



Enforcing the ADA

A Status Report from the Department of Justice

(April-June 1999)

*This Status Report covers the ADA activities of the Department of Justice during the second quarter (April - June) of 1999. 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 16). 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

Supreme Court

Supreme Court Rules that Mitigating Measures Must be Considered in Determining Disability -- The Supreme Court ruled in Sutton v. United Airlines and Murphy v.

United Parcel Service that, in determining whether an individual has an impairment that substantially limits one or more major life activities, courts should consider the effect of mitigating measures such as eye glasses or blood pressure medication. In Sutton, twin sister pilots who had uncorrected vision of 20/200 and 20/400 in their right and left eyes respectively, but which was correctable to 20/20, were rejected by United for the position of global airline pilot because they did not meet the airline's uncorrected vision standard of 20/100. Because their vision was correctable with lenses to 20/20, the U.S. Court of Appeals for the Tenth Circuit had ruled that they were not individuals with disabilities, because they were not substantially limited in the major life activity of seeing. In Murphy, a mechanic was terminated from a job, which required him to have an interstate commercial truck driver's license, because of his elevated blood pressure. Without medication, the mechanic's blood pressure was a dangerously high 250/160. The Tenth Circuit held that, when treated with medication, the mechanic only had moderate hypertension (160/102) and was therefore not an individual with a disability. In upholding the Tenth Circuit in both cases, the Supreme Court rejected the Department's amicus briefs

which argued that mitigating measures should not be taken into account. The Supreme Court also rejected the Department's view that, even if mitigating measures are taken into account, the individuals would still be protected by the statute because they were "regarded as" being substantially limited in the ability to perform a class of jobs and, therefore, in the major life activity of working. In Sutton, the Supreme Court rejected the argument that the plaintiffs were regarded as substantially limited in working, because other piloting jobs such as regional pilot or pilot instructor were still available to them despite their impairment. In Murphy, the Court ruled that the employer only regarded the employee as unemployable in a mechanic's job that required a commercial truck driver's license but did not regard him as unemployable generally as a mechanic.

Supreme Court Says Employer May Exclude Monocular Drivers -- In Albertsons v. Kirkingburg, the Supreme Court ruled that an employer could rely on a vision standard established by the U.S. Department of Transportation, which requires corrected vision of at least 20/40 in each eye, to justify its firing of a commercial truck driver with monocular vision. The Supreme Court upheld the firing even though the plaintiff qualified for a DOT waiver based on his safe driving record, because the Court concluded that the waiver program was experimental in nature and did not represent a change in the basic standard. In overruling the U.S. Court of Appeals for the Ninth Circuit, the Supreme Court rejected the Department's argument as amicus that the employer had to justify using the more rigorous DOT vision standard instead of the relaxed standard of the DOT waiver program. The Court also disagreed with the

Supreme Court Declares that Unjustified Isolation Is Discrimination -- In Olmstead v. L.C., the Supreme Court ruled that the ADA's "most integrated setting appropriate" mandate requires States to avoid undue institutionalization of people with disabilities. As urged by the Department in its amicus brief, the Court upheld the ruling of the U.S. Court of Appeals for the Eleventh Circuit that Georgia may have violated the ADA by confining two individuals with mental disabilities in an institution rather than providing services through a community-based program as recommended by the State's treating professionals. In finding that unjustified isolation is a form of discrimination under the ADA, the Court pointed to the stigma of unworthiness, and the unequal access to family and social interaction, employment, education, and cultural enrichment that result from unnecessary institutionalization. According to the Court, an institutional placement is unjustified when the State's treatment professionals have determined that community placement is appropriate, the transfer is not opposed by the individual, and the placement can be accomplished without fundamentally altering the State's program. In applying the fundamental alteration defense, courts are to consider not only the expense of providing community-based care to the plaintiffs in a particular case, but also the "need to maintain a range of facilities for the care and treatment of persons with diverse disabilities" and "the States' obligation to administer services with an even hand." The case was sent back to the Eleventh Circuit for further proceedings on the fundamental alteration issue.

Department by stating that, in determining whether the plaintiff was an individual with a disability, the subconscious adaptations made by the plaintiff's brain to compensate for the lack of vision in one eye should be taken into account. The Court saw no reason to distinguish between these adaptive mechanisms and other mitigating measures, such as eye glasses and medications. The Supreme Court did, however, agree with the Department that people with monocular vision will "ordinarily" meet the ADA's definition of disability.

