



Enforcing the ADA

A Status Report from the Department of Justice

(July-September 1998)

*This Status Report covers the ADA activities of the Department of Justice during the third quarter (July - September) of 1998. This report, previous status reports, and a wide range of other ADA information are available through the Department's ADA Home Page on the World Wide Web (see page 17). The symbol (**) indicates that the document is available on the ADA Home Page.*

INSIDE...

ADA Litigation.....	2
Formal Settlement Agreements.....	7
Other Settlements	12
Mediation	14
Certification	16
Technical Assistance	17
Other Sources of ADA Information.....	19
How to File Complaints	20

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

Title II

Bar Applicant with Learning Disability is Entitled to Testing Accommodations -- The U.S. Court of Appeals for the Second Circuit ruled, as urged in an amicus brief by the Department of Justice, that a bar applicant with dyslexia is a person with disability under title II of the ADA and that she is entitled to

accommodations, including extra time, for taking the New York State Bar Examination. The court of appeals found in Bartlett v. New York State Board of Law Examiners that, because of her dyslexia, the applicant's ability to decode words in a timely fashion is significantly restricted as compared to the average person in the general population. The court did not take into account the applicant's history of self-adjustments, which has allowed her to achieve roughly average reading skills on some measures, in determining whether her dyslexia substantially limits the major life activities of reading or learning. The case was sent back to the district court for reconsideration of the amount of damages to be awarded.

Arrest Procedures are Covered by the ADA -- The failure by Kansas City, Missouri, police to properly transport a wheelchair user who was arrested is covered by title II, according to the U.S. Court of Appeals for the Eighth Circuit in Gorman v. Bartch. The plaintiff suffered neck and shoulder injuries when police failed to properly secure him for the trip to the police station. As urged by the Department in an amicus brief, the court relied on the broad language of title II which covers the programs, services, and activities of all public entities. The court found support for a broad interpretation in the Supreme Court's decision

in Pennsylvania Department of Corrections v. Yeskey, which held that activities of State prisons are covered by title II. The Eighth Circuit also rejected arguments that arrest procedures are not covered because being arrested is not a voluntary activity. It found that transportation of arrestees is a “service” of a police department and that safe handling and transportation is a “benefit” which title II requires to be provided in a nondiscriminatory manner.

Plaintiffs May File Transit Lawsuit without First Complaining to DOT --

The U.S. District Court for the Central District of California ruled in Beauchamp v. Los Angeles County Metropolitan Transit Authority, as urged in the Department’s amicus brief, that plaintiffs do not have to exhaust administrative remedies with the U.S. Department of Transportation before filing a title II lawsuit. The plaintiffs are a group of individuals who use wheelchairs and other mobility-assistance devices who have filed suit against the Los Angeles MTA and a private contractor, Ryder/ATE, for failing to comply with the ADA’s mass transit requirements. Among the claims raised by the plaintiffs is a continuous pattern of malfunctioning wheelchair lifts and securement equipment on MTA buses as well as driver refusals to pick up persons with disabilities and a failure to train the drivers in the proper use of the lifts and the securement equipment.

Ninth Circuit Requires Intentional Discrimination for Damages under Title II --

The U.S. Court of Appeals for the Ninth Circuit decided in Ferguson v. City of Phoenix that plaintiffs must prove intentional discrimination to recover compensatory damages under title II. The lawsuit was brought by TDD users who were unable to communicate by TDD with the Phoenix 9-1-1 emergency service, because the city’s system was not properly designed to recognize TDD

calls. The district court entered a consent order mandating changes in Phoenix’s 9-1-1 system to ensure direct access to TDD users. The court, however, held that plaintiffs could not be awarded compensatory damages under title II without showing that Phoenix acted with discriminatory intent. On appeal, the Ninth Circuit rejected the argument made by the Department in its amicus brief that no showing of intentional discrimination was required, and further concluded that there was no evidence that the city engaged in intentional discrimination.

Title III

Hotel Franchisor May Be Held Responsible for New Construction Violations by Franchisee

-- The U.S. Court of Appeals for the Eighth Circuit ruled in United States v. Days Inns of America that a franchisor may be held liable for a franchisee’s failure to design and construct a hotel to meet the accessibility requirements of the ADA, if the franchisor had a significant degree of control over the final design and construction of the facility and knew that the plans for the facility did not comply with the ADA. In this lawsuit the Department of Justice alleged that a newly constructed Days Inn hotel in Wall, South Dakota, was built without an elevator and failed in other ways to comply with the ADA’s architectural requirements for new construction. The Department reached a settlement with the South Dakota hotel’s owners, architect, and contractor. The district court, however, ruled in favor of Days Inns of America (DIA), the hotel’s nationwide franchisor. The court of appeals reversed the lower court, finding that DIA had authority under the franchise agreement to require that the hotel comply with the ADA. It sent the case back to the district court to give the Department of Justice the opportunity to prove that DIA knew that the plans did not comply with the ADA Standards for Accessible Design and that DIA was therefore liable for the violations.

