



Disability Rights online News

U.S. Department of Justice
Civil Rights Division

July 2010
Issue Thirty Seven

Disability Rights Online News

is a bi-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.

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RECENT ACTIVITIES TO ENFORCE SUPREME COURT'S *OLMSTEAD* DECISION

In 2009 the Department launched an aggressive effort to enforce the Supreme Court's decision in *Olmstead v. L.C.*, a 1999 ruling recognizing that the unjustified isolation of individuals with disabilities in institutional settings is a form of discrimination under the ADA. The *Olmstead* decision requires that people with disabilities be served in community-based settings when that is the most appropriate setting for their needs. This decision has often been called the *Brown v. Board of Education* of the disability rights movement.

On May 5, 2010, the Department filed a lawsuit against the State of Arkansas charging that the entire state developmental disability service system violates the ADA. The lawsuit alleges that Arkansas segregates hundreds of individuals with developmental disabilities in institutions, fails to provide services

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MULTI-FAMILY HOUSING ACCESS FORUM IN BOSTON DRAWS LARGE TURNOUT

On June 8, 2010, more than 120 developers and building professionals, government officials, and advocates for individuals with disabilities from across New England attended the Department's eleventh Multi-Family Housing Access Forum in Boston. Hosted by Thomas E. Perez, Assistant Attorney General for the Civil Rights Division, and Steven H. Rosenbaum, Chief of the Civil Rights Division's Housing and Civil Enforcement Section, the event featured presentations by two design professionals and an accessibility expert, followed by questions from the audience.

In his welcoming remarks, Mr. Perez encouraged the building professionals in attendance to comply with the Fair Housing Act's accessibility requirements at the design and planning stages in their projects, rather than risk enforcement actions and expensive

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(Olmstead, continued)

in the community, and has other discriminatory policies that essentially gives individuals the choice of receiving services in its institutions or no services at all. The lawsuit, filed in the federal court in Little Rock, seeks a court order requiring the state to correct its discriminatory service system. In a separate action, the Department goes to trial in Little Rock on September 8, 2010, in a case involving Arkansas's largest institution for individuals with developmental disabilities, the Conway Human Developmental Center. That case involves both ADA claims and claims under the Civil Rights of Institutionalized Persons Act.

On May 24, 2010, the Department filed a brief as amicus curiae, or friend of the court, in *Disability Rights New Jersey, Inc. v. Velez*, a lawsuit alleging that the State of New Jersey has failed to implement its plan for transitioning individuals with developmental disabilities from institutional settings to community-based settings as required by the ADA and the *Olmstead* decision. The Department's brief, filed in the federal court in Trenton, noted that the state has placed relatively few residents in community settings in recent years and expects that future placements will be made at a slower pace than anticipated in the state's *Olmstead* plan,

negatively impacting more than 2,000 residents who are qualified for and desirous of community placements. The Department urged the court to rule that the state must speed up its transition process.

On May 24, 2010, the Department filed a Statement of Interest in *Williams v. Quinn*, a lawsuit alleging that the State of Illinois relies on large institutions to provide long-term care services for individuals with mental illnesses and fails to offer services in community-based settings. (A Statement of Interest is similar to a brief filed as amicus curiae or friend of the court.) The parties had asked the federal court in Chicago to give preliminary approval of a proposed consent decree they had negotiated under which the state will provide community-based services to some individuals, and a group of 17 institutionalized individuals objected, claiming that the proposed decree lacks sufficient detail about how the plan will be implemented and funded, does not provide medical professionals enough authority for determining which residents are appropriate for community placements, and does not adequately explain the proposed attorneys' fees. In its brief, the Department urged the court to give preliminary approval of the consent decree, which the court preliminarily approved on May 27, 2010. As in all class action

cases, a "fairness" hearing will now be scheduled to give interested parties an opportunity to comment on the decree.