Supreme Court Affirms that Receipt of Social Security Disability Benefits Does Not

Automatically Bar ADA Suit -- The Supreme Court unanimously ruled in Cleveland v. Policy Management Systems Corp., as urged by the Department in an amicus brief, that in determining whether a plaintiff is a qualified individual with a disability in a title I employment suit, courts should not give any special weight to the fact that the individual has also applied for Social Security disability benefits. In Cleveland, the plaintiff, after suffering a stroke and losing her job, applied for and obtained Social Security benefits, claiming she was unable to work because of her disability. Subsequently, she filed suit under the ADA contending that she was qualified for the job and that she was discriminated against because the employer fired her without providing reasonable accommodation. The Court agreed with the Department that because the qualification standards under Social Security and the ADA are different, application for or receipt of Social Security benefits is not by itself inconsistent with being a qualified individual with a disability. For example, Social Security does not consider reasonable accommodation in determining whether an applicant is able to perform the applicant's past or other work. The court also ruled that, in order to avoid having her suit dismissed, the plaintiff must

provide an explanation that would allow a reasonable juror to conclude that, despite having applied and received Social Security benefits, the plaintiff could still perform the essential functions of her job with or without reasonable accommodation.

U.S. Courts of Appeals

Fourth Circuit Finds ADA Prison Suit

Constitutional -- The U.S. Court of Appeals for the Fourth Circuit in Amos v. Maryland Department of Public Safety agreed with the Department of Justice in upholding the constitutionality of an ADA lawsuit against the Maryland State prison system. The court found the ADA to be a valid exercise of Congress' authority to enforce the equal protection guarantees of the U.S. Constitution, because the ADA was based on a legislative record of discrimination against persons

with disabilities, and because the ADA's mandate for "reasonable accom-
modation" was a proportional response to the injuries Congress identified. It noted that, in deter-

mining in particular cases whether proposed modifications are "reasonable" and whether any resulting burdens are "undue," the views of prison administrators should be taken into consideration. The court left open the possibility that, even though the statute in general is constitutional as applied to State prisons, some specific ADA regulations could be found unconstitutional on a case-by-case basis. The Department disagrees with this point and will continue to defend the ADA and its regulations from constitutional challenges.

Performing Arts Center Not Required to Provide Line of Sight over Standing

Spectators -- The U.S. Court of Appeals for the Third Circuit in Caruso v. Blockbuster-Sony Music Entertainment Centre ruled that the title III regulation requiring comparable lines of sight for accessible wheelchair seating

Decisions

locations does not require a newly constructed outdoor performing arts pavilion, the E-Centre in Camden, New Jersey, to provide wheelchair users with a line of sight over standing spectators. The Department argued in its amicus brief that, consistent with its Title III Technical Assistance Manual, a line of sight over standing spectators is required in newly constructed assembly areas where audience members can be expected to stand during a performance. The Third Circuit ruled that the Department's interpretation was not binding because it did not meet the requirements of the Administrative Procedure Act. The court acknowledged that its decision was in conflict with the opinion of the U.S. Court of Appeals for the District of Columbia Circuit in Paralyzed Veterans of America v. D.C. Arena L.P. involving the MCI Arena in Washington, D.C.

Seventh Circuit Rules that ADA does not Prohibit AIDS

Insurance Cap -- In Doe v. Mutual of Omaha, the U.S. Court of Appeals for the Seventh Circuit ruled that an insurer does not violate title III by imposing special lifetime caps on treatment of AIDS-related conditions in health insurance policies. The plaintiffs, who are HIV-positive, challenged lifetime AIDS caps of \$25,000 and \$100,000, respectively, in their insurance policies. Those policies provide a lifetime cap of \$1 million for medical conditions unrelated to AIDS. The district court had ruled that the AIDS caps violate title III. The Seventh Circuit disagreed both with the district court and with the Department's amicus brief, concluding that title III does not regulate the content of insurance policies or other goods or services offered by places of public accommodation. The court of appeals also ruled that to read title III as reaching the content of insurance policies would violate another Federal law restricting Federal interference in State regulation of insurance.

