



Disability Rights online News

U.S. Department of Justice
Civil Rights Division

May 2011
Issue Forty Two

Disability Rights Online News

is a bi-monthly update about the Civil Rights Division's activities in the area of disability rights. The Division enforces laws prohibiting discrimination based on disability in employment, housing, access to businesses serving the public, access to government programs and services, including voting and public transportation, and unconstitutional conditions in institutions of confinement.

In this Issue:

ADA	1 - 6
Fair Housing	6 - 7
ADA Mediation	7 - 8
ADA Outreach	9 - 10

MEDICAL LICENSING BOARD TO PROVIDE TESTING ACCOMMODATIONS FOR APPLICANTS WITH DISABILITIES

On February 23, 2011, the National Board of Medical Examiners, which administers the standardized test required to obtain a license to practice medicine in the United States, entered into a settlement agreement with the Department resolving a complaint by a Yale University Medical School student who was twice refused the accommodations he requested because of his disability, dyslexia. The Board agreed to provide reasonable testing accommodations to people with disabilities when taking the U.S. Medical Licensing Examination and agreed to grant the complainant the accommodations he needs -- double the standard testing time and a separate testing area to take the test.

"In the past, demands for unnecessary or redundant documentation, burdensome and expensive repeated professional evaluations, or irrelevant evaluative testing unrelated to the ability to demonstrate one's knowledge or skills on an examination prevented individuals with appropriately documented disabilities from pursuing their chosen professions," said Thomas E. Perez, Assistant Attorney General for the Civil Rights Division. "By entering into this agreement, NBME is doing its part to ensure that people with a reading disability like Mr. Romberg will have the opportunity to take the USMLE with the reasonable testing accommodations they need to demonstrate their knowledge and ability."

H&R BLOCK WILL PROVIDE EFFECTIVE COMMUNICATION FOR CLIENTS WHO ARE DEAF OR HARD OF HEARING

On January 31, 2011, HRB Tax Group Inc., H&R Block Tax Services LLC, and HRB Advance LLC (collectively, H&R Block) entered into a settlement agreement with the Department to ensure effective communication when providing tax preparation services and courses for customers who are deaf or hard

(Continued on page 2)

(H&R Block, continued)

of hearing. H&R Block has more than 11,000 owned and franchised offices nationwide and prepares more than 19.9 million tax returns annually.

The agreement, which resolves an ADA complaint filed by an individual who is deaf, requires H&R Block to furnish appropriate auxiliary aids and services, including sign language interpreter services, when necessary to serve clients who are deaf or hard of hearing. H&R Block will adopt a policy on effective communication that applies to all offices nationwide, post the policy on its website, and distribute the policy to all current and new employees and contractors. In addition, all H&R Block offices will be required to provide staff training on the ADA and post a notice in their reception areas stating that individuals who are deaf or hard of hearing have a right under the ADA to request an interpreter or other form of auxiliary aid or service if needed. H&R Block will also pay \$5,000 in compensatory damages to the complainant and a \$20,000 civil penalty to the United States.

INTERSTATE BUS COMPANY WILL ACQUIRE ACCESSIBLE BUSES

On March 9, 2011, Autobuses Ejecutivos LLC d/b/a Omnibus Express, of Houston, Texas, which operates passenger bus service between Mexico and Texas, Florida, Georgia, South Carolina, North Carolina, Virginia, Nashville, and Indianapolis, entered into a consent agreement with the Department of Justice and the Federal Motor Carrier Safety Administration (FMCSA) of the U.S. Department of Transportation resolving violations of the ADA and the Over-the-Road Bus Transportation Accessibility Act of 2007 (OBTAA). The OBTAA gives the FMCSA authority to revoke a bus company's operating authority for failing to provide accessible buses, while the Justice Department has authority to seek civil penalties for violations of the ADA. In February 2009, FMCSA and the Justice Department entered into a memorandum of understanding to work together to ensure consistent enforcement of the ADA and OBTAA nationwide.