“Stadium-style” Movie Theaters Must Provide Comparable Sight Lines -- The U.S. District Court for the Western District of Texas ruled in Lara v. Cinemark, USA, Inc. that seating for wheelchair users in newly constructed, “stadium-style” movie theaters must provide lines of sight that are at least similar to those of the average patron and cannot be limited to the worst seats in the house. In stadium-style theaters, wheelchair seating is often placed in rows at the front of the theater directly below the screen, while seating for most of the general public is placed on risers in the stadium portion of the theater. The result is that the public is provided enhanced sight lines and comfort, while wheelchair users are relegated to some of the worst seating in the theater. In Lara the Department filed an amicus brief on behalf of a group of individuals with disabilities who claim that Cinemark USA violated the ADA in the design and construction of a 20-screen, stadium-style theater complex in El Paso, Texas. The court agreed with the Department that the El Paso complex violates the ADA’s requirement for comparable lines of sight. No decision has been made yet on what remedies are appropriate.

Doctor with Staff Privileges May Sue Hospital under Title III -- The U.S. Court of Appeals for the Third Circuit ruled in Menkowitz v. Pottstown Memorial Medical Center that a physician diagnosed with attention deficit disorder who has staff privileges, but who is not a hospital employee, may challenge his dismissal under title III. The lower court had found that title III only protects clients or customers of a place of public accommodation. The Department’s amicus brief in the court of appeals argued that title III’s protections are not limited to clients and customers, but extend also to volunteers and other participants, such as doctors with admitting privileges, who may be denied the full and equal enjoyment of the privileges of a place of public accommodation.

2. New lawsuits

The Department initiated or intervened in the following lawsuits.

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 --

Amos v. Maryland Department of Public Safety (4th Circuit -- title II suit challenging lack of program accessibility in Maryland prisons)

K.L. v. Valdez (10th Circuit -- title II suit challenging discrimination against children with severe mental or developmental disabilities)

Muller v. Costello (2d Circuit -- title I employment suit against New York prison)

Martin v. Kansas (10th Circuit -- title I employment suit against Kansas prison)

Roberts v. New York Department of Correctional Services (Western District of New York -- employment suit under titles I and II challenging failure to provide reasonable accommodation)

Brown v. Chiles; Wolf Prado-Steiman v. Chiles; and Murray v. Bock (Southern District of Florida -- title II suits challenging alleged failure to provide services to persons with developmental disabilities in the most integrated setting appropriate to their needs).

3. Consent Decrees

Some litigation is resolved at the time the suit is filed or afterwards by means of a negotiated consent decree. Consent decrees are monitored and enforced by the Federal court in which they are entered.

Title III

United States v. A.B.C. Nursery, Inc. -- The U.S. Attorney for the Western District of Wisconsin entered into a consent decree resolving a lawsuit filed against ABC Nursery, Inc., in Beloit, Wisconsin, for allegedly refusing to admit a three-year-old boy because he had tested positive for HIV. Earlier this year consent decrees were filed against two other Beloit child care centers, resolving similar allegations of discrimination against the same child. All three centers have agreed that a child with HIV infection is disabled under the ADA and that such a child cannot be refused admission to child care programs because of his or her HIV-positive status. The three centers agreed to sponsor, with the participation of the U.S. Attorney's Office, an informational meeting in Beloit for interested child care providers, parents, and staff to discuss the ADA and HIV.

4. Amicus Briefs

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

Title I

Cleveland v. Policy Management Systems Corporation -- In response to a request from the Supreme Court for its views, the United States filed an amicus brief urging the Court to review a decision by the U.S. Court of Appeals for the Fifth Circuit in Cleveland v. Policy Management Systems Corp., on the effect of an application for Social Security benefits on an employee's ADA claim. The district court agreed with the employer that the employee's representations in her application for Social Security benefits -- that she was unable to work because of a disability -- prevented her from claiming that she is a "qualified individual with a disability" under the ADA. On appeal, the Fifth Circuit ruled that a Social Security applicant who claims inability to work should not be automatically barred from bringing an ADA suit. However, it decided that courts should presume that such a Social Security applicant is not "qualified" under the ADA, unless "under some limited and highly unusual" circumstances the claimant is able to introduce evidence that he or she is in fact qualified. The United States' amicus brief urges the Court to review the Fifth Circuit's decision because there is disagreement in the courts of appeals on this issue. It also argues that the Fifth Circuit "presumption" is incorrect -- that courts should not assume that receipt of Social Security benefits and a title I lawsuit are mutually exclusive. The brief argues 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 disabilities. 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.

