



Enforcing the ADA:

A Status Report from the Department of Justice

January - March 2008

This Status Report covers the ADA activities of the Department of Justice during the first quarter (January - March) of 2008. This report, previous status reports, and a wide range of other ADA information, including the consent decrees and formal settlement agreements mentioned in this report, are available through the Department's ADA Home Page at ada.gov (see page 9).

INSIDE...

ADA Litigation	2
Formal Settlement Agreements.....	4
Other Settlements.....	5
Mediation	7
Technical Assistance	9
Other Sources of ADA Information	11
How to File Complaints.....	12

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. Consent Decrees

Some litigation is resolved at the time the suit is filed or afterwards by means of a negotiated consent decree. Consent decrees are monitored and enforced by the Federal court in which they are entered.

Title III

University of Michigan Will Increase Accessible Seating at Football Stadium -- The Department of Justice and the Michigan Paralyzed Veterans of America negotiated a consent decree with the University of Michigan, resolving a lawsuit brought to challenge the lack of accessible seating in the University's 107,501-seat football stadium. The Department of Justice intervened in the U.S. District Court for the Eastern District of Michigan in Michigan Paralyzed Veterans of America v. University of Michigan after the case was referred to the Department for litigation by the U.S. Department of Education following a lengthy investigation of complaints filed by people who use wheelchairs. Under the consent decree, the University will add a minimum of 248 permanent wheelchair seats and 248 companion seats to the stadium during the next two years.

continued on page 3

University of Michigan, continued

The majority of these seats will be along the side lines. Currently, the stadium has 81 pairs of wheelchair and companion seats, all located in the end zones. By the 2010 football season, the University will have at least 329 pairs of wheelchair and companion seats dispersed throughout the stadium. At the end of that season, the parties will discuss whether to add additional accessible seating along one of the side lines. The University also agreed to modify its ticketing policies significantly for wheelchair and companion seats for a two-year period following the time that each seating area becomes available to ensure that individuals who use wheelchairs will be afforded a meaningful opportunity to purchase these seats. The University will also add accessible parking, accessible toilet rooms, and accessible routes to and throughout the stadium, and will improve access to other facilities and services at the stadium. The University is currently in the midst of a \$226 million expansion of the stadium, including the addition of luxury boxes and suites. Those seating areas, which were not addressed in the consent decree, will include additional wheelchair seating.

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 I

Germano v. International Profit Associates, Inc. -- The Department filed an amicus brief in the U.S. Court of Appeals for the Seventh Circuit in Germano v. International Profit Associates, Inc. urging the court to rule that statements made during a telephone conversation using a telecommunications relay service and facilitated by a communications assistant were admissible evidence in a Federal court proceeding. The plaintiff alleged that the defendants refused to hire him because he was deaf. Some of the evidence in support

of his claim was based on statements the defendants made during a relayed telephone conversation. The U.S. District Court for the Northern District of Illinois refused to consider this evidence because, in its view, the use of a communications assistant to relay the conversation between the defendants and the plaintiff made the defendants' statements inadmissible hearsay. In its amicus brief the Department argued that statements made by the defendant and relayed through a communications assistant were not hearsay and that they were admissible as statements by a party-opponent under the Federal Rules of Evidence. The Department also argued that treating relayed statements as hearsay would be contrary to the purposes of the ADA and would impede the government's enforcement of Federal laws that bar discrimination against persons with disabilities.

B. Formal Settlement Agreements

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

Title II

Colorado Peace Officers Standards and Training Board -- The Department entered into an agreement with the State of Colorado Peace Officers Standards and Training Board resolving allegations that the board's blanket denial of requests for reasonable accommodation during the administration of its police officer certification examination violated the ADA. The board agreed to provide reasonable accommodations to qualified applicants and not to discriminate on the basis of disability in the administration of its licensing examinations.

Title III

Wharf Cinemas, Lahaina, Maui, Hawaii -- The Department entered into an agreement with the Wallace Theater Corporation to resolve a complaint about a lack of accessible seating at Wharf Cinemas. The complaint, filed by an advocacy organization on behalf of an individual who uses a wheelchair, alleged that the three movie theaters at the cinema had only one accessible seating location in each auditorium. Wallace Theater Corporation agreed to provide four accessible seating locations and fixed companion seating in each theater, and to provide aisle seats with removable or folding armrests on the aisle side in a number equal to one percent of the fixed seats in each auditorium. It also agreed to provide an assistive listening system and to make accessibility modifications to its ticket counter, lobby, and exits.

