



Enforcing the ADA:

A Status Report from the Department of Justice

April - June 2007

This Status Report covers the ADA activities of the Department of Justice during the second quarter (April - June) of 2007. This report, previous status reports, and a wide range of other ADA information, including the consent decrees and formal settlement agreements mentioned in this report, are available through the Department's ADA Home Page at www.ada.gov (see page 9).

INSIDE..

| | |
|--|----|
| ADA Litigation | 2 |
| Formal Settlement Agreements..... | 3 |
| Other Settlements..... | 5 |
| Mediation | 8 |
| Technical Assistance | 9 |
| Other Sources of ADA Information | 11 |
| How to File Complaints..... | 12 |

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. 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 III

Miller v. California Speedway Corporation --

The Department filed an amicus brief in the U.S. Court of Appeals for the Ninth Circuit in support of the plaintiff in Miller v. California Speedway Corporation who claimed that the speedway violated the ADA title III regulations because its wheelchair seating areas do not provide comparable lines of sight over standing spectators. The U.S. District Court for the Central District of California had dismissed the case, ruling that when the Access Board issued its minimum guidelines in 1991, it interpreted its lines of sight guideline as not requiring lines of sight over standing spectators. The district court held that the Department of Justice implicitly adopted the Board's interpretation when it adopted the minimum guidelines. The district court therefore declined to defer to the Department's interpretation in the 1994 Title III Technical Assistance Manual, which expressly requires lines of sight over standing spectators, because the Manual was not issued subject to public notice and comment. In its amicus brief on appeal to the Ninth Circuit, the Department argued that the district court was wrong in ruling that

it had adopted the Board's interpretation of the minimum guidelines. The Department also argued that even if it had adopted the Board's interpretation the court should defer to the Department's later interpretation in the Technical Assistance Manual, which requires lines of sight over standing spectators.

B. Formal Settlement Agreements

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

Title II

Sheriff of St. Lucie County, Florida -- The Department entered a settlement agreement with the Sheriff of St. Lucie County, Florida, to resolve two complaints of discrimination under title II of the ADA. One complaint alleged that the sheriff's office failed to provide a qualified interpreter for an inmate who is deaf during his 280-day imprisonment at the County Jail. Another alleged that, in an attempt to communicate with a detainee who is deaf, the sheriff's office used a deputy sheriff who lacked effective interpreting skills. The sheriff's office agreed to establish procedures for effective communication, provide qualified interpreters, TTY's, and other auxiliary aids when needed, make telephone relay services available, and appoint an ADA coordinator.

Title III

Fort Wayne Country Inns and Suites, Fort Wayne, Indiana -- The Department reached an agreement with the owner of the Fort Wayne Country Inns and Suites Hotel in Fort Wayne, Indiana, resolving a complaint filed by an individual with a mobility disability who uses a service animal. The complainant alleged that the night desk clerk said she could not stay at the hotel with an animal. After she repeatedly

explained that the dog was a service animal, the clerk finally said that she could stay but she needed to use the back door so other guests would not be disturbed by the animal. The hotel owner agreed to adopt and post a policy of nondiscrimination toward users of service animals and to provide training on this policy to all current and future employees.

Roger Williams Medical Center Providence, Rhode Island -- The Department entered an agreement resolving a complaint against the Roger Williams Medical Center by an individual on behalf of himself and his daughter, who are both deaf, alleging that they were denied a sign language interpreter when they sought emergency room care for a dog bite on the daughter's lip. On his own, the complainant resorted to finding someone to interpret. The hospital agreed to adopt a policy of performing an initial assessment of communication needs upon patient entry to the hospital as well as ongoing assessments to ensure that effective communication is provided. Based on these assessments, the hospital will provide interpreters or other appropriate auxiliary aids as needed, including 24-hour use of TTY's and closed caption televisions. In addition, the hospital agreed to pay \$400 in damages to the complainant and \$100 to the individual obtained by the complainant to interpret.

Inova Fairfax Hospital, Fairfax, Virginia -- The Department reached an agreement with Inova Fairfax Hospital resolving an allegation that the hospital did not respond appropriately in an incident involving the daughter of a woman who is deaf. The mother accompanied her daughter to the hospital's emergency room after the daughter, who was eight months pregnant, was involved in a car accident. Although the daughter expressly requested a sign language interpreter for her mother, Inova failed to call for an interpreter until five and a half hours after the initial request, forcing the daughter to act as the interpreter at the