Title II

Brown v. Chiles -- The Department filed an amicus brief in the U.S. District Court for the Southern District of Florida on behalf of a class of individuals with developmental disabilities who claim that the State's failure to provide them with community-based services violates their title II right to receive services in the most integrated setting appropriate to their needs. The State has asked the court to dismiss the case, arguing that the failure to provide adequate community-based services to individuals with developmental disabilities is not discrimination under title II, because nondisabled persons do not receive these services either. The Department's brief argues that because of the language of the ADA, its legislative history, and the Department's interpretation of its own regulations, it is not necessary for people with disabilities to compare the treatment they receive with that received by nondisabled persons in order to allege a violation of the "integrated setting" requirement. The Department has also intervened in the case to defend the constitutionality of that part of the ADA that allows States to be sued under title II.

Rogers v. South Carolina Department of Health and Environmental Control -- The Department argued in an amicus brief filed with the U.S. Court of Appeals for the Fourth Circuit that title II covers the employment practices of public entities. The suit challenges the distinctions between mental disorders and physical disorders in the benefits available under the State's long-term disability

plan for its employees. The lower court ruled that title II covers employment but found that the long-term disability plan is not discriminatory. The Department's brief in the court of appeals argues that the broad language of title I and its legislative history make clear that Congress intended there to be employment coverage under title II, as well as title I, with title II procedures patterned after those of section 504 of the Rehabilitation Act.

Title III

Martin v. PGA Tour -- The Department filed an amicus brief in the U.S. Court of Appeals for the Ninth Circuit in support of Casey Martin, a professional golfer from Eugene, Oregon, with a rare disability, Klippel-Trenaunay Syndrome, that substantially limits his ability to walk. Martin challenged the PGA Tour's refusal to waive its no-carts rule and permit him to ride a cart in its golf tournaments. The PGA argued that its rules governing tournament competition were not covered by title III because the area of the golf course that is restricted to competitors is not open to the general public and is not a "place of public accommodation." It also argued that the modification would "fundamentally alter" the competition and thus was not required by the ADA. The district court rejected both of these arguments. It concluded that the PGA's rules are subject to title III and that permitting Martin to use a cart would not fundamentally alter the competition because walking is not essential to golf. The Department's amicus brief argues that the district court rulings on both the coverage issue and the no-carts rule should be upheld. It argues that facilities or parts of facilities with controlled access or selective admissions criteria can still be places of public accommodation under title III as are, for example, private schools. Therefore, PGA policies affecting competition on the fairways

Amicus Briefs

and greens are covered by title III in the same way as are PGA rules affecting the public spectator areas. It also asserts that allowing Martin to use a cart is a reasonable modification that does not alter any essential element of the game of golf, because the PGA allows the use of carts in some tournaments. In addition, modifying the no-carts rule does not disturb the competitive balance of the game because, as the evidence in the district court showed, the fatigue Martin endures even when using a cart is greater than that experienced by other golfers who walk.

World Insurance Company v. Branch -- The Department filed an amicus brief in the U.S. Court of Appeals for the Eleventh Circuit supporting a challenge to an insurance policy's \$5,000 cap on lifetime benefits for AIDS-related illnesses. The policy allowed two million dollars in lifetime benefits for most other conditions. The plaintiff, who has since died, incurred about \$75,000 in AIDS-related medical expenses that the insurance company refused to reimburse. The U.S. District Court for the Northern District of Georgia ruled in the plaintiff's favor, finding that the cap was unlawful disability-based discrimination that was not exempt from challenge under the ADA. The Department's amicus brief argues in the court of appeals that title III covers disability-based discrimination in the terms and conditions of insurance policies; the plaintiff was entitled to bring a title III claim because he purchased the policy directly from the insurance company and not through an employer; the imposition of a \$5,000 lifetime cap for treatment of AIDS-related conditions, but not other illnesses, is disability-based discrimination under the ADA; and the insurance company did not qualify for the ADA's insurance exemption because it failed to produce objective evidence that the AIDS cap complied with State law.

Harnois v. Christy's Market, Inc; Kitson v. Peoples Heritage Savings Bank -- The Department filed amicus briefs in Federal district courts in Maine and New Hampshire arguing that thirty days prior notice to State and local authorities is not required before a title III suit may be filed. In *Harnois v. Christy's Market* the plaintiff alleged that several Christy's Markets locations in Maine are inaccessible. In *Kitson v. Peoples Heritage Savings Bank* the plaintiff, a blind individual who is a petitioner in a bankruptcy proceeding, alleged that a New Hampshire bank failed to provide audio recordings of the mortgage contract and related documents. The Department's brief in *Kitson* also argues that the plaintiff has standing to seek a court order preventing future violations of title III, because the defendant's past refusal to provide the recordings strongly indicates that it will continue to do so in the future.

B. Formal Settlement Agreements

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

Title II

*** McDowell County, West Virginia* -- The Department reached a settlement with McDowell County, West Virginia, resolving a complaint that the county's facilities, including its courthouse, were not accessible to individuals with mobility impairments. The county agreed to complete structural changes necessary to make the commissioner's office, sheriff's department, courthouse annex, and first floor of the main courthouse accessible by September 1, 1998. It also adopted a policy providing for proceedings scheduled for the second and third floors of the courthouse to be moved to an accessible location upon request by a person with a disability. In addition, staff of the county land office, which is

located in an inaccessible basement, will meet with individuals with disabilities at alternative accessible locations or in their vehicles.

