



Enforcing the ADA

A Status Report from the Department of Justice

(April-June 1998)

*This Status Report covers the ADA activities of the Department of Justice during the second quarter (April - June) of 1998. This report, previous status reports, and a wide range of other ADA information are available through the Department's ADA Home Page on the World Wide Web (see page 18). The symbol (**) indicates that the document is available on the ADA Home Page.*

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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 hundreds 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 \$50,000 for the first violation and \$100,000 for any subsequent violation.

1. Decisions

Supreme Court Rules Asymptomatic HIV-infected Patient is Person with a Disability

-- The Supreme Court decided in Bragdon v. Abbott that asymptomatic HIV-status is a disability under the ADA. Plaintiff, a dental patient in Bangor, Maine, infected with HIV, but who had no outward symptoms of the disease, was denied treatment by a dentist. The patient

filed suit under the ADA, alleging that, as a result of the virus, she was “disabled” and therefore protected by the Act. The U.S. Court of Appeals for the First Circuit held that the patient’s asymptomatic HIV status constituted a disability because it was a physical impairment that substantially limited the “major life activity” of reproduction. The Supreme Court agreed with the amicus brief filed by the Department of Justice and upheld the court of appeals in a 5-4 decision, finding that asymptomatic HIV status met all the requirements under the statutory definition of a disability -- it is a physical impairment (from the moment of infection), it impairs the major life activity of reproduction, and it “substantially limits” that activity. The court also emphasized that its conclusion was consistent with the Department of Justice’s views on this issue as expressed in its regulations and technical assistance manual. As to whether the plaintiff’s HIV infection posed a “direct threat” to the dentist’s health, the Supreme Court sent the case back to the court of appeals for further review of the evidence.

Supreme Court Says ADA Clearly Protects Prison Inmates

-- In a unanimous opinion the Supreme Court ruled in Pennsylvania Department of Corrections v. Yeskey that a motivational boot camp operated for selected inmates by the Pennsylvania State prison system is subject to the requirements of title II of the ADA. Prisoners

who successfully complete the boot camp program are entitled to a significant reduction in their sentence. The Court agreed with the Department of Justice in ruling that the broad language of title II clearly covers prisons and provides no basis for distinguishing programs, services, or activities of prisons from those provided by other public entities. It rejected the State's arguments that the law is ambiguous and that prisoners cannot be "qualified individuals with disabilities" because they are not in prison voluntarily. The Department also received a favorable ruling on prison coverage in Westcott v. Garner in the U.S. District Court for the Middle District of Georgia.

State Must Consider Community-Based Services -- The U.S. Court of Appeals for the Eleventh Circuit ruled that the State of Georgia discriminated against two individuals with mental disabilities by confining them in a institution rather than providing services through a community-based program. In L.C. v. Olmstead the Eleventh Circuit agreed with an amicus brief filed by the Department of Justice arguing that the title II regulation requires States to provide services to individuals with mental disabilities in the "most integrated setting appropriate to their needs." The State's treating professionals agreed that a community placement was appropriate for the plaintiffs. The case has been sent back to the lower court for a decision as to whether the State's actions were justified because any added financial burdens or policy modifications that are needed to provide community placements would result in a "fundamental alteration in the nature of the program."

More Courts Find ADA is Constitutional -- In Dickson v. Florida Department of Corrections (consolidated with Kimel v. Florida Board of Regents) the U.S. Court of Appeals for the Eleventh Circuit rejected arguments that the ADA is unconstitutional because the rights it creates are broader than those of the Fourteenth Amendment's equal protection clause. Instead, it

concluded as urged by the Department in an amicus brief that Congress has ample authority to subject States to lawsuits under the ADA because of the history of pervasive discrimination against people with disabilities. A lower Federal court, the U.S. District Court for the Eastern District of Pennsylvania in Anderson v. Pennsylvania Department of Public Welfare, also agreed with an amicus brief filed by the Department that it is constitutional for the ADA to prohibit more than just intentional discrimination that would be prohibited by the Constitution.

Court Allows Challenge to Health Insurance AIDS Cap -- As urged by the Department of Justice in an amicus brief, the U.S. District Court for the Northern District of Illinois in Doe v. Mutual of Omaha Insurance Co. ruled that title III prohibits discrimination in the terms and conditions of a health insurance policy against persons with AIDS or Aids Related Complex (ARC). The suit challenges a health insurance policy that contains a maximum lifetime benefit cap for expenses incurred for covered services related to AIDS and ARC of only \$25,000 or \$100,000 (depending upon the policy) where the same policy provides benefits to a lifetime maximum of \$1,000,000 in virtually every other situation. The court, denying defendant's motion to dismiss, ruled that singling out individuals with AIDS or ARC for inferior insurance coverage stated a claim of discrimination under the ADA.

Court Allows U.S. Attorney to Continue Suit Against Day Care Providers for HIV Discrimination -- The U.S. District Court for the Western District of Wisconsin, denying defendants' motions for summary judgment, allowed three Department of Justice lawsuits to proceed against day care centers who denied admission to a three-year old child (L.W.) with HIV infection. Defendants in U.S. v. Happy Time Day Care, U.S. v. Kiddie Ranch, and U.S. v. ABC Nursery, claimed that L.W. does not have a disability under the ADA because his HIV is "asymptomatic," and because defendants did not

regard L.W. as having been substantially limited in a major life activity. The district court agreed with the United States Attorney's Office for the Western District of Wisconsin that damage to the child's immune system may render him substantially limited in the major life activity of caring for himself, including fighting off communicable diseases. The court also held that plaintiff proved that defendants' general fear of HIV led them to exclude L.W. from child care, thereby substantially limiting him in the major life activity of learning. The court rejected defendants' argument that plaintiff needs to prove that the defendant believed L.W. to be substantially limited in a particular major life activity. However, the Court held that HIV does not substantially limit a three-year-old child in the major life activity of procreation, disagreeing with the Department of Justice on that point. The court also held that mitigating measures, such as AZT and other treatments, should not be considered when determining whether a person with HIV has a disability. Two of the three cases have since been settled by consent decrees (see "Consent Decrees").

