



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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JACKSON, MISSISSIPPI, AGREES TO IMPROVEMENTS IN ITS BUS SYSTEM TO SERVE RIDERS WITH DISABILITIES

On March 30, 2010, the federal court in Jackson, Mississippi, entered a consent decree resolving a lawsuit filed against the City of Jackson and the Jackson Public Transportation System (JATRAM) in 2008 on behalf of individuals with disabilities. The Department had intervened in this class action lawsuit in 2009 alleging that the City had violated Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act by failing to provide a level of public transportation services to users with disabilities that

(Continued on page 2)

NEXT HOUSING ACCESS FORUM TO BE HELD IN BOSTON

The Department's next Multi-Family Housing Access Forum event will be held on Tuesday, June 8, 2010, at the Westin Copley Place Hotel in Boston, Massachusetts. The Access Forum brings together developers, architects, civil engineers, government officials, and advocates for individuals with disabilities. People interested in attending should send an email with their name, organization, and contact information, as well as the names and contact information for other attendees from their office and other people who might be interested in this event, to accessforum@usdoj.gov.

Launched in 2005, the Access Forum's objectives are to help building professionals understand their legal obligations under the federal Fair Housing Act's accessibility requirements and to highlight partnerships that have successfully produced accessible multi-family housing in which everyone profits – developers and consumers alike.

More than 100 people attended the Access Forum in Kansas City, Missouri, in November 2009. Previous events were held in Philadelphia, Houston, Seattle, Miami, Minneapolis, Phoenix, Atlanta, Dallas, and Washington, DC.

(Jackson Transportation, continued)

is comparable to the services provided to other individuals. (See previous article in issue # 32.)

The comprehensive agreement affects both JATRAM's fixed route bus service and its complementary paratransit service called Handilift. It requires that the City implement procedures for removing buses with inoperative lifts from service; provide alternative transportation whenever an inaccessible bus lift significantly delays transportation for a rider with a disability; ensure that no riders are stranded without transportation to their destination before shutting down operations for the day; design, fund, implement and operate Handilift service to satisfy all requests for next-day service; meet agreed upon performance standards for Handilift service; designate an ADA Coordinator in the City Department of Planning and Development; train all vehicle operators and mechanics on the ADA and the proper use and maintenance of lifts; train office staff, including managers, reservationists and dispatchers, on the ADA and the new procedures required by the consent decree; implement a rider complaint process; conduct public outreach about the availability of accessible transportation, including updating user manuals and JATRAM websites; obtain

approval from the United States before implementing certain changes or revisions to services or policies; record and report data on compliance activities; fund an independent monitor to assess the city's compliance; and provide free vouchers to any individual riders adversely affected by any failure to provide required services.

"Equal access to public transportation is a critical right that is guaranteed for people with disabilities, ensuring their ability to live independently in the community," said Thomas E. Perez, Assistant Attorney General for the

Civil Rights Division. "The department appreciates the city of Jackson's cooperation in resolving this matter and their commitment to moving forward with full accessibility of it[s] transportation system."

"The department's intervention in this lawsuit will help to insure that Jackson residents with disabilities have greater access to employment, shopping, medical care, and other services which is possible only when public transportation is made more accessible," said Don Burkhalter, U.S. Attorney for the Southern District of Mississippi.

INCOME TAX PREPARATION SERVICES IN FLORIDA WILL PROVIDE EFFECTIVE COMMUNICATION FOR CUSTOMERS WITH DISABILITIES

On March 18, 2010, HRB Businesses of Florida, Inc., an H&R Block franchisee with multiple offices in Florida, entered into a settlement agreement with the Department resolving a complaint filed by an individual who is deaf who alleged that HRB failed to provide qualified sign language interpreters for its tax preparation course.

