ADA
Technical Assistance
Letters

DJ 182-06-00010

Fleming W. Smith, Jr., FAIA
Principal
Gresham, Smith and Partners
3310 West End Avenue
Post Office Box 1625
Nashville, Tennessee 37202

Dear Mr. Smith:

Thank you for your letters asking questions concerning the Americans with Disabilities Act (ADA). Although the Department of Justice is authorized by law to give legal opinions only to the President and to the heads of Federal Executive agencies, the ADA authorizes the Department to provide technical assistance to entities that are subject to the Act. Therefore, we may provide informal guidance to assist you in understanding the ADA Guidelines. However, this technical assistance does not constitute a binding determination by the Department of Justice.

Your first question asks whether the 48" clear width requirement for stairs adjacent to areas of rescue assistance (4.3..11.3) applies if a building is exempt from the requirement to provide an area of rescue assistance. You are correct in your interpretation that if a section does not apply, the subsections under it also do not apply. It should be pointed out, however, that the exemption from the requirement for an area of rescue assistance only applies in buildings with supervised automatic sprinkler systems (i.e, those that have built-in signals for monitoring various features, as explained in Appendix section 4.1.3(9)).

Your second question asks whether vinyl composition tile complies with section 4.5.1. The Department of Justice does not issue opinions as to whether particular products comply with accessibility standards. You might, however, wish to contact the Architectural and Transportation Barriers Compliance Board (phone 800-USA-ABLE) for technical information on products.

cc: Records; CRS Files; Oneglia; Wodatch; Friedlander; Drake.
:UDD1:UDD:WODATCH:SMITHLETTER

01-00500

We would also point out that you have incorrectly assumed that section 4.5.1 includes a requirement for a static coefficient of 0.6. The only requirement in section 4.5.1 is for a slip-resistant surface. No specific static coefficient of friction is mandated. Although the appendix encourages a static coefficient of 0.6, nothing in the appendix is mandatory.

Your third question concerns employee work areas. Section 4.1.1(3) requires that areas used only as work areas must be designed and constructed so that an individual with disabilities can approach, enter, and exit the areas. The preamble language at page 35587 explains that the section applies to any areas used only as work areas, not just to areas "that may be used by employees with disabilities." Thus, all work areas must be designed in accordance with the ADA Guidelines, unless exempted under section 4.1.1(5) because (1) it would be structurally impracticable to comply, (2) the area is an observation gallery used primarily for security purposes, or (3) the area is non-occupiable space fitting the criteria in Section 4.1.1(5)(b)(ii), such as an elevator pit or penthouse.

Assumptions as to whether individuals with disabilities can be employed in particular positions are not determinative as to whether an area must be built accessibly. Unless one of the above exemptions applies, the work areas must be built in accordance with the Guidelines. Staff toilet areas for surgical nurses and factory or airplane maintenance workers (examples mentioned in your letter), therefore, must be designed in accordance with the Guidelines.

You also asked whether a staff toilet serving employees working in mechanical rooms must be accessible, since elevator access is not required to mechanical rooms. The "mechanical room" that is referred to in Section 4.1.3(5), Exception 2 is intended to include rooms that are only used incidentally on an "in and out" basis. If a bathroom serves the room, as your hypothetical suggests, then the room you have called a "mechanical room" is probably not a mechanical room to which Exception 2 would apply. As a work area, it must comply with the

requirement in Section 4.1.1(3) that an individual with disabilities be able to approach, enter, and exit the area, as well as with the requirement for fully accessible common areas, including bathroom facilities. Thus, there would have to be elevator access to the room as well as to any bathroom serving the room.

If the room you are describing is, in fact, a true "mechanical room," then, as you point out, Section 4.1.3(5), Exception 2 would exempt it from any requirement for an elevator. In such a case, if the only bathrooms in the facility were to be provided on that inaccessible level, accessible bathrooms would

need to be provided on the accessible ground floor. This principle is stated in Section 4.1.3(5), Exception 1.

In response to your question about accessibility in an air traffic control tower, the tower would be a work area subject to the requirement that individuals with disabilities be able to approach, enter, and exit it. If it were infeasible to use an elevator because of visibility problems, a lift would be permissible. Section 4.1.3(5), Exception 4(d) permits lifts to provide access where "existing site constraints or other constraints" make use of an elevator infeasible.

I hope this information has been helpful to you.

Sincerely,

John L. Wodatch
Director
Office on the Americans with Disabilities Act
Coordination & Review Section
Civil Rights Division

U.S. Department of Justice
Civil Rights Division

Coordination and Review Section
P.O. Box 66118
Washington, D.C. 20035-6118

JAN 17 1992

Mr. Evan Roth
Associate Editor
Museum News
American Association of Museums
1225 Eye Street N.W.
Washington, D.C. 20005

Dear Mr. Roth:

Please find enclosed the article on the effect of the Americans with Disabilities Act (ADA) on museums that you requested.

Sincerely,

John L. Wodatch
Director
Office on the Americans with Disabilities Act
Coordination & Review Section
Civil Rights Division

Enclosure

AMERICANS WITH DISABILITIES ACT

On July 26, 1990, in a ceremony on the White House lawn attended by more than 3,000 people, President Bush signed into law the Americans with Disabilities Act (ADA) -- landmark legislation that extends civil rights protection to individuals with disabilities in the areas of employment, State and local government services, and access to public accommodations and commercial facilities.

The ADA adopts a comprehensive approach that will enable individuals with disabilities to move into the mainstream of society. Title I's prohibition of discrimination in employment will ensure that they have an equal opportunity to work; title II, which prohibits discrimination in State and local government services, including transportation, will ensure that they can get to work; and title III's prohibition of discrimination in places of public accommodation will ensure that they have an equal opportunity to spend their earnings. (The Fair Housing Act Amendments of 1988 already prohibit discrimination on the basis of disability in housing.) And the ADA's application to theaters, concert halls, museums, libraries, and galleries will ensure that individuals with disabilities have equal access to the arts and to the rich cultural heritage our nation has to offer.

Museums that receive Federal financial assistance are already familiar with the requirements of section 504 of the Rehabilitation Act, which prohibits discrimination against individuals with handicaps in federally assisted programs. The

ADA extends those requirements to all activities of State and local governments, under title II, and, under title III, to "places of public accommodation" operated by private entities, including places of "public display or collection," such as museums. Museums operated by State or local governments, therefore, are covered by title II of the ADA, while those operated by private entities are covered by title III. Both title II and title III are effective on January 26, 1992. Museums operated by Federal Executive agencies are not affected by the ADA, but are covered by the requirements of section 504 for federally conducted programs and activities.

The requirements of the ADA for places of public accommodation and State and local governments are based on the requirements of section 504 and are essentially the same as those requirements. Entities covered by the Act are prohibited from discrimination in the full and equal enjoyment of the goods, services, and accommodations that they offer to the public. They cannot exclude individuals with disabilities, and must make reasonable modifications in policies, practices, and procedures that would deny equal access to individuals with disabilities. For example, a rule prohibiting animals in a museum would have to be modified to permit the use of guide dogs and other service animals by individuals with disabilities visiting the museum.

Covered entities are also required to provide effective communication with customers or clients with hearing or vision impairments. In some cases, this requirement may necessitate the provision of auxiliary aids or services such as sign language interpreters.

The ADA's requirement for removal of physical barriers is the area that has received the most public attention. In existing facilities, public accommodations must remove barriers when removal is "readily achievable" -- that is, easily accomplishable and able to be carried out without much difficulty or expense. What is "readily achievable" will be determined on an individual, case by case, basis in light of the resources available. The case-by-case approach takes into account the diversity of enterprises covered by title III and the wide variation in the economic health of particular entities at any given moment.

State and local government entities are covered by a different standard with respect to existing facilities. They must ensure that the services, programs, and activities that they offer are accessible to individuals with disabilities, but may use alternative methods for providing access, such as providing

services in an alternative accessible location, rather than making an existing facility accessible.

The most rigorous physical accessibility requirements apply to new construction and alterations. The regulations adopt specific architectural standards for new construction and alterations. Places of public accommodation and commercial facilities must comply with the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (ADAAG). State and local governments may use either ADAAG or the Uniform Federal Accessibility Standards (UFAS), which is the standard used under section 504. Both UFAS and ADAAG contain special provisions for alterations to historic properties to ensure that alterations to provide accessibility are not required if they would threaten or destroy significant historic features of an historic property. Where providing physical access is not required, alternative methods may be used to provide services to individuals with disabilities.

The Americans with Disabilities Act has been called a radical piece of legislation. But there is nothing at all radical about this law. Rather, it is the logical extension of the nation's deep commitment to eradicating unjustifiable obstacles that deny anyone the right to enjoy full participation in the American way of life -- a commitment that has President Bush's full support. The Department of Justice is committed to ensuring that the law is implemented effectively, and has established a program for providing technical assistance to

entities with responsibilities under the law as well as individuals protected by it. Our goal is to promote voluntary compliance, and we hope and expect that those businesses covered by the law will comply voluntarily so that we will rarely be forced to resort to enforcement procedures.

The Department of Justice, the Equal Employment Opportunity Commission, and the Access Board have established information lines to answer questions about the ADA. The numbers are:

Department of Justice: (202) 514-0301

Equal Employment Opportunity Commission: 1-800-669-3302

Access Board: 1-800-872-2253

T. 2/21/92
DJ 182-180-00652

FEB 28 1992

The Honorable Dan Glickman
Member, United States House of
Representatives
401 N. Market Street
Room 134
Wichita, Kansas 67202

Dear Congressman Glickman:

I am responding to your recent inquiry about a letter sent to this Department by your constituent, Dave Hoffman, seeking information about the requirements of title III of the Americans with Disabilities Act of 1990 (ADA). A copy of our response to Mr. Hoffman is enclosed for your information.

I hope that this information is helpful to you in responding to Mr. Hoffman.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

Enclosure

bcc: Records CRS CSU McDowney Oneglia Arthur
UDD:Blizard.ada.interpretation.glickman

01-00507
T. 2/21/92
DJ 182-180-00652

FEB 28 1992

Mr. Dave Hoffman
Law/Kingdon, Inc.
P.O. Box 1094
Wichita, Kansas 67201-1094

Dear Mr. Hoffman:

I am responding to your letter requesting information about the requirements of title III of the Americans with Disabilities Act of 1990 (ADA). On July 26, 1991, this Department published a regulation to implement title III, 56 Fed. Reg. 35544, to be codified at 28 C.F.R. pt. 36. We have enclosed a copy of this regulation for your information.

Because the ADA authorizes the Department of Justice to provide technical assistance to individuals and entities that are subject to the Act, we may provide informal guidance to assist you in understanding the ADA accessibility standards. However, this technical assistance should not be construed as a legal opinion of this Department or a determination of your rights or responsibilities under the ADA, and it is not binding on the Department of Justice.

You have asked us to provide definitive answers to several broad questions pertaining to the statutory concept "readily achievable barrier removal" in order that you may be able to advise the clients of your architecture and engineering design firm about their obligation to comply with the ADA.

These questions cannot be answered in the abstract. The ADA clearly requires places of public accommodation to remove existing architectural barriers and communication barriers that are structural in nature to the extent that it is readily achievable to do so. However, the Department's regulation does not establish a "quantifiable connection" or other mathematical formula to determine if barrier removal is "readily achievable."

When the title III regulation was being drafted, the Department considered -- but ultimately rejected -- the idea of trying to establish a mathematical formula because it is virtually impossible to devise a specific ceiling on compliance

cc: Records CRS CSU McDowney Oneglia Arthur
UDD:Blizard.ada.interpretation.glickman

costs that would adequately take into account the vast diversity of enterprises covered by the ADA's public accommodations requirement, and the economic situation that any particular entity would find itself in at any moment. Therefore, the regulation requires that the determination as to whether the removal of a specific barrier is readily achievable must be made on a case-by-case basis after a thorough consideration of the

factors established in the statute. The decision should be made by each public accommodation in consultation with its own legal advisors and others.

If the place of public accommodation is a facility that is owned or operated by a parent entity that conducts operations at many different sites, the public accommodation must consider the resources of both the local facility and the parent entity to determine if required barrier removal is "readily achievable." The administrative and fiscal relationship between the local facility and the parent entity must also be considered in evaluating what resources are available for any particular act of barrier removal.

In striking a balance between guaranteeing access to individuals with disabilities and recognizing the legitimate cost concerns of businesses and other private entities, the ADA establishes different standards for existing facilities and new construction. In existing facilities, where retrofitting may be expensive, the requirement to provide access is less stringent than it is in new construction and alterations, where accessibility can be incorporated in the initial stages of design and construction without a significant increase in cost. The readily achievable standard does not require barrier removal that requires extensive restructuring or burdensome expense. It does not require rearrangement of temporary or movable structures if it results in a significant loss of selling or serving space.

The Department's regulation contains a list of examples of modifications that are likely to be readily achievable. The list is merely illustrative. It is not intended to suggest that each of these modifications will always be readily achievable or that no other type of modifications would be required. Changes that are likely to be readily achievable are: installing ramps or curb cuts; repositioning shelves or telephones; rearranging display racks and other furniture; adding raised markings on elevator control buttons; installing flashing alarm lights; and installing grab bars in toilet stalls.

Because the resources available for barrier removal may not be adequate to remove all existing barriers at any given time, he Department's regulation suggests a way to determine which barriers should be mitigated or eliminated first. The purpose of these priorities is to facilitate long-term business planning and to maximize the degree of effective access that will result

from any given level of expenditure. These priorities are not mandatory. Public accommodations are free to exercise discretion

in determining the most effective "mix" of barrier removal measures to undertake in their facilities.

The suggested priorities are to 1) enable individuals with disabilities to physically enter the facility; 2) provide access to those areas of a place of public accommodation where goods and services are made available to the public; 3) provide access to restrooms; and 4) remove any remaining barriers to using the public accommodation's facility by, for example, installing visual alarms, adding Brailled floor indicators to elevator panels, or lowering telephones. It is not necessary to remove barriers in areas used only by employees.

An effective way for public accommodations to determine what they need to do is to conduct a "self-evaluation" of the facility to identify existing barriers. This Department encourages all public accommodations to establish procedures for an ongoing assessment of their compliance with the ADA's barrier removal requirements. This process should include consultation with individuals with disabilities or organizations representing them. A serious effort at self-assessment and consultation can diminish the threat of litigation and save resources by identifying the most efficient means of providing required access.

If a public accommodation determines that its facilities have barriers that should be removed, but it is not readily achievable to undertake all of the modifications immediately, the Department recommends that the public accommodation develop an implementation plan designed to achieve compliance with the ADA's barrier removal requirements. Such a plan, if appropriately designed and diligently executed, could serve as evidence of a good faith effort to comply with the ADA's barrier removal requirements.

The obligation to engage in readily achievable barrier removal is continuing, but not unlimited. Over time, barrier removal that initially was not readily achievable may later be required because of changed circumstances. But the obligation to remove barriers will never exceed the level of access required under the alterations standard (or the new construction standard if the regulation does not provide specific standards for alterations). Once an existing facility has reached the level of

accessibility that it would be required to achieve if it was subject to the alterations requirements of the ADA, the obligation to remove barriers ends.

I hope that this information is helpful to you.

Sincerely,

John L. Wodatch
Director
Office on the Americans with Disabilities Act
Civil Rights Division

Enclosure

cc: Honorable Dan Glickman

01-00511

DJ 192-180-02680

MAR 09 1992

Mr. Michael J. Davis
Co-Publisher, Engravers Journal
Post Office Box 318
26 Summit Street
Brighton, Michigan 48116

Dear Mr. Davis:

This letter is in response to your recent letter to the Attorney General concerning the requirements for permanent signs contained in the Americans with Disabilities Act Accessibility Guidelines (ADAAG), which are incorporated as an appendix to the Department of Justice's regulation implementing title III of the Americans with Disabilities Act.

The Architectural and Transportation Barriers Compliance Board (Board) is currently drafting proposed accessibility guidelines for title II of the Americans With Disabilities Act, which covers State and local governments. At the next Board meeting on March 10, I plan to request that the Board agree to include specific questions concerning appropriate standards for signage in the preamble to that proposed rule. This will enable the engraving industry to formally present to the Board its views on engraved lettering.

The Board will carefully consider all comments received and determine whether the title II guidelines should permit engraved lettering on permanent signs. If the comments received indicate that such a determination is appropriate, I will recommend to the Board that the title III guidelines be revised to be consistent with the title II guidelines. I strongly encourage representatives of the engraving industry to submit comments on the proposed title II guidelines so that the Board will have the necessary information to make a wise decision on the issue.

cc: Records; CRS Files; Oneglia; Friedlander; Wodatch; McDowney.
:udd:friedlander:davis.2

For your information, I have enclosed a copy of our recently issued title II and title III technical assistance manuals. The Department of Justice has defined "permanent signs" in a restrictive manner. The only signs subject to the raised letter requirement are men's and women's rooms, room numbers, and exit signs (see page 59 of the title III manual).

Finally, I would like to clear up some confusion in your letter about the requirements for permanent signs under the Uniform Federal Accessibility Standards (UFAS). The Department of Justice title II regulation permits public entities to follow UFAS, contained at Appendix A to 41 CFR part 101-19.6. That version of UFAS was amended in 1989 by the General Services Administration to delete the reference to engraved letters and to instead require raised letters only on permanent signs. Thus, public entities are, in fact, held to the same standard as private entities (see page 26 of the title II manual). In other words, raised letters are required on permanent signs both under UFAS and under ADAAG. Confusion has resulted because the other three agencies that issued UFAS (the Department of Defense, the Department of Housing and Urban Development, and the United States Postal Services) never amended their UFAS documents as the General Services Administration did. Therefore, Federal buildings under those agencies' jurisdictions continue to permit engraved letters on permanent signs.

I hope this information has been helpful to you.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

Enclosures

01-00513

THE
ENGRAVERS
JOURNAL
February 11, 1992

Attorney General of the United States
The Honorable William P. Barr
Department of Justice
Constitution Avenue & 10th Street NW
Washington, DC 20530

Dear Mr. Attorney General:

I understand that your Mr. John Dunne met with the ATBCB recently and the outcome, according to ATBCB Executive Director, Larry Roffee, was that the ATBCB is awaiting a letter of recommendation from you personally. As Mr. Roffee explained it to me, your letter is supposed to deal specifically with an issue of great concern to the engraving and sign industries: the prohibition under the ADA of incised lettering on interior signs. This prohibition, in turn, is based on the Georgia Tech "study" which is the subject of the enclosed article reprint.

Unfortunately, the study was poorly done and all that it proves is that both raised and incised lettering can be read tactually but that neither can be read infallibly.

The only major concern our industry has is the raised-letter-only provision, especially since both raised and incised lettering are permitted under the UFAS standard. Therefore the ADA subjects privately owned buildings to more stringent requirements than certain government-owned buildings.

Our publication and entire industry applaud the spirit and intent of the ADA and would like to produce highly innovative and cost effective "accessible" signage which provides total freedom of

movement for the visually impaired. It would be desirable to get this issue resolved and get back to business as usual.

Therefore our industry respectfully requests that you promptly send the ATBCB the letter of recommendation they are awaiting. We would also appreciate a copy of the same.

Thank you in advance and we remain,

Sincerely,

Michael J. Davis
Co-Publisher
P.O. Box 318 * 26 Summit St. * Brighton, Michigan 48116 * (313) 229-5725 *
FAX (313)229-8320
01-00514

THE AMERICANS WITH DISABILITIES ACT: HOW IT AFFECTS OUR INDUSTRY

As things stand now, January 26, 1992 may be the beginning of the end for the engraving industry as we know it. That is the day the Americans with Disabilities Act goes into effect. It is a new law affecting the entire United States, which is based on strong Civil Rights premises, but has implications that could severely impair the businesses of up to 50,000 engravers.

The bill was passed by both houses of Congress and subsequently signed into law by President George Bush on July 26, 1990. It is the most sweeping nondiscrimination legislation since the Civil Rights Act of 1964.-(Nancy Lee Jones. Legislative Attorney). The overall law is a very positive step for the equality of Americans with all types of physical disabilities. Unfortunately, in providing this segment of society the equality they have long deserved. the law is nearly legislating our entire industry out of existence.

This law has caught the engraving industry totally off guard. Although the law went through the entire legislative process, including hearings in selected cities, apparently either no one in the engraving industry knew of it or the word never spread until a few months ago. Consequently, our industry had no input into the law. Obviously we are all very concerned about it.

The provisions of the law state that "No individual shall

be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities. privileges. advantages or accommodations of any place of public accommodation..." (section 302.a). This means that all people, disabled and able alike, have the right to equal access to all public facilities. The phrases "public facilities" and "places of public access" are important

Reprinted with permission from The Engravers Journal
November/December 1991

because the law affects the signage in just about any building open to the public - not just government buildings, but every school, hospital, office building and mom and pop retail store in America.

To have access to a facility means to be able to move around the building freely. Blind people are unable to move freely through some buildings because they are unable to read the signs on the wall. This law addresses this problem by ruling that all permanent signs must be tactile (read with the hands) so the visually impaired are able to read them.

Tactile signage is not, per se, a problem for engravers. It is possible to read engraved signage tactually. The problem is that the law mandates that these permanent signs be made with raised tactile letters only. It states that:

1) Letters must be raised 1 32" from the surface.

2) Grade B braille messages must be on every permanent sign.

3) Pictograms and graphics must have a verbal description below them and a 1 32" raised border around them.

4) The character type must be simple or sans serif.

5) The character height must be a minimum of 5 8" and a maximum of 2".

6) The width-to-height ratio should be between 3:5 and 1:1, and the stroke width-to-height ratio should be between 1:5 and 1:10.

7) There should be a 70% difference in reflectance between the background color and the character color. (This basically means dark on light and light on dark colors only, e.g. black on white, off-white on dark brown.)

8) The finish must be eggshell or matte (low-glare).

This list indicates the major provisions that will affect engravers. There are other provisions regarding such requirements as sign placement, etc., that are not covered here.

It would appear that the new law covers all the bases. If a visually impaired person has some, albeit poor, vision, he or she can read the message. If not, he or she can read it tactually by feeling the characters or by reading the braille.

There is a "grandfather clause" built into the law so that it only applies to new building construction and major renovations. Every building in America

will not have to change its current signage to avoid violations. It should also be pointed out that only "permanent" signage need comply with the regulations. According to the Rules and Regulations in the Federal Register, Volume 56, Number 144, the law deals with:

(16) Building Signage

(a) Signs which designate permanent rooms and spaces shall comply with 4.30.1, 4.30.4, 4.30.5 and 4.30.6.
(b) Other signs which provide direction to or information about functional spaces of the building shall comply with 4.30.1, 4.30.2, 4.30.3 and 4.30.5.

EXCEPTION: Building directories, menus and all other signs which are temporary are not required to comply.
These regulations are vague and open to interpretation. It appears that most building signs, short of directories, menus and other temporary signs such as personnel nameplates that appear on office doors and cubicles, are required to have raised letters and braille. Other signs, e.g. those directing you through and around permanent floors, hallways and rooms, must also have raised letters and braille. So, for example, the room number on an office door must have raised letters and braille, but the name of the person occupying that office presumably can be marked in any number of ways, including sunken, engraved characters.

Anyone who has recently filled an architectural signage order knows that the trend is to coordinate the signage throughout the building. The colors are coordinated, the sign styles are coordinated and the marking method used for the signs is coordinated. When some signs in a building must be raised letter signs on 70% reflective material,

such as black/white or white/black, how likely is it that the customer will order different types and colors of signs for the ones that are not strictly regulated?

Probably the most interesting aspect of the new law is that engraved ("incised" or sunken) characters are tactile and can be read by feeling them. Yet, in effect, incised characters are outlawed by the new law. Why should this be? The answer is that the new regulations are based almost entirely on a study conducted by the Architectural and Transportation Barriers Compliance Board (ATBCB), a Federal agency in Washington DC.

The Journal obtained and examined the ATBCB study which was used to come up with these regulations. It appears that the regulations are based almost completely on the findings of this study, yet the study draws conclusions that range from questionable to actually false.

The Study Behind the Regulations

Titled A Multidisciplinary Assessment of the State of the Art of Signage for Blind and Low Vision Persons, this study was funded by the Federal government through the ATBCB in the mid 1980s ('84-'85). It cost nearly $1.3 million to complete, and the findings which are now law are, in places, absurd.

The study's intent was to test day-to-day functions of the visually impaired. By way of background, about 12 million Americans are severely visually impaired, which means their vision cannot be corrected to 20/20 visual acuity. About 648,000 people are legally blind and 23% of them (or about 144,000) are totally blind. The test was to see how well visually impaired people can read various signs.

The test basically covered the areas

of tactile and non-tactile readability of signs and surfaces based on the size of the characters, the relief or depth of the characters, the characteristics of the various typefaces, the contrast between the letters and the background, upper- or lower-case lettering, lighting, glare, reflections, information content and sign design. Some aspects were tested in the lab and others were tested in the field. There was also a comprehensive test that combined those aspects tested in the lab and those tested in the field into one test.

The study was presented to the ATBCB with impeccable credentials. Most of the research, testing and statistical compilations were done by the highly prestigious Georgia Institute of Technology, Atlanta, Georgia.

The general conclusions that were drawn state that past signage regulations for the disabled were incomplete, unclear and, in some instances, incorrect. As a result, the Justice Department adopted nearly all of the study's findings, which were considered clear and correct.

The study was conducted by an impressive board of representatives from academic institutions as well as from large organizations. Members of the ATBCB were part of the advisory panel, as were members of the Ameri-

01-00516

can Foundation for the Blind, Georgia Tech School of Architecture, the School of Architecture from the University of Wisconsin and the Special Education and Rehabilitation Center, to name a few highly prestigious organizations.

The participants, or subjects, in the study (visually impaired volunteers) came from the National Federation of the Blind Conference in Phoenix, and

the American Council of the Blind Conference in Philadelphia. There were also participants from Georgia Tech. Of the 167 total participants, some were totally blind and others were partially sighted (partially sighted people's best corrected vision does not exceed 20/70, or the maximum diameter of their visual field does not exceed 20 degrees, e.g. tunnel vision).

Of the participating subjects, 73.7% could read braille. (According to the American Foundation for the Blind, only 19% of the legally blind in the U.S., or 1% of the severely visually impaired, read braille.) Similarly, 61.7% of the participants were congenitally blind (blind from birth) yet the overwhelming majority of the blind in America (80%) are adventitiously blind (go blind later in life). Some participants (35.1%) had training in tactile reading. The study acknowledges that this is a well-educated group (32.9% of the test subjects had college degrees) and is, on a whole, better educated than the average visually impaired person.

The participants took part in a series of tests involving reading raised letter signs. They were given 24 signs with random characters (not words) to read both visually (if possible) and tactually (the partially sighted wore blindfolds for tactile readings). The success rates that participants had when reading these signs were then statistically tallied. Some of the conclusions drawn in the study are based on these results, while others appear to be diametrically opposite the statistical data, and based purely on the subjective opinions of the participants.

The Results of the Study

The regulations of the law are almost exactly the same as the results of the study. The study results state: 1) All tactile characters should be sans serif or simple serif: 2) All characters should be upper case: 3) All characters must be raised a minimum of 1/32"; 4) All characters should be 2" high; 5) Blind people preferred raised letters over incised letters.

This last conclusion is especially troublesome, because it indicates that based on a preference, not overall readability, incised letters should not be used. This is one of the main questionable points in the study. Can they really base a great deal of credence on the fact that these people prefer to read raised over incised characters?

What Does All This Mean?

The fact of the matter is, a law has been passed that is a good law overall. It makes a bold Civil Rights movement by helping a group that has been unconsciously discriminated against for a long time. The problem is the regulations adopted by the Justice Department (which is responsible for enforcing parts of the law) are almost solely based on a single, highly biased study which at times based conclusions and recommendations on totally flawed and even blatantly false information.

One of the major problems with the study is that the sign samples that the participants read were inconsistent and inaccurate. They tested two thicknesses of raised letters, 3/64" relief and 1/8" relief. For the incised letters, they tested 1/32" deep letters and also letters whose depth was described as "less than 1/32". How deep is that?

Also, many typestyles are misiden-

tified in the study. For example, they labeled a letter that is clearly an Optima typestyle as a Roman typestyle. They also compared the tactile readability of two totally different typefaces in raised vs. incised characters and then compiled statistical data based on which was more readable, the raised or the incised characters. These sorts of incongruities call into question the accuracy of the statistical conclusions that can be drawn.

The sign samples did not contain recognizable words, but rather tested random letter combinations. This is an unreal scenario because the only signs that are read day to day contain real words. The text of the study states that, "Some experts will argue that reading is accomplished by recognizing the 'footprint' of the word or sentence not by reading and recognizing each individual letter." The study went on to say that testing this factor would have made this study too complex and it would require further research.

The study also says that a 1:5 to 1:10 stroke to height ratio is best, yet acknowledges that some typestyles outside this range are just as easily read as those which meet the standard.

Not once in the study were either raised or incised letters read 100% accurately. True, in some instances raised were read somewhat more accurately than incised, but in other cases, the opposite was true. In any event, both types fluctuated primarily in the 60%-80% accuracy range. It was certainly not the case that raised letters were unquestionably more readable; especially since they did not compare like letters, i.e. they compared high relief letters (1/8") with shallow incised letters (1/32"). One would suspect that

if the height/depth of the raised incised characters were reversed and then compared, e.g. 1/8" deep incised characters vs. 1/32" raised characters, the incised characters would be statistically more readable in all cases! How can this type of unscientific comparison be used as the basis for financially devastating our industry?

These "apples to oranges" comparisons occur throughout the study. For example, figure 1 shows Table 8 from the study. In it they are comparing the readability of incised and raised letters based on intercharacter spacing. Notice the relief vs. depth in each example, as well as the comparison of distinctly different typestyles. Also note that the statistical readability of two out of three of the examples shows the "incised" characters to be more readable than the raised letters. In only one instance do they compare "like" typestyles (albeit with different heights/depths). In the other examples the typestyles being compared are different. From there the conclusion is formulated that "All characters should be raised." How can this be indisputable based on such a poor example?

If the test compared raised Caslon typestyle and incised Caslon typestyle, then raised Jubilee and incised Jubilee, and the conclusions were the same as they were with the Helvetica Medium (which was read by 17% more people when it was raised than when it was incised), the conclusions might be believable. As it is, they are questionable because the examples are inherently incomparable.

The study is riddled with similar "apples to oranges" disparities. For example, in some areas very vague directions are given, e.g. "letters should

line width changes." while in others very specific recommendations are given, e.g. Helvetica Medium is the easiest to read. Some areas, therefore, are wide open for interpretation and others are not. There are a lot of "gray areas" from which specific "black and white" recommendations are drawn.

Another factor that might have affected the results of this study's recommendations is that it was conducted with a highly-educated, elite group of visually impaired people. It simply was not a cross section of "everyday" people, although they were testing "everyday" activities. Of those tested, 73.5% could read braille; yet only 1% of the total severely visually impaired in the U.S. ever use braille. Similarly, only 20% of the visually impaired are congenitally blind. The other 80% lose their sight later in life, often due to age-related conditions such as cataracts, diabetes or glaucoma. Most of those 80% are elderly people who have never been trained to read braille or raised letters. Would a group of the elderly blind with an average education who don't read braille score the same as the study's test subjects?

The bottom line is that the study, which is the foundation of the new regulations, does not provide any conclusive evidence that these signage requirements are best for the general visually impaired public. Yet, the legislation is passed, and the new sign regulations are the law of the land!

It appears that the study was skewed from the beginning to support a pre-

conceived notion among certain blind people that raised letters are better. Realistically speaking, there may be some truth to this notion, at least if the only "incised" letters the visually impaired person has experience with are improperly engraved. As a practical matter, until now there has never been any serious consideration given to the special needs of the visually impaired. That should change! Still, that is not a valid reason to outlaw incised characters based on a biased, slap-dash study.

One of the most disturbing aspects of this study and the new law and regulations is that at no time during the process was our industry consulted or even informed as to what was taking place. Our products were tried and convicted in absentia, by a group using scant and questionable evidence. And, having had our products "outlawed," our industry must now pay the price: financial devastation!

The staggering financial repercussions have already begun. One reader has reported submitting the winning bid for a $10,000 contract to redo the signage in a hospital. Upon hearing about the new law, the hospital then cancelled the project!

So, the logical question is, "Where does it stand now?" Well, the fact of the matter is, although this is probably the first time most industry members are hearing about this, the law is passed, the regulations are finalized and they soon go into effect. After January 26, any new construction or major renovations must have signage which complies with these laws. But you still owe it to yourself and the industry not to give up hope.

Some current movements in the

industry are organizing groups interested in protesting or appealing certain aspects of the law, but it's mainly been "all talk, no action." It will take more than an individual effort to work for modifications to the regulations. The entire industry must make a concerted effort if there is any hope for changes to be made. We at The Journal will do our best to keep you informed with the latest developments, so watch future issues for updates.

There are materials available for you to educate yourself so that you have a better idea of all the implications. The ATBCB has copies of the accessibility guidelines for new construction and alterations (call 800-USA-ABLE). The Department of Justice has an ADA information package and is available to answer your questions (call 202-514-0301). The law itself (Public Law 101-336) is available from your senator or representative in Washington.

The incredible fact about this law is that all these negative implications that it holds for the sign and engraving industry are disguised by the overall good aim of the law. Honestly, who wouldn't vote for more accessibility for the disabled? The law is good, the regulations are bad. Most of the Congressmen that voted for the law probably had little understanding of the technical sign terms included in the sign regulations. It's up to us to pass the word on how ludicrous this really is. Maybe, if the engraving industry stands up to be counted, the far-reaching and detrimental effect that this has on our industry will change. But it is up to you to bring about this change!

01-00518

U.S. Department of Justice
Civil Rights Division

DJ 181-06-00012

Coordination and Review Section
P.O. Box 66118
Washington, D.C. 20035-6118

Mr. Marty Keene, President
Able Handicapped Industries, Inc.
P.O. Box 159
Shelburne, Vermont 05482

Dear Mr. Keene:

Thank you for your letter concerning the Americans with Disabilities Act (ADA).

The Department issued final rules implementing titles II and III of the ADA on July 26, 1991. Copies of these rules are enclosed. Title II bans discrimination on the basis of disability in all programs, activities, and services provided or made available by State and local governments, instrumentalities, or agencies. Title III prohibits discrimination on the basis of disability in public accommodations operated by private entities. Thus, Title III applies to privately owned golf courses.

Although the Department of Justice is authorized by law to give legal opinions only to the President and to the heads of Federal Executive agencies, the ADA authorizes the Department to provide technical assistance to entities that are subject to the Act. Therefore, we may provide informal guidance to assist you in understanding the ADA requirements. However, this technical

assistance does not constitute a binding determination by the Department of Justice.

You asked about the possibility of an exemption from the ADA requirements for existing golf courses, in exchange for the ability to assign or transfer their obligations to a golfing facility that is designed especially for golfers with disabilities. For two reasons, the exemption is not appropriate. First, the ADA does not allow the Department to exempt public accommodations -- regardless of reason -- from the statute or rule. Second, this type of arrangement would be inconsistent with the principle of integration that underlies the ADA. See, for example, sections 36.203 and 36.202(c) of the regulation.

01-00519

Currently, the ADA requirements do not include specific accessibility standards for new construction or alterations of the unique aspect of recreation facilities, e.g., golf courses. Other facilities, however, like restrooms, locker rooms, and restaurants must comply with the ADA accessibility standards. The standards do not cover air conditioning and hospitalization equipment.

I hope this information has been helpful to you.

Sincerely,

John L. Wodatch
Director
Office on the Americans with Disabilities Act
Civil Rights Division

Enclosures

01-00520

U.S. Department of Justice

Civil Rights Division

DJ 182-06-00062

Coordination and Review Section
P.O. Box 66118
Washington, D.C. 20035-6118

MAR 27 1992

T. Dwight Hanna
Personnel Director
Florence County Council
Office of Personnel
Drawer S, City-County Complex
Florence, South Carolina 29501

Dear Mr. Hanna:

This responds to your request for an interpretation of title II of the Americans with Disabilities Act (ADA) as applied to employment policies of State and local governments.

The ADA authorizes the Department to provide technical assistance to entities that are subject to the Act. This letter provides informal guidance to assist you in understanding how the ADA may apply to you. However, this assistance does not constitute a determination by the Department of Justice of your rights or responsibilities under the ADA and does not constitute a binding determination by the Department of Justice.

Title II of the ADA, which became effective January 26, 1992, applies to all programs and activities of State and local governments, including employment. Employment practices of State and local governments are also covered by title I of the ADA, which is effective July 26, 1992 for employers with 25 or more employees and July 26, 1994 for employers with 15 or more employees. Title I is enforced by the Equal Employment Opportunity Commission (EEOC). Under the Department of Justice's regulation implementing title II, the employment practices of State and local governments that are not covered by title I are subject to the requirements of section 504 of the Rehabilitation Act. Questions concerning interpretations of title I should be directed to the EEOC.

01-00521

The requirements of section 504 are, however, essentially the same as those of title I. The general requirement is that applicants and employees with disabilities receive equal treatment. There are no specific procedural requirements for applications. The ADA does not provide an exception for the employment policies of elected officials.

We hope that this information is helpful.

Sincerely,

Stewart B. Oneglia
Chief
Coordination & Review Section

Civil Rights Division

01-00522

MAR 30 1992

The Honorable Larry Combest
U.S. House of Representatives
1527 Longworth House Office Building
Washington, D.C. 20515

Dear Congressman Combest:

I am writing in response to your recent inquiry concerning the Department of Justice's regulations implementing the Americans with Disabilities Act provisions regarding 911 emergency services.

We are aware of the concern expressed by you and the

National Emergency Number Association about the provision in our regulation implementing title II of the Americans with Disabilities Act that states "telephone emergency services, including 911 services, shall provide direct access to individuals who use TDD's and computer modems."

The apparent concern is that by mandating access to persons using computer modems, the regulation may require that there be access by every format that could be used by a modem, including those that are not compatible with equipment presently used by emergency service systems. That is not the case. The regulation does not require telephone emergency systems to do anything that is technologically infeasible; accordingly, we are interpreting the requirement for access by computer modems to mean only when the modem is using the Baudot format. Until it can be technically proven that communications in another format can operate in a reliable and compatible manner in a given telephone emergency, the public service answering point is not required to provide direct access to computer modems using other formats.

This interpretive guidance has been issued by the Department of Justice in its recently published Technical Assistance Manual, which is available from the Office on the Americans with Disabilities Act, Post Office Box 66738, Washington D.C. 20035-9998, telephone: (202) 514-0301.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

01-00523

January 31, 1992

Mr. Robert Mather
U.S. Department of Justice
Civil Rights Division
P.O. Box 66118
Washington, D.C. 20035-6118

Dear Mr. Mather:

It has been brought to my attention that there is a flaw in the implementation rules for Title II Section 35 of the Americans With Disabilities Act. I voted for the Americans With Disabilities Act when it was considered by Congress, however, the Department of Justice (DOJ) in providing these rules may have created a situation that could prove devastating to hearing and speech impaired persons.

As you may know, the hearing and speech impaired community must communicate by using a device similar to a typewriter (called a TDD). They also communicate using a personal computer (PC). The Department of Justice specifies that all emergency services shall provide direct access to individuals who use TDD's and computer modems.

Currently, the hearing impaired have communicated using the baudot modem which is compatible with emergency centers. However, with the advent of the PC, a new modem with a language called ASCII (American Standard Code for Information Interchange) appeared. Now that ASCII is being placed into TDD's, it presents a problem. It is not compatible with the emergency centers' equipment. At this time, no technology exists that will connect an incoming ASCII call to an ASCII modem in the emergency centers.

Therefore, if a hearing impaired person places an emergency call using the ASCII mode, chances are likely that the call will not be handled properly. It could disconnect, receive garbled data or fail to make a connection. The result could prove devastating for the hearing and speech impaired person. Emergency centers could be held liable for conditions over which they have no control. The hearing and speech impaired will not be served with the same quality assurance that others have come to expect of their emergency centers and the advent of 911 systems.

01-00524

The reference to "computer modem" should be removed from the implementation rules until technology can assure that every TDD

call will be answered with the same quality as a voice placed call. I would greatly appreciate your consideration and comments regarding this matter.

Sincerely,

Larry Combest

LC/bb

01-00525

DJ 192-180-03980

MAR 31 1992

The Honorable Charles E. Grassley

United States Senate
135 Hart Senate office Building
Washington, D.C. 20510
Dear Senator Grassley:

I am writing in response to your recent inquiry on behalf of your constituent, Curtis Bauer.

We are aware of the concern expressed by your constituent and the National Emergency Number Association about the provision in our regulation implementing title II of the Americans with Disabilities Act that states "telephone emergency services, including 911 services, shall provide direct access to individuals who use TDD's and computer modems."

The apparent concern is that by mandating access to persons using computer modems, the regulation may require that there be access by every format that could be used by a modem, including those that are not compatible with equipment presently used by emergency service systems. That is not the case. The regulation does not require telephone emergency systems to do anything that is technologically infeasible; accordingly, we are interpreting the requirement for access by computer modems to mean only when the modem is using the Baudot format. Until it can be technically proven that communications in another format can operate in a reliable and compatible manner in a given telephone emergency, the public service answering point is not required to provide direct access to computer modems using other formats.

cc: Records; CRS Files; Oneglia; Wodatch; McDowney.
:udd:jonessandra:911.grassley.bauer

01-00526

This interpretive guidance has been issued by the Department of Justice in its recently published Technical Assistance Manual, which is available from the Office on the Americans with Disabilities Act, Post Office Box 66738, Washington D.C. 20035-9998, telephone: (202) 514-0301.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

01-00527

STORY COUNTY/MUNICIPAL
EMERGENCY MANAGEMENT AGENCY

CURTIS BAUER, COORDINATOR COUNTY COURTHOUSE
RES. PH. XXX PH. 382-6581 EXT. 310
292-3739 Ames
NEVADA, IOWA 50201

Dear Senator Grassley,

I am a member of the National Emergency Number Association (NENA). I am writing to you to alert you to a flaw in the implementation rules for Title II Section 35 of the A.D.A. Law. (Hearing and Speech Impaired). Our organization supports the A.D.A. Law 100%. However, the Dept. of Justice, who provided these rules, have set in motion a situation that could be fatal to a hearing and speech impaired person.

The hearing and speech impaired community must communicate by using a device similar to a typewriter (called a T.D.D.). They also communicate using a personal computer (PC). The Justice Dept. specifies that all emergency services shall provide direct access to individuals who use T.D.D.s and computer modems.

In the past, they have communicated using a baudot modem. It still serves virtually all of the hearing and speech impaired today. It is compatible with our emergency centers. But with the advent of the personal computer, a new modem with a language called ASCII (American Standard Code for Information Interchange) appeared. Its original design was for a business machine to communicate with another business machine, without human involvement.

However, since it is being placed into T.D.D.s, and is the norm for P.C.s, it presents a problem. It is not compatible with emergency centers equipment. Also there is, at this time, no technology that exists that will connect an incoming ASCII call to an ASCII modem in the emergency centers and guarantee connection.

Simply put, if a hearing impaired person places an emergency call using the ASCII mode, chances are virtually certain that the call will not be handled properly. It could disconnect, receive garbled data or make no connection at all. The result could be a possible loss of life or property. Emergency centers will be held

liable for conditions over which they have no control. The hearing and speech impaired will not be served with the same quality assurance that others have come to expect of their emergency centers and the advent of 9-1-1 systems.

01-00528

We need your help to keep this from happening. We feel that the reference to "computer modem" should be removed from the implementation rules until technology can assure that every T.D.D. call will be answered with the same quality as a voice placed call.

