



Enforcing the ADA:

A Status Report from the Department of Justice

October - December 2006

This Status Report covers the ADA activities of the Department of Justice during the fourth quarter (October - December) of 2006. This report, previous status reports, and a wide range of other ADA information, including the consent decrees and formal settlement agreements mentioned in this report, are available through the Department's ADA Home Page at www.ada.gov (see page 9).

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The Americans with Disabilities Act (ADA) is a comprehensive civil rights law for people with disabilities. The Department of Justice enforces the ADA's requirements in three areas --

Title I: Employment practices by units of State and local government

Title II: Programs, services, and activities of State and local government

Title III: Public accommodations and commercial facilities

I. Enforcement

Through lawsuits and both formal and informal settlement agreements, the Department has achieved greater access for individuals with disabilities in thousands of cases. Under general rules governing lawsuits brought by the Federal Government, the Department of Justice may not file a lawsuit unless it has first unsuccessfully attempted to settle the dispute through negotiations.

A. Litigation

The Department may file lawsuits in Federal court to enforce the ADA and may obtain court orders including compensatory damages and back pay to remedy discrimination. Under title III the Department may also obtain civil penalties of up to \$55,000 for the first violation and \$110,000 for any subsequent violation.

1. New Lawsuits

The Department initiated or intervened in the following lawsuits.

Title II

New Interventions to Defend the Constitutionality of the ADA -- The Department intervened in two additional cases to defend the constitutionality of private title II lawsuits against State agencies. The States argued that they were protected from ADA suits by sovereign immunity. They asserted that Congress lacked authority under the ADA to remove this immunity because the ADA's protections go further than the equal protection rights guaranteed by the U.S. Constitution. The Department argued that Congress had the authority to remove State immunity because the ADA is appropriate legislation under the Constitution to remedy the history of pervasive discrimination against people with disabilities. The cases are --

Welch v. Virginia Polytechnic Institute & State University (Western District of Virginia) -- a lawsuit by a graduate student alleging harassment and discrimination on the basis of disability.

Chase v. Baskerville (Eastern District of Virginia) -- a lawsuit by a deaf inmate claiming that he was denied an interpreter for school work and other prison programs.

2. Consent Decrees

Some litigation is resolved at the time the suit is filed or afterwards by means of a negotiated consent decree. Consent decrees are monitored and enforced by the Federal court in which they are entered.

Title II

Smith v. City of Philadelphia -- The U.S. District Court for the Eastern District of Pennsylvania approved an agreement resolving a lawsuit against Philadelphia for violating the ADA in providing emergency medical care. The Department intervened in a lawsuit filed by an individual alleging that paramedics employed by the city refused to provide him with appropriate medical care upon learning of his HIV status. Under the agreement, Philadelphia will provide paramedics employed by the city with ongoing training on appropriate and nondiscriminatory treatment of patients with infectious diseases, specifically HIV/AIDS. The city also agreed to pay \$50,000 in damages to the plaintiff created a reasonable accommodation policy.

B. Formal Settlement Agreements

The Department sometimes resolves cases without filing a lawsuit by means of formal written settlement agreements.

Title II

Department Reaches 150th Agreement Milestone for Project Civic Access

The Department signed four new agreements with local government entities under Project Civic Access, a Department initiative to bring cities, counties, and other government localities into full compliance with the ADA. This brings to 150 the number of agreements signed with 140 communities. The Department has conducted Project Civic Access reviews in all 50 states, as well as Puerto Rico and the District of Columbia; and the 150 agreements are helping to improve lives and broaden opportunities for more than 3 million Americans with disabilities.

The four new agreements are with --

- Shreveport, Louisiana
- Kanawha County Parks and Recreation, West Virginia
- Metro 911 of Kanawha County, West Virginia; and Kanawha County, West Virginia.

Project Civic Access was initiated to ensure that people with disabilities have an equal opportunity to participate in civic life. To carry out the project, Departmental investigators, attorneys, and architects survey state and local government facilities and programs across the country for the purpose of identifying modifications needed to comply with ADA requirements. Depending on the circumstances in each community, the agreements address specific areas where access can be improved, such as town halls and other government offices, public meetings, police and fire stations, community centers, local parks and recreational facilities, emergency 911 services, government websites, and voting.

