



Disability Rights online News

U.S. Department of Justice
Civil Rights Division

January 2010
Issue Thirty Four

Disability Rights Online News

is a bi-monthly update about the Civil Rights Division's activities in the area of disability rights. The Division enforces laws prohibiting discrimination based on disability in employment, housing, access to businesses serving the public, access to government programs and services, including voting and public transportation, and unconstitutional conditions in institutions of confinement.

In this Issue:

ADA	1 - 4
Fair Housing	4 - 6
ADA Mediation	6 - 7
ADA Outreach	7 - 8

MAJOR MASSACHUSETTS HOSPITAL COMPLEX WILL MAKE ITS SERVICES AND FACILITIES ACCESSIBLE

On October 22, 2009, the Beth Israel Deaconess Medical Center (BIDMC) in Brookline, Massachusetts, entered into a settlement agreement with the Department to ensure access to medical facilities and services for individuals with disabilities. BIDMC, a research and teaching hospital affiliated with Harvard University, is one of the largest health care providers in the Northeast. Encompassing more than 30 buildings, it operates a 621-bed acute care facility, a level one trauma center with sub-specialty services, and three community health clinics in the greater Boston area. Its specialities include cardiology,

(Continued on page 2)

DEPARTMENT FILES BRIEFS IN THREE STATES TO ENFORCE SUPREME COURT'S *OLMSTEAD* DECISION

On October 23, 2009, the Department filed a motion to intervene in *Disability Advocates, Inc. v. Paterson*, an ADA lawsuit pending in federal court in Brooklyn, New York, alleging that adults with mental illnesses who reside in adult homes in New York City could and should be residing in a more integrated setting in the community. The court had already ruled for Disability Advocates, Inc. (DAI) on liability. The Department intervened to participate in the remedy phase of the case and participate in the event of an appeal. The Department's motion was granted on November 23, 2009. On November 25 the Department filed a brief supporting the remedial plan proposed by DAI and opposing the plan proposed by the State of New York. DAI has proposed that the State create 6,000 supported-housing units over four years, enough so that all of the adult home residents with mental illnesses can be accommodated. The State

(Continued on page 2)

(Beth Israel, continued)

dermatology, gastroenterology, neonatology, neurology, obstetrics and gynecology, oncology, orthopaedics, psychiatry, pulmonary and thoracic disease, radiology, organ transplant, and surgery. Under the agreement, each of BIDMC's clinical services will make 10% of their patient rooms (including toilet facilities) accessible; will remove other architectural barriers; will purchase accessible medical equipment, including examination tables, radiologic and diagnostic equipment, patient beds, and lifts; and will review hospital policies and train staff to address the needs of individuals with disabilities.

"This agreement with a major teaching hospital that serves a diverse metropolitan community is a major step toward access to equal medical treatment for individuals with disabilities," said Thomas E. Perez, Assistant Attorney General for the Civil Rights Division. "It is a top priority of the Civil Rights Division to enforce laws that guarantee that persons with disabilities have equal access to medical care and critical services. We applaud the Beth Israel Deaconess Medical Center for working closely and cooperatively with us to reach a resolution."

(Olmstead, continued)

of New York has proposed to provide 1,000 supported-housing units over a five-year period. The court has not yet ruled on these proposals.

On November 23, 2009, the federal court in Richmond, Virginia, granted the Department's motion to participate as *amicus* in *Arc of Virginia, Inc. v. Kaine*. This lawsuit challenges the State's decision to build a new facility to replace the Southeastern Virginia Training Center (SEVTC), an institution for people with intellectual disabilities, on the grounds that it will result in the placement of 75 of SEVTC's current residents in a new segregated facility despite the fact that they have already been determined capable of living in the community. The next day, the Department filed a brief opposing the State's motion to dismiss the case on various legal grounds, and on November 24 participated in oral argument reiterating its position. On December 17, 2009, the court dismissed the lawsuit, and that decision has been appealed.

On November 25, 2009, the Department filed a motion in federal court in Hartford, Connecticut, seeking to participate as *amicus* in *State of Connecticut Office of Protection and Advocacy, et al. v. State of Connecticut*. This lawsuit challenges the State's reliance on privately run segregated nursing home facilities to serve the needs of individuals with mental illnesses who would be more appropriately served in community-based settings. The Department also filed a brief opposing the State's motion to dismiss the case.

NEW YORK CITY POLICE DEPARTMENT WILL IMPLEMENT EFFECTIVE COMMUNICATION POLICY

On November 18, 2009, the New York Police Department (NYPD) entered into a settlement agreement with the Department resolving three ADA complaints concerning NYPD's failure to have appropriate policies and procedures in place to handle the arrest of, or interviews with, individuals who are deaf or hard of hearing. Under the

agreement, NYPD will ensure effective communication with people who are deaf or are hard of hearing; designate an ADA coordinator to oversee compliance efforts; institute a grievance procedure; and train new recruits and supervisors regarding appropriate procedures for dealing with people who are deaf or are hard of hearing.