Please contact the Dept. of Justice and urge this change be made. Our contact is:

Mr. Robert Mather, Attorney
U. S. Department of Justice
Civil Rights Division
Coordination and Review Section
P. O. Box 66118
Washington, D.C. 20035-6118
Telephone: (202) 307-2236

Sincerely,

Curtis Bauer, Coordinator

01-00529

U.S. Department of Justice
Civil Rights Division

DJ# 182-06-00024

Coordination and Review Section
P.O. Box 66118
Washington, D.C. 20035-6118

MAR 31 1992

Mr. Neil E. Reichenberg
Director of Government Affairs
International Personnel Management
Association
1617 Duke Street
Alexandria, Virginia 22314

Dear Mr. Reichenberg:

This letter responds to your recent inquiries requesting clarification of the employment requirements of title II of the Americans with Disabilities Act (ADA). I am enclosing for your information a copy of the Department of Justice's title II implementing regulation, which establishes, effective January 26, 1992, employment nondiscrimination requirements applicable to all State and local governments. 28 C.F.R. S 35.140.

Your letter inquired whether the regulations implementing title I of the ADA, 29 C.F.R. pt. 1630, issued by the Equal Employment Opportunity Commission (EEOC), are effective on January 26, 1992, for State and local governments. The EEOC regulations are effective: (1) for all employers, including State and local government employers, with 25 or more employees after July 26, 1992; and (2) for all employers, including State and local government employers, with 15 or more employees after July 26, 1994. For additional information about title I requirements, you may contact:

Christopher G. Bell

Acting Associate Legal Counsel for
Americans with Disabilities Act Services
Equal Employment Opportunity Commission
1801 - "L" Street, N.W.
Washington, D.C. 20507

Your letter also inquired about the requirements that will apply to employment under title II as of January 26, 1992. As set forth in the enclosed regulation, the nondiscrimination requirements of section 504 of the Rehabilitation Act of 1973, 29 U.S.C. S 794, apply, under title II, to all State and local government employment effective January 26, 1992. 28 C.F.R. S 35.140(b)(2). (The section 504 employment requirements are set out in the section 504 coordination regulation issued by the

Department of Justice, 28 C.F.R. pt. 41.) Thus, under the title II regulation, all State and local governments are subject to the employment nondiscrimination requirements of section 504 during the period from January 26 to July 26, 1992. As of July 26, 1992, at the time that any State or local government becomes subject to title I, the title II regulation incorporates the nondiscrimination requirements of title I for those public entities. 28 C.F.R. S 35.140(b)(1). Any State or local government that does not become subject to title I on July 26, 1992, remains subject to the employment requirements of section 504 during the period until, if ever, it meets the jurisdictional standards for title I coverage. Because title I was modeled on section 504 regulations, employment requirements under the two authorities are, for the most part, the same.

Another question your letter raises concerns Federal enforcement responsibility for employment discrimination claims from January 26 to July 26, 1992. Subpart F of the enclosed regulation sets forth the compliance procedures that are applicable to title II complaints, including employment complaints, and subpart G designates the Federal agencies that will be responsible for title II complaint investigations.

In addition, each Federal agency that extends financial assistance to State or local governments is responsible for ensuring compliance with section 504, which prohibits discrimination on the basis of disability in federally assisted programs, in the State or local programs it assists. Each Federal agency with a program of Federal financial assistance has issued section 504 regulations, which establish nondiscrimination

requirements and compliance procedures.

Accordingly, between January 26 and July 26, 1992, complaints alleging discrimination on the basis of disability in employment by State or local governments, may be processed, as appropriate, by a Federal agency designated in the title II regulation to process title II complaints, or, where the State or local program receives Federal financial assistance, by a Federal agency responsible for processing section 504 complaints.

Sincerely,
Stewart B. Oneglia
Chief
Coordination and Review Section
Civil Rights Division

Enclosure

01-00531

DJ 192-180-04238

MAR 31 1992

The Honorable Ike Skelton
U.S. House of Representatives
2134 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Skelton:

I am writing in response to your recent inquiry on behalf of your constituent, J. Scott Brooks.

We are aware of the concern expressed by your constituent and the National Emergency Number Association about the provision in our regulation implementing title II of the Americans with Disabilities Act that states "telephone emergency services, including 911 services, shall provide direct access to individuals who use TDD's and computer modems."

The apparent concern is that by mandating access to persons using computer modems, the regulation may require that there be access by every format that could be used by a modem, including those that are not compatible with equipment presently used by emergency service systems. That is not the case. The regulation does not require telephone emergency systems to do anything that is technologically infeasible; accordingly, we are interpreting

the requirement for access by computer modems to mean only when the modem is using the Baudot format. Until it can be technically proven that communications in another format can operate in a reliable and compatible manner in a given telephone emergency, the public service answering point is not required to provide direct access to computer modems using other formats.

cc: Records; CRS Files; Oneglia; Wodatch; Kaltenborn; McDowney.
:udd:jonessandra:911.skelton.brooks

01-00532

- 2 -

This interpretive guidance has been issued by the Department of Justice in its recently published Technical Assistance Manual, which is available from the Office on the Americans with Disabilities Act, Post Office Box 66738, Washington D.C. 20035-9998, telephone: (202) 514-0301.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

01-00533

Jerome H. Wareham, Sheritt Henry County
Court House 816/885-6963 Ex. 24 Jail 816/885-5587
220 South Washington, Clinton, MO 64735 Fax 816/885-4279

December 27, 1991

The Honorable Ike Skelton
The House of Representatives
2453 Rayburn Office Building
Washington, D.C. 20515

Dear Congressman Skelton,

I am a member of the National Emergency Number Association (NENA). I am writing to you to alert you to a flaw in the implementation rules for Title II Section 35 of the A.D.A. Law (Hearing and Speech Impaired). Our organization supports the A.D.A. Law 100% However, the Department of Justice, who provided these rules, have set in motion a situation that could be fatal to a hearing and speech impaired person.

The Hearing and speech impaired community must communicate by using a device similar to a typewriter (called a T.D.D.). They also communicate using a personal computer (PC). The Justice Department specifies that all emergency services shall provide direct access to individuals who use T.D.D.s and computer modems.

In the past, they have communicated using a baudot modem. It still serves virtually all of the hearing and speech impaired today. It is compatible with our emergency centers. But with the advent of the personal computer, a new modem with a language called ASCII (American Standard Code for Information Interchange) appeared. Its original design was for a business machine to communicate with an other business machine, without human involvement.

However, since it is being placed into T.D.D.s, and is the norm for P.C.s, it presents a problem. It is not compatible with emergency centers equipment. Also there is, at this time, no technology that exists that will connect an incoming ASCII call to an ASCII modem in the emergency centers and guarantee connection.

Simply put, if a hearing impaired person places an emergency call using the ASCII mode, chances are virtually certain that the call will not be handled properly. It could disconnect, receive garbled data or make no connection at all. The result could be a possible loss of life or property. Emergency centers will be held liable for conditions over which they have no control. The hearing and speech impaired will not be served with the same quality assurance that others have come to expect of their emergency centers and the advent of 9-1-1 systems.

We need your help to keep this from happening. We feel that the reference to "computer modem" should be removed from the implementation rules until technology can assure that every T.D.D. call will be answered with the same quality as a voice placed call.

Please contact the Department of Justice and urge this change be made. Our contact is:

Mr. Robert Mather, Attorney,
United States Department of Justice
Civil Rights Division
Coordination and Review Section
P.O. Box 66118
Washington, D.C. 20035-6118

Telephone: (202) 307-2236

Respectfully yours,

J. Scott Brooks
Chief Communications Deputy
Henry County Sheriff's Department

T. 3/24/92
SBO:rjc
DJ#192-180-03991

APR 3 1992

The Honorable Paul B. Henry

U.S. House of Representatives
215 Cannon House Office Building
Washington, D.C. 20515-2205

Dear Congressman Henry:

I am writing in response to your recent inquiry on behalf of your constituent, Ms. Julie R. Deboer.

We are aware of the concern expressed by your constituent and the National Emergency Number Association about the provision in our regulation implementing title II of the Americans with Disabilities Act that states "telephone emergency services, including 911 services, shall provide direct access to individuals who use TDD's and computer modems."

The apparent concern is that by mandating access to persons using computer modems, the regulation may require that there be access by every format that could be used by a modem, including those that are not compatible with equipment presently used by emergency service systems. That is not the case. The regulation does not require telephone emergency systems to do anything that is technologically infeasible; accordingly, we are interpreting the requirement for access by computer modems to mean only when the modem is using the Baudot format. Until it can be technically proven that communications in another format can operate in a reliable and compatible manner in a given telephone emergency, the public service answering point is not required to provide direct access to computer modems using other formats.

Records, CRS, Oneglia, McDowney
:UDD:Craig:Henry.911

This interpretive guidance has been issued by the Department of Justice in its recently published Technical Assistance Manual, which is available from the Office on the Americans with Disabilities Act, Post Office Box 66738, Washington D.C. 20035-9998, telephone: (202) 514-0301.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

January 8, 1992

Paul Henry
House of Representatives
Washington, DC 20515

Dear Congressman:

I am a member of the National Emergency Number Association (NENA). I am writing to you to alert you to a flaw in the implementation rules for Title II Section 35 of the A.D.A. Law. (Hearing and Speech Impaired). Our organization supports the A.D.A. Law 100%. However; the Department of Justice, who provided these rules, have set in motion a situation that could be fatal to a hearing and speech impaired person.

The hearing and speech impaired community must communicate by using a device similar to a typewriter (called a T.D.D.) They also communicate using a personal computer (P.C.). The Justice Department specifies that all emergency services shall provide direct access to individuals who use T.D.D.'s and computer modems.

In the past, they have communicated using a baudot modem. It still services virtually all of the hearing and speech impaired today. It is compatible with our emergency centers. But with the advent of the personal computer, a new modem with a language called ASCII (American Standard Code for Information Interchange) appeared. Its original design was for a business machine to communicate with another business machine, without human involvement.

However; since it is being placed into T.D.D.'s and is the norm for P.C.'s it presents a problem. It is not compatible with emergency centers equipment. Also, there is at this time, no technology that exists that will connect an incoming ASCII call to an ASCII modem in the emergency centers and guarantee connection.

Simply put, if a hearing impaired person places an emergency call using ASCII mode, chances are virtually certain that the call would not be handled properly. It could disconnect, receive garbled data or made not connection at all. The result could be a possible loss of life or property. Emergency centers will be held liable for conditions over which they have no control. The hearing and speech impaired will not be served with the same quality assurance that others have come to expect of their emergency centers and the advent of 9-1-1 systems.

We need your help to keep this from happening. We feel that the reference to "computer modem" should be removed from the implementation rules until technology can assure that every T.D.D. call will be answered with the same quality as a voice placed call.
Please contact the Department of Justice and urge this change to be made. Out contact is:

Mr. Robert Mather, Attorney
U.S. Department of Justice
Civil Rights Division
Coordination and Review Section
P.O. Box 66118
Washington, DC 20035-6118

Phone: (202) 307-2236

Respectfully,

Julie R. DeBoer
Director

JDB/se

APR 3 1992

T. 3/27/92
SBO:BM:hkb
DJ# 192-180-03475

The Honorable James L. Oberstar
Member, U.S. House of Representatives
231 Federal Building
Duluth, Minnesota 55802

Dear Congressman Oberstar:

This letter is in response to your inquiry on behalf of your constituent, xx about the Americans with Disabilities Act (ADA). Mr. xx asked about the obligations of organizations to remove barriers in their facilities if they receive public funds.

From your inquiry, we infer that "public funds" means Federal funds. Section 504 of the Rehabilitation Act of 1973, as amended, applies to facilities that receive Federal funds. Section 504 regulations require that physical barriers be removed when necessary to make programs accessible. A copy of the Department of Justice's section 504 regulation is enclosed. Barrier removal is addressed in section 42.521.

ADA coverage is not determined by whether an entity receives public funds. Titles II and III of the ADA apply -- regardless of the receipt of "public funds." Title II of the ADA applies to all programs, activities, and services of State and local governments whether or not they receive Federal funds. Title III applies to places of public accommodation operated by private entities, such as restaurants, places of lodgings, theaters, doctors' offices and retail stores. Enclosed are copies of the Department of Justice's regulations implementing titles II and III of the ADA. Section 35.150 of the title II regulation

cc: Records; Oneglia; Wodatch; Kaltenborn; McDowney; hkb

(patterned after section 504) addresses barrier removal in existing State and local government facilities. Section 36.304 of the title III regulation addresses barrier removal in existing places of public accommodation.

I hope that this information is useful to you.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

Enclosures (3)

February 7, 1992

Gerald Olsen
Assistant Secretary for Legislation
US Department of Health & Human Services
200 Independence Avenue, SW, Room 416 G
Washington, DC 20201

Dear Mr. Olsen:

I have been contacted by XXX seeking information on the new regulations resulting from the Americans with Disabilities Act of 1990. He wishes to know what requirements are incumbent on organizations which accept public funds to remove barriers in their facilities.

I would appreciate any information you can provide me on these regulations in general and to this query specifically.

Please send response to my Duluth District Office.

Thank you for your help.

Sincerely,

James L. Oberstar, M.C.

JLO/df

XXX

T. 3/26/92
SBO:RAP:NM:hb
DJ# 192-180-04239

APR 03 1992

The Honorable Leon E. Panetta
Member, U.S. House of Representatives
380 Alvarado Street
Monterey, CA 93940

Dear Congressman Panetta:

This letter is in response to your letter on behalf of your constituent, XXX,concerning whether fines may be levied against State and local government entities under the Americans with Disabilities Act (ADA).

Title II of the ADA, which covers State and local government entities, incorporates by reference the remedies, procedures, and rights set forth in section 505 of the Rehabilitation Act of 1973. The remedies authorized by section 505 include injunctions and damages in certain cases, but they do not include fines or civil penalties.

I hope this information has been helpful to you.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

cc: Records; CRS; Oneglia; Wodatch; Kaltenborn; McDowney; hkb

01-00543

March 9, 1992

TO: Assistant Attorney General
Office of Legislative Affairs
U.S. Department of Justice
Washington, D.C. 20530

ENCLOSURE FROM: No enclosures.

RE: Ms. XXX
XXX would like to know if the Americans with Disabilities Act would allow a government agency, such as a state Community College system, to be fined for noncompliance. She understands that private companies can be fined for not complying with the law, and would like to know if this also applies to public entities.

Would you please reply to this question?

Thank you for your assistance. Please reply in writing and/or with printed information.

Thank you very much for your attention to this matter.

Sincerely,

LEON E. PANETTA
Member of Congress

PLEASE RESPOND TO ME AT:

380 Alvarado Street
Monterey, California 93940

ATTENTION: Ken Christopher; (408) 429-1976

PRINTED ON RECYCLED PAPER

01-00544

Control #2031904443

APR 3 1992

The Honorable Ralph Regula
U.S. House of Representatives
2207 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Regula:

I am responding to your letter of March 18, 1992, to the Attorney General, relating your concerns about our regulatory requirements relating to the height of controls of automated teller machines (ATM's).

As required by the Americans with Disabilities Act (ADA), the requirements that apply to ATM's are included in guidelines developed by the Architectural and Transportation Barriers Compliance Board (Access Board). These guidelines are incorporated into the Department of Justice's ADA regulation. The ADA requires that our regulation be consistent with the

guidelines of the Access Board; therefore, the Department is not in a position to amend this provision of its rule absent a change in the Board's guidelines.

The provision in question, which applies only to new construction and alterations, requires that a person using a wheelchair be able to reach the controls of an ATM through both a forward and a side reach. This provision was first included in the Board's proposed guidelines (published in January 1991), and was subject to an extensive public comment process that included 18 public hearings.

The concerns that are now being raised were not expressed during the rulemaking process. Nevertheless, we take seriously the newly stated concerns raised by the American Bankers Association. With our support and concurrence, the Access Board recently decided to reopen this issue to public comment through a notice in the Federal Register and is considering holding a hearing on the matter. The Board will decide on further action at its July 1992 meeting.

cc: Records; Chrono; Wodatch; Magagna; Bowen.

01-00549

While changes to the rule are under consideration, the Department is constrained to enforce the requirements of the ADA regulations now in effect. In every instance, we will first attempt to educate, discuss, and negotiate, particularly in cases where use of designs and technologies other than those specified in our regulations may provide substantially equivalent or greater access to and usability of a facility. Such departures are permitted by the "equivalent facilitation" section of the accessibility guidelines.

I hope this information is responsive to your inquiry.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

01-00550

March 18, 1992

Attorney General William P. Barr
Department of Justice
Washington, D.C. 20530

Dear Mr. Attorney General:

I am writing to you concerning the American with Disabilities Act (ADA) Height Controversy for access to automatic teller machines (ATMs). Since enactment of ADA, a second interpretation of the height accessibility guidelines for ATMs has arisen. The Access Board has recently stated they believe the intent of the guidelines were that ATMs should be designed and installed to allow "a forward reach range". This

is contrary to my previous understanding as well as the ATM industry and the American Bankers Association. Current equipment is designed to allow a side reach to the ATM, not a forward reach.

On Wednesday, March 11, the Access Board reviewed a petition from the American Bankers Association. Their decision was to place a notice in the Federal Register to release the issue for public comments.

The implications of this are severe. It is most likely this will cause a freeze in the marketplace for the sale or installation of walk up ATMs (drive up ATMs are exempt). The redesign effort would take the industry up to a year to accomplish and cost over $10 million.

Congress intended to ensure access to such machines by the disabled. But that access is already present through the "side reach". Requiring a major retooling of these machines just to permit a different angle of approach does not seem to be warranted given the existing access. This costs jobs to Americans and will cripple a thriving industry without any significant benefit to the disabled.

Your assistance in correcting this problem is appreciated and expected. Further, I request your immediate release of a statement allowing either forward or side reach until the controversy is resolved.
With best wishes, I am

Sincerely,
Ralph Regula, M. C.

01-0051

U.S. DEPARTMENT OF JUSTICE
Civil Rights Division
DJ# 192-06-00010
Coordination and Review Section
P.O. Box 66118
Washington, D.C. 20035-6118

APR 6 1992

Ms. Barbara Hall
Your Signs Express

P.O. Box 965
Mountain View, CA 94042

Dear Ms. Hall:

This is in response to your letter to the Office on the Americans with Disabilities Act (ADA) concerning signage.

As a sign engraver, you do not necessarily have any responsibilities to manufacture signs in compliance with ADA. The ADA regulations about which you are concerned apply only to commercial facilities and places of public accommodation. Owners and operators of those facilities are responsible for assuring that their signs comply. Moreover, there is nothing in the ADA regulations that requires a sign engraver to inform customers about the ADA. If one of your clients decides not to adhere to the ADA's requirements, any penalties that may be incurred will be imposed on your client, and not on yourself. These penalties may include injunctive relief, attorney's fees, damages, and civil penalties.

In response to your specific question about sign colors, section 4.30.5 of the ADA accessibility guidelines, which are an appendix to the Department of Justice's title III regulations (enclosed), do not require specific colors but rather require contrast of characters and background. Your other specific technical questions about letter height and transcribing into Braille can be directed to the Architectural and Transportation Barriers Compliance Board, 1331 F Street, N.W., Suite 1000, Washington, D.C. 20004-1111, (202) 272-5434.

01-00552

I hope this information has been helpful to you. A packet of all of the relevant material on the ADA is enclosed for your further information.

Sincerely,

Stewart B. Oneglia
Chief
Coordination and Review Section
Civil Rights Division

Enclosures
01-00553

T. 3/30/92 APR 7 1992
SBO:rjc
DJ#192-180-04033

The Honorable John C. Danforth
United States Senate
249 Russell Office Building
Washington, D.C. 20510-2502

Dear Senator Danforth:

I am writing in response to your recent inquiry on behalf of Mayor Marvin D. Ensworth of the City of Lee's Summit, Missouri.

We are aware of the concern expressed by your constituent and the National Emergency Number Association about the provision in our regulation implementing title II of the Americans with Disabilities Act that states "telephone emergency services, including 911 services, shall provide direct access to individuals who use TDD's and computer modems."

The apparent concern is that by mandating access to persons using computer modems, the regulation may require that there be access by every format that could be used by a modem, including those that are not compatible with equipment presently used by emergency service systems. That is not the case. The regulation does not require telephone emergency systems to do anything that is technologically infeasible; accordingly, we are interpreting the requirement for access by computer modems to mean only when the modem is using the Baudot format. Until it can be technically proven that communications in another format can operate in a reliable and compatible manner in a given telephone emergency, the public service answering point is not required to provide direct access to computer modems using other formats.

Records, CRS, Oneglia, McDowney
:UDD:Craig:Danforth.911
01-00554

This interpretive guidance has been issued by the Department of Justice in its recently published Technical Assistance Manual, which is available from the Office on the Americans with Disabilities Act, Post Office Box 66738, Washington D.C. 20035-9998, telephone: (202) 514-0301.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

01-00555

February 4, 1992

The Honorable John C. Danforth
United States Senator
SR249 Russell Office Building
Washington, D.C. 20510

Dear Senator Danforth:

The Americans with Disabilities Act (ADA) passed by Congress in 1990 contains a provision we believe is impossible for Lee's Summit and every other City to follow. We are requesting your assistance to change the regulations mandating emergency telephone access by computer modems.

The ADA mandates public agencies provide direct access to emergency telephone numbers (9-1-1) to individuals who use telecommunication devices for the deaf (TDDs) and computer modems. The TDD requirement is not an issue. We obtained the necessary equipment for such access last year. What is an issue, and what we believe to be technologically impossible as we understand it, is the requirement to make access available to computer modems.

Even though most computers can be outfitted with a modem, not every such computer can communicate with every other computer. From a technological standpoint, we cannot comply with this requirement.

The mandate for computer modems, by the way, is not found in the ADA, but rather in the regulations promulgated by the Department of Justice, 28 CFR, Section 35.162.

We encourage you to require the Department of Justice to change this mandate until such time as technology can provide viable equipment, software and standards.

Sincerely,

Marvin D. Eusworth
Mayor

MDE/tl

T. 4/4/92 APR 7 1992

SBO:rjc
DJ#192-180-04013

The Honorable John J. LaFalce
Chairman
Committee on Small Business
U.S. House of Representatives
2361 Rayburn House Office Building
Washington, D.C. 20515-6315

Dear Mr. Chairman:

I am writing in response to your recent inquiry on behalf of officials in the Office of Emergency Communications in Rochester, New York, regarding 911 emergency services.

We are aware of the concern expressed by your constituents and the National Emergency Number Association about the provision in our regulation implementing title II of the Americans with Disabilities Act that states "telephone emergency services, including 911 services, shall provide direct access to individuals who use TDD's and computer modems."

ILLEGIBLE The apparent concern is that by mandating access to persons using computer modems, the regulation may require that there be access by every format that could be used by a modem, including those that are not compatible with equipment presently used by emergency service systems. That is not the case. The regulation date does not require telephone emergency systems to do anything that is technologically infeasible; accordingly, we are interpreting the requirement for access by computer modems to mean only when the modem is using the Baudot format. Until it can be technically proven that communications in another format can operate in a reliable and compatible manner in a given telephone emergency, the public service answering point is not required to provide direct access to computer modems using other formats.

Records, CRS, Oneglia, McDowney

This interpretive guidance has been issued by the Department of Justice in its recently published Technical Assistance Manual, which is available from the Office on the Americans with Disabilities Act, Post Office Box 66738, Washington D.C. 20035-9998, telephone: (202) 514-0301.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

01-00558

January 7, 1992

Congressman John LaFalce
302 Federal Bldg.
Rochester, NY 14614

Dear Mr. LaFalce:

We are members of the National Emergency Number Association (NENA). We are writing to you to alert you to a flaw in the implementation rules for Title II Section 35 of the A.D.A. Law. (Hearing and Speech Impaired). Our organization supports the A.D.A. Law 100%. However, the Dept. of Justice, who provided these rules, have set in motion a situation that could be fatal to a hearing and speech impaired person.

The hearing and speech impaired community must communicate by using a device similar to a typewriter (called a T.D.D.). They also communicate using a personal computer (PC). The Justice Dept. specifies that all emergency services shall provide direct access to individuals who use T.D.D.s and computer modems.

In the past, they have communicated using a baudot modem. It still serves virtually all of the hearing and speech impaired today. It is compatible with our emergency centers. But with the advent of the personal computer, a new modem with a language called ASCII (American Standard Code for Information Interchange) appeared. Its original design was for a business machine to communicate with another business machine, without human involvement. However, since it is being placed into T.D.D.s, and is the norm for P.C.s, it presents a problem. It is not compatible with emergency centers equipment.

Also there is, at this time, no technology that exists that will connect an incoming ASCII call to an ASCII modem in the emergency centers and guarantee connection.

01-00559

Simply put, if a hearing impaired person places an emergency call using the ASCII mode, chances are virtually certain that the call will not be handled properly. It could disconnect, receive a garbled data or make no connection at all. The result could be a possible loss of life or property. Emergency centers will be held liable for conditions over which they have no control. The hearing and speech impaired will not be served with the same quality assurance that others have come to expect of their emergency centers and the advent of 9-1-1 systems.

We need your help to keep this from happening. We feel that the reference to "computer modem" should be removed from the implementation rules until technology can assure that every T.D.D. call will be answered with the same quality as a voice placed call.

Please contact the Dept. of Justice and urge this change be made. Our contact is:

Mr. Robert Mather, Attorney
U.S. Department of Justice
Civil Rights Division
Coordination and Review Section
P.O. Box 66118
Washington, D.C. 20035-6118

Telephone: (202) 307-2236

Sincerely,

Sharon J. Murray
Director

Donna M. Tarantello
Manager of Administrative Services

John Pagano, Jr.
Manager of Operations and Training

01-00560

DJ 192-180-04044

APR 7 1992

The Honorable Tom Lantos
U.S. House of Representatives
1526 Longworth House Office Building
Washington, D.C. 20515

Dear Congressman Lantos:

I am writing in response to your recent inquiry on behalf of your constituents.

We are aware of the concern expressed by your constituents and the National Emergency Number Association about the provision in our regulation implementing title II of the Americans with Disabilities Act that states "telephone emergency services, including 911 services, shall provide direct access to individuals who use TDD's and computer modems."

The apparent concern is that by mandating access to persons using computer modems, the regulation may require that there be access by every format that could be used by a modem, including those that are not compatible with equipment presently used by

emergency service systems. That is not the case. The regulation does not require telephone emergency systems to do anything that is technologically infeasible; accordingly, we are interpreting the requirement for access by computer modems to mean only when the modem is using the Baudot format. Until it can be technically proven that communications in another format can operate in a reliable and compatible manner in a given telephone emergency, the public service answering point is not required to provide direct access to computer modems using other formats.

cc: Records; CRS Files; Oneglia; Wodatch; McDowney.
:udd:jonessandra:911.lantos.constituents

01-00561

This interpretive guidance has been issued by the Department of Justice in its recently published Technical Assistance Manual, which is available from the Office on the Americans with Disabilities Act, Post Office Box 66738, Washington D.C. 20035-9998, telephone: (202) 514-0301.

Sincerely,

John R. Dunne

Assistant Attorney General
Civil Rights Division

01-00562

February 25, 1992

Mr. Robert Mather
U.S. Department of Justice
Civil Rights Division
Coordination and Review Section
P.O. Box 66118
Washington, D.C. 20035-6118

Dear Mr. Mather:

Several of my constituents who are emergency service providers have expressed concern over the implementation rules for Title II Section 35 of the Americans with Disabilities Act (A.D.A.)

pertaining to the hearing and speech impaired. They argue that the reference to computer modems is too ambitious for the current state of technology and could make them liable for conditions over which they have no control.

The hearing and speech impaired telecommunicate by using a device called a T.D.D. The Department of Justice specifies that all emergency services shall provide direct access to individuals who use T.D.D.'s and computer modems. However, with the advent of the personal computer and the use of new ASCII (American Standard Code for Information Interchange) modems, compatability has become a problem. In other words, if a hearing impaired person places an emergency call using the ASCII modem, the call could be disconnected, garbled, or not completed, resulting in possible loss of life and property.

I understand that the Department is currently reviewing this matter. I would appreciate receiving a copy of the clarification when it becomes available.

Thank you for your consideration of my request.

Sincerely,

Tom Lantos
Member of Congress

01-00563

T. 4/4/92 APR 7 1992
SBO:rjc
DJ#192-180-03866

The Honorable Sam Nunn
United States Senator
75 Spring Street, S.W.
Suite 1700
Atlanta, Georgia 30303

Dear Senator Nunn:

I am writing in response to your recent inquiry on behalf of your constituent, Patricia Jones, Director, Crisp County Emergency 911.

We are aware of the concern expressed by your constituent and the National Emergency Number Association about the provision in our regulation implementing title II of the Americans with Disabilities Act that states "telephone emergency services, including 911 services, shall provide direct access to individuals who use TDD's and computer modems."

The apparent concern is that by mandating access to persons using computer modems, the regulation may require that there be access by every format that could be used by a modem, including those that are not compatible with equipment presently used by emergency service systems. That is not the case. The regulation does not require telephone emergency systems to do anything that is technologically infeasible; accordingly, we are interpreting the requirement for access by computer modems to mean only when the modem is using the Baudot format. Until it can be technically proven that communications in another format can operate in a reliable and compatible manner in a given telephone emergency, the public service answering point is not required to provide direct access to computer modems using other formats.

Records, CRS, Oneglia, McDowney
:UDD:Craig.Nunn.911

01-00564

This interpretive guidance has been issued by the Department of Justice in its recently published Technical Assistance Manual, which is available from the Office on the Americans with Disabilities Act, Post Office Box 66738, Washington D.C. 20035-

9998, telephone: (202) 514-0301.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

01-00565

92 MAR 5 AM 6:30
ATLANTA OFFICE

February 20, 1992

Dear Congressman Nunn:

I am a member of the National Emergency Number Association (NENA). I am writing to you to alert you to a flaw in the implementation rules for Title II Section 35 of the A.D.A. Law. (Hearing and Speech Impaired). Our organization supports the A.D.A. Law 100%. However, the Dept. of Justice, who provided these rules, have set in motion a situation that could be fatal to a hearing and speech impaired person.

The hearing and speech impaired community must communicate by using a device similar to a typewriter (called a T.D.D.). They also communicate using a personal computer (PC). The Justice Dept. specifies that all emergency services shall provide direct access to individuals who use T.D.D.s and computer modems.

In the past, they have communicated using a baudot modem. It still serves virtually all of the hearing and speech impaired today. It is compatible with our emergency centers. But with the advent of the personal computer, a new modem with a language called ASCII (American Standard Code for Information Interchange) appeared. Its original design was for a business machine, without human involvement.

However, since it is being placed into T.D.D.s, and is the norm for P.C.s, it presents a problem. It is not compatible with emergency centers equipment. Also there is, at this time, no technology that exists that will connect an incoming ASII call to an ASII modem in the emergency centers and guarantee connection.

Simply put, if a hearing impaired person places an emergency call using the ASII mode, chances are virtually certain that the call will not be handled properly. It could disconnect, receive garbled data or make no connection at all. The result could be a possible loss of life or property. Emergency centers will be held liable for conditions over which they have no control. The hearing and speech impaired will not be served with the some quality assurance that others have come to expect of their emergency centers and the advent of 9-1-1 systems.

We need your help to keep this from happening. We feel that the reference to "computer modem" should be removed from the implementation rules until technology can assure that every T.D.D. call will be answered with the same quality as a voice placed call.

01-00566

Please contact the Dept. of Justice and urge this change be made. Our contact is:

Mr. Robert Mather, Attorney

U.S. Department of Justice
Civil Rights Division
Coordination and Review Section
P.O. Box 66118
Washington, D.C. 20035-6118

Telephone: (202) 307-2236

Thank you.

Sincerely,

Patricia Jones, Director
Crisp County E911

01-00567

T. 4/4/92 APR 7 1992
SBO:rjc
DJ#192-180-04014

The Honorable Frank R. Wolf
U.S. House of Representatives
104 Cannon House Office Building
Washington, D.C. 20515

Dear Congressman Wolf:

I am writing in response to your recent inquiry on behalf of your constituent, Mr. William Goldfeder, Fire-Rescue Director, Department of Fire and Rescue Services, Leesburg, Virginia.

We are aware of the concern expressed by your constituent and the National Emergency Number Association about the provision in our regulation implementing title II of the Americans with Disabilities Act that states "telephone emergency services, including 911 services, shall provide direct access to individuals who use TDD's and computer modems."

The apparent concern is that by mandating access to persons using computer modems, the regulation may require that there be access by every format that could be used by a modem, including those that are not compatible with equipment presently used by emergency service systems. That is not the case. The regulation does not require telephone emergency systems to do anything that is technologically infeasible; accordingly, we are interpreting the requirement for access by computer modems to mean only when the modem is using the Baudot format. Until it can be technically proven that communications in another format can operate in a reliable and compatible manner in a given telephone emergency, the public service answering point is not required to provide direct access to computer modems using other formats.

Records, CRS, Oneglia, McDowney
:UDD:Craig:Wolf.911

01-00568

This interpretive guidance has been issued by the Department of Justice in its recently published Technical Assistance Manual, which is available from the Office on the Americans with Disabilities Act, Post Office Box 66738, Washington D.C. 20035-9998, telephone: (202) 514-0301.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

01-00569

January 23, 1992

Congressman Frank Wolf
104 Cannon House Office Building
Washington, D.C. 20515
Dear Congressman Wolf:

I am a member of the National Emergency Number Association (NENA). I am writing to you to alert you to a flaw in the implementation rules for Title II Section 35 of the Americans with Disabilities Act (A.D.A.) Law (Hearing and Speech Impaired). Our organization supports the A.D.A. Law 100%. However, the Department of Justice, who provided these rules, have set in motion a situation that could be fatal to a hearing and speech impaired person.

The hearing and speech impaired community must communicate by using a device similar to a typewriter (called a TDD). They also communicate using a personal computer (PC). The Justice Department specifies that all emergency services shall provide direct access to individuals who use TDD's and computer modems.

In the past, they have communicated using a baudot modem. It still serves virtually all of the hearing and speech impaired today. It is compatible with our emergency centers. But with the advent of the personal computer, a new modem with a language called ASCII (American Standard Code for Information Interchange) appeared. Its original design was for a business machine to communicate with another business machine, without human involvement.

However, since it is being placed into TDD's, and is the norm for PC's, it presents a problem. It is not compatible with emergency centers equipment. Also there is, at this time, no

technology that exists that will connect an incoming ASCII call to an ASCII modem in the emergency centers and guarantee connection.

Simply put, if a hearing impaired person places an emergency call using the ASCII mode, chances are virtually certain that the call will not be handled properly. It could disconnect, receive garbled data or make no connection at all. The result could be a possible loss of life or property. Emergency centers will be held

01-00570

liable for conditions over which they have no control. The hearing and speech impaired will not be served with the same quality assurance that others have come to expect of their emergency centers and the advent of 9-1-1 systems.

We need your help to keep this from happening. We feel that the reference to "computer modem" should be removed from the implementation rules until technology can assure that every TDD call will be answered with the same quality as a voice placed call.

Please contact the Department of Justice and urge this change be made. Our contact is:

Mr. Robert Mather, Attorney
U.S. Department of Justice
Civil Rights Division
Coordination and Review Section
P.O. Box 66118
Washington, D.C. 20035-6118

Telephone: (202) 307-2236

I thank you for your support in this matter. If you have any questions or if I can be of any assistance to you, please do not hesitate to contact me.

Sincerely,

William Goldfeder
Fire-Rescue Director

cc: George Barton, Chairman, Board of Supervisors
Kirby Bowers, Acting County Administrator
John Wells, Acting Deputy County Administrator
Gail Fletcher, Captain, Communications Division

01-00571

DJ 202-PL-00001

APR 8 1992

Mr. Richard T. Conrad
Executive Director
California Building Standards
Commission
428 J Street, Suite 450
Sacramento, California 95814

Dear Mr. Conrad:

We are responding to your recent letter requesting that the Civil Rights Division respond to certain questions concerning the enforcement of State accessibility codes that are certified by the Department of Justice to meet or exceed the requirements of title III of the Americans with Disabilities Act of 1990 (ADA), Pub. L. 101-336, 104 Stat. 327 (July 26, 1990), 42 U.S.C.A. 12101 et seq., and this Department's regulation implementing title III, 56 Fed. Reg. 35544 (July 26, 1991), to be codified at 28 C.F.R. pt. 36.

Before we address your specific questions, we must clarify the scope of this response. The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities that are subject to the Act. This letter provides

informal guidance to assist you in understanding the ADA and the ADA regulations. However, this technical assistance does not constitute a determination by the Department of Justice of your rights or responsibilities under the ADA, and it is not binding on the Department.

With regard to your specific inquiry: title III of the ADA provides that the Attorney General, in response to a request from a State or local government, may certify that the accessibility provisions of a State or local building code meet or exceed the accessibility requirements of the ADA. Certification of a State or local code by the Attorney General does not guarantee that a building built in compliance with the code will be in compliance with the ADA. In litigation concerning violations of title III, a place of public accommodation or commercial facility can point to compliance with a certified code as rebuttable evidence of

cc: Records Chrono Wodatch Bowen Blizard
arthur.ada.interpretation.conrad

01-00572

compliance with the ADA. This "protection" applies only to the new construction or alteration of facilities that are subject to title III; it does not apply to barrier removal under title III, or in any litigation to enforce other provisions of the ADA.

Title III of the ADA does not alter the responsibility of State or local government officials to enforce existing State laws, and title III does not authorize or require State officials to enforce Federal law. The ADA specifically provides that enforcement of title III will be carried out through litigation initiated by the Department of Justice or by private litigants.

The certification process is not intended to impose greater liabilities on State or local officials toward private parties than they now have in carrying out their responsibilities under State law. This Department anticipates that State and local officials enforcing a certified code will continue to enforce that code under the same standard of care that would apply if the code was not certified.

State or local officials may interpret the provisions of the

State or local code if the State law permits them to do so. These interpretations will continue to be effective with respect to the State or local codes, as they are now. However, if an element of a place of public accommodation or a commercial facility is constructed pursuant to a waiver or a variance from the provisions of a certified code, a defendant could not necessarily use the fact of construction in accordance with the variance as evidence of compliance with the ADA requirements in any litigation to enforce title III.

We hope that this information is helpful to you.

Sincerely,

John L. Wodatch
Director
Office on the Americans with Disabilities Act
Civil Right Division

01-00573

January 15, 1992

John Wodatch, Director
Office of the ADA
U.S. Department of Justice
Washington, DC 20530

Dear Mr. Wodatch:

The State of California is in the process of adopting the 1991 editions of the Uniform Building, Mechanical, and Plumbing Codes. As part of that process, the Office of the State Architect/Access Compliance Section (OSA/AC) will be modifying their current disabled access regulations, including the adoption of ADA standards to conform with the Americans with Disabilities Act (ADA). During a recent hearing of the Commission a number of issues were raised relative to this action by OSA/AC.

Since the civil rights aspect of the Act places enforcement with the Federal Department of Justice (DOJ), this raises specific questions as to the impact of the enforcement of California's Building Code, containing these standards, by local government. If California's Building Code becomes certified by the DOJ as equivalent to the requirements of the ADA, can local government be authorized to interpret the requirements in the California Building Code, as they currently do with the existing disabled access standards? In carrying out their responsibilities of enforcement, will local government be in conflict by enforcing the ADA standards, or will they be limited only to California requirements? I raise this issue because of concern expressed by representatives of local government who feel that their ability to enforce California's access standards will be limited if they become certified to be equivalent to the ADA. Local government has an obligation by state law to enforce state accessibility standards, yet they have no authority to enforce the ADA standards.

The DOJ encourages the adoption of ADA standards in state and local codes to facilitate "voluntary compliance." Does voluntary compliance, through enforcement of the State Building Code, ensure compliance with the ADA? If so, what responsibilities and liabilities rest with local government in performing this function? Currently, OSA/AC provides assistance in interpreting state accessibility standards, but state law mandates enforcement authority for these regulations to local government; including the authority to interpret the regulations. Will local government still have the ability to interpret the state code once it is deemed to comply with the ADA? That is, can local government vary from federal ADA standards when the agency finds the need to adjust such standards due to site conditions?

01-00574

In summary, answers are needed to the following questions:

1. Will local governments be limited to the enforcement of California standards only? What is the exact scope of enforcement?

2. May local governments interpret, or be authorized to interpret, the

ADA-based California Building Code?

3. May local governments vary from the ADA standards dependent on site conditions?

4. What are the responsibilities and liabilities of local government in carrying out their enforcement and interpretive functions of a "certified" state code?

5. Does voluntary compliance, through enforcement of the State Building Code, ensure ADA compliance?

We anticipate having the revised accessibility standards before the Building Standards Commission for approval at the end of February. If you could respond prior to that time, it will assist the Commission in addressing this sensitive subject.

Thank you very much for your assistance.

Sincerely yours,

Richard T. Conrad AIA
Executive Director

RTC:mag

01-00575

DJ 182-06-00064

APR 8 1992

Harry A. Horwitz, Esq.
Davis, Reberkenny & Abramowitz
499 Cooper Landing Road
Cherry Hill, New Jersey 08002

Dear Mr. Horwitz:

I am responding to your recent letter requesting that the Department of Justice review the plans for the Hershey Water

Treatment Plant and issue an "advisory opinion" that certain areas of the planned facility are exempt from the accessibility requirements of the Americans with Disabilities Act of 1990 (ADA).

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities that are subject to the Act. Accordingly, this letter provides informal guidance to assist you in understanding the ADA accessibility standards. However, this technical assistance does not constitute a legal interpretation of the application of the statute to the Hershey Water Treatment Plant, and it is not binding on the Department of Justice.

We direct your attention to the Americans with Disability Act Accessibility Guidelines (Appendix A to this Department's regulation implementing title III of the ADA). Section 4.1.1(5)(b) provides that:

> Accessibility is not required . . . in non-occupiable spaces accessed only by ladders, catwalks, crawl spaces, very narrow passageways, or freight (non-passenger) elevators, and frequented only by service personnel for repair purposes . . . .

cc: Records; Chrono' Wodatch; Oneglia; Blizard.
:udd:bethea:ada.interpretation.horwitz

01-00576

Spaces that are entered or approached by one of the limited means of access described in this section are not required to comply with the guidelines. In addition, section 4.1.3(5)(Exception 2) provides that elevator access to elevator pits, elevator penthouses, and piping or equipment catwalks is not required.

Areas that are not subject to these limited exemptions must comply with the requirements of section 4.1.1(3), which provides that:

> Areas that are used only as work areas shall be designed and constructed so that individuals with disabilities can approach, enter, and exit the areas. These guidelines do not require that any areas used only as work areas be constructed to permit maneuvering within the work area or be constructed or equipped (i.e., with racks or shelves) to be accessible.

I hope that this information is helpful to you in advising your clients.

Sincerely,

John L. Wodatch
Director
Office on the Americans with Disabilities Act
Civil Rights Division

01-00577

December 20, 1991

John Wodatch, Director
Office on the Americans With Disabilities Act
Civil Rights Division
U. S. Department of Justice
Washington, D.C. 20530

Re: Advisory Opinion, Title III,
Americans With Disabilities Act

Dear Mr. Wodatch:

I request an advisory opinion concerning accessibility of water treatment plants. For purposes of review, I have enclosed plans of an illustrative plant. The enclosed plans are for the Hershey Water Treatment Plant, prepared by Gannett Fleming Water Resources Engineers, Inc., dated October, 1989, Sheet Nos. CP 4, CP 11 and CP 12. Due to the nature of water treatment plants, pipes and equipment are situated at various locations and heights and in many sizes.

The areas reflected in the plans show a typical pipe gallery for a surface water treatment plant. I request an advisory opinion that portions of surface water treatment plants similar to those reflected in the enclosed plans would be exempt from ADA accessibility requirements. I would also request an advisory opinion that other areas in surface water treatment plants that are below grade pipe areas and are frequented only by service personnel similarly be exempted from ADA accessibility requirements.

If you require further information, please contact me as soon as possible.

