



# Disability Rights

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# online News

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U.S. Department of Justice  
Civil Rights Division

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## Disability Rights Online News

is a monthly update about the Civil Rights Division's activities in the area of disability rights. The Division enforces laws prohibiting discrimination based on disability in employment, housing, access to businesses serving the public, access to government programs and services including voting and public transportation, and unconstitutional conditions in institutions of confinement.

### In this Issue:

Supreme Court .....	1
ADA Mediation.....	2
Voting Rights .....	3
Employment.....	4
Juvenile Services.....	5
Rights of Institutionalized Persons .....	6
Fair Housing.....	7-8
Code Certification .....	9
Outreach.....	10

## SUPREME COURT UPHOLDS INDIVIDUALS' RIGHT TO CHALLENGE INACCESSIBLE COURTS

The Supreme Court ruled in a 5-4 decision in *Tennessee v. Lane* on May 17, 2004, that individuals may sue states to make their courts accessible under the ADA.

George Lane, charged with two misdemeanor offenses, was called to appear in a Tennessee county court to answer the charges. The courtroom was on the second floor of a courthouse that had no elevator. As a wheelchair user, Lane faced an enormous obstacle in protecting his rights as a defendant. At his first appearance, he crawled up two flights of stairs to get to the courtroom. The next time he arrived for a hearing, he refused to crawl again or be carried by officers to the courtroom. He was arrested and jailed for his failure to appear in court.

Beverly Jones, a certified court reporter, also a wheelchair user, faced similar obstacles in practicing her profession. Many of the Tennessee county courthouses and courtrooms where she would be available as a court reporter were beyond her reach because of architectural barriers.

These plaintiffs filed a lawsuit alleging that the State of Tennessee and 25 of its counties violated the ADA by having inaccessible courthouses. The plaintiffs asked the federal court to order that the county courts be made accessible and to award compensatory damages.

The State of Tennessee argued in the Supreme Court, as it had unsuccessfully in the lower courts, that the suit was unconstitutional under the 11<sup>th</sup> Amendment to the U.S. Constitution. The 11<sup>th</sup> Amendment protects states from private lawsuits for damages unless they agree to be sued, or unless Congress enacts appropriate legislation protecting a Constitutional right and clearly removing state immunity with regard to that legislation. The Department of Justice argued that the lawsuit should be allowed because the ADA appropriately protects the constitutional rights of people with disabilities given the long history of state discrimination against them in a wide variety of settings, including the justice system.

The Supreme Court decided that the lawsuit may continue because the ADA protects the constitutional rights of people with disabilities to have access to the courts.

## ADA Mediation Highlights

One of the Justice Department's most innovative programs is the ADA Mediation Program through which complaints are referred to professional mediators who have been trained in the legal requirements of the ADA. This has proven to be an effective way to resolve ADA complaints at much less cost and in a shorter period of time than traditional investigations or litigation. From the program's inception in 1994, more than 75% of the complaints mediated have been resolved successfully.

Highlights of recent mediations include:

- In Ohio, a person who uses a service animal to alert her to oncoming seizures was denied access to a medical center. The hospital, which had a written policy on service animals, agreed to educate its office staff about the policy, with particular focus on helping staff identify and work with people with non-apparent disabilities who use service animals.
- In Arizona, an individual whose son uses a wheelchair complained that a bowling alley did not have accessible restrooms. The bowling alley agreed to renovate the restroom to make it accessible and to host a party for the complainant's son upon completion of the renovation.
- An individual who is blind complained that a motel in Missouri refused him a room because he used a guide dog. The motel agreed to post a sign welcoming people with service animals and to train front-desk staff and management on the ADA. The motel owner also agreed to work with the regional corporate office to increase other franchise owners' awareness of ADA requirements relating to service animals and made donations of \$150 to each of two guide dog organizations.
- A wheelchair user complained that although a Virginia hotel claimed to be accessible, the incline at the entrance was too steep for wheelchair access and an allegedly accessible guest room had an inaccessible bathtub. The hotel installed a properly sloped ramp with handrails and also installed transfer benches in the accessible guest room bathrooms.
- In Florida, a person who is deaf complained that a state professional association to which she belonged refused to provide effective communication at its annual convention and also at its local county meetings. The board of directors of the association adopted a policy to provide sign language interpreters at its annual state conventions and local meetings when requested.
- A person who is hard of hearing complained that a theater company in Florida did not have working assistive listening equipment for live performances. The theater agreed to check the listening devices daily and maintain the devices in working order at all times. The theater also provided the complainant with complimentary tickets to three other shows and concerts.