COLORADO TECHNICAL COLLEGES WILL IMPROVE ACCESSIBILITY

On December 15, 2009, IntelliTec Colleges entered into a settlement agreement with the Department to ensure access to its facilities in Colorado Springs, Grand Junction, and Pueblo, Colorado. IntelliTec offers career training programs for automotive technicians, medical and dental assistants, administrative professionals, architectural drafting professionals, and other careers at its three campuses. The agreement requires Intellitec to remove access barriers at its existing facilities and comply with the ADA Standards for Accessible Design in any future construction or alterations projects. This agreement is the result of a compliance review by the Department.

TWO NEW YORK CITY HOTELS WILL IMPROVE ACCESSIBILITY

On October 6, 2009, the federal court in Manhattan approved a consent decree between Hotel Carter and the Department resolving an ADA lawsuit filed in January 2009 as part of the initiative being conducted by the U.S. Attorney's Office in Manhattan to ensure that hotels in New York's Theater District are accessible. (See previous articles in issues 30 and 32.) Under the settlement, the 450- room Hotel Carter will create 13 fully accessible guest rooms (four with roll-in showers) and an additional 22 guest room that are accessible to people who are deaf or hard of hearing. The hotel will also make its main public entrance,

registration counter, and public restrooms accessible; change its policies and procedures to facilitate reservations by people with disabilities; allow service animals; require hotel staff to assist people with disabilities; and pay a \$20,000 civil penalty.

In November, the 790-room Edison Hotel entered into a voluntary settlement agreement with the Department under this initiative. The hotel will create 24 fully accessible guest rooms (twelve with roll-in showers) and an additional 40 guest rooms that are accessible to people who are deaf or hard of hearing. The hotel will also make its front entrance and registration counter accessible.

INDIANA CHILD CARE CENTER WILL ACCOMMODATE CHILDREN WITH DISABILITIES

On October 20, 2009, Pine Hills Kiddie Garden of Castle Rock, Colorado, which runs two child care centers in Indiana, entered into a settlement agreement with the Department resolving a complaint by a parent of a girl with Type I diabetes. The complaint alleged that Pine Hills refused to permit the six-year old to participate in field trips unless she was accompanied by a parent or a medically trained person hired by the parent. Under the agreement, Pine Hills will evaluate each child's individual needs and make reasonable modifications for children with diabetes, including monitoring them while eating, testing their blood, or using other diabetes-related equipment. The agreement includes \$10,000 in compensatory damages to the family and a \$10,000 civil penalty to vindicate the public interest.

This brings the number of hotels involved in the initiative to 23 -- eighteen resolved by settlement agreements and five resolved by consent decrees after lawsuits were filed.

COLORADO ATTORNEY SUED FOR DISABILITY DISCRIMINATION

On November 3, 2009, the Department filed a lawsuit in federal court in Denver, Colorado, against attorney Patric LeHouillier. The case stems from an incident in which Mr. LeHouillier was scheduled to take a deposition in his offices of a woman who uses a service dog. The Department alleges that when she, her dog, her husband, and her attorney showed up for the deposition, Mr. LeHouillier refused to admit them because of the service dog. The lawsuit was filed after efforts to resolve the case by settlement agreement were unsuccessful.

MULTI-FAMILY HOUSING ACCESS FORUM IN KANSAS CITY DRAWS LARGE TURNOUT

On November 17, 2009, more than 120 developers and building professionals, government officials, and advocates for individuals with disabilities attended the Civil Rights Division's ninth Multi-Family Housing Access Forum in Kansas City, Missouri. Hosted by Thomas E. Perez, Assistant Attorney General for the Civil Rights Division, and Steven H. Rosenbaum, Chief of the Civil Rights Division's Housing and Civil Enforcement Section, the event featured presentations by two design professionals followed by engaging questions from the audience. The event was free.

In his welcoming remarks, Mr. Perez advised the building professionals in attendance to comply with the Fair Housing Act's accessibility requirements from the outset of their projects,

rather than risking enforcement actions and expensive retrofits. He encouraged them to comply with the accessibility requirements not only because it is the law and the right thing to do, but because it is the right business choice as well. Mr. Perez noted that in the coming years, the Kansas City area will face growing challenges

to keep up with the increasing demand for housing and the growing numbers of people with a condition limiting basic physical activities.

