



Enforcing the ADA:

A Status Report from the Department of Justice

April - June 2008

This Status Report covers the ADA activities of the Department of Justice during the second quarter (April - June) of 2008. 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).

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The Americans with Disabilities Act (ADA) is a comprehensive civil rights law for people with disabilities. The Department of Justice enforces the ADA's requirements in three areas --

Title I: Employment practices by units of State and local government

Title II: Programs, services, and activities of State and local government

Title III: Public accommodations and commercial facilities

I. Enforcement

Through lawsuits and both formal and informal settlement agreements, the Department has achieved greater access for individuals with disabilities in 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 II

Long v. Benson -- The Civil Division of the Department of Justice filed a statement in the U.S. District Court for the Northern District of Florida in Long v. Benson supporting the validity of the Department's title II regulation requiring State services to be provided in "the most integrated setting appropriate to the needs of qualified individuals with disabilities." The lawsuit was brought by Medicaid-supported residents of nursing facilities who alleged that Florida discriminated against them by failing to provide adequate access to care in integrated, community-based settings, rather than in nursing homes. The State asked the court to dismiss the case, arguing that title II of the ADA did not provide statutory authority for the Department's integration regulation. In response to a request for guidance from the court, the Department filed a statement in support of the regulation, arguing that both the integration regulation and the ADA statute itself prohibit the unjustified isolation of individuals with disabilities. The district court upheld the validity of the integration regulation and refused to dismiss the case.

B. Formal Settlement Agreements

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

Title III

Marco Polo Restaurant, Summit, New Jersey -- The Department reached an agreement with the Marco Polo Restaurant resolving a complaint alleging that the restaurant had not complied with the barrier removal and alterations provisions of the ADA. Under the agreement, the restaurant will add one accessible parking space and one van-accessible parking space, install an accessible entry ramp, and provide directional signage indicating the location of the accessible entrance. The restaurant also agreed to pay \$750 to the complainant.

Clifford B. Hearn, Jr., P.A., Wilmington, Delaware -- The Department signed an agreement with a Delaware law practice resolving a complaint by an individual who is deaf alleging that the firm, Clifford B. Hearn, Jr., P.A., failed to provide a sign language interpreter for consultations. The firm agreed to provide appropriate auxiliary aids and services, including qualified sign language interpreters, when needed to provide effective communication; adopt and enforce an effective communication policy; distribute the policy to all staff; establish and maintain a list of qualified sign language and oral interpreter providers; and post the policy and procedures for requesting auxiliary aids.

Hotel 41 at Times Square, New York, New York -- The U.S. Attorney's Office for the Southern District of New York reached an agreement with the 47-room, Hotel 41

at Times Square, its tenth hotel settlement agreement under a compliance review of 48 places of lodging in Manhattan's Theater District. The agreements require each hotel, as applicable, to survey existing "designated" accessible guest rooms and remedy accessibility problems that are identified; provide an appropriate number of guest rooms accessible for persons with mobility impairments, including a specified number with roll-in showers; disperse accessible guest rooms among all classes of sleeping accommodations; provide an appropriate number of guest rooms accessible for persons who are deaf or hard of hearing; establish written policies and procedures for providing services to guests with disabilities; and take other steps, such as ensuring access for service animals, making entrances accessible, installing accessible registration counters, and providing TTY's at the front desk. Hotel 41 agreed to have at least two fully accessible guest rooms as well as an additional two guest rooms that are accessible to people who are deaf or hard of hearing.

HealthEast, St. Paul, Minnesota -- The U.S. Attorney for the District of Minnesota reached an agreement with HealthEast, a large health care provider licensed in the state of Minnesota, which owns and operates St. Joseph's Hospital in St. Paul, St John's Northeast Hospital in Maplewood, and Woodwinds Hospital in Woodbury. Under the settlement, HealthEast agreed to assess the auxiliary aids needs of deaf and hard of hearing patients and family members or other companions and to provide appropriate auxiliary aids to ensure effective communication, including 24-hour access to qualified interpreters when appropriate. HealthEast agreed to designate a systemwide coordinator for the implementation of the agreement and a coordinator at each hospital to respond to requests for auxiliary aids and

services; to identify a group response team at each hospital to provide services 24 hours a day, seven days a week; to conduct mandatory ADA training for its 1200 employees who provide medical care; and to develop patient and visitor notification and brochures indicating that appropriate auxiliary aids and services, including qualified interpreters, will be available free of charge. HealthEast also agreed to pay a total of \$26,000 in damages to the husband and wife complainants.

World Fresh Market (“Pueblo”), St. Thomas, Virgin Islands -- The U.S. Attorney’s Office for the District of the Virgin Islands entered into an agreement with the Pueblo, a retail food market, resolving a complaint by an individual with a disability alleging that he was asked to leave the Pueblo because he was accompanied by a service animal. The Pueblo agreed to issue a policy statement making it clear that people with disabilities who use service animals are welcome to use the market. It also agreed to post notices of the new policy in conspicuous locations.

