



Disability Rights online News

U.S. Department of Justice
Civil Rights Division

March 2011
Issue Forty One

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.

In this Issue:

ADA	1, 4 - 5
Fair Housing	1, 2 - 3
ADA Mediation	6 - 7
ADA Outreach	7 - 8

NATIONWIDE PRE-SCHOOL PROVIDER AGREES TO STOP DISCRIMINATING AGAINST CHILDREN WITH AUTISM SPECTRUM DISORDERS

On January 14, 2011, Nobel Learning Communities, Inc. (NLC), a private, for-profit company that operates a network of more than 180 preschools, elementary schools, and secondary schools throughout the country, entered into a settlement agreement to resolve the Department's lawsuit alleging that NLC violated the ADA by excluding children with autism spectrum disorders and other disabilities from its programs. (See previous article in issue # 31.) NLC operates schools in Arizona, California, District of Columbia, Florida, Illinois, Maryland, Nevada, New Jersey, North Carolina, Ohio, Oregon, Pennsylvania, South Carolina, Texas, Virginia, and Washington

(Continued on page 2)

PROPERTY OWNER AND MANAGER PAY RECORD \$1.25 MILLION TO SETTLE FAIR HOUSING LAWSUIT

On December 22, 2010, Warren Properties, Inc., Warren Village (Mobile) Limited Partnership, and Frank R. Warren entered into a consent decree with the Department resolving a Fair Housing Act (FHA) lawsuit alleging that the defendants failed to grant a request by a tenant with paraplegia to move from a second-floor apartment to one on the ground floor in an apartment complex in Mobile, Alabama. The suit also alleged that the tenant suffered severe injuries as a result of falling down the stairs twice. The complex is owned by Warren Village (Mobile) Limited Partnership and managed by Warren Properties, Inc. (See previous article in issue # 31.)

Under the consent decree, which was approved by the federal court in Mobile, Alabama, on December 27, 2010, the defendants

(Continued on page 2)

(Nobel Learning, continued)

under a variety of names, including Chesterbrook Academy, Merryhill School, and Evergreen Academy. The federal court in Philadelphia approved the agreement on January 18, 2011.

Under the agreement, NLC will implement and publicize a policy negotiated with the Department that prohibits discrimination on the basis of disability and requires its schools to provide reasonable accommodations for children with disabilities; train regional executives, principals, and assistant principals on the policy; appoint an ADA compliance officer to oversee compliance with the policy; and pay a total of \$215,000 in compensatory damages to families indentified as victims of NLC's discriminatory behavior.

"It is illegal under the ADA to discriminate against children with disabilities. Just like public schools, private schools must make reasonable modifications of policies to permit children with disabilities to participate fully in the programs they offer," said Thomas E. Perez, Assistant Attorney General for the Civil Rights Division. "This agreement ensures that children will not be denied quality preschool and other educational opportunities based upon their disabilities."

"No child should be discriminated against on the basis of disability," noted Zane David Memeger, U.S. Attorney for the Eastern District of Pennsylvania. "All children should have an equal opportunity to attend any school for which they qualify, and schools must make reasonable modifications to policies, practices or procedures in accordance with the law."

(Warren Properties, continued)

must pay \$1,195,000 to compensate the tenant, along with an additional \$55,000 in fees and costs to the government. This is the largest settlement ever obtained by the Department in an individual housing discrimination case. In addition, the defendants will adopt a policy prohibiting discrimination on the basis of disability, attend fair housing training, and hire a reasonable accommodation facilitator to handle tenants'

requests for accommodations in 85 properties managed by Warren Properties, Inc., which contain 11,000 rental units in fifteen states.

"Property owners and managers have no excuse for violating our nation's fair housing laws by refusing to accommodate people with disabilities," said Assistant Attorney General Thomas E. Perez. "Equal access to housing in the United States is a fundamental right,

Did you know...

The ADA applies to private pre-schools, elementary and secondary schools, colleges, universities, and other private educational institutions.

and this nation will not tolerate discrimination in housing."

Kenyen R. Brown, U.S. Attorney for the Southern District of Alabama, stated, "This is the second major settlement of a housing discrimination case engineered by our office in the last year. We will continue to make civil rights and housing litigation a major priority of this office."

"Persons with disabilities have a right to the reasonable accommodations they need to function and live as others do," said John Trasviña, Department of Housing and Urban Development (HUD) Assistant Secretary for Fair Housing and Equal Opportunity. "Denying them that right violates the Fair Housing Act and HUD and the Department of Justice are committed to ensuring that property owners meet their responsibility to comply with the law."

