



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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STATE OF DELAWARE WILL OVERHAUL ITS MENTAL HEALTH SYSTEM TO COMPLY WITH THE ADA

On July 15, 2011, the State of Delaware entered into a comprehensive settlement agreement with the Department that will transform the state of Delaware's mental health system and resolve violations of the ADA. The federal court in Wilmington approved the settlement the same day. The agreement requires Delaware to expand community mental health services so people with severe and persistent mental illnesses can be served in the most integrated settings appropriate to those individuals' needs. Over the next five years, Delaware will prevent unnecessary hospitalization by expanding and deepening its crisis services, including a hotline, crisis walk-in centers, mobile crisis teams, crisis apartments, and short term crisis stabilization programs. Delaware will also provide Assertive Community Treatment (ACT) teams, intensive case management, and targeted case management to individuals living in the community who need support to remain stable. In addition, the state will offer scattered-site supported housing to everyone in the

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DEPARTMENT LAUNCHES HIV SECTION ON ADA WEBSITE

On July 13, 2011, the Department launched a new section of its ADA website, www.ada.gov/aids, providing information about the Department's efforts to address discrimination against people with HIV/AIDS in violation of the ADA. The web section provides a brief history of coverage of HIV/AIDS under the ADA, recent DOJ HIV/AIDS litigation and settlement agreements, technical assistance pieces, press and outreach efforts, and how to file a discrimination complaint. It also has links to AIDS.gov and the National HIV/AIDS Strategy website.

(Delaware, continued)

agreement's target population who needs that housing support. Finally, Delaware will offer supports for daily life, including supported employment, rehabilitation services, and peer and family supports.

Thomas E. Perez, Assistant Attorney General for the Civil Rights Division, commented that "the services that the State of Delaware has agreed to provide under this agreement will enable people with mental illnesses living in Delaware to remain successfully in their homes and communities, rather than entering costly segregated facilities. As states around the country work to breathe life into the rights established in the ADA and Olmstead, this agreement demonstrates Governor Markell and Attorney General Biden's vision and leadership."

In 2009, the Justice Department began its investigation of Delaware's state hospital and, in 2010, modified the scope of the investigation to focus on violations of the ADA throughout the state's mental health system. The state worked cooperatively with the Department to negotiate a settlement resolving the violations.

OTHER RECENT ACTIVITIES TO ENFORCE OLMSTEAD DECISION

On April 7, 2011, the Department issued a comprehensive findings letter to the Attorney General of the State of New Hampshire concluding that the state is violating the ADA by failing to provide services to qualified individuals with mental illnesses in the most integrated setting appropriate to their needs. The Department notified the state that systemic failures in its mental health system have led to the needless and

prolonged institutionalization of individuals with disabilities who could be served in more integrated settings in the community with adequate services and supports. The state has agreed to participate in a series of meetings with the Department and advocacy organizations over the next few months to reach agreement on a plan to correct the violations cited.

On July 12, 2011, the Department filed a Statement of Interest in the federal court

in Oakland, California, in Darling v. Douglas (formerly called Cota v. Maxwell-Jolly), a case against the California Department of Health Care Services. The plaintiffs are elderly individuals and adults with physical and mental disabilities who currently receive services from California's Adult Day Health Care program (ADHC), which is provided as an optional benefit under the state's Medicaid State Plan. In response to the state's budget crisis, the California legislature passed a bill requiring the state to remove ADHC as a covered service and made no provision for alternative or transition services for ADHC recipients, thus placing thousands of recipients at risk of institutionalization. The Department's brief supported the plaintiffs' argument that policies that place individuals at serious risk of institutionalization are actionable under the ADA and rebutted the state's argument that providing transition and alternative services would fundamentally alter the state's programs.

