



Enforcing the ADA:

A Status Report from the Department of Justice

October - December 2007

This Status Report covers the ADA activities of the Department of Justice during the fourth quarter (October - December) of 2007. This report, previous status reports, and a wide range of other ADA information, including the consent decrees and formal settlement agreements mentioned in this report, are available through the Department's ADA Home Page at www.ada.gov (see page 10).

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The Americans with Disabilities Act (ADA) is a comprehensive civil rights law for people with disabilities. The Department of Justice enforces the ADA's requirements in three areas --

Title I: Employment practices by units of State and local government

Title II: Programs, services, and activities of State and local government

Title III: Public accommodations and commercial facilities

I. Enforcement

Through lawsuits and both formal and informal settlement agreements, the Department has achieved greater access for individuals with disabilities in thousands of cases. Under general rules governing lawsuits brought by the Federal Government, the Department of Justice may not file a lawsuit unless it has first unsuccessfully attempted to settle the dispute through negotiations.

A. Litigation

The Department may file lawsuits in Federal court to enforce the ADA and may obtain court orders including compensatory damages and back pay to remedy discrimination. Under title III the Department may also obtain civil penalties of up to \$55,000 for the first violation and \$110,000 for any subsequent violation.

1. New Lawsuits

The Department initiated or intervened in the following lawsuits.

Title II

U.S. v. City of Colorado Springs -- The Department filed a lawsuit in the U.S. District Court for the District of Colorado alleging that the City of Colorado Springs Police Department refused to promote a police officer to sergeant in retaliation for his wife's role in a successful class action lawsuit against the police department under the ADA. According to the complaint, the officer, a recipient of numerous commendations who serves on the Police Department's Tactical Enforcement Unit (S.W.A.T. team) and teaches S.W.A.T. tactics nationally, applied for promotion nine months after the class action settlement involving his wife, who successfully challenged the police department's policy of involuntarily retiring police officers with disabilities. The officer publicly supported and assisted his wife's efforts. Although the former police chief claimed to have legitimate reasons for refusing to promote the officer, the government's complaint alleges that the real reason was to punish him for activity that is

Department Files Stadium Accessibility Suit Against University of Michigan -- The Department filed a motion to intervene in Michigan Paralyzed Veterans of America v. University of Michigan, a lawsuit challenging the accessibility of the University of Michigan football stadium, the largest college stadium in the United States. The Department's complaint alleged that the university and its board of regents were violating the ADA and section 504 of the Rehabilitation Act of 1973 by failing to comply with accessibility requirements for both existing facilities and alterations. The Department's action follows an investigation by the U.S. Department of Education, which, on October 26, 2007, issued a formal letter of findings to the university concluding that the university violated the ADA and section 504. The Department of Education found that the football stadium did not have enough accessible wheelchair seats (only 88 wheelchair seats in a stadium with 107,501 seats), the accessible wheelchair seats were not dispersed around the stadium, the university had failed to provide accessible ramps and routes into and around the stadium, and the stadium had no accessible toilet rooms, concession stands, souvenir shops, parking, or signage. On November 9, 2007, the Department of Education notified the university that negotiations to achieve voluntary compliance had reached an impasse and the Department of Education referred the matter to the Department of Justice for litigation.

protected under the ADA. The lawsuit seeks a court order requiring the city to offer to promote the officer to sergeant and to compensate him for any lost wages and other benefits.

Miller v. Johnson -- The Department intervened in the U.S. District Court for the Eastern District of Virginia to defend the constitutionality of an inmate's private title II lawsuit for damages against Virginia prison officials. The inmate alleges that he is an individual with a disability because of various health conditions and that he required reasonable modifications in prison rules, policies, and practices. Virginia asserted that Congress lacked authority under the ADA to remove the State's immunity because the ADA's protections

go further than the equal protection rights guaranteed by the U.S. Constitution. The Department argued that Congress had the authority to remove State immunity because the ADA is appropriate legislation under the Constitution to remedy the history of pervasive discrimination against people with disabilities, including in prison administration.

2. Consent Decrees

Some litigation is resolved at the time the suit is filed or afterwards by means of a negotiated consent decree. Consent decrees are monitored and enforced by the Federal court in which they are entered.

