



# Enforcing the ADA

## *A Status Report from the Department of Justice*

*(January-March 1998)*

*This Status Report covers the ADA activities of the Department of Justice during the first quarter (January - March) of 1998. This report, previous status reports, and a wide range of other ADA information are available through the Department's ADA Home Page on the World Wide Web (see page 14). The symbol (\*\*) indicates that the document is available on the ADA Home Page.*

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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 hundreds 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 \$50,000 for the first violation and \$100,000 for any subsequent violation.*

#### 1. Decisions

***Eleventh Circuit Decides in Favor of Title II Employment Coverage*** -- In Bledsoe v. Palm Beach County Soil and Water Conservation District, the U.S. Court of Appeals for the Eleventh Circuit ruled that claims of employment discrimination against public entities may be brought under title II of the ADA and not just title I. It rejected the district court's holding that

only the "outputs" of State and local governments are covered by title II, not "inputs" such as employment, and that title II coverage would be redundant given title I's explicit coverage of employment. The decision followed the Department's amicus brief which argued that the broad language of title II and its legislative history make clear that Congress intended there to be employment coverage under title II, as well as title I, with title II procedures patterned after those of section 504 of the Rehabilitation Act. The section 504 procedures give complainants the option of either filing an administrative complaint with the Federal funding agency or going directly to court to file suit.

***NCAA is a Public Accommodation*** -- The U.S. District Court for the Eastern District of Missouri ruled in Tatum v. National Collegiate Athletic Association that the National Collegiate Athletic Association is a public accommodation covered by title III. It held, as urged by the Department of Justice in an amicus brief, that the NCAA is a private entity that "operates" stadiums and arenas, because for tournament events the NCAA regulates and controls in great detail everything from ticket prices, the types of goods vendors can sell, and the types of advertising that can be displayed, to the number of towels that should be supplied to the teams. The case was brought by a student basketball player with an

anxiety disorder who had been denied academic eligibility because he took the ACT exam under nonstandard conditions. The NCAA did not agree that the student should have received the accommodation he was granted (an untimed exam administered by audio cassette) or any other accommodation for the ACT exam. Although ruling that the NCAA was covered, the court denied the student's motion for a preliminary injunction. The Department's amicus brief only addressed the issue of whether the NCAA is subject to title III.

***Courts Split on Liability of Hotel Franchisor for New Construction Violations*** -- The U.S. District Court for the Central District of Illinois ruled in United States v. Days Inns of America that nationwide hotel franchisors Days Inns of America, Inc. (DIA), and HFS, Inc., are responsible for violations of the ADA's new construction requirements at a Days Inn hotel in Champaign, Illinois. The Department had earlier entered a consent decree with the hotel owner and architect under which steps will be taken to bring the hotel into compliance. Because of the extent of their supervisory role in carrying out the franchise agreement, the court found franchisors DIA and HFS liable because DIA and HFS "designed and constructed" the facility, and alternatively because they "operate" it. The court ordered that the case proceed on identifying specific violations of the ADA's Standards for Accessible Design and assessing damages. On the other hand, the U.S. District Court for the Eastern District of California, in another case brought by the Department of Justice, ruled that franchisors DIA and HFS were not responsible for new construction violations at a Willows, California, Days Inn hotel. That decision and a similar, earlier ruling by the U.S. District Court for the District of South Dakota that the franchisors were not liable for violations at the Wall, South Dakota Days Inn, have been appealed by the Department.

## 2. New lawsuits

*The Department initiated or intervened in the following lawsuits.*

### Titles I and II

***Actions to Defend the Constitutionality of the ADA*** -- The Department intervened in two additional cases in the U.S. Courts of Appeals where States are arguing that it is unconstitutional for Congress to permit ADA lawsuits directly against State governments. In general, the States assert that Congress lacks authority under the Fourteenth Amendment to subject States to lawsuits under the ADA, because the ADA's protections go beyond equal protection rights guaranteed by the U.S. Constitution. The Department intervened in each of the following cases to argue that the ADA is constitutionally appropriate legislation to remedy the history of pervasive discrimination against people with disabilities --

DeBose v. Nebraska (8<sup>th</sup> Circuit -- suit alleging discrimination under title I);

Brown v. North Carolina Department of Motor Vehicles (4<sup>th</sup> Circuit -- suit challenging fee for accessible parking placard under title II)

## 3. 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

United States v. Omega Professional Center V Condominium Council -- The United States Attorney's Office for the District of Delaware filed a complaint and a consent decree resolving a

complaint that the owners and operators of Omega Professional Center, a commercial complex housing physicians' offices, failed to remove architectural barriers that restrict access to individuals with disabilities. The Omega Professional center agreed to provide accessible parking spaces and an accessible route to the front entrance, conduct a review of all its facilities, and remove any additional barriers to access. It also agreed to pay \$5,000 each to two complainants and to pay \$10,000 in civil penalties to the United States.