On May 24, 2010, the Department filed a Statement of Interest in *Haddad v. Arnold*, a lawsuit challenging the State of Florida's requirement that a Medicaid-eligible woman with spinal cord injuries must enter a nursing home for sixty days as a prerequisite to receiving community-based services. The plaintiff in this lawsuit has quadriplegia as a result of a motorcycle accident and has been on the waiting list to receive community-based services since 2007. She resides in her home and was being assisted by her husband with daily living activities such as transferring in and out of bed, eating, and toileting. He continued to assist her for approximately two years after they were divorced. Her 24-year old son then stepped in to assist his mother, but he lives in another city and cannot continue to provide care for her. The Department's brief, filed in the federal court in Jacksonville, argued that the woman is likely to win the lawsuit and should be provided with in-home services while the case is pending. On June 23, 2010, the federal court in Jacksonville issued a preliminary injunction requiring the state to provide in-home services to Ms. Haddad pending a final decision in this case.

(Boston, continued)

retrofits later. He encouraged compliance with the requirements not only because it is the law and the right thing to do, but because it is the right business choice as well. Mr. Perez noted that, in the coming years, New England will face growing challenges to keep up with the increasing demand for housing and the growing numbers of people with a condition limiting basic physical activities. He emphasized that although the Department has obtained good results through litigation, litigation is costly for all parties. He said the Department would much prefer building professionals to ensure that the housing needs of people with disabilities are met at the outset, eliminating the need for costly retrofits and litigation.

The featured presenters were Deborah A. Ryan of Deborah A. Ryan and Associates; Robert Chandler, AIA, of the architectural firm Goody Clancy, and Diane Georgopolus, AIA, of MassHousing and chair of the Boston Society of Architects.

Ms. Ryan spoke about the accessibility requirements of the Fair Housing Act and how professionals can ensure compliance by using the Act's ten "safe harbors." She also discussed critical differences between federal and state housing accessibility laws and

provided guidance to design professionals on how to comply with both. Mr. Chandler spoke about overcoming the challenges of designing accessible housing in densely-populated, older urban settings. Ms. Georgopolus discussed her agency's efforts to reconcile the Massachusetts Accessibility Code with federal law and provide greater guidance and clarity for design professionals.

Launched in 2005, the Access Forum's objective is to help building professionals understand their legal obligations under the federal Fair Housing Act's accessibility requirements and to celebrate partnerships that have successfully produced accessible multi-family housing in which everyone profits—developers and consumers alike. The theme of the events is "Good Access is Good Business." Previous events were held in Philadelphia, Houston, Seattle, Miami, Minneapolis, Phoenix, Atlanta, Dallas, Washington, DC, and Kansas City, Missouri.



Deborah Ryan speaking at the Access Forum in Boston

HOUSING COMPLEXES IN MINNESOTA AND NEW YORK WILL CORRECT DISCRIMINATORY SERVICE ANIMAL POLICIES

On May 20, 2010, the federal court in Minneapolis approved a consent decree in *United States & Fair Housing of the Dakotas v. Van Raden Properties, Inc.*, a lawsuit alleging that the owner and management company of a 24-unit apartment building in Moorhead, Minnesota, violated the Fair Housing Act by prohibiting service animals of certain sizes and breeds. The

consent decree requires the defendants to revise their policy to remove the size and breed limitations, attend regular fair housing training, and pay \$3,000 to Fair Housing of the Dakotas. The lawsuit arose as a result of a complaint filed by Fair Housing of the Dakotas with the U.S. Department of Housing and Urban Development (HUD). HUD issued a charge of discrimination after

(Minnesota, continued)

investigating the complaint, and one of the respondents elected to have the case heard in federal court.

On June 8, 2010, the federal court in Brooklyn approved a consent decree in *United States v. Sunrise Villas, LLC*, a lawsuit alleging that the general manager and assistant general manager of a complex for persons aged 55 and over in Lindenhurst, New York, violated the Fair Housing Act by telling fair housing testers sent by Long Island Housing Services that service animals were not permitted to live at the property. The consent decree requires the defendants to adopt a written assistance animal policy, display a fair housing poster, attend fair housing training, pay \$12,186 in damages to Long Island Housing Services, and pay a \$1,000 civil penalty to the government. The lawsuit arose as a result of a complaint filed by Long Island Housing Services with HUD. (See previous article in issue # 33.)

