



# Disability Rights online News

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Civil Rights Division

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## 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.

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## JUSTICE PROJECT IMPROVES CONDITIONS FOR PEOPLE WITH DISABILITIES IN PRISONS AND JAILS

Some of the most egregious conditions faced by people with disabilities are those faced by people who are incarcerated in prisons and jails. At the beginning of 2006, state prisons held 1,259,905 inmates in custody. And local jails held 766,010. Adding in the number of people on parole or probation or in federal prisons, the number of individuals in the United States correctional system swells to more than 7 million.

Like all other facilities covered by Title II of the ADA, correction and detention facilities are required to make their programs, services, and activities accessible. This includes intake operations such as fingerprinting, initial medical and

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## COURT APPROVES DISTRIBUTION OF \$700,000 IN FAIR HOUSING DAMAGES

On December 12, 2007, the federal court in Detroit, Michigan, approved a plan for distributing \$700,000 in monetary damages to 37 people with disabilities who had been harmed by the lack of accessible features at apartment complexes owned by Michigan apartment owner Edward Rose and Sons. An additional \$250,000 from the settlement fund will be used to increase housing opportunities for people with disabilities. The payments are in accordance with a September 2005 consent decree entered in United States v. Edward Rose and Sons, in which the defendants agreed to establish a fund to compensate victims of their alleged discrimination on the basis of disability. (See previous story in issue #9.)

The consent decree resolved two lawsuits filed by the United States in 2001 and 2002 alleging that Edward Rose and Sons, along with their architects and affiliated companies, had failed to design and construct 49 apartment complexes in Michigan, Indiana, Illinois, Ohio, Wisconsin, Virginia, and

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(Justice Project, continued)

mental health screening, and determining the appropriate classification, confinement level, housing, and cell assignment for the new inmate; access to toilets, showers, food, and recreation; medical and mental health services; education, drug treatment, anger management, and sexual offender treatment programs; commissary; phone calls; jobs; religious services; work release and early release programs; and visitation programs.

Yearly, the Department receives more than 1,600 complaints from inmates in state and local facilities alleging discrimination on the basis of disability. The "Justice Project" is an initiative created in 2004 to investigate and resolve these complaints.

Inmates with disabilities allege a wide variety of ADA violations at state and local correction and detention facilities. The three most common types of allegations involve: (1) denial of access or unequal access to the facility's programs and activities; (2) lack of effective communication for inmates who are deaf or hard of hearing and those who are blind or have low vision; and (3) denial of access to disability-related medical services and devices.

### **ACCESS COMPLAINTS**

Many complaints allege lack of accessible cells, toilets, and showers, steeply sloped sidewalks and floors or steps which keep inmates with mobility disabilities from accessing essential areas such as dining halls, libraries, and medical facilities. Others allege lack of assistance for those who require help with daily activities such as toileting, showering, or feeding - some inmates have received no assistance in toileting and have remained soiled for extended periods of time.

Some inmates who take medication to treat mental illness are excluded from participating in drug treatment programs that are required to be eligible for parole. Other inmates with disabilities are excluded from job assignments, preventing them from earning good-time credits that would qualify them for early release. In some facilities, inmates with disabilities are housed in the infirmary, segregated from the general population and unable to participate in the programs and activities available to other inmates. Visitors with disabilities also face difficulties due to lack of accessible parking, entrances, and visitation areas.

### **EFFECTIVE COMMUNICATION COMPLAINTS**

Inmates with hearing and speech disabilities have complained about lack of TTYs and about policies that limit the length of telephone calls, denying them an equal opportunity to communicate with family members and friends because TTYs function in a way that takes longer than regular telephone calls. Inmates with hearing disabilities have been denied sign language interpreters for classification interviews, critical medical appointments, and required classes and treatment programs and have missed medical appointments, pill call, or meals because these events were only announced orally. Many inmates with vision disabilities are denied access to books on tape, tape players, or large print or Braille reading materials, even though these are available at no cost through the Library of Congress.

### **MEDICAL SERVICE AND DEVICE COMPLAINTS**

Generally, state and local government agencies are not required to provide personal devices for citizens with disabilities. However, prisons and jails *are* required to provide necessary devices such as eyeglasses, hearing

(Justice Project, continued)

aids, wheelchairs, walkers, and canes, necessary medical equipment such as catheters, urine bags, and prescribed orthopedic shoes, and necessary medications such as insulin and seizure medications for inmates with disabilities. Failure to provide such devices, equipment, or medication is a frequent complaint, particularly from inmates with psychiatric disabilities. Inmates with diabetes have also complained of not being able to test their blood sugar levels or get the proper diet prescribed by prison doctors.