SKIN CARE COMPANY AGREES NOT TO DISCRIMINATE AGAINST PEOPLE WITH HIV

On June 28, 2011, American Laser Centers (ALC) of Farmington Hills, Michigan, which operates skin care clinics in 27 states and Puerto Rico, entered into a settlement agreement with the Department resolving a complaint from a man alleging that he was discriminated against on the basis of his HIV status. The settlement prohibits ALC from denying any portion of their treatments to clients based on HIV status and requires the company to draft a nondiscrimination policy and submit it to the Department for approval, post the policy conspicuously in the waiting area of all clinics and on the company's website, and provide ADA training to all employees, including training about HIV discrimination. In addition, the company agreed to pay \$12,000 in compensatory damages to the complainant and a \$5,000 civil penalty to the United States.

NATIONAL BAR EXAM MUST ALLOW USE OF COMPUTERS WITH SCREEN READING SOFTWARE

On July 20, 2011, the Department filed a Statement of Interest in support of the plaintiff in Jones v. National Conference of Bar Examiners, a lawsuit in the federal court in Burlington, Vermont. The plaintiff, who has significant vision disabilities, is a student at Vermont Law School and must pass the Multistate Professional Responsibility Examination to become a member of the Vermont Bar. She sought a preliminary injunction requiring the National Conference of Bar Examiners, which owns the exam, and ACT, Inc., which administers the exam, to allow her to use a computer and the screen reading software she has used throughout law school while taking the exam, along with other accommodations. In its brief, the Department explained that title III of the ADA requires appropriate policy modifications and auxiliary aids to "best ensure" that the exam measures the test-taker's knowledge of professional responsibility issues and not her visual disabilities. On August 2, 2011, the court agreed with the Department's analysis and granted the plaintiff's motion. As a result, the National Conference of Bar Examiners allowed the plaintiff to take the exam on August 5, 2011, with the accommodations she had requested.

DEPARTMENT ARGUES THAT NEW STORES' MAIN ENTRANCES MUST BE ACCESSIBLE

On May 31, 2011, the Department filed a Statement of Interest in support of the plaintiff's motion for partial summary judgment in Colorado Cross-Disability Coalition v. Abercrombie & Fitch, Co., a lawsuit in the federal court in Denver, Colorado. The motion concerns two Hollister stores built after the ADA went into effect that have inaccessible, highly decorative main entrances and non-decorative side entrances that are accessible. Hollister is a division of Abercrombie and Fitch that markets SoCal lifestyle clothing and accessories for teenagers in stores designed to look like surf shacks. In its brief, the Department rebutted Abercrombie's arguments that the three doors constitute a single, accessible entrance and, alternatively, that the ADA regulation requiring the main entrance to be accessible is "aspirational," not mandatory. The Department urged the court to find that the design and construction of the entrances violate the ADA by unnecessarily relegating people who use wheelchairs to separate and objectively different entrances than those available for other people.

NEW PROJECT CIVIC ACCESS SETTLEMENTS

Project Civic Access (PCA) is the Department's wide ranging initiative to work cooperatively with local governments to ensure that their programs and activities comply with the ADA, allowing people with disabilities to participate more fully in the civic life of their communities. More than 190 agreements have been reached with communities small and large throughout the United States under this initiative. PCA reviews have been conducted in all 50 States, as well as Puerto Rico and the District of Columbia, helping to improve the lives and broaden opportunities for more than 3 million Americans with disabilities. (See previous articles in issues # 3, 5, 9, 17, 18, 28, 32, 37, and 40.)

Since January 1, 2011, nine local governments entered into settlement agreements with the Department under the PCA initiative. The new agreements are with:

- Daviess County, Kentucky
- The City of Des Moines, Iowa
- Fairfax County, Virginia
- The City of Independence, Kansas
- City of Madison, Indiana
- Montgomery County, Maryland, and Maryland National Capital Park and Planning Commission
- Norfolk County, Massachusetts
- The Town of Swansea, Massachusetts
- Van Buren County, Arkansas

