



Disability Rights online News

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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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NORTH CAROLINA ACCESSIBILITY CODE RECEIVES PRELIMINARY CERTIFICATION

On March 17, 2005, the Department notified the State of North Carolina of its decision to certify preliminarily that the North Carolina Accessibility Code meets or exceeds the new construction and alterations requirements of title III of the ADA. Subsequently, on April 8, the Department published a notice in the Federal Register announcing it first would receive written comments for a 60-day period through June 7 and later hold an informal public hearing in Cary, North Carolina, on May 16 on the Department's preliminary certification. The Department also published a notice stating it would hold a second public hearing in Washington, D.C., on June 20 to discuss whether final certification of the North Carolina Accessibility Code should be issued. Following consideration of submitted comments, the Department may issue a final certification of equivalency.

NUMEROUS COMMENTS RECEIVED ON ISSUES RELATED TO REVISING ADA DESIGN STANDARDS

In response to the Department's solicitation for public comments on its publication of an Advance Notice of Proposed Rulemaking (ANPRM), more than 700 comments were received and posted for public viewing at www.adaanprm.org. The solicitation, which began in September 2004 and continued through May 31, 2005, sought public input on a number of issues that will affect the Department's eventual adoption of new ADA design standards. (See previous story in Issue Five.) Comments were received from a variety of entities, including public accommodations, individuals with disabilities, public groups, and organizations representing people with disabilities.

A direct link to the ANPRM page is provided at www.ada.gov.

ADA BUSINESS CONNECTION MEETS IN NEW ORLEANS

On March 21, 2005, the ADA Business Connection met in New Orleans, Louisiana. This project brings together local and national leaders of business and disability communities to initiate discussions and encourage ongoing collaborations in an effort to make everyday commerce accessible to people with disabilities. (See previous story in Issue Two.) The meeting, which was led by Assistant Attorney General Alex Acosta and co-hosted by Craig Miller, President and CEO of Ruth's Chris Steak House, Inc. and Vice Chairman of the National Restaurant Association, focused on accessible customer service practices in the hospitality industry. Speakers at the meeting included Pedro Mandoki, Chairman of the American Hotel and Lodging Association, Gene Alleman, General Manager of a New Orleans taxi company operating accessible London fleet cars, and Charles Tubre, Systems Advocate for the Advocacy Center.

ACCESSIBLE STREAMING VIDEO ADDED TO ADA WEBSITE

On March 8, 2005, the Department expanded its heavily used ADA website by adding two accessible streaming videos: *Ten Small Business Mistakes*; and *The ADA Signing Ceremony*. Available in both open captioned and audio described versions, the videos can be viewed on computers having either dial-up or broadband internet connections.

Ten Small Business Mistakes identifies common mistakes that small businesses often make when trying to comply with the ADA. It also

addresses the importance and value of doing business with people who have disabilities. *The ADA Signing Ceremony* documents the speech given by President George H. W. Bush when he signed the ADA into law on July 26, 1990. Links to these two videos are available online at www.ada.gov.



ADA Streaming Videos

PHYSICIANS TO PROVIDE EQUAL ACCESS TO EXAMINATIONS

The Department recently reached agreements with two medical practices, resolving complaints alleging unequal treatment for people with disabilities. The two parties involved were a solo family practitioner in California and a medical office providing ob/gyn services in four locations in Florida. Under the agreements, the physicians agreed to provide equal access by purchasing accessible, adjustable height examination tables,

adopting an ADA nondiscrimination policy, and arranging training for themselves and staff on the requirements of the ADA. They also will ensure that when a patient schedules an appointment, staff will ask the patient if he or she will need any special assistance, modification of policy, or auxiliary aid or service because of a disability. In addition, the complainants will receive \$1,000 each.

