



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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ATTORNEY GENERAL GONZALES HIGHLIGHTS ADA ACCOMPLISHMENTS AT BUSINESS LEADERSHIP CONFERENCE

Attorney General Alberto R. Gonzales spoke to a national audience of business leaders on October 5, 2006, at the U.S. Business Leadership Network (USBLN) Annual Conference. The USBLN is a national organization that promotes employment of people with disabilities. The Attorney General praised the organization's aims, saying to the 400 assembled members, "You appreciate the business case for tapping into the disability market and bringing on board qualified men and women whose abilities and perspectives will help your businesses succeed."

(Continued on page 2)

JUSTICE DEPARTMENT TO HOLD ITS NEXT MULTI-FAMILY HOUSING ACCESS FORUM IN PHOENIX IN NOVEMBER

On November 14, 2006, the Department will host a discussion on accessibility in the construction of multi-family housing at the Embassy Suites Phoenix Scottsdale in Phoenix, Arizona. This event is part of the nationwide Multi-Family Housing Access Forum program launched in 2005. The program helps building professionals understand their legal obligations under the federal Fair Housing Act's accessibility requirements and celebrates partnerships that have successfully produced accessible multi-family housing in which everyone profits, developers and consumers alike. Expected to participate are building professionals, including architects and engineers, as well as developers, government officials, people with disabilities, and those who work on their behalf. The last Access Forum was held in Atlanta in May, and was attended by over 120 people. To learn more about the program, visit www.usdoj.gov/fairhousing. To receive an invitation, email the Department at accessforum@usdoj.gov.

(Conference, continued)

He then spoke about the President's New Freedom Initiative, highlighted the Department's wide-ranging accomplishments in implementing the Americans with Disabilities Act, and emphasized that compliance with the ADA makes good business sense.

During his speech, Attorney General Gonzales announced a new publication, "Access for All: Five Years of Progress," which describes the Department's successes over the last five years in enforcing the ADA, enhancing opportunities and improving access for millions of Americans with disabilities throughout the nation. The report highlights successful enforcement, technical assistance, code certification, and mediation activities in areas ranging from health care to employment to emergency services. Both the speech and the new publication are available for viewing and downloading from the ADA website, www.ada.gov.



New Publication "Access for All: Five Years of Progress"

UNIVERSITY OF CHICAGO AND COLORADO COLLEGE AGREE TO INCREASE ACCESSIBILITY FOR PEOPLE WITH DISABILITIES

The University of Chicago and Colorado College each signed settlement agreements with the Department under which the schools will make their campuses and services more accessible to students and visitors with disabilities.

In a July 17, 2006, settlement, the University of Chicago agreed to make alterations to its facilities and, when requested in advance, will relocate certain types of services and programs to accessible facilities. The agreement addresses a wide

variety of services and facilities, including classroom and administrative buildings, housing, museums, and libraries, access between facilities, athletic and performance areas, directional signage, transportation, and emergency preparedness.

Colorado College agreed on August 3, 2006, to establish an ADA working group which, along with the ADA coordinator, will prepare a plan under which the college will make alterations to its facilities and, with prior notice, will relocate certain types of services and programs to accessible facilities. Like the University of Chicago, the Colorado College agreement addresses a variety of services and facilities, including classroom and administrative buildings, housing, libraries, access between facilities, athletic and performance areas, directional signage, and emergency preparedness.

"We applaud both the University of Chicago and Colorado College for their extensive efforts to improve campus access greatly for all students and visitors," said Wan J. Kim, Assistant Attorney General for the Civil Rights Division. "We hope that other colleges and universities will follow these examples and make the entire college experience accessible to their students with disabilities and others who visit their campuses."

CALIFORNIA LANDMARK AGREES TO REMOVE BARRIERS

On June 16, 2006, the owners and operators of Madonna Inn, Inc., a landmark roadside inn and restaurant on California's Central Coast, signed an agreement with the Department resolving two complaints about the accessibility of the inn and its restaurant.