### **JUSTICE PROJECT SUCCESSSES**

With funding assistance from the Office of Justice Programs, the Justice Project conducts investigations ranging from individual complaints from an inmate to more comprehensive ADA compliance reviews of all prisons and prison programs in a state. In addition to getting broad relief affecting large numbers of inmates in a jail or prison -- such as modifications to provide physical access to cells, toilets, showers, and dining halls or the adoption

of ADA-compliant effective communications policies -- the Justice Project has obtained relief for many individual inmates, including:

- a treatment program in an accessible location for an inmate with a mobility disability;
- a prosthetic leg for an inmate that allowed him to live in the general population instead of the infirmary and to participate more fully in the activities available for inmates;
- aides to assist an inmate with no arms in eating and other activities of daily living and to assist an inmate who uses a wheelchair in getting around the prison facility;
- sign language interpreters enabling one deaf inmate to participate in educational programs, another deaf inmate to participate in a treatment program required for release, and another to participate in required meetings with probation officers;

- TTYs for staff, visitors, and inmates;
- talking books, tape recorders, magnifiers, and brailers for inmates with vision disabilities;
- access to jobs and work release programs for inmates with psychiatric disabilities; and
- changes in policy permitting an inmate with a disability to be considered for a trusty job, permitting a mother who uses a portable oxygen tank to visit her inmate son, and permitting a blind inmate to touch his children's faces during visitation.

### **TECHNICAL ASSISTANCE**

The Justice Project also provides technical assistance to state and local officials and corrections and law enforcement personnel through meetings and telephone calls. In addition, the Department has published a document entitled "ADA/Section 504 Design Guide: Accessible Cells in Correctional Facilities," which is available on the ADA Website and through the ADA Information Line.

(Fair Housing, continued)

Nebraska in accordance with the accessibility requirements of the Fair Housing Act and the Americans with Disabilities Act. Among other things, the decree required the Rose companies to set aside \$950,000 to compensate people who had been harmed by the lack of accessible features and to take steps to notify tenants and other persons of their right to apply for compensation.

The Department subsequently identified 37 people who should be compensated, and the court approved the distribution of \$700,000 to them. The remaining \$250,000 will go toward increasing housing opportunities for people with disabilities in communities where Edward Rose and Sons operates, in a manner to be determined later by the court.

“This is an important settlement for persons who were denied the right to live in accessible housing,” said Grace Chung Becker, Acting Assistant Attorney General for the Civil Rights Division. “The Civil Rights Division is committed to ensuring that individuals are not prevented from occupying the home of their choice because of illegal accessibility barriers or other violations of federal law.”

“Despite the Fair Housing Act’s enactment by Congress so many years ago, some landlords still fail to make their properties accessible to

persons with disabilities. This case demonstrates our office’s commitment to aggressively enforcing federal fair housing laws and our continuing – and successful – efforts to fight discrimination based on race, color and national origin, religion, sex, familial status and disability,” said Stephen J. Murphy, U.S. Attorney for the

Eastern District of Michigan. “As a result of this case, more than 5,000 apartment units are being made accessible to citizens with disabilities. We are also pleased to be able to compensate those individuals who have been victims of housing discrimination in this case.”

## **ALBANY, NEW YORK, DEVELOPERS WILL COMPENSATE VICTIMS AND RETROFIT SEVEN APARTMENT COMPLEXES FOR ACCESSIBILITY**

On January 18, 2008, New York developers Bruce Tanski, the Bruce Tanski Construction and Development Company, Michael Dennis, and the Mountain Ledge Development Corporation reached a settlement with the Department resolving the Department’s demands for monetary and other relief stemming from an earlier federal court ruling that these developers had violated the federal Fair Housing Act by failing to design and construct seven Albany-area apartment complexes to be accessible to people with disabilities.

The Fair Housing Act requires that certain multi-family dwellings include design features that make them more accessible to people with physical disabilities. In 2007, the court found that the defendants had violated the Act by failing to install accessible entrances, bathrooms, kitchens, pedestrian walkways, and thermostats within the reach of people who use wheelchairs at the McGregor Village Apartments, Clifton Court North Apartments, Andrea Court Apartments, Cranberry Estates, Pine Ridge II Apartments, Halfmoon Court Apartments, and Carol Jean Estates. For example, all of the ground floor units at these complexes were built with one or more steps in front of them.