Decisions

U.S. District Courts

Child Care Center Ordered to Admit Child with Asthma -- The U.S. District Court for the Northern District of California in Alvarez v. Fountainhead, Inc., ordered a California child care center to modify its "no medications" policy and enroll a child who has asthma and uses an inhaler. It also ordered the center to provide a one-hour training session for its staff on the nature of asthma and the supervision of children who use Albuterol inhalers. Fountainhead Child Care Center prohibits teachers from assisting in the administration of any medication to children enrolled in its program and requires parents to either come to the facility to administer any necessary medication, forgo medication while the child is at preschool, or not enroll the child. The four-year-old child in this case was able to use the inhaler himself, but required monitoring for signs of wheezing and supervision while he administered the inhaler. The Department argued in an amicus brief in support of the child that the minimal monitoring and supervision required in this case would be reasonable and not fundamentally different from the responsibilities that all child-care operators have for the safety and well-being of their students.

New York Federal Court Allows Interpreter Damages Suit to Proceed -- In Constance v. State University of New York Health Science Center, the Department filed an amicus brief in support of a hospital emergency room trauma patient and her husband, both of whom are deaf, who claim that the New York Health Science Center violated the ADA by failing to provide them the services of a sign language interpreter despite repeated requests. The brief argued that both the patient and her husband have standing to bring this lawsuit and that if they prove the facts in the complaint they should be entitled to damages. Because the

defendants challenged the constitutionality of title II, the Department also intervened to defend its constitutionality. The U.S. District Court for the Northern District of New York rejected the State's constitutional challenge and found that the plaintiffs had alleged enough evidence of "deliberate indifference" to plaintiffs' ADA rights to allow a suit for damages to proceed. The court also gave the plaintiffs the opportunity to establish their standing to bring this case by allowing them to amend their complaint to allege that they are likely to be subjected to discrimination again by the same hospital.

Continuing Violations by City Permit Broad Toledo Curb Cut Challenge -- The Department filed an amicus brief in Deck v. City of Toledo in support of a lawsuit alleging that Toledo, Ohio, had failed to provide accessible curb ramps in connection with newly constructed or altered streets or sidewalks. The city argued that, because of the two-year statute of limitations applicable to this case, any claims involving violations that occurred earlier than two years before the lawsuit was filed should be dismissed. The Department's brief argued that, because the city continued to violate the statute within the two-year period, the earlier claims should not be dismissed. The court agreed with the Department and ruled that, because the city had engaged in a "continuing violation" of failing to install curb ramps required by title II, the earlier claims dating back to the effective date of the ADA should not be dismissed.

2. New lawsuits

The Department initiated or intervened in the following lawsuits.

Titles I and II

New Actions Defend the Constitutionality of the ADA -- The Department intervened in a

number of additional cases 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 --

Johnson v. Tennessee Technical Center at Memphis (6th Circuit) -- title II suit challenging technical school's alleged failure to make reasonable modifications to allow an individual with paraplegia to operate a truck as part of a commercial truck driving course.

Parr v. Middle Tennessee State University (6th Circuit) -- title II suit challenging a professor's alleged failure to provide a reasonable accommodation to a student with a seizure disorder and carpal tunnel syndrome, and alleged acts of retaliation.

Lane v. Tennessee (6th Circuit) -- title II suit by individuals with paraplegia, an arrestee and a court reporter, alleging inaccessible court facilities.

Jackan v. New York State Department of Labor (2d Circuit) -- title I suit challenging alleged failure to provide reassignment as a reasonable accommodation.

Constance v. State University of New York Health Science Center (Northern District of New York) -- title II suit alleging failure by hospital to provide sign language interpreters for deaf patient and deaf spouse (see "Decisions," page 5).

Hicks v. Armstrong (District of Connecticut) -- title II suit challenging allegedly inaccessible State and local prison facilities -- Department brief also defends ADA from attack under the Commerce Clause.

3. 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

Constance v. State University of New York Health Science Center -- see "Decisions," page 5.

Deck v. City of Toledo -- see "Decisions," page 6.

Title III

Alvarez v. Fountainhead, Inc. -- see "Decisions," page 5.

Lara v. Cinemark -- The Department filed an amicus brief in the U.S. Court of Appeals for the Fifth Circuit arguing that the lower court was correct in concluding that seating for wheelchair users in newly constructed "stadium-style" movie theaters must provide lines of sight that are at least comparable to those of the average patron and cannot be limited to the worst seats in the house. The plaintiffs alleged that Cinemark USA violated the ADA in the design and construction of a 20-screen, stadium-style complex in El Paso, Texas, by only placing accessible seating at the front of the theater in areas with the worst sight lines. The brief also argues that the U.S. District Court for the Western District of Texas was right in ruling that there is no "good faith" exception to the ADA's requirements and that renovations must be made in each of the 18 noncomplying

auditoriums instead of the five proposed by defendants. The Department of Justice earlier filed briefs supporting the plaintiffs in the district court.