Third Circuit Rejects Challenge to Long-Term Disability Plan -- In Ford v. Schering-Plough Corp. the U.S. Court of Appeals for the Third Circuit rejected a suit brought by a former employee under titles I and III of the ADA against her employer and an insurance company in New Jersey. The suit challenged a long-term disability (LTD) insurance plan under which employees can receive benefits until age 65 if they become totally disabled due to physical impairments but can collect benefits for no longer than 24 months if their impairments are mental in nature. Plaintiff's LTD benefits were terminated after 24 months because hers was a mental, not a physical, disability. The Department filed an amicus brief in the Third Circuit arguing that title III prohibits unjustified discrimination in the terms and conditions of insurance coverage, and that

title III's coverage is not limited to denials of physical access to public accommodations. The Department did not address title I issues or whether the LTD plan's distinction between mental and physical impairments is disability-based discrimination. The Third Circuit held that plaintiff was entitled to bring a suit challenging the plan even though she was no longer working. However, the court concluded that the LTD plan's distinction between mental and physical disabilities was not discriminatory because every employee was offered the same insurance plan. The court also rejected plaintiff's title III claim against the insurance company. It held that, because the insurer did not deal directly with the plaintiff in issuing the employee coverage, the insurer did not act as a place of public accommodation. The Third Circuit also rejected the Department's argument that title III covers the substance of insurance policies.

Decisions

NCAA Operates Places of Public

Accommodation -- The U.S. District Court for the District of New Jersey ruled that the National Collegiate Athletic Association is a public accommodation covered by title III and refused to dismiss a lawsuit challenging the NCAA's procedures for determining athletic eligibility for student-athletes with learning disabilities. The NCAA has since agreed to modify its policies in another case resolved by a consent decree entered into with the Department of Justice (see "Consent decrees"). The court concluded in Bowers v. National Collegiate Athletic Association that, while the NCAA is not itself a "place" of public accommodation, it "operates" places of public accommodation such as stadiums and team training, dining, living, playing, practice, and meeting facilities. The Department filed an amicus brief in this case urging the court to find title III coverage.

2. New lawsuits

The Department initiated or intervened in the following lawsuit.

Titles II and III

Connecticut Association of the Deaf v. Middlesex Memorial Hospital -- The Department intervened in this suit brought by the Office of Protection and Advocacy in Connecticut against 10 acute care hospitals for failing to provide sign language and oral interpreters for persons who are deaf or hard of hearing. All the parties in the case asked the court to approve a proposed consent decree negotiated by the Department, the original plaintiffs, and the defendant hospitals. In addition, all twenty-two other acute care hospitals in Connecticut intervened as defendants to join in the proposed agreement and protect themselves from future liability. If the U.S. District Court for the District of Connecticut approves the proposed agreement, the hospitals will --

- set up a state-wide on-call system to provide interpreters 24 hours a day, seven days a week, for persons who are deaf or hard of hearing (the system will respond to most requests in urban areas within an hour, and in rural areas within one hour and fifteen minutes);
- use sign language pictogram flash cards that will be developed by the Department of Justice to assist in communication when sign language interpreters are not available;
- provide TTY's throughout the hospitals' public areas and in patient rooms, when requested;
- install visual alarms where audible alarms are provided;

- provide other auxiliary aids and services when necessary for effective communication, including computer assisted real-time transcription services, closed caption decoders for televisions, captioning of hospital-generated videos, qualified notetakers, assistive listening devices and systems, and written materials;
- train employees and volunteers about issues relating to communication with persons who are deaf or hard of hearing, including special training for emergency department personnel, psychiatric personnel, social workers, and other key personnel;
- offer training to all affiliated physicians; and
- pay \$333,000 in compensation to the named plaintiffs and individuals who filed complaints with the Department of Justice.

3. 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 III

*** United States v. Ellerbe Becket, Inc.* -- The Ellerbe Becket architectural firm agreed that all of the new sports stadiums and arenas that it designs in the future will be designed to provide wheelchair seating locations with a line of sight over standing spectators. The agreement specifically applies to any facility with more than four fixed seats and in which spectators can be expected to stand for all or any part of an event. The consent decree resolves the Department's lawsuit alleging that Ellerbe had violated the ADA

by repeatedly designing new sports stadiums and arenas that violated the ADA new construction requirement for comparable lines of sight for wheelchair seating locations. Ellerbe argued that the court should dismiss the case because architects are not covered by title III of the ADA and because lines of sight over standing spectators are not required. The court disagreed with both of these arguments and allowed the case to continue.

United States v. Happy Time Day Care Center and United States v. Kiddie Ranch -- The U.S. Attorney's Office for the Western District of Wisconsin entered into consent decrees resolving lawsuits filed against two child care centers in Beloit, Wisconsin, for allegedly refusing to admit a three-year-old boy because he had tested positive for the Human Immunodeficiency Virus (HIV). Happy Time and Kiddie Ranch each agreed to admit the child and to ensure that their admission

**** NCAA Will Revise Eligibility Requirements to Accommodate Student-Athletes with Learning Disabilities** -- Under a landmark consent decree, the National Collegiate Athletic Association will modify policies that each year prevented hundreds of students with dyslexia and other learning disabilities from playing college sports and receiving athletic scholarships. The agreement in *United States v. National Collegiate Athletic Association*, which was filed in the U.S. District Court for the District of Columbia, stems from a series of complaints lodged with the Department by student athletes alleging that the NCAA's initial-eligibility academic requirements discriminate against student-athletes with learning disabilities. The agreement requires the NCAA to modify its policies while at the same time enabling it to maintain its academic standards. The NCAA agreed to --