Mr. Perez also spoke about the Justice Department's enforcement activities and emphasized that although the Department has obtained great results through litigation—over 16,000 housing units in 26 states have been or are being made accessible in the last five years—litigation is costly for all parties. The Department would prefer to achieve compliance with the Fair Housing Act's accessibility requirements at the design and planning stages to ensure that the housing needs of people with disabilities are met without costly retrofits and litigation.

The featured presenters were Jan Burgess, AIA, a senior project manager at Treanor Architects, P.A., of Lawrence, Kansas, and Jay



Chief Steven Rosenbaum, speaker Jan Burgess, Assistant Attorney General Thomas Perez, and speaker Jay Woodward at Kansas City Access Forum

(Access Forum, continued)

Woodward, a senior staff architect with the International Code Council's Business and Product Development department in Lenexa, Kansas.

Mr. Burgess spoke about the accessibility requirements of the Fair Housing Act and how professionals can ensure compliance. He shared his experiences in designing accessible multi-family housing and the demand for accessible housing. He also spoke about the types of housing that are required to be accessible.

Mr. Woodward spoke about the International Building Code as a "safe harbor" for compliance with the accessibility provisions of the Fair Housing Act. He identified common errors that professionals make when designing multi-family housing. He also emphasized that local code officials are not responsible for ensuring that multi-family housing incorporates the accessible design features of the Fair Housing Act, and professionals must be accountable for their own compliance.

Launched in 2005, the Access Forum's objectives are to help building professionals understand their legal obligations under the federal Fair Housing Act's accessibility requirements and to celebrate partnerships that have successfully produced accessible multi-family housing in which everyone profits—developers and consumers alike. The theme of the initiative is "Good Access is Good Business." Previous events were held in Philadelphia, Houston, Seattle, Miami, Minneapolis, Phoenix, Atlanta, Dallas, and Washington, DC.

ELEVEN MULTI-FAMILY HOUSING COMPLEXES IN TENNESSEE, LOUISIANA, ALABAMA, AND TEXAS WILL BE RETROFITTED FOR ACCESSIBILITY

On November 30, 2009, the federal court in Memphis, Tennessee, approved a consent decree settling the Department's Fair Housing Act lawsuit against the developers, architects, and engineers involved in the design and construction of eleven multi-family housing complexes in Tennessee, Louisiana, Alabama, and Texas. The eleven complexes contain more than 800 units covered by the Fair Housing Act's accessibility provisions.

Under the settlement, the defendants will make the apartment complexes accessible to people with disabilities. The retrofitting will include reconfiguring bathrooms and

kitchens, widening doorways, replacing inaccessible door hardware, providing accessible parking, and installing curb ramps and eliminating steps and steep slopes in walkways.

In addition, the defendants will pay up to \$117,000 to compensate individuals harmed by the lack of accessible housing. The settlement further requires that all defendants undergo training on the requirements of the Fair Housing Act and provide periodic reports to the government. Two defendants will also pay a civil penalty of \$12,000.

The complexes involved are the South Bluffs Apartments, the Island Park Apartments, The Apartments on Harbor Town Square, and The Horizon in Memphis, Tennessee; the Grand Pointe Apartments and the Highlands of Grand Pointe in Lafayette, Louisiana; the Island Park Apartments and the Reflections of Island Park in Shreveport, Louisiana; the Ashford Place Apartments in West Monroe, Louisiana; the Sunset Bay at Bon Secour Condominiums in Gulf Shores, Alabama; and the Cumberland Place in Tyler, Texas. Anyone who believes he or she may have been harmed by the lack of accessible housing at one of these complexes should contact the Justice Department at 1-800-896-7743, and select menu option 996.

(Multi-Family Housing, continued)

“The Fair Housing Act requires equal access to housing for persons with disabilities,” said Assistant Attorney General Thomas E. Perez. “This comprehensive settlement ensures that these multifamily housing complexes will be retrofitted to comply with the Fair Housing Act, thus allowing persons with physical disabilities an equal opportunity to live in and visit these complexes.”

In announcing the settlement, U.S. Attorney Lawrence J. Laurenzi said, “This Consent Order is an example of our office’s commitment to enforcing the civil rights of all people and in particular highlights the high degree of cooperation between our office and the Civil Rights Division in enforcing the rights of individuals with disabilities.”

This case arose from a survey conducted by the Memphis Center for Independent Living indicating that three of the Memphis properties were in violation of the Fair Housing Act. The defendants are Steve Bryan, Bryan Construction Company, Patton & Taylor Construction Co., Taylor Gardner Architects, Looney-Ricks-Kiss Architects, Richard A. Barron, The Reaves Firm, Smith Engineering Firm, David W. Milem, Belz/South Bluffs, and HT Devco. Mr. Bryan and Bryan Construction Co. will each pay a civil penalty.