Title III

Madison Square Garden Will Improve Accessibility -- The Department filed a lawsuit and, simultaneously, a consent decree settling it, in the U.S. District Court for the Southern District of New York against the owners and operators of Madison Square Garden, the premier sports and entertainment arena in New York City. The Garden agreed to provide two wheelchair and two companion seats on the arena floor for basketball games by November 4, 2007; two wheelchair seats, two companion seats, and an additional twenty accessible aisle seats for hockey games, concerts, and other events by January 31, 2008; and 48 additional wheelchair and companion seats and another 40 accessible aisle seats dispersed throughout the arena by October 1, 2008. The Garden also agreed to eliminate hundreds of architectural barriers along the routes between the entrances and the newly accessible seats, ensuring that patrons with disabilities will be able to use all of the restaurants, bars, elevators, bathrooms, telephones, and drinking fountains that line the routes to their seats. The arena owners agreed to pay \$55,000 to the United States and to expend at least \$10,000 per year for the next three years on advertisements promoting the availability of accessible seating. These changes will benefit people attending events through the 2009-2010 basketball and hockey seasons. Because the arena owners are currently planning to either relocate to a new facility or undertake significant renovations at the current facility, the consent decree also contains provisions committing the owners to comply fully with the ADA if the arena is relocated or substantially renovated and, if not, to make additional changes, subject to good faith negotiations, in the existing facility beginning with the 2010-2011 season to further enhance accessibility for individuals with disabilities.

B. Formal Settlement Agreements

The Department sometimes resolves cases without filing a lawsuit by means of formal written settlement agreements.

Title II

Metropolitan Washington Airports Authority, Washington, D.C. -- The Department entered into an agreement with the Metropolitan Washington Airports Authority concerning accessible parking at Ronald Reagan National Airport. The authority agreed to add a total of 42

accessible parking spaces in two different parking facilities and to modify its website to include information about accessible parking. It also agreed to provide real-time information about the availability of accessible parking spaces (as it already does for other parking spaces), provide training for its employees, and monitor usage of the accessible parking spaces. The website now provides a telephone number that may be called for information about available accessible parking or to request assistance. It also states that when a parking facility is full, a uniformed parking assistant posted outside the entrance of the full facility will assist patrons in locating the nearest available accessible parking space.

City of Stockton Fire Department, Stockton, California -- The City of Stockton entered into a settlement agreement with the Department resolving a complaint alleging that its fire department failed to provide the complainant with appropriate emergency medical services because of his HIV status. Under the agreement, the city agreed not to discriminate against individuals with disabilities, including HIV disease, in its emergency medical services program and to retrain program employees on the proper treatment of patients with HIV and other infectious diseases. In addition, the city will pay the complainant \$25,000.

Title III

Swarthmore College, Swarthmore, Pennsylvania -- Swarthmore College reached an agreement with the Department under which the college will make its campus and services more accessible to individuals with disabilities. The agreement results from a compliance review during which the Department found barriers to access in existing facilities and elements such as doors, restrooms, seating, signage, and interior and exterior circulation routes. It addresses a wide variety of services and facilities, including administrative buildings, housing, access between facilities, parking, directional signage, and emergency preparedness. Under the agreement, the college will –

- Ensure that all buildings and facilities in which programs, services, and amenities are offered to the public and the college community meet the accessibility criteria in the agreement, unless participation requires advance notice or registration;
- Ensure that those services and programs that require advance notice or registration are located in (or relocated to) an accessible location in the event that a individual with a disability registers;
- Submit a proposed accessibility plan to the Department by December 1, 2008, outlining how the college will comply with the agreement, after conducting architectural surveys and seeking public comment;
- Update its campus-wide emergency evacuation, sheltering, and shelter-in-place plans for individuals with disabilities;
- Ensure that three percent of the units (and adjacent toilet rooms) in its student living facilities are accessible and dispersed among the facilities; and ensure that, in addition, a reasonable number of housing facilities has an accessible entrance, first floor common area, and toilet room usable by a visitor with a disability;
- Display information on its website by September 1, 2008, identifying accessible routes through the campus, accessible parking areas, accessible entrances to buildings, and accessible spaces within buildings;
- Post signs at facility entrances and toilet rooms identifying those that are accessible and, at inaccessible entrances and toilet rooms, signs directing individuals to the nearest accessible entrance or toilet room; and
- Provide assistive listening systems and devices for people with hearing impairments in lecture halls, meeting rooms, auditoria, and other assembly areas.

