



Disability Rights

online News

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Civil Rights Division

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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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WALMART TO IMPROVE ACCESS FOR PEOPLE WITH DISABILITIES NATIONWIDE

On January 16, 2009, Wal-Mart Stores, Inc., entered into a settlement agreement with the Department to improve access for people with disabilities at Walmart stores nationwide, including Supercenters, Sam's Clubs, and Neighborhood Markets. The agreement resolves an investigation that was initiated after the Department received complaints alleging a variety of issues including refusing to admit, or excessively questioning, customers who use service animals.

(Continued on page 2)

NEXT MULTI-FAMILY HOUSING ACCESS FORUM TO BE HELD IN PHILADELPHIA

The Department's ninth Access Forum will be held on Thursday, May 21, 2009, from 8:30 to 11:00 am at the Doubletree Hotel in Philadelphia, Pennsylvania. Launched in 2005 by the Assistant Attorney General for the Civil Rights Division, the Access Forum's objectives are to help building professionals understand their legal obligations under the federal Fair Housing Act's accessibility requirements and to highlight partnerships that have successfully produced accessible multi-family housing in which everyone profits – developers and consumers alike. The theme of the event is "Good Access is Good Business." The Access Forum brings together developers, architects, civil engineers, government officials, and advocates for individuals with disabilities. People interested in attending should send an email with their name, organization, and contact information, as well as the names and contact information for other attendees from their office and other people who might be interested in this event, to accessforum@usdoj.gov. More than 100 people attended the Access Forum in Houston in November 2008, and another large turnout is expected in Philadelphia. Previous events were held in Seattle, Miami, Minneapolis, Phoenix, Atlanta, Dallas, and Washington, DC.

(Walmart, continued)

Under the settlement agreement, Walmart will: adopt and implement a new policy on service animals; provide training on the new policy for all Walmart associates who have contact with the public; provide additional training on the policy for store management and greeters; post the new policy on its website and in employee areas at its stores; provide training for managers and greeters on their obligations under the ADA to maintain accessible features and to make reasonable modifications in policies, practices, and procedures when needed to accommodate customers with disabilities; and establish a grievance procedure under which Walmart will receive ADA complaints through a toll-free hotline, investigate the complaints, and take appropriate corrective action to resolve ADA violations.

In addition, Walmart will pay \$150,000 into a fund to compensate people with disabilities whose complaints were resolved by the settlement agreement. Walmart also agreed to pay an additional \$100,000 into a fund that will be used to finance a public service campaign to increase public awareness of the rights of people with disabilities who use service animals.

NASHVILLE RESCINDS ZONING CODE PROVISION THAT BLOCKED A SUBSTANCE ABUSE TREATMENT PROGRAM FOR TEENS

On January 30, 2009, the federal court in Nashville approved a settlement requiring the Metropolitan Government of Nashville and Davidson County, Tennessee, to rescind an amendment to its zoning code that had blocked a substance abuse treatment program for teenagers run by a Christian group known as Teen Challenge. Metropolitan Government will also adopt a reasonable accommodation policy for individuals with disabilities, train nearly 100 employees and officials who make zoning and land use decisions on the requirements

of the Fair Housing Act (FHA) and the Religious Land Use and Institutionalized Persons Act (RLUIPA), and appoint a compliance officer to receive complaints and ensure compliance with the settlement.

The consent decree resolves a lawsuit filed by the Department in September 2008 alleging that the Metropolitan Government had discriminated against individuals with disabilities in violation of the FHA and had imposed a substantial burden on religious exercise in violation of RLUIPA. According to the complaint, the Metropolitan Government

had denied Teen Challenge a building permit and amended its zoning code in a manner that prevented Teen Challenge from operating a treatment program in Goodlettsville, Tennessee. The decree resolves the Department's claims as well as a related lawsuit filed by Teen Challenge and participants in its program, Teen Challenge International, Nashville Headquarters, et al. v. Metropolitan Government of Nashville and Davidson County.

"Cases like this show how the FHA and RLUIPA work together to ensure that persons with disabilities are not discriminated against and that religious groups seeking to aid those persons can operate without unjustifiable burdens," said Loretta King, Acting Assistant Attorney General for the Civil Rights Division.

