



Disability Rights online News

U.S. Department of Justice
Civil Rights Division

October/November 2004
Issue Four

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

Lodging Access.....	1-2
ADA Mediation.....	2-3
Rights of Institutionalized Persons	3-4, 7-8
Fair Housing.....	5-6
Outreach.....	9

DEPARTMENT REACHES SETTLEMENT TO IMPROVE ACCESSIBILITY AT MOTEL 6

In a major agreement with nationwide significance, Motel 6, a well-known hotel chain with more than 600 locations in 50 States, has agreed to make its hotels more accessible for people with disabilities. On August 12, 2004, the chain's parent corporation, Motel 6 Operating LP, entered into a nationwide settlement agreement with the Department to resolve allegations of violations of the Americans with Disabilities Act (ADA).

"For too long Americans with disabilities have faced unreasonable challenges in enjoying many things most of us take for granted, such as traveling and staying in motels," said R. Alexander Acosta, Assistant Attorney General for Civil Rights. "Today's settlement is a major step in ensuring that persons with disabilities fully enjoy the freedom to travel."

(Continued on page 2)

MEET OLLIE CANTOS

Ollie Cantos, former General Counsel for the American Association of People with Disabilities (AAPD), has



been named Special Assistant for Disability Rights by Assistant Attorney General Acosta. He will advise AAG Acosta on the Department's activities under the Americans with Disabilities Act, the Fair Housing Act, the Civil Rights of Institutionalized Persons Act, and the Rehabilitation Act of 1973. Key responsibilities also include expansion of Project Civic Access and

the ADA Business Connection. His goal is also to foster new and creative partnerships to enhance disability rights enforcement. Ollie can be reached at ollie.cantos@usdoj.gov or (202) 514-2151 (voice/relay).

Minnesota's Disability Community Newspaper recently featured a profile on Ollie. The story, "Making a Difference," can be found online at: http://www.accesspress.org/archive/2004/11/Story_Making_Difference.htm

(Lodging, continued)

Under the agreement, Motel 6 will remove architectural barriers in existing facilities where it is readily achievable to do so, will ensure that new facilities comply fully with the ADA Standards for Accessible Design (ADA Standards), and will develop a review process to ensure that altered facilities meet applicable ADA Standards. To achieve this, the company will hire a full time ADA compliance officer, will provide ADA training to all motel managers, and will hire an independent consultant to assess compliance with the agreement.

The settlement further provides that if the chain fails to achieve substantial compliance with these goals by December 31, 2006, the corporation will pay civil penalties to the United States.

The Department was extremely pleased with the settlement. "We commend Motel 6 for its cooperation and are confident that this agreement will serve as a model for other hotel chains," said AAG Acosta.

The settlement is part of the Justice Department's efforts under President Bush's New Freedom Initiative. Announced in early 2001, the initiative seeks to provide people with disabilities the full access required by federal law.



Front entrance of a Motel 6

prior to selecting a course site to ensure that students with disabilities have full access to all classrooms.

■ In North Carolina, an individual with a mobility disability complained that a golf course's facilities were inaccessible and that course policies discriminated against golfers with mobility disabilities. The golf course provided two additional accessible parking spaces with appropriate signage. It also installed a bell for assistance in using a steep, existing ramp to an upper-level portion of the clubhouse because hilly terrain made an accessible ramp infeasible. The course acquired a golf cart designed for use by persons with disabilities and modified policies to allow for the use of standard golf carts by persons with disabilities in areas that would otherwise be closed to carts, subject to limitations under certain weather conditions.

■ In Florida, an individual with a mobility disability complained that a bank refused to allow her to use a drive-in teller reserved for commercial accounts, even though she explained she was unable to use the pneumatic tube drive-in window or open the bank's heavy doors because of her disability. The bank advised all supervisors that customers with disabilities may use the commercial drive-in teller if needed. The bank also installed automatic push button doors at the entrance.

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 program has proven to be an effective way to resolve ADA complaints at less cost, in less time and with less rancor than traditional investigations or litigation. Over 75% of complaints mediated have been resolved successfully.