Bogalusa, Louisiana -- The City of Bogalusa, Louisiana, agreed to complete its self-evaluation and transition plan.

Lehigh County, Pennsylvania -- The Department entered a settlement agreement with Lehigh County resolving a complaint alleging problems with the county's ADA grievance procedure. The county agreed to adopt and post a written policy statement indicating procedures to obtain reasonable modifications to policies, practices, and procedures. In addition, the county will adopt and publish a procedure for providing prompt and equitable resolution of complaints,

including the name, telephone number, and office address of the ADA coordinator.

Lancaster, Pennsylvania -- The Department entered into a settlement agreement with the Police Department of Lancaster, Pennsylvania, resolving a complaint alleging a failure to provide effective communication. The complainant, who is deaf and uses sign language for communication, alleged that she was detained by the police department for over three hours without explanation, and that a requested interpreter was not provided. The police department agreed to adopt guidelines for effective communication in police situations, including the provision of interpreters when necessary, and to train personnel in carrying out the guidelines. It will also purchase TDD equipment and train police personnel in its use.

Title I

***** Arizona and North Carolina Agree Not To Discriminate Against School Bus Drivers With Diabetes*** -- School bus drivers in Arizona and North Carolina will no longer face discrimination in hiring or risk being fired just because they use insulin to control diabetes. Two out-of-court agreements with the Department of Justice settled complaints that school districts in Arizona and North Carolina fired diabetic school bus drivers with accident-free driving records. Under Arizona and North Carolina law, persons with diabetes who use insulin were barred from operating a school bus. The Arizona Department of Transportation and the North Carolina Division of Motor Vehicles applied their laws without regard to whether a person's condition actually prevented them from safely operating a vehicle. Under both agreements, the States will stop the practice of automatically

barring individuals from operating a school bus who use insulin to control their diabetes. North Carolina will enact new regulations. Consistent with the ADA's requirements, the States will rigorously assess people with diabetes who use insulin on an individual basis to see if the person's diabetes can be controlled and monitored. Drivers who are deemed eligible to operate a school bus also will be subject to stringent self-monitoring and other requirements designed to ensure continued safety. Under the agreements, the Arizona complainant will receive \$10,000 and the North Carolina complainant \$9,000. For several years, the two individuals had operated school buses for local school districts safely and without any health-related incidents. They ultimately were terminated by their school districts because of their use of insulin. The Yuma, Arizona, Elementary School District No. 1 has agreed to reinstate one person to her school bus driver position.

Thousand Oaks, California -- The Department entered an agreement with the City of Thousand Oaks, California, resolving a complaint alleging that the Thousand Oaks Civic Arts Plaza, was built in violation of the ADA's requirements for new construction. Under the agreement, Thousand Oaks has both added and relocated accessible seating spaces in the Civic Arts Plaza, ensured that the accessible route from the seating area to the stage is equivalent to the route provided to the general public, constructed an accessible entrance into the control room, provided a public text telephone, installed accessible signage at accessible parking spaces and unisex toilet rooms, installed required visual alarms throughout the Civic Arts Plaza, and provided accessible benches in the dressing rooms. Thousand Oaks will also renovate the shower stalls and the toilet rooms to make them accessible and add accessible signage identifying exits.

*Formal
Settlement
Agreements*

Mendocino County, California -- The Department completed a settlement agreement with Mendocino County, California, resolving a complaint alleging that the county courthouse is inaccessible to individuals with mobility impairments. The complaint alleged that the mezzanine levels of the building where several courtrooms are located are accessible only by stairs, that there are no accessible bathrooms in the building, and that no accessible parking spaces are provided outside the courthouse. The agreement requires the county to undertake modifications, including working with the City of Ukiah to install a van-accessible parking space and ensure that the path of travel into the building is accessible, installing accessible entrances that are at least 32-inches wide at County offices throughout the courthouse, undertaking additional improvements in the accessible courtroom to make it more accessible, installing accessible

signage throughout the building, making improvements to the elevator to make it more accessible, and modifying at least one set of restrooms in the facility to comply fully with the ADA Standards for Accessible Design. The county will also adopt written policies stating that court proceedings taking place in inaccessible courtrooms will be relocated to an accessible courtroom upon the request of a court participant, juror, or spectator with a disability.

Van Buren County, Tennessee -- The Department entered into an agreement with Van Buren County, Tennessee, to resolve a complaint in which it was alleged that programs, services, and activities offered in the county's courthouse are not accessible to persons using wheelchairs. The complainant also alleged that the county had not appointed an employee responsible for coordinating its efforts to comply with the requirements of title II. Under the agreement the county appointed an ADA coordinator and formally agreed to take specific steps to ensure that meetings and court proceedings ordinarily held in the courthouse are accessible to persons using wheelchairs.