Garibaldi's Inc., Savannah, Georgia -- The Department reached an agreement with Garibaldi's, Inc. that will make the facilities of Garibaldi's Restaurant and menu items served at the nearby Savannah Bistro accessible to people with disabilities. Because of historic features, narrow sidewalks, and the close proximity of the city's underground utilities, making the Bistro accessible was not readily achievable. Garibaldi's, Inc., however, also owns and operates Garibaldi's Restaurant, which is less than 100 feet away from the Bistro. The owner agreed to make Garibaldi's Restaurant fully accessible and to make the Bistro's menu selections available at Garibaldi's. In addition, the owner agreed to pay the complainant damages in the amount of \$1,000.

Golden Cab Corporation, West Palm Beach, Florida -- The U.S. Attorney's Office for the Southern District of Florida reached an agreement with Golden Cab Corporation resolving a complaint alleging that the company refused to provide a taxi ride to a passenger because she was accompanied by her service animal. Golden Cab agreed to adopt a written policy stating that its drivers may not refuse to transport a person with a disability because that person is accompanied by a service animal or to charge that person an extra fee. It also agreed to distribute the policy and provide training to all present and future reservation call-takers, dispatchers, and taxi drivers dispatched by Golden Cab, and other employees or contractors whose duties involve contact with Golden Cab's customers. The company also agreed to require all drivers dispatched by Golden Cab and all individuals using vehicles owned or leased by Golden Cab to post a large-print sign inside or outside of each taxi indicating that people with disabilities accompanied by service animals are welcome in Golden Cabs. Golden Cab

agreed to promptly investigate complaints and to impose appropriate sanctions. In addition, Golden Cab agreed to pay \$1,000 in compensation to the complainant and a civil penalty of \$1,000 to the United States.

C. Other Settlements

The Department resolves numerous cases without litigation or a formal settlement agreement. In some instances, the public accommodation, commercial facility, or State or local government promptly agrees to take the necessary actions to achieve compliance. In others, extensive negotiations are required. Following are some examples of what has been accomplished through informal settlements.

Title II

An inmate with a seizure disorder alleged that staff at a Pennsylvania correctional facility refused to assign him a bottom bunk, which was necessary for safety reasons. The complainant was reassigned to a bottom bunk and the need for this accommodation was documented in his medical file.

An inmate who uses a walker for mobility complained that an Alaska correctional facility denied him appropriate aids, services, and access to programs offered to other inmates. The complainant was assigned a personal care attendant to assist him with mobility, getting meals, and doing laundry. He was also returned to his previous window washing job assignment and is able to participate in a variety of classes offered at the facility. In addition, the complainant was assigned a cell equipped with grab bars and a new walker was ordered to replace his broken walker.

An individual with a mobility disability alleged that an Arizona county sheriff's office does not provide accessible transportation to detainees who use wheelchairs. The sheriff's office acquired two wheelchair accessible vans to transport individuals with disabilities.

An inmate with a mobility disability alleged that a Utah state prison denied him the use of a wheelchair. The inmate was since provided with a cane, permitted use of a wheelchair for long distances, and assigned a bottom bunk.

An inmate at an Indiana correctional facility complained that his prosthesis was broken and that staff refused to have it repaired. The complainant's prosthesis was repaired.

An inmate with paraplegia alleged that an Arizona state prison denied him accessible residential housing and privacy to wash and sterilize his catheters. He was assigned to accessible residential housing with semi-private facilities.

An individual who is deaf complained that he was not provided with an interpreter and was denied the use of a TTY and a closed-caption TV during his incarceration at an Arizona county jail. The jail adopted an effective communication policy to provide interpreters through on-call interpreting services and access to a TTY and closed caption TV.

An individual alleged that a Florida county failed to provide his wife, who is deaf, with an interpreter so that she could participate in county commission meetings. The county revised its policy, appointed an ADA Coordinator, posted a notice and grievance procedure policy on its website, and modified its public notices to include a staff contact for individuals who require disability-related accommodations.

Two individuals who are deaf complained that they were not provided an interpreter and were denied the use of a TTY during their incarceration at a Florida county sheriff's office. The sheriff's office adopted an effective communication policy, made arrangements to provide on-call interpreting services, and purchased a TTY.