Title III

New York City Theater District Review Brings Five Hotel Accessibility Agreements --

The U.S. Attorney's Office for the Southern District of New York signed agreements with the following five New York City hotels under a compliance review of places of lodging in Manhattan's Theater District --

- Flatotel International Hotel,
- Salisbury Hotel,
- DaVinci Hotel,
- Paramount Hotel, and
- Hilton Times Square Hotel.

In May 2005, the U.S. Attorney's Office began compliance reviews of 48 hotels in the Theater District in a comprehensive effort to remove barriers to access in this core group of Manhattan hotels, which welcomes vast numbers of domestic and international visitors each year. Although the review was not begun in response to a complaint against any particular hotel, the U.S. Attorney's Office historically received more ADA complaints about hotels than any other type of public accommodation in its district. Each hotel was sent a survey asking about the availability of accessible guest rooms for people with mobility disabilities and individuals who are deaf or hard of hearing, as well as about the accessibility of hotel common areas, such as entrances and registration counters. The U.S. Attorney's Office conducted numerous on-site inspections to confirm survey responses and evaluate whether hotels were in compliance. If noncompliance was found at a particular hotel, the U.S. Attorney's Office offered to work with the owners operators to help bring about voluntary compliance. The agreements require each hotel, as applicable, to --

- Survey existing "designated" accessible guest rooms and make them truly accessible;
- Provide an appropriate number of guest rooms accessible for persons with mobility impairments, including a specified number with roll-in showers;
- Disperse accessible rooms among all classes of sleeping accommodations;
- Provide an appropriate number of guest rooms accessible for persons who are deaf or hard of hearing;
- Establish written policies and procedures for providing services to guests with disabilities; and
- Take other steps, such as ensuring access for service animals, making entrances accessible, installing accessible registration counters, and providing TTY's available at the front desk.

Meadowcrest Hospital, New Orleans, Louisiana -- The U.S. Attorney's Office for the Eastern District of Louisiana signed an agreement with Meadowcrest Hospital resolving a complaint by a deaf woman who alleged she was denied the services of a qualified sign language interpreter in the hospital's emergency room and at other critical times during the five days after she was admitted to the hospital. The complainant asserted that the hospital failed to respond to her numerous requests for an interpreter while in the emergency room, and only after she was admitted did she learn of her diagnosis. By that time, she had allegedly been administered numerous prescription medications despite her inability to communicate essential information to medical staff. Under the agreement, Meadowcrest Hospital will assess the communication needs of individuals who are deaf or hard of hearing upon their arrival or at the time an appointment is scheduled. It will provide qualified interpreters as soon as possible (within specified time limits) when necessary for effective communication, especially in circumstances involving lengthy or complex interactions, such as the admitting process and consultations involving detailed discussions of symptoms, diagnosis, and treatment. The hospital also agreed to provide auxiliary aids when appropriate to companions as well as to patients. In addition, the hospital agreed to pay the complainant \$15,000 in damages and \$5,000 in civil penalties to the United States.

Shoney's, LLC, Columbia, Tennessee -- The U.S. Attorney's Office for the Middle District of Tennessee reached an agreement resolving a complaint alleging that a customer was told to leave a Shoney's restaurant because she was accompanied by a service animal. The settlement requires Shoney's to revise its service animal policy and post a sign stating that service animals are welcome in the restaurant.

C. Other Settlements

The Department resolves numerous cases without litigation or a formal settlement agreement. In some instances, the public accommodation, commercial facility, or State or local government promptly agrees to take the necessary actions to achieve compliance. In others, extensive negotiations are required. Following are some examples of what has been accomplished through informal settlements.

Title II

An inmate who is blind alleged that a Virginia correctional facility denied him an equal opportunity to benefit from family visitation. Specifically, he complained that, because he cannot see the faces of his children, he cannot determine their well-being unless he is allowed to touch their faces during visitation, which existing policies did not permit. The correctional facility adopted a policy of permitting blind inmates who qualify for contact visits to touch the faces of their visitors upon entering and leaving the visiting room.

An inmate at a New York correctional facility alleged that his disabled mother was denied the opportunity to visit him because she uses a portable oxygen tank. The mother alleged that she contacted the facility prior to visiting her son and was told that her portable oxygen tank would not be allowed into the visiting room because it could be used as a weapon. The correctional facility issued a memo to staff re-emphasizing their policy that a person with a disability requiring the use of a portable oxygen tank is permitted access to the visiting room.

Title III

An individual with a mobility disability alleged that an upstate New York medical office building lacked the required number of accessible parking spaces. The building's owner subsequently installed the required number of accessible parking spaces.