HUD CONFERS SAFE HARBOR STATUS ON 2003 INTERNATIONAL BUILDING CODE, WITH A CAVEAT

On February 23, 2005, HUD announced that it has granted “safe harbor” status to the 2003 International Building Code (IBC) on the condition that the International Code Council (ICC), the publisher of the IBC, clarifies the requirement for accessible pedestrian routes. According to the ICC, 44 states, along with the District of Columbia, have thus far adopted the IBC.

The ICC had requested that HUD review the accessibility provisions of the 2003 IBC to determine whether the code could be recognized as one of the safe harbors for compliance with the accessibility requirements of the Fair Housing Act, the regulations implementing the Act, and HUD’s Fair Housing Accessibility Guidelines. HUD’s draft report identified eight areas in which the 2003 IBC appeared to be inconsistent with the FHA or the Guidelines. Following its analysis of public comments,

HUD determined that seven of the areas were no longer problematic, but that one “major issue” remained. HUD specifically found that a section of the 2003 IBC appeared to give builders much greater latitude in deciding whether to provide an accessible pedestrian route than the Guidelines and other HUD-recognized safe harbors allow.

HUD’s final report concluded that the 2003 IBC could be granted safe harbor status for this section only if the ICC issued a statement maintaining the ICC interprets the code as “requir[ing] an accessible pedestrian route from site arrival points to accessible building entrances, unless site impracticality applies” The final report also explained the process by which the ICC is to “publish and disseminate” this statement. Further information on this matter is available online at www.hud.gov/offices/fheo/disabilities/modelcodes/.

fair housing rights organization, alleging failures to design and construct apartments with accessible features for people with physical disabilities, as required by federal law. The agreement affects over 375 ground floor apartments.

The defendants included the property management firm, general contractor, architectural firm, and multiple engineering firms, owners, and developers. All defendants agreed to make accessibility retrofits to individual units and the complexes’ common areas. They also agreed to (1) establish a \$260,000 fund to compensate individuals injured by the inaccessible housing, (2) pay \$20,000 to MCIL, and (3) pay \$20,000 in civil penalties to the Department.

This case began when the MCIL conducted a survey of Memphis area apartments for compliance with accessibility guidelines published by the U.S. Department of Housing and Urban Development (HUD). Based upon their survey, the MCIL filed a complaint in federal court, which was soon followed by the Justice Department’s own investigation and intervention in October 2001.

The subject properties in Memphis include Champion Hills at Windyke, Champion Hills at Stonebridge, and Eton Square Apartments. Subject properties in Mississippi include The Magnolias in Hernando and Cypress Lakes Apartments in Robinsonville.

OVER 375 APARTMENTS IN TENNESSEE AND MISSISSIPPI TO BE RETROFITTED

On March 21, 2005, a federal court in Memphis, Tennessee, approved a consent decree reached by the Department with ten Memphis firms involved in the design and construction of

five apartment complexes in Tennessee and Mississippi. The settlement resolved lawsuits previously filed by the Department and the Memphis Center for Independent Living (MCIL), a



Map of the United States showing the vicinities where apartments are being made accessible under recent Fair Housing Act consent decrees.

OVER 700 APARTMENTS IN IDAHO, MONTANA, UTAH, AND WYOMING TO BE MADE ACCESSIBLE

On March 11, 2005, a federal court in Idaho approved a consent decree reached by the Department with two developers, two architectural firms, and four engineering firms based in Idaho that design and construct multi-family housing complexes. The agreement, which resolved a lawsuit alleging disability-related housing discrimination, affects over 700 ground floor apartments in 31 complexes.

The eight firms had designed and constructed apartment complexes in Idaho, Montana, Utah, and Wyoming. As part of the decree, they agreed to make accessibility retrofits to individual units and the complexes' common areas.

They also agreed to (1) establish a \$100,000 fund to compensate individuals injured by the inaccessible housing, (2) pay \$15,000 to the Intermountain Fair Housing Council, a fair housing rights organization in Idaho, and (3) pay \$10,000 in civil penalties to the Department.