An individual with a mobility disability alleged that a Georgia city municipal building had no evacuation plan in the event that a fire or similar emergency made the accessible front entrance unusable by people with disabilities and that the facility lacked designated accessible parking spaces. The city installed a ramp with handrails at a secondary public entrance to the building and purchased an evacuation chair to be used during emergencies. In addition, the city provided five accessible parking spaces on the shortest accessible route to the building.

An individual with a mobility disability alleged that a New Hampshire municipality failed to provide access to town meetings for people who use mobility devices. The town moved its meetings to an adjacent accessible high school cafeteria and worked with the school to remedy access issues to the parking lot, school cafeteria, and adjoining toilet rooms. The town also purchased an assistive listening system, developed an effective communication policy, and posted the policy on its website.

Title III

A disability advocacy group alleged that the entrance to a Pennsylvania bakery was inaccessible to persons with mobility disabilities. The bakery installed a ramp at its entrance.

An individual with a mobility disability complained that a Florida café lacked accessible parking spaces and curb ramps. The café owner installed accessible parking spaces and curb ramps.

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

District of Arizona -- An individual with a mobility disability complained that a health club in a two-story building without an elevator lacked a sufficient number of treadmills for use by customers with disabilities on the accessible first floor. The health club agreed to place two additional treadmills on the first floor, develop a written policy regarding the priority use of the treadmills for use by individuals with disabilities, and train staff on the policy.

Eastern District of Michigan -- A deaf couple alleged that a Michigan County Court charged them for a sign language interpreter for a divorce proceeding. The court adopted an effective communication policy regarding provision of auxiliary aids and services and compensated the complainants \$500.

Western District of Missouri -- Individuals with mobility disabilities complained that a professional sports team's stadium failed to offer people with disabilities accessible seating with a choice of admission prices and lines of sight comparable to those offered to the general public. The team confirmed that plans for a stadium renovation, which will add accessible seats, are underway. In the interim, season ticket and per-game ticket prices for existing accessible and companion seats will be lowered. Also, the team will offer the complainants tickets to a game of their choice or a refund of the amount they paid for tickets the last time they attended.

Southern District of New York -- The parents of a child with a chronic medical condition alleged that a private preschool refused to admit their child because it did not want to administer medication during the day. The preschool modified its nomedication policy and obtained medication administration certification for two staff members, updated the parent handbook indicating that individual students' medical needs will be evaluated on a case-by-case basis, sent a letter to parents of current students notifying them of the new policy, and agreed to distribute a notice to parents of prospective students notifying them of the new policy.

Middle District of Tennessee -- An individual who is deaf complained that a major hotel and resort complex did not have rooms accessible to people with hearing disabilities. The hotel agreed to permanently install visual alarms and notification devices in 107 guest rooms by 2009. In the interim, the hotel will make available 50 communication kits, including an alarm, a notification device, and a TTY, for guests who are deaf or hard of hearing. The hotel also agreed to place TTY's at its front desks and to post signage at all lobby phone banks directing people to the TTY's. The hotel also compensated the complainant \$1,000 and paid \$5,000 in civil penalties.

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, a deaf couple alleged that a mental health center refused to provide a sign language interpreter for counseling sessions. The center adopted a policy
- In Florida, an individual with a mobility disability complained that she was denied access to a mental health hospital because she uses a service animal for balance. The hospital changed its policy and

for providing effective communication for patients, including the provision of qualified sign language interpreters, and hired a trained American Sign Language interpreter to be on staff.

- An individual who uses a power wheelchair alleged that a Texas department store had insufficient space between clothing racks. The department store moved the clothing racks to provide an accessible route throughout the store, conducted staff training in assisting persons with disabilities, provided a suggestion box for customers, apologized to the complainant, and gave him a \$500 gift certificate.

developed procedures to allow service animals to accompany individuals throughout the facility.