NORTH CAROLINA AND MICHIGAN TOWNS AGREE TO RESOLVE LAWSUITS AND ALLOW GROUP HOMES FOR PEOPLE IN RECOVERY

■ On January 10, 2011, the town of Garner, North Carolina, and the town's Board of Adjustment entered into a consent decree with the Department resolving a lawsuit alleging that the town violated the FHA by refusing to allow Oxford House, Inc., to open a group home for eight people. Oxford House is a non-profit organization that assists in the development of self-governing houses for people in recovery from drug and alcohol addictions. The town permits up to six people to live in a group home, but refused to consider requests by Oxford House to increase the number to eight as a reasonable accommodation under the FHA. (See previous article in issue # 31.)

Under the terms of the decree, which was approved by the federal court in Raleigh on January 19, 2011, the defendants will grant Oxford House's reasonable accommodation request, train town officials on the requirements of the FHA, and pay \$105,000 in monetary damages to Oxford House and \$9,000 to the government as a civil penalty.

"The Fair Housing Act requires equal access to housing for persons with disabilities," said Assistant Attorney General

Thomas E. Perez. "The Justice Department will continue to ensure the right of people with disabilities to live in housing appropriate for their needs."

"This settlement demonstrates the high priority that our office gives to enforcement of all federal civil rights statutes, including the Fair Housing Act," stated George E.B. Holding, U.S. Attorney for the Eastern District of North Carolina.

■ On February 10, 2011, the federal court in Grand Rapids, Michigan, approved a consent decree resolving a lawsuit alleging that Dalton Township, Michigan, violated the FHA and the ADA by ordering an existing "Sober House" for people recovering from drug and alcohol addiction to cease operation, denying a special use permit for the home, denying a request that the residents be treated as a family under the zoning ordinance, and prohibiting the home from taking in any new residents. (See previous article in issue # 38.)

Under the terms of the decree, the township will provide training on the FHA and ADA for officials involved in land use and zoning decisions; develop a process by which people may request

reasonable accommodations in zoning and land use requirements on the basis of disability; permit the home to continue operating at its current location for up to nine residents; pay \$55,000 in compensatory damages to the owner of the group home; and pay \$7,500 to the United States as a civil penalty.

"The Fair Housing Act and the Americans with Disabilities Act ensure that persons with disabilities, including those recovering from addiction, can live in a community of their choosing free from discrimination," said Assistant Attorney General Thomas E. Perez. "The Justice Department will continue its vigorous enforcement of federal laws to protect the civil rights of persons with disabilities across the country."

"Cities and towns have an obligation to make reasonable accommodations to their zoning policies when they are necessary to afford people with disabilities the same housing opportunities that others enjoy," said Assistant Secretary John Trasviña. "HUD will continue to work with the Justice Department to enforce the Fair Housing Act to ensure equal housing opportunities for people with disabilities."

WORLD FAMOUS NEW YORK METROPOLITAN OPERA MAKES ACCESSIBILITY IMPROVEMENTS

On January 13, 2011, the Department simultaneously filed a lawsuit and a consent decree in the federal court in New York, New York, resolving claims against the Metropolitan Opera (the Met), a not-for-profit performing arts organization founded in New York City in 1883 that has been a tenant of the opera house in Lincoln Center since 1966. During the investigation, the Met installed additional wheelchair and companion seating; renovated its restrooms, concession stands, and signage to make them accessible; installed additional accessible drinking fountains; installed a handrail along the wall from the orchestra level elevators to the stairwells leading to the restrooms; and eliminated access barriers in three of its six elevators.

The consent decree, which was approved by the federal court in Manhattan the same day it was filed, acknowledges the Met's cooperation during the investigation. It requires the Met to eliminate barriers in its remaining three elevators; maintain the wheelchair and companion seating that was added; revise its policy for selling unsold wheelchair and companion seats to the general public; and revise its emergency evacuation procedures to ensure that all individuals with disabilities receive necessary information and assistance.

"The comprehensive corrective measures agreed to by the Met ensure that people with disabilities will have an equal opportunity to enjoy the performances offered by one of New York City's finest cultural institutions," said Preet Bharara, United States Attorney for the Southern District of New York. "We are pleased that the Met has worked cooperatively with our Office to resolve this matter."

COSMETOLOGY SCHOOL IN PUERTO RICO WILL ENROLL APPLICANT WITH HIV

On December 2, 2010, Modern Hairstyling Institute, Inc., a cosmetology school in Bayamon, Puerto Rico, entered into a settlement agreement with the Department resolving an allegation that it refused to enroll an applicant who is HIV-positive, based on unfounded fears and stereotypes about the disease. The Institute agreed to enroll the complainant, pay her \$8,000 in damages, and pay a civil penalty of \$5,000 to the United States.