This month's focus is on complaints from people who use wheelchairs, walkers, crutches, or other mobility devices. Highlights of recent mediations include:

■ A wheelchair user complained that an Arkansas occupational school held courses at an inaccessible hotel despite advertisements stating that all courses were held in accessible locations. The school agreed to ask all applicants if they have accessibility needs and to conduct an onsite inspection

(ADA Mediation, continued)

- In Ohio, a wheelchair user complained that the restrooms of a local restaurant were not accessible to individuals using wheelchairs. The owner agreed to install a unisex, single-user, accessible restroom.
- In California, a person whose mother uses a cane and cannot climb stairs complained that a local theater's public restroom was located on the second floor and was accessible only by stairs. The theater management agreed to make an existing employee restroom on the first floor of the theater accessible, to open it for public use, and to provide appropriate directional signage in the main lobby area.
- In Indiana, a person with a mobility disability complained that a fraternal organization's restrooms were not accessible to individuals using wheelchairs. The organization renovated the restrooms, providing accessible stalls, grab bars, toilets, sinks, and paper towel and soap dispensers.
- In Georgia, the spouse of a person with a disability complained that a large retail store failed to provide a sufficient number of properly marked and signed accessible parking spaces. The store installed additional accessible parking spaces, including van accessible spaces, access aisles, and appropriate signage.
- In Wisconsin, a wheelchair user complained that the existing accessible parking serving the main building of a state park was blocked off and not available for use during an annual event held at the park. The respondent agreed to re-open access to the accessible spaces and agreed not to interfere with use of the accessible parking in the future.

unlawful conditions that deprives institutionalized persons of their constitutional or federal statutory rights. CRIPA requires that an annual report be submitted to Congress. Copies of the reports may be found at www.usdoj.gov/crt/split/index.html.

"Protecting the rights of America's most vulnerable citizens -- the elderly, children, victims of abuse, persons with mental illness or developmental disabilities -- is one of the Department's highest civil rights priorities," said R. Alexander Acosta, Assistant Attorney General for Civil Rights. "This Administration is committed to vigorously enforcing CRIPA and rooting out systemic conditions of abuse and physical injury."

As detailed in the report to Congress, at the end of fiscal year 2003, the Department was active in CRIPA matters and cases involving over 180 facilities in 33 states and the District of Columbia, as well as the Commonwealths of Puerto Rico and the Northern Mariana Islands, and the Territories of Guam and the Virgin Islands. During the last fiscal year, the Department also continued its investigation of 85 facilities, and monitored the implementation of consent decrees, settlement agreements, memoranda of understanding, and court orders involving 97 facilities. The Department issued 18 findings letters

DEPARTMENT FILES REPORT WITH CONGRESS ON IMPLEMENTATION OF THE CIVIL RIGHTS OF INSTITUTIONALIZED PERSONS ACT

On April 5, 2004, the Justice Department filed a report with Congress outlining the progress made during Fiscal Year 2003 on implementing the Civil Rights of Institutionalized Persons Act, 42 U.S.C. § 1997 (CRIPA).

CRIPA authorizes the Department to investigate conditions in public institutions. Facilities covered by the law

include, but are not limited to, state or local government operated nursing homes, mental health facilities, mental retardation facilities, residential schools for children with developmental disabilities, jails, prisons, and juvenile facilities. CRIPA gives the Attorney General the power to take appropriate action if he finds a pattern or practice of

(Institutionalized, continued)

covering conditions in 24 facilities, more findings letters than have been issued in any fiscal year as far back as 1995.

In addition, the Department is monitoring compliance with court orders that cover persons who previously resided in institutions, but who currently reside in community-based residential settings in Hawaii, Indiana, Pennsylvania, Puerto Rico, Tennessee, and Wisconsin. The Department also conducted 145 tours of facilities to evaluate conditions and monitor compliance.

The Department filed one institutional lawsuit during Fiscal Year 2003 against the state of Arkansas concerning conditions in the Alexander Youth Services Center. The Department had found evidence of juvenile suicides resulting from inadequate mental health care and inadequate education and special education services. A consent agreement was entered in this case within one week of filing suit.

The agreement required the state to revise the facility's suicide prevention policy and to provide mental health treatment to all juveniles who require such care; to provide juveniles with educational opportunities that are available to other youth in Arkansas; and to ensure that all children needing special education services receive those services.

The Department initiated 12 new investigations and sent 18 findings letters regarding

investigations of 24 facilities during the fiscal year. In addition during fiscal year 2003, the Department closed six investigations of six facilities and obtained seven settlements regarding 18 facilities. Four other facilities covered by CRIPA settlements were closed voluntarily by the jurisdictions.