Manhattan Theater District Review Yields Three More Hotel Agreements --

The U.S. Attorney's Office for the Southern District of New York signed agreements with the following three additional New York City hotels under a compliance review of 48 places of lodging in Manhattan's Theater District --

- Courtyard by Marriott at Times Square,
- Doubletree Guest Suites Times Square, and
- Hilton New York Towers.

The agreements require each hotel, as applicable, to survey existing "designated" accessible guest rooms and make them truly accessible; provide an appropriate number of guest rooms accessible for persons with mobility disabilities, including a specified number with roll-in showers; disperse accessible rooms among all classes of sleeping accommodations; provide an appropriate number of guest rooms accessible for persons who are deaf or hard of hearing; establish written policies and procedures for providing services to guests with disabilities; and take other steps, such as ensuring access for service animals, making entrances accessible, installing accessible registration counters, and providing TTY's at the front desk.

C. Other Settlements

The Department resolves numerous cases without litigation or a formal settlement agreement. In some instances, the public accommodation, commercial facility, or State or local government promptly agrees to take the necessary actions to achieve compliance. In others, extensive negotiations are required. Following are some examples of what has been accomplished through informal settlements.

Title II

An individual with a psychiatric disability who receives Supplemental Security Income ("SSI") benefits complained that eligibility criteria established by a Louisiana municipality for the receipt of household recovery assistance discriminated against persons under 60 who are unemployed because of disability. The state funding agency agreed to recognize SSI as a stream of income in place of employment and to accept applications from unemployed SSI recipients under age 60. The complainant applied for funds and received \$3,500.

An inmate with a mobility disability alleged that he was denied a wheelchair and an accessible cell at a midwestern State correctional facility. The facility provided a wheelchair to the inmate and assigned him to an accessible cell.

A complaint alleged that a California county ordinance prohibiting convicted felons from owning dogs weighing more than 20 pounds discriminated against persons with disabilities because there was no exception for service animals. The county amended the ordinance to provide an exception.

An inmate with a mobility disability, housed at a northeastern State prison, complained that after he underwent surgery for bedsores, the prison withheld a prescribed mattress and seat cushion, and that he developed more bedsores as a result. The complainant was transferred to another institution with facilities for the medical care of persons with disabilities where he is receiving improved care for his condition.

An inmate with a seizure disorder alleged that a western State prison refused to reassign him to a lower bunk. The complainant has been reassigned to a lower bunk and medical staff

has documented the inmate's medical file to ensure that these arrangements are continued in the event he is transferred to a different facility.

An individual who is deaf complained that a Kansas municipality did not provide a sign language interpreter during his court-ordered meetings with a probation officer. The city adopted a policy for providing qualified sign language and oral interpreters on a 24-hour-a-day, as needed, basis and distributed it to its employees.

An individual with a mobility disability alleged that an Ohio municipality failed to provide accessible parking and an accessible route to one of its government office buildings. The city restriped its parking lot to create accessible parking spaces and provided an accessible route to the office building.

An inmate with multiple sclerosis complained that a midwestern State prison denied him access to employment based on his disability. The complainant was offered, and accepted, employment at the prison's center for Braille and narration.

A deaf individual complained that a Kansas county jail failed to provide him with an impartial qualified sign language interpreter for a required domestic violence class while he was incarcerated. The county sheriff's office agreed to establish an effective communication policy, train its employees, designate an ADA coordinator, and establish an inmate grievance procedure.

An inmate who uses a wheelchair alleged that a northeastern State prison refused to provide him with an aide to assist him in maneuvering around the facility. The prison assigned an aide to assist the complainant and provided a new wheelchair.

Title III

An individual with a mobility disability complained that transportation provided by his hotel to a Florida tourist attraction was not accessible because the bus lift was broken and that on another occasion the driver refused to allow him to board the bus, claiming that it was full. The hotel terminated its contract with the limousine company providing the bus service and hired another transportation provider.