The U.S. Attorneys obtained informal settlements in the following cases --

District of Arizona -- An individual alleged that a package mailing business was not accessible to persons with mobility disabilities. The business installed two accessible parking spaces, including a van-accessible space, established an accessible route from the parking to the store entrance, and modified a threshold at the entrance.

An individual with a mobility disability complained that a local restaurant did not have accessible parking. An investigation revealed that, in addition to lacking accessible parking, the restaurant did not have an accessible restroom. The restaurant agreed to add two accessible parking spaces, including one van-accessible space. Also, the restaurant will make modifications to the toilet room, including lowering the lavatory, insulating the drain pipes, replacing lavatory handles, raising the toilet seat, and mounting Brailled signage outside the restroom.

An individual who is hard of hearing alleged that a medical clinic did not provide him with auxiliary aids or services while he was attending a doctor's appointment with his minor daughter. The clinic agreed to review and revise its policies and procedures for providing effective communication to persons who are deaf or hard of hearing, identify qualified sign language interpreter agencies in the area and

enter into a service agreement with one of them, hold a mandatory in-service training for all clinic staff on the effective communication policy, and post signage about the availability of auxiliary aids and services and an identified responsible employee to contact in the event effective communication is not being provided.

Northern District of Illinois -- A deaf individual complained that a hospital failed to provide her with a sign language interpreter when she was admitted. The patient requested an interpreter for the first several days of her stay, but the hospital did not provide an interpreter until one was requested by the patient's physician. The hospital agreed to provide training to staff about the hospital's effective communication policy; post signs in conspicuous locations indicating that qualified interpreters, TTY's, and other auxiliary aids and services are available free of charge to persons who are deaf or hard of hearing; install TTY's adjacent to public telephones in several areas of the hospital; install signage to indicate the location of TTY's; and pay \$12,000 to the complainant.

Southern District of New York -- An individual with a mobility impairment alleged that a Manhattan hotel failed to provide any rooms with roll-in showers. The hotel modified five accessible rooms to provide roll-in showers.

Middle District of Tennessee -- An individual with a disability alleged that a national chain restaurant told her to leave the premises because she was accompanied by a service animal. The restaurant was required to revise its service animal policy and post a sign stating service animals are welcome in the restaurant. The complainant had previously settled a separate suit filed in U.S. District Court, and received damages of \$1,000, plus attorneys fees.

II. Mediation

Under a contract with the Department of Justice, The Key Bridge Foundation receives referrals of complaints under titles II and III for mediation by professional mediators who have been trained in the legal requirements of the ADA. An increasing number of people with disabilities and disability rights organizations are specifically requesting the Department to refer their complaints to mediation. More than 400 professional mediators are available nationwide to mediate ADA cases. Over 75 percent of the cases in which mediation has been completed have been successfully resolved. Following are recent examples of results reached through mediation.

- In Indiana, a wheelchair user alleged that a restaurant was inaccessible. The restaurant agreed to provide an accessible unisex restroom, a new side entrance with a ramp, and two accessible parking spaces, including one van-accessible space, at the new entrance.
- A wheelchair user complained that a grandstand at an outdoor Oregon entertainment venue was inaccessible. The facility agreed to provide 16 accessible parking spaces (including four van-accessible spaces), accessible portable toilets, and an accessible route throughout the facility. Additionally, it converted a central viewing area to accessible seating, including companion seating, issued a formal apology to the complainant, and provided ADA training to all employees.
- In Ohio, a person with a mobility disability complained that seating on the upper deck of a public arena was inaccessible. The arena made an accessible elevator in an adjoining clubhouse available for general use, posted signs throughout the facility indicating the elevator's location, and trained staff to direct patrons with mobility disabilities wanting to access the upper deck to the clubhouse elevator.
- In California, a wheelchair user complained that a shopping center parking area was inaccessible. The center installed curb cuts and accessible parking spaces throughout the facility and added two crosswalks between the parking area and store entrances.
- In Nebraska, a wheelchair user complained that a temporary event held in the parking lot of a convention center blocked the accessible parking. The center agreed not to impede accessible parking, to install a permanent drop-off site for patrons with disabilities at the main entrance, to provide ADA training to all parking staff, and to provide the complainant with four complimentary tickets to future events.
- An individual with severe emphysema who is unable to walk long distances complained that a New York drug store's designated accessible parking spaces were too far from the store. The parties agreed to expand the scope of the mediation to include five additional locations. The company relocated the accessible spaces to be on the shortest accessible route to the entrance at all six locations and paid the complainant \$7,500.

