



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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MULTI-FAMILY HOUSING ACCESS FORUM COMES TO ATLANTA IN MAY

On May 16, 2006, the Department will host a discussion of the Fair Housing Act's accessibility requirements for multi-family housing at the Marriott Atlanta Marquis in Atlanta, Georgia. The program is part of a nationwide "Multi-Family Housing Access Forum" that the Department launched last spring. Its purpose is to help building professionals understand their legal obligations when designing and constructing multi-family housing and to celebrate partnerships that have successfully produced accessible multi-family housing in which everyone profits – developers and consumers alike. Expected to participate are developers and building professionals, government officials, individuals with disabilities, and those who work on their behalf. The last Access Forum was held in Dallas in mid-November 2005. To learn more about the program, visit www.usdoj.gov/fairhousing. To receive an invitation, e-mail the Department at accessforum@usdoj.gov.

JUSTICE DEPARTMENT SUES NEW YORK STATE TO VINDICATE RIGHTS OF DISABLED VOTERS AND ENFORCE FEDERAL ELECTION REFORMS

On March 1, 2006, the Justice Department filed suit against the State of New York alleging violations of the Help America Vote Act of 2002 (HAVA). The Department contends that the state has failed to comply with two of HAVA's requirements governing federal elections: (1) states must adopt voting systems that are fully accessible by disabled voters and are capable of generating a permanent paper record that can be manually audited, and (2) states must create a statewide computerized voter registration database.

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(Disabled Voters, continued)

This is the first lawsuit the Department has filed against a state to vindicate the federal election reforms adopted after the 2000 Presidential election. The suit is the culmination of an extensive effort by the Department to ensure timely and full implementation of HAVA. Over the past three years, Department staff have met with representatives from states around the country, including New York, to appraise and assist with their implementation efforts. However, as of the January 1, 2006, deadline for implementing the HAVA reforms, New York was not close to compliance with either provision.

“HAVA contains important reforms designed to ensure that elections for federal office will both allow access to all voters and ensure the integrity of the process,” said Wan J. Kim, Assistant Attorney General for the Civil Rights Division. “We believe today’s lawsuit will help ensure that New York voters enjoy the benefits of these important reforms.”

New York received approximately \$221 million to assist its implementation of HAVA’s requirements. This included more than \$49 million specifically designated to assist the state in replacing its lever voting machines. New York stands to lose these funds if it fails to replace these machines by the September 2006 primary election.

The lawsuit was filed in the U.S. District Court for the Northern District of New York, in Albany. On March 23, 2006, the Court granted the Department’s motion for a preliminary injunction and ordered the New York State Board of Elections to present a remedial plan for how it will come into compliance with HAVA by April 10.

SUPREME COURT UPHOLDS INDIVIDUAL’S RIGHT TO CHALLENGE INACCESSIBLE PRISON

On January 10, 2006, the Supreme Court ruled unanimously in United States vs. Georgia that a prisoner could proceed with his ADA suit for damages against the State of Georgia alleging conduct that would constitute “cruel and unusual punishment” as prohibited by the Eighth Amendment to the Constitution. The Court did not address whether title II of the ADA provides broader protection of the rights of prisoners than does the Constitution.

The prisoner, who has paraplegia and uses a wheelchair, alleged that his cell was too small for him to maneuver his wheelchair, making it impossible for him to access his bed, toilet, and shower without assistance, and alleged that assistance was often denied. He also claimed that architectural barriers in the prison prevented him from using the library, attending religious services, and participating in a wide range of counseling, education, and vocational training programs.

The Court remanded the case to the district court to give the prisoner the opportunity to amend his complaint to identify more clearly the alleged conduct underlying each of his claims.

DEPARTMENT CEREMONY RECOGNIZES NORTH CAROLINA ACCESSIBILITY CODE

On February 9, 2006, the Department held a ceremony in Cary, North Carolina, to recognize that the North Carolina Accessibility Code has been certified as equivalent to the accessibility requirements of title III of the ADA. North Carolina is the sixth state in the country to receive ADA certification.