- An individual with a mobility disability alleged that a New Jersey hair salon was inaccessible. The salon installed signage at the accessible parking space, constructed a ramp from the sidewalk to the side entrance of the salon, installed signage at the front entrance directing customers to the accessible entrance, and installed grab bars in the restroom.
- In Nevada, an individual with a mobility disability alleged that a medical transport organization refused to allow her to travel without providing written documentation that her dog was a service animal. The organization changed its policy and established procedures to ask only the nature of the service provided by an animal.
- In Arizona, a person who is deaf complained that a truck rental company refused to rent him a vehicle because he did not have a telephone contact number. The national company modified its reservation systems to allow customers to communicate by e-mail, text message, or telephone, trained all sales and reservations employees on the changes, and requested that independent franchisees make the same modifications to their reservation systems.
- In California, a wheelchair user complained that a 216-room hotel provided her an inaccessible guest room, even though she had reserved an accessible guest room. The hotel modified 10 guest rooms to ensure an accessible route throughout the guest rooms and added accessible features, including roll-in showers, bathroom fixtures, and lowered closet rods. In addition, the attorney representing the franchisee agreed to send a letter to the national chain emphasizing the importance of ADA compliance.
- A person complained that a Wisconsin restaurant forced her to leave because she uses a seizure alert dog. The restaurant owners reaffirmed their policy of allowing service animals, posted signage indicating that service animals are welcome, and trained their staff about service animals and the ADA. The restaurant also made presentations to other local restaurant owners about complying with the ADA and apologized to the complainant.
- Parents of a child with severe food allergies complained that an organization in the Mid-Atlantic area offering activity programs for children did not permit employees to administer EpiPens. The organization changed its policies and adopted written guidelines to recognize signs of severe allergic reactions, conducted an EpiPen training program for staff which was advertised in local newspapers, sent written announcements to parents, and posted information on the organization's website. In addition, the organization participated in fund-raising activities for the group that provided the training program and wrote an apology letter to the parents.
- In Alabama, the children of a person with a manual dexterity disability complained that a chain restaurant refused to provide their parent with a safety cup that the restaurant provides children. The company reaffirmed its commitment to modifying its policies for persons with disabilities, provided ADA training to all employees

in the region, required that two of the restaurant's managers, one of whom was demoted due to this incident, write the complainants an apology letter, and provided a free meal to the complainants.

- A wheelchair user complained that a North Carolina department store allowed merchandise to block the accessible route and stored boxes in the accessible dressing rooms. The store increased space between the racks, trained

employees to ensure that merchandise is not stored in the aisles or in the dressing rooms, and apologized to the complainant.

- A person with a mobility disability alleged that a Michigan golf course refused to allow him to use a golf cart to access the greens. The club established a policy allowing golfers with disabilities access to all areas of the course, including the greens, and trained all employees on this new policy.

III. Technical Assistance

The ADA requires the Department of Justice to provide technical assistance to businesses, State and local governments, and individuals with rights or responsibilities under the law. The Department provides education and technical assistance through a variety of means to encourage voluntary compliance. Activities include providing direct technical assistance and guidance to the public through the ADA Website, ADA Information Line, and Automated ADA Fax System; developing and disseminating technical assistance materials to the public; and undertaking outreach initiatives.

ADA Website

The Department's ADA Website (www.ada.gov) provides direct access to the Department's publications, briefs, and settlement agreements, and other information about its enforcement, mediation, technical assistance, and certification programs, including proposed changes in ADA regulations and requirements, links to ADA

press releases, and links to other Federal agencies' websites that contain ADA information.

In addition, the website provides access to --

- ◆ electronic versions of the ADA Standards for Accessible Design, including illustrations and hyperlinked cross-references;
- ◆ the ADA Business Connection, with links to materials of particular interest to businesses;
- ◆ Reaching Out to Customers With Disabilities, a web-based, interactive online course that explains the requirements of title III;
- ◆ the ADA Video Gallery, with links to accessible streaming videos about the ADA; and
- ◆ online ordering forms for the ADA Technical Assistance CD-ROM and selected videos.

ADA Information Line

The Department of Justice operates a toll-free ADA Information Line to provide information and publications to the public about the requirements of the ADA.

Automated service, which allows callers to order publications by mail or fax, is available 24 hours a day, seven days a week. ADA specialists, who can assist callers in understanding how the ADA applies to their situation, are available on Monday, Tuesday, Wednesday, and Friday from 9:30 a.m. until 5:30 p.m. and on Thursday from 12:30 p.m. until 5:30 p.m. (Eastern Time). Foreign language service is also available. To get answers to technical questions, obtain general ADA information, order free ADA materials, or ask about filing a complaint, please call:

800-514-0301 (voice)
800-514-0383 (TTY)

Automated ADA Fax System

The Automated ADA Fax System allows the public to obtain free ADA information by fax 24 hours a day, seven days a week. By calling the ADA Information Line and following the directions, callers can request specific documents to be faxed directly to their fax machines or computer fax/modems. A listing of publications and their fax codes is available online or can be ordered through the ADA Information Line.