B. Formal Settlement Agreements

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

Title I

Orange County, California -- The Department reached a settlement agreement with Orange County, California, resolving an employment charge originally filed with the Equal Employment Opportunity Commission. The charging party worked as an eligibility technician for the county. After returning from an extended medical leave of absence, she was reassigned to a clerical job because of medical restrictions placed on her. She then was selected for a vacancy in her former position as eligibility technician. After her appointment to that job, the county asked her to submit to a medical examination to determine whether her past medical restrictions were still in effect. Her psychiatrist lifted the restrictions and reported that she could fulfill the duties of an eligibility technician. However, the county declined to accept the psychiatrist's conclusions, forcing her to return to her clerical job. The county denied liability but agreed to pay the complainant \$10,000 for monetary losses. She did not wish to return to her former position and therefore did not seek reinstatement.

Morgan County Memorial Hospital, Martinsville, Indiana -- The Department entered an agreement with the Morgan County Memorial Hospital to resolve a title I complaint alleging that the hospital discriminated against a nurse with HIV by suspending him because of his disability. The

hospital allegedly learned of the employee's HIV status from blood tests taken after the nurse was stuck with a needle. Despite its policies allowing HIV-positive employees to work under certain conditions, the hospital unnecessarily placed him on a leave of absence until he obtained a doctor's release. The hospital agreed to conduct HIV awareness training for a number of personnel who implement hospital policy with respect to employees with HIV. In addition the hospital agreed to pay the complainant, who now works for another employer, \$4,800 in damages.

Title II

Idaho Falls, Idaho -- The Idaho Falls Police Department agreed to adopt written policies and procedures ensuring effective communication with persons who are deaf or hard of hearing and to train its officers on their ADA obligations in arrest and other law enforcement situations.

** *Oklahoma County, Oklahoma* -- The Department entered an agreement with Oklahoma County, Oklahoma, resolving a complaint concerning the accessibility of programs, services, and activities offered in the county courthouse. The county will remove physical barriers to access and adopt a policy describing its program accessibility and effective communication obligations that will be published on the county's web site and in a county newspaper. An accessible entrance into the courthouse will be provided, toilet rooms on the first and seventh floors of the courthouse will be altered, elevator signage will be modified to improve accessibility, two courtrooms will be designated as accessible to persons who use wheelchairs and the elements of those courtrooms will be modified to provide an accessible route that connects the

main courtroom entrance, spectator seating area, participant seating area, witness stand, jury box area, jury deliberation room and jury rest room. In addition, wheelchair seating will be provided in the jury box, witness stand, and spectator seating area.

Harrison County, Iowa -- The Department entered an agreement with the Harrison County Sheriff's Department in Logan, Iowa, resolving a complaint alleging that the jail facility was not accessible to persons who use wheelchairs, and that an inmate was denied the use of a medically prescribed egg-crate foam mattress. The Sheriff's Department has agreed to relocate inmates who use wheelchairs to another facility in adjacent Cass County that is

*Formal
Settlement
Agreements*

accessible. The Sheriff's Department will provide visitors with the option of visiting the inmate during regularly scheduled hours of visitation either at the Harrison County Jail, or at the accessible jail facility in Cass County. If the site of visitation

chosen is the accessible jail facility, then the Sheriff's Department will provide the visitors with transportation to that facility. Additionally, the Sheriff's Department has agreed to provide inmates with equipment or medication prescribed by a physician, unless it is determined, on an individual basis, to pose a direct threat to the safety of others.

Raleigh, North Carolina -- The Department entered an agreement with the City of Raleigh resolving a complaint alleging that the city failed to respond properly to an emergency 9-1-1 TDD call. The city agreed to adopt numerous upgrades to its system and procedures, including monthly maintenance and testing of the TDD-compatible emergency system, prompt repairs of any equipment malfunctions, increased TDD capacity, and regular internal testing of TDD call-handling.

Georgiana, Alabama -- The City of Georgiana, Alabama, agreed to remove architectural barriers at the City Hall, the Police Station, the Magistrate's Court and Council Chamber, and the Hank Williams, Sr., Museum -- the childhood home of the well-known country music singer-songwriter. The City will install entrance ramps, modify existing rest rooms, and alter sidewalks to provide access to the programs offered at the sites.

security risk will result; and ADA training for employees. It also agreed to pay a civil penalty of \$5,000 and to ensure that any stores that it purchases or leases in the future will meet the requirements of the ADA Standards for Accessible Design.