Under the agreement, HRB will adopt a policy on furnishing appropriate auxiliary aids and services, including sign language interpreter services, when necessary to provide a client who is deaf or hard of hearing the same access to its accounting services, tax preparation services, and training programs and courses as provided to other clients; post the policy on its website, in the reception area of each office, and in employee manuals and other print materials; provide staff training on the ADA and HRB's obligations to provide effective communication to individuals with disabilities; and establish a grievance procedure for ADA-related complaints from customers. HRB will also pay \$2,500 damages to the complainant and a \$5,000 civil penalty to the United States.

(Tax Services, continued)

“Access to tax preparation services enables people with and without disabilities to prepare and pay taxes as contributing members of our society on an equal basis,” said Assistant Attorney General Thomas E. Perez. “We are glad that, at the height of tax season, HRB has affirmed its commitment to provide effective communication of its tax preparation services and classes for individuals who are deaf or hard of hearing.”

OHIO CHILD CARE CENTER WILL REVISE MEDICATION POLICY THAT DISCRIMINATED AGAINST CHILDREN WITH ASTHMA

On February 18, 2010, The Children’s House, Inc., a child care center in Broadview Heights, Ohio, a suburb of Cleveland, entered into a settlement agreement with the Department resolving a complaint filed on behalf of a child who has asthma. The complaint involved the center’s medication policy that prohibited staff from assisting children with taking their asthma medications, thus forcing parents to either go to the center to administer their child’s medication, forego their child’s medications, or find another center. In effect, the policy prevented children with asthma from enrolling and participating in the center’s program on an equal basis with other children.

Under this agreement, The Children’s House will ensure that all children with disabilities have an equal opportunity

to attend and participate in all programs, services, or activities provided by the center; evaluate the individual needs of children with disabilities wishing to attend the center and make reasonable modifications to its policies in order to accommodate children with disabilities; adopt a new medication policy for the administration of asthma medication; and provide ADA training to the center’s staff.

“Respiratory disabilities should not keep young children from the opportunity to share in the invaluable early childhood learning opportunities offered at quality child care centers,” said Assistant Attorney General Thomas E. Perez. “The ADA makes it illegal to discriminate against children with disabilities and their families. This agreement ensures that parents and children will not be denied quality child care based upon their disability.”

ARIZONA AMUSEMENT PARK WILL ELIMINATE POLICY THAT DISCRIMINATED AGAINST PEOPLE WITH BRAIN INJURIES

On March 16, 2010, Castles N’ Coasters, an amusement park in Phoenix, Arizona, entered into a settlement agreement with the Department resolving a complaint alleging that the park discriminated against the Brain Injury Survivor and Care-Giver Support Group of Glendale, Arizona, by requiring that their members and guests sign liability release forms in order to participate in a miniature golf outing that the group was planning.

Under the agreement, Castles N’ Coasters will refrain from requiring liability releases from individuals or groups on the basis of disability and will pay compensatory damages of \$1,000 to the Brain Injury Survivor and Care-Giver Support Group. In addition, Castles N’ Coasters agreed to remove architectural barriers on the site and to follow ADA standards in a planned remodeling project and other future construction projects.

ATTORNEY IN COLORADO PAYS \$50,000 FOR DISCRIMINATING AGAINST A WOMAN WITH A SERVICE ANIMAL

On March 30, 2010, the federal court in Denver, Colorado, entered a consent decree resolving a lawsuit against attorney Patric LeHouillier and his law firm, LeHouillier & Associates, P.C., of Colorado Springs, Colorado. The Department had alleged that LeHouillier and his firm violated the ADA when they barred a woman, her husband, and her attorney from entering LeHouillier's law office for a deposition because the woman was accompanied by her service animal, an Australian Shepherd dog. The woman, who is a veterinarian, has a traumatic brain injury and other conditions that affect mobility and balance, and trained her dog to provide disability-related assistance. (See previous article in issue # 34.)

Under the terms of the consent decree, LeHouillier and his law firm will adopt an ADA-compliant service animals policy; post the policy and a "Service Animals Welcome" sign in a conspicuous location; undergo training and provide training to staff on the ADA's requirements; and report to the Department any future allegations of discrimination made against LeHouillier or his firm. In addition, he will pay \$30,000 to the complainant and \$10,000

to her husband as damages and pay a \$10,000 civil penalty to the United States.