Johnson County, Tennessee -- Johnson County will renovate its courthouse to make it accessible to people with disabilities. It also agreed that county personnel will meet individuals with disabilities at accessible locations when services, programs, and activities are not provided in accessible buildings.

*** Fairfax County, Virginia* -- The Department entered into a settlement agreement on effective communication issues with the Office of the Sheriff for Fairfax County, Virginia, which operates the county jail. The complainant, an arrestee who is deaf, alleged

that there was a public telephone in the jail cell, but that a TDD was not available for his use. The complainant further claimed that he was not provided with an interpreter, and that none of the jail officials wrote notes to him. The agreement requires the sheriff to post a sign at the booking desk stating that a TDD is available, add a question on its booking form so that the booking officer can determine if an inmate needs an interpreter or other aid to effectively communicate, and retrain its deputies on how to effectively communicate with deaf inmates.

Title III

** Airlie Conference Center, Warrenton, Virginia -- The Airlie Foundation agreed to make accessible its conference and retreat center near Washington, D.C. The Airlie Conference Center’s main conference building, Airlie House, is a historic structure that has been expanded over time to include nine separate levels. The primary campus buildings are historic houses and former farm buildings -- stables, a silo, a hayloft, tackrooms -- that have been converted into meeting and sleeping rooms. Renovations and additions have resulted in a multi-level mix of structures that cover a hilly 100-acre campus, and present significant access problems. The Foundation

agreed to construct an addition to Airlie House that will house an elevator, completely accessible toilet facilities, an office, and other amenities. Upon completion of this addition, visitors to Airlie House will have access to all major facilities in the building, including the main dining room and Airlie Center’s largest conference room, both of which had been completely inaccessible. The Foundation has also agreed to make numerous changes to facilities campus-wide and to provide accessible parking at these facilities. In addition, a number of significant changes, such as the addition of fully accessible guest rooms, were made during the Department’s investigation. The Foundation has also agreed to pay \$2,000 in damages to the complainant.

Indiana Beach Water Park, Monticello, Indiana -- Indiana Beach Water Park agreed to keep all of its accessible beach entrances open during renovations. The complainant, who uses a motorized electric scooter, alleged that, when she and her family visited Indiana Beach and attempted to enter the beach area, they found that the previously existing accessible walkway had been removed and that they could not find any other way to access the beach. The complainant had to wait in the car while her family spent the day at the beach. Indiana Beach agreed to pay \$200 in damages to the complainant.

U.S. Attorneys Achieve More 9-1-1 Agreements -- In a continuing nationwide compliance effort, U.S. Attorney s offices entered written agreements to ensure direct, equally effective access for TDD users to 9-1-1 emergency systems in ten additional localities --

- Assumption Parish, Louisiana
- Gallatin, Tennessee
- Davenport, Louisiana
- Hendersonville, Tennessee

- St. James Parish, Louisiana
- Portland, Tennessee
- Lauderdale County, Mississippi
- Sumner County Sheriff, Tennessee
- Cheatam, Tennessee
- Eau Claire Police Department, Wisconsin

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

**** Lawyer's Advocate, Inc., Broomfield, Colorado** -- Lawyer's Advocate, Inc., an organization that provides legal training seminars to lawyers has agreed to provide appropriate auxiliary aids and services, including interpreters, for students with disabilities. The settlement resolves a complaint alleging that Lawyer's Advocate failed to provide a qualified sign language

interpreter for a person who wanted to attend a seminar in 1996. The audio tapes and course book offered as an alternative were not adequate because of the interactive nature of the seminar. Lawyer's Advocate will also offer to the complainant the opportunity to participate in an upcoming training seminar with a qualified sign language interpreter free of charge and at her convenience.

**** Waiting Lines will be Accessible at Wendy's Restaurants** -- Nearly 1,700 Wendy's restaurants will become more accessible to their customers with disabilities under an agreement reached with the Department of Justice and nine State attorneys general. The out-of-court agreement stems from a joint nationwide investigation of the restaurant chain by the Department of Justice and nine States -- the first time the Department has teamed up with States to launch an investigation under the ADA. Under the agreement, Wendy's International, Inc. will either widen the queues in which customers wait to order food, or remove the railings or other dividers marking the queues to accommodate customers who use wheelchairs. Prior to today's agreement, customers who use wheelchairs had to cut to the front of the line or stand outside the customer queue and wait to be recognized by a restaurant employee because the queues were too narrow. The agreement resolves a two-year investigation into access issues at Wendy's restaurants by the Department of Justice and State attorneys general from Arizona, California, Florida, Illinois, Kansas, Massachusetts, Minnesota, Pennsylvania, and West Virginia. The joint task force visited newly constructed and older Wendy's restaurants in 12 states, which include the nine states, as well as Louisiana, Ohio, and Washington.