An extensive investigation conducted by FMCSA uncovered that Omnibus Express was operating a fleet of 85 leased buses, none of which were equipped with wheelchair lifts. In the past 12 months, the bus company leased 22 new buses that were not accessible to individuals with disabilities. ADA regulations require that at least 50 percent of a carrier's buses be accessible, and that all new buses leased or purchased be accessible to individuals with disabilities. The consent agreement requires Omnibus Express to pay \$55,000 in civil penalties and to upgrade its fleet to meet ADA requirements by July 2011 or have its operating authority revoked.

"Equal access to transportation is at the cornerstone of autonomous and independent living, and this agreement demonstrates the strong commitment both the Justice Department and the Department of Transportation have to joint enforcement of the requirements that transportation be accessible to all," said Assistant Attorney General Thomas E. Perez. "We will continue to vigorously enforce these requirements to ensure individuals with disabilities have equal access as guaranteed by the ADA."

"Every day, thousands of people rely on motorcoaches and other types of commercial passenger buses to travel where they need to go safely and efficiently," said FMCSA Administrator Anne S. Ferro. "We owe it to the traveling public to make sure commercial buses are safe and accessible for everyone."

VIRGINIA HOSPITAL WILL PROVIDE EFFECTIVE COMMUNICATION FOR PATIENTS AND COMPANIONS WHO ARE DEAF OR HARD OF HEARING

On March 28, 2011, the Department filed a complaint in intervention in the federal court in Alexandria, Virginia, in a private lawsuit, Heisley v. Inova Fairfax Hospital, alleging that the hospital failed to provide effective communication for patients and companions who are deaf or hard of hearing. Simultaneously, the Department filed a consent decree that had been negotiated among the parties and was approved by the court on March 30, 2011. Under the consent decree, Inova Health System will provide training to hospital staff on the requirements of the ADA and the Rehabilitation Act, adopt specific policies and procedures to ensure that auxiliary aids and services are promptly provided to patients or companions who are deaf or hard of hearing, and pay \$95,000 in compensatory damages to aggrieved individuals and a \$25,000 civil penalty to the United States. Inova Health System separately agreed to pay a total of \$25,000 in compensatory damages to two other aggrieved individuals. (See article about previous Inova Fairfax settlement agreement in issue 19.)

“The ADA protects the right of individuals who are deaf or hard of hearing to be able to access medical services, and this settlement is the latest example of the Justice Department’s unwavering commitment to enforcing the ADA,” said Assistant Attorney General Thomas E. Perez.

“This settlement also demonstrates Inova Health System’s commitment to provide effective communication to people who are deaf or hard of hearing.”

“This settlement shows that Inova and the government share the same goal – making sure that deaf and hard of hearing patients can communicate with their doctors, especially at critical moments in their medical care,” said Neil H. MacBride, U.S. Attorney for the Eastern District of Virginia.

PUERTO RICO DEPARTMENT OF JUSTICE SUED FOR EMPLOYMENT DISCRIMINATION

On April 14, 2011, the Department filed a lawsuit in the federal court in San Juan, Puerto Rico, charging the Puerto Rico Department of Justice (PRDOJ) with employment discrimination for failing to provide a reasonable accommodation to an employee with a disability, as required by the ADA. The lawsuit alleges that the PRDOJ knowingly relocated an employee who uses a wheelchair to an office building that was not accessible to her. As a result, the employee could not park her vehicle and enter the building without the assistance of others, and could not use the restroom during her work day. After the employee filed a complaint with the Equal Employment Opportunity Commission, the PRDOJ eventually relocated the employee to a more accessible office building, but continues to require her to attend long meetings on a regular basis at an inaccessible facility.

“The Americans with Disabilities Act protects an employee’s right to work in an environment that is free of unnecessary barriers to access,” said Assistant Attorney General Thomas E. Perez. “The Civil Rights Division is committed to protecting the employment rights of individuals with disabilities, who should not be relegated to working in locations that result in unequal and, in this case, unsafe and undignified working conditions.”

RECENT ACTIVITIES TO ENFORCE SUPREME COURT'S OLMSTEAD DECISION

On February 4, 2011, the federal court in Seattle, Washington, denied the plaintiffs' motion for a preliminary injunction in M.R. v. Dreyfus, a class action lawsuit on behalf of 45,000 Washington residents with disabilities who receive personal care services through Medicaid. The plaintiffs alleged that scheduled reductions in personal care hours will force them into institutions in violation of the Olmstead decision and the ADA integration mandate. The Department had filed a Statement of Interest in support of the plaintiffs' motion. The plaintiffs have filed an appeal to the Ninth Circuit Court of Appeals.