- Revise its rules so that classes designed for students with learning disabilities can be certified as core courses if the classes provide students with the same types of knowledge and skills as other college-bound students;
- Allow students with learning disabilities who are unable to meet the initial eligibility rules when they graduate from high school to earn a fourth year of athletic eligibility if they complete a substantial percentage of their degree work and maintain good grades;
- Direct its committees that evaluate applications filed by students who do not meet the requirements but are seeking a waiver to consider a broad range of factors in reviewing the student's high school preparation and performance when deciding whether to grant a waiver and not to use a minimum qualifying test score on the SAT or ACT;
- Include experts on learning disabilities on the committees that evaluate waiver applications.

In addition, the consent decree requires the NCAA to undertake efforts designed to prevent further violations of the ADA, including designating one or more employees as an ADA compliance coordinator to serve as a resource to NCAA staff and as a liaison with students with learning disabilities; providing training to its staff regarding the new policies; and publicizing the terms of the agreement to high schools, students, parents, and member colleges and universities. The NCAA also agreed to pay a total of \$35,000 in damages to four student-athletes.

policies will not discriminate against children with disabilities. The two centers also agreed that a child with HIV infection is an individual with a disability under the ADA and that such a child can be admitted into a child care center without causing a significant risk to the safety of other children and staff. The centers will sponsor and participate in a seminar later this year for interested child care providers, staff, and parents to discuss the ADA and concerns people have regarding children with HIV. The U.S. Attorney's lawsuit against a third child care center, ABC Nursery, Inc., involving similar issues is continuing.

**** *DeVinney v. Maine Medical***

Center -- The U.S. Attorney for the District of Maine, a private plaintiff, and the Maine Medical Center entered into a consent decree requiring the medical center to provide qualified sign language interpreters, assistive listening and telecommunication devices, captioned televisions and other similar aids and services to persons who are deaf or hard of hearing. Maine Medical Center, which is Maine's largest hospital, also agreed to publish and distribute a new written hospital policy directing its employees to offer an interpreter whenever staff has any reason to believe a patient is deaf or hard of hearing. The interpreter will be made available by the medical center "as soon as possible and no later than one hour after the receipt of a request for an interpreter." The hospital has also agreed to provide the same services including interpreters to deaf family members, relatives, companions and friends who visit or accompany a patient. The hospital will require all of its clinical directors and department heads, as well as its supervisors, nurses and other patient-contact personnel, to participate in mandatory and comprehensive in-service training regarding the proper use and role of interpreters and other communication needs of persons who are deaf or hard of hearing. Maine Medical Center will also produce an educational

*Consent
Decrees*

video and distribute materials to all physicians with hospital privileges regarding the ADA rights of persons who are deaf and hard of hearing. The hospital agreed to pay a civil penalty of \$10,000 and \$25,000 in damages to the plaintiff.

Miller v. District of Columbia -- The District of Columbia agreed to pay \$15,000 each in compensatory damages to two deaf individuals whose repeated TDD calls to the D.C. 9-1-1 system went unanswered. This consent decree resolves the Department's suit against the District of Columbia for operating a 9-1-1 telephone emergency system that failed to provide direct, effective access to persons with disabilities who

use telecommunications devices for the deaf (TDD's). The agreement leaves in place an earlier court order finding that the District had violated the law and requiring it to take action to bring the 9-1-1 system into compliance.

United States v. Town of Tatum, New Mexico -- Tatum, New Mexico agreed to pay \$40,000 in back pay and compensatory damages to resolve a retaliation suit brought by the Department on behalf of a former town employee. The lawsuit alleged that the town discharged the individual from his position as an emergency medical technician in retaliation for his having obtained a favorable monetary settlement in a lawsuit he previously had filed against the town under title I of the ADA. The Equal Employment Opportunity Commission referred this charge to the Department after a finding of reasonable cause and an unsuccessful effort to conciliate by that agency. The town also agreed to post a notice about ADA rights and remedies on town property, and provide ADA training to town employees and elected officials.

4. Amicus Briefs

The Department files briefs in selected ADA cases in which it is not a party in order to guide courts in interpreting the ADA.

Title I

Wright v. Universal Maritime Service Corp. -- The Department filed an amicus brief in the Supreme Court arguing that an employee can file an ADA lawsuit charging employment discrimination even if the job is covered by a collective bargaining agreement that requires arbitration of employee grievances. Both the Federal district court in South Carolina and the U.S. Court of Appeals for the Fourth Circuit ruled that the agreement to arbitrate meant that the employee had given up his right to bring an ADA suit.

Title II

Padilla v. Ryan -- The Department filed an amicus brief in the U.S. District Court for the Northern District of California in support of a class action lawsuit challenging policies and practices at the Santa Clara County jail that discriminate against persons who are deaf or hard of hearing by denying them access to sign language interpreters, TTY's, and other auxiliary aids and services. Because of the absence of auxiliary aids, detainees have allegedly been forced to endure delays of several days in release from custody prior to being convicted of any crime; and inmates have been forced into isolation and denied equal access to programs and services, such as medical treatment, rehabilitation, and communication with family members. The Department's brief in support of the plaintiffs' motion for a preliminary injunction argued that the plaintiffs are qualified individuals with disabilities, that the ADA requires the provision of auxiliary aids to ensure effective communication, and that

the provision of auxiliary aids in this case would not compromise safety or effective prison administration or otherwise result in undue financial and administrative burdens.