Each of the 108 rooms in this well-known lodging facility is uniquely decorated with a special theme and color scheme, including five designated accessible rooms (Golfer, Vintage, Mt. Vernon, Rose, and Desert Sands). The inn agreed to make accessibility improvements in each of the designated accessible rooms and to provide additional amenities, such as a patio or fireplace, in at least two of the rooms. The inn will also offer a range of bed types in the rooms and will provide equipment to make the rooms accessible to people with hearing and vision disabilities. If the inn expands in the future, additional accessible rooms will be added.

In addition, barriers will be removed from public areas of the inn and restaurant. The agreement also requires the inn to modify its guest reservation policies to provide more opportunities for people with disabilities to stay at the inn.

NATIONAL CHAIN OF CRAFT AND FABRIC STORES WILL MAKE ACCESSIBILITY IMPROVEMENTS

On July 18, 2006, Jo-Ann Stores, Inc., agreed to make its 840 craft and fabric stores across the country accessible to people with disabilities. The agreement covers entrances, aisles, merchandise display areas, fabric cutting areas, checkout counters, and other spaces and elements at new and existing stores. The Department initially conducted an investigation after it received complaints about accessibility

at Jo-Ann stores from people with disabilities in Michigan, California, and Wisconsin. The investigation concluded that many of the spaces and elements of Jo-Ann stores were not in compliance with the ADA.

"Individuals with disabilities should be able to use retail establishments like other members of the public," said Stephen J. Murphy, United States Attorney for the

Eastern District of Michigan. "I commend Jo-Ann for its commitment to take the steps necessary to make its stores accessible. The improvements outlined in this settlement will make it possible for individuals with disabilities to use the stores in an unimpeded manner and, in particular, navigate the aisles freely."

The settlement agreement requires Jo-Ann to designate a corporate ADA Coordinator and hire an ADA consultant to assist with implementation of the settlement agreement; conduct a survey of every Jo-Ann store for compliance with the ADA over a four year period; bring all elements of each store into compliance within one year of the store's survey; provide ADA training to all store managers and personnel involved in the implementation of the agreement; and incorporate ADA training into Jo-Ann's training curriculum for all new employees.

FLORIDA HOSPITAL AGREES TO PROVIDE EFFECTIVE COMMUNICATION FOR DEAF PATIENTS

The Department entered into a settlement agreement with Bethesda Memorial Hospital in Boynton Beach, Florida, to resolve a complaint of discrimination from a patient who is deaf. The complaint stated that, despite repeated patient requests for interpreting services, the hospital failed to take appropriate steps to provide appropriate auxiliary aids, including qualified interpreters, necessary to ensure effective communication. The patient alleged that during a 20-day stay she met with doctors, specialists, and nurses and had procedures performed by the hospital without ever having the services of an interpreter. The lack of interpreter services improperly put responsibilities on the patient's husband to facilitate communication between his wife and the hospital. The settlement agreement includes payment of \$8500 in compensatory damages.

EXPANDED ILLUSTRATED GUIDE ISSUED TO ASSIST LOCAL GOVERNMENTS PLAN FOR NATURAL AND CIVIL EMERGENCIES

In August 2006, the Department issued a revised and expanded publication for local government planners, first responders, and emergency staff entitled "An ADA Guide for Local Governments: Making Community Emergency Preparedness and Response Programs Accessible to People with Disabilities." This publication identifies potential problems in notifying, evacuating, transporting, sheltering, and providing information to people with disabilities during emergencies and offers commonsense solutions for preventing or minimizing those problems.

"Recent events taught us all that people with disabilities can be among the most vulnerable members of our communities during an emergency or natural disaster," said Assistant Attorney General Wan J. Kim. "All

public officials should learn from the lessons of Hurricane Katrina and go forward better prepared to meet the needs of all of their citizens. We hope local officials will find this publication valuable and will follow the action steps it describes."

The 11-page illustrated guide can be viewed or downloaded from the Department's ADA Web site at www.ada.gov or ordered from the ADA Information Line at 800-514-0301 (voice) or 800-514-0383 (TTY). Information Line staff can answer additional questions about emergency preparedness or other ADA topics.