The settlement, which was approved by the court on January 22, requires the defendants to eliminate the steps; retrofit the apartments; retrofit public and common use areas; pay \$155,000 in damages to people identified by the Department as having been harmed by these inaccessible features, and pay \$20,000 in civil penalties. In addition, the settlement requires the defendants

(Albany, continued)

to comply with federal accessibility requirements in all future construction of apartment complexes; to report to the government on any future construction projects; and to undergo training on the requirements of the Fair Housing Act.

“With this settlement, persons in wheelchairs will be able to enter the doors of their homes, reach their thermostats, and move around in their kitchens and bathrooms,” said Grace Chung Becker, Acting Assistant Attorney General for the Civil Rights Division. “This settlement will open up 362 more apartments to persons with disabilities.”

“The Fair Housing Act requires that covered multi-family dwellings constructed for first occupancy after March 13, 1991, take into consideration the needs of persons with disabilities,” said Kim Kendrick, HUD Assistant Secretary for Fair Housing and Equal Opportunity. “Stairs without ramps, doorways too narrow for wheelchairs, and environmental controls that are inaccessible deny persons with disabilities equal access to the housing of their choice. This is unacceptable when one out of five people living in our country has a disability.”

The settlement also resolves the Department’s claim that Michael Dennis and the Mountain Ledge Development Corpo-

## DEPARTMENT TO HOLD MULTI-FAMILY HOUSING ACCESS FORUM IN SEATTLE IN MAY

The Department’s next Multi-Family Housing Access Forum will be held on Tuesday morning, May 20, 2008, at the Marriott SpringHill Suites in downtown Seattle, Washington. The Access Forum is a nationwide program that the Assistant Attorney General for the Civil Rights Division launched in 2005. Its purpose is 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. Expected to participate are building professionals, including architects and engineers, as well as developers, government officials, and advocates for individuals with disabilities. The last Access Forum event was held in Miami in November, and was attended by more than 80 people. Previous events were held in Minneapolis, Phoenix, Atlanta, Dallas, and Washington, DC. To learn more about the program and the Department’s fair-housing enforcement activities, visit [www.usdoj.gov/fairhousing/](http://www.usdoj.gov/fairhousing/). To receive an invitation to the May event, email the Department at [accessforum@usdoj.gov](mailto:accessforum@usdoj.gov).

ration failed to grant reasonable accommodations to people with disabilities. Under the terms of the agreement, these defendants must develop and post a reasonable accommodation policy that contains specific and objective standards and procedures for handling requests by people with disabilities for reasonable accommodations. These defendants are required to maintain records of such requests and to report them and any related complaints to the Department.

The case began when a tenant of McGregor Village

filed a fair housing complaint with the U.S. Department of Housing and Urban Development (HUD). After investigating the matter, HUD issued a charge of discrimination, and the matter was referred to the Justice Department, which filed the lawsuit in June 2004. (See previous stories in issues #2 and #19.) Three architects and an engineer who were also defendants in the case had previously reached settlements with the Department that included an additional \$18,000 for payments to victims.

## **IDAHO LANDLORD SUED FOR FAILING TO PROVIDE REASONABLE ACCOMMODATION**

On November 21, 2007, the Department filed a disability discrimination lawsuit against the owners and property managers of Shadow Canyon Apartments, a 77-unit apartment complex in Idaho Falls, Idaho. The complaint, filed in federal court in Boise, alleges that the defendants engaged in a pattern or practice of refusing to make reasonable accommodations for persons with disabilities in violation of the Fair Housing Act.

The case originated when the Inter-mountain Fair Housing Council (IFHC), a non-profit fair housing organization in Idaho, conducted a telephone test in response to allegations of disability discrimination at Shadow Canyon. During the test, an IFHC employee posed as a social worker looking for an apartment for a disabled client who used a wheelchair and had a service animal. In response, Shadow Canyon's onsite manager stated, "We absolutely do not allow dogs. . . . Even if it's service, we won't allow dogs." Eight months earlier, this onsite manager had received training from the U.S. Department of Housing and Urban Development (HUD) on basic fair housing law with a particular emphasis on reasonable accommodations for people with disabilities.

The IFHC filed a discrimination complaint with HUD. HUD conducted an investigation and referred the matter to the Justice Department. The Department's complaint seeks an injunction prohibiting the defendants from violating the Fair Housing Act, monetary damages for the IFHC, and a civil penalty.

