



Enforcing the ADA:

A Status Report from the Department of Justice

July - September 2005

This Status Report covers the ADA activities of the Department of Justice during the third quarter (July - September) of 2005. 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 9). 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 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 I

U.S. v. Bern Township, Pennsylvania --

The Department filed suit in the U. S. District Court for the Eastern District of Pennsylvania alleging that Bern Township violated the ADA by discriminating against a 27-year veteran employee of the Township's road crew after he had a stroke. Despite the severity of the stroke, the employee made a remarkable recovery. After nine months, his only deficit was a loss of some gripping power in his right hand and occasional aphasia affecting his speech. The township allegedly would not permit him to return to work, relying on a provision in the collective bargaining agreement that required a release from a physician "without limitation." Because of the continuing symptoms from the stroke, the employee's physician could not provide such a release. The employee asked that he be permitted to return to work and he asked for a reasonable accommodation in the event that there were limitations in his ability to perform any tasks. Bern Township allegedly refused to consider the request for accommodation and terminated him.

Title II

Easter Seals-Michigan, Inc. v. City of Royal Oak -- The Department intervened in this lawsuit in the U.S. District Court for the Eastern District of Michigan alleging that Royal Oak, Michigan, denied Easter Seals a land-use permit for a day facility for adults with mental illness in violation of the ADA. The complaint alleges that the town rejected the permit for no legitimate reason in response to community opposition to the facility based on fears and stereotypes regarding people with mental illness. Easter Seals has operated a similar facility in a nearby town without incident for over 19 years. It decided that it needed a newer facility with a more open floor plan and located and leased the property in Royal Oak approximately two miles from the current facility.

Toledo v. Sanchez-Rivera -- The Department intervened in this case in the U.S. Court of Appeals for the First Circuit to defend the constitutionality of title II lawsuits against State agencies involving disability discrimination in public education. The plaintiff, a student with a psychiatric condition (schizoaffective disorder) who missed classes because of his disability, claimed that the University of Puerto Rico failed to provide reasonable accommodations that would enable him to complete his assignments. In Tennessee v. Lane the Supreme Court upheld the constitutionality of title II suits against States involving the fundamental right of access to courts. Applying the Supreme Court's analysis in Lane to public education, the Department's brief in Toledo argued that the ADA's abrogation of State immunity was an appropriate response by Congress to a long history of unconstitutional disability discrimination in public education and that the suit against the University of Puerto Rico should be allowed to continue.

Title III

U. S. v. DeNunzio's Restaurant, Inc. -- The Department filed suit in the U.S. District Court for the Western District of Pennsylvania alleging that DeNunzio's Restaurant in Jeanette, Pennsylvania, violated the ADA because it failed to remove physical barriers to its entrance and restrooms. A customer using a wheelchair complained that he was unable to get into the front door of the restaurant because there was no ramp. Later investigation also showed that the restrooms were not accessible from the dining room because they were up one step and lacked an accessible stall. The lawsuit alleges that removal of these barriers by DeNunzio's would be readily achievable and therefore is required by the ADA.

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.

****U. S. v. Saimovici** -- The Department filed, and resolved by consent decree, a lawsuit alleging that an eye surgeon doing business in New York City as Advanced Eye Care Associates discriminated against a deaf individual. The suit alleged that, in response to Advanced Eye Care's advertisement for a free consultation for anyone considering laser vision correction, the complainant scheduled an appointment and advised the doctor's office that he was deaf and would require a sign language interpreter at the consultation. The lawsuit further alleged that the doctor refused to pay for the interpreter and cancelled the appointment. The doctor's office also told the complainant that he was not a suitable candidate for laser eye surgery because he was deaf. Under the consent decree, Advanced

Eye Care agreed to follow a policy of nondiscrimination on the basis of disability and to provide appropriate auxiliary aids, including qualified sign language interpreters, free of charge when necessary to ensure effective communication. The doctor also agreed to pay \$3,500 in civil penalties to the United States and \$1,500 to the complainant.