Two Casino Resorts Agree to Correct New Construction Violations -- The Department announced two settlements, one with Mandalay Corporation and a second with Circus Circus Mississippi, Inc., resolving investigations into the accessibility of the Mandalay Bay Casino Resort in Las Vegas and the Gold Strike Casino Resort in Tunica Resorts, Mississippi. Both resorts, subsidiaries of MGM Mirage, were constructed after the ADA Standards for Accessible Design went into effect. The settlements address a wide range of elements that do not conform with the ADA Standards. The cases arose after a guest who uses a wheelchair fell in the shower of a designated accessible guestroom at the Gold Strike because the shower controls were not correctly located within reach as required by the ADA Standards. The Mandalay resort in Las Vegas provides a total of 4752 guest rooms. Under the agreement, Mandalay agreed to provide a total of 80 accessible rooms plus an additional 64 accessible rooms with roll-in showers and an additional 75 rooms that are accessible for individuals who are deaf or hard of hearing. The Gold Strike resort in Mississippi has 1131 guest rooms. It agreed to provide 22 accessible rooms plus an additional 12 accessible rooms with roll-in showers and an additional 22 rooms that are accessible for people who are deaf or hard of hearing. Under the settlement agreements, both companies agreed to --

- disperse accessible guest rooms throughout the classes of sleeping accommodations at the hotels and make the rooms fully accessible;
- ensure that guest rooms for persons who are deaf or hard of hearing provide visual alarms that are connected to the building's emergency alarm system;
- widen doors and doorways into and within guestrooms not designated as accessible to provide at least 32" of clear width;
- ensure that reservations can be made for accessible rooms over the internet;
- add accessible seats and assistive listening devices to theaters and assembly areas;
- provide elevator access to all levels of the facilities, including all levels within restaurants;
- add accessible tables and booths to restaurants;
- lower counters or provide equivalent facilitation;
- add accessible features to locker and dressing rooms;
- add accessible parking spaces and correct signage for accessible spaces.
- Both companies also will train their employees on ADA compliance and pay \$55,000 in civil penalties to the United States.

same time that she was receiving distressing news about her own condition. Under the agreement, the hospital will provide auxiliary aids to family members and companions as well as to patients when needed for effective communication; assess the communication needs of individuals with speech or hearing disabilities upon their arrival or at the time an appointment is scheduled; and provide qualified interpreters as soon as possible and within specified time limits, especially in circumstances involving lengthy or complex interactions such as admissions and detailed discussions of symptoms, diagnosis, and treatment. The hospital also agreed to pay the patient and her mother a total of \$55,000 in compensation for the discriminatory treatment.

College Square Mall, Cedar Falls, Iowa -- The Department signed an agreement resolving a complaint filed against College Square Mall in Cedar Falls, Iowa, by an individual who had difficulty moving about portions of the mall in her wheelchair. The former and current owners of the mall agreed to remedy 205 identified architectural barriers involving public common areas, tenant spaces, parking spaces, interior and exterior accessible routes, dressing rooms, and public restrooms. The former owner also agreed to pay a civil penalty of \$40,000 to the United States.

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 is deaf complained that she was not provided a sign language interpreter by an Ohio municipal police department during an investigation of a reported theft in her home. The police department adapted for its own use, and posted on its website, technical assistance materials on effective communication published by the Department of Justice; made arrangements with an interpreter service to provide for 24-hour per day availability of qualified sign language and oral interpreters on an as-needed basis; and provided ADA training to both sworn and nonsworn personnel.

An individual with a mobility disability, who uses a prosthetic leg, alleged that a municipal correctional facility in Florida refused to have his prosthesis repaired. The facility repaired his prosthesis and provided an appropriate wheelchair and crutches.

An individual with a psychiatric disability filed a complaint against an Arizona state prison alleging that he was denied psychiatric medications and counseling. The prison is now providing these services.

An inmate with a mobility disability alleged that an Arizona state prison denied him an orthotic lift for his right shoe. During an onsite visit to the prison, investigators noted that the complainant had been moved to an inaccessible housing unit. The prison provided the complainant with a lift for his shoe and moved him to an accessible housing unit.

An individual who uses a wheelchair alleged that a Texas county jail was inaccessible to individuals with mobility disabilities. An onsite inspection revealed that the jail had some accessible cells, but did not have one

in every classification level. The jail has submitted architectural plans for an accessible new addition to the county jail and will provide an increased number of accessible cells dispersed among all classification levels.

An individual with a mobility disability complained that a South Carolina city removed an accessible parking space at its public square, that its city hall parking lot did not contain fully accessible parking spaces, that when the city hall was renovated in 2000 it was not altered in compliance with the ADA Standards for Accessible Design, and that the city had no grievance procedure. The city has replaced an accessible parking space on its public square, restriped the city hall parking lot, provided cups at the water fountains located in city hall, appointed an ADA coordinator, and established a grievance procedure.

Title III

An individual with a mobility disability alleged that he was not allowed to park his wheelchair-accessible van in a parking garage that is in fact accessible. The parking garage agreed to post signage at the garage entrance directing patrons to the designated van-accessible parking space, indicating for the benefit of both staff and visitors that the route has an accessible height throughout.