Title III

Swiftly Mart Convenience Stores, Tallahassee, Florida -- The owners of Swiftly Mart Convenience Stores agreed to remedy access violations at 53 stores. Swiftly Mart will provide accessible parking spaces with appropriate signage; curb ramps where an accessible route crosses a curb; refueling assistance to any person with a disability who specifically requests refueling assistance when more than one employee is on duty and no

North Community Bank, Chicago, Illinois -- The North Community Bank agreed to make its entrance and its automated teller machine accessible to people with disabilities. The bank allegedly ignored the complainant's requests for barrier removal and suggested that the complainant use an accessible bank facility some miles from his home. The complainant was subsequently injured when he fell over in his wheelchair while attempting to use the inaccessible local ATM. The bank agreed to install ramps to make its entrance and ATM machine accessible. The bank also agreed to have a consultant perform a complete accessibility review of its operations and identify any other barriers to participation by

Commercial Real Estate Firm Pays \$560,000 in Damages, Penalties for Discrimination in Leasing -- Under an agreement with the Department of Justice, TrizecHahn Corporation, a commercial real estate corporation that refused to lease space to a nonprofit organization that serves persons with disabilities will no longer discriminate against people with disabilities and will take corrective action to ensure that it does not happen in the future. TrizecHahn owns, manages, and develops retail and office properties throughout the United States, including a facility in Rosslyn, Virginia. The ENDependence Center, based in Arlington, Virginia, attempted to lease office space in TrizecHahn's Rosslyn, Virginia, building, but the leasing agent refused to enter into

any negotiations with the center and refused to lease the space to the center because the center serves persons with disabilities. Under the terms of the agreement, TrizecHahn will --

- no longer discriminate against individuals with disabilities when leasing commercial real estate;
- pay \$550,000 to the center and \$10,000 in civil penalties to the United States; and
- train employees in the Washington, D.C. area on the requirements of the ADA that pertain to the leasing of commercial real estate.

persons with disabilities. In addition, the bank will pay the complainant \$8,000 in compensatory damages.

First Intermed Corporation, Brandon, Mississippi -- The U.S. Attorney's Office for the Southern District of Mississippi entered an agreement with the First Intermed Corporation, owner of the MEA Medical Clinic, an after-hours emergency clinic, to remedy violations in architectural plans for a new facility. The settlement agreement requires modifications to bring the new facility into compliance with ADA Standards for Accessible Design, including modifying parking, curb ramps, interior door widths, door hardware, counter heights, and restrooms.

Ramada Maingate/Saga Inn, Anaheim, California -- The Ramada Maingate/Saga Inn agreed to establish procedures for guaranteeing accessible room reservations and for accommodating customers with disabilities. The agreement resolves a complaint filed on behalf of an individual who is mobility impaired, alleging that the hotel failed to provide a promised wheelchair accessible room. In addition, the hotel will post a policy statement indicating that all persons with disabilities are welcome in the hotel and train its staff about their ADA obligations.

Colonial Williamsburg Foundation, Williamsburg, Virginia -- The Department entered into an agreement resolving a complaint alleging that Colonial Williamsburg

**** *Avis Rent A Car will Improve Access to Airport Shuttle Systems for People with Disabilities*** -- The nation's second largest rental car company agreed to provide accessible airport shuttle buses at all of its airport locations nationwide. The agreement between Avis Rent A Car, Inc., and the Department of Justice resolved a complaint filed by a traveler who uses a wheelchair alleging that Avis violated the ADA by not providing access to the shuttle system that operates between the terminal at the Detroit Metro Airport and its offsite rental car facilities. During negotiations, Avis agreed to expand the settlement to cover all of its airport shuttle systems nationwide. Avis will ensure that --

- each of the 36 shuttle systems at airport locations that it owns and operates will have at least one accessible vehicle by December 2000; some locations will have several accessible vehicles.
- all newly acquired large shuttle vehicles will be accessible.
- accessible curbside service, under which rented vehicles are delivered directly to the terminal where the customer with a disability is waiting, will be provided at all locations.
- barriers to access will be identified and removed at each airport location.