### Did you know...

The Department of Justice operates a toll-free ADA Information Line and the ADA Website to provide information and publications to the public about the ADA.

**800-514-0301 (voice)**

**800-514-0383 (TTY)**

**[www.ada.gov](http://www.ada.gov)**

## STATE SUED FOR VIOLATING VOTING RIGHTS OF STUDENTS WITH DISABILITIES

On April 15, 2004, the Justice Department filed suit against the State of New York and the New York public university system for violating the rights of students with disabilities. The lawsuit, filed in the United States District Court for the Northern District of New York, alleges that New York failed to offer voter registration opportunities for students with disabilities as required by Section 7 of the National Voter Registration Act (NVRA). Specifically, the NVRA requires states to designate, as mandatory voter registration offices, all state-funded offices that primarily serve persons with disabilities.

The disability services offices at the State University of New York (“SUNY”) and the City University of New York (“CUNY”), including those on their community college campuses, have never been so designated.

“Participatory democracy begins with access to the voting process,” said R. Alexander Acosta, Assistant Attorney General for the Civil Rights Division. “Recognizing that many of our fellow citizens cannot easily access some locations where voter registration might take place, the National Voter Registration Act requires that process to be brought to them. This

Administration is committed to ensuring full access to the voting process for all qualified citizens.”

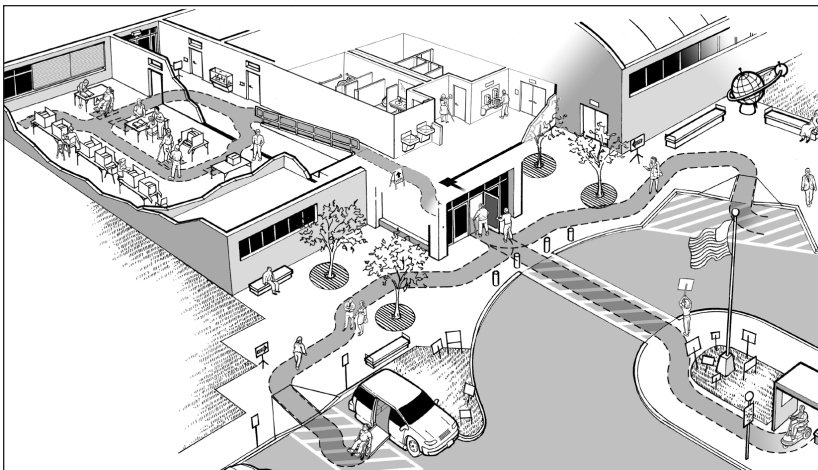
The suit asks the court to require the State of New York to provide voter registration services at all state university disability-services offices. These services would include providing voter registration applications, assistance in completing forms, and forwarding completed applications to the appropriate state election offices. The lawsuit is a part of President Bush’s New Freedom Initiative, aimed at providing citizens with disabilities all opportunities required by law.

## CHECKLIST FOR POLLING PLACE ACCESSIBILITY

The Department of Justice has released the “ADA Checklist for Polling Places” to help local officials improve voting accessibility nationwide. The 33-page checklist covers a

wide range of accessibility issues, including parking, passenger drop-off areas, walkways, building entrances and hallways, and use of the voting area. It helps election

officials recognize and identify accessibility problems at the schools, religious institutions, and public buildings that serve as polling places throughout the United States and offers practical, simple, and efficient solutions for eliminating barriers, including temporary measures for election day. This publication is available at [www.ada.gov/votingck.htm](http://www.ada.gov/votingck.htm).