"Discrimination of the type alleged in this case should never be tolerated by a free society," said U. S. Attorney Ed Yarbrough following the settlement. "Substance abuse programs perform a valuable service to persons suffering from addiction," he added.

The Metropolitan Government will also pay a \$20,000 civil penalty to the United States and \$50,000 to participants in Teen Challenge's program. Additional monetary relief to Teen Challenge will be determined by the final court order in its separate lawsuit.

VIRGINIA APARTMENT COMPLEX WILL MAKE ACCESSIBILITY IMPROVEMENTS

On January 26, 2009, the federal court in Alexandria approved a settlement requiring the architect, developer, and owner of the Crossings at Summerland Apartments, a 126-unit complex in Woodbridge, Virginia, to pay all costs related to making the apartment complex accessible to people with disabilities. The Department's complaint, filed in conjunction with the consent decree, alleged that

the defendants had failed to design and construct the complex so that ground floor units contain accessible features and the public use and common use portions of the complex are readily accessible to and usable by individuals with disabilities.

Under the settlement, the defendants will also establish a \$30,000 fund to compensate individuals harmed by the lack of accessible housing,

pay a \$20,000 civil penalty to vindicate the public interest, and undergo training on the requirements of the Fair Housing Act.

The defendants are: Summerland Heights III LP; Summerland Heights III GP LLC; Cederquist, Rodriguez, Ripley PC; Bowman Consulting Group Ltd.; and the Marlyn Development Corporation.

PENNSYLVANIA HOUSING AUTHORITY WILL CREATE ACCESSIBLE HOUSING AND ELIMINATE DISCRIMINATORY POLICIES

On February 6, 2009, the Reading, Pennsylvania, Housing Authority (RHA) entered into a settlement agreement with the Department resolving an investigation under Section 504 of the Rehabilitation Act of 1973, Title VI of the Civil Rights Act of 1964, and the Fair Housing Act. Under the agreement, RHA will set aside a portion of its annual capital funding to create, through new construction or renovation, at least five (5) two-bedroom accessible housing units and will make the kitchens in one of its developments accessible

when requested by a tenant. RHA also will maintain a list of landlords who participate in the Section 8 housing program indicating whether they have accessible units and will provide that information to all prospective tenants who have received a housing voucher. In addition, RHA agreed to adopt and implement a new assistance animal policy allowing people with disabilities to keep assistance animals (including emotional support animals). It also agreed to refund the \$50 it holds as a pet deposit from one of the complainants.

The Department's investigation resulted from referrals from the Department of Housing and Urban Development (HUD) challenging the physical accessibility of dwelling units and common areas of RHA's housing stock, RHA's reasonable accommodation policies and practices, RHA's record-keeping practices and policies with respect to tenants with limited English proficiency, and RHA's imposition of a refundable pet deposit on a tenant who used an emotional support animal. The settlement resolves all of these matters.

LARGE MULTI-FAMILY HOUSING DEVELOPER SUED FOR DISABILITY-BASED DISCRIMINATION

On March 4, 2009, the Department filed a lawsuit in federal court in Dallas, Texas, against JPI Construction L.P. (JPI) and six JPI-affiliated companies for failing to design and construct accessible dwelling units and public and common use areas at the Jefferson Center Apartments in Austin, Texas, the Jefferson at Mission Gate Apartments in Plano, Texas, and additional multi-family housing complexes in other states. The suit alleges that certain complexes have steps and curbs leading to units, steeply sloped routes leading to units, and no accessible routes to site amenities, including trash facilities, barbeque grills, and cookout tables. In addition, some housing units have narrow doors and hallways, kitchens that lack accessible clear floor space at the sink, range and refrigerator, bathrooms that lack accessible clear floor space at the toilet and tub, and thermostats that are mounted too high to be accessible by people who use wheelchairs.