During the last fiscal year, the Department continued to aggressively engage in negotiations and conciliation efforts designed to resolve CRIPA matters both before and after the filing of lawsuits. The case of *U.S. v. New York* involving the Pilgrim Psychiatric Center is an excellent example of aggressive negotiations leading to prompt reforms. In that case, the state of New York committed itself to significant and prompt reforms, including an overhaul of psychiatric staffing to better serve the needs of its residents and avoid unnecessary institutionalization. These efforts are in keeping with the statutory requirements of CRIPA and Attorney General John Ashcroft's initiative that calls on the Department to maximize its effectiveness by focusing on "fixing the problem, not the blame."

The Department also maximized its impact and increased its efficiency by continuing to focus on multifacility investigations and cases, obtaining widespread relief whenever possible. For example, the Department investigated all

of the juvenile justice facilities in South Dakota, finding that the state had not provided adequate mental health treatment to the youth confined throughout its facilities. The state comprehensively implemented all of the mandated reforms and the Department agreed to close the investigation in February 2004.

Lastly, the Department consulted with public officials and provided technical assistance to a substantial number of jurisdictions to assist in the correction of deficient, and at times life-threatening, conditions.

Did you know...

Letters of finding in CRIPA investigations can be found at www.usdoj.gov/crt/split/findsettle.htm#CRIPAletters

CONDOMINIUM ASSOCIATION WILL PROVIDE FRONT DOOR ACCESS FOR WHEELCHAIR USERS

On September 8, 2004, the Justice Department entered into a consent decree with the Triumvera Tower Condominium Association in Glenview, Illinois. The Department filed suit against the association because of a written policy prohibiting wheelchair users from entering through the front entrance to the building and requiring them instead to use the side service entrance. The front entrance was fully accessible. The side entrance was reached through a loading dock and was adjacent to the building's garbage collection area. The condominium association oversees the building, which consists of 106 units on sixteen floors.

The family of a 10-year-old boy who lives in the building brought the original suit, which the Department joined shortly thereafter. The family alleged that the president of the condominium association had threatened the family with fines and threatened to block the door if the family continued to bring the boy, who uses a wheelchair, through the front door. The association also sent the family a letter stating that the association rules prohibited them from bringing their son through the front entrance.

The consent decree, which resolved both suits, requires the condominium association to rescind the rule and to issue

a formal letter of apology to the family. The association, which admitted liability, must also pay \$83,500 in monetary damages: \$70,000 to the family, \$10,000 to the widow of a former resident of the building who also had the policy enforced against him, and a \$3,500 civil penalty to the government. Finally, the condominium association must train all current and future employees or volunteers and must hand over copies of any communications it has with the family for one year following the signing of the consent decree.

RENTAL PROPERTIES IN LAS VEGAS WILL RETROFIT FOR ACCESSIBILITY

On August 26, 2004, the Department filed a consent decree it reached with the developers, builders, and site engineers of three rental properties in Las Vegas, Nevada, to make the properties accessible to persons with disabilities. The defendants, who sold the properties several years ago, agreed to pay \$150,000 into a fund to be used to retrofit the properties in order to bring

them into compliance with the accessibility requirements of the Fair Housing Act. The decree must still be approved by the court.

In its complaint, which was filed simultaneously with the decree, the Department alleged that, as designed and constructed, the three properties - Rancho del Rey Apartments, Rancho Serene Apartments, and Rancho Viejo Apartments,

with a total of 376 ground floor units - are not accessible to persons with disabilities. Specifically, the public and common use areas have steps and steep slopes, thermostats in the dwellings are mounted too high thereby making them inaccessible, and the bathrooms lack adequate space to enable an individual in a wheelchair to maneuver about them.

Did you know...

Under the Fair Housing Act, it is unlawful to discriminate in any aspect of selling or renting housing or to deny a dwelling to a buyer or renter because of the disability of that individual, an individual associated with the buyer or renter, or an individual who intends to live in the residence. For more information, see www.usdoj.gov/crt/housing

NEW JERSEY APARTMENTS AGREE TO BECOME ACCESSIBLE

The Justice Department recently announced an agreement with the owner/developer and architect of Meridian Square Apartments in Carteret, New Jersey, settling a lawsuit alleging violations of the Fair Housing Act.