Drawing from ADA Checklist for Polling Places

## SETTLEMENT REACHED WITH STATE POLICE OVER POLICIES FOR RECRUITS WITH DIABETES

The Justice Department has settled an employment discrimination lawsuit filed against the Mississippi Department of Public Safety (MDPS) under the ADA. The lawsuit charged MDPS with discriminating against a police recruit who has diabetes. Under the agreement, MDPS will pay \$35,000 in damages and implement policies to prevent future discrimination.

The lawsuit, filed in U.S. District Court for the Southern District of Mississippi, alleged that the MDPS refused to allow police recruit Ronnie Collins a reasonable accommodation for his diabetes during academy training and unlawfully terminated him due to that disability. Specifically, it alleged that Mr. Collins made several requests for additional food at more frequent intervals in order to control his diabetes given the strenuous exercise and limited availability of food appropriate for his diet. The complaint alleges that his requests were denied and that as a result he had an incident of low blood sugar (hypoglycemia) that left him confused and unable to report to training. The Highway Patrol subsequently dismissed him from the academy.

Under the settlement, which remains subject to court approval, MDPS will pay Mr. Collins \$35,000 in damages. In addition, MDPS will implement a reasonable accommodation policy and train its training officers on the policy and on recognizing diabetes and other disabilities. The MDPS will also incorporate an overview of diabetes into its existing curriculum for training of troopers and future cadets.

“We are extremely pleased with this agreement, which provides the complainant with appropriate compensation and promises reform to avoid similar discrimination in the future,” said R. Alexander Acosta, Assistant Attorney General for Civil Rights. “We will not tolerate discrimination against individuals with disabilities in the workplace, especially when a solution to providing a reasonable accommodation can be readily achieved.”

Since 2001, the Civil Rights Division has resolved 356 ADA complaints through informal means and another 144 through formal settlement agreements; has entered into 14 consent decrees; and has successfully resolved 575 complaints through mediation.

### Did you know...

**One out of five Americans has a disability, and this ratio is expected to increase as the “baby boom” generation gets older.**

**Small businesses can use tax credits and deductions to offset costs for complying with the ADA. Information about the ADA tax incentives is available at [www.usdoj.gov/crt/ada/taxpack.htm](http://www.usdoj.gov/crt/ada/taxpack.htm)**

## STATE JUVENILE SERVICES AGENCY AGREES TO ACCESS TO PROGRAMS AND SERVICES FOR JUVENILES WHO ARE DEAF OR HARD OF HEARING

In March, the Department of Justice signed settlement agreements with the Maryland Department of Juvenile Services (MDJS) and with Youth Services International, Inc. and its parent corporation Correctional Services Corp. (collectively YSI), regarding the provision of services required by the Americans with Disabilities Act (ADA) to juveniles with hearing disabilities. MDJS and YSI have agreed to provide required assistance to juveniles detained in their facilities or receiving their services. The agreements originated with complaints filed with the Department by a juvenile who was deaf.

The juvenile alleged that during his five-month detention at an MDJS facility he was never provided access to an interpreter, and that during a 13-month stay at a YSI-operated facility he was permitted only limited access to an interpreter. This lack of access largely prevented him from participating in rehabilitation, counseling, and other social and educational programs offered at the facilities. In addition, even when provided an interpreter, he was subjected to segregated housing and limited opportunities for participation in programs.

Under the agreements, the agencies will:

- ensure that auxiliary aids and services, including qualified interpreters, are available to juveniles with hearing impairments where necessary for effective communication;
- evaluate such juveniles to determine what, if any, auxiliary aids and services are necessary for their equal participation in services, programs, or activities;
- provide assistive technology such as text telephones, volume controls, and hearing aid-compatible telephones, visual alarms, and captioning in each facility;
- develop ADA training programs for staff having contact with juveniles and ensure that each facility has an employee designated to address ADA compliance issues; and
- together pay \$65,000 in compensatory damages, and YSI will pay \$10,000 in civil penalties to the United States.