This case began when the Intermountain Fair Housing Council filed a complaint with HUD, who, in turn, referred the complaint to the Justice Department for investigation. After determining that several properties designed and constructed by the defendants did not comply with the Fair Housing Act, the Department filed suit in 2002.

APARTMENT COMPLEX IN BOISE TO BE RETROFITTED

On March 14, 2005, a federal court in Idaho approved a consent decree reached by the Department with the owner and developers of Columbia Village Apartments, an apartment complex in Boise, Idaho. The agreement settled a lawsuit alleging that the complex was inaccessible to people with disabilities in violation of the Fair Housing Act. As a result of the consent decree, the defendants will both retrofit the complex to make it accessible to people with disabilities and pay \$42,000 in monetary damages to people impacted by the defendants' violations.

This matter arose out of a complaint filed with HUD in 1998 by the Intermountain Fair Housing Council. After investigation, HUD referred the matter to the Department of Justice, which filed suit in April 2005.

Did you know...

Fair Housing Act decrees can be found online at www.usdoj.gov/crt/housing/caselist.htm#disabil

DEPARTMENT REACHES SETTLEMENT WITH NORTH CAROLINA DEVELOPER

On February 14, 2005, a federal court in Greenville, North Carolina, approved a consent decree reached by the Department with the developers of the Breezewood Condominiums and Hyde Park Apartments in Greenville. The agreement, which resolved a suit alleging violations of the Fair Housing Act, requires the developers to (1) pay \$700,000 to retrofit the Hyde Park and

Breezewood complexes, (2) pay \$70,000 to six families harmed by the lack of accessible features, and (3) pay the Department \$30,000 in civil penalties.

This consent decree follows a separate settlement in 2003 with the architectural firm involved, which ultimately required the architect to pay \$340,000 to resolve the Department's claims.

DEPARTMENT SUES OWNER OF ILLINOIS APARTMENT BUILDING FOR REFUSAL TO RENT TO A PERSON WHO USES A WHEELCHAIR

On February 17, 2005, the Department filed a lawsuit against the owner of an apartment complex in Marion, Illinois, alleging he violated the Fair Housing Act by refusing to rent to a woman because she uses a wheelchair.

This matter arose in late November 2001 when a man responded to an advertisement for a rental apartment for his mother. During an initial conversation, the son informed the property manager that he was looking for an apartment

for his mother, who uses a wheelchair. In a subsequent meeting when he first viewed the apartment, the son again told the manager that he was looking at the apartment on behalf of his mother, who uses a wheelchair. In response, the manager stated the owner would not rent to his mother because of her disability.

In its complaint, the Department seeks declaratory and injunctive relief and monetary damages for the complainants.

DEPARTMENT FILES ITS FIRST HOUSING ACCESSIBILITY SUIT IN HAWAII

On February 22, 2005, the Department filed a lawsuit against the City and County of Honolulu, Hawaii, which own and operate a 150-unit apartment complex called West Loch Elderly Village. Also named in the suit were three private firms that designed and built the complex. As part of their complaint, the Department alleges these entities failed to comply fully with the accessibility requirements of the Fair Housing Act.

This is the first action the Department has filed in Hawaii to enforce the Act's accessibility requirements.

Did you know...

It is unlawful to discriminate against a buyer or renter because of the disability of that individual, an individual associated with the buyer or renter, or an individual who intends to live in the residence. For more information, see www.usdoj.gov/crt/housing.

DEPARTMENT SUES RENO APARTMENT OWNER FOR HOUSING DISCRIMINATION

On February 7, 2005, the Department filed a lawsuit in federal court in Reno, Nevada, against the owner and property manager of a Reno apartment complex alleging that they had discriminated against potential tenants. As part of its complaint, the Department main-

tains the defendants refused to rent to three potential tenants, an African-American couple and the wife's mother, on the basis of race and disability.