#### 4. Amicus Briefs

*The Department files briefs in selected ADA cases in which it is not a party in order to guide courts in interpreting the ADA.*

#### Title II

*Bartlett v. New York State Board of Law Examiners* -- The Department filed an amicus brief in the U.S. Court of Appeals for the Second

Circuit on behalf of a law school graduate with a learning disability who is seeking accommodations, including extra time, for taking the New York bar exam. The district court ordered that the accommodations be provided. The sole issue on appeal is whether Ms. Bartlett's dyslexia is an impairment that substantially limits a major life activity despite her academic success in relation to the general population. Test results indicated that Ms. Bartlett reads slower than 96 percent of college freshman. The brief argues that she is substantially limited in reading and learning when compared with most people of her age, aptitude, and educational background. This comparison is the correct one because learning disabilities are diagnosed, and the major life activities of reading and learning are measured, by referring to relevant subgroups rather than by making comparisons to the general population.

**\*\*Major Racing Facility Agrees to Comprehensive Barrier Removal** -- The United States filed a complaint and consent decree in the U.S. District Court for the District of Delaware resolving its investigation of Dover Downs, a 100,000-seat horse and auto racing facility located in Dover, Delaware, that features the Dover Downs International Speedway. Under the consent decree in United States v. Dover Downs Entertainment, Inc., Dover Downs agreed to bring the new and altered portions of the facility into compliance with the ADA Standards for Accessible Design and to remove architectural barriers to access in the existing portions of the facility. It will make the grandstands accessible by providing over 300 accessible wheelchair seating locations with companion seating and accessible routes and ramps to these seating areas. It will provide designated accessible parking areas adjacent to grandstand entrances and develop a policy for the transportation of people with disabilities between the accessible parking areas and the gates serving the Speedway's grandstand seating. Restrooms serving the outdoor grandstands will be made accessible and accessible routes will be provided to all designated accessible restrooms. Service counters and betting windows will be lowered and other steps will be taken to make the Dover Downs Slots facility fully accessible. Dover Downs also agreed to provide annual employee training regarding nondiscriminatory service to individuals with disabilities and to pay \$20,000 in compensatory damages to the complainant.

***Supreme Court to Decide Whether Prisons are Covered by Title II*** -- The Supreme Court will review the decision of the U.S. Court of Appeals for the Third Circuit that State prisons are covered by title II. The State of Pennsylvania is arguing in Pennsylvania Department of Corrections v. Yeskey that Congress did not use specific language in title II that showed a clear intent to cover prisons. In the State's view a specific statement is necessary because management of prisons is a "core State function." The State also argues that even if Congress clearly expressed its intent to cover prisons, Congress does not have constitutional authority to do so because title II creates equal protection rights that go beyond those protected by the Fourteenth Amendment to the Constitution. The Department filed an amicus brief in the Supreme Court arguing that the language and legislative history of the ADA clearly establish that title II was intended to cover prisons. It also argues that Congress had ample power under the Fourteenth Amendment to enact title II to ensure the equal protection rights of prisoners with disabilities given the serious and pervasive disability-based discrimination throughout society documented by Congress.

*Burns-Vidlak v. Chandler* -- The Department filed an amicus brief arguing that the U.S. Court of Appeals does not need to decide at this time whether Hawaii may be sued for punitive damages under title II. The district court held that the state violated title II by excluding individuals with disabilities from participating in a health care program for low-income residents. Although the State agreed that it could be sued for compensatory damages under title II, it argued that its sovereign immunity under the Eleventh Amendment protected it from suits for punitive damages. The district court disagreed on the Eleventh Amendment issue and the State appealed. The Department in its amicus brief argued that the Ninth Circuit has no jurisdiction over the appeal at this early stage of the proceedings and should not decide the issue. The brief also asserts that punitive damages are unavailable against State defendants for reasons independent of the Eleventh Amendment.

*Gorman v. Bartch* -- The Department argued in an amicus brief filed with the U.S. Court of Appeals for the Eighth Circuit that the arrest and transportation of an individual by the Kansas City Missouri Police Department is covered by title II. The plaintiff, who uses a wheelchair, suffered

injuries while being transported to police headquarters following his arrest. He claimed that the police had no vehicles suitable for transporting wheelchair users, failed to provide adequate training in the proper manner of arresting and transporting individuals with spinal cord injuries, and failed to make other reasonable modifications in policies, practices, and procedures to avoid discrimination. The district court ruled that police arrest and transportation functions are not covered by title II. An earlier appeal in this case in which the Department participated as amicus was dismissed for technical reasons.