"For almost two decades, the ADA has ensured that individuals with disabilities are guaranteed full and equal access to public accommodations, both large and small,"

said Assistant Attorney General Thomas E. Perez. "The Justice Department is unrelenting in eradicat[ing] discrimination against people with disabilities and ensuring that owners and operators of public accommodations recognize their obligations to provide equal access."

RECENT ACTIVITIES TO ENFORCE SUPREME COURT'S *OLMSTEAD* DECISION

On March 1, 2010, the federal court in Brooklyn, New York, issued a remedial order in *Disability Advocates, Inc. v. Paterson*, an ADA lawsuit alleging that adults with mental illnesses who reside in adult homes in New York City could and should be residing in a more integrated setting in the community. Adult homes are residential adult care facilities, each housing more than 120 residents. Disability Advocates, Inc., (DAI), supported by the Department, had proposed that the State create 6,000 supported-housing units over four years, enough so that all current adult home residents with mental illnesses can be accommodated, as well as individuals who would be at risk of being placed in adult homes in the future. The State of New York had proposed to provide 1,000 supported-housing units over a five-year period. The court rejected the State's plan as insufficient to accommodate the number of individuals involved and adopted the plan proposed by DAI. The case is currently on appeal. (See previous article in issue # 34.)

On March 31, 2010, the federal court in Hartford, Connecticut, issued an order in *State of Connecticut Office of Protection and Advocacy, et al. v. State of Connecticut*, a lawsuit challenging the State's reliance on privately run segregated nursing home facilities to serve the needs of individuals with mental illnesses who would be more appropriately served in community-based settings. The court denied the State's motion to dismiss the case, granted the plaintiffs' motion to certify the case as a class action, and granted the Department's motion

(Olmstead, continued)

to participate as *amicus curiae* – or friend of the court. (See previous article in issue # 34.)

On February 16, 2010, the Department filed a Statement of Interest in support of the position taken by Disability Rights North Carolina, North Carolina's protection and advocacy agency, in a lawsuit against the State of North Carolina that was filed in the federal court in Winston-Salem on February 11, 2010. A Statement of Interest is similar to an *amicus* brief. The lawsuit, *Clinton L., et al. v. Cansler, et al.*, alleges that a proposed reduction in reimbursement rates for in-home services in the Piedmont Area of the state, below the rate charged by service providers in that area, puts two individuals with mental illness and developmental disabilities who have been living in the community for long periods of time (8 years and more than 10 years, respectively) at risk of institutionalization, in violation of the *Olmstead* decision and the ADA's integration mandate. The Department's brief urged the court to grant the agency's motion for preliminary injunction. After a hearing on February 17, 2010, the court denied the motion for one of the plaintiffs, scheduled a hearing for late April to consider the other plaintiff's motion, and ruled that any other affected class members should proceed on an individual basis. (See article on a similar case in issue # 35.)

STATE OF GEORGIA SUED FOR FAILING TO MEET NEEDS OF PEOPLE WITH MENTAL ILLNESSES AND DEVELOPMENTAL DISABILITIES

On January 28, 2010, the Department filed a lawsuit and motion for preliminary injunction against the State of Georgia under the ADA and the Civil Rights of Institutionalized Persons Act. The Department alleged that the State fails to serve individuals with mental illnesses and developmental disabilities in the most integrated setting appropriate to their needs, as required by the Supreme Court's *Olmstead* decision and the ADA's integration mandate, and that the conditions in the seven Georgia State Hospitals deprive individuals housed there of their federal constitutional and statutory rights. The federal court in Atlanta, Georgia, scheduled a hearing on the Department's preliminary injunction motion for March 1, 2010. On the eve of the hearing, the Department and the State began settlement negotiations, which are ongoing. The Office for Civil Rights at the U.S. Department of Health and Human Services and a number of advocacy groups, including Georgia's protection and advocacy agency, are participating in the negotiations.