On February 18, 2011, the Department filed a Statement of Interest in John B. v. Goetz, a class action lawsuit in the federal court in Nashville, Tennessee, regarding the State of Tennessee's alleged failure to provide adequate health services and treatment to thousands of Medicaid-eligible children, in violation of the early and periodic screening, diagnostic, and treatment (EPSDT) provisions of the Medicaid Act. Based on recent Sixth Circuit rulings on other Medicaid Act issues, the state recently moved to vacate the consent decree

that was negotiated more than a decade ago. The Department's brief argued that the EPSDT provisions at issue in this case create private rights that are enforceable under 42 U.S.C. § 1983 and that they require participating states to ensure that medically necessary services are provided to eligible beneficiaries under the age of twenty-one. On March 1, 2011, the court entered a preliminary order upholding most of the provisions of the consent decree as valid and enforceable.

On April 4, 2011, the Department filed a Statement of Interest in support of the plaintiffs' motion for summary judgment in Hiltibran v. Levy, a lawsuit in the federal court in Kansas City, Missouri, challenging the State's refusal to provide needed incontinence supplies for Medicaid-eligible individuals with disabilities who live in the community. The Department had previously filed a Statement of Interest in support of the plaintiffs' motion for a preliminary injunction requiring the state to provide the supplies while the case is pending. That injunction was granted on December 27, 2010, and applies to all similarly-situated individuals statewide. (See previous articles in issues 40 and

41.) In its brief, the Department reiterated its argument that, without the supplies, plaintiffs are at risk of institutionalization in violation of the Olmstead decision and the ADA integration mandate.

On April 7, 2011, the Department filed a Statement of Interest in Pitts v. Greenstein, a class action lawsuit in the federal court in Baton Rouge, Louisiana, challenging a decision by the Louisiana Department of Health and Hospitals to reduce the number of personal care hours available to Medicaid-eligible individuals with disabilities. The plaintiffs allege that the cuts will place them and others similarly situated at risk of institutionalization in violation of the Olmstead decision and the ADA integration mandate. In its brief, the Department argued that the defendants' motion for summary judgment should be denied because it is based on a misunderstanding of the ADA's requirements and because there are factual issues that should be resolved at trial.

On April 8, 2011, the Department filed a Statement of Interest in Troupe v. Barbour, a lawsuit in the federal court in Jackson, Mississippi, on behalf of Medicaid-eligible children

(Olmstead, continued)

who have serious emotional or behavioral disorders who allege that the State of Mississippi has denied them treatment sufficient to ameliorate their conditions, in violation of the EPSDT provisions of the Medicaid Act, and, as a result, their health has deteriorated and they have experienced un-necessary institutionalizations. In its brief, the Department opposed the State's motion to dismiss this claim, arguing that the EPSDT provisions create privately enforceable rights under 42 U.S.C. § 1983 and require states to ensure that medically necessary services are provided to eligible beneficiaries under the age of twenty-one.

At the request of the parties, on April 18, 2011, the federal court in Miami, Florida, dismissed Cruz v. Dudek, a lawsuit filed by two Medicaid-eligible men with quadriplegia who were at risk of institutionalization because of the State of Florida's failure to provide them with adequate community-based services. (See previous article in issue 39.) The court had previously issued an order requiring the State to provide support services to them in their homes while the case was pending. After the state stipulated that it will not withdraw these community-based services in the future, the parties agreed to dismiss the case.

NEW ADA RULES GO INTO EFFECT

On March 15, 2011, the Department's revised regulations implementing titles II and III of the ADA went into effect. They contain many new or expanded provisions on general nondiscrimination policies, including the use of service animals, the use of wheelchairs and other power-driven mobility devices, selling tickets for wheelchair-accessible seating at sports and performance venues, providing interpreter services through video conferencing, and the effect of the new regulations on existing facilities. An exception was made for the new provisions on hotel reservations, which will not go into effect until March 15, 2012.