TWO ADDITIONAL NEW YORK CITY HOTELS AGREE TO IMPROVE ACCESSIBILITY

Two additional hotels in Manhattan's theater district, 752-room Millennium Broadway Hotel and the 310-room Renaissance Hotel, have entered into settlement agreements to improve accessibility for customers with disabilities, under the hotel compliance initiative being conducted by the U.S. Attorney's office in Manhattan. The hotels will evaluate their current accessible rooms and make any modifications necessary to comply with the ADA Standards for Accessible Design; make additional rooms accessible to comply with the total number of accessible rooms required by the ADA; provide visual alarms and communication devices for people with hearing disabilities; disperse accessible rooms among all classes of sleeping accommodation; and establish written policies and procedures for providing services to guests with disabilities. This brings the number of hotels involved in the initiative to 37--32 resolved by settlement agreements and 5 resolved by consent decrees after lawsuits were filed. (See previous articles on this initiative in issues 16, 17, 22, 26, 29, 30, 32, and 36).

RECENT ACTIVITIES TO ENFORCE OLMSTEAD DECISION

On December 20, 2010, the Department filed a Statement of Interest in Lee v. Dudek, a class action lawsuit against the State of Florida pending in the federal court in Tallahassee. The plaintiffs are Medicaid-eligible individuals with disabilities who reside in nursing homes but desire to and are capable of residing in the community. Addressing the parties' cross motions for summary judgment, the Department argued that the plaintiffs are entitled to summary judgment with respect to the State's lack of a fundamental alteration defense and that the State's motion for summary judgment against the plaintiffs should be denied because it is premised on factual disputes and legal arguments that lack merit.

On December 27, 2010, the federal court in Kansas City, Missouri, issued a preliminary injunction in Hiltibran v. Levy, a lawsuit challenging the State's refusal to provide needed incontinence supplies for individuals with disabilities who live in the community. The plaintiffs allege that Missouri's policy to provide incontinence supplies for nursing home residents, but deny the same supplies for individuals who reside in the community, places them at risk of institutionalization in violation of the ADA's integration mandate and the Supreme Court's Olmstead

decision. The state-wide injunction requires the state to provide incontinence supplies to all Medicaid-eligible adults living in the community who need them. The Department previously filed a Statement of Interest in support of the plaintiffs. (See article in issue # 40.)

On January 26, 2011, the Department filed a Statement of Interest in the federal court in Seattle, Washington, in M.R. v. Dreyfus, a case filed by a class of 45,000 Washington residents who receive personal care services through Medicaid, seeking to prevent scheduled

reductions in personal care hours due to budget concerns. The plaintiffs argue that the impending reductions will force them into institutions in violation of the Olmstead decision and the ADA's integration mandate. In its brief, the Department argued that the state improperly ordered cuts in Medicaid benefits without individual assessments, the cuts put plaintiffs at risk of institutionalization, and the court should grant the plaintiffs' motion for a preliminary injunction to prevent the cuts from being implemented while the case is pending.

NEW HAMPSHIRE HOSPITAL WILL PROVIDE EFFECTIVE COMMUNICATION

On November 23, 2010, the Department simultaneously filed a lawsuit and a consent decree in the federal court in Concord, New Hampshire, resolving claims against HCA Health Services of New Hampshire, Inc., d/b/a Portsmouth Regional Hospital, alleging that the hospital failed to provide effective communication to deaf patients on multiple occasions and frequently relied upon unqualified friends or relatives to serve as interpreters both in emergency room and inpatient settings. Under the terms of the decree, which was signed by the court on December 2, 2010, the hospital agreed to adopt a comprehensive effective communication program, including the appointment of a program administrator who will be responsible for coordinating the provision of effective communication services for patients who are deaf or hard of hearing. In addition, the hospital will pay a total of \$60,000 in damages to the three complainants and pay \$20,000 in civil penalties to the United States.

This is the fourth hospital in New Hampshire that has agreed to provide effective communication under a compliance initiative being conducted by the U.S. Attorney's office in New Hampshire.

ADA MEDIATION HIGHLIGHTS

The ADA Mediation Program is a Department-sponsored initiative intended to resolve ADA complaints in an efficient, voluntary manner. The mediation process is 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.

Spring is a great time to travel. In this issue, we focus on complaints against hotels, motels, and inns that have been successfully mediated.

■ A person who uses a wheelchair complained that a Georgia hotel was inaccessible. The hotel provided an accessible path of travel from its accessible parking to the accessible entrance; modified bathrooms in four guest rooms by installing grab bars, accessible sinks, and hand-held shower heads; acquired portable shower seats that can be secured in place; and installed

security viewers at accessible levels in the guest room doors. The hotel also trained staff on the ADA and accommodating guests with disabilities.

■ In Florida, an individual with a mobility disability complained that an inn refused to accept her reservation because she uses a service animal for balance. The inn agreed to modify its “no pets” policy to allow service animals, revised its website to reflect the new policy, trained current employees, and will train new employees on service animals and the ADA. The owner of the inn also apologized to the complainant.