*Zimmerman v. Oregon Department of Justice* -- The Department argued in an amicus brief filed with the U.S. Court of Appeals for the Ninth Circuit that title II covers the employment practices of public entities. The brief argues that the broad language of title II and its legislative history make clear that Congress intended there to be employment coverage under title II, as well as title I, with title II procedures patterned after those of section 504 of the Rehabilitation Act. Zimmerman, who has a visual impairment, worked for the state as a child support agent. After he was discharged, he filed suit alleging discrimination on the basis of disability under titles I and II.

The district court dismissed the title I claim for failure to file a timely charge with the Equal Employment Opportunity Commission and dismissed the title II claim on the grounds that title II does not cover employment discrimination.

### Title III

*Bragdon v. Abbott* -- The Department filed an amicus brief in the Supreme Court in Bragdon v. Abbott in support of a dental patient who was denied routine dental treatment by a dentist in Bangor, Maine, because she was infected with HIV. The U.S. Court of Appeals for the First Circuit held that the patient's asymptomatic HIV status constituted a disability because it was a physical impairment that substantially limited the "major life activity" of reproduction. The court also held, consistent with the findings of the U.S. Centers for Disease Control, that affording routine dental care to HIV-infected patients in an office environment when appropriate infection control procedures are used does not pose a "direct threat" to the dentist's health. The Department's amicus brief in the Supreme Court argues that the court of appeals correctly concluded that asymptomatic HIV-status is a disability protected by the ADA and that reproduction is a "major life activity" as defined in the law. The brief also argues that an individual who has asymptomatic HIV is protected by the ADA under the alternative test that she is "regarded as" disabled. Finally, the brief argues that the court of appeals correctly relied on the findings of public health officials in concluding that the dentist was not entitled to refuse to treat the patient on the ground that her condition posed a "direct threat." The Department participated in the lower courts both as an intervenor to defend the constitutionality of the ADA and in an amicus role in support of the plaintiff's right to equal access to dental care.

## Amicus Briefs

*Menkowitz v. Pottstown Memorial Medical Center* -- A physician diagnosed with attention deficit disorder brought suit under title III alleging that his staff privileges at a Pennsylvania medical center were terminated because of his disability. The district court dismissed his complaint, holding that title III only protects members of the public who are clients and customers of a public accommodation. The Department filed an amicus brief with the U.S. Court of Appeals for the Third Circuit arguing that title III's protections are not limited to clients and customers, but extend also to volunteers and other participants, such as doctors with admitting privileges, who may be denied the full and equal enjoyment of the privileges of a place of public accommodation.

*Butler v. National Collegiate Athletic Association* -- The Department filed a second amicus brief in Butler v. National Collegiate Athletic Association asserting that the NCAA is covered by title III. The U.S. District Court for the Western District of Washington earlier found, as urged by the Department, that the NCAA is covered by title III when it granted a preliminary injunction to a University of Washington football player with a learning disability who is challenging NCAA eligibility rules regarding high school core course and test score requirements. The plaintiff asserts that reasonable modifications should be made in these rules to grant him eligibility. In support of the plaintiff's current motion for partial summary judgment on the coverage issue alone, the Department's brief argues that the NCAA is a public accommodation because it leases places of public accommodation, i.e., stadiums and arenas for tournament events, and because it "operates" these facilities, as well as other college athletic facilities, given its pervasive regulation of tournaments and of college athletics programs generally. The Department also argues that, because NCAA's policies determine which student-athletes can participate in any NCAA-sanctioned college athletic programs carried out in those facilities, the policies are subject to title III.

**B. Formal Settlement Agreements**

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

**Title II**

*\*\*Norfolk, Virginia --* Accessibility at the SCOPE Arena will improve greatly under a comprehensive agreement between the Department and the City of Norfolk, Virginia. The city will modify the SCOPE Arena to provide 92 accessible seats and 80 companion seats around the seating bowl of the arena; provide fully accessible parking; and modify floor surfaces, ticket counters, ramps, and stairs to be accessible to people with disabilities. The city will also make all public toilet rooms in the arena accessible and make sufficient numbers of accessible floor seating available whenever floor seating is utilized for arena events. The arena will advertise the availability of accessible seats and make accessible seats available in the same manner that tickets are available for other seats in the arena. Ticketing policies will be modified so that accessible seats and companion seats will not be rented to nondisabled persons until all inaccessible seating is sold out or until 5:00 p.m. the day before the event. Seats in the row in front of the accessible seating area will be held as additional companion seating until all other seats are sold out in order to ensure adequate companion seating and adequate lines of sight over standing spectators.