The lawsuit seeks a court order requiring the defendants to modify the complexes to bring them into compliance with federal laws and prohibiting future discrimination by the

defendants. The suit also seeks monetary damages to compensate victims and a civil penalty to be paid to the government. Since 1991, when the Fair Housing Act first required most new multi-family housing to contain accessible features, JPI and its affiliates have built more than 200 apartment, condominium, and other housing complexes in 26 states and the District of Columbia.

“Persons with physical disabilities should have the same housing choices as other persons,” said Acting Assistant Attorney General Loretta King. “We will continue to pursue vigorously those who still have not gotten the message that failing to design and construct multi-family housing with basic features of accessibility violates the law.”

MINNESOTA APARTMENT OWNER SUED FOR DISABILITY DISCRIMINATION

On February 18, 2009, the Department filed a lawsuit in federal court in Minneapolis alleging that the owner/manager of two six-unit apartment buildings in East Grand Forks, Minnesota, refused to rent a unit to a woman and her two minor children because one of the children uses a service animal. The Department’s complaint alleges that when the woman mentioned that her daughter uses a service dog, the owner stated that he has a “no dogs” policy. The woman tried to explain what a service animal is and offered to show the owner a doctor’s note for the dog, but he responded that it did not matter because he did not have to accept the dog. When she explained that federal law requires landlords to accept service animals, he stated that he knew that he did not have to accept dogs because he had been through such a request before with a tenant and had won a lawsuit.

The woman filed a complaint with the Department of Housing and Urban Development, which referred the matter to the Department of Justice. The Department seeks monetary damages for the victims and injunctive relief.

MISSISSIPPI HOUSING AUTHORITY SUED FOR DISABILITY DISCRIMINATION

On February 17, 2009, the Department filed a lawsuit in federal court in Gulfport, Mississippi, against the Mississippi Regional Housing Authority and a landlord who participates in the Section 8 housing program for denying a tenant's request to transfer to a first-floor unit as a reasonable accommodation for her physical disability. The tenant wears a back brace from her neck to her lower spine and sometimes uses a cane. She had fallen at least three times on the stairs near her second-floor apartment. In early October 2005, a first-floor two-bedroom apartment became available, but was given to a non-disabled woman.

The tenant filed a complaint with the Department of Housing and Urban Development, which referred the matter to the Department of Justice. The Department seeks monetary damages for the victim and injunctive relief.

The defendants are Mississippi Regional Housing Authority VIII; SBMC, Inc. d/b/a Sun Belt Management; Oakridge Park Apartments, Ltd.; and Bobby G. Marcellus, General Partner.

DETROIT-AREA APARTMENT COMPLEX SUED FOR DISABILITY-BASED DISCRIMINATION

On January 12, 2009, the Department filed a lawsuit in federal court in Detroit against four defendants for failing to build a 200-unit housing complex in compliance with the Fair Housing Act's accessibility requirements. The complex, known as the Enclave Apartments, is located in Washington Township, Michigan, approximately 35 miles from Detroit.

The Enclave Apartments have numerous barriers

that would make it difficult for a person with a mobility disability to live in or visit the complex. These barriers include steps at 176 of the 200 units; bedroom, bathroom, closet, and laundry room doors in all units that are too narrow for people who use crutches or other mobility devices; bathrooms and kitchens in most units that lack sufficient maneuvering space for people who use wheelchairs; electrical

outlets and thermostats in most units that are mounted out of reach of people who use wheelchairs; lack of accessible parking spaces; sidewalks throughout the complex that are too steep or have gaps that impede use by people who use wheelchairs or other mobility devices as well as those with vision disabilities; common use spaces, including the clubhouse and pool, that are not accessible by people with mobility disabilities and lack the signage and detectable warnings needed by people who have vision disabilities; and exterior door hardware in all units that is not useable by people with limited manual dexterity.

The lawsuit seeks a court order requiring the defendants to modify the Enclave Apartments to bring it into compliance with federal law and to prohibit future discrimination. It also seeks monetary damages to compensate victims of discrimination.

The defendants are the developer and owner, the Enclave Development, LLC; the designer, Robert Lipka and Associates, a/k/a Robert Lipka, Architect P.C.; the architect of record, Chester Stempien Associates, AIA; and the civil engineer, MCS Associates, Inc.