The regulations also adopt new ADA Standards for Accessible Design, which were revised to harmonize with model building codes. They include, for the first time, standards on making swimming pools, parks, golf courses, boating facilities, exercise clubs, and other recreation facilities accessible for individuals with disabilities. The 2010 Standards will go into effect on March 15, 2012.

These regulations apply to the activities of more than 80,000 units of state and local government and more than seven million places of public accommodation, including stores, restaurants, shopping malls, private schools, doctors' and dentists' offices, hotels, sporting arenas, movie theaters, amusement parks, and other places that provide goods and services to the public.

"The new rules usher in a new day for the more than 50 million individuals with disabilities in this country," said Assistant Attorney General Thomas E. Perez. "The rules will expand accessibility in a number of areas and, for the first time, provide detailed guidance on how to make recreation facilities, including parks and swimming pools, accessible."

NEW ADA TECHNICAL ASSISTANCE MATERIALS

ADA 2010 Revised Requirements: Effective Date/Compliance Date is a four-page publication explaining the dates on which different provisions of the revised regulations take effect.

ADA Update: A Primer for Small Business is a 23-page illustrated guide to help small businesses understand the new and updated requirements of the revised ADA regulations.

DEPARTMENT ADOPTS PLAN FOR IMPLEMENTING THE NATIONAL HIV/AIDS STRATEGY

On March 15, 2011, the Department submitted its plan for implementing the National HIV/AIDS Strategy to the Office of National AIDS Policy at the White House. The plan is available at <http://www.aids.gov/federal-resources/policies/national-hiv-aids-strategy/nhas-operational-plan-doj.pdf>.

Under the plan, the Bureau of Prisons will continue to provide HIV screening, care, and treatment of inmates diagnosed with HIV and will continue to refer them to support services upon their release to the community. The Civil Rights Division will continue to enforce the Americans with Disabilities Act, the Fair Housing Act, and other federal civil rights laws that prohibit discrimination against people with HIV/AIDS; will work with other federal agencies to ensure active and consistent enforcement of these laws. For more information about the National HIV/AIDS Strategy, see <http://aids.gov/federal-resources/policies/national-hiv-aids-strategy/overview-fed-domestic-hiv-aids-activities.pdf>.

COURT RULES AGAINST LANDLORD ON FEES FOR ASSISTANCE ANIMALS

On March 30, 2011, the federal court in Fargo, North Dakota, ruled in favor of the plaintiffs in Fair Housing of the Dakotas v. Goldmark Property Management, Co., an FHA case in which the Department participated as amicus curiae (friend-of-the-court). The lawsuit challenged Goldmark's requirements that tenants with disabilities who use assistance animals that are not specially trained, such as an emotional support or companion animals, pay an extra non-refundable deposit of several hundred dollars, a one-time reasonable accommodation request fee, and a monthly fee for the animal, and obtain \$100,000 in liability insurance. Goldmark does not impose these requirements on tenants with disabilities who use assistance animals that are specially trained, such as guide dogs or hearing dogs. Although only trained service animals must be accommodated in settings governed by the ADA, residential settings are governed by the FHA, which does not require that assistance animals be trained. The court agreed with the principles explained in the

Department's amicus brief and ruled that Goldmark is not entitled to summary judgment. (See previous article in issue 40.)

Did you know . . .

The ADA establishes the rights of people with disabilities in public settings such as stores, hotels, movie theaters, hospitals, parks, schools, public transportation, and government buildings.

The Fair Housing Act establishes the rights of people with disabilities in residential settings such as apartment buildings and residential developments.

The Air Carrier Access Act establishes the rights of people with disabilities in air travel.

The rules for service animals, or assistance animals, are different under these three laws.

For more information, see the Department's booklet *A Guide to Disability Rights Laws*.

IDAHO CONDOMINIUM COMPLEX WILL BE RETROFITTED FOR ACCESSIBILITY

On February 17, 2011, the developer of a 36-unit condominium complex in Post Falls, Idaho, a suburb of Coeur d'Alene, entered into a consent decree with the Department resolving the Department's lawsuit alleging that the developer violated the Fair Housing Act (FHA) by developing Riverwalk Condominium with inaccessible features. (See previous article in issue 33.)