*Chicot County, Arkansas --* The Department entered into a settlement agreement with Chicot County, Arkansas, resolving a complaint by a wheelchair user that she did not have access to the programs, services, and activities provided in the Chicot County Courthouse. Chicot County had taken steps to eliminate certain architectural barriers by installing ramps, but it was unable to make its basement and second floor activities

accessible. The agreement requires the county to adopt alternative measures to providing program accessibility, including by meeting individuals with disabilities at accessible locations outside of the courthouse. In addition, the county has agreed to move public meetings to the accessible first floor upon request by an individual with a disability.

*Phelps, New York --* The Town of Phelps, New York, agreed to implement policies and procedures for the provision of auxiliary aids and services to ensure effective communication in town activities. The complainant had alleged that Phelps did not provide him with an assistive listening device that would have afforded him an equal opportunity to participate in town meetings.

*Seminole, Texas --* The Department reached an agreement with the Seminole Police Department in response to a complainant who alleged that the police department failed to provide her son with a sign language interpreter when taking his statement after he was involved in a car accident. Seminole agreed to provide sign language interpreters when necessary to ensure effective communication.

*Dickinson, North Dakota --* The Department entered into an agreement resolving a complaint alleging that the Dickinson City Hall is inaccessible to individuals who use wheelchairs. Specifically, the complaint alleged that both the upper and lower levels of the city hall are inaccessible and, therefore, that city activities on these levels, including city commission meetings, municipal court proceedings, voting, and other city hall programs and services, are inaccessible to individuals who use wheelchairs. Until it completes construction of a new city hall, Dickinson will relocate municipal court proceedings to the Stark County Courthouse. The city will also relocate city commission meetings and other public meetings to the National Armory Building in Dickinson, which is fully accessible. The city will also provide the services of its administrative offices in the front foyer of the existing city hall and install an

accessible counter there to enable individuals who have mobility impairments to transact business. Finally, Dickinson will train all of its employees on how to respond to requests for accommodations under the ADA.

*Tyrone, New York* -- The Town of Tyrone agreed that the inaccessible second floor of a newly constructed addition will not be used for public programs, services, and activities, but instead will be used for storage purposes only. If programs or activities are conducted on the second level in the future, an elevator or lift will be installed to provide an accessible route to the second level. All town employees will be informed of the restricted use of the second floor. The town also agreed to provide ADA training to its employees, evaluate whether its current services, policies, and practices meet the requirements of the ADA, and make any modifications that are necessary.

*Off-Track Betting Corporation, Albany, New York* -- The Department entered into a formal settlement agreement with the regional Off-Track

Betting Corporation in Albany, New York (OTB), under which OTB agreed to provide the number of parking spaces with access aisles required by the ADA Standards for Accessible Design. The complainant had alleged that recent alterations to OTB's parking lot did not comply with the requirements of title II.

*North Myrtle Beach, South Carolina* -- The Department entered into a settlement agreement with the City of North Myrtle Beach, South Carolina, resolving a complaint alleging that a variety of city buildings and programs were not accessible to people with mobility impairments and people with hearing impairments. As a result of the agreement, North Myrtle Beach will prepare a self-evaluation report, and, if necessary, a transition plan; adopt a formal policy statement regarding provision of auxiliary aids and services, including an effective communication policy for the city's police department; post public notices describing the city's efforts to comply with the ADA; designate ADA coordinators and ensure that they receive adequate training; and distribute educational materials regarding title II to all city employees.

***\*\*Guide Dogs Will No Longer Be Subject to Hawaii Quarantine*** -- Hawaii has agreed to allow precertified, vaccinated guide dogs for persons with visual impairments immediate entrance to the State, no longer requiring them to stay in a 120-day quarantine. The agreement conditionally resolves Crowder v. Kitagawa, in which the Department of Justice intervened to challenge the quarantine under the ADA. The quarantine, established as a rabies prevention measure, required all dogs -- including guide dogs -- to stay at the State's quarantine facility. Although travelers with visual impairments could visit their dogs at specified times, they could not remove the dogs from the quarantine facility or otherwise use their dogs to travel in Hawaii during the quarantine period. Under the agreement, Hawaii will establish regulations that permit guide dogs with proper documentation and testing to enter the State immediately upon arrival. The State has also agreed not to modify guide dog exemptions over the next five years except under certain specified conditions. Under new regulations to be proposed by Hawaii, a guide dog owner will be required to demonstrate that the dog is free of rabies through documentation of rabies vaccinations and serological testing. The owner must also have a certification of training from a recognized guide dog school. The regulations will take effect after a public comment period and final action by the Hawaii Board of Agriculture. The court and members of the class of plaintiffs will then have an opportunity to accept or reject the agreement between the parties as a final resolution of the case.



