



Disability Rights

online News

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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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DEPARTMENT HOLDS PUBLIC HEARINGS ON PROPOSED RULEMAKING UNDER THE ADA

The Department is holding three public hearings on four advance notices of proposed rulemaking (ANPRMs) that were published in July 2010. (See previous article in issue # 38.) The purpose of the hearings is to get public comments on the possibility of drafting additional regulations for titles II and III of the ADA to address accessible websites; captioning and video description of movies shown in theaters; accessible features for Next Generation 9-1-1 (when 9-1-1 centers acquire new equipment that enables them to receive voice, text, and video calls over the Internet); and accessible equipment and furniture such as medical equipment, hotel beds, ATMs, interactive transaction machines (including point-of-sale devices), and kiosks.

The first hearing was held on November 18, 2010, in Chicago, Illinois. Fifty people testified, including individuals with disabilities, disability rights advocates, rehabilitation

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HILTON WORLDWIDE AGREES TO PRECEDENT-SETTING SETTLEMENT OF ADA ISSUES

On November 9, 2010, the Department simultaneously filed a lawsuit and a consent decree in the federal court in Washington, DC, resolving multiple complaints of discrimination by Hilton Worldwide, Inc. (HWI). HWI cooperated with the Department throughout the lengthy investigation and negotiation process. The consent decree, which was approved by the court on November 30, 2010, applies not only to hotels HWI owns or manages but also to hotels it franchises. The decree covers all ten hotel brands owned by HWI: Hilton Hotels, Conrad Hotels & Resorts, Waldorf Astoria Hotels & Resorts, Hilton Grand Vacations, Hilton Garden

(Continued on page 2)

(Public Hearings, continued)

specialists, and representatives of industries and government agencies that will be affected if the Department develops regulations on these topics. In addition, several golf course operators testified about their efforts to ensure access to golf courses for people with disabilities. Commenters unable to attend in person participated by telephone or videophone.

The second hearing was held on December 16, 2010, in Washington, DC, and was webcast live. More than fifty people testified, including individuals with disabilities, advocates, industry representatives, and state and local government officials. A significant number of advocates and individuals who are blind or have low vision urged the Department to develop regulations that will give them access to goods and services offered through the Internet. A number of commenters with disabilities also described their personal experiences, including a 16-year old girl who testified about her daily struggle to fit in as a teenager with a severe hearing loss and how much she wants to be able to attend an open-captioned movie with her friends on opening night.

The third public hearing was held on January 10, 2011, in San Francisco, California, and also was webcast live.

Transcripts and on-demand video rebroadcasts of the three hearings are available on the Department's ADA Website, www.ada.gov.

(Hilton Worldwide, continued)

Inn, Hampton Inn, Homewood Suites, Embassy Suites Hotels, Home2Suites, and Doubletree Hotels.

The consent decree is precedent-setting in three ways: this is the Department's first case in which a franchisor has agreed to impose ADA requirements on franchisees; it is also the first case that sets out comprehensive standards for making a hotel reservations system accessible; and is the first case in which a hotel chain has agreed to provide specific

information on its website about the accessible features of guest rooms and make its online reservations system accessible.

All HWI-owned hotels built after January 26, 1993, as well as all HWI-managed and franchised hotels built since then that experience a "triggering event," will be required to conduct an accessibility survey of its facilities and certify to an HWI-hired ADA consultant that the hotel complies with the ADA

requirements specified in the survey. In the event the survey identifies barriers to access, the hotel will be required to develop a plan to comply with ADA requirements and submit the plan to the ADA consultant for review. The consultant will monitor surveys and plans and can conduct on-site inspections to verify ADA compliance. He or she will also file a report annually with the court. The survey requirements for franchised and managed hotels will be triggered by a new franchise or management agreement, a renewal or extension of a franchise agreement, or a change of ownership. It is anticipated that approximately 900 of the 2,200 Hilton branded hotels in the United States built after 1993 will undergo an accessibility survey during the term of the decree.