Title III

Wai v. Allstate Insurance Co. -- The Department filed an amicus brief in support of landlords who wanted to rent houses to organizations that would operate them as group homes for persons with disabilities but were refused standard landlord property and casualty insurance. They were told by the insurance companies that they must obtain more expensive commercial insurance for those houses. The insurance companies asked the U.S. District Court for the District of Columbia to dismiss the claims under the Fair Housing Act and the ADA. The Department's brief argues that the ADA prohibits discrimination in the terms and conditions of insurance policies, not just physical access to physical facilities; and that the landlords should be allowed to bring this suit because they claim to have suffered discrimination as a result of their relationship with organizations that serve people with disabilities.

Pallozzi v. Allstate Life Insurance, Co. -- The Department filed an amicus brief in the U.S. Court of Appeals for the Second Circuit supporting plaintiffs in a suit in which they allege that Allstate refused to sell them a life insurance policy because they have mental disabilities. The Department's brief argues that title III's ban on discrimination covers a refusal to sell insurance coverage to a person because of his or her disability, that Allstate was acting as an owner or operator of a place of public accommodation under title III when it rejected the Pallozzi's application for life insurance, and that the insurance company has the burden of producing evidence that the plaintiffs' posed an unacceptable insurance risk.

Caruso v. Blockbuster-Sony Music Entertainment Centre -- The Department filed an amicus brief in the U.S. Court of Appeals for the Third Circuit in support of plaintiffs who claim that the design of a newly-constructed performing arts amphitheater in Camden County, New Jersey, violates the ADA Standards for Accessible Design. The lower court had ruled that the ADA does not require lines-of-sight over standing spectators. Because this is a facility where audiences are expected to stand frequently during events, the Department argued in its brief on appeal that the requirement for “comparable lines of sight” for wheelchair locations means that a line of sight over standing spectators must be provided.

Gilbert v. Eckerd Drugs; Kellet-Breed v. Coastal Bank -- It is not necessary to first notify a State or seek State administrative remedies before filing a Federal lawsuit under title III according to amicus briefs filed in Gilbert v. Eckerd Drugs in the Eastern District of Louisiana and in Kellet-Breed v. Coastal Bank in the District of Maine. In Gilbert, the drug store defendant withdrew its motion to dismiss after the Department filed its brief.

Leonard F. v. Israel Discount Bank of New York -- Title III covers the terms and conditions of insurance policies and regulates more than just physical access to insurance offices, according to an amicus brief filed by the Department in this case in the U.S. Court of Appeals for the Second Circuit. Plaintiff filed suit against his employer and an insurance company, challenging a long-term disability insurance plan under which employees can receive benefits until age 65 if they become totally disabled due to physical impairments, but can collect benefits for no longer than two years if their impairments are mental in nature. Plaintiff’s long-term benefits were terminated after 24 months because he had a mental, not a physical, disability. The U.S. District Court for the Southern District of New York dismissed the title III claims ruling that the ADA is not intended to

regulate the content of insurance policies and suggesting that title III only guarantees physical access to the goods and services offered by places of public accommodation. The employer settled the title I claims against it by agreeing to equalize coverage. Only the title III claims against the insurance company are before the court of appeals.

B. Formal Settlement Agreements

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

Title II

Prince George’s County, Maryland -- The Prince George’s County Police and Fire Department agreed to provide people with disabilities an equal opportunity to volunteer as emergency medical technicians. The agreement resolves complaints filed with the Department of Justice charging that the county violated the ADA by refusing to certify two qualified applicants with hearing impairments. Under the terms of the agreement, the county will no longer automatically reject volunteer firefighter or volunteer rescue technician applicants solely on the basis of disability. Instead, it will evaluate on an individual basis every applicant’s ability to perform the essential functions of the position. The county will train all personnel, including medical personnel, involved in making decisions on volunteer application decisions on how to properly review applications under the ADA. It also offered to reevaluate the rejected applications of the complainants.

Oakland, California -- The Oakland Police Department agreed to take the necessary steps to ensure that members of the public who are deaf or hard of hearing can communicate effectively with police officers during law enforcement situations ranging from traffic stops to arrests to criminal interrogations. The agreement resolves

three complaints involving three separate incidents between 1994 and 1997 where the Oakland Police allegedly failed to provide appropriate auxiliary aids and services to arrestees with hearing impairments. In one instance, an individual was denied pencil and paper with which to communicate with jail staff. In another, a deaf individual who had borrowed an automobile from a friend was unable to make a telephone call for approximately seven hours (because no operable TDD was available) to clear up charges that he had stolen the automobile. Under the agreement, the police department will adopt policies for providing effective communication and publish and publicize them as official operating procedures. It will purchase at least one more TDD, train jail personnel on how to operate TDD's, and initiate a testing program to ensure the TDD's are functioning properly. The Oakland Police will also ensure that one of the jail cells that provides a television set has closed captioning capability. All of the approximately 700 officers who deal with the public will receive extensive ADA training on how to implement the ADA's effective communication requirements in typical police situations. This instruction will be provided during annual police academy training that all officers are required to attend.

Citrus County, Florida -- Citrus County agreed to provide raised and Brailled characters on signs designating permanent rooms and spaces in its courthouse and to renovate the restrooms so that at least one men's toilet room and one women's toilet room is fully accessible. Each toilet room will have visual alarms and at least one accessible lavatory, mirror, and dispenser.

Natchez, Mississippi -- The Department entered into a settlement agreement with the City of Natchez, Mississippi, to resolve access problems at the county library and violations of the ADA Standards for Accessible Design in the construction plans for a new convention center

and visitors bureau. The city agreed to provide van-accessible parking, companion seating, and a 36-inch alternative accessible stall in addition to the standard accessible stall in one of the restrooms at the convention center and visitors bureau. The city also took lead responsibility for installing a ramp to make the entrance to the county library accessible.