ADA BUSINESS CONNECTION MEETS IN ALBUQUERQUE

Assistant Attorney General Wan J. Kim sponsored an ADA Business Connection meeting in Albuquerque, New Mexico, on September 13, 2006. The ADA Business Connection is a Department initiative that works to increase voluntary compliance with the ADA. A key feature of this initiative is a series of events called ADA Business Connection meetings. Since 2002, 17 of these

meetings have occurred across the country to facilitate discussions and encourage long term collaborations between local leaders of business and disability rights organizations.

The Albuquerque session was co-hosted by Ray Trombino, Owner, Trombino's Bistro Italiano, and Julie Ballinger, Consultant, Star-



Assistant Attorney General Kim addresses participants at ADA Business Connection meeting in Albuquerque

Reach Enterprises. The meeting, involving 50 participants including small business owners, the U.S. Attorney from the District of New

Mexico, and individuals from local and statewide organizations of people with disabilities, focused on the many benefits of accessibility for both businesses and customers with disabilities. The topic was introduced by two speakers, Faye Heller, Consultant,

Heller and Associates, and Jim Salas, Deputy Director, New Mexico Commission for the Blind. Discussion centered on accessibility issues in Albuquerque's retail, hospitality, and cultural organizations as well as the city's resources to effect favorable change for businesses, customers, and employees with disabilities.

IDAHO APARTMENT COMPLEX TO RECEIVE ACCESSIBILITY RETROFITS

On July 18, 2006, a federal court in Idaho approved a settlement resolving United States v. Taigen & Sons, Inc., a case alleging discrimination against people with disabilities. The court previously determined that the Centennial Trail Apartments,

an 82-unit complex in Post Falls, Idaho, failed to meet the accessibility requirements of the Fair Housing Act and the Americans with Disabilities Act and it later granted an order requiring that all items found in noncompliance be retrofitted. The consent decree

requires extensive retrofitting of the common areas and the 32 ground floor units covered by the FHA's accessibility requirements, \$55,000 in damages for victims, and \$3,000 in damages for the Intermountain Fair Housing Council.

TEXAS DEVELOPERS, ARCHITECTS, AND ENGINEERS SETTLE DISABILITY DISCRIMINATION ALLEGATIONS

On September 28, 2006, the Department settled a lawsuit against ten Austin, Texas, developers, builders, architects, and engineers alleging disability discrimination in the design and construction of two housing developments in Austin. The suit was filed in federal court to enforce the provisions of the federal Fair Housing Act that require recently constructed dwellings to include features designed to make the dwellings more accessible to people with physical disabilities.

“People with disabilities, like all Americans, deserve the opportunity to obtain fair housing in their communities,” said Wan J. Kim, Assistant Attorney General for the Civil Rights Division. “This lawsuit under the Fair Housing Act helps to ensure that we remain a welcoming society for all Americans.”

The defendants will retrofit parking areas, paths and walkways, public and common use areas, as well as the interiors of ground floor units, to enhance the accessibility of the complexes to disabled

residents and their guests. The decree also requires the defendants to establish a \$50,000 fund which will be used to compensate individuals harmed by the inaccessible housing and to pay \$10,000 in civil penalties to the government. Under the settlement, the defendants will undergo training on the requirements of the Fair Housing Act and will make periodic reports to the government on the status of their facilities.

DEPARTMENT SUES FLORIDA CITY CHALLENGING ORDINANCE THAT DISCRIMINATES AGAINST PEOPLE WITH DISABILITIES

On September 20, 2006, the Department filed a federal lawsuit alleging disability discrimination by the City of Boca Raton, Florida. The Department’s complaint alleges that a zoning ordinance passed by the city in 2002 and amended in 2003 excludes housing for persons recovering from alcohol or drug dependency from residential

areas of the city and unreasonably restricts their operation in commercial zones in violation of the Fair Housing Act. Under the ordinance, the only zones in the city in which substance abuse treatment facilities may operate are medical center districts. The complaint alleges that the ordinance intentionally and on its face targets housing for persons in

recovery and subjects it to different and substantially more onerous requirements than other types of housing.

The suit seeks to prevent the city from enforcing the ordinance and to obtain monetary damages to compensate victims, civil penalties, and a court order barring future discrimination.