*Fairfax, Virginia* -- The City of Fairfax, Virginia, agreed not to automatically exclude individuals with hearing impairments as volunteer firefighters. Instead, Fairfax will conduct an individual assessment to determine if an individual with a hearing impairment can meet the qualifications for the position. The agreement resolves a complaint by an individual who is deaf in his left ear and who applied for a position as a volunteer firefighter. The complainant was accepted for the position by a vote of the volunteer members and underwent a physical examination. Applying medical standards developed by the National Fire Protection Association (NFPA), Fairfax excluded the complainant from the volunteer position because of his hearing loss. Fairfax notified the Department that the NFPA standards have been modified so that failure to meet the hearing requirement does not automatically exclude an applicant from consideration. The city agreed to give priority consideration to the complainant if he reapplied and qualified for the position. It also agreed to pay the complainant \$850.

*Formal  
Settlement  
Agreements*

*\*\*Borough of Olyphant, Pennsylvania* -- The Borough of Olyphant, Pennsylvania, agreed to construct an accessible ramp to the rear entrance of the Olyphant Municipal Building and to alter the restroom facilities on the first floor of the building so that there will be an accessible unisex restroom. Olyphant will also install signage on inaccessible restrooms indicating where the accessible restroom is located. Furthermore, Olyphant will modify its policies to provide that, upon request, borough officials whose offices are located on the second floor of the municipal building will conduct business in the first floor conference room with persons with disabilities who cannot access the second floor. This policy will be posted in a conspicuous place in the lobby of the municipal building along with instructions on

how and where to make such a request. Finally, Olyphant will continue to take all possible steps to find an accessible permanent location for the meetings currently held in inaccessible municipal building rooms and, until an accessible permanent location is found, move public meetings to an accessible location upon request.

*Wetzel County, West Virginia* -- The Department reached an agreement with the Wetzel County Commission resolving a complaint alleging that the programs, services, and activities conducted in the Wetzel County Courthouse are inaccessible to individuals who use wheelchairs. The commission stated that because of financial constraints it is unable to make the entrance to the courthouse and the restroom accessible. The commission agreed to adopt alternative methods to ensure that its programs, when viewed in their entirety, are readily accessible to and usable by individuals with disabilities, including by meeting individuals with disabilities at accessible locations outside of the courthouse. The commission will post a notice at all entrances to the courthouse and at the parking spaces designated for persons with disabilities that summarizes the ADA's program accessibility requirement, states that upon request the proceedings of the court and the commission will be moved to an accessible location, and identifies the county's alternative methods of providing program accessibility.

*Conway, South Carolina* -- The City of Conway entered into a settlement agreement to resolve a complaint involving issues of both physical and communications accessibility. The agreement requires the city to complete a self-evaluation report, and if necessary, a transition plan; and implement a written policy regarding the city's interactions, including those of the police, with people who are deaf or hard of hearing. The city will appoint two ADA coordinators, one for the police department and one for the city generally. It will post a notice in various city buildings identifying the ADA coordinators and describing

the city's efforts to comply with the ADA.

Conway will also ensure that the ADA coordinators view an educational video on title II, and it will distribute materials describing the city's title II obligations to all city employees.

*Additional 9-1-1 Agreements* -- U.S. Attorney's offices entered into written agreements to ensure direct, equally effective access for TDD users to 9-1-1 emergency systems in seven localities --

- Allen County, Indiana
- Biloxi, Mississippi
- Fort Wayne, Indiana
- McAlester, Oklahoma
- New Haven, Indiana
- Reno County, Kansas
- Richmond, Virginia

The agreements require each 9-1-1 center to have TDD capability at each call-taker position, to query every "silent call" with a TDD, and to thoroughly train each call taker in handling TDD calls.

*Formal  
Settlement  
Agreements*

**Title III**

*Miramar Beach Apartments, Sarasota, Florida* -- The Department entered into an agreement with the Miramar Beach Apartments, a vacation resort located in Sarasota, Florida, resolving an allegation that the complex had refused to allow a blind woman to rent the apartment of her choice because she was blind and accompanied by her service dog. The Miramar Beach Apartments agreed to pay her \$7,500 in compensation and to ensure that persons with disabilities and their service animals are welcome.