ADA MEDIATION HIGHLIGHTS

The ADA Mediation Program is a Department-sponsored initiative intended to resolve ADA complaints in an efficient, voluntary manner. Mediation cases are initiated upon referral by the Department when both the complainant and the respondent agree to participate. The program uses professional mediators who are trained in the legal requirements of the ADA and has proven effective in resolving complaints at less cost and in less time than traditional investigations or litigation. Over 78% of all complaints mediated have been resolved successfully.

In this issue, we highlight complaints against local governments that have been successfully mediated.

- An individual whose wife uses a walker for mobility alleged that a Virginia county library’s accessible parking spaces were not on the shortest accessible route to the entrance. The library installed accessible spaces with signage and access aisles directly in front of the accessible entrance.

- A Florida parent complained that a court failed to provide effective communication for

her son, who is deaf and had requested real-time captioning when he was summoned for jury duty. The court agreed to provide real-time captioning when needed and revised its jury summons to include instructions for individuals with disabilities needing accommodations to call the ADA compliance officer. The court also instructed its information officers to refer individuals with disabilities who need assistance to the court’s ADA compliance officer, added captioning to the jury instruction video, produced a written copy of the juror oath, and agreed to review all efforts to improve effective communication on an ongoing basis.

- In Georgia, a couple who is deaf alleged that a county court required the complainants’ son to interpret for them during a hearing. The court adopted a policy for providing effective communication, including the provision of qualified sign language interpreters, and distributed a memo to staff directing them to send individuals who need assistance with effective communication to the clerk of the court, who had been trained on the policy. The

(Mediation, continued)

court also created a list of qualified sign language interpreters and posted signage about the availability of interpreters and how to make a request.

- In Virginia, a person who uses a wheelchair complained that town hall meetings were held in an inaccessible location. The town agreed to hold all public meetings in an accessible building and to inform the public of these changes.

- In Oklahoma, a person who uses a wheelchair alleged that a courthouse was inaccessible. The courthouse installed an accessible route from its accessible parking spaces to the entry door, trained security officers and court staff on procedures for dealing with people who have disabilities, gave security officers wands to screen individuals who, because of disability, could not pass through the metal detector,

and removed barriers in the corridor between the elevator and the courtroom door. The county commissioners also appointed an ADA Coordinator to address program access issues throughout the county.

- In Texas, a person who uses a wheelchair complained that an exterior wheelchair lift used to access a courthouse was continually breaking down, once leaving him stranded inside the lift. He further alleged that when he raised the issue with a court employee, the employee told him that he could be removed from the juror list. The courthouse repaired the wheelchair lift so that it could again be operated independently and installed a buzzer in the lift to alert staff if assistance is needed. In addition, the complainant was assured that he had not been removed from the jury pool.

tion and answer questions about the ADA. Approximately 17,000 people attended the event.

- On November 11-13, representatives staffed a booth at the National League of Cities' annual conference in San Antonio, Texas, to distribute information and answer questions about the ADA. Approximately 8,000 people attended the convention.

- On November 13, staff participated in the Open Society Institute and Mental Disability Rights International (MDRI/OSI) Strategic Litigation Meeting at American University's Washington College of Law in Washington, DC. The day-long meeting, sponsored by MDRI/OSI, brought together American and international litigators, academics, and activists to discuss litigation strategies that would best enhance the disability rights protections created by the United Nations Convention on the Rights of Persons with Disabilities, with particular emphasis on the rights to legal personhood (legal capacity) and community integration.

- On November 13, staff conducted ADA training at Deerfield Correction Center in Capron, Virginia. The

RECENT OUTREACH ACTIVITIES

- On November 5, staff spoke at the 59th Annual Cortland Recreation Conference organized by State University of New York-Cortland's Recreation, Parks and Leisure Studies Department. The student-organized conference was called "Destination Rec-GREENation" and focused

on topics such as outdoor recreation, inclusive recreation services, and sustainable practices. An estimated 300 to 400 people attended the event.

- On November 5-8, representatives staffed a booth at the Abilities Expo in Atlanta, Georgia, to distribute informa-

(Outreach, continued)

audience included approximately 70 correctional officials and staff, including wardens, administrators, ADA coordinators, medical and mental health professionals, correctional officers, and counselors.

■ On November 18, staff gave a presentation and participated

on a panel at a workshop in Washington, DC, sponsored by the Office of Compliance, the office responsible for ensuring that the U.S. Senate and House of Representatives comply with the nondiscrimination requirements of the Congressional Accountability Act of 1995. The presentation provided an

overview of the program access requirement under the ADA. The audience was comprised of approximately 50 people representing the US Capitol Police, Library of Congress, Congressional Offices, and others covered by the Act.