The wife of a deaf individual alleged that a Florida doctor's office failed to provide an interpreter for her husband when the couple needed to discuss proposed treatment for their son, and instead referred her to another doctor. The doctor adopted a written office policy for providing appropriate auxiliary aids and services free of charge when necessary to ensure effective communication with patients and their family members, made its policy known to patients, established a roster of available interpreters, and provided ADA training for employees.

An individual with diabetes alleged that a Florida movie theater did not allow him to bring his backpack containing medications and testing kits into the theater. The theater modified its policy to permit such items to be brought in by persons who need them because of their disability and provided the complainant with a letter of apology and free movie passes.

An individual with a mobility disability complained that the parking lots and curb ramps at a shopping center in Indiana were not accessible to people with disabilities. The owners of the facility provided additional accessible parking spaces and created an accessible route from the parking to the shopping center.

The U.S. Attorneys obtained informal settlements in the following cases --

District of Minnesota -- An individual with a mobility disability complained that a fast food restaurant had no van-accessible parking spaces and an inadequate number of accessible parking spaces. The restaurant added additional accessible parking spaces and signage and agreed to pay the complainant \$300.

Southern District of New York -- An individual with a mobility disability complained that a restaurant refused to serve him because he was accompanied by a service animal. The restaurant agreed to

adopt a formal written policy welcoming service animals into the restaurant and to train its current and future employees on its ADA obligations.

A complaint on behalf of multiple inmates with disabilities alleged that the State department of correction denied access to prison programs to inmates with disabilities housed in the regional medical units of four correctional facilities, including rehabilitative programs that would enable them to earn merit time and other credits. The State agreed to conduct individualized assessments of the programming needs and capabilities of the inmates and to provide rehabilitative programs in those four facilities.

II. Mediation

Under a contract with the Department of Justice, The Key Bridge Foundation receives referrals of complaints under titles II and III for mediation by professional mediators who have been trained in the legal requirements of the ADA. An increasing number of people with disabilities and disability rights organizations are specifically requesting the Department to refer their complaints to mediation. More than 400 professional mediators are available nationwide to mediate ADA cases. Over 75 percent of the cases in which mediation has been completed have been successfully resolved. Following are recent examples of results reached through mediation.

- In New York, a wheelchair user complained that a doctor's office was inaccessible. While a new, accessible office is being built, staff at the

inaccessible location will schedule appointments for people with disabilities at four nearby accessible locations. The practice also posted accessibility information on its website.

- A person whose mother is hard of hearing complained that a California movie theater did not maintain assistive listening equipment in working order. The theater implemented a procedure to regularly inspect and maintain its assistive listening system, and trained its staff on how to respond if problems arise.
- In Ohio, a wheelchair user and his spouse complained that the restrooms at a restaurant were inaccessible. The restaurant widened the doors to the men's and women's restrooms and installed grab bars, and gave the complainants a complimentary meal.

- In North Carolina, a wheelchair user complained that a restaurant's parking lot was inaccessible. The restaurant restriped the parking lot and installed two accessible parking spaces, including a van space, signage, and a ramp to the entrance.
- In Illinois, a person who is deaf complained that a medical practice refused her TTY call. The practice trained its staff in providing effective communication, including accepting TTY calls, developed a policy to provide qualified sign language interpreters upon request, posted signs in all four of its locations regarding effective communication, and agreed to pay the complainant \$2,500.
- A wheelchair user and his spouse complained that an outdoor theater in the Mid-Atlantic region failed to provide accessible seating for a specific show. The theater agreed that, when changes in seating configuration for particular events create barriers to accessible seating, it will move ticket holders who use wheelchairs to alternative accessible seats. The theater also agreed to indicate the location of accessible seats on its online seating chart. In addition, the theater added accessible picnic tables to the concessions area; installed accessible counters at all fixed kiosks, stands, and bars; refunded \$144 to the complainants; and reimbursed them \$1,600 for attorneys' fees.
- In New Mexico, a person who is hard of hearing complained that a hotel did not provide effective communication. The hotel acquired two communication kits, agreed to provide ongoing training to staff in ensuring effective communication, and apologized to the complainant.
- A person who is deaf complained that her TTY calls to a New Jersey State agency were repeatedly refused. The agency notified its employees that TTY and relay calls must be accepted, established a process to regularly test TTY lines, apologized to the complainant, and provided her a direct contact person with whom to conduct her business.
- In Pennsylvania, a person who is deaf complained that a hospital refused to provide a sign language interpreter and that it was difficult to activate closed captioning on the televisions. The hospital adopted a policy for providing effective communication with patients, including the provision of qualified sign language interpreters. The hospital will provide ongoing staff training on ADA requirements, and add a notice of patients' rights under the ADA to its intake packet and post it throughout the hospital. The hospital also obtained additional TTY's and will ensure that closed captioned televisions are available in the rooms of patients who are deaf.
- In Illinois, a person who is deaf complained that a bank refused to accept a call using a video relay service, resulting in penalties and debt collection calls that negatively affected his credit rating. The bank retrained approximately 3,000 employees to accept calls, including those by TTY, relay, and video relay services, and posted information on its website concerning such calls. The bank also refunded \$479.40 to the complainant for penalties assessed, provided correction letters to credit agencies, and paid the complainant \$10,000.