HISTORIC WISCONSIN AMPHITHEATER MAKES ACCESSIBILITY IMPROVEMENTS

On February 3, 2009, the Milwaukee World Festival in Milwaukee, Wisconsin, entered into a settlement agreement with the Department resolving a complaint alleging that the Marcus Amphitheater was inaccessible to people who use wheelchairs. The complaint alleged that the amphitheater did not have enough wheelchair and companion seating spaces and that the restrooms and concession stands were inaccessible.

During settlement discussions, the Milwaukee World Festival added several dispersed wheelchair and companion spaces to the amphitheater and modified all of its concession areas and restrooms to bring them into compliance with the ADA Standards. The settlement agreement documents these accessibility improvements.

ONE NEW YORK CITY HOTEL AGREES TO IMPROVE ACCESSIBILITY; FIVE OTHERS ARE SUED OVER LACK OF ACCESSIBILITY

One additional hotel in Manhattan's theater district, the 1748-room Sheraton New York Hotel & Towers, has entered into a settlement agreement to improve accessibility for customers with disabilities, under the hotel compliance initiative being conducted by the U.S. Attorney's Office in Manhattan. This brings to fifteen the number of hotels that have entered into voluntary compliance agreements through this initiative. The hotel will evaluate its designated accessible rooms and make any modifications necessary to comply with the ADA Standards for Accessible Design; make additional rooms accessible, including some with accessible roll-in showers, as needed to meet the required number of accessible rooms; provide visual alarms, communication devices, and appropriate electrical outlets in rooms for people with hearing disabilities; disperse accessible rooms among all classes of sleeping accommodation; and establish written policies and procedures for providing services to hotel guests with

Did you know...

ADA Specialists talk to 1,100 callers a week. For answers to your individual questions, call the ADA Information Line:

800-514-0301 (Voice)

800-514-0383 (TTY)

disabilities. In addition, the hotel will make accessibility improvements in its lobby area. (See previous articles on this initiative in issues 16, 17, 22, 26, and 29).

On January 13, 2009, five other hotels in the theater district -- the 614-room Hotel Carter, the 219-room Ameritania, the 136-room Amsterdam Court, the 113-room Radio City Suites, and the 34-room Moderne -- were sued by the Department for violating the ADA. All have significant barriers to accessibility, and all were unresponsive to the Department's efforts to negotiate settlement agreements with them.

RV PARK SUED FOR DISCRIMINATING AGAINST CHILD WITH HIV

On January 16, 2009, the Department filed a lawsuit against Wales West LLC, an RV park in Silverhill, Alabama, alleging that the park management discriminated against a child because of his HIV status. The suit alleges that after a couple mentioned to park staff that their 2-year-old foster child has HIV, they were told that the child would not be allowed to use the RV resort's pool or showers because of his HIV and that the owner said he might reconsider only if the couple could produce a letter from a doctor or the health department ensuring that the child could not infect others. The suit, filed in federal court in Mobile, Alabama, seeks declaratory judgment, injunctive relief, and damages for the family. Pre-trial discovery is currently under way.

DEPARTMENT RAISES CONCERNS ABOUT SETTLEMENT IN PRIVATE SUIT AGAINST WALT DISNEY WORLD

On March 12, 2009, the Department filed a motion to participate as *amicus curiae* in Ault et al. v. Walt Disney World, Co., a private ADA lawsuit in federal court in Orlando, Florida, for purposes of objecting to a proposed class action settlement agreement and appearing at a hearing to address the fairness of the settlement agreement. The motion was granted by the court on March 24, 2009, and the Department will appear at the class settlement objection hearing on June 3 and 4, 2009.

Three plaintiffs who use Segways® for mobility initiated the suit challenging Disney's refusal to modify its policy banning Segways® from the Disney theme parks in Florida. In January 2009, the court conditionally approved a class action settlement agreement that would require Disney to make a specified number of Disney-owned four-wheeled electric stand-up vehicles (ESVs) available for rent by people with disabilities at Disney resorts in both Florida and California. In its written objections, the

Department urged the court to reject this settlement because of procedural flaws raising serious due process concerns, because judicial endorsement of the agreement would undermine the Department's current ADA rulemaking efforts which, among other things, address the use of Segways® and other electronic personal assistive mobility devices, and because the substantive terms of the agreement are fundamentally unfair to absent class members.