The suit, filed April 30, 2004, alleged that Carteret Terrace LLC, Feinberg and Associates PC, and others violated civil rights laws by designing and constructing the apartment complex without required features that allow persons with disabilities to use them. Among other things, the apartments have doors that are two narrow for people using wheelchairs, steps and high thresholds make access to apartments difficult, side-walks and common areas are not accessible, and kitchens and bathrooms do not have enough space to allow persons with wheelchairs to use them.

“Housing is a basic necessity,” said R. Alexander Acosta, Assistant Attorney General for Civil Rights. “The inability to find accessible housing bars individuals with disabilities from participating more broadly in community life. These violations of the law must end.”

Under the agreement, which was approved by the court on August 16, 2004, Carteret Terrace will make the apartment complex accessible to people

using wheelchairs. Feinberg & Associates will pay \$5000 in compensation and Carteret Terrace will establish a \$45,000 fund to compensate those who may have been impacted by the inaccessible housing. The case was referred to the Justice Department by the Department of Housing and Urban Development.

“The Fair Housing Act opens doors of opportunity to everyone,” said Carolyn Peoples, HUD Assistant Secretary for Fair Housing and Equal Opportunity. “In requiring that new apartment buildings be accessible, the Act says we can’t leave people with disabilities at the threshold.”

Since January 1, 2001, the Civil Rights Division has filed 131 lawsuits under the Fair Housing Act, including 32 enforcing the Act’s design and construct provisions that are the basis of this lawsuit.

Persons who believe they have suffered from housing discrimination at Meridian Square should contact the Civil Rights Division at (800) 896-7743, option #98. Persons who believe that they have suffered housing discrimination elsewhere should contact the Department of Housing and Urban Development at (800) 669-9777.

DEPARTMENT FINDS CIVIL RIGHTS VIOLATIONS AT TWO NURSING HOMES

On August 3, 2004, the Justice Department announced the results of two separate investigations into public nursing homes, the Laguna Honda Hospital and Rehabilitation Center in San Francisco, California, and the A. Holly Patterson Geriatric Center in Uniondale, New York. The Department's findings were transmitted in letters from R. Alexander Acosta, Assistant Attorney General for the Civil Rights Division, to California Governor Arnold Schwarzenegger and New York Governor George Pataki.

In San Francisco, the Department found evidence that California is contributing to the unnecessary segregation of individuals with disabilities residing at the 1,200-bed Laguna Honda facility.

"The Supreme Court has made clear that unnecessary isolation of individuals with disabilities in institutions, including nursing homes, is discrimination that diminishes individuals' ability to lead full and independent lives," said Assistant Attorney General Acosta. "The law requires, and we will ensure, that people with disabilities, like all Americans, have equal access and opportunity to participate in community life."

The announcement is part of the Department's long-standing investigation into whether residents of Laguna Honda are being served in the most integrated setting appropriate to their needs, as required by the Americans with Disabilities Act (ADA). The Department initiated its investigation of California following findings in May 1998 and April 2003 that San Francisco, which owns and operates Laguna Honda, unnecessarily isolates residents in violation of the ADA.

The Department found evidence that California has failed to ensure that residents eligible for community placement have meaningful access to community alternatives. Instead, the State routinely authorizes nursing home placements without requiring adequate assessments evaluating the appropriateness of home- and community-based care. As a result, individuals remain at Laguna Honda long after they become eligible for community programs and services. For example, the State approved a Laguna Honda resident's continued institutionalization for two years, even though the resident, who was sent to Laguna Honda in 1991 after a traffic accident, leaves

Did you know...

The Civil Rights of Institutionalized Persons Act (CIRIPA) authorizes the Department to investigate conditions of confinement at State and local government institutions such as prisons, jails, pretrial detention centers, juvenile correctional facilities, nursing homes, and institutions for people with psychiatric or developmental disabilities. For more information, see www.usdoj.gov/crt/split

(Nursing homes, continued)

the facility and goes to work each day using public transportation.

In New York at A. Holly Patterson, an 889-bed nursing home, the Department uncovered significant civil rights and statutory violations. Investigators found credible evidence that the facility's use of restraints is constitutionally deficient and that residents suffer harm as a result of inadequate clinical care, mental health care, and nutritional services.