JUSTICE DEPARTMENT AND COMMONWEALTH OF KENTUCKY REACH SETTLEMENT REGARDING CONDITIONS AT DEVELOPMENTAL CENTER

On August 31, 2006, the Department reached a court enforceable settlement agreement with the Commonwealth of Kentucky regarding civil rights violations at the Communities at Oakwood, a center for persons with developmental disabilities in Somerset, Kentucky. The five-year agreement, filed with the federal court for the Eastern District of Kentucky, requires the Commonwealth to implement reforms to ensure that residents at the facility are adequately protected from harm and provided adequate supports and services. The agreement replaces and strengthens a 2004 out-of-court settlement between the Department and the Commonwealth.

“It is a Justice Department priority to protect the civil rights of all Americans, including these vulnerable institutionalized persons,” said Assistant Attorney General Wan J. Kim. “People in the care of the Commonwealth are entitled to be safe and provided with adequate treatment.”

“We are constantly striving to protect our most vulnerable citizens,” added Amul R. Thapar, U.S. Attorney for the

Eastern District of Kentucky. “This agreement is a very positive step in that direction.”

The Department reviewed the facility after reaching the 2004 settlement and found that numerous ongoing civil rights violations continued at Oakwood. Specifically, the Department found that the facility fails to protect individuals from harm; fails to provide adequate supports and services to individuals, including behavioral, psychology and psychiatric services, general medical and nursing care, and physical and nutritional therapy; and fails to ensure adequate discharge planning and placement in the most appropriate, integrated setting. The facility also received 24 citations in 2005 and 2006 from the Commonwealth’s own Office of Inspector General for the Cabinet for Health and Family Services involving preventable deaths, sexual abuse, and failure to address adequately residents’ maladaptive behaviors. Furthermore, Commonwealth prosecutors have criminally charged numerous Oakwood staff for abuse of residents.

Two serious incidents occurred in recent months: one in which four staff were charged with beating a resident with a broom handle on several occasions, and a second in which four staff were charged with beating a resident and fracturing his nose. In addition, a former Oakwood female staff member was sentenced in August to serve two years for dragging a resident by her shirt collar, hitting her with a shoe, and slamming her head into a wall. In September, a second former staff was sentenced to two months for striking a resident in the face.

Under the terms of the new agreement, the Commonwealth will implement a remedial plan to correct all of the violations identified by the Department and will submit to court supervision of its efforts.

The Department conducted its investigation pursuant to the Civil Rights of Institutionalized Persons Act of 1980 (CRIPA). The statute allows the federal government to identify and root out systemic abuses such as those identified in this case, rather than focus on individual civil rights violations. The Department has successfully

(Kentucky, continued)

resolved investigations of similar facilities in the states of Connecticut, Indiana, Iowa, Louisiana, New Jersey, and Tennessee, in the District of Columbia, and in the Commonwealth of Puerto Rico. Investigations of similar facilities in Arkansas, California, Missouri, Texas, and Washington are pending.

Did you know...

The Department's CRIPA enforcement effort reaches beyond facilities for persons with developmental disabilities. Since 2001, the Department has opened 64 investigations into the terms and conditions of confinement at nursing homes, mental health facilities, residences for persons with developmental disabilities, juvenile justice facilities, jails, and prisons. More information about the work of the Special Litigation Section of the Justice Department's Civil Rights Division can be found at www.usdoj.gov/crt/split/index.html.

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 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 75% of all complaints mediated have been settled successfully.

In this issue, we focus on complaints against retail stores that have been successfully mediated.

- In Iowa, a wheelchair user complained that a six inch step made the front entrance to a paint store inaccessible. The store installed a ramp to the entrance, provided disability awareness training to all employees, and implemented a grievance procedure to address any ADA complaints that may arise in the future.
- In Pennsylvania, a wheelchair user complained that a small flower shop's

entrance was inaccessible. The parties agreed that making the entrance accessible was not readily achievable. Instead the shop installed a call bell at the entrance for customers unable to enter the shop. The shop manager will either provide curb side service or make arrangements to provide services to the customer in his or her home.

- In Mississippi, a wheelchair user complained that a floor covering store located in an old house did not have an accessible entrance or accessible parking. The owner widened a ground level entrance door to provide wheelchair access and installed accessible parking near that entrance.

- In Texas, a wheelchair user complained that a retail store did not provide an accessible path of travel to the entrance. The building's landlord installed both curb cuts and wheel stops in parking spaces.