Very truly yours,

DAVIS, REBERKENNY & ABRAMOWITZ
By: Harry A. Horwitz

HAH:pm
01-00578

DJ 192-180-04156

APR 9 1992

The Honorable Dennis DeConcini
United States Senate
328 Hart Senate Office Building
Washington, D.C. 20510-6025

Dear Senator DeConcini:

This is in response to your inquiry on behalf of your constituent, Al Tarcola, concerning the religious exemption contained in section 307 of the Americans with Disabilities Act of 1990, Pub. L. 101-336. At issue is how the exemption applies to hospitals operated by religious orders.

Title III of the ADA establishes requirements for private entities that own, operate, lease (or lease to) places of public accommodation such as hospitals. A private entity has no title III obligations, however, if it is a religious entity. A religious entity is a religious organization or a private entity controlled by a religious organization.

A religious entity, however, is not exempt from the employment requirements of title I of the ADA, which go into effect on July 26, 1992, for hospitals with 25 or more employees. Moreover, if a religious entity receives Federal funds, as most hospitals do, it is subject to section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. S794, which prohibits disability discrimination in federally assisted programs.

I hope that you find this information useful in responding to your constituent.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

cc: Records; Chrono; Wodatch; Deputy; Beard; McDowney.
:udd:beard:dis.307.rev.deconcini.3.20.92

01-00579

January 24, 1991

Rosalie Lopez, Legislative Aide
c/o Senator DeConcini
2424 East Broadway
Suite 104
Tucson, Arizona 85719-6011

RE: Inquiry of An Issue In The American Disability Act

Dear Ms. Lopez:

As a followup to our phone conversation on January 23, 1992 with you in the Senator's Washington, D.C. office, this letter is being sent to the Senator's local office in Tucson and then transmitted to you in Washington, D.C.

As noted in our conversation, I have placed 15 phone calls trying to ascertain an answer to a question related to the fact that religious organizations and entities controlled by religious Foundation organizations have no obligation under the American Disabilities Act. My inquiries started on January 8, 1992 via the Arizona office of ADA who directed me to the Architectural and Transportation Barriers Compliance Board in Washington, D.C. [1- 800-USA-ABLE] who in turn directed me the Department of Justice. All of the calls to the Department of Justice [202-514-0301] never went beyond a recording which directed me to hold until someone came on the line which also never occurred. It was on January 17, 1992 that I contacted the Senator's office for assistance in this matter.

Page 35554 of the Federal Registration//Volume 56, No. 144/Friday, July 26, 1991/Rules and Regulations addresses to and speaks of religious organizations and/or religious entities having no obligations under the ADA. Carondelet Health Care operates a number of hospitals and related medical facilities in Southern Arizona. Both the Corporation and the hospitals are a part of the Sisters of St. Joseph's of Carondelet. With this affiliation, would we in fact be exempt or not obligated under the Rules and Regulations of the ADA?

The purpose of clarifying this point is if we are indeed not obligated under the Rules and Regulations of the ADA we would then have an opportunity to allocate our resources over a

longer period of time if need be to accomplish many of the good aspects of the ADA. There is no question that the ADA requirements will place a significant financial burden on hospitals and other institutions at a time when we can least

01-00580

afford it. We have in the past both committed and utilized resources to accommodate access to our facilities for those who are less fortunate with respect to their ability to move about as easily as those of us who have normal mobility and who are not disabled and handicapped.

Thank you very much for your time, consideration and a timely response to my question above and/or a source from whom I can acquire a definitive answer.

Sincerely,

Al Tarcola
Corporate Administrative Director of Facilities

AT/tm

01-00581

DJ 192-180-04114

APR 10 1992

The Honorable E. Thomas Coleman
U.S. House of Representatives
2468 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Coleman:

I am writing in response to your recent inquiry on behalf of your constituents.

We are aware of the concern expressed by your constituents and the National Emergency Number Association about the provision in our regulation implementing title II of the Americans with Disabilities Act that states "telephone emergency services, including 911 services, shall provide direct access to individuals who use TDD's and computer modems."

The apparent concern is that by mandating access to persons using computer modems, the regulation may require that there be access by every format that could be used by a modem, including those that are not compatible with equipment presently used by emergency service systems. That is not the case. The regulation does not require telephone emergency systems to do anything that is technologically infeasible; accordingly, we are interpreting the requirement for access by computer modems to mean only when the modem is using the Baudot format. Until it can be technically proven that communications in another format can operate in a reliable and compatible manner in a given telephone emergency, the public service answering point is not required to provide direct access to computer modems using other formats.
cc: Records; CRS Files; Oneglia; Wodatch; McDowney.

01-00582

This interpretive guidance has been issued by the Department of Justice in its recently published Technical Assistance Manual, which is available from the Office on the Americans with Disabilities Act, Post Office Box 66738, Washington D.C. 20035-9998, telephone: (202) 514-0301.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

01-00583

January 23, 1992

Honorable Ike Skelton
United States Representative, District 4
2134 Rayburn Office Building
Washington, D.C. 20515, 202/225-2876

Dear Representative Skelton:

In 1984 Mid America Regional Council assisted the County of Platte, as well as other local governments in the region to install and make continued service improvements on the 9-1-1 services. During 1991 Mid America Regional Council assisted us in acquiring telecommunication devices for the deaf (TDD machines) to allow 9-1-1 answering points to serve the area's hearing and speech impaired residents. Most hearing and speech impaired residents communicate using this type of machine. T.D.D. machines use a baudot modem to communicate over telephone lines.

New technology allows hearing and speech impaired individuals to use personal computers to communicate over telephone lines. This communication system uses a language called ASCII (American Standard Code for Information Interchange). Our 9-1-1 answering point, along with the other local answering points, are not able to receive and respond to ASCII calls.

The regulations issued to the Americans with Disabilities Act of 1990 require public agencies to provide direct access to individuals who use TDDs and computer modems, however, we have been informed that current computer modem technology is not compatible in the telephone service environment at this time.

We would request your immediate attention and assistance by encouraging the Department of Justice to modify it's rules implementing the Americans with Disabilities Act by delaying implementation of the computer modem requirement until such time as industry can provide viable equipment, software and standards for the emergency services.

01-00584

We appreciate your time and consideration in this matter. If we can assist you by providing further information, please do not hesitate to contact us.

Sincerely,

Carol Tomb,
Presiding Commissioner

Scott D. Spangler, 1st District

Chuck Reineke, 2nd. District

T. 4/3/92 APR 13 1992
SBO:MF:RM:hkb
DJ# 192-180-03114

The Honorable Leon E. Panetta
Member, U.S. House of Representatives
380 Alvarado Street
Monterey, California 93940

Dear Congressman Panetta:

This letter is in response to your inquiry on behalf of your constituent, XXX, about the Americans with Disabilities Act (ADA).

Title III of the ADA applies to places of public accommodation, such as restaurants, places of lodging, theaters, doctors' offices and retail stores. "Places of lodging" include inns, hotels, motels, or other places of lodging, except for owner-occupied establishments renting fewer than six rooms

(S36.104). Based on the information you have supplied, your constituent's establishment would constitute a place of public accommodation. Enclosed is a copy of the Department of Justice's regulation implementing title III of the ADA, which will assist XXX in understanding the requirements.

Public accommodations may not discriminate on the basis of disability (S36.201). Places of public accommodation must be operated in accordance with the full range of title III requirements, such as: elimination of discriminatory eligibility criteria (S36.301); reasonable modifications in policies, practices, and procedures (S36.302); provision of auxiliary aids (S36.303); and removal of barriers in existing facilities (S36.304). However, barriers only need be removed if it is "readily achievable" to do so, i.e., easily accomplishable and able to be carried out without much difficulty or expense. For many small businesses, this will mean taking of modest measures such as ramping of a few steps or installation of grab bars in a bathroom. In addition, construction and alterations must be accessible in compliance with the ADA Accessibility Guidelines (SS36.401 and 36.402).

cc: Records; CRS; Oneglia; Friedlaner; Mather; Downey; hkb
01-00586

The general title III requirements became effective on January 26, 1992. While all businesses must comply by January 26, 1992, small businesses do have limited protection from lawsuits. Except with respect to new construction and alterations, no lawsuit may be filed until July 26, 1992, against businesses with 25 or fewer employees and gross receipts of $1 million or less; or January 26, 1993, against businesses with ten or fewer employees and gross receipts of $500,000 or less (36.508).

In suits by the Attorney General, civil penalties for violations under title III are not to exceed $50,000 for the first violation, and $100,000 for any subsequent violation. When considering the dollar amount of a civil penalty, if any is

appropriate, the court is required to give consideration to any good faith effort or attempt by the public accommodation to comply with its obligations under the Act (36.504).

I hope that this information is useful to you. If I can be of further assistance in this matter, please do not hesitate to let me know.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

Enclosure

01-00587

CONSTITUENT REQUEST

DATE: 2/3/92

STAFF MEMBER: kwc

CONSTITUENT NAME: XXX

ADDRESS: XXX
XXX.
XXX

PHONE: XXX

Position/A Information/B B Bill Status/C Document/D

VIEWPOINT OR REQUEST

Issue/Subject Americans with Disabilities Act (ADA)

XXX would like to know what sorts of businesses must comply with the ADA, and when they must do so. He needs to know more about the ADA regulations, so he can ensure he meets them as required.

XXXsays that he runs a 7 room bed & breakfast. His guests usually stay less than one week as tourists; there are no long-term rentals. He would like to know if a business of this sort is required to comply with the ADA and, if so, what it must do to comply.

XXX was concerned about an advertisement recently from a local contractor, which indicated that all businesses open to the public must be entirely accessible to the disabled, and that there were fines starting at $50,000 for businesses which did not comply. XXX thought this was probably an exaggeration of the facts, but wanted to be sure about the ADA's requirements.

01-00588

DJ 192-180-04237

APR 14 1992

The Honorable Strom Thurmond
United States Senate
217 Russell Senate Office Building
Washington, D.C. 20510-0010

Re: #2064210032

Dear Senator Thurmond:

I am writing in response to your recent inquiry on behalf of your constituents.

We are aware of the concern expressed by your constituents and the National Emergency Number Association about the provision in our regulation implementing title II of the Americans with Disabilities Act that states "telephone emergency services, including 911 services, shall provide direct access to individuals who use TDD's and computer modems."

The apparent concern is that by mandating access to persons using computer modems, the regulation may require that there be access by every format that could be used by a modem, including those that are not compatible with equipment presently used by emergency service systems. That is not the case. The regulation does not require telephone emergency systems to do anything that is technologically infeasible; accordingly, we are interpreting the requirement for access by computer modems to mean only when the modem is using the Baudot format. Until it can be technically proven that communications in another format can operate in a reliable and compatible manner in a given telephone emergency, the public service answering point is not required to provide direct access to computer modems using other formats.

cc: Records; CRS Files; Oneglia; Wodatch; McDowney.
:udd:jonessandra:911.thurmond.constituents

01-00589

Simply put, if a hearing impaired person places an emergency call using the ASCII mode, chances are virtually certain that the call will not be handled properly. It could disconnect, receive garbled data or make no connection at all. The result could be a possible loss of life or property. Emergency

centers will be held liable for conditions over which they have no control. The hearing and speech impaired will not be served with the same quality assurance that others have come to expect of their emergency centers and the advent of the 9-1-1 systems.

We need your help to keep this from happening. We feel that the reference to "computer modem" should be removed from the implementation rules until technology can assure that every T.D.D. call will be answered with the same quality as a voice placed call.

Please contact the Department of Justice and urge this change be made. Our contact is:

Mr. Robert Mather, Attorney
U. S. Department of Justice
Civil Rights Division
Coordination and Review Section
P. O. Box 66118
Washington, D. C. 20035-6118

Telephone: (202) 307-2236

Very truly yours,

LANCASTER POLICE DEPARTMENT

W. B. Sumner
Chief of Police/Fire Department Administrator

WBS/css

01-00591

January 7, 1992

The Honorable Strom Thurmond
SR-128 Russell Senate Office Bldg.
Washington, DC 20510
Honorable Thurmond:

I am a member of the National Emergency Number Association (NENA). I am writing to you to alert you to a flaw in the implementation rules for Title II Section 35 of the A.D.A Law. (Hearing and Speech Impaired). Our organization supports the A.D.A. Law 100%. However, The Dept. of Justice, who provided these rules, have set in motion a

situation that could be fatal to a hearing and speech impaired person.

The hearing and speech impaired community must communicate by using a device similar to a typewriter (called a T.D.D.). They also communicate using a personal computer (PC). The Justice Dept. specifies that all emergency services shall provide direct access to individuals who use T.D.D.s and computer modems.

In the past, they have communicated using a baudot modem. It still serves virtually all of the hearing and speech impaired today. It is compatible with our emergency centers. But with the advent of the personal computer, a new modem with a language called ASCII (American Standard Code for Information Interchange) appeared. Its original design was for a business machine to communicate with another business machine, without human involvement.

However, since it is being placed into T.D.D.s, and is the norm for P.C.s, it presents a problem. It is not compatible with emergency centers equipment. Also, there is at this time, no technology that exists that will connect an incoming ASCII call to an ASCII modem in the emergency centers and quarantee connection.

Simply put, if a hearing impaired person places an emergency call using ASCII mode, chances are virtually certain that the call will not be handled properly. It could disconnect, receive garbled data or make no connection at all. The result could be a possible loss of life or property. Emergency centers will be held liable for conditions over which they have no control. The hearing and speech impaired will not be served with the same quality assurance that others have come to expect of their emergency centers and the advent of 9-1-1 systems.

01-00590

We need your help to keep this from happening. We feel that the reference to "computer modem" should be removed from the implementation rules until technology can assure that every T.D.D. call will be answered with the same quality as a voice placed call.

Please contact the Dept. of Justice and urge this change be made. Our contact is:

Mr. Robert Mather, Attorney
U. S. Department of Justice
Civil Rights Division
Coordination and Review Section
P.O. Box 6118
Washington, DC 20035-6118

Telephone: (202) 307-2236

Sincerely,

Ralph E. Inman
President

REI/kb

01-00592

T. 4/15/92 APR 20 1992
SBO:MF:NM:hb
DJ# 192-180-03447

The Honorable Alan J. Dixon
United States Senate
331 Hart Building
Washington, D.C. 20510-1301

Dear Senator Dixon:

This is in response to your letter requesting an update on the Department of Justice's review of the requirements for permanent signs under the Americans with Disabilities Act (ADA) and the Department of Justice regulations promulgated thereunder.

To assist in an understanding of the signage requirements at present, I have enclosed a copy of our recently issued title III technical assistance manual. In the manual the Department has defined "permanent signs" in a restrictive manner. The only signs subject to the raised letter requirement are men's and women's rooms, room numbers, and exit signs (see page 59 of the manual). Engraved letters are permitted on all other types of signs.

The Architectural and Transportation Barriers Compliance Board (Board) is currently drafting accessibility guidelines for title II of the ADA, which covers State and local governments. At my request, the Board agreed to include specific questions concerning appropriate standards for signage in the preamble to that proposed rule. This action, which is a direct response to previous Congressional inquiries, will enable the engraving industry to formally present to the Board its views on engraved lettering.

I strongly encourage representatives of the engraving industry to submit comments on the proposed title II guidelines so that the Board will have the necessary information to make a wise decision on the issue. The Board will carefully consider all comments received and determine whether the guidelines should

permit engraved lettering on permanent signs in State and local

cc: Records; CRS; Oneglia; Friedlander; Milton; hkb
McDowney:

01-00593

facilities. If the comments received indicate that such a determination is appropriate, I will recommend to the Board that the title III guidelines, covering places of public accommodation and commercial facilities, should likewise be revised to permit engraved letters.

I hope this information has been helpful to you.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

Enclosure
01-00598

December 2, 1991

Senator Alan J. Dixon
Hart Senate Office Building
Room 331
Washington, D.C. 20510

Re: The Americans with Disabilities Act Regulations. The Federal Register, Vol.56, No.144, July 26, 1991. Part III, Dept of Justice, Office of Attorney General, 28 CFR Part 36, Appendix A, Nondiscrimination on the basis of disability by public accommodations and in commercial facilities. Signage, section 4.30-1 through 4.30-6.

Dear Senator Dixon:

The regulations promulgated by the Architectural and Transportation Barriers Compliance Board with respect to above mentioned act requires that certain signs in public buildings be made with 1/32" raised letters. Accordingly, this will preclude the use of engraved signs for these applications when the regulations become effective January 26, 1992.

It has been demonstrated that blind people can read an engraved sign as well as raised letters. Engraved signs are in very common use, very economical to produce and are the products of principally many small businesses throughout the country. Aside from having a very negative impact on many small engraving businesses, a raised letter sign will cost substantially more to produce, thus adding a substantial, unnecessary cost to build a large new commercial building.

The engraving industry was not consulted with or informed by the Architectural and Transportation Barriers Compliance Board that these regulations were being issued. Being an industry of small businesses, there

are no resources to monitor legislation affecting the industry or to lobby on it's behalf.

As a member of the engraving industry, I respectfully request your help to get these regulations changed to include engraved signs. This legislation effects blind people but also the mere existence of many small businesses. Let's be fair to both. Thank you.

Sincerely,

Jeanne Brommer
President
01-00599

December 10, 1991

Senator Alan J. Dixon
Hart Senate Office Building
Room 331
Washington, DC 20510

Re: The Americans with Disabilities Act Regulations. The Federal Register, Vol. 56, No 144 July 26, 1991. Part III, Dept. of Justice, Office of Attorney General, 28 CFR Part 36, Appendix A, Nondiscrimination on the basis of disability by public accommodations and in commercial facilities. Signage, sections 4.30-1 through 4.30-6.

Dear Senator Dixon:

The regulations promulgated by the Architectural and Transportation Barriers Compliance Board with respect to above mentioned act requires that certain signs in public buildings be made with 1/32" raised letters. Accordingly, this will preclude the use of engraved signs for the applications when the regulations become effective on January 26, 1992.

It has been demonstrated that blind people can read an engraved sign as well as raised letters. Engraved signs are in very common use, very economical to produce and are the products of principally many small business throughout the country. Aside from having a very negative impact on many small engraving business, a raised letter sign will cost substantially more to produce, thus

adding a substantial, unnecessary cost to build a large new commercial building.

The engraving industry was not consulted with or informed by the Architectural and Transportation barriers compliance Board that these regulations were being issued. being an industry of small businesses, there are no resources to monitor legislation affecting the industry or lobby on it's behalf.
Thank you in advance for considering this matter. I would like to hear what your feelings are concerning this issue.

Sincerely,

Thomas K. Denson
President

01-00600

DJ 181-06-0002

Apr 20 1992

Mr. William B. Ingersoll
Ingersoll and Block
1401 Sixteenth Street, N.W.
Washington, D.C. 20036

Dear Mr. Ingersoll:

This letter responds to your August 21, 1991, letter on behalf of Marriott Ownership Resorts, Inc. (Marriott), requesting guidance on the application of certain provisions of the Americans with Disabilities Act (ADA) to the timesharing resorts operated by Marriott under its Vacation Ownership System. Specifically, you have requested guidance as to whether "timesharing that is sold in increments of one week or less is a public accommodation as that term is defined in the ADA."

The ADA authorizes the Department to provide technical assistance to entities that are subject to the Act. This letter

provides informal guidance to assist you in understanding how the ADA may apply to your client. However, this technical assistance does not constitute a determination by the Department of Justice of your client's rights or responsibilities under the ADA and does not constitute a binding determination by the Department of Justice.

Based on our review of your letter and supporting materials, it is our understanding that the specific question you pose is the following: Is a vacation property owned in the form of ownership referred to by Marriott as "timesharing," and sold by Marriott in increments of one week or less, a "place of public accommodation" as defined in this Department's regulation Implementing title III of the ADA? See, 56 Fed. Reg. 35,544 (July 26, 1991) to be codified at 28 C.F.R. pt. 36.

cc: Records; CRS Files; Oneglia; Friedlander; Wodatch; Pecht.
:uddl:udd:pecht:ingersoll

01-00597

To be considered a place of public accommodation under the title III regulation, a facility must be operated by a private entity, its operations must affect commerce, and it must fall within one of the 12 categories listed in S 36.104 of the regulation. Each category includes representative examples of covered facilities. However, the examples included are meant to be illustrative, not exhaustive. Thus, a facility does not have to be specifically listed in order to be covered.

Therefore, in order for Marriott's timesharing resorts to be considered places of public accommodation, they must fall within one of the 12 categories. In this instance, the analysis turns on whether any given resort is a "place of lodging" such as an inn, hotel, or motel. These terms are not defined in either the Act itself or the title III regulation. However, the preamble to the title III regulation does note that the category "places of lodging" would "exclude solely residential facilities because the nature of a place of lodging contemplates the use of the facility for short-term stays."

Thus, one factor that should be considered in determining whether a particular facility is a place of lodging is whether the facility is intended or used for, or permits short-term stays. Although the regulation does not define "short-term," the Department would consider stays of one week or less to be "short-term" stays. While this interpretation may be consistent with certain Federal court precedents established under title II of the Civil Rights Act of 1964 and cited in the materials you provided to us, you should be aware that the Department may look to such precedents for guidance but does not consider itself bound by them in interpreting its ADA regulations.

In addition to considering whether a given facility is intended or used for, or permits short-term stays, in making a determination as to whether a facility is a place of lodging, each entity should also consider the extent to which the facility does or does not share the characteristics of the examples listed as places of lodging. For example, one potentially significant difference between inns, hotels, and motels, as a group, and facilities held in Marriott's form of timeshare ownership is that, according to your April 23, 1991, letter to John Wodatch, timeshare owners are deeded a fee interest in the timesharing resort. Obviously, a deeded fee interest differs from the interest normally conveyed to the patron of a hotel or motel. However, if, as you point out in the April 23rd letter, the fee interest conveyed is subject to recorded restrictive covenants that substantially restrict the "traditional possessory rights of ownership" and the properties are, in fact, operated in a manner very similar to the manner in which hotels are operated, timeshare facilities are more likely to be treated as places of lodging covered under the ADA.

Based on the representations made in your April 23, 1991, letter, we believe that timeshare facilities in Marriott's Vacation Ownership System are nonresidential places of public accommodation. In reaching this conclusion we have considered the following factors to be of particular significance:

1. Ownership of timesharing units is sold in intervals of one week or less, which is consistent with the requirement that a place of lodging be a facility that is intended or used for, or permits short-term stays;

2. While ownership to individual units is conveyed in fee simple, recorded restrictive covenants substantially limit rights of ownership and owners have no right to occupy, alter, or

exercise other control over any specific unit;

3. Owners of timesharing interests are not required to return to the same unit or project and may utilize various exchange options to exchange their units for units at other resorts; and

4. Marriott's timeshare accommodations are operated like hotels (i.e., reservations, central registration, and room assignments are required) by a company that is in the hotel business.

We wish to stress that we have reached this conclusion based on your description of the ownership and operation of Marriott's Vacation Ownership System. Thus, this conclusion should not be viewed as a general statement of the Department's position with respect to other types of timesharing facilities; our position on this issue may well be different given a different set of facts concerning the ownership and operation of such facilities.

As you note in your April 23, 1991, letter, as places of public accommodation, timeshare facilities are subject to the title III requirements for readily achievable barrier removal; and any new construction or alteration of such facilities must follow the Accessibility Guidelines adopted as Appendix A to the Department's title III regulation. We would also like to point out that, as a public accommodation, Marriott is also subject to other significant non-discrimination requirements under title III of the ADA. For example, Marriott must provide auxiliary aids and services to guests with hearing, speech, or vision impairments, unless doing so would result in an undue burden or a fundamental alteration in the nature of the services or accommodations being offered.

01-00599

I hope this information has been helpful to you.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

01-00600

August 21, 1991

VIA MESSENGER

Stewart Oneglia
Chief
Coordination and Review Section

Department of Justice
320 First Street, N.W.
Washington, D.C.

RE: Request for Guidance
Final Rule published by the Department of Justice ("Department") in the Federal Register on July 26, 1991 with respect to Title III of the Americans with Disabilities Act, Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities (the "Final Rule")

Dear Ms. Oneglia:

On behalf of Marriott Ownership Resorts, Inc. ("Marriott"), we are requesting guidance as to the meaning of the term "short-term stay" as used in the Department's Section by Section Analysis in the Final Rule with respect to the definition of public accommodations. On April 23, Marriott submitted comments to the Department with respect to the proposed rule making implementing Title III of the Americans with Disabilities Act (the "ADA" or the "Act"), requesting confirmation in the Final Rule of Marriott's position that timesharing that is sold in increments of one week or less is a public accommodation as that term is defined in the ADA. A copy of Marriott's April 23 comments is enclosed for your reference.

In addition, on March 14, I spoke at the public hearing in Washington, D.C. regarding this issue. At that time, the panel indicated that it was aware of this question and intended to address it in the Final Rule. Although we recognize that it was difficult for the Department to address the many individual questions that arose in the comments to the proposed rule, we were nevertheless disappointed to find no reference at all to timesharing or vacation ownership in the Final Rule. We were encouraged, however, by the Department's statements in the Section-By-Section

Analysis and Response to Comments (the "Department's Analysis") that "... the nature of a place of lodging contemplates the use of the facility for short-term stays." (56 Fed. Reg. 35552; emphasis added).

Although the Department's distinction between short-term stays and long-term stays was encouraging, the absence of any definition of a short-term stay has left Marriott, and the timeshare industry, without the immediate guidance necessary to know whether or not they are required to comply with the provisions of the ADA. Given the approaching deadlines for removal of architectural barriers, as well as plans for future projects to be constructed, this places an undue burden on the industry. We are therefore requesting guidance as to whether a stay of one week or less constitutes a "short-term stay."

As discussed in the attached comments, we believe that there is considerable legal basis to conclude that stays of one week or less constitute a short-term stay. In particular, please refer to our discussion of Title II public accommodations (Section II.A. of our comments, beginning on page 7) in which we cite several Federal court decisions interpreting the term lodging to transient guests, as used in the definition of public accommodations in Title II, to apply to lodging for one week or less.

In its analysis, the Department repeatedly differentiates between short-term and long-term stays. For example, in discussing residential hotels, the Department states,

> Although such hotels or portions of such hotels may fall under the Fair Housing Act when operated or used as long-term residences, they are also considered "places of lodging" when guest of such hotels are free to use them on a short-term basis.

We wish to emphasize that it is Marriott's position that its timeshare projects are not residential in nature, as that term has been interpreted in the context of the Fair Housing Act. Therefore, Marriott projects are not mixed use projects that allow both residential and short-term stays and should not be subject to both the ADA and the Fair Housing Act.

Based on the Department's distinction between short-term and long-term stays and the legal precedent cited in the attached comments, we believe that projects in which timesharing that is sold in increments of one week or less are public accommodations which are covered only by the ADA. Because of the necessity to take immediate steps to remove architectural barriers and to design

new construction, we would appreciate your comments and guidance on this issue as soon as possible.

Sincerely,

William B. Ingersoll

WBI:SLV:pc

Enclosure:
April 23 Comments

cc:w/copy of enclosure
Irene Bowen
Paul Hancock

01-00603

April 23, 1991

John L. Wodatch
Office of Americans with Disabilities Act
Civil Rights Division
U.S. Department of Justice
Rulemaking Docket 003
Box 75087
Washington, D.C. 20013

RE: Comments of Marriott Ownership Resorts, Inc. with respect to Timesharing and the Marriott Vacation Ownership System

Dear Mr. Wodatch:

On behalf of Marriott Ownership Resorts, Inc., ("Marriott"), a subsidiary of the Marriott Corporation, we are submitting the following comments in response to the proposed rule making implementing Title III of the Americans with Disabilities Act ("ADA") or (the "Act") issued by the Department of Justice (the "Department") in the February 22 Federal Register (55 Fed. Reg. 7452) (the "Proposed Rulemaking"). By separate letter, Marriott is submitting comments on several provisions in the proposed rule making. However, because of the importance to Marriott of confirming that timesharing that is sold in increments of one week or less is a public accommodation, as that term is defined in the Act, we are submitting separate comments on this issue alone.

Since the enactment of the Americans with Disabilities Act of 1990 (the "ADA")1, there has been considerable confusion as to whether the ADA or the handicapped provisions in the 1988 Amendments to Fair Housing Act (the "Fair Housing Act")2 apply to timesharing. Historically, the timesharing industry has stressed compliance with Title II of the Civil Rights Act of 1964 ("Title

1 Americans with Disabilities Act of 1990, Pub. L. No. 101-336, S 104 Stat. 327, (1990).

2 Title VIII of the Civil Rights Act of 1968, as amended, 42 U.S.C. S 3601 et seq. (1988).

II")3 because of the public accommodations nature of timesharing facilities. Marriott, a subsidiary of the Marriott Corporation, is a leader in the timesharing industry. Marriott's Vacation Ownership System currently includes seven timesharing resorts developed by Marriott and several other resorts under construction or in the planning stage.4

Marriott has been committed to non-discriminatory practices in all aspects of its business, and it has been particularly concerned about complying with the new requirements enacted by Congress regarding handicapped accessibility. It is clear that Congress intended to provide handicapped access to all facilities which are generally available to the public, including both public accommodations which are occupied on a transient basis and residential dwelling units. However, we believe that Congress did not intend timesharing to be covered by both the ADA and the Fair Housing Act. Further, even if some types of timesharing are covered by the Fair Housing Act, we do not believe that all types of timesharing, regardless of the length of stay of the owners, are subject to the Fair Housing Act.

The Department recognized that the transitory nature of a stay as well as the length of stay is determinative when it stated in the Section by Section Analysis:

> Places of lodging (e.g. hotels and inns, primarily intended for transitory stays) are designated as places of public accommodation. Places used for longer stays (e.g. residential hotels) are not consider "commercial facilities" because they are residential facilities. (Emphasis added.)

Based on the reasons expressed herein, we urge the Department to clarify the confusion by clearly stating in the final regulations that transitory timesharing facilities which are sold in increments of one week or less, are subject to regulation as public accommodations under the ADA.

The following memorandum will provide a background on timesharing as it is structured today, with particular emphasis on

3 42 U.S.C. 2000 et seq.

4 Marriott has developed seven timesharing resorts in three states: Florida, South Carolina and California. New resorts are under construction in Florida and Colorado and resorts are also being planned in the Bahamas, Mexico and other national and international locations.

Marriott's Vacation Ownership System. This will be followed by analysis of the legal basis for applying the ADA to timesharing, as well as a discussion of the inapplicability of the Fair Housing Act to timesharing which is sold in increments of one week or less.

I. INTRODUCTION

In addition to the case law and statutory interpretations outlined herein, there is a practical reason why timesharing such as the Marriott Vacation Ownership System should be covered by the ADA. ADA will provide immediate accessibility to individuals with disabilities at no personal cost. Under ADA, architectural and communication barriers in existing projects must be removed, when readily achievable, at no expense to the individual with a disability. Further, all alterations and renovations must meet the standards for new construction, as well as for alterations. Under the Fair Housing Act, a person with disabilities who wishes such modifications must make them at his own expense. This is unrealistic when a guest only spends one week a year at a resort. Similarly, under the proposed Architectural and Transportation Barriers Compliance Board ("ATBCB") accessibility guidelines, a percentage of each class of new units must be readily accessible to individuals with disabilities. The Fair Housing Act provides for less accessible units. For example, the proposed ATBCB guidelines require grab bars in accessible units; Fair Housing only requires reinforcement in the walls, but the handicapped must install grab bars at their own expense. Thus, confirming that timesharing that is sold in increments of one week or less is subject to the ADA will make the majority of timesharing in the United States more accessible to the disabled at no personal cost.

Background

Although there are many types of timesharing, all

timesharing is sold as a mechanism which allows individuals to assure the availability of transient vacation accommodations of a short duration, typically one week intervals. There are four essential elements in the structure of any timeshare project: the interest, the unit, the interval and the exchange.

Interests. There are two basic types of timesharing interests - fee and non-fee or "right to use." In fee timesharing, the purchaser receives some type of deeded interest - either an undivided percentage interest in the entire project or in a specific unit. Right to use timesharing is generally structured as a club membership in which the purchaser receives the right to use a certain type of unit at a timeshare project for a specified number of years. All of Marriott's timesharing resorts are structured as some type of fee timesharing.

Units. Although Marriott owners are deeded an interest in a specific unit, they waive the right to use that specific unit under the recorded covenants and restrictions for the project. Instead, owners may only use one of several units of the type in which an interest was purchased, i.e., 1 bedroom, 2 bedroom, etc. Owners have absolutely no individual control over the units and are prohibited from altering them in any manner or from installing furnishings or fixtures. Further, the recorded covenants and restrictions prohibit the use of a unit as a permanent residence. Therefore, few, if any, of the traditional possessory rights of ownership are available to Marriott timeshare owners. The emphasis is on the vacation experience, not on ownership.

Timeshare owners occupy standardized units similar to hotel suites that are designed for the transient use of the public. The units are identical both inside and outside, with floor plans that facilitate interchangeability. Interior furnishings are identical, from furniture to color schemes. Linens, towels, tissues, utensils, ashtrays, etc. are provided by the timesharing facility management group, just as in hotels.

A unique feature in Marriott's California timesharing project are "lock-out" units, in which a second or guest bedroom can be physically locked off from the rest of the unit to create two usable units - a master or one-bedroom apartment and a one-bedroom guest suite. Owners may use each of the two separate halves of the unit in their appropriate season. Or they may rent or exchange either half through the exchange programs described below.

Intervals. Timesharing involves the concept of purchas-

ing the right to use accommodations for a defined time period or "interval." Marriott timesharing intervals are sold in one week intervals. There are two types of intervals - fixed and floating - with variations within each type. Fixed time generally refers to the right to use a unit during a specific week each year. However, it may also refer to a specified season. In projects with floating time, all owners must reserve their time, usually on a first-come, first-served basis. Although the organizational structure varies from resort to resort, except for a few units in the first two resorts developed by Marriott, all of the units in the Marriott Vacation Ownership System are subject to floating time.

Under Marriott's floating time program, all owners are required to reserve the use of a unit of the type in which their interest was purchased within the season of the week they purchased. For example, a purchaser of an interest in Unit 100, a 2-bedroom unit, for the first week in August, could reserve any available 2-bedroom unit during the summer season. Owners are

requested to submit four choices in order of preference. The management company assigns the weeks on a first-come, first-served basis; however, the actual units are not assigned until the time of check-in. Under this program, there is no anticipation nor likelihood of an owner staying in the same unit each year or even of vacationing during the same week each year.

The documentation for all of Marriott's timesharing resorts permits two flexible features which add to the transient nature of the occupancy - "odd-even year usage" and "split week usage." The odd-even year program permits owners to use a unit at a specific timesharing resort every other year rather than annually. In addition, a split week program has been implemented at the Desert Springs Villas Resort in California. Under this program, an owner may divide the normal seven-day use period into two separate use periods of three and four days during the same season as the week they purchased. When the split-week program is combined with the "lock-out" feature, as described above, owners may use, rent or exchange the separate halves of their units for a total of four periods each year - two three-day periods in one half of the unit and two four-day periods in the other half.

Marriott timeshare accommodations are similar to hotel accommodations in additional respects: central registration, check-in and check-out, and room assignment is required; keys are distributed and collected as in hotel facilities; and all maintenance and housekeeping functions are the responsibility of

management, not of the guests. Utilities are usually master-metered and the expense covered out of the facility's operating budget.

In short, Marriott timesharing purchasers are not buying an interest in a residential unit; they are buying usage of vacation accommodations which can be used, rented or exchanged from one project to another. The vacation experience is reinforced by the exchange systems, in which owners may exchange a week in their project for a week in a project in another location.

Exchange. The nature of timesharing as transient vacation accommodations is further underlined by the existence of exchange systems. Virtually every timesharing project participates in some type of exchange system, as timesharing developers have found that people will not buy timesharing if they are limited to returning to the same project year after year. Almost all time-share owners utilize the exchange during their period of timeshare ownership, with over 75% maintaining their affiliation with an exchange system in anticipation of exchanging their vacation week for a week at another project. Industry figures indicate that over one-third of exchange members exchanged their unit for another in 1990, with this percentage increasing each year. Marriott's

statistics are even higher, showing that owners in the Marriott Vacation Ownership System utilize the exchange systems provided more than 50% of the time, depending on the resort and the length of ownership.

Marriott timesharing resorts offer two exchange options to their owners. Marriott is affiliated with one of the two major exchange companies, Interval International, Inc. In addition to the external exchange program with timesharing projects around the world, Interval International operates a special internal exchange program for Marriott timesharing resorts under which owners at Marriott resorts are given priority over other Interval Interna-tional members in exchanging their time period for time in another Marriott timesharing resort.

A final benefit currently offered to all Marriott owners is the Honored Guest Awards program. This program substantially broadens the bundle of rights purchased with a timeshare interest. The Honored Guest Awards program is similar to the airline frequent flyer programs. Originally designed for guests at Marriott hotels, owners of timeshare interests in Marriott timesharing resorts are

currently eligible to participate in this program.5 Members may earn points that can be accumulated and redeemed for future stays at various Marriott hotels, free or discounted airline tickets, rental cars, etc. Marriott timeshare owners can earn Honored Guest Awards points by assigning the use of their unit to Marriott during any given year instead of using it personally. In addition, points are sometimes given as a sales incentive.

Clearly, timesharing is appropriately seen as a transient public accommodation, which is differentiated from other public accommodations by virtue of the concept of a pre-purchase which assures the availability of a vacation experience in a standardized setting. Marriott sales and owner literature emphasizes the many ways that owners may use their floating time: personal use, the internal Marriott exchange, the external Interval International exchange, rental to third parties or the Honored Guest Awards program. None of these features are characteristic of a residential unit that an owner expects to return to year after year. Instead, the one week periods, floating time reservation system, flexible features in some resorts such as split weeks and lock-out units and the Honored Guest Awards program are all typical of transient public accommodations such as hotels which are subject to the ADA.

5 Like the hotel program, the Honored Guest Award program for timeshare owners may be changed or eliminated at the discretion of Marriott.

II. TIMESHARING AS PUBLIC ACCOMMODATIONS UNDER TITLE II AND THE AMERICANS WITH DISABILITIES ACT.

A. Title II

Because of the relationship between public accommodations under Title II and public accommodations under the ADA, it is first necessary to address the application of Title II to public accommodations such as Marriott timesharing. Marriott views its timesharing facilities as public accommodations for transient guests that are regulated by Title II. Section 2000a(b)(1) of Title II includes as public accommodations, "any inn, hotel, motel, or other establishment which provides lodging to transient guests.-..." The legislative history regarding the scope of Title II differentiates lodging for transient guests from permanent residential housing:

Only public establishments furnishing lodging

to transcients [sic] would be within this subsection. Establishments furnishing lodging to guests of a permanent duration, or to guests of an indefinite duration having no fixed intent to leave, as in the case of a boarding house, would not be included.6

Similarly, the following explanation of the transient guest requirement, submitted by U.S. Attorney General Kennedy during the extensive hearings on the Civil Rights Act of 1964, emphasizes that transient guests were intended to be non-permanent in nature:

> The "transient guest" requirement exempts establishments, like apartment houses, which provide permanent residential housing. For example, apartments rented on month-to-month tenancies automatically renewed each month unless specifically terminated, are exempted.7

Federal courts have interpreted the term "transient" to apply to lodging for one week or less. In U.S. v Beach Associates,

6 S. Rep. No. 872, 88th Cong., 2nd Sess., reprinted in 1988 U.S. Code Cong. & Admin. News 2355, 2356.

7. Hearings Before Subcommittee No. 5 of the Committee on the Judiciary, House of Representatives, 88th Cong., 1st Session, Part II, Series No. 4, p. 1402.

Inc.8, the court held that beach apartments which were rented by the week were "lodging by transient guests" within the meaning of section 2000a(b)(1)9.

Affirming the decision in Beach Associates, the court in U.S. v. Young Men's Christ. Ass'n of Columbia, S.C.10, construed "transient" as including "lodgers of a week or less." Although there was disagreement between the parties as to whether the YMCA rented accommodations for less than a week, the record established that accommodations were rented for no more than one week.11 Citing Beach Associates and United States v. Sadler (No. 570, E.D. N.C., January 15, 1968), the court stated:

> I feel obliged to accept the construction of "transient" adopted in these decisions. Since

> the defendant concedes that it is its policy to rent rooms in its dormitory by the week, it follows that, under the construction adopted in the Beach Associates Case, the defendant does provide, as I have concluded, lodging for "transient" guests within the meaning of 42" U.S.C. section 2000a(b)(1).12

The one week threshold in Beach Associates and Young Men's Chris. Assn' is analogous to the sale of timesharing in increments of one week or less. Equally important is the non-residential nature of the facilities, a point which is emphasized in the ADA.

B. Americans with Disabilities Act of 1990 (the "ADA")

Title III of the ADA is entitled "Public Accommodations and Services Operated by Private Entities." The definition of "public accommodations" in the ADA is almost identical to the definition in Title II - "an inn, hotel, or other place of lodging...."13 Although the term "transient guests" is not included in the ADA definition, both the House and the Senate reports state

8 286 F.Supp. 801 (D.C. Md. 1968).
9 Id. at 808.
10 310 F.Supp 79 (D. S.C. 1979)
11 Id. at 82.
12 Id.
13 Section 301(7)(A).

01-00611

that "[O]nly nonresidential facilities are covered by this title."14

A one week stay in a timesharing resort cannot be deemed to be residential in any sense of the word. Timesharing units are nonresidential. Even when there is an ownership interest, permanent residence is prohibited and owners have no possessory rights in their units. Congress, in enacting the Americans with Disabilities Act, extended the protection to the handicapped afforded

in the Fair Housing Act to residential facilities to nonresidential public accommodations such as timesharing resorts.

II. FAIR HOUSING ACT

Congress did not specifically include timesharing facilities in the 1988 Amendments to the Fair Housing Act; however, HUD, in its Section by Section Analysis of the Final Fair Housing Accessibility Guidelines, stated that "... the fact of vacation timesharing ownership of units in a building does not affect whether the structure is subject to the Act's accessibility requirements."15 We believe this statement is incomplete. Although the fact of vacation ownership should not affect whether a structure is subject to the Fair Housing Act, the length of stay, based on a timeshare owner's interest, should be determinative.

The underlying policy of the Fair Housing Act is "to provide, within constitutional limitations, for fair housing throughout the United States."16 "Housing" is not defined in the Act, nor is the term used to any extent. Instead, the focus is on "dwellings," which are defined as:

> ... any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building structure, or portion thereof.17

14 H.R. Rep. No. 101-485, Part 2, 101st Cong., 2d Sess, at 99. See also, S. Rep. No. 101-16, 101st Cong., 1st Sess., at 59.

15 Comments to Final Fair Housing Accessibility Guidelines, 56 Fed. Reg. 9472 at 9482 (March 6, 1991).

16 Id. at S 3601 (emphasis added).

17 Id. at S 3602(b) (emphasis added).

The application of the Act to timesharing that is sold in increments of one week or less hinges on whether timesharing units are "dwellings." The central concept in the definition of "dwelling" is the term "residence." It is the consistent emphasis on residence as opposed to transient accommodations that distin-

guishes traditional housing units from timesharing units.

Although the legislative history of the Act is meager due to the lack of committee reports and other relevant materials, the background events against which the Act was passed, such as the urban riots of 1967, indicate that a major concern was segregation in residential neighborhoods.18 Case law is equally sparse. The few courts that have addressed the question of whether the Act applies to a particular structure have focused on the term "residence."

In United States v. Hughes Memorial Home19, the court held that the Act applies to a children's home in which the average stay was four years. In its analysis, the court stated "[W]hether the Home is within the scope of the prohibition in section 3604(a) thus turns on whether it is "occupied as a ... residence."20

Because "residence" is not defined in the Act, the court looked to its ordinary meaning, quoting from Webster's Third New International Dictionary:

> a temporary or permanent dwelling place, above or habitation to which one intends to return as distinguished from the place of temporary sojourn or transient visit [.]21

The transient nature of accommodations has been an essential element in deciding whether a structure is a "dwelling."