When the Department began its investigation, Avis had only six lift-equipped vehicles out of 286 in its fleet. When Avis is in full compliance with the agreement, it will have at least 153 accessible vehicles.

was inaccessible to persons with vision, hearing, and mobility impairments. During the Department's investigation many modifications to improve the accessibility of hotels, restaurants, walkways, restrooms, and entrances to historic structures were completed, and policies were set in place to provide auxiliary aids and services for people with hearing and vision disabilities. The agreement requires Colonial Williamsburg to modify handrails, insulate hot water pipes, adjust accessible lavatory counters, provide signage directing patrons to accessible restrooms, and to provide an additional accessible restroom in the visitors' center.

Med-Dent, Inc., Presque Isle, Maine -- The U.S. Attorney's Office for the District of Maine entered into a settlement agreement with Med-Dent, Inc., the owner of a medical office building in Presque Isle, Maine, requiring it to make changes that will provide physical access to patients who use wheelchairs. A wheelchair user complained that steps at the exterior entrances and an interior stairwell of the office of her treating neurologist denied her access to the physician's office and required her doctor to examine and treat her in a van in the parking lot. The building owner agreed to install ramps to the exterior front entrances of the office building, install a vertical platform lift at the interior stairwell of the structure, provide training in operation of the lift to persons employed at the building, post accessible parking signs, and replace door knobs with lever-type handles that can be grasped by persons who have disabilities.

*Formal
Settlement
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Dr. Robin Rinerson, Falls Church, Virginia -- A Virginia doctor agreed to make the entrance to her professional office accessible to people with mobility impairments. Dr. Rinerson will install a ramp to her office entrance and allow sufficient maneuvering space for opening the doors.

Tenaker Pet Center, Highland Ranch, Colorado -- The Tenaker Pet Center agreed to modify a newly-installed ramp at its front entrance to make it fully accessible to people with mobility impairments. The ramp will now have a smooth, level surface at the bottom landing and handrails on both sides.

Shoppers Landing Limited Partnership, Freeport, Maine -- Shoppers Landing, a commercial landlord, agreed to construct a ramp from the street to the rear door of a retail clothing store; post signs at the inaccessible entrance directing patrons to the accessible entrance; and maintain the walkway to the accessible entrance.

Central Mississippi Medical Center, Jackson, Mississippi -- The U.S. Attorney's Office for the Southern District of Mississippi reached an agreement with Central Mississippi Medical Center resolving a complaint that the Center denied a request for an interpreter for a deaf individual to attend child birth classes. The Center will institute a policy to ensure that individuals will receive the auxiliary aids and services needed for effective communication, including sign language interpreters. For courses or seminars offered by the Center, no more than 48 hours prior notice will be required to receive an interpreter. The Center will also provide ADA training to its employees and pay \$1,000 in damages to the complainant.

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 southern State's department of corrections agreed to provide an inmate with diabetes his prescribed food and the appropriate medical attention for his diabetic condition.

A town in New York agreed to relocate its monthly meetings to an accessible location and to provide notice in local newspapers of the town's policy for providing program accessibility.

A Kentucky city government agreed to provide individuals with disabilities auxiliary aids and services, including sign language interpreter services, at its public meetings and to provide closed captioning for public meetings and public announcements televised on its cable access channel. It also installed hardware for each of its telephone emergency dispatchers that will provide direct access to 9-1-1 callers using TDD's.

A town in Louisiana completed its self-evaluation and transition plan.

Title III

Two northern Virginia franchised fabric stores agreed to make their facilities accessible by adding curb cuts, accessible parking spaces, an accessible entrance, and appropriate signage.

The franchiser also installed folding auxiliary shelves at the counters in both stores.

A Michigan hotel agreed to purchase three TDD's, two portable door beacons, two portable tone amplifiers, and two portable sonic alert telephone signalers for guests who are deaf or hard of hearing. The hotel also posted notice of the equipment at the front desk, provided appropriate training to staff, and paid \$1,000 in compensatory damages to the complainant.

A national professional board agreed to provide testing accommodations to an individual with a learning disability.

An insurance company agreed to reverse its policy and issue health insurance for a child with pervasive developmental disorder.

A southern State's rural health services organization adopted a policy to provide auxiliary aids and services when requested, including qualified sign language interpreters. The policy requests that the patient provide five days advance notice and guarantees that all interpreter costs will be paid by the organization.