Wan J. Kim, Assistant Attorney General for the Civil Rights Division, participated in the ceremony with several North Carolina officials and recognized the state for meeting or exceeding the ADA accessibility requirements for new construction and alterations. "Securing ADA certification benefits both the citizens and businesses of North Carolina," said Assistant Attorney General Kim. "Now individuals with disabilities can expect greater access to their community, while architects and builders will have more confidence that by following state law, they are also complying with federal ADA requirements."

The ceremony also honored Ronald L. Mace, FAIA, an architect and North Carolinian who developed the first North Carolina Accessibility Code over thirty years ago. Mace gave numerous presentations during the 1970s-1990s teaching people about accessible and universal design and played key roles in the development of numerous state and federal accessibility standards and guidelines. His intellectual and architectural contributions helped further the concept of equal opportunity on which the ADA is built.



Assistant Attorney General Wan J. Kim presents an ADA Certification and a congratulatory letter to North Carolina Commissioner of Insurance James Long (right) and staff members Laurel Wright and Jeffrey Kanner (left)

MEMPHIS AREA McDONALD'S WILL BECOME ACCESSIBLE

On November 14, 2005, the Department entered into a consent agreement ensuring that 28 Memphis-area McDonald's restaurants owned by Fred Tillman and managed by Century Management will be made accessible for people with mobility and vision disabilities. The consent decree provides for extensive barrier removal, including installing a standard accessible stall or accessible unisex restroom in each of the restaurants, providing accessible routes from parking and public sidewalks, improving signage, lowering self-service counters and placing dispensers within proper wheelchair reach ranges, and removing protruding objects from circulation paths. The consent order also provides for \$40,000 in damages to the complainant, a woman with a mobility disability who was injured when she tried to use one of the inaccessible restrooms, and a civil penalty to the United States of \$55,000. In a separate settlement agreement, the McDonald's corporation has guaranteed that it will carry out the structural changes required by the consent decree in the event that Tillman or Century Management fail to comply.

AMC STADIUM-STYLE MOVIE THEATERS ORDERED TO BECOME ACCESSIBLE

AMC stadium-style movie theaters nationwide will be made accessible under a January 10, 2006, ruling in *United States v. AMC Entertainment, Inc., et al.*, (C.D. Cal.). Previously, AMC was found in violation of the ADA for failing to locate wheelchair and companion seating in the stadium sections of its stadium-style movie theaters. After attempts to reach an agreement with AMC on retrofits for existing theaters and other remedies proved unsuccessful, the Department filed a motion for summary judgment and a proposed remedial order, which the court endorsed in its entirety. The order requires AMC to: (1) perform specified modifications in nearly 1,200 noncompliant stadium-style auditoriums nationwide, including building ramps in about 350 of these auditoriums; (2) ensure that any new stadium-style theaters built by AMC over the next five years conform to specified design standards, including the Department's interpretation of line-of-sight requirements; (3) pay \$200,000 in total monetary relief to complainants; and (4) pay \$50,000 in civil penalties for each of two AMC defendants.

"Providing the same movie going experience for individuals in wheelchairs that other patrons enjoy delivers on the promise of the ADA," said Wan J. Kim, Assistant Attorney General for the Civil Rights Division. "These improvements will make the goals of the ADA a reality for thousands of Americans who want to enjoy this popular form of entertainment."

DEPARTMENT BRIEF ARGUES THAT ALL PUBLIC ENTITIES MUST MAKE EXISTING SIDEWALKS ACCESSIBLE

The Department has filed an amicus brief in the federal court in New Jersey arguing that all public entities, including those with fewer than 50 employees, are obligated to make existing sidewalks accessible for people with disabilities by installing curb ramps. The New Jersey Protection and Advocacy Agency sued Riverside Township, a municipality in Burlington County, New Jersey, claiming that Riverside Township violated the ADA by failing to install curb ramps in public sidewalks. The township, which has fewer than 50 employees, asserted that it did not have an obligation to install curb ramps in existing sidewalks because transition plans, in which public entities identify the structural changes needed to make existing facilities accessible, are only required for public entities with 50 or more employees. The advocacy agency asked the court to reject this view and rule that public entities regardless of size have an obligation to install curb cuts to provide access to existing public sidewalks. In its amicus brief the Department agreed, arguing that the exemption for small public entities only applies to the administrative obligation to complete a transition plan and not to the substantive obligation to make public sidewalks accessible.