In Patel v. Holley House Motels,22 the court held that a motel was not a "dwelling" under the Act. Citing the above definition of a residence in Hughes Memorial, the court stated:

18 See Laufman v. Oakley Building & Loan Co., 408 F. Supp, 489, 496-97, quoting from The Report of the National Advisory Commission on Civil Disorders (1968).

19 396 F.Supp. 544 (W.D. Va. 1975)
20 Id. at 549.
21 Id.
22 483 F.Supp 374 (S.D. Ala. S.D. 1979).

> It is clear that the Palms Motel is an establishment which provides lodging to "transient" guests. The Palms Motel is a "public accommodation" as distinguished from a "dwelling," see Title II, Civil Rights Act of 1965 (Public Accommodations), 42 U.S.C. S 2000a(b)-(1), and Plaintiffs, therefore, have no claim under the Fair Housing Act.23

Using the same rationale, the district court in Baxter v. City of Belleville, Ill.24, held that a home for AIDS victims was subject to the Act, stating, "[A]lthough the length of the residence may vary, the persons who will reside at [the home] will not be living there as mere transients."25

The most recent case to address the definition of a dwelling is U.S. v. Columbus Country Club26, which involved the rental of summer bungalows belonging to a private club. The Columbus Country Club was a non-profit social organization whose "annual" members owned the land collectively, which it leased to its annual members for a fee. However, the annual members owned their cottages.27 Members could spend up to five months a year in their bungalows and most returned each summer. The court quoted, in part, from R. Schwemm, a professor of law at the University of Kentucky:

> Title VIII "would presumably cover... facilities whose occupants remain for more than a brief period of time and who view their rooms as a residence 'to return to.'"28

To better understand the court of appeal's decision, the full passage from which this quote was taken is reproduced below:

23 Id. at 381.

24 720 F.Supp. 720 (S.D. Ill. 1989).

25 Id at 731.

26 915 F2d 877 (3rd Cir. 1990).

27 U.S. v. Columbus Country Club, No. 87-8164, Lexis Slip op. 14757 (E.D. Pa. 1989).

28 Id. at 881, quoting from Robert G. Schwemm, Housing Discrimination Law, 53 (1983).

> Other courts have agreed with Hughes Memorial that temporary residence cases should generally be decided by looking to whether the occupants intend to remain in these residences for any substantial period of time. If occupancy is merely transient, as would be the case with most motel and hotel rooms, the property may be viewed as something less than a dwelling and therefore not subject to Title VIII. On the other hand, Title VIII has been held to apply when a longer term occupancy is involved as in Hughes Memorial and in the monthly rental of a mobile home site. If this principle is followed, the statute would presumably cover boarding houses, dormitories, and other facilities whose occupants remain for more than brief period of time and who view their rooms as a residence "to return to." 29

After citing Professor Schwemm, Hughes Memorial, Holley House Motels and City of Belleville, the third circuit held:

> We agree with these cases and hold that the central inquiry is whether the defendant's annual members intend to remain in the bungalows for any significant period of time and whether they view their bungalows as a place to return to.30

Timeshare units have none of the traditional attributes of a residence, but are merely transient vacation accommodations. Unlike the members of the Columbus Country Club, Marriott timeshare owners purchase intervals of one week, hardly a "significant period of time." Members of the Club returned to the same bungalow year after year. Timeshare owners of one week intervals do not intend to return to their resorts each year, as evidenced by the use of the exchange systems. Columbus Country Club members owned their bungalows, which could be permanently furnished and altered according to each owner's wishes. They were entitled to the traditional possessory rights of ownership. Not only are many timeshare owners denied the use of the same unit each year, but, like hotel guests, they are never permitted to furnish a unit or to make any type of alteration, however temporary.

29 Schwemm at 53.

30 Columbus Country Club at 881.

01-00615

IV. CONCLUSION

Based on the above and because ADA provides more accessibility at less personal cost to individuals with disabilities, we feel that the final rule should clarify that timesharing, such as Marriott's, which is sold in increments of one week or less, is a public accommodation which is covered by the ADA. Such timesharing is sold and used as transient vacation accommodations that are most analogous to hotel use; therefore, such timesharing units should be regulated as public accommodations under the ADA. The entire nature of timesharing is nonresidential. The emphasis is on variety of vacation use, not on the unit itself.

The district courts in Beach Associates and Young Men's Christ. Assn explicitly held that lodgings which are used for periods of one week or less are covered by Title II. It follows that timesharing interests that are sold in increments of one week or less should also be covered by Title II. As a public accommodation, timesharing should also be subject to the ADA.

We wish to stress that Marriott does not wish to avoid civil rights or handicapped accessibility regulation. In fact, as stated herein, we believe that by confirming that timesharing that is sold in increments of one week or less is subject to the ADA, the Department will provide immediate accessibility in such projects to individuals with disabilities at no personal cost.

Sincerely,

William B. Ingersoll

WBI:SLV:pc

01-00616

DJ 192-180-04656

APR 20 1992

The Honorable Carl Levin
United States Senate
459 Russell Senate Office Building
Washington, D.C. 20510

Dear Senator Levin:

I am writing in response to your recent inquiry on behalf of your constituent, XXX of Charlotte, Michigan.

We are aware of the concern expressed by your constituent and the National Emergency Number Association about the provision in our regulation implementing title II of the Americans with Disabilities Act that states "telephone emergency services, including 911 services, shall provide direct access to individuals who use TDD's and computer modems."

The apparent concern is that by mandating access to persons using computer modems, the regulation may require that there be access by every format that could be used by a modem, including those that are not compatible with equipment presently used by emergency service systems. That is not the case. The regulation does not require telephone emergency systems to do anything that is technologically infeasible; accordingly, we are interpreting the requirement for access by computer modems to mean only when the modem is using the Baudot format. Until it can be technically proven that communications in another format can operate in a reliable and compatible manner in a given telephone emergency, the public service answering point is not required to provide direct access to computer modems using other formats.

cc: Records; CRS Files; Oneglia; Wodatch; Kaltenborn; McDowney.
:udd:jonessandra:911.levin.rogers

01-00617

This interpretive guidance has been issued by the Department of Justice in its recently published Technical Assistance Manual, which is available from the Office on the Americans with Disabilities Act, Post Office Box 66738, Washington D.C. 20035-9998, telephone: (202) 514-0301.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

01-00618

January 6, 1992

Senator Carl Levin
140 Russell Senate Office Bldg.
Washington, DC 20510

Dear Senator Levin:

I am a member of the National Emergency Number Association (NENA). I am writing to you to alert you to a flaw in the implementation rules for Title II Section 35 of the A.D.A. Law. (Hearing and Speech Impaired.) Our organization supports the A.D.A. Law 100%. However, the Department of Justice, who provided these rules, have set in motion a situation that could be fatal to a hearing and speech impaired person.

The hearing and speech impaired community must communicate by using a device similar to a typewriter (called a T.D.D.). They also communicate using a personal computer (PC). The Justice Dept. specifies that all emergency services shall provide direct access to individuals who use T.D.D.'s and computer modems.

In the past, they have communicated using a baudot modem. It still serves virtually all of the hearing and speech impaired today. It is compatible with our emergency centers. But with the advent of the personal computer, a new modem with a language called ASCII (American Standard Code for Information Interchange) appeared. Its original design was for a business machine to communicate with another business machine, without human involvement.

However, since it is being placed into T.D.D.'s and is the norm for PC's, it presents a problem. It is not compatible with emergency centers equipment. Also there is, at this time, no technology that exists that will connect an incoming ASCII call to an ASCII modem in the emergency centers and guarantee

connection.

Simply put, if a hearing impaired person places an emergency call using the ASCII mode, chances are virtually certain that the call will not be handled properly. It could disconnect, receive garbled data, or make no connection at all. The result could be a possible loss of life or property. Emergency centers will be held liable for conditions over which they have no control. The hearing and speech impaired will not be served with the same quality assurance that other have come to expect of their emergency centers and the advent of 9-1-1 systems.

01-00619

We need your help to keep this from happening. We feel that the reference to "computer modem" should be removed from the implementation rules until technology can assure that every T.D.D. call will be answered with the same quality as a voice placed call.

Please contact the Department of Justice and urge this change be made. Our contact is:

Mr. Robert Mather, Attorney
U.S. Department of Justice
Civil Rights Division
Coordination and Review Section
P.O. Box 66118
Washington, DC 20035-6118

Sincerely,

Paul M. Rogers, Director
Eaton County Central Dispatch

Jle

01-00620

T. 4/8/92
DJ 202-16-0
Control/202-CON-0001

APR 20 1992

The Honorable Robert S. Walker
U. S. House of Representatives
2369 Rayburn House Office Building
Washington, D.C. 20515-3816

Dear Congressman Walker:

I am responding to your recent inquiry on behalf of your constituent, XXX, about his obligations under title III of the Americans with Disabilities Act of 1990 (ADA), Pub. L. 101-336, 104 Stat. 327 (July 26, 1990), and this Department's regulation implementing title III, 56 Fed. Reg. 35544 (July 26, 1991). Specifically, XXX is seeking clarification of whether a physician is required to provide a sign language interpreter for a patient who is deaf or hard of hearing if effective communication can be achieved through other means.

The ADA authorizes the Department of Justice to provide

technical assistance to individuals and entities that are subject to the Act. This letter provides informal guidance about the obligation of a health care provider to provide auxiliary aids; however, this technical assistance does not constitute a determination by the Department of XXX rights or responsibilities under the ADA and it is not binding on the Department.

The ADA requires that a public accommodation, such as the professional office of a health care provider, make available appropriate auxiliary aids when those aids are necessary to ensure effective communication. An individual who has a hearing impairment that substantially limits his or her ability to communicate is entitled to receive auxiliary aids from a health care provider, unless the health care provider can demonstrate that providing the auxiliary aid will fundamentally alter the nature of the service being provided or that it will result in undue burdens.

cc: Records; Chrono; Wodatch; Bowen; Blizard; McDowney.
:udd:bowen:cong.walker

01-00621

Auxiliary aids include a wide range of services and devices that promote effective communication. The type of auxiliary aid or service necessary to ensure effective communication will vary with the length and complexity of the communication involved. Brief exchanges of information would not ordinarily require the use of interpreter, but discussions of complex issues, such as alternative methods of treating a serious illness, may require an interpreter.

To determine what type of auxiliary aid should be provided, a health care provider should consult with the patient whenever possible to determine what type of auxiliary aid is needed to ensure effective communication, because it is important to ensure that the auxiliary aid that is used is, in fact, effective for that individual. However, the ultimate decision as to what measures to take to facilitate communication rests in the hands of the health care provider, as long as the method chosen results

in effective communication.

The Department of Justice recently published a technical assistance manual to assist individuals and entities affected by title III of the ADA to understand their rights and responsibilities under the Act. I am enclosing a copy of that manual for your use. The manual addresses both the obligation to provide auxiliary aids and the limitations on that obligation. It also identifies the factors to consider in determining if providing an auxiliary aid will constitute an undue burden.

I hope that this information is helpful to you in responding to XXX.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

Enclosure

01-00622

February 20, 1992

Honorable Robert Walker
House of Representatives
2441 Rayburn House Office Bldg.
Washington, DC 20515

Re: The American Disabilities Act

Dear Congressman Walker:

I am writing to express my concern about ambiguities in the wording of the American Disabilities Act, particularly in regard to the provision of services to the deaf.

We have received a communication from the Department of Justice referring to

Section 36.303 - Auxiliary Aids and Services. This states, "Implicit in this duty to provide auxiliary aids and services is the underlying obligation of a public accommodation to communicate effectively with its customers, clients, patients or participants who have disabilities affecting hearing, vision, or speech." It goes on to mandate that "appropriate auxiliary aids and services be furnished to ensure that communication with persons with disabilities is as effective as commination with others." This is being interpreted by the Deaf Association to mean that we must provide an interpreter provided by the Deaf Association, and pay that interpreter for those services. The charge that they are asking in some cases exceeds our charge for the office visit.

It is our interpretation of the law that we simply need to provide adequate communication with the patient, whether through written mechanisms or through lip reading. It is the Deaf Association's interpretation that we must provide an interpreter who can effectively sign as well as speak. Whenever the law is ambiguous, as this is, the interpretation is left to the courts.

We have been informed by the Deaf Association that if we do not pay them for an
interpreter that they insisted come along to a patient visit, that they will sue us and "shut us down." The publicity of a law suit on discrimination is potentially far more harmful to us than the cost of paying an interpreter. So though legally we have the right to refuse and accept a lawsuit which we may well win, the threat of adverse publicity puts a dampening effect on our ability to fight for our interpretation of the law. The additional costs of an interpreter obviously add to our overhead which ultimately must be passed on to other patients, further increasing the cost of medical care. There is also a clear risk that physicians will be less willing to take on a deaf patient if it means paying more for the deaf patient's care than is received from the visit.

For these reasons, I request that you work to ammend the American Disabilities Act inserting language clarifying that this does not require an interpreter to

be present, as long as communication can be carried out through lip reading or through written notes.

I thank you for your attention to this matter.

Sincerely,

XXX

XXX/jab

01-00624

U.S. Department of Justice
Civil Rights Division

DJ# 181-06-0005

Coordination and Review Section
P.O. Box 66118
Washington, D.C. 20035-6118

APR 21 1992

Daniel L. Bart, Esq.
Senior Attorney
GTE Service Corporation
1850 M Street, N.W.
Suite 1200
Washington, D.C. 20036

Dear Mr. Bart:

This is in response to your letter requesting a "Declaratory Ruling" from the Department of Justice that "telecommunications equipment spaces, designed to be non-occupiable and frequented by service personnel for repair or maintenance fit the functional criteria for the General Exception of Section 4.1.1(5)(b)" of the Americans with Disabilities Act Accessibility Guidelines (ADAAG).

The ADA authorizes this Department to provide technical assistance to entities that are subject to title III. This letter provides informal guidance to assist you in understanding how the ADA accessibility standards may apply to specific situations. However, this technical assistance does not constitute a determination by the Department of Justice of rights or responsibilities under the ADA and does not constitute a binding determination by the Department of Justice.

Section 4.1.1(5)(b) of ADAAG provides that "[a]ccessibility is not required . . . in non-occupiable spaces accessed only by ladders, catwalks, crawl spaces, very narrow passageways, or freight (non-passenger) elevators, and frequented only by service personnel for repair purposes . . . ." Thus, telecommunications equipment spaces that are entered or approached by one of the

limited means of access described in this section are not required to comply with the guidelines. However, all other

telecommunications equipment spaces (i.e., those accessed by other means) are not exempt and must comply with the requirements for work areas contained in section 4.1.1(3). That section provides that:

> Areas that are used only as employee work areas shall be designed and constructed so that individuals with disabilities can approach, enter, and exit the areas. These guidelines do not require that any areas used only as work areas be constructed to permit maneuvering within the work area or be constructed or equipped (i.e., with racks or shelves) to be accessible.

I hope that this information is helpful to you.

Sincerely,

Stewart B. Oneglia
Chief
Coordination & Review Section
Civil Rights Division

cc: Larry Roffee, Executive Director
Architectural and Transportation
Barriers Compliance Board

01-00626

DJ 202-PL-00111

APR 21 1992

Mr. James C. Hanna
Director
Department of Housing and
Community Development
100 Community Place
Crownsville, MD 21032-2023

Dear Mr. Hanna:

We are responding to your letter of February 5, 1992, to Irene Bowen inviting the Civil Rights Division to comment on Maryland Senate Bill No. 469, and asking us to respond to certain questions concerning the enforcement of the Americans with Disabilities Act of 1990 (ADA), Pub. L. 101-336, 104 Stat. 327 (July 26, 1990), 42 U.S.C.A. 12101 et seq.

Before we address your specific questions, we must clarify the scope of this response. The Department of Justice is authorized by law to provide legal opinions only to the President and to the heads of Federal Executive agencies; therefore we can not provide a legal opinion with respect to a pending State legislative proposal.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities that are subject to that Act; therefore, we may provide informal guidance to assist you in understanding the ADA and the ADA regulations. However, this technical assistance does not constitute a determination by the Department of Justice of your rights or responsibilities under the ADA and it is not binding on the Department.

You have asked whether the State of Maryland has the authority to enforce the ADA. The ADA does not authorize State officials to enforce the ADA's accessibility standards. The ADA will be enforced at the Federal level through litigation or through Federal administrative enforcement proceedings. The specific enforcement mechanism varies according to the provision

cc: Records Chrono Wodatch Blizard arthur.ada.interpre.hanna
01-00627

of the Act that is being enforced. The ADA may also be enforced by private litigants. However, if the State enacts legislation adopting accessibility requirements based on the ADA as State law, those provisions may be enforced by State officials to the same extent that they would enforce any other provision of State law.

You have also asked if State officials may interpret the ADA accessibility standards, or if requests for such interpretations should be referred to the Department of Justice or to the Architectural and Transportation Barriers Compliance Board. We reiterate that State or local officials do not have the authority to enforce the ADA. If a State adopts an accessibility code that duplicates or is based on the ADA, State or local officials may interpret the provisions of that State code to the extent that State law permits them to do so. Such interpretations do not, however, constitute interpretations of the ADA.

Neither the Department of Justice nor the Architectural and Transportation Barriers Compliance Board plans to provide interpretations of the accessibility standards with respect to individual projects in the way that State or local agencies do. However, both agencies plan to respond to requests for technical assistance with respect to the accessibility standards to the extent that their resources permit.

We hope that this information is helpful to you.

Sincerely,

John L. Wodatch
Director
Office on the Americans with Disabilities Act

01-00628

Mr. Hanna -

This note is intended to provide to you my own general and informal answer to the two questions raised in your letter of February 5. We are not able to give you a more formal response due to staffing limitations and our own time constraints. We have numerous requests from all over the country. Partly because of our limited staff resources, it takes a while to answer the letters, and we try to answer them in the order in which they are received.

In response to your second concern stated in your letter, your State does not have the authority to enforce the ADA as a Federal statute. You do have the authority to enforce the same provisions as are in the ADA, if you make them part of your State code. But you are then enforcing the State code, not the ADA as such.

As to your first concern, the answer is similar. If you have a State code that is identical to or like the ADA, the State is able to interpret that code as a State code. That doesn't mean you are interpreting the ADA as such. DOJ will not have staff to provide interpretations about individual projects in the way that State or local agencies do. We will not do plan approvals.

Also, we are not necessarily encouraging the States and localities to incorporate the ADA regulations by reference; it may be more appropriate to include the substance of the ADA provisions in the existing code in language that is more familiar to those working with the codes. But if you do use the approach of incorporating by reference, it is very important to include not only the ADA accessibility guidelines (ADAAG) that the ATBCB issued, but also the other parts of the DOJ regulation that relate to new construction and alterations (subpart D of our title III rule for private entities' buildings).

I hope this is helpful. I'm glad to see the progress you're making in your State. I'm sorry that we can't give you guidance right now that is more official. We'll go ahead and answer your

letter officially as soon as we can.

Thanks,
Irene Bowen
01-00629

February 5, 1992

L. Irene Bowen, Esquire
Coordination and Review, Civil Rights Division
Department of Justice
Washington DC 20530

Dear Ms. Bowen:

In re: Senate Bill 469 - Disabled Persons -
Maryland Accessibility Code

Enclosed is a copy of Maryland Senate Bill No. 469, which was introduced on January 30, 1932, and assigned to the Senate Economic and Environmental Affairs Committee.

In view of our short legislative session, the bill will soon be scheduled for hearing by the assigned committee. Any specific comments from you will be invaluable in understanding our role in interpretation and enforcement of two provisions in the bill. The first concern: SB 469 makes the State responsible for interpretation of accessibility guidelines for buildings and facilities of the Americans with Disabilities Act of 1990. Do we have that authority or should requests for interpretation be forwarded to the Department of Justice or the ATBCB?

Our second concern: Does the State have the authority to enforce the provisions of the ADA in the legislation or is that done through the Department of Justice?

Because of our limited response time, we should appreciate hearing from you as quickly as possible.

Sincerely,

James C. Hanna, Director

JCH:grh

Enclosure
cc: Michael Seipp
Pat Sylvester

SENATE OF MARYLAND

2lr2361 No. 469 03

CF 2lr2424

By: Senators Stone and Garrott
Introduced and read first time: January 30, 1992
Assigned to: Economic and Environmental Affairs

A BILL ENTITLED

AN ACT concerning

Disabled Persons-Maryland Accessibility Code

FOR the purpose of requiring the Department of Housing and Community Development to develop, adopt regulations for, and administer the Maryland Accessibility Code; requiring the Department to incorporate certain guidelines in the Code; specifying certain procedures regarding the Code, including: interpretation, jurisdiction preparation of regulations, investigations of violations, and enforcement remedies; defining a term; establishing certain penalties; making stylistic changes; and generally relating to access for individuals with disabilities to buildings and facilities.

BY repealing and reenacting, with amendments,
Article 83B- Department of Housing and Community Development
Section 6-102
Annotated Code of Maryland
(1991 Replacement Volume)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article 83B- Department of Housing and Community Development

19 6-102

20 [(a)(1) the Department, or an appropriate division of the Department, shall
21 promulgate and adopt a State building code for the purpose of developing rules and
22 regulations for making building and facilities accessible and usable by the physically
23 handicapped to the extent feasible.

24 (2) The rules and regulations shall be developed in conjunction with
25 the Governor's Committee for Employment of the Handicapped, the
26 Maryland Rehabilitation Association, and the Maryland Society of Architects.

EXPLANATION: CAPITALS INDICATE MATTERS ADDED TO EXISTING LAW.
[BRACKETS] indicate matter deleted from existing law

1 (3) (i) In addition to any other penalty for a violation of the State
2 building code for the handicapped, the Secretary shall investigate to determine the
3 existence of any violation.]

4 (A) IN THIS SECTION "CODE" MEANS THE MARYLAND
5 ACCESSIBILITY CODE.

6 (B) THERE IS A MARYLAND ACCESSIBILITY CODE ADMINISTERED
7 BY THE DEPARTMENT.

8 (C) (1) THE DEPARTMENT SHALL DEVELOP THE CODE AND ADOPT
9 REGULATIONS TO MAKE BUILDINGS AND FACILITIES ACCESSIBLE AND
10 USABLE BY INDIVIDUALS WITH DISABILITIES TO THE EXTENT FEASIBLE.

11 (2) THE DEPARTMENT SHALL INCORPORATE BY REFERENCE IN
12 THE CODE THE ACCESSIBILITY GUIDELINES FOR BUILDINGS AND
13 FACILITIES OF THE AMERICANS WITH DISABILITIES ACT OF 1990 AS PART
14 OF THE MINIMUM STANDARDS OF THE CODE.

15 (3) THE DEPARTMENT SHALL PREPARE THE REGULATIONS
16 WITH THE:

17 (I) MARYLAND ADVISORY COUNCIL FOR INDIVIDUALS
18 WITH DISABILITIES;

19 (II) GOVERNOR'S COMMITTEE FOR EMPLOYMENT OF

PEOPLE WITH DISABILITIES:

(III) MARYLAND STATE INDEPENDENT LIVING COUNCIL;
(IV) MARYLAND REHABILITATION ASSOCIATION; AND

(V) MARYLAND SOCIETY OF ARCHITECTS.

(D) (1) THE SECRETARY SHALL INVESTIGATE QUESTIONS OF BUILDING AND FACILITY ACCESSIBILITY AND USABILITY BY INDIVIDUALS WITH DISABILITIES TO DETERMINE THE EXISTENCE OF A VIOLATION OF THE CODE.

[(ii)](2) If the Secretary determines that a violation exists, the Secretary may resolve [any] AN issue [in] REGARDING the violation by informal methods of mediation and conciliation.

[(iii)](3) In addition to the provisions of[subparagraph (ii) of this paragraph] PARAGRAPH (2) OF THIS SUBSECTION, the Secretary may institute in any court of competent jurisdiction in the subdivision in which the violation occurred an action for equitable relief which may include:

SENATE BILL No. 469

(I) [enjoining] ENJOINING the construction, renovation, or occupancy of a building or facility that violates the [Maryland Building] Code [for the Handicapped or to seek]; OR

(II) SEEKING other appropriate relief from the violation.

[(iv)](4) Notwithstanding any other provision of this [paragraph] SUBSECTION, the Secretary may not seek [any] AN injunction under [subparagraph (iii) of this paragraph] PARAGRAPH (3) OF THIS SUBSECTION until 5 working days after the Secretary has sought to seek a resolution through mediation and conciliation under [subparagraph (ii) of this paragraph] PARAGRAPH (2) OF THIS SUBSECTION.

(5) IF THE SECRETARY DETERMINES THAT A VIOLATION OF THE CODE IS ALSO A VIOLATION OF THE ACCESSIBILITY GUIDELINES UNDER PARAGRAPH (2) OF THIS SUBSECTION, THE SECRETARY MAY PURSUE AN ACTION OR SUPPORT AN ACTION OF OTHERS FOR ENFORCEMENT UNDER THE APPROPRIATE PROVISIONS OF THE CODE OF FEDERAL REGULATIONS.

[(4)](6) The Attorney General is authorized to prosecute all civil cases arising under this section which are referred to the Attorney General by the Secretary.

[(b)](D) (1) Enforcement of the Code shall be the responsibility of local

20 jurisdictions or any other public agencies having authority over buildings or facilities.

21 (2) The Department shall decide questions of interpretation of the Code
22 [and authorize any waivers or exemptions under the Code].

23 [(c)](E) (1) Any person who willfully violates any provision of the
[Maryland
24 Building] Code [for the Handicapped] adopted under subsection [(a)] (C) of this
25 section is guilty of a misdemeanor and on conviction for each violation is
subject to a fine
26 not exceeding $500 for each day that the violation exists or imprisonment not
exceeding 3
27 months[,] or both.

28 (2) Any penalty ordered under paragraph (1) of this subsection is in
29 addition to and is not a substitute for any other penalty ordered under a federal, State, or
30 local law.

31 [(d)](F) (1) Nothing in this section shall limit the authority of the Human
32 Relations Commission to enforce the provisions of Article 49B, S 22 of the
Code.

33 (2) The Department shall cooperate with and provide technical assistance to
34 the Human Relations Commission concerning any action brought by the Commission to
35 enforce the provisions of Article 49B, S 22 of the Code.

36 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
37 October 1, 1992.

U.S. Department of Justice
Civil Rights Division
DJ 192-06-00015
Coordination and Review Section
P.O. Box 66118
Washington, D.C. 20035-6118

APR 21 1992

Mr. James D. Harris
Deputy Attorney General
Office of the Attorney General
State of New Jersey
3rd Floor, West Wing
25 S. Market Street, CN 081
Trenton, New Jersey 08625

Dear Mr. Harris:

This letter responds to your letter to John L. Wodatch,

Director, office on the Americans with Disabilities Act, in which you seek clarification on the application of title I of the Americans With Disabilities Act (ADA) to State governments.

Title I of the ADA, which prohibits discrimination on the basis of disability by an employer in its employment practices, becomes effective on July 26, 1992, for employers with twenty-five or more employees. As all States employ more than twenty-five employees, title I will apply to all State governments after that date.

Additionally, title II of the ADA prohibits discrimination on the basis of disability in all programs, services, and activities of a State government, including its employment practices. Title II became effective on January 26, 1992. Although the Department of Justice title II regulation does incorporate title I's substantive standards with respect to a State's employment practices, these standards will not be applicable to State governments until July 26, 1992, the date that title I becomes effective. In the interim, the Department of Justice coordination regulation for federally assisted programs (28 C.F.R. Part 41) as implemented by the Department's section 504 regulation for its federally-assisted programs (28 C.F.R. Part 42, Subpart G), will be applied to complaints of employment discrimination under title II.

We hope this letter responds to your concerns. Should you require additional information, please call Louis M. Stewart of my staff at (202) 616-7779.

Sincerely,

Stewart B. Oneglia
Chief
Coordination and Review Section
Civil Rights Division

T. 4/15/92
SBO:MF:NM:hb

DJ# 192-06-00013

APR 21 1992

Mr. C.J. Morrow-Fundin
Assistant City Attorney
City of Mobile
P.O. Box 1827
Mobile, Alabama 36633-1827

Dear Mr. Morrow-Fundin:

This is in response to your letter concerning the applicability of the Americans with Disabilities Act (ADA) to the City of Mobile's Convention Center construction project.

The ADA authorizes the Department of Justice to provide technical assistance to entities that are subject to the Act. This letter provides informal guidance to assist you in understanding how the ADA may apply to you. However, this technical assistance does not constitute a determination by the Department of Justice of your rights or responsibilities under the ADA and does not constitute a binding determination by the Department of Justice.

Because the City began construction of the Convention Center before January 26, 1992, there is no obligation under the ADA to follow either the Uniform Federal Accessibility Standards (UFAS) or the ADA Accessibility Guidelines (ADAAG) in your construction project. However, because the Center, when completed, will be an "existing facility" under the Act, there is an obligation to make the Center's programs accessible. Constructing the Center in compliance with an accessibility standard will increase the probability that the programs offered in the Center will be accessible to all.

cc: Records; CRS; Oneglia; Friedlander; bb

The enclosed technical assistance manual for title II of the ADA at page 28 describes the different standards for assembly areas under UFAS and ADAAG. You will note that the ADAAG requirements are more detailed and more stringent than the UFAS requirements.

I hope this discussion has been helpful.

Sincerely,

Stewart B. Oneglia
Chief
Coordination and Review Section
Civil Rights Division

Enclosure

January 15, 1992

U.S. Department of Justice
Civil Rights Division
Office of the Americans With Disabilities Act
P. O. Box 66118
Washington, D.C. 20035-6118

Dear Director:

On January 9, 1992, I discussed the City of Mobile's Convention Center construction project with your office requesting a written confirmation of the City's legal position regarding the Americans with Disabilities Act (ADA) relative to this project. I was informed this request would take four to six weeks to complete. The City of Mobile would be most appreciative of whatever assistance you can provide to expedite the forwarding of this information to my attention in the City Legal Department, P. O. Box 1827, Mobile, Alabama 36633.

Attached for your information is a letter to Convention Center Project Manager Garry Johnson advising him of the conversation I had with your office. It is imperative the City of Mobile receive written confirmation as soon as possible. Thank you for your assistance in this matter.

Yours truly,

C. J. Morrow-Fundin
Assistant City Attorney
City of Mobile

CJM-F:vjw

ATTACHMENT

January 15, 1992

U.S. Department of Justice
Civil Rights Division
Office of the Americans With Disabilities Act
P. O. Box 66118
Washington, D.C. 20035-6118

Dear Director:

On January 9, 1992, I discussed the City of Mobile's Convention Center construction project with your office requesting a written confirmation of the City's legal position regarding the Americans with Disabilities Act (ADA) relative to this project. I was informed this request would take four to six weeks to complete. The City of Mobile would be most appreciative of whatever assistance you can provide to expedite the forwarding of this information to my attention in the City Legal Department, P. O. Box 1827, Mobile, Alabama 36633.

Attached for your information is a letter to Convention Center Project Manager Garry Johnson advising him of the conversation I had with your office. It is imperative the City of Mobile receive written confirmation as soon as possible. Thank you for your assistance in this matter.

Yours truly,
C. J. Morrow-Fundin
Assistant City Attorney
City of Mobile

CJM-F:vjw

January 15, 1992

Mr. Garry Johnson
Convention Center Project Manager
City of Mobile
P. O. Box 1827
Mobile, Alabama 36633-1827

Re: Americans With Disabilities Act
Mobile Convention Center Construction Project

Dear Garry:

I was successful in discussing the City of Mobile's Convention Center construction project with the Justice Department on the telephone January 9, 1992. By copy of this letter to the Justice Department, I am seeking a written confirmation of the following legal position with regards to the Americans with Disabilities Act (ADA). I was informed this request would take four to six weeks to complete.

First, a brief history on the topic. On July 29, 1990, President George Bush signed the ADA into law. The City of Mobile received bids from general contractors for the Convention Center project on January 9, 1991. On March 19, 1991, the City of Mobile entered into a contract for construction of the Convention Center with Harbert International of Birmingham, Alabama. Thompson, Ventulett, Stainback & Associates of Atlanta, Georgia, had previously been chosen as the architects for the project. The local architectural consultant is TAG Architects - The Architects Group. Manhattan - Ogden Joint Venture is the City's local construction consultant. The City of Mobile's Inspection Services Department issued a building permit to Harbert International for the Mobile Convention Center on April 4, 1991. In the meantime, on July 26, 1991, the Department of Justice acting pursuant to the ADA, issued its ADA Rules and Regulations which included an appendix with the ADA Accessibility Guidelines.

Obviously, much planning and design of the Convention Center had been completed prior to July 26, 1991 when the Department of Justice ADA Rules and Regulations were issued. The July, 1991 Justice Department regulations determined the compliance date for municipal governmental buildings under Title II of the Act to be January 26, 1992. The scope of Title II's coverage

of public entities is broad. Title II coverage is not limited to "executive" agencies, but includes activities of the legislative and judicial branches of state and local governments. All governmental activities of public entities are covered even if they are carried out by contractors. The private, nongovernmental entity operating a public facility would also be subject to the obligations of public accommodations under the standards set out by Title III of the Act, not Title II like the City of Mobile.

Under Title II of the ADA, "New Construction and Alterations" of facilities under design on January 26, 1992 will be governed by the ADA if the date the bids were invited falls after January 26, 1992. Since the bids for the Mobile Convention Center were received on January 9, 1991, over a year prior to the effective date of Title II of the ADA, the Mobile Convention Center would be classified as an "Existing Facility". The requirements under the ADA for an "Existing Facility" are as follows:

> "Unlike Title III of the Act, which requires public accommodations to remove architectural barriers where such removal is 'readily achievable,' or to provide goods and services through alternative methods, where those methods are 'readily achievable,' Title II requires a public entity to make its programs accessible in all cases, except where to do so would result in a fundamental alteration in the nature of the program or in 'undue financial and administrative burdens'. Congress intended the 'undue burden' standard in Title II to be significantly higher than the 'readily achievable' standard in Title III. Thus, although Title II may not require removal of barriers in some cases where removal would be required under Title III, the program access requirement of Title II should enable individuals with disabilities to participate in and benefit from the services, programs or activities of public entities in all but the most unusual cases." [56 F.R. 35708] Emphasis added.

Therefore, it is my legal opinion it would be in the City of Mobile's best interest to abide by the ADA's less ambiguous, more clear "New Construction and Alterations" Standards whereby public entities, like the City are allowed to choose to comply with either the ADAAG (ADA Accessibility Guidelines for Buildings and Facilities - Appendix "A" to Department of Justice's Regulation on Title III, 7/26/91) or UFAS (Uniform Federal Accessibility Standards-1988) if construction or an alteration on a governmental facility is to begin after the effective date of the Act - January 26, 1992.

Practically speaking, the UFAS Standards, which are the old military construction guidelines which have been codified, are better defined and more certain than the ADAAG Standards. Plus, the UFAS Standards do not differ greatly from the ANSI Standards [ANSI A117.1 American National Standard for Buildings and Facilities - Providing Accessibility and Usability for Physically Handicapped People - 1986], which the architects abided by in drafting the original plans for the Convention Center, whereas the ADAAG Standards do differ significantly from the ANSI Standards. In light of these considerations, I recommend that the construction team for the Mobile Convention Center abide by the UFAS guidelines and in my opinion that will more than cover compliance with the ADA.

Attached you will find copies of an "ADA - Title II - Public Entity Facilities Compliance Fact Sheet and Timetable", note the "self-evaluation" requirement. Please contact me if I can be of further assistance regarding this issue.

Yours truly,

C. J. Morrow-Fundin
Assistant City Attorney
City of Mobile

CJM-F:vjw

ATTACHMENT

cc: Mayor
City Council

City Attorney
City Council Attorney
TAG - Robert Krchak
Manhattan-Ogden - John Jamison
TVS - Don Benz
Harbert International - Gary Savage
Department of Justice

01-00642

Americans with Disabilities Act
Title II-Public Entity Facilities Compliance Fact Sheet

General Rule:
No qualified individual with a disability shall be discriminated against or excluded from participation in or the benefits of the services, programs, or activities of a public entity.

Program Accessibility:
No qualified individual with a disability shall, because of inaccessible or unusable facilities of a public entity, be excluded from participation in, or be denied the benefits of the services, programs, or activities of a public entity or be subject to discrimination by any public entity.

Limitations:
It is not required that a public entity take any action that it can demonstrate would constitute a fundamental alteration in the nature of the service, program or activity, or would cause an undue administrative or financial burden. Regardless of that, a public entity is required to take some action that would not trigger this limitation and ensure program accessibility.

Existing Facilities:
A public entity is required to make structural changes to existing facilities only when program accessibility is not feasible any other way (i.e.: reassignment of services to accessible building, or provision of auxiliary aids).

Although unable to protect a public entity from complaint or civil suit if programs are not readily accessible to and usable by persons with disabilities by Jan. 26, 1992, each public entity in the U.S. is required to complete a "self-evaluation" of its current policies and practices to identify any non-compliant policies or practices. (See the timetable for Title II facilities compliance on the other side of this sheet).

Where "structural changes" to existing facilities are the only way to arrive at program accessibility, a "transition plan" (only for public entities with 50 employees or more) outlining the steps necessary to complete the structural changes is required. Comments must be invited from disabled persons or organizations representing such individuals. The "transition plan" must be completed by July 26, 1992 and must include the identification of barriers (architectural and communication) to program accessibility, detailed methods for making the facilities accessible, a schedule for implementation and the official responsible for implementation.

New Construction:
All new facilities constructed by, on behalf of or for the use of a public entity shall be designed and constructed to be readily accessible to and usable by persons with disabilities if construction is started or if the invitation for bids is after Jan. 26, 1992.
Alterations:
Alterations to facilities of a public entity must also meet the "readily accessible" standard, to the maximum extent feasible.

Effective Date:
The effective date of this Title is Jan. 26, 1992.

Regulations and Standards:
The Department of Justice issued regulations on July 26, 1991 for all portions of Title II except those portions dealing with Public Transportation which have been issued by the Department of Transportation.

The regulations associated with Title II of the Act and printed in the Federal Register on July 26, 1991 state that compliance with the Uniform Federal Accessibility Standards (UFAS) or the ADAAG (without the

elevator exemption) shall satisfy the accessibility requirements of this Title for new and altered buildings and facilities. This publication also states that "departures from particular requirements of those standards by use of other methods shall be permitted when it is clearly evident that equivalent access to the facility or part of the facility is thereby provided."

Most facilities constructed or altered with Federal funds are presently required to comply with UFAS under the Architectural Barriers Act of 1968. Facilities constructed or altered by recipients of Federal financial assistance are presently required to comply with UFAS under Section 504 of the Rehabiliation Act of 1973.

Enforcement:
Those who believe themselves discriminated against may file a civil lawsuit in Federal District Court.

Individuals may file complaints with the designated Federal agencies concerning matters of Title II discrimination or contact the Department of Justice who will direct the complaints as required. The Federal agency specified in the regulations will then investigate the complaint (if made within 180 days of the alleged discrimination), attempt to resolve complaints on a voluntary compliance basis and then, if unsuccessful, refer case to the Department of Justice for civil suit.

Remedies are the same as available under Section 505 of the Rehabilitation Act of 1973. Courts may order an entity to make facilities accessible, provide auxiliary aids or services, modify policies, and pay attorneys' fees.

Notes: Unless stated otherwise, information presented above was taken from the Title II regulations published by the D.O.J. in the Federal Register July 26, 1991.

This is not legal advice. A competent lawyer should be consulted regarding any specific legal questions.

August 1991

Americans with Disabilities Act

Title II-Public Entity Facilities Compliance Timetable

7-26-1990 Signing of the Americans with Disabilities Act of 1990 by President George Bush.

2-28-1991 Draft Regulations issued by the Department of Justice for implementing Title II.

4-29-1991 Final comments on draft regulations due at DOJ.

7-26-1991 Final regulations for implementing Title II published by the Department of Justice.

1-26-1992 Effective Date of Title II.

1.) Ensure that the operation of each service, program and activity is operating so that each, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities. (35.150(a)

Even though the following required procedures will not shield a public entity from a discrimination complaint, they are mandatory if programs are not readily accessible to and usable by people with disabilities:

A. Begin self-evaluation process for those areas of services, policies and practices not previously evaluated (and on file) for section 504 of the Rehabilitation Act of 1973. (35.105)
B. Begin transition plan outlining structural changes required for program accessibility and proceed with structural changes, as required, to facilities "as expeditiously as possible". (35.150(e))

2.) New construction starting after this date must be readily accessible. (35.151(a))

3.) The altered portions of alterations beginning construction after this date must, to the maximum extent feasible, meet the "readily accessible to and usable by individuals with disabilities" standard set by the Uniform Federal Accessibility Standard or, at the public entity's option, the ADAAG. (35.151(b))

4.) Date a complaint or civil law suit may be filed by an individual based on ADA discrimination by a public entity.

7-26-1992 Transition plan complete where structural changes to facilities will be undertaken to provide program access. Transition plan must identify obstacles, describe in detail the methods that will be

used to make facilities accessible, specify the schedule for taking the steps identified and indicate the official responsible for implementation of the plan. (35.150(d))

1-26-1994 Self-evaluation complete. (35.105(a))

1-26-1995 Completion of last structural changes to facilities where such changes were undertaken for program accessibility.(35.150(c))

This is not legal advice. A competent lawyer should be consulted regarding any specific legal questions. Information presented above was taken from D.O.J. Regulation (28CFR Part 35) on Title II of ADA.

Evan Terry Associates P.C. 2129 Montgomery Highway Birmingham, Alabama 35209
(205)871-9765 FAX(205)871-9766
Architecture...Space Planning...Land Planning...Landscape Architecture

January 15, 1992

U.S. Department of Justice
Civil Rights Division
Office of the Americans With Disabilities Act
P.O. Box 66118
Washington, D.C. 20035-6118

Dear Director:

On January 9, 1992, I discussed the City of Mobile's Convention Center construction project with your office requesting a written confirmation of the City's legal position regarding the Americans with Disabilities Act (ADA)

relative to this project. I was informed this request would take four to six weeks to complete. The City of Mobile would be most appreciative of whatever assistance you can provide to expedite the forwarding of this information to my attention in the City Legal Department, P.O. Box 1827, Mobile, Alabama 36633.

Attached for your information is a letter to Convention Center Project Manager Garry Johnson advising him of the conversation I had with your office. It is imperative the City of Mobile receive written confirmation as soon as possible. Thank you for your assistance in this matter.

Yours truly,

C. J. Morrow-Fundin
Assistant City Attorney
City of Mobile

CJM-F:vjw

ATTACHMENT

01-00645

T. 4/22/92
SBO:MF:NM:hb
DJ# 192-16i-00014

Mr. (b)(6)
XX
Stoneboro, Pennsylvania 16153

Dear Mr. (b)(6)

This is in response to your letter to our office concerning

the Americans with Disabilities Act (ADA).

The ADA authorizes the Department of Justice to provide technical assistance to entities that are subject to the Act. This letter provides informal guidance to assist you in understanding how the ADA may apply to you. However, this technical assistance does not constitute a determination by the Department of Justice of your rights or responsibilities under the ADA and does not constitute a binding determination by the Department of Justice.

Title III of the ADA covers public accommodations and commercial facilities. The remedies available under title III depend upon the type of suit being brought. In a private suit, the available remedies are injunctive relief and attorney's fees, but not damages. If a suit is brought by the Department of Justice under title III, the remedies available are injunctive relief, damages to individuals, and civil penalties or fines. Title III of the ADA became effective on January 26, 1992, generally. New facilities for which construction began after January 26, 1992, for first occupancy after January 26, 1993, must be fully accessible.