NEW YORK APARTMENT COMPLEX WILL BE RETROFITTED FOR ACCESSIBILITY

On July 25, 2011, the developer and architect of a 143-unit residential apartment complex in New York, New York, entered into consent decrees with the Department resolving a lawsuit alleging that they violated the Fair Housing Act (FHA) in the design and construction of The Melar, a 22-story apartment building on the upper west side of Manhattan. The lawsuit, filed on September 30, 2010, alleged that the defendants failed to provide kitchens and

bathrooms that are usable by people with disabilities, failed to provide accessible routes into and within the apartment units, failed to make public and common areas accessible for people with disabilities, and located light switches, electrical outlets, and other controls in inaccessible locations. The lawsuit also alleged that The Melar's design and construction violated the accessibility provisions of New York City law.

The consent decree with L&M 93rd Street LLC, the developer and owner of The Melar, requires the company to pay all costs related to retrofitting common areas to make them accessible to people with disabilities and reconfiguring the bathrooms, kitchens, and closets in apartments; some of the retrofits to the apartments are mandatory and some are upon the request of the tenants. In addition, the developer will establish a fund in the amount of \$288,300 to make additional improvements for the benefit of people with disabilities.

The L&M consent decree also establishes a settlement fund of \$180,000 to compensate individuals harmed by the lack of accessible features at The Melar. Anyone who believes that he or she may

(Fair Housing, continued)

be entitled to monetary relief should write to the Chief of the Civil Rights Unit at the U.S. Attorney's Office, 86 Chambers Street, Third Floor, New York, New York, 10007, or contact the Civil Rights Complaint Line at 212-637-2987 (voice) or 212-637-0039 (TTY).

The consent decree with Costas Kondylis & Partners, LLP, the architectural firm that designed the building, as well as the L&M consent decree require both companies to undergo training on the

requirements of the FHA and pay a civil penalty to the United States in the amount of \$40,000 each.

“The Fair Housing Act is an important safeguard for those with disabilities and helps ensure that they can enjoy full use of and access to their living spaces,” said Manhattan U.S. Attorney Preet Bharara. “Architects, owners and developers play a key role in making sure that these requirements are met, and when they fail to do so, this Office will hold them accountable.”

that a retail store refused to allow her into the dressing room to assist her daughter. The store changed its policy, agreed to allow companions to accompany customers with disabilities needing assistance into dressing rooms, trained its staff on the ADA, and gave the complainant a \$100 gift card.

- A person who uses a wheelchair complained that a Pennsylvania hotel failed to honor her reservation for an accessible room. The hotel's owner implemented a new policy at the nine hotels it owns in the area to guarantee reserved accessible rooms, including removing accessible rooms from the general room inventory, sending a confirmation letter guaranteeing the room at the time of reservation, and limiting staff's ability to override the reservation system. In addition, the owner established an interactive employee training program on disability sensitivity and awareness and a “mystery guest” program to monitor compliance on a regular basis.

- In North Carolina, a person who has cerebral palsy affecting his manual dexterity and mobility complained that a check-cashing store refused to provide assistance to him

ADA MEDIATION HIGHLIGHTS

The ADA Mediation Program is a Department-sponsored initiative intended to resolve ADA complaints in an efficient, voluntary manner. The mediation process is 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 than traditional investigations or litigation. Over 78% of all complaints mediated have been resolved successfully.

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

- In Pennsylvania, an individual who uses a wheelchair complained that a cable provider refused to serve her at the designated accessible counter because the manager was using the computer there. The company agreed to serve customers at the accessible counter when needed and conducted disability-related sensitivity training for staff.

- In New York, the mother of an adult child with an intellectual disability complained

(Mediation, continued)

in filling out required forms. The business reaffirmed its policy of providing assistance to customers with disabilities upon request, retrained staff on the policy, sent a memo to other stores in the network reminding them of their ADA obligations, and apologized to the complainant.

- In Arkansas, a person who uses a wheelchair complained that a self-service gas station refused to provide assistance in pumping gas. The station agreed to provide refueling assistance when there are at least two employees on duty and posted signs asking customers to honk twice to request assistance.