East Providence, Rhode Island -- The City of East Providence has agreed to pay damages for failing to carry out two earlier agreements with the Department of Justice. Those agreements

required it to alter its municipal stadium, Pierce Field, to make the seating and the restrooms accessible to people with mobility impairments and to install accessible signage to these areas. In light of these previous failures and the length of time it has taken to bring Pierce

Field into compliance, the city agreed to pay \$2,000 to a group representing people with disabilities in Rhode Island, and, if the city did not complete the required renovations by May 1, 1998, it agreed to pay any group on the same list \$200 per day for each day after that date that renovations were not completed. The city missed the deadline by 12 days and paid \$2,400.

** *Northampton County, Pennsylvania* -- The Department entered into a settlement agreement with the County of Northampton, Pennsylvania, resolving a complaint about the county's grievance procedures. The complainant alleged that the county did not have an ADA coordinator, that he made several attempts to file an ADA grievance with officials of the county, and that he was not able to locate the ADA coordinator and was eventually referred to a local independent living center. The county agreed to adopt and post a written policy statement indicating procedures to follow to obtain reasonable modifications to policies, practices and procedures. In addition, the county will adopt and publish a procedure for providing prompt and equitable resolution of

*Formal
Settlement
Agreements*

complaints, including the name, telephone number, and office address of the ADA coordinator. The county also agreed to provide copies of the policy statement and grievance procedures to all county employees and train all staff to ensure that people with disabilities are treated in a nondiscriminatory manner.

**** San Bernardino, California --** The San Bernardino City Council reached an agreement with the Department in which it agreed to provide the auxiliary aids necessary to ensure effective communication at city council meetings with individuals who are deaf or hard of hearing or who have impaired vision. The city agreed to provide, when appropriate, sign language interpreters, assistive listening devices, and written materials in alternative formats. The city also agreed to provide ADA training to its employees and to include a notice on its agenda to inform members of the public of its policy with regard to effective communications and how to obtain auxiliary aids.

Moore County, North Carolina -- The Department entered into a settlement agreement with the Board of Commissioners of Moore County, North Carolina, resolving a complaint alleging that the Commissioners held public meetings on the top floor of the historic county courthouse building in Carthage, a location accessible only by stairs. The Department found that the battery-operated, tractor-type device purchased by the board to provide access to that floor was inadequate because it did not permit independent access and operation, and because it did not provide access for people who use “scooter” type wheelchairs or for individuals with mobility disabilities who do not use wheelchairs. The board agreed to relocate public meetings to an accessible location, if requested to do so, until a planned elevator is installed. It will also adopt a written policy statement on how to obtain reasonable modifications in policies,

practices and procedures and a written procedure for resolving complaints, including the name, telephone number and office address of the ADA coordinator.

Virginia Department of Health -- The Department reached an agreement with the Commonwealth of Virginia Department of Health resolving a complaint alleging that emergency medical technician training provided by Virginia was not accessible to people who are deaf or hard of hearing. The department of health agreed to provide sign language interpreters in training programs that require interaction with program moderators. It will provide written transcripts in training programs that only require the trainee to view a video. The department of health will publicize the availability of interpreters and transcripts and will provide them free of charge to people with hearing impairments.

Title III

Fremont YMCA, Fremont, Nebraska -- The Department entered into a settlement agreement with the Fremont YMCA resolving a complaint alleging violations of the ADA Standards for Accessible Design in a new addition and renovations project as well as violations of the barrier removal requirement for existing facilities. The YMCA is a multi-story facility and, although there was an existing elevator shaft, it was not large enough to accommodate an elevator that complied with the ADA Standards. Under the agreement, the YMCA agreed to enlarge the elevator shaft and install a new elevator. The YMCA also agreed to make changes to the parking, men’s locker room, women’s pool locker room, fitness studio, signage, doors, and ramps in order to make the facility accessible to and usable by people with disabilities.

*Formal
Settlement
Agreements*

Best Western Motel, Mequon, Wisconsin -- A newly constructed Best Western Motel in Mequon, Wisconsin, agreed to remedy violations of the ADA Standards for Accessible Design and change its pricing policy for accessible rooms. The complaint alleged that, when a wheelchair user called the motel to make lodging reservations, he was told the budget room rate was \$77. However, when he told the manager that he would need a room that was wheelchair accessible, he was allegedly informed that an accessible room would cost \$160 because the only accessible rooms were deluxe rooms with whirlpools. Under the agreement, the motel will make four rooms accessible. One will be a budget room and three will be luxury rooms. Because the motel offers more budget rooms than luxury rooms, the motel agreed to charge individuals needing budget accessible rooms the budget rate for the three luxury accessible rooms.

It also agreed to hold open one luxury accessible room and the one budget accessible room until all other rooms have been rented, and to hold open the two other luxury accessible rooms until all other nonaccessible luxury rooms have been rented. In addition, the motel will make changes to provide the correct number of accessible parking spaces, an accessible path of travel to the entrance, and accessible restroom/shower facilities in the indoor pool area. Finally, the motel gave the complainant a free one-night stay in a luxury room.

** *Vasquez Funeral Home, Chicago, Illinois* -- The Department signed a settlement agreement with a Chicago funeral home resolving a complaint alleging that the funeral home charged higher fees for persons who died of AIDS-related complications. The complaint alleged that the home required a family to pay a surcharge of \$100 for embalming the remains of their father because he died of AIDS. The funeral home agreed to stop charging extra fees for persons who have died from AIDS-related complications

and other infectious diseases, appoint an employee to be responsible for ensuring compliance with the ADA, train all employees who handle human remains in the use of universal precautions, and pay damages of \$3,000 to the family.