Under the agreement, the Ohio-based chain has agreed to --

- Either remove or widen the customer queues at all of its nearly 1,700 corporate-owned or leased restaurants in 39 states;
- Modify its prototype architectural plans for future restaurants, both corporate-owned and franchised, to incorporate accessible customer queue designs;
- Notify all franchisees of the agreement and their obligations under the ADA, and provide them with technical assistance;
- Allow the task force to conduct spot checks of restaurants covered by the agreement to ensure that customer queues have been removed or widened;
- Remove various other barriers found at the 17 newly constructed restaurants visited by members of the joint task force;
- Pay the joint task force \$50,000; and
- Pay a total of \$12,000 in damages to five individuals or entities who filed complaints with the Department of Justice or State attorney generals' offices, regarding accessibility at Wendy's.

Monterey Days Inn, Monterey, California -- The Monterey Days Inn agreed to make renovations that will provide access to guests with disabilities. The complaint alleged that none of the Days Inn's 35 rooms (constructed in the 1950's) were accessible. Under the agreement, the Days Inn will renovate one room immediately to make it fully accessible and provide another accessible room by June 30, 1999. Further, the Days Inn is immediately required to undertake other improvements, including providing two accessible parking spaces, reducing the height of the threshold that exists at the lobby entrance, providing a desk in the lobby to provide equivalent facilitation to persons with disabilities for whom the registration desk is inaccessible, and acquiring four sets of devices to assist persons with hearing impairments. Each set is composed of a TDD, an auxiliary visual alarm, and a visual notification device to alert a deaf or hard of hearing occupant of incoming telephone calls or of a door bell or knock.

Best Western Marina Park Hotel, Miami, Florida -- The U.S. Attorney for the Southern District of Florida reached an agreement that will vastly improve accessibility at the Best Western Marina Park Hotel in Miami. The Marina Park agreed to hold accessible rooms open for people with disabilities until all other rooms are rented; remove barriers to access throughout the hotel, including in the hotel entrance, parking, guest rooms, restaurant, lobby areas and restrooms; and provide auxiliary aids. The hotel will have six guest rooms accessible to persons with mobility and hearing impairments, two of which will have roll-in showers, and an additional six guest rooms accessible to persons who are deaf or hard of hearing.

Village Developers, Muncie, Indiana -- The U.S. Attorney for the Southern District of Indiana entered an agreement to ensure

accessible parking in a private lot adjacent to a restaurant. The settlement agreement requires Village Developers to designate the proper number of parking spots and provide appropriate signage. In addition, Village Developers agreed to pay a civil penalty of \$2,000.

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 Utah county sheriff's department developed policies, procedures, and training to ensure effective communication in law enforcement situations for individuals who are deaf or hard of hearing.

A southern State commission of law enforcement standards and training reinstated a part-time police officer who was dismissed from his position because the vision in his right eye did not meet department standards. The commission agreed to adopt a policy of making individualized determinations of ability to perform essential job functions.

An Indiana county board of commissioners developed a transition plan and made alterations to its city-county building, board of health office, and county welfare building to provide accessibility. In addition, the county made modifications so that individuals who are deaf or hard of hearing are able to participate in programs, activities, and services.

An Indiana building authority agreed to make modifications to a building that it owns and leases to a municipality. The building authority developed and implemented a transition plan that included alterations to make restrooms accessible. The building authority installed TDD equipment and signage announcing the availability of the equipment, and posted a list of personnel who are knowledgeable in its use.

A large California city installed a ramp to make the main entrance to one of the buildings in its city hall complex accessible, created accessible parking, and began the process of making the restrooms throughout that building accessible. An earthquake then rendered the building unfit for occupancy. The city plans to work with the ADA coordinator and architect to ensure that repairs and alterations to the building comply with ADA standards.

A New Jersey police department adopted procedures to accommodate persons with disabilities who are under arrest. These procedures include the use of enlarged standard forms for persons with vision impairments and providing written texts to allow deaf or hard of hearing persons to read their constitutional rights.

A midwestern state prison purchased a TDD and installed a separate telephone line for inmates who are deaf or hard of hearing.

A Washington county sheriff's office revised its manual to include information on ADA compliance and incorporated ADA technical assistance materials in its training program for deputies.

A Texas county youth center installed a permanent ramp to the main entrance, provided accessible parking with appropriate signage

immediately adjacent to the entrance, and made alterations to the restroom to provide full accessibility.

Title III

An Alaska hotel added two accessible guest rooms and provided an accessible entrance and accessible public restrooms.

A small group of supermarkets in Wisconsin adopted a written policy to provide assistance in shopping to customers with disabilities. The policy includes retrieving product items that are positioned on store shelves above the reach of customers using wheelchairs and assisting customers with low vision or those who are blind in finding items and determining product prices. The store posted this policy in a large print format at the store service desk and distributed the policy to all store employees.