*Holmes Honda World, Shreveport, Louisiana* -- Holmes Honda World agreed to install an accessible counter in its dealer showroom to enable individuals who use wheelchairs to transact business. It also agreed to install a unisex, accessible restroom in the dealership. In addition, Holmes Honda World will provide ADA training to all of its employees, including how to respond to inquiries from patrons with disabilities who require accommodations to participate in any service offered by the dealership.

***\*\*Hospital Center Pays Damages, Agrees to Nondiscriminatory Treatment of Patients with HIV*** -- The Department reached an agreement with The George Washington University, The George Washington University Medical Center, The George Washington University Hospital (GWUH), and District Hospital Partners, L.P., to resolve a complaint that cardiothoracic surgeons at GWUH violated title III of the Americans with Disabilities Act by denying open heart surgery to a patient because he has HIV. The agreement requires GWUH to pay \$125,000 to the complainant and his attorneys; to issue a hospital policy establishing that patients cannot be denied, or discouraged from seeking, surgery or other medical treatment because of infection with HIV or AIDS; to conduct annual training for staff on this new nondiscrimination policy; to amend its bylaws and regulations to provide for discipline of hospital staff who violate this nondiscrimination policy; to conduct a grand rounds symposium for local area cardiothoracic surgeons that addresses nondiscrimination against persons with HIV and AIDS who need open-heart surgery; to advise patients of GWUH's nondiscrimination policy; and to establish an internal mechanism for responding to patients' concerns that they have been denied treatment, or discouraged from seeking treatment, because of HIV, AIDS, or any other disability.

*\*\*TST One Indiana, L.L.C., Indianapolis, Indiana* -- The U.S. Attorney's Office for the Southern District of Indiana entered into a settlement agreement with TST One Indiana, L.L.C., a holding company for Tishman Speyer/Travelers Real Estate Venture, addressing accessibility problems in a large office building that houses the National Bank of Detroit and other businesses in downtown Indianapolis. The building has a restaurant and other businesses and services on the basement level, but the only public access to the basement is by an escalator. The settlement agreement requires TST to designate an existing freight elevator as the wheelchair-accessible elevator, and make all repairs and improvements necessary to bring the elevator into compliance with the ADA Standards for Accessible Design. In addition, the agreement requires TST to maintain an accessible route from the elevator to the businesses and services in the basement, including installing automatic doors on two sets of double-leaf doors. The agreement also requires TST to install signage at the top and bottom of the escalator to direct patrons to the accessible elevator.

*Paradise Grill, Branson, Missouri* -- The Department entered into a settlement agreement with the Paradise Grill restaurant in Branson, Missouri, resolving a complaint alleging that the restaurant was not designed and constructed in compliance with the new construction standards of the ADA. The owner and architect agreed to make the restaurant's parking facilities and main entrance more accessible, provide accessible signage at its restrooms, and correct several problems in the restrooms designated as accessible. In addition, the architect paid \$1,000 and the owner paid \$1,500 in civil penalties.

## 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

A northeastern State prison agreed to modify 16 first-floor inmate cells to provide an adequate turning radius for wheelchair users and to bevel the thresholds to those cells to facilitate entry. It also agreed to issue water bottles to inmate wheelchair users to give access to inaccessible water fountains and implemented a policy that allows wheelchair users to return to their cell block during class or other programs in order to use the accessible toilet facilities and then to return to their programs.

A California town lowered the height of public business counters in its city hall and adjusted the main lobby doors and the doors to the city council chambers to require less opening force.

A Louisiana city completed its self-evaluation and transition plan.

A Florida county government agreed to provide a sign language interpreter at a public meeting.

A North Carolina town opted to remove an inaccessible newly constructed gazebo located at an historic overlook.

An Indiana county constructed portable ramps in each of its courtrooms to provide access to the witness stand and jury area and expanded the raised platform at the witness stand to allow a sixty-inch turning space.

An Illinois county court system formalized and publicized its policies and procedures for making auxiliary aids available to ensure effective communication.

### Title III

A Tallahassee, Florida, seafood restaurant agreed to make its restrooms accessible by removing interior partitions and installing grab bars.

The sponsors of a nationwide oral academic competition for elementary and junior high school students agreed to appoint a committee to review

requests for accommodations, to appoint an ADA coordinator, and to educate its members and participants about its ADA policies.

A Maryland psychiatric institute modified its policy prohibiting a predoctoral intern from using her service animal outside of her office. The revised policy restricts the service animal only from wards housing children with serious behavior disorders and from home visits where the homeowners refuse to allow the dog to enter.

*The U.S. Attorney for the Southern District of Indiana reached the following informal settlement --*

A medical facility revoked its policy of letting a nondisabled employee park in a designated accessible parking space.