An individual with a mobility disability complained that a food market in Houston was not accessible to people with mobility disabilities because large items placed for sale near the entrance made the route to the entrance too narrow. The food market has since removed the barriers, and the route is now accessible.

An individual with a mobility disability alleged that he could not maneuver his motorized wheelchair in a clothing store located in Oklahoma without hitting coat racks and

catching them on his wheelchair. The store agreed to create an accessible route among some of the racks.

An individual who uses a service animal complained that a New York-based foundation that provided donated computers and computer training to blind individuals refused to allow service animals into the house of the foundation official where the instruction was provided. The foundation modified its service animal policy, relocated training to the homes of students, and agreed to serve people with low vision who could also benefit from the same training.

An individual with a mobility disability alleged that the designated accessible toilet room in a Pennsylvania department store, which had been altered, did not comply with the ADA Standards for Accessible Design. The department store modified and redesigned the toilet room to make it accessible.

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

Eastern District of California -- Two individuals with mobility disabilities alleged that a California state fair was not fully accessible to individuals with disabilities. One complainant, who has a spinal cord injury and has difficulty climbing stairs, was denied access to an elevator because he did not appear disabled to an employee of the state fair. The other complainant, who uses a wheelchair, attended a concert at the fair, but could not be directed to wheelchair seating because staff did not know the location of such seating. The state fair agreed to educate all employees at the outdoor concert area, including those temporarily employed for the fair, about access to the raised-platform wheelchair seating; provide ADA training to all staff; require all staff temporarily employed for the state fair to read and sign an employee handbook containing

information on ADA policies; and revise the language in its contracts with vendors to assure compliance with ADA.

Central District of Illinois -- An individual with a mobility disability complained that a dieting group held its meetings in an inaccessible building. The group relocated its meeting site to an accessible location, agreed to ensure that all of its meeting locations in the region will be accessible to people with disabilities, and paid the complainant \$2500 in compensatory damages.

Southern District of Iowa -- An individual who is deaf alleged that a private hospital failed to provide her with an interpreter at various times during a recent hospitalization including when she met with physicians to discuss her diagnosis and treatment. The hospital has prepared and implemented new policies and procedures to ensure the provision of appropriate auxiliary aids and services necessary for effective communication to patients and companions. Additionally, the hospital has paid the complainant \$1,000.

Eastern District of Louisiana -- An individual with a hearing disability complained that she was denied access to an office building because she was accompanied by her service dog. The office building management agreed to modify its "no animals" policy to permit people to use service animals in the two buildings it manages and to provide ADA training to its security staff.

Southern District of Mississippi -- A compliance review revealed several ADA violations at a newly constructed minor league baseball park. Several changes were made to the stadium including the provision of wheelchair accessible seating on every level; accessible routes to all sections of seating, as well as to the field and dugout levels; the required number of accessible parking spaces; accessible benches and locker storage areas in the locker rooms; and visual alarms in common rooms and spaces.

District of New Hampshire -- A deaf individual, who is a licensed pilot, complained that an aviation service refused to rent an aircraft to him because of his disability. The aviation service agreed to add language to its rental agreement stating its commitment not to discriminate on the basis of a hearing disability in renting aircraft for qualified, licensed pilots; display its nondiscrimination policy in a conspicuous location and in written materials provided to potential students; provide ADA training to its employees; develop and maintain on file a list of interpreter services within a 50-mile radius; and contact one of the services to retain a qualified interpreter when it is determined that such an auxiliary aid or service is required.

Southern District of New York -- Several inmates with mobility disabilities alleged that the New York City Department of Correction used inaccessible vehicles to transport inmates to court appearances and to medical appointments, and, also, to transport inmates and visitors between its facilities. The Department of Correction agreed to procure and put into use new accessible vehicles for transporting inmates, and discontinue using inaccessible vehicles to transport inmates with mobility disabilities; procure at least one new accessible van for transporting visitors; and establish written policies and procedures for providing accessible service.

Middle District of Tennessee -- An individual who is blind alleged that he was asked to leave a restaurant because he had his service animal with him. The restaurant subsequently implemented a policy permitting customers with disabilities to dine in the restaurant with their service animals. The restaurant will also post a sign prominently at its entrance stating service animals are welcome.