Title II of the ADA, which covers State and local government entities, incorporates by reference the remedies, procedures, and rights set forth in section 505 of the Rehabilitation Act of 1973. The remedies authorized by section 505 include injunctions and damages in certain cases, but they do not include civil penalties. Title II of the ADA became effective on January 26, 1992.

cc: Records; CRS; Oneglia; Friedlander; Milton; FOIA; hb

01-00646

Title I of the ADA covers employment by all employers, other than the Federal government, with 15 or more employees. Title I becomes effective on July 26, 1992, for employers with 25 or more employees, and on July 26, 1994, for employers with 15-24 employees. For information on the remedies available under title I, you should contact the Equal Employment Opportunity

Commission, 1801 L Street, N.W., Washington, D.C. 20507, at (800) 669-EEOC.

A packet of materials on the ADA, including the ADA Accessibility Guidelines, is enclosed for your further information. Also enclosed is a copy of the Department of Justice's regulation for the coordination of nondiscrimination in federally assisted programs, which was issued pursuant to section 504 of the Rehabilitation Act of 1973. If you are interested in receiving additional information about the Rehabilitation Act of 1973, you should contact the Government Printing Office, Superintendent of Documents, Washington, D.C. 20402, at (202) 783-3238.

I hope this information has been helpful to you.

Sincerely,

Stewart B. Oneglia
Chief
Coordination and Review Section
Civil Rights Division

Enclosures (5)

01-00647

3/12/92

Dear Sir:

I am a citizen of the United States.

I would like to learn more about the American with Disabilities Act (1989). I am most interested in the area of remedies to stop discrimination. Also, I would appreciate any detailed information on the Rehabilitation Act of 1973. Guidelines for accessibility would helpful.

Thank you.

(b)(6) Sincerely Yours,

XX

Stoneboro, PA 16153 XX

(b)(6)

01-00648

DJ 192-180-05606 April 24, 1992

Ms. Catherine Richter

San-Suz-Ed RV Park
Post Office Box 387
West Glacier, Montana 59936

Dear Ms. Richter:

This letter is in response to your correspondence regarding the application of the Americans with Disabilities Act (ADA) to ground surfaces that are required to be accessible. You appear to believe that you would Violate the ADA if you followed your county's requirements for gravel ground surfaces on a public roadway and in parking spaces in your RV park.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities with rights or obligations under the Act. This letter provides informal guidance to assist you in understanding the ADA accessibility standards. However, this technical assistance does not constitute a legal interpretation of the statute and it is not binding on the Department.

If you are a private entity operating a place of recreation that affects interstate commerce, you are a public accommodation subject to title III of the ADA and this Department's regulation, including its ADA Accessibility Guidelines. There are, however, no specific requirements under the ADA for public roads. Thus, the county's requirements for the public roadway would not be inconsistent with the ADA.

As for the parking spaces, the ADA Accessibility Guidelines require that the access aisle of the accessible parking space be "stable, firm, slip-resistant." It is true that gravel is generally not considered to be a complying ground surface for new construction or alterations. However, because your project was undertaken before the effective date of the ADA, you should apply the ADA requirements for existing facilities, not new construction or alterations.

In existing facilities, a public accommodation must remove barriers when it is "readily achievable" to do so. "Readily achievable" means easily accomplishable and able to be carried out without much difficulty or expense. If you determine that it is readily achievable to add pavement or other suitable binder treatment to the surfaces of the access aisles of certain of your parking spaces to provide accessibility, you would be complying with the barrier removal requirements of the ADA. It is likely that such action regarding the parking spaces would be permitted by the county regulations.

I am enclosing a copy of the regulations and a copy of the title III Technical Assistance Manual prepared by the Department of Justice. I hope this information is useful to you in complying with the ADA.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

Enclosures (2)

CARING FOR THE HANDICAPPED and obeying the State and Federal Accessibility Law brings guilty verdict to the Richter's of the San-Suz-Ed Trailer & R.V. Park.

ATTENTION HANDICAPPED - DISABLED
& SENIOR CITIZENS

We want you to know - Howard Gipe DID NOT speak up on your behalf! Sharon Stratton DID NOT speak up on your behalf ! Mary Atkins DID NOT speak up on your behalf! Your County Planning Board, Mr. Herbaly and Mr. Greer, who are in charge of this department, DID NOT speak or ACT IN YOUR BEHALF!

These people and our politicians have not paid any attention to the Federal and State Laws. These people are DEGRADING our campgrounds by wanting to use OIL AND/OR THREE-QUARTER INCH ROCKS for you to walk on and try to get around in your wheelchairs.

"This information will help you to comply with the new Accessibility Laws:"

- Public accommodations such as restaurants, hotels, theaters, doctors' offices, pharmacies, retail stores, museums, libraries, parks, private schools, and day care centers, may not discriminate against individuals with disabilities.

- Physical barriers in existing facilities must be removed, if removal is readily achievable. If not, alternative methods of providing the services must be offered, if they are readily achievable.

- All new constructions and alterations of facilities must be accessible.

- Auxiliary aids and services must be provided to individuals with vision or hearing impairments or other individuals with disabilities unless an undue burden would result.

- Complaints can be filed with the Attorney General, who may file lawsuits to stop discrimination and obtain money damages and penalties.

This information was sent to the San-Suz-Ed by their wheelchair people that come every year and by Michael J. Regnier, Advocacy Coordinator of the Summit Independent Living Center Inc.

The San-Suz-Ed has been using these hard packed, clean, gravel spaces since 1968 and all electric wheelchairs can travel all over the campground with no assistance from others. They DO NOT track oil into their 80 to 800 thousand dollar homes on wheels. Oil and/or 3/4" rocks are degrading.

Montana STATE LAW says all roads must be well drained and graded.

(Handwritten letter) March 30 -

Hello from Beautiful Western Montana

I was told to send you this information I went to our county commissioner they did not care our judge could care less and the state attorney general said sorry and so I sent it to the Attorney General's Office in D.C. and I was able to get them on the phone and they said they received my information and would call me back in a week probably on Tuesday. Well I also turned Justice of the Peace Stewart (word illegible) in to the judicial committee and have not heard from them yet, to see how they are go(illegible) to vote on this.

We have to know soon as we are getting reservations and need to know if we can use these spaces as they are.

We started our camp in 1964 so we do know what it is all about and we are proud of our camp. We have gravel, "lots", of it, and it is the kind that wheel chairs can get around in. 3/4" rock gravel is not what we need. Oil is supposed to settle the dust. Well if and when we have dust we sprinkle it with water (illegible) we water our grass, natural flowers, & (illegible) this is clean and no (illegible) get

---

upset with water but oil don't (illegible) it to our tourist campers, the word passes fast and the campers would just go by. So will our business We have a very short season and we don't want to go into bankruptcy over this.

Hope to hear from you soon. I can get the D.C. Attorney General office on the phone or by mail.

Thanks
Catherine Richter
of the
San-Suz-Ed

DJ 182-06-00043 APR 24 1992

Mr. Charles E. Scharbrough, AIA, CSI
Project Architect
Paul I. Cripe, Inc.
7172 Graham Road
Indianapolis, Indiana 46250

Dear Mr. Scharbrough:

This responds to your request for an interpretation of the Americans with Disabilities Act (ADA) as applied to office buildings.

The ADA authorizes the Department to provide technical assistance to entities that are subject to the Act. This letter provides informal guidance to assist you in understanding how the ADA may apply to you. However, this technical assistance does not constitute a determination by the Department of Justice of your rights or responsibilities under the ADA and does not constitute a binding determination by the Department of Justice.

Title III of the ADA establishes specific requirements for "places of public accommodation," which are facilities whose operations affect commerce and fall into one or more of twelve specified categories including restaurants, sales or rental establishments, and service establishments. "Commercial facilities" are facilities that are intended for nonresidential use and whose operations affect commerce. Commercial facilities that do not fall into one or more of the listed categories of places of public accommodation are only subject to the requirements of title III for new construction and alterations (subpart D of the Department's regulation implementing title III).

The requirements for removal of barriers in existing facilities apply to facilities that are "places of public

accommodation" (including common areas serving a place of public accommodation), whether or not those facilities are also included in the definition of "commercial facility." Thus, those areas of

cc: Records Chrono Files Oneglia Wodatch Kaltenborn
FOIA Breen
01-00654

an office building that are places of public accommodation are subject to the barrier removal requirement as well as the other requirements of title III for places of public accommodation. Areas of an office building that are not places of public accommodation are only subject to the requirements for commercial facilities.

We hope that this information is helpful.

Sincerely,

Stewart B. Oneglia
Chief
Coordination & Review Section
Civil Rights Division

01-00655

7172 Graham Road
Indianapolis, Indiana 46250
317-842-6777
FAX 317-841-4798
PAUL I. CRIPE, INC.

December 5, 1991

Ms. Barbara S. Drake
Deputy Assistant Attorney General
Civil Rights Division
US Department of Justice
Washington, DC 20530

RE: Question on 28 CFR Part 36
Commercial Facilities Definition

Dear Ms. Drake:
Can you be more specific about the definition of Commercial Facilities, specifically as it regards Office Buildings? Office buildings are defined as commercial facilities in the middle of the third column of page 35547 of the Federal Register. On page 35551, however, places of public accommodation are defined to include sales and/or service establishments. We have not yet found an office building where sales and/or service do not take place. Is there an intent in the law concerning the "extent" to which sales and/or service take place?

If a building qualifies as an office building, and does not house any of the specific places of public accommodation itemized in 36.104, is it then a commercial facility? Is the type of sales and service done in an office building recognized as inherently different? Why were "office buildings" included in the category of "commercial facilities".

We, Paul I. Cripe, Inc. offer architectural services. Our clients want to know the answers to the above questions so they will know if the requirements for removal of barriers in existing facilities apply to them.

Thank you for your consideration.

Sincerely,
PAUL I. CRIPE, INC.
Charles E. Scharbrough, AIA, CSI
Project Architect
tp
Enclosure

Civil Rights Division
Coordination and Review Section
P.O. Box ILLEGIBLE
Washington, D.C. 20035-6118

DEC 10 1991

(inserted in three columns)
from physical impairments, or other sexual behavior disorders;

(ii) Compulsive gambling, kleptomania, or pyromania; or

(iii) Psychoactive substance use disorders resulting from current illegal use of drugs.

Drug means a controlled substance, as defined in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812).

Facility means all or any portion of buildings, structures, sites, complexes, equipment, rolling stock or other conveyances, roads, walks, passageways, parking lots, or other real or personal property, including the site where the building, property, structure, or equipment is located.

Illegal use of drugs means the use of one or more drugs, the possession or distribution of which is unlawful under the Controlled Substances Act (21 U.S.C. 812). The term "illegal use of drugs" does not include the use of a drug taken under supervision by a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of Federal law.

Individual with a disability means a person who has a disability. The term "individual with a disability" does not include an individual who is currently engaging in the illegal use of drugs, when the private entity acts on the basis of such use.

Place of public accommodation means a facility, operated by a private entity, whose operations affect commerce and fall within at least one of the following

categories-

(1) An inn, hotel, motel, or other place of lodging, except for an establishment located within a building that contains not more than five rooms for rent or hire and that is actually occupied by the proprietor of the establishment as the residence of the proprietor;

(2) A restaurant, bar, or other establishment serving food or drink;

(3) A motion picture house, theater, concert hall, stadium, or other place of exhibition or entertainment.

(4) An auditorium, convention center, lecture hall, or other place of public gathering;

(5) A bakery, grocery store, clothing store, hardware store, shopping center, or other sales or rental establishment;

(6) A laundromat, dry-cleaner, bank, barber shop, beauty shop, travel service, shoe repair service, funeral parlor, gas station, office of an accountant or lawyer, pharmacy, insurance office, professional office of a health care provider, hospital, or other service establishment;

(7) A terminal, depot, or other station used for specified public transportation;

(8) A museum, library, gallery, or other place of public display or collection;

(9) A park, zoo, amusement park, or other place of recreation;

(10) A nursery, elementary, secondary, undergraduate, or postgraduate private school, or other place of education;

(11) A day care center, senior citizen center, homeless shelter, food bank, adoption agency, or other social service center establishment; and

(12) A gymnasium, health spa, bowling alley, golf course, or other place of exercise or recreation.

Private club means a private club or establishment exempted from coverage under title II of the Civil Rights Act of 1964 (42 U.S.C. 2000a(e)).

Private entity means a person or entity other than a public entity.

Public accommodation means a private entity that owns, leases (or leases to), or operates a place of public accommodation.

Public entity means-

(1) Any State or local government;

(2) Any department, agency, special purpose district, or other instrumentality of a State or States or local government; and

(3) The National Railroad Passenger Corporation, and any commuter authority (as defined in section 103(8) of the Rail Passenger Service Act). (45 U.S.C. 541)

Qualified interpreter means an interpreter who is able to interpret effectively, accurately and impartially both receptively and expressively, using any necessary specialized vocabulary.

Readily achievable means easily accomplishable and able to be carried out without much difficulty or expense. In determining whether an action is readily achievable factors to be considered include--

(1) The nature and cost of the action needed under this part;

(2) The overall financial resources of the site or sites involved in the action; the number of persons employed at the site; the effect on expenses and resources; legitimate safety requirements that are necessary for safe operation, including crime prevention measures; or the impact otherwise of the action upon the operation of the site;

(3) The geographic separateness, and the administrative or fiscal relationship of the site or sites in question to any parent corporation or entity;

(4) If applicable, the overall financial resources of any parent corporation or entity; the overall size of the parent corporation or entity with respect to the number of its employees; the number,

type, and location of its facilities; and

(5) If applicable, the type of operation or operations of any parent corporation or entity, including the composition, structure, and functions of the workforce of the parent corporation or entity.

Religious entity means a religious organization, including a place of worship.

Service animal means any guide dog, signal dog, or other animal individually trained to do work or perform tasks for the benefit of an individual with a disability, including, but not limited to, guiding individuals with impaired vision, alerting individuals with impaired hearing to intruders or sounds, providing minimal protection or rescue work, pulling a wheelchair, or fetching dropped items.

Specified public transportation means transportation by bus, rail, or any other conveyance (other than by aircraft) that provides the general public with general or special service (including charter service) on a regular and continuing basis.

State means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

Undue burden means significant difficulty or expense. In determining whether an action would result in an undue burden, factors to be considered include--

(1) The nature and cost of the action needed under this part;

(2) The overall financial resources of the site or sites involved in the action; the number of persons employed at the site; the effect on expenses and resources; legitimate safety requirements that are necessary for safe

operation, including crime prevention measures; or the impact otherwise of the action upon the operation of the site;

(3) The geographic separateness, and the administrative or fiscal relationship of the site or sites in question to any parent corporation or entity;

(4) If applicable, the overall financial resources of any parent corporation or entity; the overall size of the parent corporation or entity with respect to the number of its employees; the number, type, and location of its facilities; and

(5) If applicable, the type of operation or operations of any parent corporation or entity, including the composition, structure, and functions of the workforce of the parent corporation or entity.

required to meet the "program accessibility" standard in order to comply with section 504, but would not be in violation of the ADA unless it failed to make "readily achievable" modifications. On the other hand, an entity covered by the ADA is required to make "readily achievable" modifications, even if the program can be made accessible without any architectural modifications. Thus, an entity covered by both section 504 and title III of the ADA must meet both the "program accessibility" requirement and the "readily achievable" requirement.

Paragraph (b) makes explicit that the rule does not affect the obligation of recipients of Federal financial assistance to comply with the requirements imposed under section 504 of the Rehabilitation Act of 1973.

Paragraph (c) makes clear that Congress did not intend to displace any of the rights or remedies provided by other Federal laws or other State or local laws (including State common law)

that provide greater or equal protection to individuals with disabilities. A plaintiff may choose to pursue claims under a State law that does not confer greater substantive rights, or even confers fewer substantive rights, if the alleged violation is protected under the alternative law and the remedies are greater. For example, assume that a person with a physical disability seeks damages under a State law that allows compensatory and punitive damages for discrimination on the basis of physical disability, but does not allow them on the basis of mental disability. In that situation, the State law would provide narrower coverage, by excluding mental disabilities, but broader remedies, and an individual covered by both laws could choose to bring an action under both laws. Moreover, State tort claims confer greater remedies and are not preempted by the ADA. A plaintiff may join a State tort claim to a case brought under the ADA. In such a case, the plaintiff must, of course, prove all the elements of the State tort claim in order to prevail under that cause of action.

A commenter had concerns about privacy requirements for banking transactions using telephone relay services. Title IV of the Act provides adequate protections for ensuring the confidentiality of communications using the relay services. This issue is more appropriately addressed by the Federal Communications Commission in its regulation implementing title IV of the Act.

Section 36.104 Definitions

"Act." The word "Act" is used in the regulation to refer to the Americans with Disabilities Act of 1990, Pub. L. 101-336, which is also referred to as the "ADA."

"Commerce." The definition of "commerce" is identical to the statutory definition provided in section 301(1) of the ADA. It means travel, trade, traffic,

commerce, transportation, or communication among the several States, between any foreign country or any territory or possession and any State, or between points in the same State but through another State or foreign country. Commerce is defined in the same manner as in title II of the Civil Rights Act of 1964, which prohibits racial discrimination in public accommodations.

The term "commerce" is used in the definition of "place of public accommodation." According to that definition, one of the criteria that an entity must meet before it can be considered a place of public accommodation is that its operations affect commerce. The term "commerce" is similarly used in the definition of "commercial facility."

The use of the phrase "operations affect commerce" applies the full scope of coverage of the Commerce Clause of the Constitution in enforcing the ADA.

The Constitution gives Congress broad authority to regulate interstate commerce, including the activities of local business enterprises (e.g., a physician's office, a neighborhood restaurant, a laundromat, or a bakery) that affect interstate commerce through the purchase or sale of products manufactured in other States, or by providing services to individuals from other States. Because of the integrated nature of the national economy, the ADA and this final rule will have extremely broad application.

"Commercial facilities" are those facilities that are intended for nonresidential use by a private entity and whose operations affect commerce. As explained under S 36.401, "New construction," the new construction and alteration requirements of subpart D of the rule apply to all commercial facilities, whether or not they are places

of public accommodation. Those commercial facilities that are not places of public accommodation are not subject to the requirements of subparts B and C (e.g., those requirements concerning auxiliary aids and general nondiscrimination provisions).

Congress recognized that the employees within commercial facilities would generally be protected under title I (employment) of the Act. However, as the House Committee on Education and Labor pointed out, "[t]o the extent that new facilities are built in a manner that make[s] them accessible to all individuals, including potential employees, there will be less of a need for individual employers to engage in reasonable accommodations for particular employees." H.R. Rep. No. 485, 101st Cong., 2d Sess., pt. 2, at 117 (1990) [hereinafter "Education and Labor report"]. While employers of fewer than 15 employees are not covered by title I's employment discrimination provisions, there is no such limitation with respect to new construction covered under title III. Congress chose not to so limit the new construction provisions because of its desire for a uniform requirement of accessibility in new construction, because accessibility can be accomplished easily in the design and construction stage, and because future expansion of a business or sale or lease of the property to a larger employer or to a business that is a place of public accommodation is always a possibility.

The term "commercial facilities" is not intended to be defined by dictionary or common industry definitions. Included in this category are factories, warehouses, office buildings, and other buildings in which employment may occur. The phrase, "whose operations affect commerce," is to be read broadly, to include all types of activities reached under the commerce clause of the

Constitution.

Privately operated airports are also included in the category of commercial facilities. They are not, however, places of public accommodation because they are not terminals used for "specified public transportation." (Transportation by aircraft is specifically excluded from the statutory definition of "specified public transportation.") Thus, privately operated airports are subject to the new construction and alteration requirements of this rule (subpart D) but not to subparts B and C. (Airports operated by public entities are covered by title II of the Act.) Places of public accommodation located within airports, such as restaurants, shops, lounges, or conference centers, however, are covered by subparts B and C of this part.

The statute's definition of "commercial facilities" specifically includes only facilities "that are intended for nonresidential use" and specifically exempts those facilities that are covered or expressly exempted from coverage under the Fair Housing Act of 1968, as amended (42 U.S.C. 3601-3631). The interplay between the Fair Housing Act and the ADA with respect to those facilities that are "places of public accommodation" was the subject of many comments and is addressed in the

01-00658

U.S. Department of Justice
Civil Rights Division

DJ 192-16i-00017

Coordination and Review Section
P.O. Box 66118
Washington, D.C. 20035-6118

APR 28 1992

Ms. X
XXXXXXXX

Austin, Texas 78704

Dear Ms. X

This letter is in response to your inquiry concerning a list of addresses and telephone numbers to be used in contacting the agencies designated to receive complaints under title II of the Americans with Disabilities Act (ADA). In addition, you have asked whether there are regional offices of the Department of Justice designated to address title II issues.

With respect to your last question, there are no regional offices of the Department of Justice designated to respond to title II complaints.

The list of agency addresses and phone numbers is as follows:

Department of Agriculture: Complaints Adjudication Division, Office of Advocacy and Enterprise, Room 1353 - South Building, Department of Agriculture, 14th & Independence Avenue, S.W. ,Washington, D.C. 20250; Telephone: (202) 720-5681 (Voice); (202) 720-7327 (TDD);

Department of Education: Office for Civil Rights, Department of Education, 330 C Street, S.W., Suite 5000, Washington, D.C. 20202; Telephone: (202) 732-1637 (Voice); (202) 732-1673 (TDD) ;

Department of Health and Human Services: Office of Civil Rights, Department of Health & Human Services, 330 Independence Avenue, S.W. , Washington, D.C. 20201; Telephone: . (202) 619-0553 (Voice) ; (800) 537-7697 (TDD) , (202) 863-0101 (TDD-for 202 area code);

Department of Housing and Urban Development: Assistant Secretary for Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 7th Street, S.W., Room 5100, Washington, D.C. 20410; Telephone: (800) 669-9777 (Voice) ; (800) 927-9275 (TDD);

Department of the Interior: Office for Equal Opportunity, Office of the Secretary, Department of Interior, 18th & C Streets, N.W., Washington, D.C. 20547; Telephone: (202) 208-4015 (Voice); (202) 208-4817 (TDD) ;

Department of Justice: Coordination and Review Section, P.O. Box 66118, Civil Rights Division, U.S. Department of Justice, Washington, D.C. 20035-6118; Telephone: (202) 514-0301 (Voice) ; (202) 514-0381, 0383 (TDD) ;

Department of Labor: Directorate of Civil Rights, Department of Labor, 200 Constitution Avenue, N.W., Room N-4123, Washington, D.C., 20210; Telephone: (202) 523-8927 (Voice); (202) 523-8927 (TDD) ;

Department of Transportation: Office for Civil Rights, Office of the Secretary, Department of Transportation, 400 Seventh Street, S.W. , Room 10215, Washington, D.C. 20590; Telephone: (202) 366-4754 (Voice) ; (202) 755-7687 (TDD).

I hope you find this information of assistance.

Sincerely,

Stewart B. Oneglia
Chief
Coordination and Review Section
Civil Rights Division

APR 29 1992

DJ 181-06-0010
Mr. Walter Laroque
Laroque Consulting/Training, Inc.

2640 Canal Street
Suite 304 - Third Floor
New Orleans, Louisiana 70119-6410

Dear Mr. Laroque:

This responds to your letter to Barbara Drake, Stewart Oneglia, and John Wodatch. Your request for written materials has been referred to our publications unit.

Although Federal Executive agencies are not covered by the Americans with Disabilities Act (ADA), they are covered by sections 501 and 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. SS791 and 794. Because section 504 served as the model for the requirements of the ADA, the requirements for Executive agencies are substantially the same as the requirements for private employers under the ADA. The Federal judiciary, however is covered by neither the ADA nor the Rehabilitation Act.

Section 304 of the ADA prohibits discrimination on the basis of disability in the provision of transportation services to the general public by bus, rail, or any other conveyance on a regular and continuing basis by any private entity that is primarily engaged in the business of transporting people and whose operations affect commerce. This requirement would include taxi services.

Your questions concerning the employment requirements of title I should be addressed to the Equal Employment Opportunity Commission. We note, however, that there is no requirement for development of a strategic plan or conducting of training seminars.

Section 310 of the ADA was intended to defer the effective date of title III for small businesses. The regulation is taken directly from the statute and provides that, except for any civil action brought for a violation of section 303 of the Act, no civil action shall be brought for any act or omission described in section 302 of the Act that occurs-

cc: Records, CRS, Kaltenborn, Friedlander, Craig, FOIA:dhj
udd:Kaltenborn:Laroque
01-00661

(1) Before July 26, 1992, against businesses with 25 or fewer employees and gross receipts of $1,000,000 or less.

(2) Before January 26, 1993, against businesses with 10 or fewer employees and gross receipts of $500,000 or less.

The effective date for public accommodations not covered by this provision is January 26, 1992. All public accommodations are fully covered, and subject to suit, after January 26, 1993.

I hope this information is helpful.

Sincerely,

Stewart B. Oneglia
Chief
Coordination and Review Section
Civil Rights Division

01-00662

Friday - 16 August 1991
THIS LETTER IS INDIVIDUALLY ADDRESSED, AND SEPARATELY MAILED, TO EACH OF THE THREE PEOPLE SHOWN BELOW AS THE ADDRESSEES

Ms. Barbara S. Drake
Deputy Assistant Attorney General - Civil Rights Division - U. S. Department of Justice
Washington, DC 20530

Mr. Stewart B. Oneglia - Chief
Coordination and Review Section - Civil Rights Division
U. S. Department of Justice
Washington, DC 20530

Mr. John L. Wodatch - Director - Office on the Americans With Disabilities - Civil Rights Division - U.S. Department of Justice
Washington, DC 20530

Dear Ms. Drake and Messrs. Oneglia and Wodatch:

We have been "commissioned", by the CHAMBER/New Orleans and the River Region (ie: the New Orleans Chamber of Commerce) to write, and conduct, public training seminars, for businesses, employers, and others, affected by the provisions of PL 101-336 - AMERICANS WITH DISABILITIES ACT OF 1990 (short title: ADA). That Chamber's membership is found in the 7 Civil Parishes (ie: Counties in other States) of: Jefferson, Orleans, Plaquemines, St. Bernard, St. Charles, St. James and St. John the Baptist.

We come to you to request you factually/legally assist our effort. We ask that you send us certain written materials. We ask you for certain legal and/or other clarifications. Please help us in these specific areas:

WRITTEN MATERIALS (Affecting TITLES II, III and IV only): Copies of: (a) final rules and interpretive appendices, in LARGE PRINT - (b) - compliance manuals - (c) - policy guidances - (d) - any other written pieces re: USDJ's approach to the implementation of the ADA and the enforcement of its legal and regulatory requirements and (e) parts of compliance manuals, now completed, even though the total manuals are not now available.

LEGAL AND/OTHER DEFINITIVE INTERPRETATIONS (Re: TITLES II, III and IV, except for Request One below):

Request One: (Re: TITLE I) - Act's Coverage: TITLE I - EMPLOYMENT SEC. 101. DEFINITIONS (5) EMPLOYER (B) EXCEPTIONS (i) - says: "The term 'employer' does not include - (i) the United States, a corporation wholly owned by the government of the United States ***. OUR QUESTION: Does this mean that the Executive and Judicial Branches of the Federal Government, and the Federal Agencies, under these two Branches, are exempt (as employers) from the provisions of the Act (PL 101 336)? We note that Section 509 of TITLE Vof that

Act says: the ADA covers Congress and Senate (the Legislative Branch) and certain agencies of that Branch.

Request Two:
Possible Contradiction: Section 506 (PL 101 336) - TECHNICAL ASSISTANCE (c) IMPLEMENTATION - (3) TECHNICAL ASSISTANCE MANUALS says: "Each Federal agency that has responsibility *** shall ***ensure the availability and provision of technical assistance manuals to individuals or entities with rights or duties under this Act ***." Then, in (e) further down, in the Act, it says: "***shall not be excused from compliance with the requirements of this Act because of any
failure to receive technical assistance under this section, including any failure in the development or dissemination of any technical assistance manual authorized by this section." To us this sounds unfairly punitive and contradic-
01-00663

tory since, in one place it says: "ensure availability and provision" and then later, no excuse: "because of any failure ***including any failure in the development, etc."

Request Three:
Taxis: Buses, and trains, as forms of public transportation are mentioned in the Act. OUR QUESTION: Are taxis, as a mode of public transportation, exempt from coverage under the ADA?

Request Four:
We read a newspaper news article. It said that ADA-covered employers will be required to: (A) - prepare a STRATEGIC PLAN and (B) - conduct educational training seminars re: TITLES I, II, III and IV, for their staffs. Are these two things so? We did not find these two requirements mentioned anywhere in the ADA (PL 101 336).

Request Five:
If a STRATEGIC PLAN is a legal and/or regulatory requirement of employers, please send us (a) - a model or format for one of these PLANS and/or (b) - a statement of the content, needed, in one of these PLANS, which would fully satisfy the requirements for an acceptable STRATEGIC PLAN, if this type PLAN, indeed, will be required. And,

Request Six:
We are probably reading it incorrectly. We are probably missing the point. We are sure you can correct our reading. We are certain you can help us see the point. Such help, in interpretation, on your part, is hereby requested.
Situation: It concerns a piece prepared by Erica Jones (possibly associated with: President's Committee on Employment of People With Disabilities). This is excerpted from it:

Why this seemingly (at least to us) unnecessary language? It refers to TITLE III(A). We opine: if a Company has (a) - 2 employees, then those 2 are: "***(25)or less employees" and (b) - revenue of $100, then those $100 are: "***$1 million or less". And, what happens to a Company with 26 employees and $1,000,001 in revenue? Are they not covered?

NEW SUBJECTS:
NS#1: We wish to be active in the promotion, advancement and educational/training aspects of the ADA.

(COPY OF PIECE OF PAPER ON PAGE) A. Public accommodations (all business and service providers - January 26, 1992, for businesses with twenty-five (25) or less employees and revenue $1 million or less; January 26, 1993, for

businesses with ten (10) or less employees and revenue $500,000 or less.

Section 506 (d) (1) and (2) refer (at least in our opinion, they seem to) to the need, for people, like us (ie: LAROQUE CONSULTING/TRAINING, Inc.) to assist in effectuation of the intents and purposes of the AMERICANS WITH DISABILITIES ACT.

OUR QUESTION: To whom can we go to get information in this matter of assistance in effectuation of the intents and purposes of the ADA?

NS#2: Please send us: (1) regulations implementing Section 504 of the Rehabilitaation Act of 1973, transferred to your Department, in 1980 by Executive Order 12250 (2) a copy of EO 12250 (3) the Federal Register of 26 July 1991 Part II - Architectural and Transportation Barriers Compliance Board and (4) the Regulatory Flexibility Act and the Paper Work Reduction Act.

Thanks for your assistance in fulfilling the requests, made in this letter.
And, we reiterate our interest: to have our seminars be: accurate - correct factual - legal in their
01-00664

subject content!

Ms. Drake and Messrs. Oneglia and Wodatch, we have attached, to this letter, a copy of one we wrote, on 26 July 1991. It is sent to you with the hope that it will be, to you, or others, useful, in addition, we would also hope, to being merely informative.

SICUT PATRIBUS, SIT DEUS NOBIS!

(picture)

Sincerely,

Walter Laroque
Attachment (As described in this letter)
wjl/eka
01-00665

LAROQUE CONSULTING / TRAINING, Inc.
Suite 304 - Third Floor
2640 Canal Street
New Orleans, Louisiana 70119-6410
(504) 827-8601

Friday - 26 July 1991

WHILE THIS LETTER APPEARS TO BE JOINTLY ADDRESSED - IT IS, IN FACT, INDIVIDUALLY ADDRESSED, TO EACH OF THE TWO SEPARATE ADDRESSEES, AND IT IS INDIVIDUALLY MAILED TO THEM.

Mr. Charles L.Gambel, Jr.
President
GENERAL HEATING AND AIR CONDITIONING
3500 Monticello Avenue
New Orleans, LA 70118

Mr. Conrad Meyer IV
Attorney at Law
BALDWIN AND HASPEL LAW OFFICES
2200 Energy Centre
New Orleans, LA 70163-2200

Dear Messrs. Gambel and Meyer:

The Latin Scholar is wont to say: VERBUM SAT SAPIENTI! Or, as we, in the practical world of commerce always exclaim: Let a Word to the Wise be Sufficient!

In June, I made a promise to both of you. This is an interim/status report in the matter.

The monthly Meeting of the CHAMBER/New Orleans and the River Region, convened on: 13 June 1991

During that Meeting I made a brief statement. It was to this effect: The 1990 AMERICANS WITH DISABILITIES ACT - Public Law 101-336, signed into law on 26 July 1990, is fraught with peril for those affected companies and organizations who ignore, or, are ignorant of, its legal provisions, and the rules and regulations to enforce its effect.

I mentioned that our Company was planning, in our private practice, to prepare a training program to cover its legal requirements upon companies/organizations affected by it.

And, the design of the program, to be how our clients, and others interested, and hiring us, can be shown how to comply with the law, and thus avoid the costly penalties, and legal actions, coming from their viola-

tions - purposeful or not!

You both showed interest in my comments made to the CHAMBER's Board. Then each of you asked us to send you a copy of our training program.

I promised to fill your request. And, when the training program is complete and published, I shall do so. In the meantime here are some important informative

Dick Thornburgh, U.S. Attorney General, says, "The Americans with Disabilities Act gives civil rights protection to individuals with disabilities similar to those provided to individuals on the basis of race, sex, national origin and religion ... Fair, swift and effective enforcement of this landmark civil rights. legislation is a high priority of the Department of Justice." The Justice Department will file lawsuits on behalf of disabled individuals, with businesses incurring their own legal expenses. The purpose of these lawsuits will be to stop discrimination and to seek monetary damages and penalties for the disabled individual.

The real impact of the public accommodations section is that it requires everyone doing business with the public to serve the disabled just as they serve anyone else. The Department of Justice considers expenses associated

Educational training seminars must be held to educate staff on both public accommodation and employment. Searching for loopholes or window-dressing actions w ill not pass muster as a good-faith effort. Anything less than a sincere attempt to conform may result in monetary damages, penalties and a shocking backlash of negative publicity. If an organization does not understand this legislation, that organization has a cause for legitimate concern.

From his wheelchair, EEOC Chairman Evan Kemp Jr., a top law school graduate from the University of Virginia and a former employee of the Ralph Nader-sponsored Disability Rights Center, intends to attack

disability discrimination in the workplace. His enforcement will include scrutiny of the subtle discrimination in training, promotions, assignments and reward structures. His concerns are not limited to entry-level employees, but also encompass discrimination that keeps the disabled out of executive suites.
01-00666

(in the broadest - non-detailed sense) highlights re: THE 1990 ADA:
CHAMBER'S REQUEST OF US: Mr. Ronnie Robert is Chairman of the Executive Committee of the CHAMBER's SMALL BUSINESS COUNCIL. He has requested us to consider giving training to Member companies/organizations of the CHAMBER. We have answered "Yes" to his request.

MEANS OF DELIVERING PROGRAM WITHIN THE CHAMBER: We envision three possible ways to present our material, to suffice the CHAMBER's needs: (1) - To the Board, and anyone else it chooses and invites to hear our presentation (2) - The CHAMBER's monthly evening program: "BUSINESS AFTER HOURS - 60-MINUTE SUBJECT PRESENTATION" and (3) - "CHAMBER SPOTLIGHT" - a radio show. Or, any other program delivery means the CHAMBER may decide.

STRATEGIC PLAN AND EDUCATIONAL TRAINING: The Act requires a company or organization to prepare a STRAGETIC PLAN. And, to conduct Educational Training Seminars to educate their staffs re: the Employment and Public Accommodations Titles of the Act.

SPECIFIC AREAS OF THE ACT'S COVERAGE: The Act consists of five TITLES. These are: (I) - Employment (II) - Public Services (State and Local Governments - including transportation) (III) - Public Accommodations (operated by private companies/organizations) (IV) - Telecommunications and (V) - Miscellaneous (the Act's relationship to other laws). It is our belief that the most generally applicable provisions most widespread in their affect upon businesses and organizations will be TITLES: I - II and III.

EFFECTIVE DATES: Several. 26 July 1992 for Title I. 26 January 1992 for Titles II and III. 26 July 1993 for Title IV. And, Title V's effective date is contingent upon actions outcoming from application/enforcement of the other Titles.
FEDERAL ENFORCEMENT AGENCIES: Title I's enforcement has been assigned to the EQUAL EMPLOYMENT OPPORTUNITY COMMISSION. The JUSTICE DEPARTMENT, broadly, will enforce the remaining Titles.

REMEDIES AND PENALTIES: Private rights of action. Injunctive relief. Job reinstatement. Back pay. Equal Employment Opportunity Commission enforcement. Damages, in certain cases. Civil penalties. Compensatory damages. And, relief generally available through the Federal Communications Commission.

LEGAL FEES: The Department of Justice will file lawsuits on behalf of disabled individuals. Business and organizations will incur and pay their own legal costs.

BUSINESSES/ORGANIZATIONS AFFECTED BY THE ADA - 1990: Title I:Companies/organizations employing 25 plus employees working on 26 July 1992. Then, on 26 July

1994, the 25 drops to 15. A Part of Title III: Companies/organizations (all business and service providers) on 26 January 1992, with 25 or less employees and $1,000,000, or less, in revenue. Then, on 26 January 1993, this criterion changes to 10 or less employees, and revenue of $500,000 or less.

ACT-COVERAGE EXEMPTIONS: Section 307 (Affecting: Title III - Public Accommodations) of the Act exempts from coverage: (a) - private clubs (b) - establishments previously exempted under Title VII of the Civil Rights Act of 1964 and (c) religious organizations or entities controlled by religious organizations. Places of worship are included under the exemption. Re: (c) - religion: A catch!: Not applicable if Federal funding is accepted. EXAMPLE: The Society of Jesus - the Jesuits, operate New York's Fordham University. If that University gets any kind of Federal funding, the exemption, then, does not apply.
UNDER THE ACT - WHAT IS A DISABILITY: It can be from "A" to "V". AIDS to Visual Disability and beyond. The definition is all-inclusive. Example: While it does not include illegal users of alcohol and/or drugs, it does not permit discrimination vs. those no longer illegally using drugs/alcohol, but who are undergoing rehabilitation and treatment or those who have successfully completed such. Disability is not a consideration if the disabled person can perform the essential functions of the job. The disability becomes a consideration when: there is a "direct threat". This means: a significant risk to the
01-00667

health or safety of others which cannot be eliminated by reasonable accommodation.

AFFIRMATIVE ACTION: Not, at this time, generally required under the ADA. However, Federal funding again comes into play here. Also, performance of "Agency Services" for the Federal Government. In the instances of acceptance of Federal funds and performing "Agency Services", then Affirmative Action becomes a requirement. Example of "Agency Services": A bank, selling and redeeming U. S. Savings Bonds.

EQUAL EMPLOYMENT OPPORTUNITY: For all intents and purposes, disabled persons will join others in the Title VII (Civil Rights Act of 1964) Protected Classes (eg: blacks, women et al). Equal Employment Opportunity is not only hiring. It is training, promotions, assignments, re-assignments, rewards, and other employment benefits, rules, regulations, etc. affecting employees. These must be administered without discrimination.
Messrs. Gambel and Meyer - VERBATIM ET LITTERATIM!
Sincerely,
Walter Laroque
cc: Mr. George Denegre - Chairman - the CHAMBER/New Orleans and the River Region(TC/NORR)
Mr. Jim Monroe - President/CEO - TC/NORR
Mr. Ronnie Robert - Chairman - Executive Committee - Small Business Council - TC/NORR
Mr. Roger F. Villere, Jr. - Coordinator - "CHAMBER SPOTLIGHT" - Radio Show - TC/NORR
wjl/eka
01-00668

DJ 202-PL-00106

APR 29 1992

The Honorable Trent Lott
United States Senate
487 Russell Senate Office Building
Washington, D.C. 20510-2403

Dear Senator Lott:

This is in response to your recent letter on behalf of your constituent, Carter Bise. Mr. Bise has asked about the application of title III of the Americans with Disabilities Act of 1990 (ADA) to the operation of the professional office of a health care provider.

The ADA authorizes the Department to provide technical assistance to individuals and entities that have rights or responsibilities under the Act. This letter provides informal guidance to assist Mr. Bise in understanding the ADA and the Department's regulation. However, this technical assistance does not constitute a determination by the Department of Justice of the rights or responsibilities of the physicians represented by Mr. Bise under the ADA, and it is not binding on the Department of Justice.

The professional office of a health care provider is a place of public accommodation subject to title III of the ADA. Title III applies to any private entity that owns, operates, leases, or leases to a place of public accommodation. Coverage under title III is not determined by the size of a business or the number of people it employs. However, except for litigation initiated to enforce the new construction or alterations requirements of title III, no civil action alleging discrimination on the basis of disability can be brought against businesses with 25 or fewer employees and gross receipts of $1,000,000 or less before July

26, 1992; or against businesses with 10 or fewer employees and gross receipts of $500,000 or less before January 26, 1993.

cc: Records; Chrono; Wodatch; Breen; Blizard; Arthur; McDowney,
Friedlander:udd:jonessandra:ada.interpretation.lott
01-00669

It appears that the office described by Mr. Bise is a "commercial facility," but not a "place of public accommodation" because it is a separate facility only for employees where patients do not receive any treatment or services. Under title III, new construction of (or alterations to) commercial facilities must comply with the ADA accessibility standards, but barrier removal in existing facilities is not required.

However, any operations at the office, such as billing practices, fee policies, or scheduling of appointments, that affect the delivery of services by the physicians in their hospital practice would be subject to title III. Moreover, if patients do, in fact, receive treatment or services of any kind at the office, the office would be a place of public accommodation subject to the full range of title III requirements.

This Department recently issued a technical assistance manual to assist individuals and entities subject to the ADA to understand the requirements of title III. I have enclosed a copy for your information.

I hope that this information is helpful to you in responding to Mr. Bise.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

Enclosure
01-00670

JAMES B. PERSONS & ASSOCIATES
ATTORNEYS AT LAW
8710 BEACH BOULEVARD, SUITE 8-B
P.O. BOX 4585
BILOXI, MISSISSIPPI 90585
JAMES B. PERSONS TELEPHONE
--- (601)388-9430
CARTER O. BISE TELECOPIER
(601)388-6138

February 12, 1992

Hon. Trent Lott
Senate Office Building
Washington, D.C. 20510

Dear Senator Lott:

Please be advised that I represent a small firm which is a professional medical group. Their practice is limited to a hospital practice. They have one private office which is used purely for billing purposes, and no patients are treated at that office. There are less than five employees in that office. The question has arisen whether they would be a private entity subject to the regulations regarding public accommodations as defined under 42 USC Section 12181(7) (F).

I would appreciate it if you could give me some advice regarding clarification of this matter, including but not limited to the names of individuals, entities, or organizations with whom I should correspond regarding this issue.

I would appreciate your prompt reply.

Very truly yours,

CARTER BISE

CB/sl
01-00671

T. 4/20/92
SBO:MF:LS:hb
DJ 192-180-04902

APR 28 (?)

The Honorable Richard G. Lugar
United States Senator
1180 Market Tower
10 W. Market Street
Indianapolis, Indiana 46204

Dear Senator Lugar:

This letter responds to your recent letter to the Department of Education on behalf of your constituent, Dr. Robert K. Poinsett. The Department of Education forwarded your letter to this office for response.

Dr. Poinsett requests information on Federal funding sources for the installation of an elevator in a facility operated by a private college to make the upper levels of the facility accessible to persons with disabilities. Evidently, Dr. Poinsett believes that the installation of the elevator is needed to comply with the Americans With Disabilities Act (ADA).

Dr. Poinsett should be advised that under title III of the ADA (which covers private educational institutions), a private college would only have to remove architectural barriers to make its facilities accessible where the removal of such barriers is readily achievable. Barrier removal is readily achievable if it can be accomplished without much difficulty or expense. The installation of an elevator rarely would be considered readily achievable under this standard.