This agreement is another step forward in carrying out President Bush's New Freedom Initiative, a comprehensive program announced in early 2001 to eliminate discrimination against people with disabilities and ensure access to all areas of community life as required by federal law.

### Did you know...

**Many people with disabilities rely on trained service animals in their daily lives. Dogs that provide wayfinding assistance to people who are blind or have low vision are the most well known, but animals can be trained to perform many other tasks for people with disabilities. Some animals assist people whose disability is not obvious, such as alerting a person with a seizure disorder to an oncoming seizure.**



## CIVIL RIGHTS VIOLATIONS FOUND AT ARKANSAS DEVELOPMENTAL DISABILITY FACILITY

The Justice Department announced the results of its investigation into conditions at Conway Human Development Center (Conway), in Conway, Arkansas, a facility that provides care for approximately 550 residents with developmental disabilities such as mental retardation, cerebral palsy, epilepsy, and autism, ranging in age from 11 to 66. The Department found substantial civil rights violations in the care provided to the residents of Conway and transmitted its findings in a letter from R. Alexander Acosta, Assistant Attorney General for Civil Rights, to Arkansas Governor Mike Huckabee. The letter concludes a 17-month investigation into the terms and conditions of residency at Conway. The investigation found evidence of egregiously deficient, and at times life-threatening, medical care, as well as deficient physical and nutritional management and therapy services. The text of the letter is available online at [www.usdoj.gov/crt/split/findsettle.htm](http://www.usdoj.gov/crt/split/findsettle.htm).

“Residents of such facilities are among our most vulnerable citizens, and all too often lack voice or representation in our public processes,” said Assistant Attorney General R. Alexander Acosta. “We will ensure respect for their civil rights.”

According to the findings letter, the investigation revealed that, over the three months prior to her death, one resident experienced more than eight separate episodes of significant bleeding at the site of her colostomy bag, sometimes in amounts sufficient to spill blood onto her legs and soak her clothing. Yet, according to the letter, Conway staff failed to address the bleeding.

The Department also found evidence that the facility’s neurological care was critically deficient. A majority of Conway residents suffer from seizure disorders, yet the manner of prescribing anti-convulsant medications at Conway may in some instances have actually worsened residents’ seizure disorders. Especially disturbing was Conway’s failure to develop an accountable system for investigating resident deaths, particularly in light of the facility’s identified deficiencies.

The investigation also identified inadequate special education services provided to school-aged residents in violation of the Individuals with Disabilities Education Act. Actual daily instruction time was extremely limited, in some cases lasting as little as six minutes, and the content of class instruction was not educational.

Lastly, the Department alleges that some Conway residents were not being treated in the most integrated setting appropriate to their individualized needs as required by the Americans with Disabilities Act. A number of residents have lived at Conway for most of their lives without the state ever making any meaningful attempt to determine whether they could function in a more appropriate setting. Other residents previously identified for community placement, in some cases decades ago, have never been transferred back into the community.

Since 2001, the Department of Justice has opened 43 similar investigations into nursing homes, mental health facilities, juvenile justice facilities, prisons, and residences for persons with developmental disabilities.

### Did you know...

Department of Justice findings letters with regard to investigations of publicly-operated institutions are available on the web at [www.usdoj.gov/crt/split/findsettle.htm#CRIPAlettersb](http://www.usdoj.gov/crt/split/findsettle.htm#CRIPAlettersb)

## FAIR HOUSING ACT MANDATES ACCESS TO AMENITIES, COURT RULES

For the first time since the Fair Housing Act prohibited discrimination based on disability, a court has decided whether multifamily housing must have accessible walkways connecting apartments to amenities, such as a clubhouse or swimming pool, and to the public street. The Justice Department argued that the answer is “ordinarily, yes.” United States District Judge Bernice Donaldson agreed in an opinion issued April 27, granting in large part the Department’s motion for summary judgment on this and other issues in a protracted and contentious case against Memphis area builders.