Hilton's ADA consultant will also review HWI's prototype hotel design plans to ensure that they meet ADA requirements. In addition, HWI will amend the standards it imposes on the hotels it owns, manages, or franchises to require that they comply with the ADA, get an ADA compliance certificate from an architect when they build a new facility, train all employees on the ADA, and designate an ADA contact person at each hotel. This provision will affect 2,800 hotels in the United States.

(Hilton Worldwide, continued)

HWI's reservations system will be improved so individuals with disabilities can learn what amenities are available (for example, whether an accessible room has a roll-in shower or an accessible tub) when reserving by telephone or online. Customers with disabilities will also be able to guarantee a reservation as easily as other customers. HWI will also pay a civil penalty of \$50,000 to the United States.

"The ADA protects the right of people with disabilities to stay in accessible hotel rooms, and to reserve those hotel rooms through the same convenient systems as everyone else," said Thomas E. Perez, Assistant Attorney General of the Civil Rights Division. "Persons with disabilities who travel for pleasure or business must be able to count on getting the accessible room they reserved, and the hotel must provide the choice of amenities that everyone comes to expect from a major national hotel chain like Hilton."

TWO LARGEST MOVIE THEATER COMPANIES AGREE TO IMPROVE ACCESSIBILITY AND ENHANCE VIEWING EXPERIENCE IN STADIUM-STYLE THEATERS

Regal Entertainment Group, America's largest movie theater company with more than 6,700 screens nationwide, and AMC Entertainment, Inc., the second largest company with more than 5,300 screens, recently entered into consent decrees with the Department resolving claims that they violated the ADA by failing to provide patrons who use wheelchairs with comparable lines of sight relative to other movie patrons. These consent decrees will improve the movie-going experience for people who use wheelchairs and their companions at AMC and Regal stadium-style theaters across the country.

The consent order negotiated with AMC, which was approved by the federal court in Los Angeles on November 29, 2010, and the renewed consent order negotiated with Regal, which was endorsed by the federal court in Boston on December 9, 2010, have similar accessibility provisions. With respect to existing stadium-style theaters (as well as stadium-style theaters acquired during the terms of the decrees), both companies have agreed to make sure that a specified percentage of auditoriums provide wheelchair spaces and companion seating in the stadium section. AMC and Regal also will, as needed,

relocate wheelchair seating from the front row to locations further back from the screen and otherwise ensure that movie patrons who use wheelchairs enjoy an unobstructed view of the screen. Moreover, all stadium-style theaters opened by AMC or Regal during the respective five- and three-year terms of these consent decrees will be constructed in accordance with design requirements that place accessible seating near the middle of the auditorium. AMC also will pay \$25,000 in civil penalties to the United States and a total of \$50,000 in monetary damages to individual complainants.

Stadium-style theaters were introduced in the United States in the mid-1990's. They offer superior lines of sight and a better movie-going experience for most moviegoers compared with previous theater designs. In early stadium theater designs, accessible seating was often located at or near the very front of the auditoriums, which resulted in uncomfortable and distorted views of the screen for patrons with disabilities and their companions seated in these locations. The two recent consent decrees culminate the Department's efforts over more than ten years to ensure that movie patrons with disabilities have equal access to the enhanced viewing experience of stadium-style theaters.

OREGON HOTEL AGREES TO ACCEPT NON-DRIVER IDENTIFICATION

On September 10, 2010, the American Hospitality Inn in Portland, Oregon, entered into a settlement agreement with the Department resolving a complaint from a man who is blind who, when registering for a room at the hotel, produced a state-issued identification card and a Veteran's Administration identification card but was turned away because the desk clerk refused to accept anything other than a driver's license for identification. Under the terms of the settlement, the hotel will adopt a formal policy on acceptable forms of identification as well as a policy on acceptable treatment of people with disabilities who use service animals and will pay \$1,000 in compensatory damages to the complainant.

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, 32, and 37.)

Since June 10, 2010, six local governments entered into settlement agreements with the Department under the PCA initiative. The new agreements are with:

- Fort Myers, Florida
- Muskegon, Michigan
- Newport, Rhode Island
- Pearl River County, Mississippi
- Pomfret, Connecticut
- Wilson County, North Carolina

Did you know...