INDIANA CITY WILL GRANT PERMIT FOR A GROUP HOME FOR RECOVERING ADDICTS

On June 15, 2010, the city of Columbus, Indiana, and the Department reached agreement on a consent decree to resolve the Department's lawsuit alleging that the city's Board of Zoning Appeals violated the Fair Housing Act when it denied a request from Addictions Counseling Treatment Service, Inc., (ACTS) for a land use variance to operate a group home for up to eleven people recovering from drug or alcohol addiction. ACTS filed a complaint with HUD, which referred the matter to the Justice Department. (See previous article in issue # 33.) The federal court in Indianapolis approved the decree on June 17, 2010.

Under the settlement, the city will grant ACTS permission to operate the home if it submits a new application within three years; adopt and implement a policy to address reasonable accommodation requests on behalf of people with disabilities; obtain Fair Housing Act training for the staff of the city's Planning Department and Board of Zoning Appeals; pay \$18,000 to ACTS; and pay \$6,000 to the United States as a civil penalty.

"Experience has shown that people recovering from addictions to alcohol and drugs can benefit when given the opportunity to live in supportive residences. The Fair Housing Act prohibits local governments

from using zoning codes to deny them this opportunity," said Assistant Attorney General Thomas E. Perez. "The Justice Department will continue to vigorously protect the civil rights of all persons with disabilities across the country."

"Enforcement of the Fair Housing Act in this manner protects the civil rights of persons with disabilities," said Timothy M. Morrison, U.S. Attorney for the Southern District of Indiana. "These actions encourage local governmental units to end discriminatory policies."

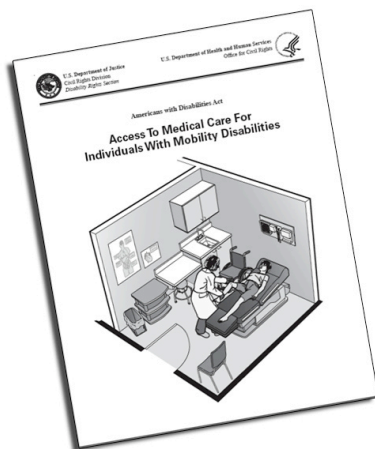
"Recovery programs help the individual and the community. This settlement enables all parties to move forward based on fact, not stereotype," stated HUD Assistant Secretary for Fair Housing John Trasviña.

Did you know...

The Department's housing discrimination complaints and settlements are available at: www.justice.gov/crt/housing/fairhousing/caselist.htm#disabil

NEW ADA GUIDANCE FOR HEALTH CARE PROVIDERS

Access to Medical Care for Individuals with Mobility Disabilities is a 19-page technical assistance document published jointly by the Department of Justice and Department of Health and Human Services to provide guidance for medical care professionals on accessible health care services for individuals with mobility disabilities. Intended for use by both large and small practices and facilities, it includes an overview of ADA requirements, commonly asked questions in health care settings, and illustrated examples of accessible examination rooms and medical equipment. The publication is available on the ADA website or through the ADA Information Line.



NEW PROJECT CIVIC ACCESS SETTLEMENTS

Project Civic Access (PCA) is the Department's wide-ranging initiative to work cooperatively with local governments to ensure that their programs and activities comply with the ADA, allowing people with disabilities to participate more fully in the civic life of their communities. More than 175 agreements have been reached with communities small and large throughout the United States under this initiative. PCA reviews have been conducted in all 50 States, as well as Puerto Rico and the District of Columbia, helping to improve the lives and broaden opportunities for more than 3 million Americans with disabilities. (See previous articles in issues # 3, 5, 9, 17, 18, 28, and 32.)