ADA MEDIATION HIGHLIGHTS

ADA Mediation Program is a Department-sponsored initiative intended to resolve ADA complaints in an efficient, voluntary manner. Mediation cases are initiated upon referral by the Department when both the complainant and the respondent agree to participate. The program uses professional mediators who are trained in the legal requirements of the ADA and has proven effective in resolving complaints at less cost and in less time

(Mediation, continued)

than traditional investigations or litigation. Over 78% of all complaints mediated have been resolved successfully.

In this issue, we highlight complaints involving policy issues that have been successfully mediated.

- In Texas, a person who uses a wheelchair complained that a gas station did not provide assistance 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.

- In Missouri, a person who uses a wheelchair complained that he was unable to enter a cable TV services store because of heavy entrance doors. The store, which was part of a nationwide chain, installed buzzers and signage at two of its stores for customers to ring for assistance in opening the doors and agreed to provide ongoing training to front counter representatives in assisting people with disabilities upon request. In addition, the chain's management adopted a nationwide policy offering free pickup of equipment at home for customers with disabilities.

- A person with Tourette Syndrome complained that she was told by a South Carolina hair salon that she could only receive services outside in an alley behind the salon. The owner of the salon agreed to provide services in an integrated setting for all customers, including the complainant; set up comprehensive ADA training for its employees; apologized to the complainant; and made a donation to a Tourette Syndrome organization in the name of the complainant.

- The parents of a son with autism alleged that a Pennsylvania ski resort refused to provide him ski lessons because of his disability. The resort modified its policy, established procedures on accommodating patrons with disabilities and how to resolve problems if they arise, and provided training for staff on the new policy.

- Parents of a child with severe food allergies complained that an organization in

the Mid-Atlantic area offering arts and crafts programs for children did not permit employees to administer EpiPens. The organization changed its policies and adopted written guidelines to recognize signs of 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.

- 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.

RECENT OUTREACH ACTIVITIES

- On February 23, staff provided an update on recent ADA activities and held a question-and-answer session for the DBTAC-National Network of ADA Centers in

Arlington, Virginia. Attendees of this meeting included DBTAC Directors, NIDRR Project Officers, and the DBTAC Coordination Outreach and Research Center.

(Outreach, continued)

- On March 2, staff participated in a panel discussion at the Paralyzed Veterans of America (PVA), Chapter Advocacy and Legislation Training Seminar in Arlington, Virginia. The presentation provided an update on recent ADA activities and the status of the proposed revisions in ADA regulations. The audience included 80 PVA members from chapters around the country. Other presenters represented the Access Board and the Equal Employment Opportunity Commission. A question-and-answer session followed the presentations.
- On March 12, staff participated in a panel discussion at the American University Washington College of Law in Washington, DC on the topic of “Assisting Law Students with Disabilities in the 21st Century.” Staff addressed issues relating to the ADA Amendments Act.
- On March 20, staff participated on a panel at Georgetown University Law Center in Washington, DC, concerning public interest law and pro bono work. An estimated 30-40 students attended the event.
- On March 24, staff participated in a one-day training session for Maryland State Agency ADA Coordinators in Baltimore, Maryland, on the ADA Amendments Act. An estimated 30-40 ADA Coordinators attended the event.
- On March 31, staff addressed a Disabilities Studies class at the University of Pittsburgh at Bradford, Pennsylvania, on the ADA and some of its recent changes. An estimated 40-50 students, faculty members, and other personnel attended the presentation.
- On April 16, staff gave a presentation on disability awareness and the ADA for students at the Cornell Medical School at New York Presbyterian Hospital in New York, New York.
- On April 20 through 23, 2009, staff made several presentations at the National Association of ADA Coordinators in Baltimore, Maryland. Approximately 50 ADA Coordinators representing State and local governments throughout the country attended the conference.