Under the settlement, which was approved by the federal court in Boise, Idaho, on March 2, 2011, Riverwalk Condominiums LLC will retrofit the complex, including reconfiguring bathrooms and kitchens, remounting electrical and environmental controls, making pedestrian routes to and within the complex accessible, and creating accessible parking spaces, storage units, and mailboxes. In addition, it will ensure that future or ongoing construction meets the accessibility requirements of the FHA; pay \$13,500 in compensatory damages to the complainant and the Intermountain Fair Housing Council (IFHC), a non-profit fair housing organization in Boise that assisted the complainant and helped document accessibility barriers at the complex; and pay a \$5,000 civil penalty to the

United States. The complex's condominium association, which is also a party to the settlement, has agreed to allow access to the complex so that the retrofits can be completed.

"Since 1991, the Fair Housing Act has required that new multi-family housing meet basic accessibility requirements, and there is no excuse for noncompliance at new developments," said Assistant Attorney General Thomas E. Perez. "Enforcement actions like this one illustrate the department's commitment to ensuring accessible housing is available for persons with disabilities."

"Builders and designers of multi-family housing have an obligation to ensure that their housing is accessible to persons with disabilities," said

Wendy J. Olson, U.S. Attorney for the District of Idaho. "We commend the work of the Department of Housing and Urban Development (HUD) and IFHC for their commitment to the fundamental principles of fair housing for all."

"While most get it right, HUD and the Justice Department will continue to work together to ensure that all architects, builders and developers comply with their legal responsibility to build housing that is accessible," said John Trasviña, HUD Assistant Secretary for Fair Housing and Equal Opportunity.

The lawsuit arose from complaints filed with HUD by the apartment seeker and IFHC. After investigation, HUD referred the matter to the Justice Department.

ADA MEDIATION HIGHLIGHTS

The ADA Mediation Program is a Department-sponsored initiative intended to resolve ADA complaints in an efficient, voluntary manner. With the complainant's consent, the Department refers the complaint to a network of professional mediators throughout the country who are trained in the legal

requirements of the ADA, and the mediation process is initiated when the respondent agrees to participate. The program has proven effective in resolving complaints at less cost and in less time than traditional investigations or litigation. Over 78% of all complaints mediated have been resolved successfully.

(Mediation, continued)

Customers and businesses need to communicate effectively. In this issue, we highlight complaints against businesses from people who are deaf or hard of hearing that have been successfully mediated.

■ In Illinois, a person who is deaf complained that a bank refused to accept a call using a video relay service, resulting in penalties and debt collection calls that negatively affected his credit rating. The bank retrained approximately 3,000 employees to accept TTY, relay, and video relay calls and posted information on its website concerning such calls. The bank also refunded \$479.40 to the complainant for penalties assessed, provided correction letters to credit agencies, and paid the complainant \$10,000.

■ A person who is deaf complained that when he attempted to place his order by writing on a napkin, an Indiana fast food restaurant refused to serve him and ridiculed him after restaurant personnel repeatedly misunderstood his written order. The misunderstanding escalated, the police were called, and the complainant was asked to leave. The restaurant added pictorial menus

at the counter that customers can use to point to their order. The restaurant also trained its staff on the ADA and paid the complainant \$30,000.

■ A person who is deaf complained that a collection agency in the state of Washington refused to accept his calls through the video relay system. The agency reaffirmed its policy to accept relay calls, trained its staff on the ADA and using the relay system, and apologized to the complainant.

■ A person whose mother is hard of hearing complained that a California movie theater did not maintain its assistive listening equipment in working order. The theater implemented a procedure to regularly inspect and maintain the system and trained its staff on how to respond if problems arise.

■ An individual who is deaf complained that a theater in the State of Washington failed to provide sign language interpretation for its productions. The theater agreed to provide a qualified sign language interpreter for at least one performance per production and will provide information about which performances will be interpreted in theater brochures and on its website.

■ An individual complained that a West Virginia debt collection agency refused to accept his TTY calls through the telecommunication relay system. The agency changed its policy to accept relay calls, trained its staff in using the relay system, and published an article about providing effective communication in a trade publication.

■ 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 New Mexico, a person who is hard of hearing complained that a hotel did not provide effective communication. The hotel acquired two communication kits, agreed to provide ongoing training to staff in ensuring effective communication, and apologized to the complainant.