NEW ADA TECHNICAL ASSISTANCE MATERIALS

ADA: Know Your Rights -- Returning Service Members with Disabilities is a 28-page booklet designed to provide military service members who have been seriously injured in Operation Iraqi Freedom or Operation Enduring Freedom a basic understanding of their rights under the ADA and where to turn for additional information and assistance.

Ten Employment Myths: Information about the Americans with Disabilities Act is a seventeen-minute video that explains the ADA in common sense terms and dispels common misunderstandings and unfounded concerns that employers have about hiring people with disabilities. The fully accessible video is available in streaming format on the ADA Website or in DVD format from the ADA Information Line.

ONE ADDITIONAL NEW YORK CITY HOTEL AGREES TO IMPROVE ACCESSIBILITY

One additional hotel in Manhattan's theater district, the 770-room Crowne Plaza Times Hotel, has entered into a settlement agreement to improve accessibility for customers with disabilities, under the hotel compliance initiative being conducted by the U.S. Attorney's Office in Manhattan. This is the twentieth hotel to enter into a voluntary compliance agreement through this initiative. The hotel will evaluate its current accessible rooms and make any modifications necessary to comply with the ADA Standards for Accessible Design; make additional rooms accessible to comply with the total number of accessible rooms required by the ADA; provide visual alarms and communication devices for people with hearing disabilities; disperse accessible rooms among all classes of sleeping accommodation; and establish written policies and procedures for providing services to hotel guests with disabilities. In addition, the hotel will make accessibility improvements in its lobby area. (See previous articles on this initiative in issues 16, 17, 22, 26, 29, 30, and 32).

LEASING OFFICE AT APARTMENT COMPLEX WILL BECOME ACCESSIBLE

On April 6, 2010, Northland Germantown, LLC, of Memphis, Tennessee, entered into a settlement agreement with the Department resolving an ADA complaint alleging that the company had failed to remove architectural barriers at the leasing office of the Stoneridge Germantown Falls Apartments. (In apartment complexes, leasing offices and other public areas are covered by both the ADA and the Fair Housing Act.) The barriers included inaccessible parking, an inaccessible route from the parking lot to the entrance, an inaccessible entry, an inaccessible route from the leasing office to the site's swimming pool, inaccessible men's and women's restrooms, and an inaccessible after hours drop box. The agreement requires that all of these barriers be removed.

TWENTY-ONE MULTI-FAMILY HOUSING COMPLEXES IN TENNESSEE WILL BE RETROFITTED FOR ACCESSIBILITY

On March 30, 2010, the federal court in Nashville, Tennessee, approved a consent decree settling the Department's Fair Housing Act and ADA lawsuit against the designers, builder, and owners of twenty-one multi-family housing complexes in Tennessee. The complexes, which were built with the assistance of federal low-income housing tax credits, contain more than 800 units covered by the Fair Housing Act's accessibility provisions.

Under the settlement, twenty-three defendants will pay all costs related to making the complexes accessible to people with disabilities. The retrofitting will include

reconfiguring bathrooms and kitchens, widening doorways, installing accessible door hardware, creating accessible routes to building entrances and site amenities such as clubhouses, pools, mailboxes and trash facilities, and providing accessible parking for residents and guests. In addition, the defendants will pay up to \$350,000 to compensate individuals harmed by the lack of accessible housing and pay a \$75,000 civil penalty to the United States. The settlement also requires all the defendants to undergo training on the requirements of the Fair Housing Act and provide periodic reports to the government.

(Housing Complexes, continued)

The defendants responsible for the payments and retrofits are Murphy Development LLC, Westland Development LLC, Meadow Creek LP, Miller Town LP, Swiss Ridge LP, 17th Street LP, Alta Vista LP, Forest View LP, Stonebridge LP, Spring Branch LLC, Delrose Court LP, River View Park LP, Sutherland View Apartments LP, Lyon's Den LP, Dunhill LLC, Ashton View LLC, West Vista Ridge LLC, Cassell Ridge LP, Cassell View LP, Sutherland Park LP, Azalea Development LLC, The Highlands Apartments LP, and Beason Well LP.