The case, U.S. v. Grant, concerned Camden Grove and Wyndham, both multi-

acre complexes comprised of apartment buildings that resemble large, single-family homes with driveways and attached garages. A network of roads connects the driveways to the exercise facility, clubhouse, mail kiosks and refuse facilities, but there are no sidewalks except for short approach walks to apartment and amenity entrances. Most of the driveways, particularly at Camden, are steeply pitched and the roads at both properties slope towards their centers. The Department argued that the law requires accessible *pedestrian* routes except in rare instances where physical barriers or legal restrictions, outside the control of the owner, make them impractical to install. The builders argued

that automobile routes sufficed to meet their obligations. After some 400 pages of briefing on motions for preliminary injunction and summary judgment, the Department decided to film a short movie to vividly illustrate the consequences of the Grants’ argument.

Individuals who use manual and powered wheelchairs and who are employed by or affiliated with the Memphis Center for Independent Living, as well as a University of Memphis graduate student, volunteered to spend three cold days last January transferring into and out of cars, trucks, and vans, in an attempt to get from one place to another within the apartment complexes. The resulting “Day in the Life” video dramatically brought to life the dry statutory and regulatory arguments: A multifamily housing complex that requires persons with disabilities to drive – or, for the many persons with disabilities who do not drive, to be transported – to the bus stop, laundry, playground, pool, social lounge, rental office, mail boxes, or even to the door of a neighbor’s home for a visit is not “readily accessible to and usable by” them.

(continued page 8)



**The slope of this parking space is too steep for people who use wheelchairs.**

(Fair Housing, continued)

The court's order is available online at [www.usdoj.gov/crt/housing/documents/grantorder1.htm](http://www.usdoj.gov/crt/housing/documents/grantorder1.htm). Further information concerning the Fair Housing Act may be found at [www.usdoj.gov/crt/housing/hcehome.html](http://www.usdoj.gov/crt/housing/hcehome.html).

From January 1, 2001, through May 28, 2004, the Civil Rights Division has filed 51 lawsuits alleging discrimination in housing based on disability, including 30 lawsuits alleging failures to design and construct apartments to be accessible to persons with disabilities.

## **OWNER, DEVELOPER, AND ARCHITECT TO PAY \$718,000 TO CORRECT ACCESS PROBLEMS IN NEW APARTMENT COMPLEX**

The owner, developer, and architect of an apartment complex in Nevada have settled a Fair Housing lawsuit brought by the Justice Department on referral from the Department of Housing and Urban Development. The government alleged the apartment complex has no accessible route into the apartments, doors in the units are too narrow to allow access by persons using wheelchairs, bathroom walls lack reinforcements needed for the safe installation of grab bars, and the common and public use areas are not accessible.

“When designers and developers of new construction fail to meet accessibility standards, they effectively deny housing to persons with disabilities,” said R. Alexander Acosta, Assistant Attorney General for Civil Rights. “Today’s settlement is a reminder that we will not accept such violations of the law.”

The defendants have agreed to pay a total of \$718,000 to make the complex accessible to persons with disabilities.

### **Did you know...**

The Department of Justice and HUD recently issued a joint statement on reasonable accommodations under the Fair Housing Act, available at [www.usdoj.gov/crt/housing/](http://www.usdoj.gov/crt/housing/)

## **CONDOMINIUM ASSOCIATION CHARGED WITH DISCRIMINATING AGAINST PEOPLE WHO USE WHEELCHAIRS**

On May 13, 2004, the Justice Department sued a Chicago-area condominium association charging that the association requires residents who use wheelchairs to enter the building through its rear service entrance, even though the front entrance is fully accessible and the rear entrance abuts a loading dock and garbage dumpsters. The case was originally filed by the parents of a boy with a disability living in the condominium. The Justice Department's suit, which includes a claim that the association has engaged in a

pattern or practice of discrimination against persons with disabilities, seeks monetary damages for the plaintiffs and requests that a civil penalty be imposed, along with an order enjoining the association's policy.