Other Settlements

An Indiana food store renovated its parking lot so that the accessible parking spaces are now closer to the entrance and will not be obstructed by a temporary greenhouse erected each spring.

A U.S. Attorney obtained an informal settlement in the following case --

Southern District of Mississippi -- An annual outdoor air show and exhibition agreed to provide at least 50 accessible parking spaces and an additional eight to ten accessible van spaces, accessible toilet stalls (one per cluster), and a sign language interpreter for one entire day of the event, which consists of the same activities and performances presented on three consecutive days. Training materials regarding disability awareness and general information about the ADA are being distributed to volunteers who staff the event.

II. Mediation

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

- In Arkansas, wheelchair users complained that a restaurant did not have an accessible entrance. The owner agreed to install a ramp and to properly mark accessible parking spaces and the paths of travel. The owner also agreed to work with the complainants when planning any major renovations in the future and to provide disability awareness training for all employees.
- A wheelchair user complained that a California doctor's office did not have an accessible entrance or accessible parking. The doctor agreed to make the entrance accessible and to provide a van accessible parking space.
- A person who is deaf complained that, on several occasions, a Colorado medical center failed to follow its effective communication policy and did not always treat her with the same dignity and respect accorded other patients. The medical center agreed that, if a patient with a disability complains that an employee has not provided appropriate service, including a lack of effective communication, then the employee will be counseled and monitored to ensure that future communication is effective. The medical center agreed to survey patients who are deaf or hard of hearing to determine whether they were served properly and to identify areas for further training or education of employees. The medical center also agreed that, if a patient with a disability files a written complaint, the complaining patient will be contacted for additional information and will be informed to the extent permissible by law of the action taken in response to the complaint.
- In Colorado, a wheelchair user complained that a bar did not have accessible restrooms. The owner agreed to make the restrooms accessible.
- A wheelchair user complained that a Colorado restaurant did not have an accessible entrance or accessible restrooms. The owner agreed to install a ramp and to install grab bars in the restrooms. The owner also agreed to provide two free meals to the complainant.
- In Illinois, a person with a disability complained that a store refused to accept a State identification card in lieu of a driver's license. The store has an existing policy to accept a State identification card as an appropriate form of identification, but the employee serving the complainant did not follow that policy. The general manager of the store will meet with employees and reiterate which forms of identification are acceptable when customers are making purchases. The store agreed to send the complainant a \$100 gift certificate.

- A wheelchair user complained that an Illinois restaurant did not have accessible restrooms. The owner agreed to renovate the restrooms to make them accessible for people with disabilities.
- In Massachusetts, a person with a hearing disability complained that three movie theaters did not have effective assistive listening systems and that films were shown in inaccessible auditoriums. All theater owners agreed to provide effective assistive listening systems and to establish a film rotation schedule to provide access for individuals who use wheelchairs.
- A wheelchair user complained that a Maryland restaurant did not have an accessible entrance or accessible restrooms. The owner agreed to make the front entrance accessible and to create an accessible unisex restroom.
- In Maryland, a wheelchair user complained that a group of movie theaters was not accessible and did not have accessible public telephones. The owner agreed to provide accessible seating in various locations in the theaters. The owner also agreed to relocate one phone in each theater to an accessible location and to arrange a meeting between the complainant and the theater manager to review the emergency evacuation plan for people with disabilities.
- In New Hampshire, a wheelchair user complained that a dentist's office was not accessible and did not have an accessible entrance. The dentist agreed to rebuild the ramp and modify the door so that the entrance is accessible and to instruct the office staff to keep the pathways in the office clear.
- A person who is deaf complained that a New York doctor refused to provide the services of a qualified sign language interpreter for an office visit. The doctor agreed to develop a policy for providing effective communication and to provide the services of a qualified sign language interpreter for the next office visit.
- A wheelchair user complained that an Oklahoma bank did not have an accessible counter, that staff was not available to provide service to patrons with disabilities, and that heavy doors to the bank's entrance made it impossible to enter the bank independently. The bank agreed to ensure that an accessible desk in the bank's lobby would be adequately staffed so that people with disabilities receive service as quickly as other patrons transacting similar business. The bank agreed to adjust the door tension at each of its two accessible entrances and to install a buzzer at the rear entrance to the bank for individuals who may need additional assistance to enter the bank. The bank also agreed to create an accessible parking space and a curb ramp at the rear entrance. The bank will also purchase a video to educate the staff regarding the ADA and other disability related issues.
- In Pennsylvania, a wheelchair user complained that a shopping center did not have enough accessible parking spaces or curb cuts. The manager of the shopping center agreed to create additional accessible parking spaces, including some van accessible parking spaces, throughout the lot in front of each of the businesses and to install curb cuts near these parking spaces. The manager of one of the stores in the center agreed to build a ramp to the store's entrance.