Between October 28, 2009, and June 9, 2010, eleven local governments entered into settlement agreements with the Department under the PCA initiative. The new agreements are with:

- Atlanta, Georgia
- Fargo, North Dakota
- Glynn County, Georgia
- Lancaster County, Pennsylvania
- LaPorte County, Indiana
- Poplarville, Mississippi
- St. Clair County, Illinois
- Santa Rosa, California
- Smyth County, Virginia
- Wilmington, North Carolina
- Wyandotte County and Kansas City, Kansas

ADA MEDIATION HIGHLIGHTS

The ADA Mediation Program is a Department-sponsored initiative intended to resolve ADA complaints in an efficient, voluntary manner. Mediation cases are initiated upon referral by the Department when both the complainant and the respondent agree to participate. The program uses professional mediators who are trained in the legal requirements of the ADA and has proven effective in resolving complaints at less cost and in less time than traditional investigations or litigation. Over 78% of all complaints mediated have been resolved successfully.

(Mediation, continued)

Summer is a good time for fun! In this issue, we highlight complaints involving places people go for entertainment that have been successfully mediated.

■ In Alabama, the parents of a child with cerebral palsy complained that a recreation center excluded their child and others from some of their programs because of their disabilities. The recreation center reaffirmed its policy not to discriminate against children with disabilities in its regular programs. In addition, it formed a committee comprised of parents and staff to evaluate the need for specialized programs for children with disabilities who are unable to participate in the regular programs. The complainant's child joined one of those specialized programs, the adaptive swimming class, which now has a waiting list because of its popularity.

■ In Delaware, a person with a mobility disability complained that accessible parking was roped off for VIP parking during a concert at an entertainment venue, causing him to walk an additional 1,000 feet to the entrance. The venue informed all staff and contractors that accessible parking must remain available at all times, and donated 100

concert tickets to a local Korean War veterans group.

■ In California, a mother of a child who uses a wheelchair complained that a large, temporary arts exhibition failed to provide a sufficient number of accessible parking spaces and that the shuttle service from parking lots to the festival was inaccessible. Because the grounds and shuttle service were operated by the city, the festival organizers worked with the city to install additional accessible parking spaces, including van-accessible spaces, to increase the number of wheelchair accessible shuttles, and to provide radio communication between shuttles so that people who use wheelchairs could be served more quickly. The festival also agreed to provide more information about the availability of accessible parking and shuttles in event literature, on the web, and in an insert included with tickets.

■ An individual with multiple sclerosis alleged that, because she did not look disabled, a Virginia amusement park asked for documentation of her disability when she requested a disabled access pass. The park apologized for the way the staff had treated the complainant, reimbursed her the cost of her trip, provided her and her family with a complimentary visit, added components to its staff

training on serving all patrons with disabilities, regardless of whether disabilities are visible or not, and agreed to work with the complainant to raise awareness about multiple sclerosis.

■ In Texas, the grandmother of a child with cerebral palsy complained that she became separated from her grandchild at an amusement park because of conflicting information about where to meet the child at the end of the ride. The park created a new accessible entrance with signage for the ride and updated its guidebook for guests with disabilities to clarify the location of accessible ride entrances and procedures for loading and unloading rides. Additionally, the park gave the complainant five daypasses with meals included.

■ In Georgia, two veterans with mobility disabilities alleged they were refused access to a car show held at a motor speedway because they used scooters as their mobility devices. The speedway made changes to policies for outside vendors and vendor contracts that explain their obligation to provide access for individuals with disabilities, including those who use scooters, and gave the complainants four tickets and a parking pass for a racing event at the speedway.