B. Formal Settlement Agreements

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

Title II

**** Project Civic Access Agreements Signed by 29 More Communities** -- The Department has signed 29 additional agreements under Project Civic Access, a nationwide effort to ensure that cities, counties, towns, and villages throughout the United States comply with the ADA. The goal of Project Civic Access is to ensure that people with disabilities have an equal opportunity to participate in civic life. Departmental investigators, attorneys, and architects survey State and local government facilities and programs across the country for the purpose of identifying modifications needed to comply with ADA requirements. Depending on the circumstances in each community, the agreements address specific areas where access can be improved.

Twenty-two of these new agreements were announced at a Justice Department ceremony in July 2005 celebrating the 15th anniversary of the signing of the ADA -- Birmingham, Alabama; Tucson, Arizona; Crittenden

County, Arkansas; Hartford, Connecticut; Miami, Florida; Ada County, Idaho; Will County, Illinois; Allen County, Indiana; Gary, Indiana; Washington County, Maine; Prince George's County, Maryland; St. Louis County, Minnesota; Omaha, Nebraska; Paterson, New Jersey; Monroe County, New York; Providence, Rhode Island; Laurens County, South Carolina; Madison County, Tennessee; Memphis, Tennessee; Amarillo, Texas; Webb County, Texas; Loudoun County, Virginia.

At the ceremony, then-Acting Assistant Attorney General for Civil Rights Brad Schlozman announced that through its agreements in the past year the Department had achieved increased access for over one million persons with disabilities in the United States. The ceremony was attended by representatives from eight of the communities signing agreements and by representatives of the disability rights community.

Since that ceremony, the Department has signed seven additional agreements with -- Fontana, California; Maui, Hawaii; Springhill, Louisiana; Barnstable County, Massachusetts; Billings, Montana; North Las Vegas, Nevada; and Durham, North Carolina.

To date, 142 Project Civic Access agreements have been signed with 136 communities. Each community has agreed to take specific steps, depending on local circumstances, to make core government functions more accessible to people with disabilities. The agreements have improved access to many aspects of civic life -- including courthouses, libraries, parks, sidewalks, and other facilities -- and address a wide range of accessibility issues, such as employment, voting, law enforcement activities, and emergency preparedness and response.

Title III

Oskar Blues Grill & Brew, Lyons, Colorado -- The Department entered into an agreement resolving a complaint by an individual whose daughter uses a wheelchair alleging that the ramp to the second floor of Oskar Blues Grill & Brew was removed, eliminating access to the second floor for persons with mobility impairments. The owner agreed to provide at least one van-accessible parking space, to make the first and second floor toilet rooms accessible by providing a "standard" accessible stall, and to make the second floor accessible to persons with mobility impairments by installing an accessible elevator or ramp. The owner also agreed to pay \$1,000 to the complainant and a \$500 civil penalty.

Mrs. Walker Ice Cream, Beachwood, New Jersey -- The Department reached an agreement with the owner and lessee of Mrs. Walker's Famous Ice Cream, resolving a complaint by an individual who uses a wheelchair alleging that the store was inaccessible to persons with mobility impairments. The owner agreed to modify its current accessible parking space to make it van accessible, install accessible handrails for the existing ramp, and provide an accessible entrance.

**** Dr. Ray Hand, Oklahoma City, Oklahoma** -- The Department reached an agreement resolving a complaint that a consulting psychologist allegedly failed to use an interpreter in evaluating a minor child who is deaf for a divorce case in family court. The psychologist agreed to conduct individualized assessments of persons who are deaf or hard of hearing to determine what auxiliary aids are necessary to ensure effective communication and to provide the auxiliary aids, including sign language interpreters, where appropriate.

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 who uses a wheelchair complained that a county courthouse did not have accessible parking and directional signage at the inaccessible entrances. The county agreed to provide a van-accessible parking space for the lot adjacent to the courthouse, accessible directional signage, and an accessible toilet room for the public near the grand jury deliberation room.

Title III

An individual who uses a wheelchair complained that a nationally franchised hotel in New Orleans failed to provide him with the one accessible guest room the hotel had, even though he had reserved the accessible guest room in advance. The 216-room hotel agreed to make the main entrance, lobby, pool, and public laundry room areas accessible; install five accessible parking spaces, including a van-accessible space; provide seven accessible guest rooms, including three with roll-in showers, and establish seven additional guest rooms for individuals who are deaf or hard of hearing, each containing a visual alarm and each having a TTY available.