## II. Mediation

*Through a technical assistance grant from the Department, The Key Bridge Foundation is accepting referrals of complaints under titles II and III for mediation by professional mediators who have been trained in the legal requirements of the ADA. More than 350 professional mediators are available to mediate ADA cases in \*\*45 States. Over 80 percent of the cases in which mediation has been completed have been successfully resolved. Following are recent examples of results reached through mediation.*

- A wheelchair user complained that an Arizona restaurant did not have an accessible restroom. The owner agreed to renovate the men's and women's restrooms to make them accessible for people with disabilities.
- In Maryland, a married couple of deaf individuals complained that a realty company and a mortgage company did not provide the services of a qualified sign language interpreter for effective communication during negotiations over the purchase of a home. The complainants alleged that the lack of an interpreter resulted in a misunderstanding of the terms of the purchase and sales agreement. The realty company and the mortgage company agreed that the services of a qualified sign language interpreter will be provided for effective communication if a request is made by a client. The realty company agreed to return the nonrefundable \$1,000 deposit received from the complainants under the previously executed purchase agreement. The mortgage company also agreed to return the \$386 fee

- that the complainants paid for a credit report and appraisal in connection with their loan application.
- In Ohio, a person who uses a large, motorized mobility device complained that the staff of a restaurant failed to remove obstructions along an accessible route, making it impossible for him to reach a table. The owner agreed to create and implement an employee training program on the requirements of the ADA and how to appropriately respond to the individual access needs of customers with disabilities. The owner also agreed to pay the complainant approximately \$5,400.
  - A person with a mobility impairment complained that a Florida restaurant did not have enough accessible parking spaces. The property owner agreed to create an additional accessible parking space.
  - A person with a hearing disability complained that an Ohio theater did not have an effective assistive listening system. The theater owner agreed to install a new infrared assistive listening system and provided the complainant with two VIP passes to the theater.
  - In Utah, a person whose disability is due to congestive heart failure complained that the distance between a hospital's customer parking lot and the physical therapy unit entrance was too great, making it nearly impossible to get to the building. The person also complained that the nonslip tile in the physical therapy shower room was too slippery. The hospital agreed to allow the complainant, who cannot walk long distances, to use a reserved parking space in the staff parking lot located closest to the physical therapy unit entrance and to have a wheelchair and orderly available to assist her into the unit. The hospital also agreed to increase the frequency of maintenance of the nonslip tile in the shower.
  - In Virginia, a person who is deaf complained that a pet store did not provide the services of a qualified sign language interpreter for its dog obedience training classes. The owners agreed to re-educate their managers about their existing policies for providing effective communication and other accommodations for people with disabilities. The owners also apologized to the complainant.
  - An individual with a mobility impairment complained that a Florida shopping center did not have any accessible parking spaces. The owner agreed to create the requisite number of spaces.
  - In New Jersey, a wheelchair user complained that a private organization held an informational meeting at a diner that did not have an accessible entrance. The organization agreed to add wheelchair accessibility to its criteria list for selecting future locations for its public meetings. The diner has investigated many methods of barrier removal at its entrance, but has determined that it is not readily achievable. The owner agreed to inform anyone interested in renting space at the diner for a public meeting that the diner is not accessible.
  - In Colorado, a wheelchair user complained that a restaurant did not have accessible restrooms. The restaurant owner agreed to renovate the restrooms to comply with the ADA.
  - A wheelchair user complained that a New York office building had no accessible parking spaces in the adjacent lot. The building management company agreed to create the requisite number of accessible parking spaces in the lot.
  - In New York, a wheelchair user complained that a building housing a doctor's office did not have an accessible entrance. The building owner agreed to install a ramp to make the entrance wheelchair accessible.

- A Washington, D.C., wheelchair user complained that a restaurant's entrance and restrooms were not accessible. The restaurant owner agreed to install a doorbell and signage at the existing accessible side entrance. When the doorbell is pressed, a light alerts staff at the hostess station who have been instructed to respond immediately to assist customers with disabilities who wish to enter. The owner agreed to ensure that the path of travel from the entrance through the restaurant remains free of obstructions. The owner also agreed to make certain that staff know where the accessible restrooms are and how they can be accessed by patrons with disabilities. The owner also invited the complainant to the restaurant for a free meal.
- A person who has a heart condition complained that a California city hall was not accessible. The city official agreed to provide the services available at city hall at another nearby accessible government building. The official also agreed to make changes at the alternative site to lower two service counters, install accessible doors to the restrooms, and make one stall accessible in each restroom.