ASSISTANT ATTORNEY GENERAL KIM CO-HOSTS ADA BUSINESS CONNECTION MEETING IN FLORIDA

On March 2, 2006, Assistant Attorney General Wan J. Kim held an ADA Business Connection meeting with 30 leaders of Palm Beach County, Florida, business and disability organizations at the Boca Raton Museum of Art. The session was co-hosted by George S. Bolge, Executive Director of the Museum. The meeting focused on ways that accessibility benefits older customers. The topic was introduced by the session's three featured speakers: Bruce Westbrook, leader of the Consumer Products Industry segment at Deloitte Consulting LLP; Angela Van Etten, Coalition for Independent Living Options, Inc.; and Bill Burton, InterContinental Hotels Group. Following these speakers, Deputy Assistant Attorney General Loretta King led a productive discussion of local accessibility issues and resources to affect favorable change for customers with disabilities, older customers, and businesses.

The ADA Business Connection aims to make everyday commerce more accessible to people with disabilities by bringing together local and national leaders of business and disability communities to discuss issues of mutual concern, by developing materials that explain the ADA to business owners and managers, and by making these materials available through the ADA Website. Visit the ADA Business Connection page at www.ada.gov/business.htm.



Assistant Attorney General Kim addresses guests at the ADA Business Connection meeting in Boca Raton, Florida



HUNTSVILLE, ALABAMA, SPEEDWAY AGREES TO IMPROVE ACCESSIBILITY

On January 19, 2006, the Department entered into a settlement agreement with the past and current owners of Huntsville Speedway in Huntsville, Alabama. Under the settlement, the current owner will make physical modifications to Huntsville Speedway so that parking, ticket counters, toilet rooms for spectators and racers, spectator seating, and routes to spectator seating are accessible to people with disabilities and will provide patrons seated in wheelchair seating areas with waiter/waitress service for concessions purposes during all scheduled events. The former owner will pay a total of \$6,250 in monetary relief to the two individuals whose complaints prompted the Justice Department's investigation.

George Bolge, Executive Director of the Boca Raton Museum of Art, co-hosted the ADA Business Connection meeting

McDONALD'S RESTAURANT IN ALABAMA WILL WELCOME SERVICE ANIMALS

On February 10, 2006, the Department entered into a settlement agreement with Johnson Enterprises, d/b/a McDonald's Restaurant in Huntsville, Alabama, resolving a complaint that the restaurant had refused service to a man because he was accompanied by his service animal. Under the agreement, McDonald's will (1) provide employees with a copy of its service animal policy; (2) place a "Service Animals Welcome" sign in its restaurant; (3) train employees on the ADA and the service animal policy; and (4) pay the complainant \$250 in damages.

DEPARTMENT SUES BUILDERS, DESIGN PROFESSIONALS, AND OWNERS OF TWO APARTMENT COMPLEXES IN TEXAS

On January 30, 2006, the Department filed a federal lawsuit alleging disability discrimination by the architects, engineers, developers, builders, and owners of two multi family residential complexes in Austin, Texas. The complexes were built through the use of Low Income Housing Tax Credits, a federal program to encourage the construction and rehabilitation of apartments affordable to low-income families. The Department alleges that 52 ground level units at St. Johns Village and 110 ground level units at Huntington Meadows lack accessible features required by the Fair Housing Act. Specifically, the public and common areas are not readily accessible to and usable by persons in wheelchairs; doors within the covered units are not wide enough to allow passage for a person who uses a wheelchair; accessible routes within the units are not provided; bathroom walls lack reinforcement for the later installation of grab bars; bathrooms and kitchens are not wide enough to permit use of a wheelchair; and environmental controls and outlets are not in accessible locations. The suit seeks injunctive relief, monetary damages for those harmed by the lack of accessibility, and civil penalties.