With respect to Federal funding for barrier removal, we are unaware of any Federal grant programs that fund projects for the purposes identified by Dr. Poinsett. Section 190 of the Internal

cc: Records; CRS; Oneglia; Friedlander; LS; hb
McDowney:

01-00672

Revenue Code, however, provides a deduction up to $15,000 per year for expenses associated with the removal of certain architectural barriers.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

01-00673

U.S. Department of Justice
Civil Rights Division
APR 29 1992

DJ 182-06-00067

Coordination and Review Section
P.O. Box 66118
Washington, D.C. 20035-6118

Mr. Robert G. Weiss
10849 East Vassar Drive
Aurora, Colorado 80014-1769

Dear Mr. Weiss:

This responds to your request for an interpretation concerning the application of the Americans with Disabilities Act (ADA) to religious entities.

The ADA authorizes the Department to provide technical assistance to entities that are subject to the Act. This letter provides informal guidance to assist you in understanding how the ADA may apply to you. However, this technical assistance does not constitute a determination by the Department of Justice of your rights or responsibilities under the ADA and does not constitute a binding determination by the Department of Justice.

Section 307 of the ADA provides that religious organizations and entities controlled by religious organizations are not subject to the requirements for public accommodations or commercial facilities under title III of the Act. Religious organizations may, however, accommodate individuals with disabilities at their own discretion, and do not waive their exemption from the requirements of title III by doing so.

I hope that this information is responsive to your inquiry.

Sincerely,

Stewart B. Oneglia
Director
Coordination and Review Section
Civil Rights Division

01-00674

10849 East Vassar Drive
Aurora, CO 80014-1769
(303) 751 - 8322

January 5, 1992

Ms. Sarah Kaltenborn
Conditional Review Section
Civil Rights Division
United States Department of Justice
Post Office Box 66118
Washington, DC 20035-6118

Dear Ms. Kaltenborn:

This letter is to recap our conversation of January 3, 1992.

I am a member of a committee at my son's school, which is a religious, non-profit institution. This committee is trying to put into effect policies and procedures to deal with faculty, staff, and students with infectious diseases, especially those who are HIV positive (AIDS).

The committee has received a number of legal opinions on its efforts. Unfortunately, those opinions have been quite divergent.

The troubling opinion we have received is related to the "Americans with Disabilities Act," which is tied to the "Civil Rights Act."

We were told that if we accommodated any handicapping conditions, like AIDS, we would then wave our exemption under the "Americans with Disabilities Act." If we set a policy for one, we would then have to accommodate all handicaps covered in the ADA. This would prove to be cost prohibitive to the school.

The committee's intent is to encourage the school to accept and adjust to those with many handicaps as possible, taking into account our financial and physical constraints. Should the school be in (financial) jeopardy by implicitly waving its exemption by adopting a policy to prevent the spread of AIDS, the committee will recommend that such a policy not be adopted.

01-00675

It is the hope of the committee that your office's "official" opinion will be that:

> An institution which is specifically exempt from the ADA, will not wave any rights or exemptions, nor have any additional obligations because it adopts policies or procedures for handicaps covered by either the ADA or the Civil Rights Act. (In short, we still retain our exemption.)

We request a written reply documenting your agency's opinion, for the school's records. During our conversation, you indicated that you were in agreement with the committee and that a written opinion was available if requested in writing.

Thank you for your time and effort in our behalf.

Sincerely,

Robert G. Weiss
Committee Member
AIDS Task Force
Herzl Day School
Denver, Colorado

cc: Leslie Englander, Chairperson
01-00676

DJ 192-180-04158

APR 30 1992

The Honorable Frank Horton
U.S. House of Representatives
2108 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Horton:

This is in response to your letter on behalf of your constituent, Ms. Susan Yara, regarding signage requirements under the Americans with Disabilities Act (ADA).

This letter provides informal guidance to assist you in responding to an inquiry from your constituent. However, this technical assistance does not constitute a determination by the Department of Justice of Ms. Yara's rights or responsibilities under the ADA and does not constitute a binding determination by the Department.

With respect to Ms. Yara's concerns, please be advised as follows:

1. Ms. Yara quotes S4.30.3 of the Americans with Disabilities Act Accessibility Guidelines (Guidelines) (Appendix A to the Department of Justice's title III regulation), which requires that characters and numbers on signs be sized according to the viewing distance from which they are to be read, and inquires as to whether further guidelines are available. The only further guideline available regarding this issue is found in the chart contained in S4.30.3, which sets out the requirement that, with respect to signs that are required to be suspended or projected overhead, the minimum character height is three inches (75mm). As Ms. Yara notes, the appropriate height for characters and numbers on signs is a subjective judgment. The Accessibility Guidelines permit this judgment to be made by design professionals.

cc: Records; Chrono; Oneglia; Friedlander; Pecht; McDowney.
:uddl:udd:pecht:horton.yara.2
01-00677

2. With respect to Ms. Yara's question regarding the color contrast between characters and their background, S4.30.5 of the Accessibility Guidelines requires that ". . . characters and symbols shall contrast with their background - either light characters on a dark background or dark characters on a light background."

Further guidance regarding S4.30.5 (and all other sections of the Accessibility Guidelines designated with an asterisk) is found in the Appendix to the Guidelines. The Appendix contains materials of an advisory nature designed to help the reader understand and comply with the Guidelines. Appendix SA4.30.5 explains that ". . . signs are more legible for persons with low vision when characters contrast with their background by at least 70 percent," and includes a formula for determining contrast in percent. For your convenience, we have enclosed a copy of the title III ADA regulation, which includes the Accessibility Guidelines.

There is no requirement in the Guidelines that signage materials be a solid color. With reference to the sample enclosed by Ms. Yara, the Department does not issue determinations as to whether specific products comply with the ADA Guidelines.

3. Ms. Yara requests a source of local assistance to aid her in "determining the application of this law." Through the National Institute on Disability and Rehabilitation Research, Congress has funded a regional network of Disability and Business Technical Assistance Centers. The Center in Ms. Yara's region should be able to provide her with technical assistance and referrals to local resources. The applicable Center is the Region 2 Northeast Center at the following address:

United Cerebral Palsy of N.J.
354 South Broad Street
Trenton, New Jersey 08608
609-392-4004 (Voice)
609-392-7004 (TDD)

4. Ms. Yara requests clarification as to what constitutes a permanent room or space under section 4.1.2(7) of the ADA Accessibility Guidelines. In its Title III Technical Assistance Manual, the Department has indicated that it considers the category of permanent signage to include only those signs that designate men's and women's rooms, room numbers, and exit signs. Signs that provide direction to or information about functional spaces of a building (e.g., "cafeteria this way" or "copy room")

need not comply with the requirements for raised and Brailled letters (which are only applicable to permanent signage) but are subject to other requirements. For your convenience, we have
01-00678

enclosed a copy of the Manual. The information cited can be found on page 59.

5. Ms. Yara inquires whether company logos are required to be in raised lettering. Such logos are not considered permanent signs subject to the raised letter requirement.

6. Ms. Yara asks whether raised lettering can be thicker than 1/32". On January 14, 1992, the Architectural and Transportation Barriers Compliance Board amended its ADA Accessibility Guidelines (which are the same Guidelines adopted by the Department for its title III regulation) to make it clear that lettering must be raised a minimum of 1/32" (emphasis added). A copy of this amendment is enclosed. The Department plans to make this technical correction to its title III regulation at a later date.

7. Ms. Yara inquires as to whether, each time a permanent sign is replaced, the replacement must comply with the ADA Accessibility Guidelines. Under ADA regulations, any replacement of permanent signage is considered an alteration which must be made in a manner that complies with the Accessibility Guidelines.

8. Ms. Yara asks which sign should be used to determine the centerline for complying with the S4.30.6 requirement for mounting height when multiple signs are used. As stated in the regulation, the measurement should be made from the centerline of the permanent sign. In the example given in Ms. Yara's letter, this would be the sign designating the room number.

9. Ms. Yara requests a description of the pictorial for the "sign depiction of a telephone handset with radiating sound waves," as required by S4.30.7(2). Ms. Yara is correct in assuming that this sign is typically provided with the telephone equipment. However, if one is not provided, any pictorial fitting the description set out in the regulation is acceptable.

10. Ms. Yara asks whether the signage at non-accessible entrances required by S4.1.6(1)(h) of the Guidelines must meet the permanent signage requirements (raised letters and Braille). Such signs are not considered permanent signs and, thus, do not have to meet the raised letter and Braille requirements. Please refer to the discussion of permanent signs at number 4 above.

11. Ms. Yara requests a listing of letter styles falling into the categories "sans serif" and "simple serif." She also asks where the Braille required by S4.30.4 should be located.

The term "serif" refers to the short lines that stem from

and are located at an angle to the upper and lower ends of the strokes of a letter. "Sans serif" refers to type styles without these flourishes, while "simple serif" type may include styles
01-00679

with some, but not excessive, additional lines. Many letter styles fall within these broad, generic categories, and new styles are frequently created. Thus, a comprehensive listing would be impossible. The intention of the regulation is to provide design professionals with the ability to exercise their professional and aesthetic judgment within these general guidelines.

The same holds true for the location of Braille. Braille must accompany raised characters on permanent signs, but no particular location is required, thus providing design professionals with an opportunity to place Braille characters in the location most appropriate to a given design application.

12. Ms. Yara inquires ". . . where are upper case letters required and lower case letters allowed?"

Lower case letters are permitted for all signs subject to the requirements of S4.30.3. Section 4.1.2(7) requires " . . . signs which provide direction to, or information about, functional spaces of the building . . ." to comply with S4.30.3. Examples of such signage are discussed at number four above.

Upper case letters are required for all signs subject to the requirements of S4.30.4. Section 4.1.2(7) requires " . . . signs which designate permanent rooms and spaces . . ." to comply with S4.30.4. Please refer to the discussion of permanent signs at number 4 above.

13. Ms. Yara asks whether the S4.30.4 requirement that the border dimension of a pictogram must be six inches minimum in height refers to the size of the pictogram or to the overall dimension of the sign. It refers to the overall dimension of the sign. The edge of the plate is considered to be the border and no separate border or frame is required.

14. Ms. Yara requests clarification regarding the required date of compliance for existing businesses. Title III generally went into effect on January 26, 1992. Although there are phase-in periods for smaller businesses (see S36.508 of the enclosed title III regulation), these phase-in periods are, in effect, grace periods during which civil actions cannot be brought against covered small businesses. However, those businesses are still expected to comply with the title III regulation.

There is no general obligation to replace signage in existing facilities when no alteration or new construction is planned. However, S36.304 of the title III regulation requires businesses to remove architectural barriers and communications

barriers that are structural in nature from existing facilities when such removal is readily achievable, that is, easily accomplishable and able to be carried out without much difficulty
01-00680

or expense. Section 36.304(c) suggests priorities for such barrier removal. Under S 36.304(c)(2), which discusses measures that may be taken as a second priority (to provide access to those areas of a place of public accommodation where goods and services are made available to the public), providing Brailled and raised character signage is listed as an example.

As noted above, all signage in newly altered areas must comply with the requirements of the Guidelines. In addition, signage in buildings designed for first occupancy after January 26, 1993, must also comply.

15. Ms. Yara expresses concern regarding the requirement that raised rather than engraved lettering be used for permanent signage. First, as noted above, in its technical assistance manual, the Department has defined permanent spaces in a restrictive manner. Thus, only a limited number of rooms are subject to the raised letter and Braille requirement.

Also, the Architectural and Transportation Barriers Compliance Board (Board) is currently drafting accessibility guidelines for title II of the ADA, which covers State and local governments. At my request, the Board agreed to include specific questions concerning appropriate standards for signage in the preamble to that proposed rule. This action will enable the engraving industry to formally present to the Board its views on engraved lettering.

I strongly encourage representatives of the engraving industry to submit comments on the proposed title II guidelines so that the Board will have the necessary information to make a wise decision on the issue. The Board will carefully consider all comments received and determine whether the guidelines should permit engraved lettering on permanent signs in State and local facilities. If the comments received indicate that such a determination is appropriate, I will recommend to the Board that the title III guidelines, covering places of public accommodation and commercial facilities, should likewise be revised to permit engraved letters.

I hope this information has been helpful to you.

Sincerely,

John R. Dunne
Assistant Attorney General

Civil Rights Division

Enclosures (3)
01-00681

CS Engraving
3816 West Walworth Road, Macedon, New York 14502 (315)986-2860
February 17, 1992
Congressman Frank J. Horton
House of Rep., 2108 Rayburn Bldg.
Washington, D.C. 20515

Re: The Americans with Disabilities Act Regulations
Dear Congressman Horton:

It was a pleasure to meet with you last week to discuss my questions and concerns regarding the above referenced law. As per your recommendation, I have compiled questions on several aspects of the law with regard to the signage requirements. Since my customers rely on me to assist them in complying with this law, I want to be sure that I understand it as fully as possible.

Section 4.30.3"...shall be sized according to the viewing distance from which they are to be read..." This section discusses the letter height requirements; and we wonder if there are any further guidelines with regard to maximum distance vs. letter height. This is a very subjective determination. In addition, available wall space is of concern since lettering of this height, particularly 2", takes up a large amount of space.

We have been reading that the color contrast between lettering the background should have at least a "70% reflective difference". What does that mean and how do we determine whether or not we are within this standard? Also, does the color have to be a solid dark or light; or can it be something like the sample of material enclosed?

Where can we obtain assistance locally in determining the application of this law? I do not want to be the judge of whether what the client wants to do will meet the required standards. Also, we do not have the time to consult Washington D.C. every time we have a question.

Section 4.1.2 (7) "...Signs which designate permanent rooms and spaces shall comply...". What specifically is a permanent room or space. Many room usages change over time, so is the room number the only identification that is considered permanent, or is the function to be indicated with raised lettering as well?

Is a company logo; eq. Coca Cola, required to be in raised lettering as well?

01-00682

Is raised lettering to be only 1/32" in thickness, or can it have more thickness? The study included in the enclosed article tested 1/8" thick letters as well.

I have read articles that suggest that each time a "permanent" sign is changed that the replacement should meet the new standards. Is this correct, or will a change be required only when an area is totally renovated or remodeled?

Section 4.30.6 "...Mounting height shall be 60 inches...to centerline of sign " If several signs are used at the same doorway; e.q. room number, room function, occupant's names; and stacked one above the other, which is used for the centerline measurement?

Section 4.30.7 (2) What does the pictorial look like for the "sign depiction of a telephone handset with radiating sound waves.", or is this sign provided with the telephone itself?

4.1.6 (1)(h) "...signage at non-accessible entrance..." Is this required to have raised letters and braille? Section 4.30.4 states "...upper case, san serif or simple serif type and be accompanied with Grade 2 braille..." Specifically what letter styles fall into this category and where is the braille to be located on the sign?

Section 4.30.3 states "...lower case characters are allowed." and Section 4.30.4 states "...letters and numerals shall be...upper case...". Specifically where are upper case letters required and lower case letters allowed?

Section 4.30.4 states "Border dimension of pictogram shall be 6 in. minimum in height." Does this refer to the size of the pictogram itself, or the overall sign? Also, does border mean the sign must have a separate border or frame, or is the edge of the plate considered a border?

The information I have been receiving seems to be contradictory with regard to the date of compliance for

existing businesses. Assuming no physical alterations or new construction are planned by an existing business, when must this business comply with the law; specifically regarding the changing of their signage to comply with this law?

01-00683

Congressman Horton, as we discussed last week, I still do not understand why engraved signage is no longer allowed for "permanent" signage. It can be read tactily, is less expensive, and is usually less subject to vandalism; a major concern to my clients. As I mentioned in my last letter to you, a similar law in Connecticut was amended to include engraved signs because blind people testified that they could read an engraved sign as well as raised letters. Also, please refer to the section of the Engravers Journal article that I have attached which also addresses this subject.

In conclusion, I want to reiterate that we wish to help our clients comply fully with a law whose purpose we completely agree with which is why we are requesting clarification on certain points. However, we would like to see engraved signage included in the allowable signs for the reasons stated above and in my earlier correspondence. As we discussed before.....If it ain't broke, don't fix it.

Sincerely,

Susan Yara

01-00684

T. 04/30/92
DJ 202-PL-00107
Wodatch
Date
Mr. Julio Rufo
Solomon Cordwell Buenz & Associates Inc.
57 West Grand Avenue
LIB Chicago, Illinois 60610
Deputy
Dear Mr. Rufo:
Date
I am responding to your request for clarification of the effective date of the new construction requirements of Title III of the Americans with Disabilities Act of 1990 (ADA), Pub. L.
Blizard 101-336, 104 Stat. 327 (July 26, 1990), 42 U.S.C.A. SS 12101 et seq., and this Department's regulation implementing title III, 56
Date Fed. Reg. 35544 (July 26, 1991), to be codified at 28 C.F.R. Pt. 36.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities that are subject
GYB to the Act. This letter provides informal guidance to assist you in understanding the ADA. However, this technical assistance
Date does not constitute a determination by the Department of Justice of your client's rights or responsibilities under the ADA and it is not binding on the Department of Justice.

Your understanding of which buildings are subject to new construction standards is correct. The new construction requirements of the ADA apply to any place of public accommodation or commercial facility first occupied after January 26, 1993, for which the last application for a building permit or permit extension was completed after January 26, 1992. If a facility is constructed under a permit for which the application was completed prior to January 26, 1992, or the facility is occupied before January 26, 1993, the facility is not subject to the new construction requirements of the ADA.

However, places of public accommodation are subject to a continuing obligation to remove architectural, communication, and transportation barriers. Under this continuing obligation, each public accommodation is required to remove barriers in its

cc: Records, Chrono, Wodatch, Blizard,
udd:Blizard.interpretation.rufo

until the facility complies with the accessibility standards that would apply if the facility was being altered.

This Department recently issued a technical assistance manual to assist individuals and entities subject to the ADA to understand the requirements of title III. I have enclosed a copy for your information. I hope that this information is helpful to you.

Sincerely,

L. Irene Bowen
Deputy Director
Office on Americans with Disbilities
Civil Rights Division

Enclosure

U.S. Department of Justice
Civil Rights Division
Office of the Assistant Attorney General Washington, D.C. 20035

MAY 1 1992

Ms. Nessa Feddis
Senior Federal Counsel
American Bankers Association
1120 Connecticut Avenue, N.W.
Washington, D.C. 20036

Dear Ms. Feddis:

I am responding to your letter relating to accessibility requirements for automated teller machines (ATM's) under the Americans with Disabilities Act (ADA).

As required by the Americans with Disabilities Act, the requirements that apply to ATM's are included in guidelines developed by the Architectural and Transportation Barriers Compliance Board (Access Board). These guidelines are incorporated into the Department of Justice's ADA regulation. The ADA requires that our regulation be consistent with the guidelines of the Access Board.

The provision in question, which applies only to new construction and alterations, requires that a person using a wheelchair be able to reach the controls of an ATM through both a forward and a side reach. This provision was included in the ADA Accessibility Guidelines when they were first published for comment in January 1991. The Guidelines were subject to an extensive public comment process that included 18 public hearings. The concerns that you are now raising were not expressed during the rulemaking process.

The Department of Justice takes seriously the concerns that you have stated. As you know, the Access Board recently decided to reopen this issue to public comment through a notice in the Federal Register and to hold a hearing on the matter. The action of the Board has the support and concurrence of the Department of Justice. However, while changes to the rule are under consideration, the Department is not in a position to amend the provision on ATM's, and we are constrained to enforce the requirements of the ADA regulation now in effect.

You should be aware that section 2.2 of the ADA Accessibility Guidelines permits departures from particular technical requirements by use of other designs and technologies
01-00687

where the alternative designs and technologies will provide substantially equivalent or greater access to and usability of the facility. Based on the information you have sent us, it appears that, in some circumstances, the ATM's that are currently available may be usable by individuals with disabilities. If you can demonstrate that particular ATM's, as installed, provide equivalent facilitation, they will be considered as complying with the ADA. You may be able to show that meeting one of the reach ranges specified in S 4.2.5 or S 4.2.6 provides equivalent facilitation, assuming all other requirements for ATM's contained in S 4.34.1, S 4.34.2, and S 4.34.4 are met.

You have described two situations as a common occurrence in the banking industry: the installation of new ATM's that were ordered before the effective date of the ADA, and the relocation of existing ATM's, originally installed prior to January 26, 1992. You have suggested that compliance with neither S 4.2.5 nor S 4.2.6 will be possible with respect to many of these machines. While the number of such ATM's is not certain, we are confident that many can be "redeployed" consistent with the standards. For example, they could be used as drive-up-only teller machines, which are not required to comply with SS 4.27.2, 4.27.3, and 4.34.3. (See S 4.1.3(20), exception.) They could also be used at locations where two or more ATM's are provided, because only one is required to comply in that situation. (See S 4.1.3(20).) In limited circumstances, they could be installed outside the specified reach ranges if the use of the particular equipment so dictated (S 4.27.3, exception) or where full compliance would be technically infeasible in alterations due to existing physical or site constraints (S 4.1.6(1)(j)).

Please note: The interpretations in the preceding two paragraphs are premised on the information currently available to us and will be revisited based on the information received as a result of the Access Board's notice.

Based on the approach that I have outlined here, your fears of an adverse economic impact on ATM vendors and financial institutions should be greatly alleviated. I strongly urge you to submit data and other information to the Access Board in response to its notice.

Sincerely,

John R. Dunne
Assistant Attorney General

AMERICAN BANKERS Association
1120 Connecticut Avenue, N.W.
Washington, D.C.
20036

GOVERNMENT RELATIONS/ OPERATIONS AND RETAIL BANKING
SENIOR FEDERAL COUNSEL
Nessa E. Feddis
202/663-5433

April 1, 1992

Mr. John L. Wodatch
Office on the Americans With Disabilities Act
Civil Rights Division
U.S. Department of Justice
P.O. Box 75087
Washington, D.C. 29913

Re: Accessibility requirements for ATMs under the Americans With Disabilities Act Accessibility

Dear Mr. Wodatch,

The American Bankers Association ("ABA"), NCR, and InterBold ("the ATM vendors") recently submitted the attached petition to the Architectural and Transportation Barriers and Compliance Board ("the Board") to clarify the reach and height requirements for automated teller machines ("ATMs") under the Americans with Disabilities Act Accessibility Guidelines ("ADAAG").1 Until the issue is resolved, however, financial institutions and major ATM vendors are unable to make critical business decisions.

Therefore, ABA and the ATM vendors respectfully request that the Department of Justice issue either a letter or interim regulations specifically stating that under ADAAG wheelchair accessible ATMs must allow either a forward or front reach until final action on the petition. Additionally, we request that the letter or interim regulation provide that used ATMs relocated after January 26, 1992 are not subject to ADAAG. Rather, such ATMs must comply with Sections 36.303 and 36.304 of the Department of Justice's Americans With Disabilities Act regulation. Those sections generally require removal of barriers where readily achievable and the addition of auxiliary aids and services where such measures do not impose an undue burden. It is vital that the Department of Justice respond promptly to this request given the adverse economic impact on ATM

_____

1 The ABA is the national trade and professional association for America's commercial banks, from the smallest to the largest. ABA members represent about 90 percent of the industry's total assets. Approximately 94 percent of ABA members are community banks with assets less than $500 million. InterBold and NCR manufacture about 88% of the ATMs sold in the United States annually.

vendors and financial institutions associated with delaying critical business decisions.

It is our understanding that the Board is preparing to request comment on the subject of ATM reach and accessibility requirements. However, no final action can be expected for several weeks to allow publication of the request for comment, review of comments, and final action.

Neither NCR nor InterBold, the two major ATM vendors, currently have available an ATM which allows both a forward and side reach. Accordingly, until the matter is resolved, the ATM vendors and financial institutions cannot proceed with critical business decisions. The ATM vendors cannot go forward with the design, production, and sale of new ATMs. Financial institutions cannot proceed with:

- the installation of newly purchased ATMs;
- the relocation and retrofitting of existing ATMs;
- the delivery and installation of previously ordered ATMs;
- purchase orders for new ATMs; and
- the installation of new ATMs.

Relying on ANSI-A117 and ergonomic studies, ATM vendors developed and financial institutions installed wheelchair accessible ATMs to best accommodate the needs of all their customers. They also chose side reach ATMs to allow more functions and better security and privacy than provided by a lower forward reach ATM. Moreover, many institutions and people, including Department of Justice staff responding to telephone inquiries, have interpreted ADAAG to allow either a side or forward reach. For these reasons, the majority of wheelchair-accessible ATMs installed and available from the two major vendors allow only a side reach.

While Fujitsu, an ATM vendor with approximately 11% of the domestic market, has available an ATM which allows both reaches, there are a variety of reasons that its product may not, as a practical matter, be a solution for many institutions. For example, a Fujitsu ATM may not be compatible with the institution's existing ATM processing, maintenance, and servicing system. In addition, as the attached petition explains, the flat plane design of that ATM may present accessibility, security, and privacy issues for many institutions.

Further, the Department of Justice should allow financial institutions to redeploy ATMs originally installed prior to January 26, 1992 which do not comply with ADAAG until final resolution of this matter. Rather, those ATMs should be subject to Sections 36.303 and 36.304 of the Department of Justice's Americans With Disabilities Act regulations. Those sections generally require removal of barriers where readily

achievable and the addition of auxiliary aids and services where such measures do not impose an undue burden.

ATMs are expensive machines with an average useful life of ten to fifteen years. Because of their expense and longevity, they are often relocated for a variety of reasons. For instance, a bank may replace an old ATM with an upgraded ATM and reinstall the old ATM in another location. It may relocate it in an area where only a less expensive ATM is justified because of the low transaction volume expected. ATMs may also be relocated when the branch moves to a new location. Used ATMs are also often installed in new branches.

Financial institutions have invested heavily over many years to install tens of thousands of ATMs nationwide. We do not believe that the subsequent enactment of the Americans With Disabilities Act ("ADA") should significantly reduce their utility and useful life, and believe that such a result would be inconsistent with both the letter and intent of that statute.

Financial institutions and the ATM vendors are eager to comply with ADA and have taken significant measures in that regard. However, we feel that the additional burden of redesigning and producing even lower wheelchair accessible ATMs, and restricting the relocation of existing ATMs contradicts the much publicized policy of the Bush Administration to avoid overly burdensome, costly, and unnecessary regulations. We believe that an interim regulation or a letter which allows either a side or forward reach and which permits continued use of used ATMs will help to avoid costly business decision delays. This approach will also advance the Administration's policy to minimize regulatory burdens in a manner which does not contradict the implementation and enforcement of the ADA.

We will be happy to discuss this matter further.

Sincerely,

Nessa Feddis
Senior Federal Counsel
American Bankers Association

David Wetzel
InterBold
Marketing Manager for
Consumers With Disabilities

Ken Justice
NCR
Systems Sales Analyst
Self-Service Systems Division

U.S. Department of Justice
Civil Rights Division
DJ 192-06-00019
Coordination and Review Section
P.O. Box 66118
Washington, D.C. 20035-6118

MAY 4 1992

Ms. Clare Beckett
Clare's Engraving
P.O. Box 1012
Moorhead, Minnesota 56560

Dear Ms. Beckett:

This is in response to your letter to our office concerning coverage of apartment buildings under the Americans with Disabilities Act (ADA).

The ADA authorizes the Department of Justice to provide technical assistance to entities that are subject to the Act. This letter provides informal guidance to assist you in understanding how the ADA may apply to you. However, this technical assistance does not constitute a determination by the Department of Justice of your rights or responsibilities under the ADA and does not constitute a binding determination by the Department of Justice.

Under title III of the ADA, entities which are covered by the Fair Housing Act of 1968, i.e. long-term residential facilities, are expressly exempted from the ADA's commercial facilities requirements. Such facilities may, however, be covered by the ADA as places of public accommodation if they fall under one of the 12 categories of places of public accommodation (see pages 35551 and 35594 of the title III rule). If a long-term residential facility provides social services, for example, it would be a place of public accommodation because it falls under category 11.

Note, however, that the category "places of lodging" (the first category on the list) excludes facilities that are solely residential. Only facilities used for short-term stays are included within this category. (See page 35552 of the rule.)

Thus, if a facility is purely residential and does not fall within one of the 12 listed categories, then the facility is covered by the Fair Housing Amendments Acts only and not by title III.
01-00692

Title II of the ADA, which covers State and local government services, must also be considered. Thus, for example, State-operated public housing apartments are covered by title II and must be constructed in compliance with one of two accessibility design standards, the Uniform Federal Accessibility Standards or the ADA Accessibility Guidelines (which are an appendix to our title III rule). See section 35.151(c) of the title II rule.

Copies of our title II and title III rules and technical assistance manuals are enclosed. I hope this information is helpful to you.

Sincerely,

Stewart B. Oneglia
Chief
Coordination and Review Section
Civil Rights Division

Enclosures (4)
01-00693

T. 4/30/92
SBO:SK:hb
DJ# 181-06-0003 MAY 4 1992

Ms. Susan Perry
Senior Vice President -
Government Relations
American Bus Association
1015 - 15th Street, N.W., #250
Washington, D.C. 20005

Dear Ms. Perry:

This is in response to your petition for reconsideration or clarification of the Department of Justice's final rule implementing title III of the Americans with Disabilities Act (ADA) with respect to application of the elevator exemption to transportation terminals.

As explained in the preamble to the final regulation, the elevator exemption is an exception to the requirement for "ready access" to floors above and below the ground level for certain small buildings (i.e., a facility that is less than three stories or has less than 3000 square feet per story), where such access would require installation of an elevator. The ADA provides an exception to the elevator exemption for buildings housing a shopping center, shopping mall, or the professional offices of a health care provider, or other category determined by the Attorney General.

In issuing the final regulation, the Attorney General determined that the elevator exemption should not apply to terminals, depots, or other stations used for specified public transportation, or airport passenger terminals because of the significance of transportation services for individuals with disabilities. The Department, however, provided in the final regulation that the requirement applies only to those areas used for passenger loading and unloading and for other passenger services. This approach is similar to that used for the other types of facilities that are ineligible for the elevator exemption.

cc: Records; CRS; Oneglia; Kaltenborn; hb
UDD: Kaltenborn(Susan Perry 1)(PB)FOIA

Example 3 at page 35580 of the preamble explains that when all retail stores that make a facility a "shopping center" are located on the first floor, elevator access need not be provided to the offices on the second floor. Likewise, if all passenger service areas of a terminal are located on the ground floor, S36.401(d) (2) (ii) of the regulation does not require elevator access to other floor levels of the building. Thus, the amendment you have proposed is unnecessary since elevator access in not required when passenger services are provided exclusively at the ground level. The only requirement is that any area housing passenger services, including boarding debarking, loading and unloading, baggage claim, dining facilities, and other common areas open to the public, be on an accessible route from an accessible entrance.

We hope this information is helpful to you.

Sincerely

John R. Dunne
Assistant Attorney General
Civil Rights Division

BEFORE THE

DEPARTMENT OF JUSTICE

_____

28 CFR PART 36

NONDISCRIMINATION ON THE
BASIS OF DISABILITY BY
PUBLIC ACCOMMODATIONS AND
IN COMMERCIAL FACILITIES;
FINAL RULE

_____

PETITION OF
THE AMERICAN BUS ASSOCIATION

FOR

RECONSIDERATION OR, IN
THE ALTERNATIVE, CLARIFICATION

_____

Enclosed for convenient reference is a copy of Comments of the American Bus Association (ABA) in response to the Notice of Proposed Rulemaking in the above-captioned proceeding.

In the preamble to the final rule pertaining to the elevator exemption, it is stated that no one opposed adding terminals, depots, and stations used for specified public transportation to the nonexempt categories. As indicated by the attachment to this petition, that statement is not correct.

ABA opposed the removal of the elevator exemption for bus terminals and stations because -

> At all bus terminals and stations, with relatively few exceptions, buses arrive and depart, load and unload only at ground level. No services are provided for passengers on the second floor or above.

ABA then suggested specific language to address the unique characteristics of intercity bus terminals and stations.

Section 401(d)(2)(ii) of the rule reads as follows:

> A terminal, depot, or other station used for specified public transportation, or an airport passenger terminal. In such a facility, any area housing passenger services, including boarding and debarking, loading and unloading, baggage claim, dining facilities, and other common areas open to the public, must be on an accessible route from an accessible entrance.

We have no problem with this requirement if it is satisfied by compliance with the second sentence. In all new construction or alterations contemplated by members of ABA, there would be an accessible route from an accessible entrance to all areas of the facility housing passenger services.

For the reasons set forth above, ABA urges that the elevator exemption with respect to bus terminals and stations be reconsidered or, in the alternative, that the purpose and effect of the exemption be clarified.

Respectfully submitted,

Susan Perry
Senior Vice President -
Government Relations
American Bus Association
1015 15th Street, N.W.-#250
Washington, DC 20005

DATED: August 12, 1991

BEFORE THE
DEPARTMENT OF JUSTICE

_____

28 CFR PART 36

NONDISCRIMINATION ON THE BASIS OF DISABILITY
BY PUBLIC ACCOMMODATIONS AND IN
COMMERCIAL FACILITIES; PROPOSED RULE

_____

COMMENTS OF

AMERICAN BUS ASSOCIATION

_____

These Comments are filed by the American Bus Association ("ABA") in response to the Notice of Proposed Rulemaking published in the Federal Register on February 22, 1991 (56 Fed. Reg. 7452). The proposed rule implements title III of the Americans With Disabilities Act ("ADA") which prohibits discrimination on the basis of disability by private entities in places of public accommodation.

ABA is the national trade association for the intercity bus industry. The Association has over 600 operator members. All of these members are private entities who are primarily engaged in the business of transporting passengers and who operate over-the-road buses as defined in section 301(5) of the ADA.

ABA's particular interest in this proceeding stems from its members' operation of terminals, which subparagraph (G) of section 301(7) specifically includes in the definition of "public accommocation."

Sec. 36.104--Definitions--Current Illegal Use of Drugs

The term, "current illegal use of drugs," is defined as follows in section 36.104:

> Current illegal use of drugs means illegal use of drugs that occurred recently enough to justify a reasonable belief that a person's drug use is current or that continuing use is a real and ongoing problem.

This definition is taken verbatim from the Report of the Conference Committee. H. Conf. Rep. No. 596, 101st Cong., 2d Sess. 64 (1990). The definition is obviously congruent with Congressional intent and we urge its adoption. We note, however, that the Equal Employment Opportunity Commission has proposed a somewhat different definition of "current illegal use of drugs."1 In the interest of government-wide consistency, we hope the Department of Justice will be able to persuade EEOC that its definition of "current illegal use of drugs" is preferable.

1 Equal Employment Opportunity for Individuals With Disabilities--EEOC Notice of Proposed Rulemaking, 56 Fed. Reg. 7452 (February 28, 1991)

Secs. 401(d) and 404(a)--Elevator Exemption

Section 303 (b) of the ADA provides that requirements for new construction and alterations in public accommodations and commercial facilities in section 303(a)-

> shall not be construed to require the installation of an elevator for facilities that are less than three stories or have less than 3,000 square feet per story . . . unless the Attorney General determines that a particular category of such facilities requires the installation of elevators based on the usage of such facilities.

In sections 36.401(d) and 36.404(a) of the regulations, the Department of Justice proposes not to apply the elevator exemption to:

> A terminal, depot, or other station used for specified public transportation, or an airport passenger terminal.

In the preamble to the proposed rule, the following reason is given for adding passenger terminals, depots, and other stations to the nonexempt category:

> It is not uncommon for an airport passenger terminal or train station, for example, to have only two floors, with gates on both floors. Because of the significance of transportation, because a person with disabilities could be arriving or departing at any gate, and because inaccessible facilities could result in a total denial of transportation services, it is reasonable to require that newly constructed transit facilities be accessible, regardless of square footage or number of floors.

56 Fed. Reg. 7475.

At all bus terminals and stations, with relatively few exceptions, buses arrive and depart, load and unload only at

ground level. No services are provided for passengers on the second floor or above. Since the reason for the proposed regulation has no relevance to intercity bus operations, ABA urges that section 401(d)(ii) relating to new construction and section 404(a) relating to alterations be amended by adding the following language at the end of each section:

> A bus terminal or bus station shall be eligible for the elevator exemption if buses arrive and depart and load and unload exclusively at ground level and if no services for passengers are provided on the second story or above.

If the proposed amendment were adopted, two-story bus terminals and stations would be treated in the same way as a building which houses retail stores "exclusively on the ground floor, with only office space (not professional offices of health care providers) on the second. (56 Fed. Reg. 7475, par. 3). It is especially important to eliminate unnecessary economic burdens on the intercity bus industry which (1) provides the most economical form of transportation, (2) is virtually unsubsidized, and (3) is only marginally profitable.

Respectfully submitted,

Susan Perry
Senior Vice President -
Government Relations
American Bus Association
1015 15th Street, N.W.-#250
Washington, DC 20005
(202) 842-1645

DATED : April 23, 1991
DUE : April 23, 1991

U.S. Department of Justice
Civil Rights Division
Office of the Assistant Attorney General Washington, D.C. 20035

Mr. Kenneth M. Lesser
First Vice-President
Association of City Employees
with Disabilities
706 North Vendome Street
Los Angeles, California 90026

Dear Mr. Lesser:

This is in response to your letter about the provision of curb cuts under title II of the Americans with Disabilities Act (ADA). Your letter also asked about available remedies under title II and section 504 of the Rehabilitation Act of 1973, as amended.

The ADA authorizes the Department to provide technical assistance to entities that are subject to the Act. This letter provides informal guidance to assist you in understanding how the ADA may apply to public entities. This technical assistance, however, does not constitute a determination by the Department of Justice of rights or responsibilities under the ADA and does not constitute a binding determination by the Department of Justice.

Title II prohibits discrimination on the basis of disability in all programs, activities, and services provided or made available by State and local governments, instrumentalities, or agencies. The title II regulation (enclosed) is based on regulations implementing section 504.

Like the section 504 rule, the title II rule provides that a public entity must not deny the benefits of its programs, activities, and services to individuals with disabilities because its facilities are inaccessible (S35.149). A public entity's services, programs, or activities, when viewed in their entirety, must be readily accessible to and usable by individuals with

disabilities. A public entity, however, is not necessarily required to make each of its existing facilities accessible. Nor does a public entity have to take any action that it can demonstrate would result in a fundamental alteration in the nature of its program or activity or in undue financial and administrative burdens (S35.150(a)).

Section 35.150(d)(2) of the title II rule states that public entities with responsibility for or authority over streets, roads, or walkways must prepare a schedule for providing curb ramps where pedestrian walks cross curbs. Priority must be given to walkways serving State and local government offices and facilities, transportation, places of public accommodation, and employers, followed by walkways serving other areas. This schedule must be included as part of a transition plan (S35.150(d)(2)).

However, section 35.150 does not necessarily require a curb ramp at every intersection. Alternative routes to buildings that make use of existing curb cuts may be acceptable under the concept of program accessibility, even if an individual with disabilities may need to travel a longer route to reach a particular building than would a nondisabled individual.

In residential areas, as opposed to commercial areas, it may be appropriate to establish a procedure for installing curb ramps upon request when an individual with disabilities moves into a neighborhood. Moreover, the fundamental alteration and undue burdens defenses will limit the number of curb ramps required in many cases. In developing a transition plan to provide curb ramps, a public entity should consider all of these factors.

In the case of new construction and alterations (as opposed to existing facilities), the rule requires that curb ramps be provided at any intersection having curbs or other barriers to entry from a street level pedestrian walkway (S35.151(e)).

In response to your question about remedies, title II incorporates the remedies of section 505 of the Rehabilitation Act, which include court orders to stop discrimination, termination of Federal funds when there are Federal funds to

terminate, and damages in some circumstances. Penalties are not available. Nor is reimbursement of Federal funds an available remedy under title II or section 504.

I hope this information has been helpful to you.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

Enclosure
01-00705

U.S. Department of Justice
Civil Rights Division
Office of the Assistant Attorney General Washington, D.C. 20035

Ms. Susan Logan
Associate Director
Division of Continuing Education
Texas Tech University
Box 4110
Lubbock, Texas 79409-2191

Dear Ms. Logan:

This letter is in response to your letter regarding the applicability of the Americans with Disabilities Act's (ADA) requirements to warehouse rooms.

The ADA authorizes the Department to provide technical assistance to entities that are subject to the Act. This letter provides informal guidance to assist you in understanding how the ADA may apply to your University. This technical assistance, however, does not constitute a determination by the Department of Justice of the University's rights or responsibilities under the ADA and does not constitute a binding determination by the Department of Justice.

Texas Tech University, as we understand, is a public entity, which is covered by title II of the ADA. Effective January 26, 1992, title II prohibits discrimination on the basis of disability by public entities. The Department of Justice is responsible for implementation of title II of the ADA. Enclosed are copies of our title II rule and a technical assistance manual explaining the rule.

If Texas Tech University is part of a program that receives financial assistance from any Federal agency, then the University is also subject to section 504 of the Rehabilitation Act of 1973, as amended, and the implementing Department of Education regulation at 34 C.F.R. pt. 104 (1991). Section 504 prohibits discrimination on the basis of handicap in federally assisted

programs and activities.

01-00706

In your letter, you explained that in order to house a large inventory of textbooks, the University is making two changes to a warehouse room. First, sales transactions will occur at the door of the warehouse room. The door is being fitted with a half door with a ledge built onto the bottom half of the door to facilitate transactions. It is not apparent from the letter whether the ledge would be accessible to persons who use wheelchairs. Second, the University is arranging seven foot high shelves to house the large inventory of textbooks, and the arrangement of shelving will not provide wheelchair access to the textbooks in the room.

You also explained that employees in the warehouse room would bring boxes of books from the basement of the building, stock high book shelves, retrieve the books from these shelves, and conduct sales transactions from the door. Specifically you asked whether the nature of the work to be done in the warehouse room would disqualify persons who use wheelchairs from employment in the room and whether the room would be exempt from the ADA.

Many of the provisions contained in the title II regulation are based on section 504 of the Rehabilitation Act and its implementing regulations. The following are basic employment and program accessibility requirements under title II and section 504.

With respect to possible employment in the warehouse, covered entities must provide reasonable accommodation to the known physical or mental limitations of a qualified individual with a disability who is an applicant or employee, unless the entity can demonstrate that the accommodation would impose an undue hardship on the operation of the program (see 28 C.F.R. S35.140 (title II rule); and 34 C.F.R. S104.12 (Education's section 504 rule)). If an individual with a disability works in the warehouse room, the question of whether an accommodation, including modifying the shelves, is required, would need to be determined on a case-by-case basis.

As to access at the door of the warehouse room for students with disabilities who want to purchase textbooks, two different requirements are applicable. First, the title II rule, as well as the section 504 rule, requires that alterations, to the maximum extent feasible, be made in an accessible manner

(S35.151(b) of the title II rule; and 34 C.F.R. S104.23(b) (section 504 rule)). The section 504 rule at S104.23 provides that compliance with the Uniform Federal Accessibility Standards (UFAS) is considered compliance with the alterations requirements. The title II rule at S35.151(c) permits the use of either UFAS or the ADA Accessibility Guidelines, which are an appendix to the Department's regulation implementing title III of the ADA (also enclosed). Section 7 of each of these standards covers sales and service counters.

Second, the title II rule, like the section 504 rule, also requires a public entity to make its programs, services, and activities accessible, except where to do so would result in a fundamental alteration in the nature of the program or in undue financial and administrative burdens (see SS35.150(a) and (a)(3) of the title II rule). With respect to the services provided at the door of the warehouse room, if necessary to achieve program accessibility, the University may need to lower the ledge of the door to an accessible height, or open the door to provide the service.

I hope this information has been helpful.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

Enclosures (4)
01-00708

T. 5/4/92
SBO:MF:hb MAY 07 1992
XX

Mr. (b) (6)
Gainsville, Florida 32606

Dear Mr. XX

Thank you for your letter about the Florida Commission on Human Rights' ruling, which considers transsexualism a disability. You asked about the relationship between that ruling and the Americans with Disabilities Act (ADA). You were concerned that transsexualism should not be considered a disability.