Sixty-four franchise restaurants of a nationally recognized quick service chain in Maine reached an agreement with the U.S. Attorney for the District of Maine to provide access to individuals who are unable to use drive-through speakers, including persons who are deaf or hard of hearing or who have speech impairments. Each restaurant will post clearly visible signs at the drive-through order board informing customers that picture menus and assistance are available for customers with speech or hearing disabilities at the restaurant's pick-up window. In addition, pencils, pens, and paper will be readily available at the pick-up window for customers who indicate they wish to write their order. Drive-through staff will be fully trained in the ADA's requirements for restaurants.

II. Mediation

*Under a contract with the Department of Justice, 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 450 professional mediators are available nationwide ** to mediate ADA cases. 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 --*

- In South Carolina, a person who is deaf complained that a theater did not provide effective communication with patrons who have hearing disabilities. The respondent agreed to provide sign language interpreters for live performances upon request, to install a TDD-equipped public pay telephone, and to install a telephone with an amplifying device. The respondent also agreed to place Braille signage throughout the theater.
- In California, a wheelchair user complained that a hotel did not have accessible rooms. The hotel management agreed to modify seven rooms to make them accessible and to obtain disability awareness materials to educate its staff.
- A person who uses a wheelchair complained that an Indiana restaurant was not accessible. The owner agreed to post a sign at the inaccessible entrance directing people with disabilities to the accessible entrance and to maintain a clear path of travel throughout the dining area. The owner agreed to install a buzzer so that once persons with disabilities enter the restaurant, they can alert the host or hostess and be seated promptly. Finally, the owner agreed to train the staff regarding the needs of people with disabilities.
- In Louisiana, a wheelchair user complained that a bank did not provide accessible parking. The management company agreed to create a van accessible parking space directly in front of the entrance to the building.
- In Michigan, a person complained that, although he had already been accepted into an art school, he was told that he could not participate in his chosen course of study because of his recently acquired spinal cord disability. Although the complainant no longer wishes to attend the school, the school agreed to modify its policy and pay the complainant \$12,500.
- A person who uses a wheelchair complained that a North Carolina motel had no accessible guest rooms. The owner agreed to create an accessible guest room by installing a ramp to the room, remodeling the bathroom, and providing an accessible parking space directly outside of the room.
- In California, a group of wheelchair users complained that a county building was inaccessible because it did not have a ramp. The county agreed to install a temporary ramp at the front entrance of the building

while plans are being finalized to renovate the existing building and to work with the complainants regarding the upcoming renovations to insure compliance with the ADA. Once construction begins, the county will relocate the offices in that building to another accessible building during the renovations.

- A person who uses a wheelchair complained that an Arkansas hotel was not accessible. The owner agreed to add an accessible parking space and a van accessible space, install signage directing people with disabilities to the accessible route to the lounge, lessen the force required to open some doors, modify the restrooms in the lobby, including installing visual alarms, and install a roll-in shower in one of the guest rooms. The owner also agreed to train its staff in providing auxiliary aids.
- In Maryland, a wheelchair user complained that a restaurant had no accessible restroom. The management agreed to renovate the restrooms to make them accessible.
- A person who uses a wheelchair complained that a South Dakota restaurant was not accessible. The owner agreed to renovate the ground floor restrooms to make them accessible and to create additional accessible parking. The owner also agreed to install an elevator.
- In Georgia, a person with a hearing impairment complained that he was asked to leave a restaurant because he was accompanied by a service animal. The manager apologized to the complainant and acknowledged his responsibilities under the

ADA relating to service animals. The manager also posted a notice for all staff about service animals and the ADA, and published an article in the restaurant's newsletter.

- A person who works with people with various disabilities complained that a Georgia restaurant was not accessible. The property manager agreed to provide appropriate ramps and modify the parking lot to allow access for all customers.
- An individual complained that she was asked to leave a Georgia barber shop because she used a service animal. The owner of the barber shop apologized to the complainant, agreed to allow individuals using service animals to enter his shop, and paid the complainant \$50.
- In North Carolina, a person from a disability rights organization complained that a shopping center's accessible parking space did not have the appropriate signage and that a concrete barrier blocked access to a curb ramp. The property managers at the shopping center agreed to install the appropriate signage and to remove the concrete barrier.
- In Florida, a woman who is deaf complained that a dentist refused to provide an interpreter so that she could communicate with the dentist about her daughter's diagnosis and treatment. The dentist agreed to provide an interpreter.
- An individual complained that a South Carolina hotel did not provide effective communication with its guests who have hearing disabilities. The hotel agreed to obtain eight TDD's, to install amplifiers on

Mediation

three public pay telephones, and to place appropriate signage at the front desk indicating the availability of the TDD's for guest use.