Settlement agreements and other information about Project Civic Access are available at www.ada.gov/civiac.htm

NEW HAMPSHIRE TOWN AGREES TO MAKE ITS FACILITIES ACCESSIBLE

On October 26, 2010, the Town of Wolfeboro, New Hampshire, entered into a settlement agreement with the Department to resolve an allegation that town programs and facilities violated the "program access" requirements of title II of the ADA. The town agreed to make a host of architectural changes to improve physical access to a variety of town facilities, including the town hall, public safety building, library, and community center. The agreement sets forth changes that the town made during the course of the investigation and establishes a three-year timetable for the completion of additional changes.

RECENT ACTIVITIES TO ENFORCE OLMSTEAD DECISION

On October 12, 2010, the Department filed a Statement of Interest in Boyd v. Herrmann-Steckel, a lawsuit challenging the State of Alabama's refusal to provide community-based services for a young man with quadraplegia who currently resides in a nursing home. The facility's restrictions and conditions make it difficult for him to pursue his graduate studies at a local state university. The Department's brief, filed in the federal court in Montgomery, Alabama, argued that the plaintiff is suffering irreparable harm and should be provided with community-based services while the case is pending.

On October 15, 2010, the Department filed a Statement of Interest in Hiltibran v. Levy, a lawsuit challenging the State of Missouri's refusal to provide incontinence supplies, particularly incontinence briefs, for four individuals with disabilities who live in the community with their families and have medical incontinence. The state refuses to provide these supplies in the community, but will provide them if the plaintiffs enter a nursing home – at a cost approximately 20 times the cost of providing the supplies in the community. The Department's brief, filed in the federal court in Kansas City, Missouri, argued that the

plaintiffs are likely to win the lawsuit and should be provided with the needed supplies while the case is pending.

Since 2009, the Department has filed Olmstead complaints in Arkansas and Georgia, moved to intervene in cases in Florida, New Jersey, and

New York; filed seven amicus briefs in cases in California (2), Connecticut, New Jersey, North Carolina, Pennsylvania, and Virginia; and filed ten statements of interest in cases in Alabama, California, Florida (2), Georgia, Illinois (3), Missouri, and North Carolina.

FLORIDA COUNTY PAYS \$400,000 TO RESOLVE FHA LAWSUIT

On October 25, 2010, Polk County, Florida, entered into a consent decree with the Department resolving a lawsuit filed on September 30, 2010, alleging that the county violated the Fair Housing Act (FHA) when it denied New Life Outreach Ministries the right to operate a faith-based transitional residency program in Lakeland, Florida, for homeless men with disabilities, including those in recovery from drug and alcohol abuse. The county had originally approved the project, but subsequently reversed itself after community opposition arose because of the disabilities of the residents.

Under the terms of the consent decree, which was approved by the federal court in Tampa on October 30, the county will pay \$280,000 in compensatory damages to New Life, up to \$80,000 in compensatory damages to individuals who were forced to relocate from New Life's facility as a result of the county's conduct, and a civil penalty of \$40,000 to the United States. The consent decree also prohibits the county from further discrimination and requires county employees who have responsibilities related to zoning and land-use to receive fair-housing training.

"Equal access to housing is a basic necessity and a civil right, and the Fair Housing Act guarantees that all individuals can access that right free from discrimination," said Assistant Attorney General Thomas E. Perez. "This settlement will ensure that the equal housing opportunities required by law are available to all citizens of Polk County and send a message to other states and municipalities that we have no tolerance for discrimination against persons with any type of disability."

DEPARTMENT BRIEF EXPLAINS FHA RULES REGARDING ASSISTANCE ANIMALS

On November, 2, 2010, the Department filed a friend-of-the-court brief on behalf of the plaintiffs in Fair Housing of the Dakotas v. Goldmark Property Management Co., an FHA case pending in the federal court in Fargo, North Dakota. Goldmark manages more than 10,000 apartment units throughout North Dakota, Minnesota, Iowa, and Nebraska, serving over 25,000 residents a year. The plaintiffs are a fair housing organization and five individuals from Bismarck and Fargo, North Dakota, and Moorhead, Minnesota, who have mental disabilities and use assistance animals.

