



Enforcing the ADA:

A Status Report from the Department of Justice

January - March 2007

This Status Report covers the ADA activities of the Department of Justice during the first quarter (January - March) of 2007. 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. Decisions

Third Circuit Allows Private Title II Suit Against State University -- The U.S. Court of Appeals for the Third Circuit ruled in Bowers v. National Collegiate Athletic Association that a claim against

the University of Iowa in a suit brought by a student alleging that he was denied an athletic scholarship because of his learning disability was not barred by sovereign immunity. The University of Iowa asserted that the ADA's provision allowing private suits against States was unconstitutional because the ADA creates rights for people with disabilities that go too far beyond the rights established in the Constitution. The Department intervened in the Third Circuit to defend the constitutionality of the ADA and private suits brought to assert ADA rights against State entities, including public State universities. The court of appeals agreed with the Department, holding that, given the past record of pervasive discrimination against people with disabilities, the ADA abrogation of immunity is appropriate in the context of public education and that, therefore, the plaintiffs claims against the University of Iowa should not be dismissed.

Federal District Court Rules Private Title II Prison Claim Barred by Sovereign Immunity -- The U.S. District Court for the Eastern District of Virginia in Spencer v. Earley dismissed a title II suit brought by an inmate, who has both physical and mental

disabilities resulting from a traumatic brain injury, in which he complained of a series of incidents involving unequal treatment and failure to accommodate. The court ruled that the ADA's abrogation of State immunity was unconstitutional in this case because the ADA creates rights that go too far beyond the restricted constitutional rights that exist in the prison context. The Department intervened to argue that allowing suits against State prisons was an appropriate use of congressional power to enforce the equal protection guarantees of the Fourteenth Amendment given the history of unconstitutional treatment of inmates with disabilities.

DOT Transit Station Regulations Again

Held Invalid -- The U.S. District Court for the Northern District of California ruled for the second time in George v. Bay Area Rapid Transit District that the U.S. Department of Transportation's ADA accessibility regulations for transit stations are invalid. The plaintiffs, two persons with vision disabilities, brought suit alleging that defendant Bay Area Rapid Transit District (BART), a public entity providing public transportation in the San Francisco Bay area, violated title II because public entrances at four BART stations were inaccessible to persons who are blind or who have low vision. BART argued that it provided an accessible route in compliance with DOT's ADA regulations and therefore it was in compliance with the ADA. The district court held that, although BART complied with the DOT regulations, it was still liable under the ADA because the DOT regulations were arbitrary and capricious in that they had ignored the needs of persons with vision disabilities. BART appealed, and the Department filed an amicus brief in the U.S. Court of Appeals for the Ninth Circuit arguing that DOT's ADA regulations were valid because the government carefully considered the needs of people who are blind or who have low vision and issued

rules that, taken as a whole, address the obligation of public transportation facilities to provide access to these individuals. The Ninth Circuit did not reach the issue of whether the regulations were valid, but held that the United States was an indispensable party and sent the case back to the district court. The United States intervened in the district court and filed briefs defending the validity of the regulations. The district court again held that DOT's regulations were invalid because they do not adequately address the accessibility needs of people with vision disabilities in public transit stations.

2. 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

Disabled in Action of Pennsylvania v. SEPTA -- The Department filed an amicus brief in the U.S. Court of Appeals for the Third Circuit in Disabled in Action of Pennsylvania v. SEPTA, a suit alleging that the Philadelphia-area transit authority violated the ADA by failing to install elevators when it renovated a stairway at a subway entrance and an escalator at a subway exit. The court held that the statute of limitations began to run as soon as Disabled in Action (DIA) knew, or had reason to know, that SEPTA planned to make alterations that would not include installation of elevators and, therefore, dismissed the case because the plaintiffs had filed too late. On appeal the Department filed an amicus brief supporting DIA, arguing that the statute of limitations on a claim involving alterations to a transit station does not begin to run at the earliest until the alterations at issue have been completed.