- In Texas, individuals with mobility impairments complained that a golf club and a brokerage firm had no accessible parking. Both respondents agreed to restripe the parking lot.
- A person with a disability complained that a Colorado restaurant had only one accessible parking space that was not the appropriate width and that was located in an area that was too steep. Additionally, she complained that the accessible space was not located on the shortest accessible route to the entrance. The respondent agreed to provide two eight-foot parking spaces with the appropriate access aisle and to relocate the spaces immediately adjacent to the front entrance.
- In South Carolina, a person who is deaf complained that a hotel was not accessible to patrons who are deaf or hard of hearing. The hotel agreed to install visual alarms in guestrooms, common areas, and restrooms. It also acquired a TDD to be made available at the front desk for use with a public pay telephone (the hotel already provided TDD's for guest rooms) and agreed to provide a television with a closed caption decoder in the lobby.

Mediation

- In Illinois, a mother complained that a riding stable discriminated against her daughter, a person with Rett Syndrome, by refusing to assist her while horseback riding. Although the respondent is no longer in business, she did apologize to the complainant, agreed to pay for a family horseback riding trip, and to pay the complainant \$40 for a family picnic for the inconvenience the family experienced. The respondent agreed to write letters to other riding stables in Illinois to increase awareness of the ADA and Rett Syndrome based on educational information provided her by the complainant.
- An individual complained that a North Carolina stadium charged higher prices for accessible seating than comparable nonaccessible seating. The stadium changed the policy to eliminate the price disparity between accessible and general seating and agreed to work with the complainant to create and make available an accessibility guide for all patrons. The stadium issued a handout to all ushers on accommodating guests with disabilities and required all usher captains to wear name tags so they may be easily identified during events to resolve any access issues that may arise. The stadium agreed to pay the complainant \$500 and also will contribute \$500 to a local disabled children's organization.

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, ADA Home Page, and Fax on Demand, 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.

**** Card-sized Self-serve Gas Fact Sheet Now Available --** The Department has printed a new card-sized version of its technical assistance fact sheet on providing assistance at self-serve gas stations. This new version, which is easily stored in a vehicle's glove compartment, may be obtained by calling the ADA Information Line. The ** standard-size fact sheet is also available through the ADA Home Page, ADA Fax on Demand (document #3210) and the ADA Home Page.

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),
- Freedom of Information Act (FOIA) ADA materials, and
- Links to the Department's press releases, ADA Bulletin Board, and Internet home pages of other Federal agencies that contain ADA information.

Justice and SBA Intensify Outreach to Small Business -- The Department of Justice and the Small Business Administration (SBA) have begun an outreach initiative to increase the awareness of small businesses of their rights and responsibilities under the ADA. SBA's 53 Business Information Centers and 57 Business Development Centers located in every State will disseminate ADA materials to the existing and new small businesses they serve. Dissemination efforts will also be enhanced by the more than 13,000 representatives of the Service Corps of Retired Executives (SCORE) who work closely with these SBA offices. The first material disseminated by this initiative will be a jointly issued version of the ** ADA Guide for Small Businesses. This edition will include the toll-free number for the SBA information line for small businesses.

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 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 32 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 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, visiting the ADA Home Page on the World Wide Web, 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 search or visit this website is provided from the ADA Home Page.

IV. Other Sources of ADA Information

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

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

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

<http://www.eeoc.gov>

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

ADA documents
202-314-3070 (voice)
202-484-8831 (TDD)

ADA questions
202-418-0976 (voice)
202-418-0484 (TDD)

<http://www.fcc.gov/dtf>

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

ADA Assistance Line for information, questions, or complaints
888-446-4511 (voice/relay)
202-366-2285 (voice)
202-366-0153 (TDD)

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

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

<http://www.fta.dot.gov>

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)

<http://www.access-board.gov>

The *Disability Rights Education and Defense Fund ADA Hotline* is funded by the Department of Justice to provide technical assistance to the public on all titles of the ADA.

ADA technical assistance
800-466-4232 (voice & TDD)

The *Disability and Business 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 & TDD)

<http://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)
202-347-3066 (voice)
202-347-7385 (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)

<http://janweb.icdi.wvu.edu/english>

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