- In Alabama, a wheelchair user complained that a drug store did not have accessible parking. The respondent restriped the parking lot and posted proper signage.

The store reimbursed the complainant for attorney's fees and provided a \$500 line of credit.

■ In Missouri, a wheelchair user complained that there was no accessible parking at an automobile dealership. The dealership agreed to restripe the parking lot to include a van accessible space and to build a ramp from the parking lot to the entrance. In addition, the dealership agreed to provide ADA training to its employees and to pay the complainant \$1,000.

■ A person with a mobility disability complained that the entrance to a Mississippi discount department store was blocked with shopping carts and there was no way for a wheelchair user to get through the store because merchandise crowded the aisles. The store agreed to keep the aisles clear of merchandise and to maintain a clear path of travel on sidewalks around the store and at the entrance.

■ In Colorado, a wheelchair user complained that a craft store was inaccessible because the aisles were blocked by merchandise. The store removed all merchandise from the aisles.

■ A wheelchair user complained that a Texas furniture store's aisles were blocked with merchandise and inaccessible to customers with mobility impairments. The store agreed to keep aisles free of merchandise to provide an accessible path of travel through the store.

■ In New Mexico, a wheelchair user complained that the public restroom of a large department store was inaccessible. The store reconfigured the stalls in the restroom and installed grab bars to provide access.

■ In Pennsylvania, a wheelchair user complained that a store's public restroom was inaccessible. The store owner constructed a new accessible restroom in compliance with the ADA.

■ In Idaho, a wheelchair user complained that a computer store did not have accessible demonstration tables. The store agreed to remove the existing fixed tables and installed new accessible tables. The store manager also apologized to the complainant.

■ A blind individual complained that a Virginia chain store refused to admit

him with his service animal and that employees in another store in the chain refused to assist him in selecting items for purchase. The chain agreed to provide additional ADA training to employees in that region and apologized to the man for the conduct of its employees. The chain also agreed to pay his legal fees and \$3,500 in damages.

■ An individual with a disability from Arizona complained that a North Carolina store of a national chain discriminated against her by not allowing her to remain in the store with her service animal. The parties reached an agreement by teleconference in which the chain affirmed its policy nationwide of providing access to all persons using service animals, agreed to train all employees on the ADA, and granted compensation to the complainant in the form of \$750 in gift certificates.

■ In California, a wheelchair user complained that employees of an auto dealership were parking in or blocking the accessible parking and the public sidewalk adjacent to the dealership. The owner of the dealership provided its employees with a written management policy prohibiting

(Mediation, continued)

them from parking any vehicles in accessible parking spaces and access areas, including public sidewalks. The policy also prohibits employees from directing or allowing nondisabled customers to park in accessible parking spaces.

■ A wheelchair user in Oklahoma complained that a large retail store had a number of barriers to access. The store agreed to install curb ramps and relocate accessible parking spaces to provide an accessible route from the sidewalk through the store entrance, install concrete blocks to maintain an accessible path of travel to the refueling area and signage identifying the accessible fuel pump, and lower the check writing and point of sale reader to provide check out access to individuals using wheelchairs. The store provided ADA training to its fuel center employees and store managers and agreed to monitor access within the store and refueling center on an ongoing basis.

RECENT OUTREACH ACTIVITIES

On August 12-16, Division staff gave an ADA presentation at the American Correction Association's 136th Congress of Corrections in Charlotte, North Carolina. The seminar addressed how title II of the ADA applies to correctional facilities and operations.

On September 28, 2006, Division staff gave a presentation at the 13th annual ADA Update Conference sponsored by the ADA & IT Information Center for the Mid-Atlantic Region. The presentation highlighted ADA cases, issues, and projects the Department of Justice has

undertaken this past year. An audience of 125 well-informed ADA Coordinators from state and local governments, professionals with disability services, rehabilitation, and human resource communities, and people with disabilities attended the event.

During October 26- 28, 2006, Division staff participated in the Life @ 50+/AARP National Event and Expo at the Anaheim Convention Center in Anaheim, California. Staff answered questions and disseminated ADA information to the estimated 25,000 attendees.