Menard, Inc., Eau Claire, Wisconsin -- The Department concluded a settlement agreement with Menard, Inc., a home improvement retail chain, to resolve a complaint filed by an individual who is legally blind. She alleged that one of Menard's stores in Milwaukee, Wisconsin, violated the ADA because its staff refused to accept her state-issued identification card in place of a driver's license when she purchased items with a check. She claimed that store staff insulted her and required her husband to produce his driver's license before the store would accept her check. The store did in fact have a written policy in place at the time of the

incident stating that State ID's would be acceptable identification for persons who do not drive because of a disability. The agreement requires Menard to train employees at its over 115 stores in carrying out the policy; to post a notice of the policy at all cash registers; and to pay the complainant \$1,000 and issue her a written apology.

** *Andy Williams' Moon River Theater, Branson, Missouri* -- An agreement with Moon River Enterprises will improve accessibility for patrons of the Andy Williams' Moon River theater in Branson, Missouri. The agreement requires the owner to nearly triple the number of accessible seats in the theater, install additional signs directing patrons to accessible routes, lower the public telephones, and install visual alarms and alternate stalls in the bathrooms.

*Formal
Settlement
Agreements*

Carmike Cinemas Inc., Washington, D.C. --
 The Carmike Cinema chain, which operates 510 theaters with over 2700 screens in 36 states, has agreed to initiate a nationwide process of barrier removal. The agreement resolves a complaint alleging that certain theaters operated by Carmike in Des Moines, Iowa, were not accessible to individuals who use wheelchairs. Carmike agreed to remove barriers at the Des Moines theaters, including barriers related to inaccessible entrances, restrooms, ticket windows, lobby areas, concessions, wheelchair seating, and parking. Carmike also agreed to conduct a nationwide review of all of its theaters to identify barriers to access. It developed a twenty-page survey that will be completed by theater managers at each theater, and the results will guide the company's barrier-removal program.

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

A Louisiana town completed a schedule for making the changes listed in its transition plan.

A municipal police department in Illinois formally adopted a written policy for ensuring effective communication with persons who are deaf or hard of hearing and will train its staff in carrying out the policy.

U.S. Attorneys Achieve More 9-1-1 Agreements -- In a continuing nationwide compliance effort, U.S. Attorney's offices entered written agreements to ensure direct, equally effective access for TDD users to 9-1-1 emergency systems in twenty-two additional localities --

- | | |
|-------------------------------|-------------------------------|
| Childersburg, Alabama | Gulfport, Mississippi |
| Etowah County, Alabama | Wilkes County, North Carolina |
| Lincoln, Alabama | Ardmore, Oklahoma |
| Sylacauga, Alabama | Durant, Oklahoma |
| St. Claire County, Alabama | Muskogee, Oklahoma |
| Tuscaloosa County, Alabama | Dekalb County, Tennessee |
| East St. Louis, Illinois | Giles County, Tennessee |
| Canyon County, Indiana | Hickman County, Tennessee |
| Gary, Indiana | Jackson County, Tennessee |
| Koontenai County, Indiana | Overton County, Tennessee |
| Plaquemines Parish, Louisiana | Southside Place, Texas |

The agreements require each 9-1-1 center to have TDD capability at each call-taker position, to query every "silent call" with a TDD, and to thoroughly train each call taker in handling TDD calls.

A county board of commissioners in Georgia agreed that all future meetings will be held either on the first floor of the courthouse, which is accessible, or, if a large crowd is present, the meeting will be moved to another accessible location.

A parish in Louisiana completed items listed in its transition plan to make its courthouse accessible, including installing grab bars in the restroom, providing a cup dispenser at the water fountain, and posting signs indicating whom to contact if assistance is required.

A western State highway patrol agreed to provide additional instruction at its training academy about individuals with speech disabilities. The highway patrol has also agreed to provide training for all incoming clerical staff regarding the ADA.

An inmate at a northeastern State prison who was removed from his job in the institution's kitchen because he uses a cane to assist him was offered reinstatement.

A Michigan county courthouse completed alterations to its annex in compliance with the ADA standards and completed a self-evaluation and a transition plan.

A Virginia municipality made numerous accessibility improvements, including installing TTY's, training staff on the requirements of the

ADA, providing accessible parking and restrooms, and adding a wheelchair lift to the swimming pool. The city also adopted a transition plan and a completed self-evaluation. In addition, the city will provide accessible seating at the city stadium.

An Illinois town agreed to purchase, install, and maintain an assistive listening system; designate an ADA coordinator; post notices as to how to obtain reasonable modifications in policies, practices, and procedures; provide written minutes of all public meetings; and conduct a

comprehensive review of its policies and procedures, in consultation with persons with disabilities, to ensure that all programs, services and activities are accessible.

A correctional institution in Ohio installed grab bars and a shower seat in the maximum security section of the facility.

An Indiana theater agreed to add additional accessible seating to its newly altered facility.

*Other
Settlements*

Title III

A franchised quick-service restaurant in Georgia redesigned its accessible parking and installed a ramp to comply with the ADA Standards.

A bank in southwestern Virginia agreed to make its newly installed automated teller machine (ATM) more accessible by providing instructions on Brailled panels attached to each ATM.