IDAHO APARTMENT COMPLEX TO ADD ACCESSIBILITY FEATURES

The Creekside Meadows Apartments, a 28-unit complex in Coeur d'Alene, Idaho, will be retrofitted to meet the Fair Housing Act's accessibility requirements under a consent decree approved by a federal district court on February 27, 2006. The Department originally filed suit against the contractor and architects in August 2001 and obtained a court ruling that the complex failed to provide important accessible features. The consent decree requires the defendants to establish a \$115,000 retrofit fund, to pay \$2,000 in damages to a fair housing organization, and to undertake substantial retrofits in the common areas and in the 14 units covered by the FHA's accessibility requirements.

DC APARTMENT OWNER AND MANAGER WILL CEASE DISCRIMINATING AGAINST GUIDE-DOG USERS

The owner and managing agent of the Sulgrave Manor Apartments in Washington, DC, will pay \$25,000 to compensate victims of disability discrimination and a \$20,000 civil penalty to the government under a consent decree approved by the federal district court on February 1, 2006. The Department's lawsuit against Douglass Management Inc. alleged that the defendants violated the Fair Housing Act by refusing to rent an apartment to a man with low vision who relies upon a guide dog for assistance. The Department conducted its investigation through the use of fair housing testers—individuals who pose as renters for purposes of gathering information about possible discriminatory practices in the rental of apartments. Under the terms of the consent decree, the defendants are required to establish and follow non discriminatory tenancy procedures and undergo fair housing training.

DEPARTMENT FINDS EXTENSIVE VIOLATIONS AT CALIFORNIA INSTITUTION FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES

On January 4, 2006, the Department issued a detailed and comprehensive findings letter to the State of California outlining a host of constitutional and statutory violations affecting over 500 people with developmental disabilities who reside at the Lanterman Developmental Center, a large congregate State institution located in Pomona, California. In addition to identifying constitutional violations at the institution cognizable under the Civil Rights of Institutionalized Persons Act, the Department also informed the State that its failure to provide community-based services to Lanterman residents violates the Americans with Disabilities Act's mandate to provide services in the most integrated setting appropriate for the individual.

The number of Lanterman residents placed into the community recently has trickled to only a handful each year. In contrast, several dozen Lanterman residents had been placed into the community each year throughout the late 1990's. In our letter, we noted that fiscal limitations effectively place an artificial ceiling on

Did you know...

The Civil Rights of Institutionalized Persons Act (CRIPA) authorizes the Department to obtain remedial relief on behalf of persons living in government institutions in all 50 states, the District of Columbia, the Commonwealth of Puerto Rico, and the U.S. territories. For more information, see www.usdoj.gov/crt/split.

the number of institutionalized residents that may be placed out of the facility in any given year. This, in turn, chills the Lanterman interdisciplinary teams from recommending community placement for residents who might benefit from that setting but for whom there are no transition funds. The letter sets forth minimal remedial measures to address the deficiencies cited.

The Department has made similar findings with regard to two other State facilities, the Agnews Developmental Center and the Sonoma Developmental Center. The Department is currently pursuing remedial relief for residents of all three of these facilities.

ADA MEDIATION HIGHLIGHTS

The ADA Mediation Program is a Department-sponsored initiative intended to resolve ADA complaints in an efficient manner. Mediation cases are initiated upon referral by the Department when both the complainant and the respondent agree to participate. The program utilizes 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 75% of all complaints mediated have been settled successfully.

In this issue, we focus on complaints involving accessible parking spaces that are blocked or misused by non-disabled people.