- In Arizona, an individual who is blind and uses a service animal alleged that a hotel charged a nightly surcharge for the animal. The hotel no longer charges for service animals, provides training to its staff about service animals and the ADA, and has posted signage indicating, “Service Animals Welcome” at the registration area. Additionally, the hotel paid the complainant \$730 in compensation, including a \$30 refund of the surcharge that she paid.
- In Michigan, an individual who uses a wheelchair filed a complaint alleging that a department store had insufficient space between racks and did not have an accessible restroom. The store changed its policy and conducted employee training to ensure that merchandise is not placed in the aisles. The store also installed appropriate signage directing customers to the accessible restroom.
- In North Carolina, an individual with a mobility disability complained that he was denied access to a grocery store because he uses a service animal for balance. The parties agreed to expand the scope of the mediation to cover all stores in the grocery store chain nationwide. The store changed its policy and developed procedures to allow service animals, posted them on the nationwide employee website, and agreed to incorporate them into its corporate policy manual. Additionally, the chain posted signage stating “Service animals welcome, no pets please” in more than 1,300 stores in 11 states.

III. Technical Assistance

The ADA requires the Department of Justice to provide technical assistance to businesses, State and local governments, and individuals with rights or responsibilities under the law. The Department provides education and technical assistance through a variety of means to encourage voluntary compliance. Our activities include providing direct technical assistance and guidance to the public through our ADA Website, ADA Information Line, and Automated ADA Fax System; developing and disseminating technical assistance materials to the public; and undertaking outreach initiatives.

ADA Website

The Department’s ADA Website (www.ada.gov) provides direct access to the Department’s publications, briefs, and settlement agreements, and other information about its enforcement, mediation,

technical assistance, and certification programs, including proposed changes in ADA regulations and requirements, links to ADA press releases, and links to other Federal agencies’ websites that contain ADA information.

In addition, the website provides access to --

- ◆ electronic versions of the ADA Standards for Accessible Design, including illustrations and hyperlinked cross-references;
- ◆ the ADA Business Connection, with links to materials of particular interest to businesses;
- ◆ Reaching Out to Customers With Disabilities, a web-based, interactive online course that explains the requirements of title III;

- ◆ the ADA Video Gallery, with links to accessible streaming videos about the ADA; and
- ◆ online ordering forms for the ADA Technical Assistance CD-ROM and selected videos.

ADA Information Line

The Department of Justice operates a toll-free ADA Information Line to provide information and publications to the public about the requirements of the ADA. Automated service, which allows callers to order publications by mail or fax, is available 24 hours a day, seven days a week. ADA specialists, who can assist callers in understanding how the ADA applies to their situation, are available on Monday, Tuesday, Wednesday, and Friday from 9:30 a.m. until 5:30 p.m. and on Thursday from 12:30 p.m. until 5:30 p.m. (Eastern Time). Foreign language service is also available. To get answers to technical questions, obtain general ADA information, order free ADA materials, or ask about filing a complaint, please call:

800-514-0301 (voice)
800-514-0383 (TTY)

Automated ADA Fax System

The Automated ADA Fax System allows the public to obtain free ADA information by fax 24 hours a day, seven days a week. By calling the ADA Information Line and following the directions, callers can request specific documents to be faxed directly to their fax machines or computer fax/modems. A listing of publications and their fax codes is available online or can be ordered through the ADA Information Line.