- In Virginia, an individual whose wife uses a wheelchair complained that a historic attraction failed to provide accessible shuttle service from the parking lot to the attraction and back. The attraction's only accessible shuttle bus broke down, leaving the complainant stranded on a hot day, unable to return to the parking lot. The operator of the attraction added two accessible vehicles to its fleet of shuttle buses, established a policy allowing people with disabilities to park near the attraction in the unlikely event that no accessible shuttles are operational, and agreed to train all current and future staff on the ADA and the accessible transportation plan.
- At a concert venue in Oregon, an individual with a mobility disability complained that she was instructed to park in an accessible parking space near an accessible entrance that was subsequently blocked by buses and closed. When the complainant had a medical emergency after the show and needed to reach her car quickly, staff and security guards refused to allow her to leave through the entrance near her car and forced her to use an entrance further away. The facility agreed to keep all accessible entrances open at all times. It also moved an accessible portable toilet to an accessible location, hired staff to work exclusively on ensuring access for people with disabilities, trained all staff on the ADA, updated its website to provide information on accessibility, and paid the complainant \$1,000.

RECENT OUTREACH ACTIVITIES

- On May 3, staff participated in a panel discussion on the ADA at the American Public Transportation Association's Annual Bus and Paratransit Conference in Cleveland, Ohio. The presentation focused on progress made in accessible transportation since the ADA's passage and highlighted the Department's recent settlement of an accessible transportation lawsuit in Jackson, Mississippi. (See article in issue # 36.)
- On May 5, staff gave an update, via webcast, on Project Civic Access for the Southwest ADA Center in Houston, Texas. This is one of the ten regional centers funded by the Department of Education to provide technical assistance on the ADA at the local level.
- On May 18, staff gave a presentation at the Association of University Centers on Disabilities, Disability and Health Partners Meeting in Atlanta, Georgia. The audience included approximately 150 disability and health professionals who work at state health departments, university centers on developmental disabilities, and other university settings around the country.
- On May 18, staff conducted a three-hour training for the Council of Boston Teaching Hospitals in Boston, Massachusetts. The program provided an overview of titles I, II, and III of the ADA as they relate to hospitals and health care facilities, an overview of the settlement agreement with Beth Israel Deaconess Medical Center (see article in issue # 43), a presentation with photos of common architectural problems and solutions in health care facilities, and a discussion of accessible medical equipment and the Department's new technical assistance document, *Access to Medical Care for Individuals with Mobility Disabilities*. The program was attended by more than 60 representatives from six hospitals and medical centers

(Outreach, continued)

and several area architectural firms. The audience included hospital executive staff, administrators, risk managers, facilities and procurement personnel, and design and construction professionals.

■ On May 23, staff conducted a training on accommodating inmates with disabilities at the American Jail Association's 29th Annual Training Conference in Portland, Oregon.

■ On June 2, staff participated in a meeting organized by the U.S. Attorney in Kansas City, Missouri, to discuss Olmstead enforcement issues. The group included representatives from the regional offices of the Departments of Health and Human Services, Housing and Urban Development, the Education, several U.S. Attorneys offices, and advocates from across Kansas and Missouri.

■ On June 7, staff gave a presentation on ADA issues related to law enforcement and detention facilities at the Middle Atlantic States Correctional Association Conference in Atlantic City, New Jersey. The conference was attended by state jail and prison administrators, sheriffs, law enforcement and correctional officers, and jail and prison health care professionals.

■ On June 8 and 9, staff gave a presentation and participated in a panel discussion on ADA issues related to emergency telephone services and the next generation of 9-1-1 equipment at the National Emergency Number Association Annual 9-1-1 Conference & Trade Show in Indianapolis, Indiana. Attendees included 9-1-1 center managers, directors, technology specialists, and training specialists.

■ On June 10, staff gave a presentation on ADA issues related to law enforcement and detention facilities at the New Jersey Department of Corrections (DOC) Training Academy in Sea Girt, New Jersey. The training was attended by DOC ADA coordinators, prison administrators, correctional officers, and correctional health care professionals.

■ On June 20-23, staff participated in four breakout sessions and two round table discussions at the Great Plains ADA Center's National ADA Symposium in Denver, Colorado. This is one of the ten regional centers funded by the Department of Education to provide technical assistance on the ADA at the local level. Attendees included state, city, county, and school ADA coordinators, consumers, and advocates.

■ On June 26, staff gave a presentation on ADA issues related to law enforcement and detention facilities at the annual conference of the National Sheriff's Association in Anaheim, California.