### III. Technical Assistance

*The ADA requires the Department of Justice to provide technical assistance to entities and individuals with rights and responsibilities under the law. The Department encourages voluntary compliance by providing education and technical assistance to businesses, governments, and members of the general public through a variety of means. Our activities include providing direct technical assistance and guidance to the public through our ADA Information Line, developing and disseminating technical assistance materials to the public, undertaking outreach initiatives, operating an ADA technical assistance grant program, and coordinating ADA technical assistance government-wide.*

#### ADA Home Page

An ADA home page is operated by the Department on the Internet's World Wide Web (<http://www.usdoj.gov/crt/ada/adahom1.htm>). The home page provides information about:

- the toll-free ADA Information Line,
- the Department's ADA enforcement activities,
- the ADA technical assistance program,
- certification of State and local building codes,
- proposed changes in ADA regulations and requirements, and
- the ADA mediation program.

The home page also provides direct access to:

- ADA regulations and technical assistance materials (which may be viewed online or downloaded for later use), and
- links to the Department's press releases, ADA Bulletin Board, and Internet home pages of other Federal agencies that contain ADA information.

## 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 listen to recorded information and to order publications, is available 24 hours a day, seven days a week. ADA specialists are available on Monday, Tuesday, Wednesday and Friday from 10:00 a.m. until 6:00 p.m. and on Thursday from 1:00 p.m. until 6:00 p.m. (Eastern Time). Spanish language service is also available.

To obtain general ADA information, get answers to technical questions, order free ADA materials, or ask about filing a complaint, call:

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

## ADA Fax On Demand

The ADA Information Line's Fax Delivery Service allows the public to obtain free ADA information by fax 24 hours a day, seven days a week. By entering the appropriate document code number, callers can select from among 28 different ADA technical assistance publications and receive the information, usually within minutes, directly on their fax machines or computer fax/modems. A list of available documents and their code numbers may be ordered through the ADA Information Line.

## Publications and Documents

Copies of the Department's ADA regulations and publications, including the Technical Assistance Manuals for titles II and III, and information about the Department's technical assistance grant program, can be obtained by calling the ADA Information Line 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 persons with disabilities.

Disability Rights Section  
Civil Rights Division  
U.S. Department of Justice  
P.O. Box 66738  
Washington, D.C. 20035-6738

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

Freedom of Information/Privacy Act Branch  
Administrative Management Section  
Civil Rights Division  
U.S. Department of Justice  
P.O. Box 65310  
Washington, D.C. 20035-5310  
Fax: 202-514-6195

Currently, the FOI/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 FOI/PA Branch also provides access to ADA materials on the World Wide Web at <http://www.usdoj.gov/crt/foia/records.htm>. A link to this website is provided from the ADA Home Page.

ADA regulations and technical assistance materials can also be downloaded from the Department's ADA Bulletin Board System (ADA-BBS). The ADA-BBS, which includes selected ADA documents from other agencies, can be reached by computer modem by dialing 202-514-6193 or accessed on the Internet through [www.fedworld.gov](http://www.fedworld.gov) using telnet software. The ADA Home Page also provides a link to the fedworld website.

## IV. Other Sources of ADA Information

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

ADA documents  
800-669-3362 (voice)  
800-800-3302 (TDD)

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

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

ADA documents  
202-857-3800 (voice)  
202-293-8810 (TDD)

ADA questions  
202-418-1098 (voice)  
202-418-0484 (TDD)

The *National Institute on Disability and Rehabilitation Research (NIDRR)* of the U.S. Department of Education has funded centers in ten regions of the country to provide technical assistance to the public on the ADA.

ADA technical assistance nationwide  
800-949-4232 (voice & TDD)

The *U.S. Department of Transportation* through the *Federal Transit Administration* offers technical assistance to the public concerning the transportation provisions of title II and title III of the ADA.

Toll Free ADA Assistance Line  
888-446-4511 (voice/relay)

ADA documents and general questions  
202-366-1656 (voice/relay)

ADA legal questions  
202-366-4011 (voice/relay)

ADA information, questions or complaints  
202-366-2285 (voice)  
202-366-0153 (TDD)

Project ACTION  
800-659-6428 (voice/relay)  
202-347-3066 (voice)  
202-347-7385 (TDD)

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

ADA documents and questions  
800-872-2253 (voice)  
800-993-2822 (TDD)

The *Job Accommodation Network (JAN)* is a free telephone consulting service funded by the President's Committee on Employment of People with Disabilities. 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 & TDD)



## 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 (TDD) 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 --

Disability Rights Section  
Civil Rights Division  
U.S. Department of Justice  
Post Office Box 66738  
Washington, D.C. 20035-6738