## **POLICE DEPARTMENT SUED FOR RETALIATION**

On December 10, 2007, the Department filed an ADA lawsuit in federal court in Denver against the City of Colorado Springs (Colorado) Police Department (CSPD) alleging that CSPD refused to promote Lance Lazoff to Sergeant because of the assistance he had provided to his wife, a retired CSPD officer, who has a disability and was the lead plaintiff in a successful ADA class action against the CSPD. The suit seeks a court order requiring CSPD to offer Lazoff a promotion to Sergeant, together with retroactive seniority, payment of back pay with interest, and related benefits. Efforts to resolve this matter with CSPD before litigation were unsuccessful.

## **MOVIE THEATER IN HAWAII WILL IMPROVE ACCESSIBILITY**

On January 15, 2008, Wallace Theater Corporation entered into a settlement agreement with the Department resolving a complaint filed by an advocacy organization on behalf of an individual who uses a wheelchair alleging that the Wharf Cinemas in Lahaina, Maui, Hawaii, a four-theater

movie complex, had only one wheelchair seating location in each of its theaters. The complainant further alleged that when two individuals in wheelchairs arrived to see the same movie, one was turned away due to the lack of accessible seating. Under the

agreement, Wallace Theater Corporation will provide additional wheelchair seating locations in each theater, will install assistive listening systems in each theater, and will make modifications to its entrance doors, concession lobby, and theater doors.

## ADA BUSINESS CONNECTION HOLDS MEETING IN FLORIDA

On January 7, 2008, Acting Assistant Attorney General Grace C. Becker sponsored the 22nd ADA Business Connection Leadership meeting in conjunction with the annual convention of the Society for Accessible Travel and Hospitality (SATH), held at the Disney Contemporary Resort in Orlando, Florida. Stuart Vidockler, Chairman of SATH, and Jeannie Amendola of Walt Disney World served as co-hosts for the event, which was moderated by Deputy Assistant Attorney General Loretta King. Ms. Amendola and Nadine O. Vogel, President of Springboard Consulting, LLC, served as speakers for the meeting, addressing the mutual benefits of accessible customer service for both individuals with disabilities and the travel and hospitality industries. Twenty-nine leaders from the travel and hospitality industries and disability rights organizations and the U.S. Attorney from the Middle District of Florida attended the meeting and participated in a lively discussion following the formal speeches.

## 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 social service agencies that have been successfully mediated.

- In Pennsylvania, a woman complained that a social service organization discontinued childcare services to her young daughter because staff members refused to conduct blood sugar level tests. The organization agreed to train staff members to

check blood sugar levels of children with diabetes and to pay \$2,000 in compensation to the complainant.

- In New York, a person with a neurological disability that causes her to be unable to eat certain foods complained that an organization that provides in-home meals dropped her from the program because they would not modify their menu for her. The social service center resumed service, implemented a system to work with the complainant and others to identify individual dietary needs, and apologized to the complainant.

- A person who uses a wheelchair complained that a social service center in Georgia was inaccessible. The center installed a van-accessible parking space, a curb ramp, an accessible door handle at the entrance, and a new accessible restroom.

- In Nebraska, a person who uses a wheelchair alleged that a nonprofit housing organization did not have accessible restrooms. The building owner widened the entrance to the unisex bathroom and reconfigured it to provide access to people with mobility disabilities.

(Mediation, continued)

- In Texas, a parent of a child with a severe peanut allergy complained that a nationwide summer day camp program for elementary school-aged children refused to administer epinephrine via an Epi-Pen in the event of an allergic reaction, instead requiring the parent to come to the site to administer the medication. The corporate office agreed to adopt a policy requiring site coordinators to administer basic first aid to all children, including the Epi-Pen for children experiencing an allergic reaction. The respondent also purchased a supply of Epi-Pens for use in its programs throughout the country and sent a written apology to the complainant.
- A parent complained that her child with autism had been denied access to a day care program in Tennessee. The program agreed to comply with the ADA and to admit the child immediately, to establish a plan for ongoing communication with the parent about any needs the child may have, and to provide individualized assistance when deemed necessary by all parties.

## RECENT OUTREACH ACTIVITIES

On January 15, Division staff participated as a panel member in a regional audio-conference organized by the DBTAC-Great Lakes ADA Center in Chicago. The topic was “2008 Best Practices in Design: Balancing local, State and Federal Requirements to Ensure Accessibility.” The panel also included architects and a representative of the Chicago Mayor’s Office for People with Disabilities.