The complexes involved are the Highlands Apartments in Chattanooga; the Miller Town Apartments in Clarksville; the Stonebridge Apartments in Columbia; the Meadowcreek Apartments in Goodlettsville; the Lake Side Apartments in Hermitage; the White Oak Apartments in Jamestown; the Beason Well Apartments in Kingsport; the Cassell Ridge Apartments, Cassell View Apartments, Dunhill Apartments, Lyon's

Den Apartments, River View Park Apartments, Sutherland Park Apartments, Sutherland View Apartments, and West Vista Ridge Apartments in Knoxville; the Spring Branch Apartments in Madison; the Ashton View Apartments in Morristown; the Forest View Apartments in Mt. Juliet; the Swiss Ridge Apartments and Swiss View Apartments in Nashville; and the 17th Street Apartments in Springfield. Anyone who believes he or she may have been harmed by the lack of accessible housing at one of these complexes should contact the Justice Department at 1-800-896-7743, and select menu option 2.

"Equal access to housing for persons with disabilities is an important right protected by both the Fair Housing Act and the Americans with Disabilities Act," said Assistant Attorney General Thomas E. Perez. "This comprehensive settlement will ensure that equal housing opportunities required by law are provided in these 21 housing complexes. This will give persons with physical disabilities an equal opportunity to live in

and visit these complexes, and provide compensation to those who have been harmed by the builders' failure to provide accessible housing."

"The United States will work aggressively to guarantee that persons with disabilities have the accessible rental housing to which they are entitled," said Ed Yarbrough, United States Attorney for the Middle District of Tennessee. "The scope of this settlement and the many apartment complexes that it covers will benefit many Tennesseans with disabilities."

This case began when the Tennessee Fair Housing Council, a private, nonprofit advocacy organization whose mission is to eliminate housing discrimination in Tennessee, provided the Department with information about seven apartment complexes in Nashville that were inaccessible to people with disabilities. The department conducted an independent investigation, filed the lawsuit in September 2008, and subsequently expanded the lawsuit to include additional complexes. (See previous article in issue # 27.)

ADA MEDIATION HIGHLIGHTS

The ADA Mediation Program is a Department-sponsored initiative intended to resolve ADA complaints in an efficient, voluntary 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 78% of all complaints mediated have been resolved successfully.

In this issue, we highlight complaints against health care providers and hospitals that have been successfully mediated.

- In Oregon, an individual with a mobility disability complained that a building containing a medical office on the sixth floor was inaccessible because its elevator was often out of service, the door to the medical office was too heavy, and its restroom was inaccessible to people using a wheelchair or a walker. Both the building owner and medical office tenant participated in the mediation and the building owner repaired the elevator to work reliably, modified the door closer to lessen its force, and expanded and modified the restroom to make it accessible.
- In Virginia, an individual whose daughter has Asperger's Syndrome and an anxiety disorder complained that, after using a dentist for three years, the dentist informed her that he was implementing a "behavior management" fee charged to patients who required additional time. The dentist agreed to stop charging the fee and to place a sign in his office indicating that the office does not discriminate. Finally, the dentist wrote a letter of apology to the complainant's daughter, paid \$500 to the complainant, and donated \$500 to an autism center.
- A person who uses a wheelchair complained that a California medical practice was inaccessible. The practice installed a van-accessible parking space and a ramp with handrails at the entrance, relocated furniture to create an accessible route inside the practice, and installed grab bars and accessible toilets in two restrooms.
- In Florida, an individual with a mobility disability complained that she was denied access to a mental health hospital because she uses a service animal for balance. The hospital changed its policy and developed procedures to allow service animals to accompany individuals throughout the facility.
- In Colorado, an individual who has a seizure disorder complained that she was denied access to a doctor's office because she uses a seizure alert animal. The doctor modified his policy and developed procedures to allow all service animals to accompany individuals with disabilities throughout the medical office.
- In Ohio, a person with a mobility disability complained that a dental office refused to treat him because he uses a service animal for balance. The practice changed their policy, agreed to treat patients who use service animals, and apologized to the complainant.