The ADA authorizes the Department to provide technical assistance to entities that are subject to the Act. This letter provides informal guidance to assist you in understanding how the ADA may apply to you. This technical assistance, however, does not constitute a determination by the Department of Justice of your rights or responsibilities under the ADA and does not constitute a binding determination by the Department of Justice.

Section 511 of the ADA states that for purposes of the definition of "disability," the term "disability" does not include transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders. Accordingly, the term "disability" does not apply to an individual solely because of an individual's transsexuality.

cc: Records; CRS; Oneglia; Friedlander; Mather; FOIA; hb
01-00709

You asked about the relationship between the ADA and State laws. The ADA does not preempt any State law, if that State law provides protection for individuals with disabilities at a level greater or equal to that provided by the ADA.

I hope this information has been helpful to you.

Sincerely,

Stewart B. Oneglia
Chief
Coordination and Review Section
Civil Rights Division

01-00710

(Hand written)

Article P 752 670587

Coordination and Review Section
Civil Rights Division
U.S. Department of Justice
P.O. Box 66118
Washington, DC 20035-6118

Dear Honorable Hearing Officer

I am a recovering drug abuser (pot) and alcoholic who lost not only a military career and my South Carolina drivers license as a result of substance abuse, but - more important it also cause me a divorce after nine years of marriage. Today, after struggling with physical and emotional addiction to alcohol and pot, I have found freedom from the addiction of these drugs through the help of the State of South Carolina, local support groups, churches, and friends. My road to continuing recovery has not been easy; but with the love of my new wife, family, friends and determination on my part, I am now living a life of hope and productivity. True, at fourty years of age, I have a long ways to go to recover a small percentage of the finances and value I wasted away because of alcohol abuse. But now under The Americans Disability Act, I have a hope of securing employment in area where in the past I was denied because I had been dismissed from the Air Force and have a D.U.I. conviction against me. The ILLEGIBLE discrimination against me
01-00711

(Hand written)

Pg2

during the 1980's and to present (because of my military record - although I'm a Vet with an Honorable Discharge from 1971-1975) and not having a driver license until last year, appears to be having an effect upon my life mentally and emotionally: my tax return upon income and job stability will verify great financial hardship over the last ten years. At the present, I am still unemployed; and I am having great difficulty finding employment in the town which I live, Gaine sville, Florida. Is it because of my legally recognized handicap? I don't know. With a college education and my skills and experience in construction, I would think there would be some kind of work for me to secure having been looking for work since Sept of last year. Do I feel like I'm being discriminated against? Yes! But by the homosexual community. I belong to a grass-root organization, Concerned Citizens for Traditional Family Values, and am actively involved - without pay - in "politically" voicing my and our believes against the concept of "sexual-orientation" to be added to the already existing anti-discrimination ordances. Did I take this to the Alachua County Commission in Florida? Yes, but by letter (see Board of County Commissioner letter, dated March 11, 1992) they referred me to the Florida Commission on Human Relations. The problem, however, in having referred me to the Florida State Commission is I don't believe they will give me a fair and impartial hearing on possible Civil Rights violations against me because they - the State Commission - have already voted in 8 to 1 in favor in

declaring "Transsexuality" as a disability (See Exhibit I) in apparent violation of the intent and spirit of Public Law 101-336, Sec. 511(a)(1). Because of their "biased" pro-homosexual stance - in violation of The Americans Disability Act and Florida State laws criminalizing the acts of homosexuals; and because of the Florida State Commission "attitude" of State immunity from Civil and Federal action; I and others - Concerned Citizens - are asking that the Federal government authorities to take jurisdiction in this matter (See original certified ltr. P 752 670 584 and 5, Exhibit II). On the issue of our Human Rights concerning sexual orientation and Transsexuality under the Human Rights of 1977 and Florida Civil Rights Act of 1992 [FS 760.01(2) and FS 760.11(4)(a) and (5)], we got no answer because of being deferred to the Florida Commission. It is to my and others understanding; however, the legal authority for all County Commissions in the State of Florida comes from Florida Statute (FS) 125.66(2)(a) - a sweeping and unchecked power for Commissions to enact laws in apparent violation of mine and others Seventh, Eigth, Nineth and Fifteenth Amendment Rights under the Constitution.

Consequently, because of possible Civil and Bill of Rights violations, we are asking the Civil Rights Division of the US Department of Justice to ask the Florida State Attorney General and/or proper authority having jurisdiction to enact an emergency injunction against FS 125.66(2)(a) and any other Florida Statue which is in direct conflict with existing Federal laws against the sex act(s) of homosexual and

24 Mar 92 Article P 752 670 587
bi-sexuals which violate our Civil Liberties in Federal, State, and local laws and/or ordanances.

Sincerely,
(b)(6)

Gainesville, FL 32606

(b)(6)
See Exhibits I, II, III and IV
01-00714

This interpretive guidance has been issued by the Department of Justice in its recently published Technical Assistance Manual,* which is available from the Office on the Americans with Disabilities Act, Post Office Box 66738, Washington D.C. 20035-9998, telephone: (202) 514-0301.

Sincerely,

Assistant Attorney General
Civil Rights Division

* Copy enclosed.
01-00715

January 3, 1992

LANCASTER
POLICE
DEPARTMENT
P.O. BOX 1008
LANCASTER, SC
29721-1008
OFFICE
(803) 283-1173
FAX
(803) 286-4632

The Honorable Strom Thurmond
United States Senate
Senate Office Building
Washington, D. C. 20515

Dear Senator Thurmond:

I am a member of the National Emergency Number Association (NENA). I am writing to you to alert you to a flaw in the implementation rules for Title II Section 35 of the A.D.A. Law.

(Hearing and Speech Impaired). Our organization supports the A.D.A. Law 100%. However, the Department of Justice, who provided these rules, have set in motion, a situation that could be fatal to a hearing and speech impaired person.

The hearing and speech impaired community must communicate by using a device similar to a typewriter (called a T.D.D.) They also communicate using a personal computer (PC). The Justice Department specifies that all emergency services shall provide direct access to individuals who use T.D.D.s and computer modems.

In the past, they have communicated using a baudot modem. It still serves virtually all of the hearing and speech impaired today. It is compatible with our emergency centers. But with the advent of the personal computer, a new modem with a language called ASCII (American Standard Code for Information Interchange) appeared. Its' original design was for a business machine to communicate with another business machine, without human involvement.

However, since it is being placed into T.D.D.s, and is the norm for PCs, it presents a problem. It is not compatible with emergency centers equipment. Also there is, at this time, no technology that exists that will connect an incoming ASCII call to an ASCII modem in the emergency centers and guarantee connection.

Forward
Together...
The Spirit of
Lancaster
01-00716

COUNTY OF LEXINGTON, SOUTH CAROLINA
COUNTY ADMINISTRATION BUILDING LEXINGTON, SOUTH CAROLINA 29072 (803) 359-8000

December 31, 1991

The Honorable J. Strom Thurmond
SR-217 Russell Senate Office Building
Washington, DC 20510-4001

Dear Senator Thurmond:

I am a member of the National Emergency Number Association (NENA). I am writing to you to alert you to a flaw in the implementation rules for Title II Section 35 of the A.D.A. Law. (Hearing and Speech Impaired). Our organization supports the A.D.A. Law 100%. However, the Department of Justice, who provided these rules, have set in motion a situation that could be fatal to a hearing and speech impaired person.

The hearing and speech impaired community must communicate by using a device similar to a typewriter (called a T.D.D.). They also communicate using a personal computer (PC). The Justice Department specifies that all emergency service shall provide direct access to individuals who use T.D.D.s and computer modems.

In the past, they have communicated using a baudot modem. It still serves virtually all of the hearing and speech impaired today. It is compatible with our emergency centers. But with the advent of the personal computer, a new modem with a language called ASCII (American Standard Code for Information Interchange) appeared. Its original design was for a business machine to communicate with another business machine, without human involvement.

However, since it is being placed into T.D.D.s, and is the norm for P.C.s, it presents a problem. It is not compatible with emergency centers equipment. Also there is at this time, no technology that exists that will connect an incoming ASCII call to an ASCII modem in emergency centers and guarantee connection.

01-00717

Simply put, if a hearing impaired person places an emergency call using the ASCII mode, chances are virtually certain that the call will not be handled properly. It could disconnect, receive garbled data or make no connection at all. The result could be a possible loss of life or property. Emergency centers will be held liable for conditions over which they have no control. The hearing and speech impaired will not be served with the same quality assurance that others have come to expect of their

We need your help to keep this from happening. We feel that the reference to "computer modem" should be removed from the implementation rules until technology can assure that every T.D.D. call will be answered with the same quality as a voice placed call.

Please contact the Department of Justice and urge this change be made. Our contact is:

Mr. Robert Mather, Attorney
U.S. Department of Justice
Civil Rights Division
Coordination and Review Section
PO Box 66118
Washington, DC 20035-6118
Telephone (202) 307-2236

Sincerely,

Ronald T. Farr
Communications Coordinator

01-00718

The Gainesville Sun, 22 Feb 1992, Pg 1A.

Transsexuality ruled disability

Associated Press

TALLAHASSEE - The firing of a Jacksonville transsexual who worked as a corrections officer was handicap discrimination according to the Florida Commission on Human Rights.

The board voted 8-1 Thursday that transsexualism is a disability and Belinda Smith - formerly Lt. William Smith - should not have been fired by the Jacksonville Sheriff's Office in 1985.

"Transsexualism is a recognized disor- it's a handicap. Commissioner Judith Kavanaugh of Sarasota said before voting.

Smith, 43, was fired after he was observed dressed as a woman while off-duty. The firing came after the 14 year veteran Smith explained plans to undergo a sex-change operation, with the prerequisite that she live and dress as a woman for two years before the surgery.

Since then, Smith has had the operation.

"This is excellent. This is as strong a ruling as we could have gotten in our favor," Smith said.

Jacksonville attorney Sam Jacobson who represents Smith on behalf of the American Civil Liberties Union said the ruling breaks new ground in Florida.

"Under a handicap law, this is the first one. I think it's a case that is going to make the world a more comfortable place for people with this trait" he said.

Jacobson and several of the commissioners said the ruling will amplify the

state's Human Rights Act of 1977. It prohibits discrimination based on reasons
See DISABLED on page 6A
Court: Officials may
See UF student Wooten pa 1-A
be sued for damages
Associated Press

WASHINGTON - State officials who violate someone's rights while performing governmental duties may be sued and forced to pay monetary damages, the Supreme Court ruled Tuesday.

The 8-0 decision in a Pennsylvania case could expose officials to costly lawsuits when they are accused of violating a Civil War-era federal law aimed at preventing abuses of power.

"Imposing personal liability on state officers may hamper their performance of public duties," Justice Sandra Day O'Connor wrote for the court.

But she said the law is clear: State officials are not immune from being sued "solely by virtue of the official nature of their acts."

In other developments, the court:

* Heard arguments in an Illinois dispute over the use of hearsay evidence in child sex abuse cases. At issue is whether juries may hear statements allegedly victimized children make to others.

The court's decision in the Pennsylvania case cleared the way for trial of a suit against Barbara Hafer, a Republican, was accused of firing 18 Democratic employees for political reasons.

The workers sued, alleging they were fired based on unsubstantiated charges that they had "bought jobs" in the auditor general's office.

Hafer was elected to her post in 1988 after a campaign in which she made the job-buying allegations.

Don't remember the date. This article was cut out of the Gainesville Sun somewhere between Oct and Dec. 1991. Front page Article was about UF Student, Wooten who died of alcohol overdose.

Exhibit I
24 Mar 92 P 752 670 587
01-00719

NOTICE:

Due to the political sensitivity of the following material and the possibility of retaliation and/or reprisal from political activist and/or individual(s) opposed to Concerned Citizens for Traditional Family Values, we are requesting the same legal protection other1 political and/or self declared minority and/or special interest group(s) are enjoying under the Federal and State Hate Crime Act. We believe this request is justifiable because of our political views which are opposed to the criminal sexual acts2,3 and/or practices of gays, lesbians and bi-sexuals, and others; because of the Political Correctness left-wing militant(s)4 who may want to suppress and/or deny our Constitutional rights to freedom of speech and thought; because of race, color, ancestry, national origin, sex, nationality, family traditional values, religious traditional values5 and/or present view(s); and because of the fact(s) that since 1989, fifty or more religious dwellings6 for worship in the State of Florida have been fire damaged and/or burnt down, eight of these dwellings being in Gainesville, Florida.

1 "Other" used in the contents of the notice of request is meant to be understood as any individual(s), interest group(s), minority group(s), political group(s) and/or parties, and/or religious organizations which may have personal and/or politically active views contrary to concerned citizens for Traditional Family Values.

2 Criminal sexual acts and/or practices refers not only to gays, lesbians and bi-sexuals, but "any" illegal sex act committed by any individual(s), male and/or female - which violates existing laws and/or another person(s) unwillingness to participate in such behavior (rape and etc).

3 In the State of Florida, as well as many other states, the sexual consenting or non-consenting acts(rape) is still on the law books as being a misdemeanor and/or felony in some cases, the degree depending upon the seriousness of the offenses.

4 Political Correctness can be a racist ideology at the national level (KKK; "equal, but separate"; South Africa) and/or it can be illegally practiced individually or collectively by some (Neo-NAZI; Yah-whe Ben Yah-whe; secular humanism; New Age Movement; Academic PC; and etc). See also "Voice of the People", by Bill Maxwell, The Gainesville Sun, Gainesville, FL, February 8, 1992, page 11 A.

5 Religious tradional values refers to the thousands of years of Western culture and other cultures which have (as far back as recorded history)and do (present and future) hold the view(s) of the importance of the family unit and/or member(s), and that the sexual acts and/or practices of gays, lesbians, and bi-sexuals are unnatural and normally wrong.

5 March 1992
(b)(6)
(P752 670 584 and 5) Attachment 2
24 March 1992 P 752 670 587
EXHIBIT I

(hand written) P 752 670 584 and 5

(b)(6)
Gainesville, FL. 32606

March 3, 1992

County Commissioner Leveda Brown
P.O. Box 2877
Gainesville, FL. 32602-2877
(904) 374-5210

County Commissioner P. Wheat
P.O. Box 2877
Gainesville, FL. 32602-2877
(904) 374-5210

Dear Honorable Elected Offical,

After the County Commissioners and special Committee meeting last Monday afternoon, 2 Mar. 92, I requested of Ms Ida Reynold if she would please check to see if my letter(s) to the County Commissioners Kate Barnes, Leveda Brown, George Lake Penny Wheat and Tom Coward (PS Form 3811, line 6: signed letters received 4 Feb 92; and previous other letters) had been submitted as a matter of record against the purposed sexual orientation Amendment; and if Ms Ida Reynold had them in her file for, as being against the Amendment, her - personal review and the special Committee's review. Ms Reynold and other special Committee members informed me that my letters were not in their possession, and the letters had not been reviewed by her, nor anyone else in the Committee. I

EXHIBIT II

01-00721

(Hand written) 24 Mar 92 P 752 670 587

To: County Commissioners Leveda Brown and P. Wheat
Re: Sexual orientation amendment and missing ltrs., civil rights verdict

March 3, 1992
Page 3.

with my legal counsel, we have decided to re-submitt the
lost or misplaced letters (dated 26 Jan. 92) with copies of all
letters written to City and County Commissioners about my vote
against the sexual orientation amendment (that is, proposed amend.)
and that this letter, all copies of previous letters and/or supporting
documents against the amendment, and my present vote against
the proposed Criminal sexual orientation amendment, be reviewed
by all the County Commissioners, and Ilda Reynold, and the spa
Committee appointed to make recomendations on the amendment.
Additionally, we are requesting that one or more of the County
Commissioners (George Dekle, P. Wheat, Kate Barnes, Leveda Brown,
Tom Coward.) Contact the Florida Commission on Human Relations
to initiate and investigate a Human Rights violation (SB2 1365 and 72
SF 760.01(2) lines 19-25;pg.2) because of my race, color, religion, person
dignity, marital status, my interest, my rights, and privilege in a
of my Bill of rights, and my Constitutional guarantee right to domestic
tranquility; because of my Fourteenth Amendment rights to due process of
(voters rights) law to protect my heterosexual ancestry family tradition
values, my moral convictions, and my wanting to live peacefully
within the existing community - or anywhere else in the United States
Furthermore, we are requesting that the County Commissioner and Florida
State Human Rights Commission request an investigation by the
01-00722

(Hand written 24 Mar 92 P 752 670 585

(b)(6)
Gainesville, FL 32606

(b)(6)
March 3, 1992

In Care of Ida Reynolds and Special Commission on sexual orientation proposal amendment

County Commissioner
P.O. Box 2877
Gainesville, FL 32602-2877

Dear Honorable Elected Officials

This letter is in addition to the letter(s) to Honorable Commissioner Leveda Brown and P. Wheat. The purpose of this particular is to make another political positional statement against the proposed sexual orientation amendment, and all other wording which may be interpret to imply any illegal criminal sexual orientation to be added to either the local anti-discrimination ordinance, or at the state level on the Florida Human Civil Rights Act of 1992 (SB's 1368 and 72). For example, gays, lesbians, bi-sexuals, transvestites, transsexuals, and all others with criminal sexual orientations could - and probably will - use the lack of clarification in what is handicap, or marital status to further their criminal cause(s): ("Transsexuallity Ruled ILLEGIBLE) 01-00723

insurance to domestic tranquality.
2.) It would violate my First Amendment Right to petition the government for redress of grievances - since the sex acts of gays, lesbians, bi-sexuals, and others with criminal sexual orientation are on the Federal and State law books as being illegal.
3.) It would violate my Seventh Amendment right to sue anyone who violates personal, physical and/or mental, boundaries of my children, my family and/or myself (See attch 4: ltr, 26 JAN 9).
4.) It would be a violation of my Eighth Amendment rights in that it would be tantamount to "cruel and unusual (mental) punishment (it would be a molestation of mine and others conscience(s) - desiring to enjoy our ancestry, pro-heterosexual, or single lifestyle of millions of years.) Supreme Court Justice O'Connor made it clear it is unconstitutional to punch prisoners in the face or to serve unappetizing food because it would bluntly ignore the concepts of dignity, civilized standards, humanity and decency that estimates the 8th Amendment (The Gainesville 26 Feb 92); how much more, then, are the victims of cruel and unusual punishment who are legally forced against Federal and State laws to protect, ignore and possibly become victims of those with criminal sexual orientation.

Sincerely,

(b)(6)

Monday, 16 Dec. 1991

Dear Honorable Commissioner Tom McKnew and Commissioners:

Bravo for you, Tom! Your stance against Ms. Gilda Josephson and her "Task Force Against Offensive Advertisement" was a timely breeze of rationality. This latest affront against the advertising practices of private businesses has the appearance of political groping for recognition and power by an apparently frustrated and hypocritical pack of "witch hunters."

And no wonder; one can only imagine their loss of political face and self-respect to the communities irritation against Police Lt. Sadie Darnell and the Commissioners On The Status Of Women presumptuousness: "letters sent by Sadie Darnell on city government stationary" (at the expense of Alachua County taxpayers - without the voice of the majority) "to US Sen. Connie Mack and Bob Graham to vote against the Supreme Court nomination of Clarence Thomas and a dozen businesses" since January of this year. This same police spokeswoman was quoted in the Gainesville Sun newspaper on 12 Dec. 91 as saying that she feels an innocent verdict for William Kennedy Smith "will intimidate rape victims?" He was found innocent, but yet it appears he has now become a victim of sexual harassment by the accuser and by Sadie's personal opinion, regardless of his innocence.

It appears that she and her self-interest group will overturn a pebble looking for a mirage of sexual exploitation of women (in advertisement), but will overlook the fact that they are slamming themselves against boulders of hypocracy. This is truly an irony and a miscarriage to their own objectives. Has Gilda Josephson been willing to send letters of "enlightenment and correction" to the owners of Cafe Risque, Fantasy Cafe, and Trader South Gatorland for exploiting women - having them dance in the nude for financial profit; and the Gainesville Sun newspaper for running phone sex ads? Would Police Lt. Sadie Darnell and her other commissioners politically intimidate and possibly even threaten legal actions against the women who sexually exploit men for financial profit or other gain by sexually suggestive nudity and/or by paid bedroom sex talk over the phone? Have they written to the publishers of PENTHOUSE, PLAYBOY, HUSTLER, and other such magazines sold here in Alachua County?

Let the commissioners on the status Of Women "enlighten and correct" their own gender first; then we, the taxpayers of Gainesville and Alachua County will gain respect, with compassion and understanding, for their concerns about possible sexual exploitation of women in advertisement.

Thus, until the commissioners on The Status Of Women assume accountability of their own gender for their part in exploitation

of women and men for financial gain, I, as do many of the

Attachment 3
24 Mar 1992 P 752 670 587
01-00725

Voice of the People
The Gainesville Sun
P.O. Box 147147
Gainesville, Florida 32614-7147

This weekend while reading the Gainesville Sun, Sunday, January 26, 1992, I came across an article in the Horizon section by Sun staff writer Bob Arndorfer. This masterful piece of public enlightenment to The Darkest Secret: sexual abuse of children... was not only deeply disturbing, but also very informative to just how serious and prevailing this hideous crime is. As a loving and caring father, it staggers my imagination and sickens me to the stomach to think how any man and/or woman victimize innocent children - who look to their parents for love and security. I can only imagine with disgust and anger what rationalization and mitigating factors defense attorneys might use to lessen the emotional and legal impact for such victimization. My emotions can sympathize with Mary's extreme solution to the sexual predators: castration or hysterectomy; but, sound reasoning and the perplexing question as to why begs for answers which both will protect children from such abuse and bring swift justice. How can humanity stoop to such degradation whereas "one in three women in the United States, and one in five men, were sexually abused as children?" Men of America, are we that sexually perverted that "95 to 98 percent of identified sexual abusers are males?" Do you hear what Ted Shaw, Bob Arndorfer, Dennis Gies, Judge Jack Singbush, Julie McCall and Gilda Josephson are saying about our gender? I, for one, am in total agreement with the Florida Legislature in passing the "Florida Sexual Predators Act" to put away for a very long time such persons as Mark Dean Schwab, Jeffery L. Dahmer, and Aileen Wuornos - all which have been accused and/or found guilty of heinous sex crimes. And what did all the alleged sex offenders have in common besides stating they themselves were sexually victimized? It appears that all had numerous homosexual, lesbian and/or bi's relationships. Indeed, children and others must have legal protection from molestation from sex predators and all others with "criminal sexual orientations." Will the courts agree with Gilda Josephson, a licensed mental health counselor and chairwoman for the Gainesville Commission on the

Attachment 4
01-00726

Commissioners...
Leveda Brown
Chairman
Kate Barnes
Thomas Coward
George Dekle
Penelope Wheat

BOARD OF COUNTY COMMISSIONERS

P.O. Box 2877 * Gainesville, Florida 32602-2877
(904) 374-5210

Robert F. Fernandez
County Manager

EXHIBIT III
24 MAR 92 p 752 670 587

March 11, 1992
(b)(6)

Gainesville, FL 32606

Dear Mr. XX

Thank you for your letter of March 3, 1992, with enclosures regarding the issue of adding sexual orientation as a protected category in the County's anti-discrimination ordinance. We appreciate that you forwarded copies of your prior correspondence, including a copy of a letter dated January 26, 1992, which apparently was not received by the County or which was lost or misplaced. Please be assured that all your correspondence has been placed in the official County file of public comments and materials on this issue. The file is maintained in the County's Equal Opportunity Office and all information is available for inspection and review by the County Commissioners, as well as the public.

With regard to specific concerns expressed in your letter, if you wish to pursue the circumstances regarding the lost letter, you would need to file a complaint with the United States Postmaster, 4600 S.W. 34th Street, Gainesville, FL 32608-9998.

With regard to your concern regarding a possible human rights violation under state law, you would need to contact the Florida Commission on Human Relations, 325 John Knox Road, Building "F", Suite 240, Tallahassee, FL 32303-4113; telephone (904) 323-4115, since that agency would have jurisdiction.

Any violations you perceive against you in relation to the state law on hate crimes, and any concerns or questions regarding the church fires would need to be directed to law enforcement or the State Attorney's office, since they have jurisdiction.

I hope this information is helpful. The Board appreciates your concerns regarding the issue of sexual orientation.

Sincerely,

Leveda Brown, Chairman

Possible scenario on 4 Feb 1992
John Crow Sharon White (Sec. for E.C.E)
ILLEGIBLE Vallard (Comm Executive Off. Mgt) Comm ILLEGIBLE
Gwen Jeffery (Comm Board Sec.) or John Crow
LB:bk ILLEGIBLE Vallard Gwin Jeffery

An Equal Opportunity Employer M.F.V.H.
EXHIBIT III
01-00727

(this page hand written partially illegible)
Congressman Stearns:
I have been informed that you
did not vote for continued funding
for NEA projects such as the one
which ILLEGIBLE Jesus sodomizing a
6-year-old boy in church.

I am tired of my tax dollars
going to support anti-Christian
bigotry, pornography and filth.
Thank you for refusing to vote
for funding of such filth.

Sincerely,

Mr. (b)(6)
Gainesville FL

P.S. I am also against the adding
of "sexual orientation" wording, or
any wording which may be interpreted
to legalize the criminal sex acts of
gays, lesbians, bi-sexuals
and ILLEGIBLE criminal orientations
to local, State (SBs 1368 & 72)
and Federal Human Rights
Act- The American Disabilities
Act. The ILLEGIBLE "Handicapped-
marital status should exclude
sexual orientation and the homosexual,
criminal sexual acts.

13 MAR 92

Rep. Clifford B. Stearns
House of Representatives
Washington D.C. 20515

Senator Mack:

I have been informed that you
did not vote for continued funding
for NEA projects such as the one
which depicted Jesus sodomizing a
6-year-old boy in church.

I am tired of my tax dollars

going to support anti-Christian
bigotry, pornography and filth.
Thank you for refusing to vote
for funding of such filth.
Sincerely,

Mr. (b)(6)
Gainesville FL

P.S. I am also against the adding
of "sexual orientation" wording, or
any wording which may be interpreted
to legalize the illegal and criminal
sex acts of gays, lesbians,
bi-sexuals, and other criminal
orientations to local, State (
SB's 1368 and 72), and
Federal Human Right Acts - The
American Disabilities Act. The words
"Handicap and marital status"
should exclude sexual orientation and
the homosexual, criminal sex acts.

13 MAR 92

Sen. Connie Mack III
U.S. Senate
Washington D.C. 20510

Senator Graham:

I have been informed that you
did not vote for continued funding
for NEA projects such as the one
which depicted Jesus sodomizing a
6-year-old boy in church.
I am tired of my tax dollars
going to support anti-Christian
bigotry, pornography and filth.
Thank you for refusing to vote
for funding of such filth.

Sincerely,

Mr. (b)(6)
Gainesville FL

P.S. I am also against the adding

of "sexual orientation" wording, or
any wording which may be interpreted
to legalize the criminal sex acts
of gays, lesbians, bi sexuals,
and other criminal orientations
to local, State (SB's 1368
and 72), and Federal
Human Rights Act - The American
Disabilities Act. The words "Handicap
and marital status" should exclude
sexual orientation and the homosexual,
ILLEGIBLE sexual acts.

13 MAR 92

Sen. Bob Graham
U.S. Senate
Washington D.C. 20510

EXHIBIT IV

24 March 92 P 752 670 587
01-00728

(hand written partially illegible)
Tuesday November 26, 1991

Dear Honorable Commissioner(s):

As an American citizen and tax payer of ILLEGIBLE County, I am deeply concerned - as many ILLEGIBLE are - that the adding of the "sexual-orientation clause" to already existing anti-discrimination laws would be a blatant assault against historical heterosexual values and a breach of the doctrine of "Seperation of The Church and State." The passage of this clause would appear to be no more than another legal loophole ILLEGIBLE gays to broaden their market to solicit and ILLEGIBLE the morally confussed, the unsuspecting, the ILLEGIBLE, and the willful rebels of law and nature. Which species - other than mankind and dogs - practice sexual behavior as gays do? Actually, dogs don't even do some of the things ILLEGIBLE indulge themselves in. Gay-rights, which ILLEGIBLE to have its origin from secular humanism - ILLEGIBLE a religion by the U.S. Supreme Court - and heterosexual phobia, already are protected as a ILLEGIBLE interest group under the Federal and Florida ILLEGIBLE Hate Crime Act. Herein is a contradiction ILLEGIBLE dids: Gay ultra left wing radical groups such as "Stop the Morality Police (S.T.O.M.P.) and ILLEGIBLE the protection -
ILLEGIBLE
ideology and lifestyle is hostile towards christian values and standards of the heterosexual community. These morality "hate groups" driven by lewd and lascivious desires are determined to undermind social stability and morality by seeking - under existing "gay" laws - a new flesh market. Of course, they appear to be getting help from NOW, the ACLU, the NEA, and the ideologies of Political Correctness (PC) of the new Age movement. One can't help it but to wonder if - in some way - the secular humistic ideologies of anti-christian values coupled with the desired lifestyles of homosexuals are responsible for the fifty or more church fires (seven in G'ville) across the State of Florida? Under the Hate Crime Act, gays are protected from such crimes against society; but we heterosexual, law abiding citizens seem to be denied such protection. Has any of the commissioners and/or law enforcement agencies considered this

possibility? I - like the vast majority - say NO to the self interest groups (gays) seeking to add this "sexual-orientation clause" to already existing anti-discrimination laws! Additionally, I am requesting protection for my family and myself under the Federal and State Hate Crime Act.

Thank you,

(b)(6)
GAINESVILLE, FL. 32606

01-00729

#2040205296 II -4.3200

MAY 7 1992

The Honorable Lee H. Hamilton
U.S. House of Representatives
2187 Rayburn Building
Washington, D.C. 20515

Dear Congressman Hamilton:

This letter responds to your correspondence to the Federal Communications Commission regarding an inquiry by your constituent, (b)(6) concerning the obligations of movie theatres under title III of the Americans with Disabilities Act of 1990 (ADA), Pub. L. 101-336.

Please be advised that the ADA is not intended to require film makers or movie theatres to provide subtitles for English language movies, according to the committee reports of the Senate Committee on Labor and Human Resources (Report 101-116 at 64) and of the House Committee on Education and Labor (Report 101-485, Part 2, at 108) (enclosed).

I hope that you find this information useful in responding to your constituent.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

Enclosures (2)

cc: Records, CRS, Wodatch, Beard, McDowney:dhj T. 4/22/92
udd:Beard:C.302xx.Hamilton DJ 192-180-05296
01-00730

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

March 26, 1992

U.S. Department of Justice
Office of Legislative Affairs
10th & Constitution Avenue N.W.
Washington, D. C. 20530
Attn: Carol Crawford
Assistant Attorney General

Dear Ms. Crawford:

Enclosed is a letter from the Office of Congressman Lee H. Hamilton on behalf of his constituent, (b)(6). (b)(6) concern does not fall under the jurisdiction of the Federal Communications Commission. I believe that your office can more appropriately respond to this inquiry than the FCC. Please reply to Capitol Hill office at the address indicated below.

Sincerely,

Ora Lou Sizemore
Congressional Liaison Specialist
Office of Legislative Affairs

Enclosure

cc: Honorable Lee H. Hamilton
House of Representatives
2187 Rayburn House Office Building
Washington, D.C. 20515
Attn: Marianne Buckley
01-00731

TO:D.C.
FROM:PHIL
DA:2-10-92
(b)(6)

QUESTION REGARDING "THE AMERICANS WITH DISABILITIES ACT." PAGE 10,SECOND Q & A CONCERNING HEARING. IS IT POSSIBLE TO REQUIRE MOVIE THEATRES TO PROVIDE SUBTITLES FOR ENGLISH SPEAKING MOVIES UNDER THIS ACT.
01-00732

Calendar No. 216
101ST CONGRESS SENATE REPORT
1st Session 101-116

THE AMERICANS WITH DISABILITIES ACT OF 1989

AUGUST 30, 1989.---Ordered to be printed

Filed under authority of the order of the Senate of August 2 (legislative day, January 3), 1989

Mr. KENNEDY, from the Committee on Labor and Human Resources, submitted the following

REPORT
together with
ADDITIONAL VIEWS
[To accompany S. 933]

The Committee on Labor and Human Resources, to which was referred the bill (S. 933) to establish a clear and comprehensive prohibition of discrimination on the basis of disability, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

CONTENTS

Page
I. Introduction..... 1
II. Summary of the legislation..... 2
III. Hearings..... 4
IV. Need for the legislation..... 5
V. Summary of committee action.....21
VI. Explanation of the legislation.....21
VII. Regulatory impact.....88
VIII. Cost estimate.....90
IX. Changes in existing law.....95

I. INTRODUCTION

On August 2, 1989, the Committee on Labor and Human Resources, by a vote of 16-0, ordered favorably reported S. 933, the

21-174
01-00733

who uses a wheelchair can reach all the books. Rather, a salesperson can tell the blind person how much an item costs, make a special order of brailled books, and reach the books that are out of the reach of the person who uses a wheelchair.

The legislation specifies that auxiliary aids and services includes qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments. Other effective methods may include: telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for the deaf, closed captions, and decoders.

For example, it would be appropriate for regulations issued by the Attorney General to require hotels of a certain size to have decoders for closed captions available or, where televisions are centrally controlled by the hotel, to have a master decoder.

It is also the Committee's expectation that regulations issued by the Attorney General will include guidelines as to when public accommodations are required to make available portable telecommunication devices for the deaf. In this regard, it is the Committee's intent that hotels and other similar establishments that offer nondisabled individuals the opportunity to make outgoing calls, on more than an incidental convenience basis, to provide a similar opportunity for hearing impaired customers and customers with communication disorders to make such outgoing calls by making available a portable telecommunication device for the deaf.

It is not the Committee's intent that individual retail stores, doctors' offices, restaurants or similar establishments must have telecommunications devices for the deaf since people with hearing impairments will be able to make inquiries, appointments, or reservations with such establishments through the relay system established pursuant to title IV of the legislation, and the presence of a public telephone in these types of establishments for outgoing calls is incidental.

Open-captioning, for example, of feature films playing in movie theaters, is not required by this legislation. Filmmakers are, however, encouraged to produce and distribute open-captioned versions of films and theaters are encouraged to have at least some preannounced screenings of a captioned version of feature films.

Places of public accommodations that provide film and slide shows to impart information are required to make such information accessible to people with disabilities.

The legislation also specifies that auxiliary aids and services includes qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments. Additional examples of effective methods of making visually delivered materials available include: audio recordings and the provision of brailled and large print materials.

The legislation specifies that auxiliary aids and services includes

the acquisition or modification of equipment or devices. For example, a museum that provides audio cassettes and cassette players for an audio-guided tour of the museum may need to add brailled adhesive labels to the buttons on a select number of the tape-players so that they can be operated by a blind person.

The Committee wishes to make it clear that technological advances can be expected to further enhance options for making

AMERICANS WITH DISABILITIES ACT OF 1990

May 15, 1990.-Ordered to be printed

Mr. Hawkins, from the Committee on Education and Labor, submitted the following

REPORT
together with
MINORITY VIEWS

[To accompany H.R. 2273 which on May 9, 1989, was referred jointly to the Comm-ittee on Education and labor, the Committee on Energy and Commerce, the Com-mittee on Public Works and Transportation, and the Committee on the Judiciary]

[Including cost estimate of the Congressional Budget Office]

The Committee on Education and Labor, to whom was referred the bill (H.R. 2273) to establish a clear and comprehensive prohibition of discrimination on the basis of disability, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1: SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.--This Act may be cited as the "Americans with Disabilities Act of 1989".

(b) TABLE OF CONTENTS.--The table of contents is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Findings and purposes.
Sec. 3. Definitions.
TITLE I--EMPLOYMENT
Sec. 101. Definitions.
Sec. 102. Discrimination.
Sec. 103. Defenses.
Sec. 104. Illegal drugs and alcohol.
Sec. 105. Posting notices.
Sec. 106. Regulations.
Sec. 107. Enforcement.
Sec. 108. Effective date.

29-939

public telephone in these types of establishments for outgoing calls is incidental.

Open-captioning, for example, of feature films playing in movie theaters, is not required by this legislation. Filmmakers, are, however, encouraged to produce and distribute open-captioned versions of films, and theaters are encouraged to have at least some pre-announced screenings of a captioned version of feature films.

Places of public accommodations that provide films and slide shows to impart information are required to make such information accessible to people with disabilities.

The legislation also specifies that auxiliary aids and services include qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments. Additional examples of effective methods of making visually delivered materials available include audio recordings and the provision of brailled and large print materials.

The legislation specifies that auxiliary aids and services include the acquisition or modification of equipment or devices. For example, a museum that provides audio cassettes and cassette players for an audio-quided tour of the museum may need to add brailled adhesive labels to the buttons on a select number of the tape-players so that they can be operated by a blind person.

The Committee wishes to make it clear that technological advances can be expected to further enhance options for making meaningful and effective opportunities available to individuals with disabilities. Such advances may require public accommodations to provide auxiliary aids and services in the future which today would not be required because they would be held to impose undue burdens on such entities.

Indeed, the Committee intends that the types of accommodation and services provided to individuals with disabilities, under all of the titles of this bill, should keep pace with the rapidly changing technology of the times. This is a period of tremendous change and growth involving technology assistance and the Committee wishes to encourage this process. (See, for example, the enactment in 1988 of P.L. 100-407, the Technology Related Assistance for Individuals with Disabilities Act). Information exchange is one of the areas where there are still substantial barriers, but where great strides are being made. Access to time sensitive print information, whether in the press or in government documents (such as notices of grants and contracts in the Federal Register or the Commerce Daily) is one of the cornerstones of our free society and of equal opportunity and access. It is not coincidental that access to information was the first guarantee extended by the Bill of Rights.

For these reasons, the Committee expects the Federal agencies charged with the implementation of this Act to take special interest in being aware of the possibilities relating to information dis-

semination and to make special efforts to share this information through technical assistance programs. Programs such as the Newspapers for the Blind Program in Flint, Michigan, a program which has been nationally recognized and is in the process of being emulated, provide an excellent example of what can be done in this area.

01-00736

Ret. 5/1/92
SBO:WRW:rjc
DJ#192-180-04976

MAY 07 1992

The Honorable Robert S. Walker
Member, United States House of
Representatives
2369 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Walker:

This letter responds to your request for assistance on behalf of your constituent, Mr. Charles Price. Mr. Price has asked about his responsibility as a manager of a community park and pool to comply with the Americans with Disabilities Act (ADA). In addition, he has asked about Federal grant money available to bring his facility into compliance with the ADA.

There are no Federal loan programs directly addressed to meeting the costs of complying with the requirements of the ADA. Nor has Congress appropriated any money specifically earmarked to defray the costs to private and public entities of compliance with the ADA. However, the Department of Housing and Urban Development (HUD) makes available community development block grants designed to aid low and moderate income households and communities. These grants may be used to remove architectural barriers that restrict accessibility of publicly owned and privately owned buildings, facilities, and improvements. For more information on how to apply for a community development block grant, your constituent may contact HUD's Office of Block Grant Assistance at (202) 708-3587.

In addition, if the community park and pool is a private entity subject to title III of the ADA, tax legislation may help defray the cost of making alterations. As amended in 1990, the Internal Revenue Code (IRS) allows a deduction of up to $15,000 per year for expenses associated with removal of qualified

architectural and transportation barriers. In the same law, Congress established the Disabled Access Credit. This credit is available to businesses whose receipts in the preceding tax year were not more than $1,000,000 or who employed no more than 30 full-time employees. Qualifying businesses may claim a

Records, CRS, Worthen, Friedlander, Oneglia, McDowney, Craig
:UDD:Worthen.Citizen.Cong.Walker.Grants.4.92
01-00737

credit of up to 50 percent of the eligible access expenditures that exceed $250, but do not exceed $10,250. The credit may be elected through IRS form 8826. If the community park and pool is a public entity subject to title II, neither the tax credit nor tax deduction provisions apply.

Mr. Price should be advised that the ADA requirements applicable to both public and private entities do not include specific accessibility standards for new construction or alterations of the unique aspects of pools and parks. However, facilities and features commonly associated with pools and parks, such as restrooms, parking lots, locker rooms, and routes to and from a pool or park, must comply with the ADA accessibility standards.

We hope you find this information of assistance.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

01-00738

March 20, 1992

CONGRESSIONAL INQUIRY

Mr. Charles Price
2957 Main Street
Conestoga, Pennsylvania 17516

Mr. Price runs a community park and pool. He recently received information relative to the Americans with Disabilities Act. He notes that the facility has a lot of work to do to bring the facilities up to standard. He notes they will have to start the "upgrade" very soon and wants to know if there are any federal funds available for this type of upgrading. He also wants to know, if there is money available, if they would be reimbursed, should they begin renovations now. He is interested in federal grants and very low interest loans.

Your attention to this request is appreciated.

nw

01-00739

DJ 202-PL-00017

MAY 8 1992

Mr. Donald Springer Hawley, PE
Post Office Box 102
Ruidoso, New Mexico 88345

Dear Mr. Hawley:

This letter responds to your correspondence requesting information about the provisions of the Americans with Disabilities Act, 42 U.S.C. 12101-12213 (ADA). The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist you in understanding the ADA accessibility standards. However, it does not constitute a legal interpretation and it is not binding on the Department.

Your letter specifically inquires as to the means by which title III of the ADA will be enforced.

Title III provides for enforcement by both private litigation and by government litigation. Under Section 308(a), Title III may be enforced by a private individual through a law suit against a public accommodation to obtain a court order requiring compliance with Title III. The private individuals may obtain reasonable attorney fees, but may not obtain compensatory or punitive damages. Under Section 308(b), Title III may be enforced by the Department of Justice through a law suit to obtain not only a court order requiring compliance, but also monetary damages (but not punitive damages) and a civil penalty not exceeding $50,000.00 for a first violation and not exceeding $100,000.00 for a subsequent violation.

The Department has received and is investigating complaints of title III violations from all over the country. There are also many active disability rights groups around the country that may choose to pursue litigation to enforce the ADA.

cc: Records Chrono Wodatch Magagna Beard.ta.308.hawley
arthur T. 4/28/92
01-00740

I enclose a copy of the Department's Title III Regulations and a copy of the Title III Technical Assistance Manual which may further clarify obligations under and enforcement of Title III.

We hope that this information is useful to you in evaluating the rights and obligations of your customers under the ADA.

Sincerely,

Joan A. Magagna
Deputy Director
Office on the Americans with Disabilities Act

Enclosures
01-00741

PO Box 102
Ruidoso, NM 88345
January 31, 1992

Department of Justice Coordination and Review Sect.
Civil Rights Division
PO Box 66118
Washington, D.C. 20035-6118

Dear Sirs,

I am a registered professional engineer interested in assisting firms to comply with Title III of the Disabilities Act, and I understand that you are the authority which will enforce compliance. How will this be enforced? I understand that the local building department will not be involved, and I wonder how much attention firms will pay to compliance if they feel that enforcement is remote and not likely to be effective. Can you supply me with information or advice as to how I can convince firms that they should make the investment to comply with Title III?

Yours sincerely,

Donald Springer Hawley, PE

01-00742

DJ 202-PL-18

MAY 11, 1992

Mr. Mark Lawrence, General Manager
International Inn
662 Main Street
Hyannis, Massachusetts 02601

Dear Mr. Lawrence:

This letter is to follow up my May 11, 1992, letter to you regarding the Americans with Disabilities Act (ADA). The paragraph that begins at the top of page 2 is not totally accurate. That paragraph relates to alterations to guest rooms. ADA Accessibility Guidelines (ADAAG) require that when guest rooms are being altered in an existing facility, at least one sleeping room or suite shall be made accessible for each 25 sleeping rooms, or fraction thereof, of the total number of rooms being altered until the total number of such accessible rooms meets the number required by ADAAG for new construction. The total number of accessible rooms required is not a fixed percentage but is set forth in a table in ADAAG. My earlier letter had stated that all altered guest rooms were required to be made accessible until 5% of the total was reached. I have enclosed a copy of the Department's Title III regulations which includes ADAAG as an Appendix. See generally ADAAG Section 9 and specifically 9.1.5 and 9.1.2.