International Spy Museum Agrees to Innovative Accessibility Improvements --

The Department reached an agreement with the International Spy Museum in Washington, D.C., to provide equal access to visitors with disabilities, including those who are deaf or hard of hearing and those who are blind or who have low vision. The Spy Museum fully cooperated with the Department’s investigation into a complaint filed by an individual who is legally blind alleging that he and a group of individuals who are blind or who have low vision were denied full and equal enjoyment of the museum’s goods, services, and facilities during their visit to the museum. The Spy Museum developed innovative solutions that will establish a model for accessibility in museum settings. Under the agreement the Spy Museum will provide –

- tactile maps of the museum and tactile floor plans for temporary exhibits that visitors can follow;
- regularly scheduled tours with a qualified audio describer to describe audiovisual presentations, computer interactives, or exhibits;
- a qualified reader to read exhibit labels;
- captions for all audiovisual, audio-only, and computer interactive programs; or, when captioning is not an option, scripts or wall text to communicate the audio narration or ambient sounds;
- a sample of models, and objects or reproductions of objects for tactile examination accompanied by audio description;
- sign language and oral interpreter services and real-time captioning, on advance request, for all public programs.

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Spy Museum, continued

The Spy Museum will display information about the availability of these auxiliary aids and services on its website and in its brochures, print, and video advertisements. It will also remove barriers to improve physical access to its facilities, which, in addition to the exhibits, include a restaurant and a museum shop. It will provide integrated wheelchair seating areas and companion seats in its theaters, accessible ramps, and improved access to doors and counters. It will also designate an ADA compliance officer, train all first-line supervisors and managers on the ADA, and ensure that all newly hired supervisors and managers receive this training within thirty days of beginning employment.

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 inmate with diabetes alleged that a west coast State prison prevented him from earning sentence reduction credit because his disability made it impossible for him to participate in the community service work program. The inmate has been transferred to another correctional facility where he will be able to participate in the work program in a position that he can perform.

Two individuals who are deaf complained that an Ohio county court charged them for interpreter services needed for a court hearing. The court changed its policy and adopted measures to ensure the provision of auxiliary aids and services to the public at no cost, posted signage in each courtroom and in the clerk's

office indicating that auxiliary aids are provided, and trained court staff to respond to such requests. The complainants were each compensated \$500.

An inmate who uses a wheelchair and walker for mobility alleged that the roll-in shower in his housing unit at a Mid-Atlantic State prison was not accessible because grab bars were not provided. The prison installed grab bars in the roll-in shower.

An inmate who uses leg braces for mobility complained that staff at a State correctional facility in the South failed to repair a broken leg brace and refused to provide him with a shower chair. The brace has been repaired and the correctional facility purchased four roll-in shower chairs and placed one in the complainant's housing unit.

An inmate with a mobility disability alleged that a west coast State prison failed to repair an orthotic foot support and orthopedic shoe and a pressure relief mattress had not been transferred to the current State prison where he resides. The prison repaired the complainant's orthotic, provided a new orthopedic shoe, and provided him with an appropriate pressure relief mattress.

An individual with a mobility disability complained that a Mid-Atlantic public university failed to provide an equal opportunity for wheelchair users to purchase tickets for accessible seats online for events held in a school auditorium. The university agreed to modify its ticketing policy and website to allow wheelchair and companion seats to be purchased online and in the same manner that tickets for general seating are purchased.

Three inmates with disabilities alleged that a west coast State's correctional facilities violated their rights under the ADA. A wheelchair user alleged that his personal care needs were not being met in the general population prison setting. The inmate was assigned to the assisted living unit in a different facility that was better able to meet his disability-related needs.

Another complainant, who has a herniated disc and arthritis that limits his ability to sit for extended periods of time, complained that prison staff made him stay seated for three hours during the completion of a required course, contrary to instructions from prison medical staff. The prison allowed the inmate to sit or stand as necessary to accommodate his disability and he completed the course.

The third complainant, an inmate with a mobility disability, alleged that he was denied access to educational programs because the elevator providing access to the programs had been out of service for several years. The inmate was transferred to a different facility where he is able to attend educational programs. In addition, the first prison has since moved its educational programs to a new facility where they are accessible to inmates with mobility disabilities.

Title III

Parents complained that a private healthcare facility in Nebraska refused to enroll their daughter in its child care center because she has diabetes. The facility agreed to develop policies and procedures to address requests for reasonable modifications for children with disabilities including diabetes, to include the policies and procedures in all brochures and application materials, and to train staff on the child care center's ADA obligations.

An individual with a mobility disability alleged that a hotel in Ohio lacked an appropriate number of accessible guest rooms and needed to remove other architectural barriers. The hotel agreed to install signage at the passenger loading zone; place a cane detectable element under a wall-mounted mailbox in the main lobby; install a buzzer to alert staff at the main registration counter that a guest unable to reach the counter needs assistance and post a sign indicating that staff will provide a clipboard for guests to use during any business transaction; replace or reposition paper and other dispensers in the toilet rooms; and install automatic door openers at the entry to the six accessible guest rooms.