■ In Virginia, two people who use wheelchairs complained that a hotel was inaccessible. The hotel modified guest rooms by removing curbs in roll-in showers and installing grab bars and sinks with knee clearance; reduced the opening force of the pocket door to the bathroom in one accessible guest room; installed a king-size bed in another accessible guest room; acquired portable shower seats that can be secured in place; and lowered grab bars and installed accessible dispensers and coat hooks in the public restrooms.

■ A person who uses a wheelchair alleged that a Washington, D.C., hotel failed to provide an accessible guest room, even though the hotel assured him that the room he reserved would be accessible. The hotel conducted an onsite evaluation of its accessible guest rooms and modified each room to ensure accessibility by widening bathroom doors and installing grab bars.

■ In Florida, a person who uses a wheelchair complained that, although he had reserved an accessible room, upon arrival he learned that the hotel did not have any accessible rooms, making it necessary for him to accept a standard room and use the portable toilet in his van. The hotel installed two fully accessible guest rooms, one with a roll-in shower. In addition, it developed a reservation system in consultation with the complainant to ensure that reservations for accessible guest rooms are held, and trained staff to confirm that guests’ accessibility requests are met. The owner of the hotel also apologized and refunded the night’s stay to the complainant.

(Mediation, continued)

■ In Florida, a person who uses a wheelchair complained that, although she made a reservation for an accessible room at a hotel, all accessible rooms were occupied when she checked in, so she was forced to stay elsewhere. The hotel agreed not to overbook accessible rooms and to train staff to ensure that all requests for accessible rooms are entered into the reservation system. In addition, the hotel apologized to the complainant and gave her a two-day complimentary stay.

■ In Illinois, a person who is deaf complained that a hotel was not accessible to people with hearing disabilities. The hotel agreed to have two portable communication kits available at all times and to provide ongoing ADA training for all employees. In addition, the hotel reimbursed the complainant for his room and provided \$200 in compensation.

■ A person who uses a wheelchair complained that a Washington, D.C., hotel failed to provide him safe egress from the building during a fire alarm. The hotel adopted a policy with detailed procedures for the emergency evacuation of guests with disabilities, including assigning specific evacuation duties to individual staff

members, providing ongoing two-way communication among assigned staff during emergencies, requiring staff training four times per year, and conducting mock evacuation drills two times per year.

■ In New York, a person who uses a wheelchair complained

that a hotel failed to provide an accessible bathroom in the designated accessible room. The hotel installed an adjustable hand-held shower, repositioned the grab bars, provided a portable shower seat, and installed the flush lever on the accessible side of the toilet tank.

RECENT OUTREACH ACTIVITIES

■ On January 8, staff gave two presentations at the sixth annual Southeast Regional Top Dog conference for guide dog users in Orlando, Florida. The presentations addressed the new ADA regulations for title II and title III pertaining to service animals and access to temporary housing and medical facilities, programs, and services by persons with disabilities accompanied by service animals.

■ On January 19, staff gave a presentation at the Department of Transportation (DOT) Forum on Air Travel by Individuals with Disabilities on the Department's ADA enforcement responsibilities. Representatives from other federal agencies, including the Access Board, the Transportation Security Administration, the Federal Aviation Administration, and other DOT components

also gave presentations at the Washington, DC, event. The audience included approximately 300 individuals with disabilities, representatives from disability rights organizations, airport managers, and airline industry representatives.

■ On January 19, staff gave a presentation on the Department's new ADA regulations at the Liberty & Independence for Everyone (LIFE) conference in Dover, Delaware. Attendees included consumers, family members, educators, non-profit organizations, and service providers for individuals with disabilities.

■ On January 20, staff conducted training on the new ADA regulations and 2010 Standards at the Texas Registered Accessibility Specialist Association annual

(Outreach, continued)

meeting in Round Rock, Texas. Approximately 100 Registered Accessibility Specialists attended the training.

■ On January 25, staff gave a presentation on Project Civic Access activities relating to curb ramps, sidewalks, pedestrian crossings, and transportation stops at the annual meeting of the Transportation Research Board in Washington, DC.

■ On January 29, staff gave a presentation at the American Corrections Association's winter workshop in San Antonio, Texas.

■ On February 23, staff gave a presentation and answered questions about the Department's new ADA regulations and new definition of service animals at the California State Board of Guide Dogs for the Blind in Sacramento, California.

Participants included guide dog users, consumer organizations, disability organizations, law enforcement, state and local government agencies, and the business community.

■ On February 24, staff gave an update on ADA activities and answered questions at a meeting of executive directors of the DBTAC: ADA Centers in Washington, DC.