The Department seeks declaratory and injunctive relief and monetary damages for the complainants.

NEW JERSEY NURSING HOME AGREES TO IMPROVE CONDITIONS

On February 18, 2005, the Department filed in federal court a settlement agreement with Mercer County, New Jersey, resolving an investigation of conditions and services at the Mercer County Geriatric Center pursuant to CRIPA.

The settlement agreement resulted from a findings letter issued by the Department on October 9, 2002, detailing unconstitutional conditions at the nursing home. In particular, the Department found that the nursing home (1) exposed residents to unsafe living conditions and undue restraints, (2) failed

to provide adequate medical and mental health care, (3) failed to provide residents with adequate nutrition and hydration, and (4) failed to protect residents from unnecessary institutionalization.

The agreement between the Department and Mercer County requires the nursing home to improve care planning, rehabilitation/restorative care services, mental health care, and mealtime assistance. The agreement also ensures that each resident will be served in the most integrated setting appropriate to his or her needs.

MEDIATION HIGHLIGHTS

Through the ADA Mediation Program, the Department refers complaints to professional mediators who are trained in the legal requirements of the ADA. Cases are initiated when both the complainant and the respondent agree to participate in the mediation process. This program has proven effective in resolving ADA complaints at less cost and in less time than traditional investigations or litigation. Over 75% of all complaints mediated have been settled successfully.

The ADA is comprehensive in its reach and does not just apply to architectural barriers and effective communication concerns. In this issue, we focus on a wide array of topics that have been successfully mediated.

- In New Hampshire, an individual with food allergies complained that a dinner train tour refused to allow her to bring her own food on the train. The tour operator has since affirmed its existing policy of allowing customers to bring medically necessary food on the train and developed a new policy of making alternate dietary selections available to all customers upon 24 hours notice. The tour operator also

NEW CRIPA INVESTIGATIONS

In March 2005, the Department initiated two investigations of facilities for individuals with disabilities pursuant to the Civil Rights of Institutionalized Persons Act (CRIPA). One investigation involves a Texas facility for individuals with developmental disabilities and the other involves a District of Columbia hospital for individuals with mental illness.

(ADA Mediation, continued)

now advertises this new policy in its print advertisements, brochures, and website.

■ A father of a child with multiple disabilities complained that a Virginia barber refused to cut his son's hair because of the child's disabilities. The owner of the barber shop subsequently dismissed the barber involved, placed the manager on an unpaid leave of absence, and required the manager to attend a customer relations course at a local community college. The owner also agreed to pay the child's father \$5,000.

■ In Oregon, a person with a developmental disability, accompanied by a job coach from a social service agency, was denied service at a restaurant when the restaurant host believed the individual was going to behave in an unacceptable manner because of his disability. The owner of the restaurant has since sent a written apology to the agency and provided assurance that no person with a disability will be refused service in the future.

■ In Florida, an individual with a respiratory disability complained that a hospital offering outpatient physical therapy and other medical services did not have enough accessible parking spaces. When the complaint was initiated, the hospital had 27 accessible parking spaces. Then,

prior to mediation, 18 more were added. Now, the hospital has agreed to construct another 19 accessible parking spaces.

■ A wheelchair user who has paralysis on one side of his face complained that a Maryland restaurant employee insulted him, refused him service, and told him to leave because of his appearance. As a result of this complaint, the respondents modified their policies to include training both on the ADA and appropriate conduct towards customers. They also provided the complainant with a complimentary meal.

■ In California, a parent of an adolescent with Down Syndrome alleged that an entertainment facility refused to modify its ticketing policy, which required persons with lottery-awarded wristbands to proceed unaccompanied to the ticket window to purchase their one allotted ticket. Following this complaint, the arena modified its policy to allow persons with disabilities to be accompanied if needed. It agreed to post this policy change on its website and in its handout materials and to train its staff on the requirements of the ADA. In addition, the arena apologized to the parent, provided four complimentary tickets to four upcoming events, and made a donation of \$500 to a charitable organization identified by the parent.