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

Southern District of Mississippi -- An individual with a mobility disability complained that a municipal arts center lacked accessible parking and an accessible route from parking to facility entrances. The arts center installed accessible parking and modified curb ramps creating an accessible path of travel to all building entrances, installed curb ramps serving

pedestrian approaches to the facility, including an accessible pedestrian drop-off area, and eliminated changes in level that created barriers along the path of travel to the facility.

An individual with a mobility disability complained that a specialty food store's aisles were inaccessible. The store agreed to create and maintain aisles that are wide enough to provide access to display racks and counters. The store also agreed to install a sign informing customers with disabilities that employee assistance is available for reaching items that may be displayed above the required reach ranges and to train employees to assist customers with disabilities.

District of Nebraska -- A wheelchair user complained that a fitness center's cardiovascular equipment and free weights were located on its inaccessible second floor. The fitness center agreed to permit members and nonmembers who have disabilities to use,

at no additional charge, cardiovascular equipment and weights located in a ground floor area for which an additional fee is usually charged. The center also agreed to train its employees regarding these accommodations.

District of New Hampshire -- A wheelchair user complained that a commercial building that housed places of public accommodation was inaccessible. The complex installed accessible parking, an accessible route, and appropriate signage.

Southern District of New York -- An individual with a mobility disability complained that a New York City visitor's center lacked an accessible rest room. The center modified its rest room by enlarging the doorway, reversing the direction of the door to swing out, and installing an automatic door opener and electronic door strike plate.

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 Texas, a person who uses crutches and a wheelchair for mobility alleged that a hotel refused to allow her access to the lobby and restaurant and attempted to charge her a \$100 pet deposit for her guest room because she uses a service animal to retrieve items. The corporate hotel owners reaffirmed their policy to allow service animals to accompany individuals throughout their facilities, posted signs indicating "service animals welcome", trained its regional general managers, apologized to the complainant, and provided her with a complimentary stay at any of the chain's hotels.

- An individual complained that a West Virginia debt collection agency refused to accept his TTY calls through the telecommunication relay system. The agency changed its policy to accept relay calls, trained its staff in using the relay system, and published an article about providing effective communication in a trade publication.
- In New York, a wheelchair user complained that a restaurant parking lot was inaccessible. The restaurant repaved and restriped the lot and installed three accessible parking spaces with signage (including two van accessible spaces) in front of the main entrance.
- A wheelchair user complained that a Virginia train and hobby store failed to provide accessible parking and access to the store's second floor. The shopping center where the store was located installed signage directing customers to accessible parking. The store instituted a policy to assist individuals who cannot navigate the stairs by informing customers about what is available on the second floor, bringing merchandise down until the customer finds what he or she is looking for, and then completing the sale. The store also installed signage identifying staff they could ask for assistance.
- In Colorado, an individual who has a seizure disorder complained that she was denied access to a doctor's office because she uses a seizure alert animal. The doctor modified his policy and developed procedures to allow all service animals to accompany individuals with disabilities throughout the medical office.
- In North Carolina, a person who is deaf complained that a dental office refused to provide a qualified sign language interpreter for a visit to discuss surgery. The practice changed its policy and trained its staff in providing effective communication, including sign language interpreters, and posted signs in the office about the policy. The practice also apologized to the complainant, reimbursed her for costs incurred, and paid her \$200.
- An individual with a mobility disability complained that she was denied access to three mental health hospitals because she uses a service animal for balance. The company that operates these hospitals, located in Missouri, Louisiana, and Texas, changed its policy and developed procedures to allow service animals to accompany individuals with disabilities throughout its facilities.
- The parents of a son with autism alleged that a Pennsylvania ski resort refused to provide him ski lessons because of his disability. The resort modified its policy, established procedures on accommodating patrons with disabilities and how to resolve problems if they arise, and provided training for staff on the new policy.
- In Georgia, a person who is deaf complained that a veterinary practice refused to provide her with a qualified sign language interpreter for a discussion of a complex surgical procedure for her service animal. The practice developed a policy to ensure effective communication, including provision of qualified sign language interpreters upon request,

trained employees on the policy, and reimbursed the complainant \$600.

- In Connecticut, a person with a mobility disability complained that a private university's public swimming pool was

inaccessible. The university installed a curb cut, sidewalk, and ramp from the accessible parking to the main entrance, equipped the pool with a wheelchair ramp, and installed accessible shower seats in the locker room area.

Department Issues Proposed Revisions to ADA Regulations -- On Friday, May 30, 2008, Attorney General Michael B. Mukasey signed proposed regulations to revise the Department's ADA regulations, including its ADA Standards for Accessible Design. On Tuesday, June 17, 2008, the proposed regulations were published in the Federal Register. The proposed regulations consist of a notice of proposed rulemaking to amend the ADA regulation for State and local governments, a notice of proposed rulemaking to amend the ADA regulation for public accommodations and commercial facilities, a regulatory impact analysis, and two supporting appendices. The notices provided for a 60-day public comment period.

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. Activities include providing direct technical assistance and guidance to the public through the 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 at (www.usdoj.gov/crt/foia/crt.htm). Links to search or visit this website are provided from the ADA Website.

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.