B. Formal Settlement Agreements

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

Title II

Department Signs 153rd Agreement Under Project Civic Access -- The Department signed three new agreements with local government entities under Project Civic Access, the Department's wide-ranging initiative to work cooperatively with local governments to ensure that people with disabilities have an equal opportunity to participate in civic life, a fundamental part of American society. This brings to 153 the number of agreements signed with 143 communities. The Department has conducted Project Civic Access reviews in all 50 states, as well as Puerto Rico and the District of Columbia; and the 153 agreements are helping to improve lives and broaden opportunities for more than 3 million Americans with disabilities. The three new agreements are with --

- Pike County Library District, Kentucky
- Pike County Health Department, Kentucky
- Hernando, Mississippi

Project Civic Access was initiated to ensure that people with disabilities have an equal opportunity to participate in civic life. To carry out the project, Departmental investigators, attorneys, and architects survey state and local government facilities and programs across the country for the purpose of identifying modifications needed to comply with ADA requirements. Depending on the circumstances in each community, the agreements address specific areas where access can be improved, such as town halls and other government

offices, places where public meetings are held, police and fire stations, community centers, local parks and recreational facilities, emergency 911 services, government websites, and polling places.

Title III

Hampton Inn, Charleston, South Carolina --

The Department reached an agreement with John Street Associates, owner and operator of a Hampton Inn located in the historic district of Charleston, South Carolina, resolving a complaint filed by an individual alleging that during his stay at the hotel his mother was unable to use her guest room's shower due to the lack of maneuvering clearance and the lack of an accessible shower or tub. The hotel agreed to modify four existing designated accessible guest rooms and four additional guest rooms so that each is fully accessible to people with disabilities. The hotel will also modify the toilet rooms in the hotel's lobby to make them fully accessible, ensure that there are accessible routes into and throughout the hotel, provide accessible parking, and provide accessibility equipment such as TTY's, closed captioned televisions, and visual notification devices for guests who are deaf or hard of hearing. In addition, the hotel will provide ADA training to its staff.

Log Cabin Restaurant, Loudon, Tennessee --

The Department signed an agreement with the Log Cabin Restaurant resolving a complaint by a person with a mobility disability who alleged that she was asked to leave when she attempted to purchase a meal because the owners objected to the presence of her service animal. The restaurant owners agreed to post a notice that they do not discriminate on the basis of disability and that they welcome service animals. They will also provide training to current and future employees on carrying out this policy.

Viscount Hotel, Tucson, Arizona -- The U.S. Attorney's Office for the District of Arizona entered an agreement with Viscount Hotel Group, LLC, the owner and operator of the Viscount Hotel, resolving a complaint that the hotel's parking lot and open dining area were not accessible to people with disabilities. In addition to investigating the issues raised in the complaint, the Department conducted a compliance review of the hotel and identified additional accessibility problems. The owner agreed to remove barriers in the parking area, including connecting the accessible parking spaces to an accessible route; modify at least one telephone in the lobby to be accessible to people who use wheelchairs; make available to guests without charge a portable TTY for use at the public telephone bank in the hotel lobby area; remove barriers in the public toilet rooms located on the ground floor of the lobby; install proper signage at the elevators; remove physical barriers in seven designated accessible guest rooms; and modify five additional guest rooms to make them accessible to people who are deaf or hard of hearing.

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

A complainant with a seizure disorder alleged that he was refused reassignment to a lower bunk by corrections officers at a California prison, even though his medical record stated

he should be assigned to a lower bunk. The prison agreed to permanently reassign him to lower bunk/lower tier status, which will be reviewed annually by medical staff. Medical staff will also include documentation in the complainant's file to ensure that these arrangements are continued in the event he is transferred to a different facility.

A prisoner with a mobility disability complained that the authorities at a California prison failed to provide him with orthopedic shoes. Prison staff ordered a medical evaluation, made a referral to a podiatrist, and subsequently fitted the prisoner with orthopedic shoes and supports.

An inmate with no arms alleged that she was denied appropriate aids to assist her with daily life-care activities, including toileting and dressing while she was housed in a Kentucky prison. The correctional facility has since provided appropriate aids to assist the inmate with her daily life-care activities.

An individual who is morbidly obese and who uses a wheelchair alleged that an Arizona prison refused to provide a shower wand or a shower chair for his use. The prison agreed to provide the requested equipment.

An inmate with a psychiatric disability at an Arizona prison alleged that he was denied an opportunity to participate in an employment program on the basis of his mental health score, although he was otherwise qualified to participate in the employment program. The complainant has been reassigned to employment for special projects and is now satisfied.