The lawsuit challenges policies and practices on assistance animals that apply in Goldmark's North Dakota region, which encompasses 7,600 apartment units in North Dakota and part of western Minnesota. Goldmark requires tenants with disabilities who use an assistance animal that is not specially trained, such as an emotional support or companion animal, to pay an extra non-refundable deposit of several hundred dollars, a one-time reasonable accommodation request fee, and a monthly fee for the animal, and to obtain \$100,000 in liability insurance. Goldmark does not impose these requirements on tenants with disabilities who use specially trained animals, such as guide dogs or hearing dogs.

In its brief, the Department explained that 1) the FHA requires landlords to make reasonable accommodations to their normal policies in cases where people with disabilities use assistance animals, regardless of whether those animals have special training; 2) the ADA regulation on service animals, which requires that animals be trained, does not apply to residential settings governed by the FHA; 3) under the FHA, generally applicable fees, such as pet fees, must be waived when necessary to provide tenants with disabilities an equal opportunity to use and enjoy their residence; 4) while the FHA allows landlords to recover the cost of damage caused by a tenant's assistance animal, Goldmark has not established a connection between its fees and damages caused by tenants' assistance animals; and 5) Goldmark's policy discriminates against tenants with mental disabilities who use emotional support animals because it imposes fees and other requirements not imposed on tenants with disabilities who use trained assistance animals.

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.

In this issue, we highlight complaints about exercise and sports facilities that have been successfully mediated.

- A person with a mobility disability complained that a Texas golf course refused to allow golfers with disabilities to take golf carts off the path. The golf course established a policy allowing golfers with disabilities to travel off-path and trained all staff on the new policy and the ADA.

- In Colorado, a golfer with a mobility disability complained that a golf course refused

(Mediation, continued)

to allow her to take her golf cart off the path and that staff questioned her about her disability. The course reaffirmed its policy of allowing golfers with disabilities to travel off path without being questioned about their disability, and will provide annual staff training on the existing policy and how best to interact with customers with disabilities.

- A person with disabilities that make walking long distances difficult complained that a Texas golf course refused to allow golfers with disabilities to take golf carts off path. The golf course changed its policy to allow golfers with disabilities to take golf carts off path, installed signage explaining the new policy, and published the new policy in its newsletter.

- In Illinois, the father of a child with autism complained that a miniature golf center refused to allow him to accompany his child on the golf course without paying, even though he was going to assist the child, not play golf himself. The center changed its policy and agreed to waive fees for individuals assisting golfers with disabilities.

- In South Carolina, an individual complained that a fitness center revoked her membership because she has

Tourette Syndrome. The fitness center reinstated the complainant's membership and posted an informational notice about Tourette Syndrome at the front desk at the complainant's request.

- In Connecticut, a person with a mobility disability complained that a swimming pool open to the public at a private university 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.

- In Oregon, the parent of a child who is deaf complained that an athletic organization refused to provide a sign language interpreter for the child during a tournament. The organization changed its policy and developed new procedures for providing effective communication, including providing sign language interpreters for tournament participants upon request. The organization also added a section in its participant application form for individuals to request needed disability-related services. The new policy on effective communication and use of the revised application form has been instituted in all 50 states.

RECENT OUTREACH ACTIVITIES

- On October 6, 13, and 27, staff provided training on issues raised by the Department's new title II and III regulations at a series of webinars sponsored by the National Association of ADA Coordinators.

- On October 25, staff gave a presentation on the new ADA title II regulations at a conference of Maryland State Judicial ADA Coordinators in Annapolis, Maryland. The presentation included an overview of the new ADA Standards for judicial facilities and addressed new

requirements for service animals, mobility devices, and effective communication.

- On October 27, staff provided training on the legal requirements of titles II and III of the ADA to approximately 50 disability services coordinators, administrators, educators, and project directors who receive funding from the U.S. Department of Education to develop and implement accessibility initiatives in higher education settings. The training, held in Washington, DC, included representatives from 23 public and private colleges and

(Outreach, continued)

universities, including “open” universities, from around the country.