ADA Publications and Documents

Copies of the Department's ADA regulations and technical assistance publications can be obtained by calling the ADA Information

Line, visiting the ADA Website, or writing to the address listed below. All materials are available in standard print as well as large print, Braille, audiotape, or computer disk for people with disabilities.

U.S. Department of Justice
Civil Rights Division
950 Pennsylvania Avenue, N.W.
Disability Rights Section - NYAV
Washington, D.C. 20530

Some publications are available in foreign languages. Spanish language documents can be accessed through the ADA Website (www.ada.gov/publicat_spanish.htm). Other Language documents can be obtained by mail.

Copies of the legal documents and settlement agreements mentioned in this publication can be obtained by writing to --

U.S. Department of Justice
Civil Rights Division
950 Pennsylvania Avenue, N.W.
FOIA/PA Branch, NALC Room 311
Washington, D.C. 20530
Fax: 202-514-6195

Currently, the FOIA/PA Branch maintains approximately 10,000 pages of ADA material. The records are available at a cost of \$0.10 per page (first 100 pages free). Please make your requests as specific as possible in order to minimize your costs.

The FOIA/PA Branch also provides internet access to ADA materials at www.usdoj.gov/crt/foia/crt.htm. Links to search or visit this website are provided from the ADA Website.

IV. Other Sources of ADA Information

The **Equal Employment Opportunity Commission** offers technical assistance to the public concerning the employment provisions of title I of the ADA.

ADA publications
800-669-3362 (voice)
800-800-3302 (TTY)

ADA questions
800-669-4000 (voice)
800-669-6820 (TTY)

www.eeoc.gov

The **Federal Communications Commission** offers technical assistance to the public concerning the communication provisions of title IV of the ADA.

ADA publications and questions
888-225-5322 (voice)
888-835-5322 (TTY)

www.fcc.gov/cgb/dro

U.S. Department of Transportation, Federal Transit Administration provides information to the public on the transportation provisions of title II of the ADA.

ADA Assistance Line for regulations and complaints
888-446-4511(voice/relay)

www.fta.dot.gov/ada

The **U.S. Architectural and Transportation Barriers Compliance Board, or Access Board**, offers technical assistance to the public on the ADA Accessibility Guidelines.

ADA publications and questions
800-872-2253 (voice)
800-993-2822 (TTY)
www.access-board.gov

The **DBTAC: ADA Centers** are funded by the U.S. Department of Education through the National Institute on Disability and Rehabilitation Research (NIDRR) in ten regions of the country to provide resources and technical assistance on the ADA.

ADA technical assistance
800-949-4232 (voice & TTY)

www.adata.org

Project ACTION is funded by the U.S. Department of Transportation to provide ADA information and publications on making transportation accessible.

Information on accessible transportation
800-659-6428 (voice/relay)

<http://projectaction.easterseals.com>

The **Job Accommodation Network (JAN)** is a free telephone consulting service funded by the U.S. Department of Labor. It provides information and advice to employers and people with disabilities on reasonable accommodation in the workplace.

Information on workplace accommodation
800-526-7234 (voice)
877-781-9403 (TTY)

www.jan.wvu.edu

V. How to File Complaints

Title I

Complaints about violations of title I (employment) by units of State and local government or by private employers should be filed with the Equal Employment Opportunity Commission. Call 800-669-4000 (voice) or 800-669-6820 (TTY) to reach the field office in your area.

Titles II and III

Complaints about violations of title II by units of State and local government or violations of title III by public accommodations and commercial facilities should be filed with --

U.S. Department of Justice
Civil Rights Division
950 Pennsylvania Avenue, N.W.
Disability Rights Section - NYAV
Washington, D.C. 20530

If you wish your complaint to be considered for referral to the Department's ADA Mediation Program, please mark "Attention: Mediation" on the outside of the envelope.

The Attorney General has determined that publication of this periodical is necessary in the transaction of the public business required by law of the Department of Justice.