- In South Carolina, a person with a mobility disability was denied access to a restaurant and forced to eat outside because she uses a service animal. The business developed a written policy regarding service animals and added it to the employee manual, trained all managers on ADA requirements, and placed “Service Dogs Welcome” signs in the windows of all three of its restaurants.
- A person who is blind and uses a service animal complained that a Pennsylvania restaurant did not allow service animals to enter the restaurant. The restaurant trained its staff on ADA requirements, provided information regarding service animals to the local community newspaper, and gave the complainant a gift card to use at the restaurant.
- In California, a person who is deaf complained that a city police department failed to provide her with a sign language interpreter. The police department had a policy in place, but agreed to provide additional training on effective communication to be conducted by a local deaf advocacy organization for all police officers.
- In New York, a wheelchair user complained that a country store was inaccessible. The store installed a ramp at the door, restriped the accessible parking space to make it van accessible, and installed appropriate signage at the space.

Attorney General Gonzales Highlights ADA Five-Year Report at Business

Leadership Conference -- Attorney General Alberto R. Gonzales announced the publication of **Access for All: Five Years of Progress**, a 73-page report describing the Department’s achievements over the last five years to enforce the ADA and enhance opportunities and improve access for millions of people with disabilities across America. The report highlights successful enforcement, technical assistance, code certification, and mediation activities in areas ranging from health care to employment to emergency services. The Attorney General announced the report on October 5, 2006, in Minneapolis, Minnesota, in remarks made to the annual conference of the U.S. Business Leadership Network, a national organization that promotes employment of people with disabilities. The report is available for viewing and downloading from the Department’s ADA website, www.ada.gov, and individual copies can be ordered from the ADA Information Line at (800) 514-0301 (voice) or (800) 514-0383 (TTY).

III. Technical Assistance

The ADA requires the Department of Justice to provide technical assistance to businesses, State and local governments, and individuals with rights or responsibilities under the law. The Department provides education and technical assistance through a variety of means to encourage voluntary compliance. Our activities include providing direct technical assistance and guidance to the public through our ADA Website, ADA Information Line, and Automated ADA Fax System; developing and disseminating technical assistance materials to the public; and undertaking outreach initiatives.

ADA Website

The Department's ADA Website (www.ada.gov) provides direct access to the Department's publications, briefs, and settlement agreements, and other information about its enforcement, mediation, technical assistance, and certification programs, including proposed changes in ADA regulations and requirements, links to ADA press releases, and links to other Federal agencies' websites that contain ADA information.

In addition, the website provides access to --

- ◆ the ADA Business Connection, with links to materials of particular interest to businesses;
- ◆ Reaching Out to Customers With Disabilities, a web-based, interactive online course that explains the requirements of title III;
- ◆ the ADA Video Gallery, with links to accessible streaming videos about the ADA; and
- ◆ online ordering forms for the ADA Technical Assistance CD-ROM and selected videos.

ADA Information Line

The Department of Justice operates a toll-free ADA Information Line to provide information and publications to the public about the requirements of the ADA. Automated service, which allows callers to order publications by mail or fax, is available 24 hours a day, seven days a week. ADA specialists, who can assist callers in understanding how the ADA applies to their situation, are available on Monday, Tuesday, Wednesday, and Friday from 9:30 a.m. until 5:30 p.m. and on Thursday from 12:30 p.m. until 5:30 p.m. (Eastern Time). Foreign language service is also available. To get answers to technical questions, obtain general ADA information, order free ADA materials, or ask about filing a complaint, please call:

800-514-0301 (voice)
800-514-0383 (TTY)

Automated ADA Fax System

The Automated ADA Fax System allows the public to obtain free ADA information by fax 24 hours a day, seven days a week. By calling the ADA Information Line and following the directions, callers can request specific documents to be faxed directly to their fax machines or computer fax/modems. A listing of publications and their fax codes is available online or can be ordered through the ADA Information Line.

ADA Publications and Documents

Copies of the Department's ADA regulations and technical assistance publications can be obtained by calling the ADA Information Line, visiting the ADA Website, or writing to the address listed below. All materials are available in standard print as well as large print, Braille, audiotape, or computer disk for people with disabilities.