A deaf inmate complained that for two years a correctional facility failed to provide sign language interpreters for the Alcoholics Anonymous, Narcotics Anonymous, and other programs he is required to attend. The correctional facility trained its staff on effective

communication requirements and now provides qualified sign language interpreter services and publishes a monthly interpreter schedule with a notice on how to request sign language interpreter services.

An inmate with a mobility disability alleged that she was denied placement in a Texas treatment program because the program was offered in a multi-storied facility and was not accessible to individuals with mobility disabilities. Successful completion of the treatment program was a requirement in order to receive a pardon or parole. Texas permitted the inmate to take an alternative treatment program.

An inmate who has diabetes and chronic circulation problems alleged that he was not receiving his medication on a daily basis because he was unable to stand for long periods of time during pill call at a Virginia prison. The complainant was recently assigned to another prison and provided a wheelchair to accommodate his inability to walk or stand for long periods of time; he is also now receiving his medication on a daily basis.

An inmate with a psychiatric disability at an Arizona prison complained that he had been denied an appropriate level of employment and pay solely on the basis of his mental health score. The prison assigned the complainant a new job at a higher pay rate.

An inmate who is hard of hearing complained that a Pennsylvania jail restricted his use of a text telephone (TTY) while other inmates had substantially greater access to the standard voice telephone. The jail changed its procedures so that access to a TTY by inmates who are deaf or hard of hearing is provided as often as access to the standard voice telephone is provided to other inmates.

Title III

An individual who is paraplegic and uses a wheelchair complained that toilet rooms at a Kansas mall were not accessible. The mall agreed to remedy barriers involving three sets of toilet rooms, a drinking fountain, and the mall entrances.

An individual with a mobility disability alleged that she was denied access to a doctor's office in Arizona because she uses a service animal. The doctor's office agreed to post a written policy of nondiscrimination and develop a two-hour training program for existing staff and new employees on the requirements of the ADA and appropriate ways of serving people with disabilities, including people who use service animals.

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

District of Arizona -- An individual with a mobility disability alleged that a local ranch where she boards her horse lacked an accessible route and other accessible features. The ranch agreed to remove the four-inch step at the main walkway leading to the ranch's office, reduce the height of the office door threshold, and replace the office door handle hardware. It also agreed to convert a women's restroom into a unisex accessible restroom by reducing the height of the entrance threshold, replacing door handle hardware, widening the doorway, replacing the lavatory faucet, insulating the drain pipes under the lavatory, modifying the toilet height, and installing grab bars.

A local government reported that a restaurant refused to remove barriers to access. The restaurant agreed to provide appropriate signage for its accessible parking spaces and modify the access aisles serving the designated accessible parking spaces so that they are level

in all directions with a two percent maximum cross slope. Additionally, the restaurant will post directional signage to the accessible route guiding individuals with disabilities to the nearest accessible entrance and install a curb ramp that does not extend into the access aisle.

An individual with low vision who uses a service animal alleged that, while shopping at a chain grocery store, employees harassed her by following her around the store and told her that her service animal was not allowed in the store. The grocery store agreed to modify its store policy concerning the definition of a service animal, and train current and new employees on the requirements of the ADA as it applies to persons with disabilities who use service animals.

District of Nebraska -- A deaf couple alleged they were denied sign language interpreters for several hearings to which they were a party at a Nebraska courthouse. When the judges became aware of the problem, they implemented procedures to provide interpreters in a timely manner for the remainder of the hearings. In addition, the State administrative office of the courts posted a notice in all State courthouses notifying citizens of the availability of auxiliary aids and services and providing a contact person for these services in each court.

Eastern District of Tennessee -- An individual with a disability complained that she was refused lodging at a hotel because she was traveling with her service animal. The hotel developed a written policy accepting guests with service animals, provided a copy of the policy to all employees, and displayed it in a conspicuous location by the hotel's front desk.

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 Maryland, an individual who is deaf complained that an automotive retail store refused to accept telephone calls placed through the telephone relay system. The company agreed to change its policy to accept relay calls, pay the complainant \$5,000, and make a \$5,000 donation to a national disability rights organization.
- A parent with Chronic Fatigue Syndrome complained that a California youth sports organization refused to modify its policy requiring every parent to volunteer at the team snack stand during the season. The organization modified its policy to allow parents with disabilities to volunteer for tasks other than the snack stand, including making phone calls and completing paperwork.