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 Florida, a wheelchair user complained that, although she made a reservation for an accessible room at a hotel, all accessible rooms were occupied when she checked in, so she was forced to stay elsewhere. The hotel agreed not to overbook accessible rooms, to train staff to ensure that all requests for accessible rooms are entered into the system, to apologize to the complainant, and to provide her with a two day complimentary stay.
- In Utah, a person with a mobility disability complained that she was denied access to a grocery store because she uses a service animal. The company agreed to expand its service animal training as part of ongoing ADA training provided to all regional store employees and wrote an apology to the complainant reaffirming the company's policy of welcoming service animals.
- A wheelchair user complained that a social service center in Georgia was inaccessible. The center installed a van-accessible parking space, a curb ramp, an accessible door handle at the entrance, and a new accessible restroom.
- In California, a person with low vision complained that a golf course refused to allow his aide to stay with him unless he paid a fee, even though the aide was not playing. The golf course agreed not to charge individuals assisting disabled golfers and also developed additional policies, including allowing off-path travel for disabled golfers using carts. The golf course also developed an ADA pocket guide, trained all staff on the policies, and agreed that senior staff would be available onsite to resolve any complaints that might arise.
- A wheelchair user complained that an Iowa restaurant was inaccessible. The restaurant installed a ramp to the entrance, removed a step and graded the path of travel to the parking area, and moved a freezer away from an interior doorway to provide access to the dining area.
- In Florida, an individual who is deaf alleged that a doctor refused to provide a sign language interpreter during a medical examination. The doctor agreed to provide an interpreter for patient visits upon request.
- An individual who is blind and uses a service animal alleged that a Nebraska cab driver refused to provide service to her and her friend. The cab company arranged for all drivers to be trained on the ADA by an advocacy organization. The company also apologized to the complainant in writing and gave her 52 round-trip cab rides and \$500.

- In Nebraska, a wheelchair user alleged that a nonprofit housing organization did not have accessible restrooms. The building owner widened the entrance to the unisex bathroom and reconfigured it to provide access to people with mobility disabilities.
- A wheelchair user complained that a New Jersey restaurant was inaccessible. The restaurant relocated the accessible parking spaces close to the existing accessible entrance at the rear of the restaurant and posted directional signage.

III. 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 to encourage voluntary compliance. Our activities include providing direct technical assistance and guidance to the public through our ADA Website, ADA Information Line, and Automated ADA Fax System; developing and disseminating technical assistance materials to the public; and undertaking outreach initiatives.

ADA Website

The Department's ADA Website (www.ada.gov) provides direct access to the Department's publications, briefs, and settlement agreements, and other information about its enforcement, mediation, technical assistance, and certification programs, including proposed changes in ADA regulations and requirements, links to ADA press releases, and links to other Federal agencies' websites that contain ADA information.

In addition, the website provides access to --

- ◆ electronic versions of the ADA Standards for Accessible Design, including illustrations and hyperlinked cross-references;
- ◆ the ADA Business Connection, with links to materials of particular interest to businesses;
- ◆ Reaching Out to Customers With Disabilities, a web-based, interactive online course that explains the requirements of title III;
- ◆ the ADA Video Gallery, with links to accessible streaming videos about the ADA; and
- ◆ online ordering forms for the ADA Technical Assistance CD-ROM and selected videos.

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, who can assist callers in understanding how the ADA applies to their situation, 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 get answers to technical questions, obtain general ADA information, order free ADA materials, or ask about filing a complaint, please call:

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

Automated ADA Fax System

The Automated ADA Fax System allows the public to obtain free ADA information by fax 24 hours a day, seven days a week. By calling the ADA Information Line and following the directions, callers can request specific documents to be faxed directly to their fax machines or computer fax/modems. A listing of publications and their fax codes is available online or can be ordered through the ADA Information Line.

ADA 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 Website, 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 people 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. Spanish language documents can be accessed through the ADA Website (www.ada.gov/publicat_spanish.htm). Other language documents can be obtained by mail.

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 internet access to ADA materials on their website (www.usdoj.gov/crt/foia/crt.htm). A link to search or visit this website is provided from the ADA Website.

ADA Tool Kit Adds Chapters on Websites and Curb Ramps -- The Department of Justice issued the fifth and sixth chapters of The ADA Best Practices Tool Kit, which is designed to assist State and local officials in complying with title II of the ADA. The new chapters address website accessibility, curb ramps, and pedestrian crossings. The Tool Kit, which is being issued in installments on the Department's ADA Home Page at www.ada.gov, guides State and local government officials in identifying and resolving problems that prevent people with disabilities from gaining equal access to State and local government programs, services, and activities. It also teaches State and local officials how to conduct surveys of their buildings and facilities to identify and remove architectural barriers to access. After all installments have been released, the Department will provide training for State and local officials on how best to use the Tool Kit to improve accessibility. While State and local governments are not required to use the Tool Kit, the Department encourages its use as one effective means of complying with the requirements of the ADA.

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 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 to the public on 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 **DBTAC: ADA 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)
877-781-9403 (TTY)

www.jan.wvu.edu

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 (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.