RECENT OUTREACH ACTIVITIES

- Staff has been participating in intensive training for local public health professionals, case managers, and advocates sponsored by the AIDS Community Research Initiative of America (ACRIA). ACRIA is funded by the Elton John Foundation to conduct HIV health literacy training in Southern states. The Department's presentation describes federal civil rights laws that protect people with HIV/AIDS. Trainings were held January 20-21 in Birmingham, Alabama, March 31-April 1 in Memphis, Tennessee, and April 15 in Augusta, Georgia.
- Recently, staff have been conducting outreach to AIDS Services Organizations (ASOs) pursuant to the Department's plan for implementing the National HIV/AIDS Strategy. Outreach was conducted on February 10 in Columbus, Ohio, on March 3 in Jackson, Mississippi, on March 16 in Detroit, Michigan, and on March 23 in San Francisco, California.
- On February 27, staff gave a presentation on the new ADA regulations for the American Council of the Blind Legislative Affairs Summit in Arlington, Virginia.
- On March 4, staff gave a presentation on the new ADA regulations at the Mid-West Fairs Association's annual conference in Houston, Texas. The presentation focused on the requirements related to safe harbor, service animals, wheelchair and other power-driven mobility devices, and the 2010 ADA Standards. The conference was attended by representatives of large state fairs, including Texas, California, and Minnesota, as well as a number of smaller state and county fairs.
- On March 7, staff gave a presentation on the new ADA regulations at the National Association of Counties Legislative Conference in Washington, DC. Attendees of the conference included county officials from across the country.
- On March 10, staff conducted training on the new ADA regulations and the 2010 Standards at a conference sponsored by the Mid-Atlantic ADA Center in Silver Spring, Maryland. Attendees included architects, designers, codes officials, ADA coordinators, and local government administrators.
- On March 14, at the request of the Department of Education's Office of Non-public Education, staff gave a presentation on the recent settlement with Nobel Learning Communities (see article in issue 41) for the Counsel of American Private Educators in Washington, DC.
- On March 21 and 22, staff gave presentations at the Legal Committee and the Response and Recovery Committee at the National Emergency Management Association's mid-year conference in Alexandria, Virginia. The presentations focused on ensuring that the needs of individuals with disabilities are met in emergency response situations. Attendees included directors and key staff of state and local emergency management agencies.
- On March 24, staff conducted training at the EEOC regional office in San Francisco, California. The

(Outreach, continued)

training included a discussion of issues that cut across titles I, II, and III of the ADA and an update on ADA cases in the pipeline.

■ On April 1, staff participated in a full day forum discussion with disability advocates from Kansas and Missouri hosted by the U.S. Attorney's Office for the Western District of Missouri. Representatives from the Centers for Medicaid and Medicare Services and Housing and Urban Development also participated. The discussion centered around current issues, concerns, and questions regarding ADA compliance in Kansas and Missouri.

■ On April 7, staff gave a presentation to the first year class of the Cornell Medical School in New York, New

York. The presentation provided an overview of the ADA and other disability rights laws, general disability related issues, and considerations when treating and interacting with patients with disabilities

■ On April 8, staff attended an HIV/AIDS Employment Roundtable sponsored by the U.S. Department of Labor in Washington, DC. The event brought together a cross-section of government agency representatives, HIV/AIDS service providers, employers, researchers, advocates, and members of the HIV/AIDS community to discuss improving employment for people living with HIV/AIDS.

■ On April 12, staff participated in a webinar with the Texas Registered Accessibility Specialists Association. The webinar

focused on the new ADA 2010 Standards and Regulations.

■ On April 27, staff participated in a meeting with HIV/AIDS legal service attorneys, impact litigation attorneys, and human rights advocates hosted by the Ford Foundation in New York, New York. The meeting was convened to discuss progress made over the past year in building networks and improving access to justice for people with HIV/AIDS and to consider strategies for collaboration and network expansion, particularly in the Southern United States.

■ On April 27, staff gave a presentation on the 2010 Standards as they apply to vending machines at the National Automatic Merchandising Association's annual meeting and trade show in Chicago, Illinois.