II. Mediation

*Through a technical assistance grant from the Department, The Key Bridge Foundation is accepting referrals of complaints under titles II and III for mediation by professional mediators who have been trained in the legal requirements of the ADA. More than 350 professional mediators are available to mediate ADA cases in **45 States. Over 80 percent of the cases in which mediation has been completed have been successfully resolved. Following are recent examples of results reached through mediation.*

- A person with a physical disability who uses a service animal complained that a Massachusetts restaurant initially refused to serve her, claiming that it only permitted guide dogs for blind persons. The restaurant's policy was based on misinformation provided by a local health organization. The director of the health organization apologized to the complainant for unintentionally misinforming the restaurant owner about the ADA and for the humiliation that resulted. The director agreed to write an article about the ADA and service animals for a state health organization publication and to inform all restaurant owners in the local area of the rights of people who use service animals. The director also agreed to enclose an informational flyer in all license renewal notices in the next year. The restaurant owner apologized to the complainant for the discomfort that was caused and agreed to change the restaurant policy to comply with the ADA. The owner also agreed to purchase an educational video and to utilize it to train the entire staff at the restaurant.
- A California restaurant and a Michigan office building agreed to install accessible parking spaces.
- An Ohio hotel, an Arkansas jewelry store, and a Utah retail store agreed to install accessible ramps.
- In Mississippi, a person with a vision impairment complained that a restaurant denied her access and service because she used a service animal. The owner agreed to display a sign in the establishment stating that service animals are welcome and agreed to instruct all his employees that people who use service animals are to be welcomed, seated, and served in the same manner as all customers.
- In California, a wheelchair user complained that a hotel had no rooms with accessible bathrooms. The owner agreed to make three guest rooms fully accessible with accessible bathrooms, apologized to the complainant for the inconvenience caused, and paid the complainant \$500.
- A wheelchair user complained that a California restaurant did not have an accessible restroom. The owner agreed to remodel the restrooms. Additionally, the owner agreed to create a sports program for people with disabilities and to pay the complainant \$6,000.
- In Iowa, a wheelchair user complained that an auction house was not accessible. The owner agreed to build a ramp to the bleachers and to provide a wheelchair accessible seating location.
- The mother of a four-year-old boy with asthma and anaphylaxis food allergy to milk proteins complained that her son had been denied admission to an Illinois preschool because of his disabilities. The school director agreed to include a statement of nondiscrimination in the

- parent handbook, in the school brochure, and in a monthly newsletter and to create written procedures for staff regarding interaction with children with disabilities. The director agreed to train all appropriate staff and to maintain records of the training and make the records available to parents. The director also agreed to write a letter to the boy apologizing for not admitting him to the school and to pay the complainant \$650.
- In Massachusetts, a person who uses a cane complained that a bar was not accessible and did not have an accessible restroom because the path of travel was blocked by the stage and a band's set-up. The owner agreed to maintain a clear path into the bar from the accessible entrance, to ensure that the stage does not block the door to the accessible restroom, and to maintain a clear path to the restroom. The owner agreed to train the staff during the staff meetings on how to interact with and assist people with disabilities.
 - In North Carolina, a wheelchair user complained that a recreational train was not accessible and did not have an accessible restroom at the ticketing and boarding area. The owner agreed to provide an accessible path of travel between the ticket office and the train door and to provide an accessible entrance to board the train. The owner also agreed to make a restroom accessible and to change the height of a drinking fountain to comply with the ADA.
 - A person who is deaf complained that a North Carolina doctor refused to pay for the services of a qualified sign language interpreter for office visits. The doctor agreed that he has a responsibility to pay for interpreter services and the complainant agreed that the doctor has the right to have input into who the interpreter should be.
 - In Ohio, a person with a hearing disability complained that three theaters did not have effective assistive listening systems. All theater owners agreed to install new infrared assistive listening systems.
 - A wheelchair user complained that an Ohio theater did not have an accessible restroom. The owner agreed to make the restrooms accessible.
 - In Pennsylvania, a person who is deaf complained that two doctors refused to pay for the services of qualified sign language interpreters for office visits. The doctors agreed to comply with the ADA's requirements for effective communication. They will develop a previsit questionnaire for use by all patients who are deaf or hard of hearing. One of the questions on the form will be whether the patient believes a qualified sign language interpreter is necessary for effective communication during the office visit. The doctors also agreed to develop an exit form for patients to evaluate the effectiveness of the communication during the office visit. The doctors agreed to instruct the appropriate staff members on the use of these forms and to attend training to increase sensitivity toward people who are deaf or hard of hearing and to convey this information to staff members. The doctors also apologized for any lack of effective communication.
 - In Texas, the parents of a four-year-old boy with atypical autism complained that a university-affiliated nursery school expelled their son after the school refused to provide him care that he needed because of his disability. The school agreed to conform its policy to the ADA and include the policy in its handbook. The board also agreed to pay the complainants \$3,800.

III. Certification of State and Local Building Codes

The ADA requires that newly constructed or altered facilities comply with the ADA Standards for Accessible Design (Standards). The Justice Department is authorized to certify building codes that meet or exceed the ADA Standards. In litigation, an entity that complies with a certified code can offer that compliance as rebuttable evidence of compliance with the ADA.

In implementing its authority to certify codes, the Department works closely with State and local officials, providing extensive technical assistance to enable them to make their codes equivalent to the ADA. In addition, the Department responds to requests for review of model codes and provides informal guidance to assist private entities that develop model accessibility standards to make those standards equivalent to the ADA.

The Department has certified the accessibility codes of the States of Washington, Texas, Maine, and Florida, and has pending requests for certification from New Mexico, Minnesota, New Jersey, Maryland, California, the Village of Oak Park, Illinois, and the County of Hawaii. The Department is also reviewing model codes submitted by the Building Officials and Code Administrators, International; and the Southern Building Code Congress, International. Recent certification activity includes --

Florida -- Acting Assistant Attorney General Bill Lann Lee and Governor Lawton Chiles held a joint press conference in Tallahassee, Florida, to announce that the Department of Justice certified that the Florida Accessibility Code for Building Construction meets or exceeds the requirements of the ADA. This decision was the result of a three-year effort in which the State officials worked closely with the Department to ensure that the new Florida code is consistent with the ADA. Before the certification became final, the Department solicited public comment on its preliminary determination and held public hearings in Orlando, Florida, and Washington, D.C.