- In New York, an individual with an artificial knee and rheumatoid arthritis alleged that a courthouse failed to allow individuals with mobility impairments to use the elevator reserved for court personnel and attorneys. The courthouse reaffirmed its policy of allowing individuals with disabilities to use the restricted elevator, posted directional signage to the elevator, and retrained all staff regarding the court's policy. The courthouse is under renovation, which will provide a public use elevator in addition to the existing restricted elevator.
- In New York, a couple who are deaf complained that a doctor's office failed to provide an interpreter during a medical examination of their child. The office changed its policy to provide effective communication, including the use of sign language interpreters, and refunded the couple \$300 in office visit fees paid.
- A person who uses a wheelchair alleged that a Texas restaurant failed to provide accessible seating in the smoking section and that the bathrooms were inaccessible. Although the restaurant that was the subject of the complaint was slated to be closed, the chain agreed to survey restaurants nationwide and removed barriers in 86 of them.
- In New York, a person who uses a wheelchair alleged that a hotel failed to provide an accessible bathroom in the designated accessible guest room. The hotel installed an adjustable hand-held shower spray unit, repositioned the grab bars, provided a portable shower seat, and installed a flush control on the accessible side of the toilet tank.
- A person with a mobility disability alleged that a Florida doctor's office would not provide services while her service animal was present. The office established a written policy allowing full access for all patients who use service animals, provided staff training on the policy, and gave the complainant a 50 percent discount for future visits.
- In New York, a wheelchair user with a neurological disability that causes her to be unable to eat certain foods complained that an organization that provides in-home meals dropped her from the program because it would not modify its menu for her. The social service center resumed service, implemented a system to work with the complainant and others to identify individual dietary needs, and apologized to the complainant.
- A couple who are hard of hearing complained that a Florida movie theater did not have enough assistive listening devices and those they had often did not work. The theater complex, located in an area with a large elderly population, agreed to provide more than 40 assistive listening devices and to implement a policy to ensure that they are operable.
- In Texas, a wheelchair user complained that a restaurant was inaccessible. The restaurant installed a van-accessible parking space and ramp to the entrance of the restaurant and converted two restrooms into an accessible unisex restroom. The restaurant also apologized to the complainant, gave him five free dinners, and made a \$200 donation to a charitable organization.
- In Texas, a wheelchair user complained that a gas station did not provide assistance in pumping fuel. The station apologized, installed a sign and an intercom at the island closest to the building, trained its employees, and implemented a policy to ensure that pumping assistance is provided when there are at least two employees at the station.

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. Our activities include providing direct technical assistance and guidance to the public through our 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 Business Connection Marks Fifth Anniversary -- The ADA Business Connection, which completed its fifth year in January 2007, continues to promote improved access to businesses for people with disabilities and to introduce businesses to a world of new customers. The program's most visible component is the ADA Business Connection Leadership meeting, hosted by the Assistant Attorney General for Civil Rights. Since the program's initiation in 2002, 20 meetings have been held around the country, bringing together local representatives from businesses and organizations of people with disabilities to discuss the importance of building the business case for accessible products and services, providing staff training, and honing effective marketing techniques. In addition to the meetings, the program develops technical assistance materials called ADA Business Briefs and the Expanding Your Market series that address ADA issues of specific interest to businesses. All of these publications, along with an online course, video, and many other documents, can be found at the ADA Business Connection web page on the ADA Website, www.ada.gov.

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 on their website (www.usdoj.gov/crt/foia/crt.htm). A link to search or visit this website is provided from the ADA Website.

ADA Tool Kit Expands -- The Department of Justice issued the third and fourth chapters of “The ADA Best Practices Tool Kit for State and Local Governments,” which is designed to assist State and local officials in complying with title II of the ADA. The new chapters address “General Effective Communication Requirements” and “9-1-1 and Emergency Communications Services.” The Tool Kit, which is being issued in installments on the Department’s ADA Home Page at www.ada.gov, guides State and local government officials in identifying and resolving problems that prevent people with disabilities from gaining equal access to State and local government programs, services, and activities. It will also teach State and local officials how to conduct surveys of their buildings and facilities to identify and remove architectural barriers to access. After all installments have been released, the Department will provide training for State and local officials on how best to use the Tool Kit to improve accessibility. While State and local governments are not required to use the Tool Kit, the Department encourages its use as one effective means of complying with the requirements of the ADA.

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.