(Mediation, continued)

■ In Illinois, a person who uses a wheelchair complained that a medical center did not have accessible restrooms. The medical center modified the restrooms to be accessible and paid the complainant \$2,500.

■ In West Virginia, an individual who is deaf complained that a mental health facility refused to provide a

sign language interpreter for an appointment. The facility changed its policy and developed new procedures for providing effective communication, including the provision of sign language interpreters for patients upon request. The facility also compiled a list of qualified sign language interpreters trained current staff, and will train new employees, on the new policies, and the ADA.

for returning service members with disabilities and gave an overview of the ADA's requirements at a Warrior and Survivor Care Conference in San Antonio, Texas. The conference was attended by 200 U.S. Air Force personnel who provide direct care or coordinate benefits for injured service members.

■ On April 7, staff gave a presentation at a national webinar hosted by the Federal Emergency Management Administration's Citizen Corps. The presentation provided an overview of rights and obligations under the ADA and other federal disability rights laws and addressed issues related to planning, preparedness, notification, evacuation and transportation, sheltering, the ADA's integration mandate and the related need for physical access and functional support services, clean-up, recovery, and rebuilding. More than 450 people attended the webinar.

■ On April 7, staff gave a presentation on the ADA and Corrections at the Florida Sheriff's Association Conference in Kissimmee, Florida. The conference was attended by state, county, local, and private jail administrators, sheriffs, law enforcement officers, and jail health care professionals.

RECENT OUTREACH ACTIVITIES

■ On March 4, staff gave a presentation in Winooski, Vermont, to the Vermont Human Rights Commission. The presentation explained the requirements pertaining to service animals and assistance animals under the Fair Housing Act and the ADA.

■ On March 17, staff participated in a lecture series for graduate students in a museum studies program at Seton Hall University in South Orange, New Jersey. The lecture focused on accessibility and best practices for museums.

■ On March 25 and 26, staff participated in a convening of HIV/AIDS legal service attorneys hosted by the Ford Foundation in New York, New York.

The meeting was convened to discuss areas of overlap and areas of weakness in advocating for the legal rights of people with HIV, especially regarding discrimination. Staff gave a presentation explaining how the ADA protects people with HIV.

■ On March 29 - April 2, staff attended the 2010 National Hurricane Conference held in Orlando, Florida. Staff gave a presentation on the ADA and emergency preparedness for people with disabilities. Attendees included Emergency Managers, City and County Commissioners, and Hospital/Health Care Officials.

■ On April 6, 2010, staff distributed copies of the Department's new publication

(Outreach, continued)

■ On April 12-13, 2010, Section staff gave presentations at three hospitals in Cleveland, Ohio, about the ADA's effective communication requirements in medical settings. Over 100 people attended the presentations.

■ On April 15, staff gave a presentation to the first-year class of the Cornell Medical School at New York Presbyterian Hospital in New York City. The presentation provided an overview of the ADA and other disability rights laws, general disability-related issues, and considerations when interacting

with patients with disability and chronic health issues. The presentation included a discussion of the students' reactions to an exercise requiring them to travel a specific route within the medical school and hospital using a wheelchair.

■ On April 19-22, staff participated as keynote speakers and gave a series of panel presentations on the ADA at a meeting of the National Association of ADA Coordinators in Miami, Florida.

■ On April 21, staff gave a presentation at the 2010 Crime Victims' Rights

Week Conference in Omaha, Nebraska. The presentation included an overview of the ADA and a discussion of ADA compliance issues. Attendees included victims' rights program directors, victim advocates, and law enforcement officers.

■ On April 21, staff gave the keynote speech at the Deaf/Hard of Hearing Legal Advocacy Program's Deaf Rights Night Clinic in Jacksonville, Florida. The presentation focused on effective communication, recent ADA activities, and the complaint process.