Nationwide -- In conjunction with the certification of the Florida Code, Acting Assistant Attorney General Bill Lann Lee wrote to the Governors of each State that has not yet requested ADA certification of its accessibility code to encourage them to make their State accessibility codes ADA-equivalent and to seek certification. In these letters, Mr. Lee emphasized the benefits of certification — “By meshing local and Federal requirements, certification will increase the number of accessible buildings and decrease the need for costly litigation.”

IV. Technical Assistance

The ADA requires the Department of Justice to provide technical assistance to entities and individuals with rights and responsibilities under the law. The Department encourages voluntary compliance by providing education and technical assistance to businesses, governments, and members of the general public through a variety of means. Our activities include providing direct technical assistance and guidance to the public through our ADA Information Line, developing and disseminating technical assistance materials to the public, undertaking outreach initiatives, operating an ADA technical assistance grant program, and coordinating ADA technical assistance government-wide.

ADA Home Page

An ADA home page is operated by the Department on the Internet's World Wide Web (<http://www.usdoj.gov/crt/ada/adahom1.htm>). The home page provides information about:

- the toll-free ADA Information Line,
- the Department's ADA enforcement activities,
- the ADA technical assistance program,
- certification of State and local building codes,
- proposed changes in ADA regulations and requirements, and
- the ADA mediation program.

The home page also provides direct access to:

- ADA regulations and technical assistance materials (which may be viewed online or downloaded for later use), and
- links to the Department's press releases, ADA Bulletin Board, and Internet home pages of other Federal agencies that contain ADA information.

**** Justice Issues New 9-1-1 Questions & Answers** -- The Department has issued updated guidance for 9-1-1 and other telephone emergency service providers, entitled ADA Access for 9-1-1 and Telephone Emergency Services. This document replaces "Commonly Asked Questions Regarding Telephone Emergency Services," the Department's earlier guidance on this issue. It outlines ADA requirements for access to emergency telephone services for persons who are deaf, hard of hearing, or who have speech impairments and who use TTY's (text telephones, also referred to as "TDD's" or "telecommunications devices for deaf persons"). It offers guidance on, for example, the number and types of TTY equipment telephone emergency providers must have; required procedures for recognizing and handling TTY calls; and recommended measures for training and testing staff. ADA Access for 9-1-1 and Telephone Emergency Services is available through the ADA Information line, the ADA Fax on Demand System (document number 3304), and the ADA Home Page.

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 listen to recorded information and to order publications, is available 24 hours a day, seven days a week. ADA specialists are available on Monday, Tuesday, Wednesday and Friday from 10:00 a.m. until 6:00 p.m. and on Thursday from 1:00 p.m. until 6:00 p.m. (Eastern Time). Spanish language service is also available.

To obtain general ADA information, get answers to technical questions, order free ADA materials, or ask about filing a complaint, call:

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

ADA Fax On Demand

The ADA Information Line's Fax Delivery Service allows the public to obtain free ADA information by fax 24 hours a day, seven days a week. By entering the appropriate document code number, callers can select from among 25 different ADA technical assistance publications and receive the information, usually within minutes, directly on their fax machines or computer fax/modems. A list of available documents and their code numbers may be ordered through the ADA Information Line.

Publications and Documents

Copies of the Department's ADA regulations and publications, including the Technical Assistance Manuals for titles II and III, and information about the Department's technical assistance grant program, can be obtained by calling the ADA Information Line 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 persons with disabilities.

Disability Rights Section
Civil Rights Division
U.S. Department of Justice
P. O. Box 66738
Washington, D.C. 20035-6738

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

Freedom of Information/Privacy Act Branch
Administrative Management Section
Civil Rights Division
U.S. Department of Justice
P.O. Box 65310
Washington, D.C. 20035-5310
Fax: 202-514-6195

Currently, the FOI/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 FOI/PA Branch also provides access to ADA materials on the World Wide Web at <http://www.usdoj.gov/crt/foia/records.htm>. A link to this website is provided from the ADA Home Page.

ADA regulations and technical assistance materials can also be downloaded from the Department's ADA Bulletin Board System (ADA-BBS). The ADA-BBS, which includes selected ADA documents from other agencies, can be reached by computer modem by dialing 202-514-6193 or accessed on the Internet through www.fedworld.gov using telnet software. The ADA Home Page also provides a link to the fedworld website.

V. Other Sources of ADA Information

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

ADA documents
800-669-3362 (voice)
800-800-3302 (TDD)

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

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

ADA documents
202-857-3800 (voice)
202-293-8810 (TDD)

ADA questions
202-418-1098 (voice)
202-418-0484 (TDD)

The *National Institute on Disability and Rehabilitation Research (NIDRR)* of the U.S. Department of Education has funded centers in ten regions of the country to provide technical assistance to the public on the ADA.

ADA technical assistance nationwide
800-949-4232 (voice & TDD)

The *U.S. Department of Transportation* through the *Federal Transit Administration* offers technical assistance to the public concerning the transportation provisions of title II and title III of the ADA.

Toll Free ADA Assistance Line
888-446-4511 (voice/relay)

ADA documents and general questions
202-366-1656 (voice/relay)

ADA legal questions
202-366-4011 (voice/relay)

ADA information, questions or complaints
202-366-2285 (voice)
202-366-0153 (TDD)

Project ACTION
800-659-6428 (voice/relay)
202-347-3066 (voice)
202-347-7385 (TDD)

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

ADA documents and questions
800-872-2253 (voice)
800-993-2822 (TDD)

The *Job Accommodation Network (JAN)* is a free telephone consulting service funded by the President's Committee on Employment of People with Disabilities. 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 & TDD)

VI. 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 (TDD) 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 --

Disability Rights Section
Civil Rights Division
U.S. Department of Justice
Post Office Box 66738
Washington, D.C. 20035-6738