■ A parent claimed that a summer camp in South Carolina refused to allow her son, who has multiple disabilities, to attend a camp program, which included overnight stays, unless she provided a full-time attendant for him. In the course of mediation, the parties agreed to explore whether or not the child needed continual supervision and, if so, who would provide it. After several months of good faith discussions before the camp's program began, the camp agreed to let the child attend its program without requiring an accompanying attendant.

OUTREACH ACTIVITIES

■ On January 8, staff from the Civil Rights Division and the Office of Justice Programs' Office for Civil Rights attended the American Correctional Association's Winter Conference in Phoenix, Arizona. They disseminated publications and answered questions on the ADA specific to law enforcement facilities. The Department's newest technical assistance publication, *Accessible Cells in Correctional Facilities*, was well received by all present: law enforcement organizations, wardens and correctional officers, sheriffs, parole and probation officers, juvenile

(Outreach, continued)

detention centers, architectural firms, construction companies, and plumbing and fixture manufacturers that specialize in the design of justice related facilities. Attendees requested copies of the new publication for in-house training and workshops and inquired about Division staff conducting future workshops on the ADA.

- On February 3, Division staff participated in a panel presentation on ADA issues at a meeting of the Asian American Hotel Owners Association in Washington, D.C. The purpose of the panel was to address “drive by” ADA title III lawsuits filed against hotels, the effect of proposed title III regulations on hotels, and other related topics. The panel discussion included a representative from the Small Business Administration and a staff person from Congressman Mark Foley’s office.

- On February 15, Division staff gave a presentation for the 2004 - 2005 Audio Conference Series, which was sponsored by the Great Lakes ADA and IT Center. The presentation, entitled “Ask DOJ,” provided an open-ended format where participants could ask questions of Division staff after hearing a brief update on current ADA activities.

- On February 18, Division staff gave a presentation to the Louisiana State Bar Association

in Baton Rouge, Louisiana. The speech provided an overview of title III ADA requirements for businesses.

- On March 16, Division staff gave a presentation for students at Fairview Middle School in Fairview, Pennsylvania. The students are a part of Project Citizen, a project established by the Center for Civic Education that enables students to learn more about how the government works. During the presentation, students inquired about the Department’s ADA Technical Assistance program, how the ADA is enforced, and how they could help educate local builders on the importance of curb ramps for people who use wheelchairs.

- On March 22, Division staff spoke at the National Hurricane Conference in New Orleans, Louisiana. The training session, entitled “Legal Aspects of Emergency Preparedness for People with Disabilities,” was attended by state, local, and county emergency management officials. It specifically addressed obligations under the ADA and Executive Order 13347.

- On March 31, Division staff spoke at the Chesapeake Bay Chapter of the American Institute of Architects meeting in Annapolis, Maryland. While the presentation addressed ADA enforcement efforts, a

representative from the Access Board also discussed proposed changes to the ADA’s accessibility requirements.

- From April 4 - 7, Division staff attended the annual conference of the National Association of ADA Coordinators in Las Vegas, Nevada. Staff gave an update on recent enforcement activities and detailed recent technical assistance initiatives. They additionally answered questions on a range of issues affecting state and local governments under title II of the ADA.

- On April 7, Division staff spoke at a meeting of the National Retail Federation in Sarasota, Florida. The presentation focused on the regulatory issues raised by the Department’s Advanced Notice of Proposed Rulemaking, which seeks input on a number of issues related to the eventual adoption of new ADA Standards for Accessible Design.

- From April 6 - 9, Division staff participated in the 2005 Council for Exceptional Children Convention and Expo in Baltimore, Maryland. Approximately 7,000 parents, children with disabilities, service providers, and health care professionals attended. Staff answered questions and disseminated ADA information to attendees who stopped by the ADA technical assistance booth.