U.S. Department of Justice
Civil Rights Division
950 Pennsylvania Avenue, N.W.
Disability Rights Section - NYAV
Washington, D.C. 20530

Some publications are available in foreign languages. Spanish language documents can be accessed through the ADA Website (www.ada.gov/publicat_spanish.htm). Other language documents can be obtained by mail.

Copies of the legal documents and settlement agreements mentioned in this publication can be obtained by writing to --

U.S. Department of Justice
Civil Rights Division
950 Pennsylvania Avenue, N.W.
FOIA/PA Branch, NALC Room 311
Washington, D.C. 20530
Fax: 202-514-6195

Currently, the FOIA/PA Branch maintains approximately 10,000 pages of ADA material. The records are available at a cost of \$0.10 per page (first 100 pages free). Please make your requests as specific as possible in order to minimize your costs.

The FOIA/PA Branch also provides internet access to ADA materials on their website (www.usdoj.gov/crt/foia/crt.htm). A link to search or visit this website is provided from the ADA Website.

Department Issues Title II “ADA Best Practices Tool Kit” -- The Department of Justice issued the first installment of a new technical assistance document designed to assist State and local officials to improve compliance with title II of the ADA. The new document, “**The ADA Best Practices Tool Kit**,” which will be released in several installments over the next ten months, is designed to guide State and local government officials in identifying and fixing problems that prevent people with disabilities from gaining equal access to State and local government programs, services, and activities. It will also teach State and local officials how to conduct surveys of their buildings and facilities to identify and remove architectural barriers to access. After all installments have been released, the Department will provide training for State and local officials on how best to use the Tool Kit to improve accessibility. While State and local governments are not required to use the ADA Best Practices Tool Kit, the Department encourages its use as one effective means of complying with the requirements of the ADA. The ADA Best Practices Tool Kit will be published in installments on the Department’s ADA Home Page at www.ada.gov.

IV. Other Sources of ADA Information

The **Equal Employment Opportunity Commission** offers technical assistance to the public concerning the employment provisions of title I of the ADA.

ADA publications
800-669-3362 (voice)
800-800-3302 (TTY)

ADA questions
800-669-4000 (voice)
800-669-6820 (TTY)

www.eeoc.gov

The **Federal Communications Commission** offers technical assistance to the public concerning the communication provisions of title IV of the ADA.

ADA publications and questions
888-225-5322 (voice)
888-835-5322 (TTY)

www.fcc.gov/cgb/dro

U.S. Department of Transportation, Federal Transit Administration provides information to the public on the transportation provisions of title II of the ADA.

ADA Assistance Line for regulations and complaints
888-446-4511(voice/relay)

www.fta.dot.gov/ada

Project ACTION is funded by the U.S. Department of Transportation to provide ADA information and publications on making transportation accessible.

Information on accessible transportation
800-659-6428 (voice/relay)

<http://projectaction.easterseals.com>

The **U.S. Architectural and Transportation Barriers Compliance Board**, or **Access Board**, offers technical assistance to the public on the ADA Accessibility Guidelines.

ADA publications and questions
800-872-2253 (voice)
800-993-2822 (TTY)

www.access-board.gov

The **Job Accommodation Network (JAN)** is a free telephone consulting service funded by the U.S. Department of Labor. It provides information and advice to employers and people with disabilities on reasonable accommodation in the workplace.

Information on workplace accommodation
800-526-7234 (voice)
877-781-9403 (TTY)

www.jan.wvu.edu

The **DBTAC: ADA Centers** are funded by the U.S. Department of Education through the National Institute on Disability and Rehabilitation Research (NIDRR) in ten regions of the country to provide resources and technical assistance on the ADA.

ADA technical assistance
800-949-4232 (voice & TTY)

www.adata.org

V. How to File Complaints

Title I

Complaints about violations of title I (employment) by units of State and local government or by private employers should be filed with the Equal Employment Opportunity Commission. Call 800-669-4000 (voice) or 800-669-6820 (TTY) to reach the field office in your area.

Titles II and III

Complaints about violations of title II by units of State and local government or violations of title III by public accommodations and commercial facilities should be filed with --

U.S. Department of Justice
Civil Rights Division
950 Pennsylvania Avenue, N.W.
Disability Rights Section - NYAV
Washington, D.C. 20530

If you wish your complaint to be considered for referral to the Department's ADA Mediation Program, please mark "Attention: Mediation" on the outside of the envelope.

The Attorney General has determined that publication of this periodical is necessary in the transaction of the public business required by law of the Department of Justice.