An individual in Virginia whose daughter uses a wheelchair complained that a department store in Richmond failed to maintain an open, accessible check-out aisle. The store agreed to provide accessible check-out aisles.

An individual who uses a wheelchair complained that although an Ohio hotel and conference center provided a courtesy shuttle from the airport, there were no lift-equipped shuttles to enable persons with mobility impairments to utilize the service. The hotel and conference center purchased a lift-equipped shuttle.

An individual who uses a wheelchair complained that a tour bus company in Pennsylvania did not have accessible tour buses. The company installed a wheelchair lift on one of the 19 tour buses, which now has the ability to accommodate two wheelchair users.

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

District of Arizona -- An individual with multiple disabilities, including debilitating arthritis, complained that a cosmetology school failed to accommodate her condition. The school agreed to permit the student to sit down for 15 minutes each hour that she is in school.

Northern District of Iowa -- A person with a mobility impairment complained that a grocery store refused to allow her into the store with her service animal. The store now allows people with disabilities to shop with their service animals.

Western District of Missouri -- A person with a mobility impairment complained that a kidney dialysis center at a hospital, which had a small parking lot separate from the main hospital, did not have any accessible parking spaces. The hospital added two van-accessible spaces to the lot.

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 California, a woman who is deaf complained that a service organization failed consistently to provide effective communication at its classes. The organization agreed to include a statement of its commitment to provide accommodations on all class announcements, to provide qualified sign language interpreters within seven days of a request, to train all instructors on how to enable closed captions for videos, and to provide all instructors and volunteers with additional ADA training within three months.

- In Oregon, an individual with a mobility disability complained that a building containing a medical office on the sixth floor was inaccessible because its elevator was often out of service, the door to the medical office was too heavy, and its restroom was inaccessible to persons using a wheelchair or a walker. Both the building owner and medical office tenant participated in the mediation and the building owner repaired the elevator to work reliably, modified the door closer to lessen its force, and expanded and modified the restroom to make it accessible.
- A disability rights organization complained that a Pennsylvania restaurant did not provide accessible parking, an accessible entrance, or an accessible restroom. The restaurant modified its accessible parking to include appropriate access aisles and signage. The restaurant also installed a ramp from the accessible parking area to the entrance, modified its restroom to be accessible, and posted appropriate signage.
- A wheelchair user complained that a Texas restaurant refused to serve her because she uses a service animal. The restaurant owner agreed to review ADA requirements with the employees. The owner also apologized to the complainant orally and in writing and notified her in writing of the steps taken to ensure that all service animals will be welcome in the restaurant.
- In California, two wheelchair users complained about a number of accessibility issues at a jointly owned parking lot serving several businesses, the city, and a college. Through mediation involving several parties, a comprehensive agreement was reached, including the installation of two curb cuts, two ramps and the renovation of a third ramp, installation of four van-accessible spaces and two additional universal design spaces, and the creation of several marked crossings.
- An individual with a mobility disability who uses a service animal complained that she was denied access to an event at a county arena in Kansas. The county agreed to post signs welcoming service animals and agreed to require anyone renting the facility to comply with the ADA in the lease agreement.
- In Indiana, a wheelchair user complained that a county social service agency was adding a surcharge for wheelchair users to use its transportation service. The county agreed to immediately end the surcharge. In addition, the county created a written policy requiring uniform fares as well as a policy to allow service animals.
- In Michigan, a person with a seizure disorder complained that he was denied access to a bank due to concerns about involuntary behavior resulting from the side effects of medication. The institution sent an apology, provided ADA training to its staff, and paid the complainant \$1,000.
- A wheelchair user complained that an Ohio funeral home was inaccessible. The funeral home installed an accessible ramp at the entrance to the facility and also agreed to provide a portable ramp to a viewing area upon request and to train employees in how to safely install and use the ramp.