- A wheelchair user complained that a South Dakota wholesale warehouse did not have an accessible entrance. After determining that constructing a permanent ramp would not be readily achievable, the manager agreed to construct a removable ramp. The manager agreed to post a sign indicating the availability of the ramp and to publicize its availability in future television ads. The manager also agreed to make merchandise located upstairs available for viewing on the first floor.
- In Tennessee, a person with a disability complained that a bank refused to accept a State identification card in lieu of a driver's license. The manager agreed to change the bank's policy and to instruct the employees to accept a State identification card as an appropriate form of identification.
- A wheelchair user complained that an Oklahoma restaurant did not have an accessible entrance. The owner agreed to install a ramp that complies with the ADA.
- In Idaho, a person complained that a restaurant did not have appropriate signage identifying the accessible parking spaces. The owner agreed to install appropriate vertical signage.

III. Certification of State and Local Building Codes

The ADA requires that newly constructed or altered facilities comply with the ADA Standards for Accessible Design (Standards). The Justice Department is authorized to certify building codes that meet or exceed the ADA Standards. In litigation, an entity that complies with a certified code can offer that compliance as rebuttable evidence of compliance with the ADA.

In implementing its authority to certify codes, the Department works closely with State and local officials, providing extensive technical assistance to enable them to make their codes equivalent to the ADA. In addition, the Department responds to requests for review of model codes and provides informal guidance to assist private entities that develop model accessibility standards to make those standards equivalent to the ADA.

The Department has certified the accessibility codes of the States of Washington, Texas, Maine, and Florida, and has pending requests for certification from New Mexico,

Minnesota, New Jersey, Maryland, California, Indiana, the Village of Oak Park, Illinois, and the County of Hawaii. The Department has received a supplemental request for certification of accessibility code amendments from the State of Washington, and it is also reviewing model codes submitted by the Building Officials and Code Administrators, International; and the Southern Building Code Congress, International. Recent certification activity includes --

Maryland -- The Department provided technical assistance to the State of Maryland on its application for certification of the Maryland Accessibility Code. Maryland was informed that further clarification of some of the elements of the Maryland Code is required before a preliminary certification determination can be made.

Indiana -- The State of Indiana requested certification that its building code meets or exceeds the new construction and alterations requirements of title III -- the 15th request for certification received by the Department.

IV. 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 and Home Page, developing and disseminating technical assistance materials to the public, undertaking outreach initiatives, operating an ADA technical assistance grant program, and coordinating ADA technical assistance government-wide.

ADA Tax Benefits Described in IRS Mailing -- Information on ADA tax benefits and the availability of a new brochure entitled "ADA Tax Incentive Packet for Businesses" was sent to over 6.2 million businesses as part of the September 1998 quarterly mailing from the Internal Revenue Service. The Packet explains the tax credit and deduction available to help offset the cost of improving accessibility for customers and employees. It is available on the ADA Homepage, as well as through the ADA Information Line and ADA Fax on Demand (document #3203).

ADA Home Page

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

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

The home page also provides direct access to:

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

ADA Information Line

The Department of Justice operates a toll-free ADA Information Line to provide information and publications to the public about the requirements of the ADA. Automated service, which allows callers to listen to recorded information and to order publications, is available 24 hours a day, seven days a week. ADA specialists are available on

Monday, Tuesday, Wednesday and Friday from 10:00 a.m. until 6:00 p.m. and on Thursday from 1:00 p.m. until 6:00 p.m. (Eastern Time). Spanish language service is also available.

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

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

ADA Fax On Demand

The ADA Information Line's Fax Delivery Service allows the public to obtain free ADA information by fax 24 hours a day, seven days a week. By entering the appropriate document code number, callers can select from among 25 different ADA technical assistance publications and receive the information, usually within minutes, directly on their fax machines or computer fax/modems. A list of available documents and their code numbers may be ordered through the ADA Information Line.

Publications and Documents

Copies of the Department's ADA regulations and publications, including the Technical Assistance Manuals for titles II and III, and information about the Department's technical assistance grant program, can be obtained by calling the ADA Information Line or writing to the address listed below. All materials are available in standard print as well as large print, Braille, audiotape, or computer disk for persons with disabilities.

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

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

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

Currently, the FOI/PA Branch maintains approximately 10,000 pages of ADA material. The records are available at a cost of \$0.10 per page (first 100 pages free). Please make your requests as specific as possible in order to minimize your costs.

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

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

V. Other Sources of ADA Information

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

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

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

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

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

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

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

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

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

ADA Assistance Line
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)

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

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

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

The *Job Accommodation Network (JAN)* is a free telephone consulting service funded by the President's Committee on Employment of People with Disabilities. It provides information and advice to employers and people with disabilities on reasonable accommodation in the workplace.

Information on workplace accommodation
800-526-7234 (voice & TDD)

VI. How to File Complaints

Title I

Complaints about violations of title I (employment) by units of State and local government or by private employers should be filed with the Equal Employment Opportunity Commission. Call 800-669-4000 (voice) or 800-669-6820 (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

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.