■ In **Maryland**, a person who uses a wheelchair complained that vehicles often block the curb ramp leading to a restaurant entrance. In addition to increasing the width of the curb ramp to ensure it would not be blocked by legally parked vehicles, the restaurant also agreed to adjust the closers on the entrance and restroom doors, to remove the vestibule door, to provide wheelchair access to the food order line and

the dining tables, and to remove a partition in the restroom to increase access.

■ In **New York**, an individual with a mobility disability complained that mall security did not respond when she informed them that her car was blocked by a vehicle illegally parked in the access aisle. The director of mall security agreed to instruct all security staff on procedures to follow when a car is parked illegally in an accessible parking space or access lane.

■ In **Pennsylvania**, a person who uses a wheelchair complained that an amusement park allowed vehicles to park improperly in accessible spaces. The amusement park agreed to provide ADA training for all seasonal staff on ensuring appropriate use of accessible parking. The park also increased the number of accessible spaces by more than 60%, including van-accessible spaces, and installed appropriate signage.

■ In **Tennessee**, two people with disabilities complained that a union violated the ADA when it covered signs identifying existing accessible parking spaces and used them for

other purposes during a union-sponsored public car show. The union agreed to provide accessible parking during its activities and install signage stating that cars illegally parked in accessible parking spaces would be towed and a fine assessed. Both parties agreed to write articles for a union publication on the union's commitment to provide access to individuals with disabilities.

■ In **Virginia**, a person who uses a wheelchair complained that a hospital did not provide accessible parking near the main entrance, the existing parking in the rear lot was difficult to find due to poor lighting, and unauthorized vehicles were allowed to park in accessible spaces. The hospital created additional accessible parking at both the front and rear entrances, created a curb cut to provide access from the parking lot to the hospital entrances, increased exterior lighting to enhance the visibility of accessible parking in the rear lot, and adopted a policy to monitor use of accessible parking by unauthorized drivers and to notify local police to ticket those who were illegally parked.

RECENT OUTREACH ACTIVITIES

- On February 15, Division staff participated in a three-hour panel discussion on the ADA and its impact on corrections facilities sponsored by the National Institute of Corrections, Bureau of Prisons, in Spokane, Washington. The discussion was broadcast by satellite and internet to an audience of 12,000 people at correctional facilities nationwide.
- On February 21-24, Division staff participated in an event in San Francisco, California, conducted by the Disability Rights Education and Defense Fund, under contract with the National Council on Disability (NCD), to learn from entities covered by title III of the ADA of their experiences implementing the Act. NCD will issue a report to the Congress and the President later this year about the implementation of title III of the ADA. Representatives from Wells Fargo, the California Hotel and Lodging Association, small business representatives from the San Francisco area, advocates, and others participated in the four-day event.
- On February 28, Division staff gave two presentations at an Advance Employment Law Seminar presented by the Southern California chapter of the American Corporate Counsel Association in Los Angeles, California. This is a professional association for corporate in-house counsel. The presentations addressed service animals and EEOC's guidance on cancer as a disability.
- On March 2, Division staff made several presentations at the ADA/ABA and California Accessibility Conference held in the Bill Gramm Auditorium in San Francisco, California. The conference was sponsored by the Mayor's Office on Disability for the City and County of San Francisco and the San Francisco chapter of the American Institute of Architects. The conference was attended by approximately 150 architects and state and local government employees.
- On March 6-9, Division staff made several presentations at the annual conference of the National Association of ADA Coordinators in Miami, Florida. Topics included the fundamentals of title II, case law updates, strategies for compliance and avoiding litigation, and emergency preparedness and management issues.
- On March 8, Division staff participated in a webcast sponsored by the Disability Law Resource Project, a project funded by the National Institute on Disability and Rehabilitation Research, to provide information about Project Civic Access. The event was broadcast over the web to 150 sites.
- On March 14, Division staff made a presentation at the World Bank in Washington, DC on the requirements of the ADA and recent implementation successes. The World Bank is taking steps to ensure that it takes accessibility into account when funding development projects worldwide.