III. Certification of State and Local Accessibility Requirements

The ADA requires that newly constructed or altered places of public accommodation and commercial facilities comply with title III of the ADA, including the ADA Standards for Accessible Design (ADA Standards). The Justice Department is authorized to certify that State and local accessibility requirements, which are often established through building codes, meet or exceed the ADA's accessibility requirements. In any lawsuit that might be brought, an entity that complies with a certified State or local code can offer that compliance as rebuttable evidence of compliance with the ADA.

In implementing its certification authority, the Department works closely with State and local officials, providing, as needed, detailed technical assistance to facilitate efforts to bring those accessibility requirements into accord with the ADA Standards. In addition, the Department responds to requests from private entities for review of the accessibility provisions of model codes and standards, and provides informal guidance regarding the extent to which they are consistent with the minimum accessibility requirements of the ADA.

The States of Texas, Maine, Florida and Maryland currently have accessibility codes certified by the Department of Justice. Earlier this year, the Department issued a preliminary certification for the accessibility code of the State of North Carolina. Requests for certification from the States of California, Indiana, New Jersey, and Utah, and for technical assistance from the State of Michigan and the International Code Council (a model code organization) are pending before the Department. Recent certification related activity includes --

State of Washington -- The Division received a request from the State of Washington for certification of the accessibility requirements the State implemented in 2004 for the construction and alteration of buildings and facilities pursuant to title III of the ADA. Washington received certification in 1995 for the accessibility code then implemented within the State. This state code was superseded by new accessibility requirements Washington implemented in 2004, which are based on the International Building Code, 2003 edition. The State's new accessibility requirements are the subject of the pending certification request.

IV. 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. Our activities include providing direct technical assistance and guidance to the public through our ADA Website, ADA Information Line, and ADA Fax on Demand; developing and disseminating technical assistance materials to the public; undertaking outreach initiatives; and coordinating ADA technical assistance government wide.

ADA Website

The Department's ADA Website on the Internet's World Wide Web provides direct access at anytime to ADA information offered by the Department and by other Federal agencies.

The ADA Home Page (www.ada.gov) is the entry point to the website. It provides direct access to --

- ◆ ADA regulations and technical assistance materials in English and Spanish (which may be viewed online or downloaded for later use),
- ◆ electronic versions of the ADA Standards for Accessible Design, including illustrations and hyperlinked cross-references,
- ◆ selected ADA legal documents, settlement agreements, and technical assistance letters

- ◆ the ADA Business Connection, including ADA Business Briefs in English and Spanish,
- ◆ Reaching out to Customers with Disabilities, a web based interactive online course that explains the requirements of title III,
- ◆ The ADA Video Gallery with accessible streaming video, including Ten Small Business Mistakes and the ADA Signing Ceremony,
- ◆ an online ordering form for the ADA Technical Assistance CD-ROM,
- ◆ links to the Department's press releases, and
- ◆ links to Internet web pages of other Federal agencies and Federal grantees that contain ADA information.

The ADA Website also 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.



New Online Course for Businesses on ADA.gov -- The Department has put into operation “Reaching Out to Customers with Disabilities”, a new web-based interactive online course that explains the ADA and how it applies to businesses. The ten-lesson course, which is available through the Department’s ADA Website, www.ada.gov, is intended for owners, managers, and employees of all types of businesses, including independent business owners. It is designed to fit easily into a business person’s busy schedule with the flexibility to study one short lesson at a time or all ten at once. Consumers with disabilities

will also find the course helpful in understanding their rights under the ADA. The straightforward language, abundant examples, easy navigation, and numerous links to supplemental information make it an ideal course for people who are generally knowledgeable about the ADA as well as for those who know little about the law. The entire course is in an accessible format that can be used by people who are blind or who have low vision.

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

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

ADA Fax On Demand

The ADA Information Line Fax Delivery Service allows the public to obtain free ADA information by fax 24 hours a day, seven days a week. By calling the number above and following the directions, callers can select from among 34 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 also be ordered through the ADA Information Line.

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 Home Page, 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.

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. For further information please call the ADA Information Line.

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 access to ADA materials on the World Wide Web. A link to search or visit this website is provided from the ADA Home Page.

V. 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 about 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 **ADA and IT Technical Assistance 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 & TTY)
www.jan.wvu.edu

VI. 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