■ On November 3, staff provided training on the new ADA title II regulations for staff of the regional Offices for Civil Rights of the Department of Education and Department of Health and Human Services. The training, held in Denver, Colorado, focused on the service animal and miniature horse provisions in the new regulations.

■ On November 4, staff gave a day-long presentation on the new ADA regulations at a conference sponsored by the Mid-Atlantic DBTAC in Silver Spring, Maryland.

■ On November 9, staff participated in a webinar on Olmstead and Nursing Home issues facilitated by the Centers for Medicare and Medicaid Services’ PASRR Technical Assistance Center and the National Association of PASRR Professionals. PASRR requires preadmission screening and resident review to protect individuals with serious mental illness or mental retardation from inappropriate placement in nursing facilities.

■ On November 9, staff gave a presentation on the new ADA regulations for the National

Parks and Recreation Association meeting in Chicago, Illinois. The audience included approximately 150 parks and recreation managers, risk managers, disability advocates, and representatives from the Illinois Attorney General’s office.

■ On November 15, staff gave a presentation at the quarterly meeting of the Department of Defense/Veterans Affairs Federal Recovery Coordinator Program in Bethesda, Maryland, for Federal Recovery Coordinators. These are people stationed at four military hospitals around the country who work with seriously wounded and ill service members, veterans, and family members to identify services needed to return to duty or re-enter the community as private citizens following disability. The presentation provided an overview of the ADA as it relates to service members who have acquired disabilities in Iraq and Afghanistan.

■ On November 16, staff participated in two panel discussions at a forum jointly sponsored by the Global Initiative for Inclusive Information Communication Technologies and the Elliott School of International Affairs at George Washington University in Washington, DC. Staff

addressed policy and technical challenges in ensuring the accessibility of information and communication technologies under the United Nations Convention on the Rights of Persons with Disabilities. Attendees included Elliott School students and faculty and invitees from various federal agencies, corporations, and non-governmental organizations.

■ On November 16, staff discussed the Department’s four ADA Advance Notices of Proposed Rulemaking on an audio conference sponsored by the Disability and Business Technical Assistance Centers. Over 200 people at 56 sites participated in the audio conference.

■ On November 16, staff gave a presentation on DOJ’s Olmstead enforcement activities at a joint conference of the National Association of State Mental Health Program Directors and the National Association of State Directors of Developmental Disabilities Services, held in Alexandria, Virginia.

■ On November 16, staff gave a presentation on the new ADA Title II regulation at a meeting of the Association of Federal External Civil Rights Specialists and Officers in Washington, DC.

(Outreach, continued)

■ On November 17 and 18, staff gave presentations on the new ADA regulations at a conference sponsored by the Great Lakes ADA Center in Minneapolis, Minnesota. The audience on the 17th included government officials, business owners, and representatives of disability and service organizations. On the 18th, the audience was comprised of members of the Great Lakes Center's state affiliate steering committee.

■ On November 30, staff gave a presentation at the 120th International Association of Fairs and Expositions annual convention in Las Vegas, Nevada. The presentation focused on the new ADA regulations and Standards as they apply to public fairs and expositions.

The convention was attended by approximately 5,000 people, including employees, volunteers, concessionaires, and ride operators who participate in state and county fairs around the country.

■ On December 2, staff participated in a webinar hosted by the International Association of Venue Managers to discuss the new ADA regulations and Standards as they apply to assembly areas. Participants included facility managers for stadiums, arenas, performing arts centers, and convention centers.

■ On December 9, 2010, staff participated in a webinar hosted by the American Bankers' Association to discuss the new ADA regulations and Standards

as they apply to banking institutions, including provisions for accessible ATMs.

■ On December 13-14, 2010, staff participated in two panel discussions at the Interagency Disability Educational Awareness Showcase (IDEAS), held at George Washington University in Washington, DC. Staff addressed OMB's memorandum on Section 508 and DOJ's Section 508 Survey.

■ On December 14, staff gave a presentation on DOJ's Olmstead enforcement activities at the National Health Law Project in Washington, DC.

■ On December 16, staff participated in a webcast sponsored by the American Public Works Association to discuss ADA transition plans.