Coalition, an affiliate of the Mid-Atlantic ADA Center (formerly, Disability and Business Technical Assistance Center) in Morgantown, West Virginia.

- On July 15, staff conducted training for staff of the U.S. Department of Corrections in Sea Girt, New Jersey. The training focused on the ADA and section 504 of the Rehabilitation Act.

RECENT OUTREACH ACTIVITIES

- On July 6, staff participated in a conference call with regional accessibility coordinators at the U.S. Bureau of Reclamation to discuss the new ADA regulations on other power-driven mobility devices and service animals.

- On July 11-12, staff gave several presentations at the American Council of the Blind national convention in Reno, Nevada. The presentations focused on the Wells Fargo settlement agreement and the new title II and title III regulations regarding service animals. Staff also provided an opportunity for individuals to submit initial claims for relief under the terms of the Wells Fargo agreement (see article in issue # 43).

- On July 12, staff gave a presentation on the work of the Civil Rights Division at the Lawyers' Committee for Civil Rights in Washington, DC.

- On July 12-14, staff gave several presentations at the Association on Higher Education and Disability (AHEAD) conference in Seattle, Washington. The presentations covered aspects of the revised ADA regulations and ADA Standards for Accessible Design as they relate to colleges and universities.

- On July 15, staff gave a presentation on the new title II and title III regulations at a conference sponsored by the West Virginia ADA

- On July 21, 2011, staff gave a presentation at a town hall meeting in Topeka, Kansas, on the new ADA regulations. The event was hosted by the Topeka Human Relations Commission.

- On July 22, staff gave a presentation on the new title II and title III regulations at a conference sponsored by ADA Indiana, an affiliate of the Great Lakes ADA Center (formerly, Disability and Business Technical Assistance Center) in Indianapolis, Indiana.

- On July 22, staff took part in a panel briefing for the National Council on Disabilities on the ratification process for the UN Convention on the Rights of Persons

(Outreach, continued)

with Disabilities. The President signed the Convention in July 2009 and will seek its ratification by Congress. The briefing, in Washington, DC, was part of an effort to increase awareness of the Convention and build support for ratification. The other speakers on the panel were State Department officials Judy Heumann, the President's Special Advisor for International Disability Rights, and Gilda Brancato, Attorney Advisor.

■ From July 23-26, staff answered questions and disseminated ADA technical assistance materials at the 102nd Annual NAACP Convention in Los Angeles, California. Approximately 30,000 participants attended the convention.

■ From July 24-28, staff answered questions and disseminated ADA technical assistance materials at the 38th Annual National Association

of Blacks in Criminal Justice Training Institute and Conference in St. Louis, Missouri. Approximately 1,500 participants attended the conference.

■ On July 25, staff gave a presentation on "The ADA: Past and Present" at the Missouri History Museum in St. Louis, Missouri. The Starkloff Disability Institute sponsored the event to celebrate the ADA's 21st anniversary. Approximately 100 individuals with disabilities and disability rights advocates attended the event.

■ From July 27-30, 2011, staff answered questions and disseminated ADA technical assistance materials at the National Urban League Annual Convention in Boston, Massachusetts. Approximately 20,000 participants attended the convention.

■ On July 31, staff gave a presentation on the ADA as it relates to child care settings at an event sponsored by the

Maryland State Department of Education, Division of Early Childhood Development in Towson, Maryland. This educational event is organized annually for child care providers who are subject to Maryland's state child care licensing regulations.

■ On August 10, staff gave a presentation at the 2011 Equal Employment Opportunity Commission Chicago Area Technical Assistance Program Seminar in Chicago, Illinois. The conference focuses on the latest developments and best practices in EEO law.

■ On August 24, staff gave a presentation on the new title II and title III regulations at a conference sponsored by ADA - OHIO, an affiliate of the Great Lakes ADA Center (formerly, Disability and Business Technical Assistance Center) in Columbus, Ohio.