“The law demands fair treatment in housing for individuals with disabilities,” said R. Alexander Acosta, Assistant Attorney General for Civil Rights. “Forcing residents who use wheelchairs to enter their home through the back door is demeaning and far less than they deserve.”



## JUSTICE DEPARTMENT CERTIFIES MARYLAND'S STATE ACCESSIBILITY CODE AS EQUIVALENT TO FEDERAL ACCESSIBILITY REQUIREMENTS

The Maryland Accessibility Code has been certified by the Department of Justice as meeting or exceeding the requirements for the design and construction of accessible buildings and facilities under the ADA. Maryland Governor Robert Ehrlich, Jr., joined Assistant Attorney General R. Alexander Acosta, in making the announcement on February 18, 2004, at a ceremony in Annapolis, Maryland.

The ADA establishes design standards to ensure that newly built and altered public accommodations and commercial facilities will be accessible to people with disabilities. The ADA also permits states to submit their formally adopted accessibility codes for federal

certification. If the state code meets or exceeds the level of access required by the federal requirements, the Department of Justice may certify the state code.

“Certification is truly a win-win scenario both for individuals with disabilities and Maryland businesses,” said R. Alexander Acosta, Assistant Attorney General for Civil Rights. “It will allow state officials and building code inspectors to check compliance early in the construction process, when mistakes are more readily caught and less expensively fixed. Through certification, we can achieve more accessibility with fewer burdens, less litigation, and significantly less cost.”

The Maryland certification followed a pair of public hearings in Ellicott City, Maryland and Washington, D.C. at which commenters unanimously supported the Justice Department's proposed action. The State of Maryland is the first state since 1998, and the fifth overall, to achieve state code certification. The Justice Department previously certified the codes of the States of Washington, Texas, Maine and Florida.

The Department wants to increase the number of states with certified accessibility codes and has actively sought to certify additional codes. In this regard, the Department began a campaign to reach out to state governors and accessibility officials to encourage them to seek ADA certification and hopes to certify additional states over the coming year.

“Maryland today joins a small but banner group of states which have achieved this milestone,” said Acosta. “We hope that other states will soon follow.”

At present, the Department is working with California, Indiana, New Jersey, North Carolina, and Utah to obtain certification for their state accessibility codes.



(left to right) Director Kristen Cox, Assistant Attorney General R. Alexander Acosta, Governor Robert Ehrlich, Jr., and Secretary Victor Hoskins at the ceremony in Annapolis

## OUTREACH AND TRAINING HIGHLIGHTS

Assistant Attorney General Alex Acosta spoke at this year's Annual Expo for small businesses hosted by the U.S. Small Business Administration. In addition, ADA specialists staffed a booth in the exposition hall to answer questions and disseminate ADA information to conference attendees. The Expo was held on May 20-21 in Orlando, FL.

Civil Rights Division staff participated in a continuing education seminar for interior designers, architects and hotel owners on the accessible design requirements for hotels at the Hospitality Design Expo in Las Vegas.

Division staff also presented three workshops at the National ADA Symposium and Expo 2004 in May on the requirements of titles II and

III of the ADA, the role and responsibilities of ADA coordinators, and the Department's recent enforcement and technical assistance efforts and initiatives. The three-day conference, sponsored by the Great Plains ADA & IT Center, was attended by more than 400 participants from 47 states and included representatives of state and local governments, ADA coordinators, building inspectors, attorneys, business owners, and persons with disabilities.

Under the auspices of the U.S. Environmental Protection Agency, Office of Pesticide Programs, Division staff recently gave a presentation in Davis, CA on the requirements of the ADA for state/tribal regulators that train, certify, license and otherwise regulate the chemical industry.

**The Justice Department provides ADA speakers and information booths at national and regional events nationwide.**

**To request a speaker or booth for a major event, write to:**

**Speakers Bureau, U.S.  
Department of Justice,  
Civil Rights Division,  
950 Pennsylvania Ave, NW  
DRS - 1425 NYA,  
Washington, DC 20035.**