The Department also found evidence that A. Holly Patterson violates the ADA by failing to assess residents ad-

equately to determine whether their continued stay at the facility is appropriate.

"The conditions at A. Holly Patterson are very troubling and reveal the continuing need to protect the civil rights of the elderly," said Assistant Attorney General Acosta. "When the State takes responsibility for the elderly and persons with disabilities, it must be held to account. However, we are confident that the State of New York and the administrators of A. Holly Patterson will continue to work cooperatively with us to remedy these deficiencies."

DEPARTMENT REACHES AGREEMENT WITH STATE OF NEW JERSEY REGARDING NEW LISBON DEVELOPMENTAL CENTER

On August 2, 2004, the Justice Department announced that it had signed a settlement agreement with the State of New Jersey regarding conditions and services at the New Lisbon Developmental Center, an institution for about 600 people with developmental disabilities operated by the State of New Jersey.

The agreement, which was filed in the U.S. District Court in Trenton, requires the state to protect residents from harm and improve services in the areas of psychology, psychiatry, health care, and nutritional and physical management. Under the agreement,

the state will serve New Lisbon residents in the most integrated setting appropriate to their individualized needs as required by federal law.

"When the state takes responsibility for individuals with disabilities, it shoulders a nonnegotiable obligation to protect them from harm," said R. Alexander Acosta, Assistant Attorney General for Civil Rights. "These individuals are some of the most vulnerable among us. We will remain committed to ensuring that they receive the dignified and competent care the law demands."

Did you know...

In its 1999 decision in *Olmstead v. L.C.* the Supreme Court held that the Americans with Disabilities Act requires states to provide services to residents with disabilities in the most integrated setting appropriate to each individual's needs. Several of the Department's recent findings have alleged a failure to live up to this requirement. The Department continues to focus on the unnecessary and inappropriate institutionalization of children and adults.

RECENT OUTREACH AND TRAINING ACTIVITIES

■ The IRS/SSA Reporter is a quarterly newsletter of the Internal Revenue Service and the Social Security Administration reaching seven million businesses nationwide. An article appearing in the summer 2004 issue informed this vast audience that the Department plans to update the accessibility requirements of the Americans with Disabilities Act (ADA). Those wishing to express their views were advised to be on the lookout for an Advanced Notice of Proposed Rulemaking that would be posted on the www.ada.gov website later this summer soliciting comments from the public.

■ Department staff gave three presentations and staffed a booth to disseminate publications and information on the ADA at the Tools for Life Exposition and Conference in Honolulu, Hawaii, on July 9 and 10, 2004. The presentations provided updates on the Department's enforcement activities and plans for revising the ADA Standards for Accessible Design.

■ At the request of Congressman Jerry Lewis, Department staff spoke before the Chamber of Commerce of San Bernardino, California, on July 16, 2004, to address small

business's concerns about ADA lawsuits being filed by private plaintiffs in their State.

■ Staff from the Department's Civil Rights Division and Office of Justice Programs jointly attended the American Correctional Association's 134th Congress of Corrections held at the Navy Pier in Chicago, Illinois, from July 31 to August 5, 2004. They distributed publications and information on the ADA to many law enforcement organizations, wardens and correctional officers, sheriffs, jailers, parole and probation officers, providers of juvenile offender programs, and non-profit groups that provide transitional housing and support services for individuals after incarceration. Over 3800 people attended the Conference, and a number of attendees requested that the Department conduct future workshops on the ADA.

■ Department staff gave a presentation at an American Bar Association Conference in Atlanta, Georgia, on August 10, 2004. The talk focused on the ADA's requirements as they apply to the legal profession. Law firms and clinics must be accessible both for clients and for attorneys who have disabilities.



DOJ staff member distributes ADA information at conference

■ On August 12 and 13, 2004, Department staff participated in the Leadership Exchange in Arts and Disability (LEAD), a national conference and training workshop sponsored by the Kennedy Center in Washington, DC. The conference was attended by 200 people representing arts organizations from across the country. The Department's presentation addressed legal and design issues in cultural arts accessibility.

■ On August 20, 2004, Department staff made a keynote presentation in New York at the Legal Advocacy and Defense for People with Disabilities (LADD) of Japan. The presentation focused on the status of disability discrimination in the United States.