ADA Publications and Documents

Copies of the Department's ADA regulations and technical assistance publications can be obtained by calling the ADA Information Line, visiting the ADA Website, or writing to the address listed below. All materials are available in standard print as well as large print, Braille, audiotape, or computer disk for people with disabilities.

U.S. Department of Justice
Civil Rights Division
950 Pennsylvania Avenue, N.W.
Disability Rights Section - NYAV
Washington, D.C. 20530

Some publications are available in foreign languages. Spanish language documents can be accessed through the ADA Website (www.ada.gov/publicat_spanish.htm). Other language documents can be obtained by mail.

Copies of the legal documents and settlement agreements mentioned in this publication can be obtained by writing to --

U.S. Department of Justice
Civil Rights Division
950 Pennsylvania Avenue, N.W.
FOIA/PA Branch, NALC Room 311
Washington, D.C. 20530
Fax: 202-514-6195

Currently, the FOIA/PA Branch maintains approximately 10,000 pages of ADA material. The records are available at a cost of \$0.10 per page (first 100 pages free). Please make your requests as specific as possible in order to minimize your costs.

The FOIA/PA Branch also provides internet access to ADA materials at www.usdoj.gov/crt/foia/crt.htm. Links to search or visit this website are provided from the ADA Website.

IV. Other Sources of ADA Information

The **Equal Employment Opportunity Commission** offers technical assistance to the public concerning the employment provisions of title I of the ADA.

ADA publications
800-669-3362 (voice)
800-800-3302 (TTY)

ADA questions
800-669-4000 (voice)
800-669-6820 (TTY)

www.eeoc.gov

The **Federal Communications Commission** offers technical assistance to the public concerning the communication provisions of title IV of the ADA.

ADA publications and questions
888-225-5322 (voice)
888-835-5322 (TTY)

www.fcc.gov/cgb/dro

U.S. Department of Transportation, Federal Transit Administration provides information to the public on the transportation provisions of title II of the ADA.

ADA Assistance Line for regulations and complaints
888-446-4511(voice/relay)

www.fta.dot.gov/ada

The **U.S. Architectural and Transportation Barriers Compliance Board, or Access Board**, offers technical assistance to the public on the ADA Accessibility Guidelines.

ADA publications and questions
800-872-2253 (voice)
800-993-2822 (TTY)
www.access-board.gov

The **DBTAC: ADA Centers** are funded by the U.S. Department of Education through the National Institute on Disability and Rehabilitation Research (NIDRR) in ten regions of the country to provide resources and technical assistance on the ADA.

ADA technical assistance
800-949-4232 (voice & TTY)
www.adata.org

Project ACTION is funded by the U.S. Department of Transportation to provide ADA information and publications on making transportation accessible.

Information on accessible transportation
800-659-6428 (voice/relay)
<http://projectaction.easterseals.com>

The **Job Accommodation Network (JAN)** is a free telephone consulting service funded by the U.S. Department of Labor. It provides information and advice to employers and people with disabilities on reasonable accommodation in the workplace.

Information on workplace accommodation
800-526-7234 (voice)
877-781-9403 (TTY)
www.jan.wvu.edu

V. How to File Complaints

Title I

Complaints about violations of title I (employment) by units of State and local government or by private employers should be filed with the Equal Employment Opportunity Commission. Call 800-669-4000 (voice) or 800-669-6820 (TTY) to reach the field office in your area.

Titles II and III

Complaints about violations of title II by units of State and local government or violations of title III by public accommodations and commercial facilities should be filed with --

U.S. Department of Justice
Civil Rights Division
950 Pennsylvania Avenue, N.W.
Disability Rights Section - NYAV
Washington, D.C. 20530

If you wish your complaint to be considered for referral to the Department's ADA Mediation Program, please mark "Attention: Mediation" on the outside of the envelope.

The Attorney General has determined that publication of this periodical is necessary in the transaction of the public business required by law of the Department of Justice.