I regret the confusion and hope that this provides clearer guidance for you. Please feel free to contact this office if we can be of further assistance.

Sincerely,

Joan A. Magagna
Deputy Director
Office on the Americans with Disabilities Act

cc: Records Chrono Wodatch Magagna.pl.18.followup Bread
arthur T. 6/10/92

DJ 202-PL-18

MAY 11 1992

Mr. Mark Lawrence, General Manager
International Inn
662 Main Street
Hyannis, Massachusetts 02601

Dear Mr. Lawrence:

This letter responds to your correspondence with several offices of the Department of Justice seeking information about the provisions of the Americans with Disabilities Act (ADA). The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist you in understanding the ADA accessibility standards. However, it does not constitute a legal interpretation and it is not binding on the Department.

Your letter describes various measures the International Inn has taken to comply with the ADA and asks for our further suggestions. You inquire specifically whether 5% of the total number of guest rooms must be made accessible immediately.

We commend you for taking steps to bring your facility into compliance with the ADA. However, short of conducting an in-depth compliance review, we cannot assess the sufficiency of those efforts.

With respect to the 5% requirement, this Department is not authorized to grant a waiver of any statutory requirement. However, the extent of your obligation under the ADA depends on whether you are planning guest room renovations in the ordinary course of business or whether your intent is to make alterations only insofar as required by the ADA.

cc: Records; Chrono; Wodatch; Magagna.
:uddl:udd:magagna:pl.18

When a public accommodation is engaged (after January 26, 1992) in an alteration or remodeling of an existing facility in the ordinary course of business, it must comply with the ADA Accessibility Guidelines (ADAAG) to the maximum extent feasible--that is, unless it is virtually impossible to comply because of the structure of the building being altered. Cost is not a consideration. This means that all renovations to guest rooms must comply with ADAAG until the requisite number of rooms are made accessible. Thus, for example, if you now have no accessible rooms and plan to renovate a number of rooms each year, making only one per year accessible, that would not be permissible under the ADA. If you plan full renovations of any rooms, every room so renovated must comply with ADAAG to the maximum extent feasible until 5% of the rooms are made fully accessible. If minor alterations are planned, the altered features in 5% of the rooms must comply with ADAAG.

If no alterations are planned in the ordinary course of business, the hotel's obligation is less rigorous. It must remove architectural barriers to accessibility where it "readily achievable" -- that is, where the removal can be done easily and without much difficulty or expense. There are a number of factors to be used in determining whether the removal of a particular barrier is readily achievable. These include: the nature and cost of the action; the financial resources available both to the site and the parent organization; the size and number of employees at the site and overall; and the relationship of the sites to the parent organization. The hotel must take these factors into account in determining whether making one room per year accessible fulfills the barrier removal obligations.

I am enclosing a copy of the Department's Title III Technical Assistance Manual which may further assist you in understanding your obligations under the ADA. We hope that this information is useful to you.

Sincerely,

Joan A. Magagna
Deputy Director
Office on the Americans with Disabilities Act

Enclosure

International Inn
662 MAIN STREET HYANNIS, CAPE COD, MA 02601 (508) 775-5600

February 3, 1992

Wayne Budd
United States Attorney General
U.S. DEPARTMENT OF JUSTICE
Washington, DC 20530

Dear Mr. Budd,

In our endeavor to conform to the Americans with Disability Act, our Controller contacted the Massachusetts Office on Disability and spoke with Bruce Bruneau. A meeting was set up for January 13, 1992 and the following persons were in attendance:

Bruce Bruneau, Massachusetts Office on Disability
Pam Berkley and Julie Nolan, Cape Organization for Rights of the Disabled
Arthur D. Rittel, President, International Inn
Mark Lawrence, General Manager, International Inn
Paul Larsen, Chief Engineer, International Inn

Let me take this opportunity to state for the record my impression of these fine ladies and gentlemen and their commitment to this cause. On the date of our appointment we experienced a fierce snowstorm and anticipated their cancellation. However, punctually at 10:00 AM there these individuals were, ready, willing, and able.

We toured the entire property noting their recommendations in regards to conforming our Sleeping Rooms, Stairways, Indoor and Outdoor Pool accessibilty, certain areas of our Registration Lobby, i.e., height of Registrations Desk, Public Restrooms, and Dining Room.

The following will outline each area, along with their recommendations, and what we are doing to conform to these regulations.

-Sleeping Rooms: Presently we lodge four Accessible Accommodations. The only recommendations made to each of these rooms is to change the swing of the door which we anticipate being completed in the near future.

-Stairway: It was recommended that we close in the risers for the stairway located in the Lobby. This has been completed.

-Indoor Pool: It was suggested to us that we build a ramp leading from the Hallway to the Pool Entrance with a landing located at the turn in the Hallway.
This, too, has been completed.

-Changing Rooms (Located in the Indoor Pool): Widening of the entryways to 36" and building one 5' X 6' Stall to replace the existing stalls was recommended. Also to remove existing vanity and replace with an accessible sink that meets all regulations. At this time, we have completed the widening of the entryways and bringing the interior up to regulation is in process. We are receiving estimates from bidders for the installation of the vanity.

-Outdoor Pool: No recommendations were made due to the inclement weather, however, it has come to our attention that a ramp will be needed to facilitate access to the pool area. In the case of both the Indoor and Outdoor Pools a lift must be installed to enable the disabled full use of these amenities.

-Registration Lobby: Many recommendations were made as outlined below and we intend to adhere to all of them.

1). Portico: Our slated Entrance Way must be regraded for a more accessible approach to the Front Doors.
2). Registration Desk: A lower-level desk will be installed to enable wheelchair registration.
3). Public Phone: Our Chief Engineer has been in touch with New England Telephone to replace existing equipment with equipment that conforms.
4). House Phone: Our Chief Engineer is presently constructing a split-level phone center to be installed upon completion.
5). Public Restrooms: It was suggested that we create a Unisex Bathroom due to the physical restrictions that are present. We are consulting with Contractors to submit plans for this reconstructive project. This project should be completed by April 1, 1992.

-Dining Room: A tour of the Dining Room was conducted and it appears we meet all required regulations.

In regards to our Accessible Guest Rooms Quota of 5% of the total number of Guest Rooms, we would like to seek temporary relief in that we presently
01-00747

have four such rooms and wish to complete the quota on a scale of one room per year for the next four years. We seek this relief simply because of the hard economic times we are all experiencing in the Lodging Industry.

My President, Arthur Rittel, is also owner and operator of The Country Squire Motor Lodge located at 206 Main Street, Hyannis, MA. As this property utilizes less than 25 employees, grosses less than one million dollars annually, and is only open seven months of the year, it is not required to comply until the required date of July 26, 1992. However, in Mr. Rittel's attempt to be an example to others in our community, he intends to begin renovations prior to the hotels opening in April 1992. In this regard, a meeting has been established with The Cape Organizations for the Rights of the Disabled (CORD) to discuss necessary compliance.

I would welcome any suggestions you may have in our endeavor to comply to this long awaited Legislative Ruling. May I have a reply to our request regarding Accessible Rooms Quota? If you require any additional information, please do not hesitate to contact me personally. I anxiously await your reply.

Yours Sincerely,

THE INTERNATIONAL INN

Mark Lawrence
General Manager
ML/mhf

cc: Barbara S. Drake, Deputy Asst. Attorney General
Stewart B. Oneglia, Coordination and Review Section
John L. Wodatch, Office of the ADA
Scott Harshbarger, Mass. Attorney General
Bruce Bruneau, Massachusetts Office on Disability
Pam Berkley, CORD
Julie Nolan, CORD
Arthur D. Rittel, CEO International Inn
Christina Canning, GM Country Squire Motor Lodge
Paul Larsen, Chief Engineer, International Inn
01-00748

DJ 202-PL-113

MAY 11 1992

Mr. Chandler Rand
Attorney
Mental Health Advocacy Project
111 West St. John, Suite 315
San Jose, California 95113

Dear Mr. Rand:

This is in response to your letter requesting information about the Americans with Disabilities Act (ADA).
The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist you in understanding the ADA's requirements. However, it does not constitute a legal interpretation and it is not binding on the Department.

You inquire whether the ADA covers public housing and subsidized housing. Public housing is typically owned and operated by a State or local government entity. Title II of the ADA prohibits discrimination on the basis of disability in all of the programs, activities, and services of State and local government entities. Public housing operated by a State or local government entity would be considered a program, activity or service and is thus covered by title II.

Strictly residential facilities that are privately owned are not otherwise covered by the ADA. Subsidized housing is typically owned and operated by private entities. Title II does not cover a private entity simply because it receives State or local financial assistance. However, any private entity that receives Federal financial assistance, as many subsidized housing facilities do, would be covered by section 504 of the Rehabilitation Act which has similar obligations to those of title II regarding nondiscrimination on the basis of disability.

cc: Records; Chrono; Wodatch; Magagna.
:uddl:udd:magagna:pl.113
01-00749

I have enclosed a copy of this Department's Title II Technical Assistance Manual which further describes the coverage of title II and also provides some discussion of section 504.

I hope this information will be useful to you.

Sincerely,

Joan A. Magagna
Deputy Director
Office on the Americans with Disabilities Act

Enclosure
01-00750

(Hand written)

March 10, 1992

To Whom it may concern:

I read the handbook entitled: The Americans With Disabilities Act Questions and Answers. I believe it was published by the U.S. Equal Employment Opportunity Commission and the U.S. Department of Justice Civil Rights Division. It was printed by the National Institute on Disability and Rehabilitation Research (July, 1991).

I have a question: Under the miscellaneous section it states "All Government facilities" are covered and yet it then states residential apartment units are covered by the Fair Housing Act. Here's my question:

Does the ADA Cover
1 Public Housing?
2 Subsidized Housing?

Thank You.

Chandler Rand
Attorney
Mental Health Advocacy Project
111 West St. John Suite 315
San Jose Ca ILLEGIBLE

01-00751

U.S. Department of Justice
Civil Rights Division

T. 4/27/92
JLW:PLB:HJB:Jfh
III-1.5000

Washington, D.C. 20530

Ms. (b)(6)
Gainesville, New York 10923

Dear Ms. XX

This letter responds to your correspondence requesting information about the application of the Americans with Disabilities Act (ADA) to churches. The ADA authorizes the Department of Justice to provide technical assistance to individuals or entities having rights or responsibilities under the Act. This letter provides informal guidance to assist you in understanding the ADA's requirements. However, it does not constitute a legal interpretation, and it is not binding on the Department.

Section 307 of the ADA provides that "[t]he provisions of this title shall not apply to . . . religious organizations or entities controlled by religious organizations, including places of worship." As noted in the preamble to the ADA title III regulation:

> [T]he ADA's exemption of religious organizations and religious entities controlled by religious organizations is very broad, encompassing a wide variety of situations. Religious organizations and entities controlled by religious organizations have no obligations under the ADA. Even when a religious organization carries out activities that would otherwise make it a public accommodation, the religious organization is exempt from ADA coverage. Thus, if a church itself operates . . . a private school, or a diocesan school system, the operations of the . . . school or schools would not be subject to the ADA or [the title III regulations]. The religious entity would not lose its exemption merely because the services provided were open to the general public. The

test is whether the church or other religious organization operates the public accommodation, not which individuals receive the public accommodation's services.

cc: Records; OADA; Wodatch; Breen; Beard; Arthur
01-00752

56 Fed. Reg. 35,554 (July 26, 1991).

Nonreligious entities may be subject to title III when operating places of public accommodation in the facilities of a religious organization. A nonreligious entity running a place of public accommodation -- such as a community theatre in a church auditorium -- is exempt when the space is donated by the church. However, the public accommodation (i.e. the community theatre) -- but not the church itself -- is covered when the space is rented (for money or any other consideration) from the church. See 56 Fed. Reg. 35,554 (July 26, 1991); Department of Justice ADA Title III Technical Assistance Manual SIII-1.5200 (1992).

A religious entity, however, is not exempt from the employment requirements of title I of the ADA, which go into effect on July 26, 1992, if it has 25 or more employees. Moreover, if a religious entity receives Federal funds, it is subject to section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. S794, which prohibits disability discrimination in federally assisted programs.

I hope that this information is useful to you in understanding the requirements of the ADA.

Sincerely,
Philip L. Breen
Special Legal Counsel
Office on the Americans with Disabilities Act
01-00753

III-4.4200

MAY 12 1992

Ms. (b)(6)
Tenton Falls, New Jersey 07724

Dear Ms. XX

This letter responds to your correspondence requesting information about the provisions of the Americans with Disabilities Act (ADA). The ADA authorizes the Department of Justice to provide technical assistance to individuals or entities having rights or obligations under the Act. This letter provides informal guidance to assist you in understanding the ADA's requirements. However, it does not constitute a legal interpretation and it is not binding on the Department.

You state that you use a wheelchair and cannot go down the aisles at a book store because there are temporary displays set up in the aisles. Book stores are subject to the provisions of title III of the ADA which requires the removal of barriers, such as shelving that impedes access by wheelchair users, if removal is "readily achievable." The ADA defines "readily achievable" to mean easily done and without much difficulty or expense. In many circumstances, it will not be difficult or expensive to make aisles wide enough for access by persons using wheelchairs. The ADA regulations indicate, however, that removing or reconfiguring shelves would not be considered readily achievable if it would result in a "significant loss of selling or serving space."

If barrier removal is not readily achievable, then a store must take other readily achievable measures to make its goods and services available to persons with disabilities. Retrieving

books for a customer may be an appropriate way to do this but only if barrier removal is not readily achievable. The factors considered in determining whether the removal of a particular barrier is readily achievable are: the nature and cost of the action; the financial resources available both to the store and any parent organization; the size of the business and number of employees, and the relationship of the businesses to the parent organization.

cc: Records Chrono Wodatch Magagna Beard.ta.302baiv. xx(b)(6)
arthur T. 5/8/92

01-00754

You also inquired what steps you could take to resolve your problem with the book store. Individuals may file law suits under the ADA to secure their rights and you may wish to consult an attorney to explore this option. This Department investigates complaints of discrimination and can take enforcement action where there is a pattern or practice of discrimination or a denial of rights raising an issue of general public importance. A Title III Complaint Information Sheet is enclosed.

I hope that this information is useful to you in understanding your rights under the ADA.

Sincerely,
Joan A. Magagna
Deputy Director
Office on the Americans with Disabilities Act

01-00755

(Handwritten)

(b)(6)

Tinton Falls NJ 07724

March 3, 1992

Dear Sirs

I have been in a wheelchair for 13 years and with the passing of the ADA I am beginning to have the freedom to browse and shop I had before my disability.

However I seem to be having quite a problem

with Encore Books, Shrewsbury Plaza, Shrewsbury, NJ 07701.

The store has many temporary displays set up in its aisles which prohibit me from going into the aisles to look for books.

I spoke to the manager

01-00756

about this problem and he said the legal department had advised him that having some one get books for me satisfied the ADA regulations.

In reading the ADA information from the Justice Department I believe he is wrong.

These are temporary racks
and displays, not walls or
permanent fixtures. In fact
I am able to push & lift
most of them, when
needed (But it really would be messy).

The statement that
they will get books for
me tells me they don't
really want me there.

How can I tell them

01-00757

to get the books, when
I don't know what's there.
Am I not to browse as
other shoppers do? Cannot
I make my own selections?

What must I do to get

this store to clear its aisles? How do I get help and from whom?

I remain respectfully yours,

(b)(6)

01-00758

U.S. Department of Justice
Civil Rights Division

T. 4/22/92
JLW:LIB:PLB:HJB:jfh
Washington, D.C. 20530

Mr. xx(b)(6)
XX
Sodus Point, New York XX

Dear Mr. XX

This letter responds to your correspondence requesting information about the Americans with Disabilities Act (ADA). In your letter you note that because of the short-term memory loss

resulting from your head injury, it was necessary for you to tape record the November 2, 1991, meeting of the board of directors of the New York State Head Injury Association, and that this accommodation was denied to you.

The ADA authorizes the Department of Justice to provide technical assistance to individuals or entities having rights or obligations under the Act. This letter provides informal guidance to assist you in understanding the ADA's requirements. However, it does not constitute a legal interpretation, and it is not binding on the Department.

Entities covered by either title II (State and local government) or title III (public accommodations and commercial facilities) of the ADA are required to make their programs and activities accessible to individuals with disabilities. As noted by S 36.302 of the title III regulation issued by the Department of Justice, "[a] public accommodation shall make reasonable modifications in policies, practices, and procedures when . . . necessary to afford . . . services, . . . to individuals with disabilities, unless the public accommodation can demonstrate that making the modifications would fundamentally alter the nature of the . . . service . . . ." 28 C.F.R. S 36.302(a). Similar language may be found in the title II regulation. 28 C.F.R. S 35.130(b) (3) (ii).

The ADA was not yet in effect at the time of the November 2, 1991, meeting. Both title II and title III of the Americans with Disabilities Act (ADA) took effect on January 26, 1992. However, if the New York State Head Injury Association received Federal financial assistance, it would be required to conform to section 504 of the Rehabilitation Act of 1973. The obligations under section 504 are similar to those under the ADA.

cc: Records; OADA; Wodatch; Bowen; Breen; Beard; Arthur
01-00759

If you wish to file a complaint concerning the November 2, 1991, incident, you should contact the Office for Civil Rights of the United States Department of Education, which has jurisdiction over alleged violations of section 504 by grantees of the Department of Education.

We hope that this information is useful to you in evaluating your rights under the ADA.

Sincerely,

Philip L. Breen
Special Legal Counsel
Office on the Americans with Disabilities Act

01-00760

U.S. Department of Justice
Civil Rights Division

T. 4/27/92
JLW:PLB:HJB:jfh

Washington, D.C. 20530
MAY 12 1992

Frank H. Burder, President
Tacala, Inc.
500 Chase Park South, Suite 108
Birmingham, Alabama 35244

Dear Mr. Burder:

This letter responds to your correspondence regarding your efforts to comply with the Americans with Disabilities Act (ADA). The ADA authorizes the Department of Justice to provide technical assistance to individuals or entities having rights or obligations under the Act. This letter provides informal guidance to assist you in understanding the ADA's requirements. However, it does not constitute a legal interpretation, and it is not binding on the Department.

Depending on the context, title III of the ADA imposes a range of compliance standards on private entities regarding physical barriers in places of public accommodation. When a public accommodation is engaged in new construction of a facility, it must comply with the accessibility provisions of the ADA and the ADA Accessibility Guidelines (ADAAG) established pursuant to it. When a public accommodation is engaged in an alteration or remodeling of an existing facility, it must comply with ADAAG's requirements for alterations.

When a public accommodation is engaged in neither new construction nor alteration of a facility, then a significantly less rigorous accessibility obligation is imposed. The public facility must remove any physical barriers to individuals with disabilities where the removal of those barriers is "readily achievable" -- that is, where the removal can be done easily and without much difficulty or expense.

The regulations issued by the Department of Justice discuss the factors that are to be used in determining whether the removal of a particular barrier is readily achievable. These include the nature and cost of the action, the financial resources available both to the site and the parent organization, the size and number of employees at the site and overall, and the relationship of the site to the parent organization. A copy of these regulations is enclosed.
cc: Records; OADA; Wodatch; Breen; Beard; Arthur
01-00761

The removal of existing physical barriers to your restrooms should be evaluated under the "readily achievable" standard. Where removal of all barriers is not readily achievable, you must still take whatever steps you can under that standard to remove barriers. In addition, the obligation to remove any existing barriers is an ongoing one. What is not readily achievable today may be readily achievable next year.

We hope that this information is useful to you in evaluating your compliance with the ADA.

Sincerely,

Philip L. Breen
Special Legal Counsel
Office on the Americans with Disabilities Act

Enclosure

01-00762

MAY 12 1992

DJ 202-PL-00104

Mr. Duane L. Cobeen
Cobeen, Tsuchida & Associates, Inc.
210 Ward Avenue, Suite 240
Honolulu, Hawaii 96814

Dear Mr. Cobeen:

I am responding to your request for clarification of the effective dates of various provisions of title III of the Americans with Disabilities Act of 1990 (ADA), Pub. L. 101-336, 104 Stat. 327 (July 26, 1990), 42 U.S.C.A. SS 12101 et seq., and this Department's regulation implementing title III, 56 Fed. Reg. 35544 (July 26, 1991), to be codified at 28 C.F.R. pt. 36.

The ADA authorizes the Department to provide technical assistance to individuals and entities having rights or responsibilities under the Act. This letter provides informal guidance to assist you in understanding the ADA. However, this technical assistance does not constitute a determination by the Department of Justice of your rights or responsibilities under the ADA and it is not binding on the Department of Justice.

The new construction requirements of the ADA apply to any place of public accommodation or commercial facility first occupied after January 26, 1993, for which the last application for a building permit or permit extension was completed after January 26, 1992. If a facility is constructed under a permit for which the application was completed prior to January 26, 1992, or the facility is occupied before January 26, 1993, the facility is not subject to the new construction requirements of the ADA. Alterations to places of public accommodation and commercial facilities are required to comply with the ADA accessibility standards if the alteration began after January 26, 1992.

cc: Records Chrono Wodatch Bowen Magagna
Blizard.udd:ada.interpretation.cobeen arthur T. 4/17/92

01-00763

In addition, existing places of public accommodation are required to remove architectural, communication, and transportation barriers to the extent that it is readily achievable to do so. This requirement took effect on January 26, 1992. This Department's regulation provides that the duty to remove barriers is a continuing obligation under which each public accommodation is required to remove barriers in its facilities, to the extent that it is readily achievable to do so, until the facility complies with the accessibility standards that would apply if the facility was being altered.

This Department recently issued a technical assistance manual to assist individuals and entities subject to the ADA to understand the requirements of title III. I have enclosed a copy for your information. I hope that this information is helpful to you.

Sincerely,

Joan A. Magagna
Deputy Director
Office on the Americans with Disabilities Act
Civil Rights Division

Enclosure

COBEEN, TSUCHIDA & ASSOCIATES, INC. ARCHITECTS A.I.A.

September 25, 1991

Mr. John Wodach
Deputy Section Chief
Civil Rights Division
U.S. Department of Justice
P. O. Box 66118
Washington DC 20035

RE: ADA EFFECTIVE DATES

Dear Mr. Wodach:

I attended a seminar, Designing for Accessibility, October 22 and 23, 1990, here in Honolulu in which you participated. I was impressed with you excellent presentation and knowledge of the various acts.

We have been trying to advise our clients, and as Chairman of the Building Codes Committee for the Honolulu Council A.I.A., our entire membership of the progress and implementation of the Fair Housing Amendments Act and the Americans with Disabilities Act. On the most part, with the help of your shared insight, the implementation of these Acts is clear, but we have come up with divided interpretations on an important segment of the A.D.A.

A. New Structures, January 26, 1993. (Sec. 36.401)

B. Alterations, January 16, 1992. (Sec. 36.402)

C. Existing Structures. (Sec. 36.402)

Our State of Hawaii Commission on Persons with Disabilities, Mr. Bruce Clark says existing structures must comply by January 26, 1992.

A call to the U.S. Department of Justice (A Ms. Brenda
) produced a date of January 26, 1995.
Please advise us. A lot people are anxiously awaiting a clear answer on this question.

Very truly yours,

Duane L. Cobeen, A.I.A.
210 Ward Avenue, Suite 240, Honolulu, Hawaii 96814 Telephone (808) 523-8181
Telefax No. (808) 523-6873
01-00765

U.S. Department of Justice

Civil Rights Division

T. 4/27/92
JLW:LIB:HJB:jfh

Washington, D.C. 20530

MAY 12 1992

Mr. Donald R. Holt
Schroeder & Holt
212 West Wisconsin Avenue
Milwaukee, Wisconsin 53203
Dear Mr. Holt:

This letter responds to your correspondence requesting technical assistance with respect to the provisions of the Americans with Disabilities Act (ADA). The ADA authorizes the Department of Justice to provide technical assistance to individuals or entities having rights or obligations under the Act. This letter provides informal guidance to assist you in understanding the ADA accessibility standards. However, it does not constitute a legal interpretation, and it is not binding on the Department.

You inquire whether it is correct to construe Section 36.401(a)(2)(i) [and (ii)] (which applies to new construction) to mean "that if permits are applied for prior to January 26, 1992, a building would not technically have to be in compliance, even if was completed after January 26, 1992, and also that if a permit is applied for after January 26, 1992, and is occupied prior to January 26, 1993, it would not have to comply."

If by "permits are applied for" you mean that the last application for a building permit or permit extension is certified to be complete, or received by the relevant local government agency, and if by "occupied" you mean that a

certificate of occupancy has been issued, then your understanding appears to be correct.

We hope that this information is useful to you in evaluating your compliance with the ADA.

Sincerely,

L. Irene Bowen
Deputy Director
Office on the Americans with Disabilities Act

cc: Records; OADA; Wodatch; Bowen; Beard; Arthur FOIA
01-00766

SCHROEDER & HOLT
Architects, Ltd.
212 West Wisconsin Avenue Milwaukee WI 53203 (414) 271-1521

December 9, 1991

Ms. Barbara S. Drake
Deputy Assistant Attorney General
Civil Rights Division
U.S. Department of Justice
Washington, D.C. 20530

Dear Ms. Drake:

I have tried on many occasions to call your Information Hotline, and I have never been able to get through. Your machine asks that I wait on the line, repeating itself for about fifteen minutes, and then ultimatly disconnecting me.

I was calling to ask for a clarification of Paragraph 36.401(a)(2)(i) of Subparagraph D. I would interpret this section to say that if permits are applied for prior to January 26, 1992, a building would not technically have to be in compliance, even if it was completed after January 26, 1992, and also that if a permit is applied for after January 26, 1992 and is occupied prior to January 26, 1993, it would not have to comply.

Please advise whether my interpretation is correct, and if not, what is the

correct interpretation of this section?

Sincerely,

Donald R. Holt

DRH:kk

01-00767

T. 04/15/92

202-PL-00109

MAY 12 1992

Mr. Paul G. Johnson
Smith, Hinchman & Grylls Associates, Inc.
150 West Jefferson, Suite 100
Detroit, MI 48226

Dear Mr. Johnson:

I am responding to your request for an advisory opinion concerning the application of the new construction and barrier removal requirements of title III of the Americans with Disabilities Act of 1990 (ADA), Pub. L. 101-336, 104 Stat. 327 (July 26, 1990), 42 U.S.C.A. SS 12101 et set., and this Department's regulation implementing title III, 56 Fed. Reg. 35544 (July 26, 1991), to be codified at 28 C.F.R. pt. 36, to your client, a private entity that is constructing a highrise office tower.

The ADA authorizes the Department to provide technical assistance to individuals and entities that are subject to the Act. This letter provides informal guidance to assist you in understanding the ADA. However, this technical assistance does not constitute a determination by the Department of Justice of your client's rights or responsibilities under the ADA and it is

not binding on the Department of Justice.

The new construction requirements of the ADA apply to any place of public accommodation or commercial facility first occupied after January 26, 1993, for which the last application for a building permit or permit extension was completed after January 26, 1992. If a facility is constructed under a permit for which the application was completed prior to January 26, 1992, or the facility is occupied before January 26, 1993, the facility is not subject to the new construction requirements of the ADA.

However, even if your facility is not subject to the new construction requirements because it receives its certificate of occupancy before January 26, 1993, it will be subject to a continuing obligation to remove architectural, communication, and transportation barriers if it is a public accommodation. Under this continuing obligation, each public accommodation is required to remove barriers in its facilities, to the extent that it is

cc: Records, Chrono, Wodatch, Blizard
udd:Blizard.ada.interpretation.johnson

readily achievable to do so, until the facility complies with the accessibility standards that would apply if the facility was being altered.

This Department recently issued a technical assistance manual to assist individuals and entities subject to the ADA to understand the requirements of title III. I have enclosed a copy for your information. I hope that this information is helpful to you.

Sincerely,

L. Irene Bowen
Deputy Director
Office on the Americans with Disabilities Act
Civil Rights Division

Enclosure

01-00769

SH&G

November 15, 1991

Project No. 16045.00

Department of Justice
Coordination and Review Section
Civil Rights Division
P.O. Box 16118
Washington, D.C. 20035-6118

RE: ADA/ADAAG Interpretation

Dear Sirs:
I recently spoke on the telephone with Michelle, of your office, for assistance in an interpretation of ADA/ADAAG. Our project consists of eight floors of office space to be completed within a newly constructed, but as yet incomplete highrise office tower. The majority of core and shell construction

on this building is nearly complete, including central facilities such as toilet rooms, elevators, structure, exterior walls, mechanical and electrical systems, and main entry lobbies. Our client will be contracting for construction services to complete partitions, finishes, final mechanical and electrical systems, and other required items on eight floors which they will lease within this highrise tower. We are currently finalizing contract documents for construction to begin in mid-December of this year, with a scheduled completion date prior to year-end 1992. Based on our interpretation of ADA/ADAAG and my conversations with Michelle, and Lucille Johansen at the A.T.B.C., we will proceed as follows:

1. All core spaces and services which are in place or nearing completion, are considered to be existing construction. We will not attempt to modify any of these spaces which may not be in full compliance with all of the detailed provisions of ADA/ADAAG. We will review these facilities and recommend to our client that revisions be made to toilet rooms, if required by existing conditions to comply with Section 36.304, C, 3 of ADA (see attached copies).

2. New facilities (our project) within the eight floors will be designed and constructed to comply with ADA/ADAAG, unless prohibited by fixed elements of the completed core building.

Smith, Hinchman & Grylls Associates, Inc. 150 West Jefferson Avenue, Suite 100
Detroit, Michigan 48226 313/983-3600
Fax 313/983-3636
Architects Engineer Planners
A Member of The Smith Group Inc.

01-00770

Unless otherwise advised by your office, we will proceed as indicated in this letter. Thank you for your assistance in this matter.

Sincerely,

Paul G. Johnson, AIA
Associate

PGJ/kac

Enclosure

Smith, Hinchman & Grylls Associates, Inc. 150 West Jefferson Avenue, Suite 100

Detroit, Michigan 48226 313/983-3600
Fax 313/983-3636
Architects, Engineers, Planners
A Member of The Smith Group Inc.

01-00771

(2) Illustration-medical specialties. A health care provider may refer an individual with a disability to another provider. If that individual is seeking, or requires treatment or services outside of the referring provider's area of specialization, and if the referring provider would make a similar referral

for an individual without a disability who seeks or requires the same treatment or services. A physician who specializes in treating only a particular condition cannot refuse to treat an individual with a disability for that condition, but is not required to treat the individual for a different condition.

(c) Service animals-(1) General. Generally, a public accommodation shall modify policies, practices, or procedures to permit the use of a service animal by an individual with a disability.

(2) Care or supervision of service animals. Nothing in this part requires a public accommodation to supervise or care for a service animal.

(d) Check-out aisles. A store with check-out aisles shall ensure that an adequate number of accessible check-out aisles are kept open during store hours, or shall otherwise modify its policies and practices, in order to ensure that an equivalent level of convenient service is provided to individuals with disabilities as is provided to others. If only one check-out aisle is accessible, and it is generally used for express service, one way of providing equivalent service is to allow persons with mobility impairments to make all their purchases at that aisle.

S 36.203 Auxiliary aids and services.

(a) General. A public accommodation shall take those steps that may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless the public accommodation can demonstrate that taking those steps would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations being offered or would result in an undue

burden, i.e., significant difficulty or expense.

(b) Examples. The term "auxiliary aids and services" includes-

(1) Qualified interpreters, notetakers, computer-aided transcription services, written materials, telephone handset amplifiers, assistive listening devices, assistive listening systems, telephones compatible with hearing aids, closed caption decoders, open and closed captioning, telecommunications devices for deaf persons (TDD's), videotext displays, or other effective methods of making aurally delivered materials available to individuals with hearing impairments;

(2) Qualified readers, taped texts, audio recordings, Brailled materials, large print materials, or other effective methods of making visually delivered materials available to individuals with visual impairments;

(3) Acquisition or modification of equipment or devices; and

(4) Other similar services and actions.

(c) Effective communication. A public accommodation shall furnish appropriate auxiliary aids and services where necessary to ensure effective communication with individuals with disabilities.

(d) Telecommunication devices for the deaf (TDD's). (1) A public accommodation that offers a customer, client, patient, or participant the opportunity to make outgoing telephone calls on more than an incidental convenience basis shall make available, upon request, a TDD for the use of an individual who has impaired hearing or a communication disorder.

(2) This part does not require a public accommodation to use a TDD for receiving or making telephone calls incident to its operations.

(e) Closed caption decoders. Places of lodging that provide televisions in five

or more guest rooms and hospitals that provide televisions for patient use shall provide, upon request, a means for decoding captions for use by an individual with impaired hearing.

(f) Alternatives. If provision of a particular auxiliary aid or service by a public accommodation would result in a fundamental alteration in the nature of the goods, services, facilities, privileges, advantages, or accommodations being offered or in an undue burden, i.e., significant difficulty or expense, the public accommodation shall provide an alternative auxiliary aid or service, if one exists, that would not result in an alteration or such burden but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the goods, services, facilities, privileges, advantages, or accommodations offered by the public accommodation.

S 34.204 Removal of barriers.

(a) General. A public accommodation shall remove architectural barriers in existing facilities, including communication barriers that are structural in nature, where such removal is readily achievable, i.e., easily accomplishable and able to be carried out without much difficulty or expense.

(b) Examples. Examples of steps to remove barriers include, but are not limited to, the following actions-

(1) Installing ramps;

(2) Making curb cuts in sidewalks and entrances;

(3) Repositioning shelves;

(4) Rearranging tables, chairs, vending machines, display racks, and other furniture;

(5) Repositioning telephones;

(6) Adding raised markings on elevator control buttons;

(7) Installing flashing alarm lights;

(8) Widening doors;

(9) Installing offset hinges to widen

doorways;
(10) Eliminating a turnstile or providing an alternative accessible path;
(11) Installing accessible door hardware;
(12) Installing grab bars in toilet stalls;
(13) Rearranging toilet partitions to increase maneuvering space;
(14) Insulating lavatory pipes under sinks to prevent burns;
(15) Installing a raised toilet seat;
(16) Installing a full-length bathroom mirror;
(17) Repositioning the paper towel dispenser in a bathroom;
(18) Creating designated accessible parking spaces;
(19) Installing an accessible paper cup dispenser at an existing inaccessible water fountain;
(20) Removing high pile, low density carpeting; or
(21) Installing vehicle hand controls.
(c) Priorities. A public accommodation is urged to take measures to comply with the barrier removal requirements of this section in accordance with the following order of priorities.
(1) First, a public accommodation should take measures to provide access to a place of public accommodation from public sidewalks, parking, or public transportation. These measures include, for example, installing an entrance ramp, widening entrances, and providing accessible parking spaces.
(2) Second, a public accommodation should take measures to provide access to those areas of a place of public accommodation where goods and services are made available to the public. These measures include, for example, adjusting the layout of display racks, rearranging tables, providing Brailled and raised character signage, widening doors, providing visual alarms, ILLEGIBLE

(3) Third, a public accommodation should take measures to provide access to restroom facilities. These measures include, for example, removal of
01-00772

obstructing furniture or vending machines, widening of doors, installation of ramps, providing accessible signage, widening of toilet stalls, and installation of grab bars.
ILLEGIBLE
should take any other measures necessary to provide access to the goods, services, facilities, privileges, advantages, or accommodations of a place of public accommodation.

(d) Relationship to alterations requirements of subpart D of this part.

(1) Except as provided in paragraph (d)(2) of this section, measures taken to comply with the barrier removal requirements of this section shall comply with the applicable requirements for alterations in S 36.402 and SS 36.404-36.406 of this part for the element being altered. The path of travel requirements of S 36.403 shall not apply to measures taken solely to comply with the barrier removal requirements of this section.

(2) If, as a result of compliance with the alterations requirements specified in paragraph (d)(1) of this section, the measures required to remove a barrier would not be readily achievable, a public accommodation may take other readily achievable measures to remove the barrier that do not fully comply with the specified requirements. Such measures include, for example, providing a ramp with a steeper slope or widening a doorway to a narrower width than that mandated by the alterations requirements. No measure shall be taken, however, that poses a significant risk to the health or safety of

individuals with disabilities or others.

(e) Portable ramps. Portable ramps should be used to comply with this section only when installation of a permanent ramp is not readily achievable, in order to avoid any significant risk to the health or safety of individuals with disabilities or others in using portable ramps, due consideration shall be given to safety features such as nonslip surfaces, railings, anchoring, and strength of materials.

(f) Selling or serving space. The rearrangement of temporary or movable structures, such as furniture, equipment, and display racks is not readily achievable to the extent that it results in a significant loss of selling or serving space.

(g) Limitation on barrier removal obligations. (1) The requirements for barrier removal under S 38.304 shall not be interpreted to exceed the standards for alterations in subpart D of this part.

(2) To the extent that relevant standards for alterations are not provided in subpart D of this part, then the requirements of S 38.304 shall not be interpreted to exceed the standards for new construction in subpart D of this part.

(3) This section does not apply to rolling stock and other conveyances to the extent that S 38.310 applies to rolling stock and other conveyances.

S38.306 Alternatives to barrier removal.

(a) General. Where a public accommodation can demonstrate that barrier removal is not readily achievable, the public accommodation shall not fail to make its goods, services, facilities, privileges, advantages, or accommodations available through alternative methods, if those methods are readily achievable.

(b) Examples. Examples of alternatives to barrier removal include, but are not limited to, the following

actions--
(1) Providing curb service or home delivery;
(2) Retrieving merchandise from inaccessible shelves or racks;
(3) Relocating activities to accessible locations;
(c) Multiscreen cinemas. If it is not readily achievable to remove barriers to provide access by persons with mobility impairments to all of the theaters of a Multiscreen cinema, the cinema shall establish a film rotation schedule that provides reasonable access for individuals who use wheelchairs to all films. Reasonable notice shall be provided to the public as to the location and time of accessible showings.
S38.308 Personal devices and services.
This part does not require a public accommodation to provide its customers, clients, or participants with personal devices, such as wheelchairs; individually prescribed devices, such as prescription eyeglasses or hearing aids; or services of a personal nature including assistance in eating, toileting, or dressing.
S 36.307 Accessible or special goods.
(a) This part does not require a public accommodation to alter its inventory to include accessible or special goods that are designed for, or facilitate use by, individuals with disabilities.
(b) A public accommodation shall order accessible or special goods at the request of an individual with disabilities, if, in the normal course of its operation, it makes special orders on request for unstocked goods, and if the accessible or special goods can be obtained from a supplier with whom the public accommodation customarily does business.
(c) Examples of accessible or special goods include items such as Brailled versions of books, books on audio cassettes, closed-captioned video tapes,

special sizes or lines of clothing, and special foods to meet particular dietary needs.

S 36.308 Seating in assembly areas.

(a) Existing facilities. (1) To the extent that it is readily achievable, a public accommodation in assembly areas shall-

(i) Provide a reasonable number of wheelchair seating spaces and seats with removable aisle-side arm rests; and

(ii) Locate the wheelchair seating spaces so that they-

(A) Are dispersed throughout the seating area;

(B) Provide lines of sight and choice of admission prices comparable to those for members of the general public;

(C) Adjoin an accessible route that also serves as a means of egress in case of emergency; and

(D) Permit individuals who use wheelchairs to sit with family members or other companions.

(2) If removal of seats is not readily achievable, a public accommodation shall provide, to the extent that it is readily achievable to do so, a portable chair or other means to permit a family member or other companion to sit with an individual who uses a wheelchair.

(3) The requirements of paragraph (a) of this section shall not be interpreted to exceed the standards for alterations in subpart D of this part.

(b) New construction and alterations. The provision and location of wheelchair seating spaces in newly constructed or altered assembly areas shall be governed by the standards for new construction and alterations in subpart D of this part.

S 36.309 Examinations and courses.

(a) General. Any private entity that offers examinations or courses related to applications, licensing, certification, or credentialing for secondary or postsecondary education, professional,

or trade purposes shall offer such examinations or courses in a place and manner accessible to persons with disabilities or offer alternative accessible arrangements for such individuals.

(b) Examinations. (1) Any private entity offering an examination covered by this section must assure that-

(i) The examination is selected and administered so as to best ensure that, when the examination is administered to an individual with a disability that impairs sensory, manual, or speaking skills, the examination results accurately reflect the individual's

01-00773

U.S. Department of Justice

Civil Rights Division

Retyped 5/6/92
SBO:MAF:SK:ca:jfh

DJ# 192-180-04931
Office of the Assistant Attorney General Washington, D.C. 20035

The Honorable Frank H. Murkowski
United States Senator
222 West 7th Avenue, Box 1
Anchorage, Alaska 99513-7570

Dear Senator Murkowski:

This letter responds to your request for information concerning the Americans with Disabilities Act (ADA) in response to an inquiry from your constituent, Elsie O'Bryan.

The ADA authorizes the Department to provide technical assistance to entities that are subject to the Act. This letter provides informal guidance to assist you in responding to Ms. O'Bryan. However, this technical assistance does not constitute a determination by the Department of Justice of Ms. O'Bryan's rights or responsibilities under the ADA and

does not constitute a binding determination by the Department of Justice.

Ms. O'Bryan requested guidance on whether the ADA requires the City of Houston, Alaska, to continue the service of "plowing and sanding handicap driveways." Title II of the ADA, which applies to State and local governments, prohibits discrimination against qualified individuals with disabilities in the provision of services, programs, and activities. Under the ADA, the City may not deny services to individuals on the basis of disability, if it makes those services available to other citizens. Generally, however, it is not required to provide special programs or services for individuals with disabilities if it does not provide such programs or services for individuals without disabilities.

cc: Records CRS Oneglia Friedlander Kaltenborn McDowney Arthur
udd:kaltenborn:murkowski

01-00774

Pursuant to your request, I am enclosing a copy of our implementing regulation for title II. I hope that this information is helpful in responding to your constituent's inquiry.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

Enclosure

01-00775

JULE R. PETERSON
MAYOR

January 28, 1992

Senator Frank Murkowski
222 West 7th Avenue
Anchorage, Alaska 99502

RE: Americans with Disabilities Act

Dear Senator Murkowski,

We are sending this letter in hopes that you may have the answers to a question that we have in reference to the Americans with Disabilities Act.

At the present time the City of Houston has been plowing and sanding handicap driveways, on a limited basis. Due to budget shortfalls and the increasing number of driveways that need to be done, this is a service that the City of Houston can not longer afford to provide. What we would like to know is are we required, under the law, to provide this service?

We have contacted several different organizations and they have not been able to provide us with an answer. Any help you can provide in this area would be greatly appreciated.

Sincerely,

Elsie O'Bryan
Councilmember

P.O. BOX 940027 * HOUSTON, ALASKA 99694 * 892-6869

01-00776

DJ 202-PL-78

MAY 12 1992

Lee E. Sapira, Esq.
Kozloff, Diener, Payne & Fegley
Post Office Box 6286
Wyomissing, Pennsylvania 19610

Dear Mr. Sapira:

This letter responds to your correspondence requesting

information about the Americans with Disabilities Act, 42 U.S.C. 12101-12213 (ADA). The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under to the Act. This letter provides informal guidance to assist you in understanding the ADA accessibility standards. However, it does not constitute a legal interpretation and it is not binding on the Department.

Your letter makes inquiry with respect to two issues under title III of the ADA: whether automatic doors are required in existing facilities, regardless of cost, in order to assure accessibility for individuals with disabilities; and whether a self evaluation is required for public accommodations. You also request a source for answering future questions concerning the ADA.

Title III of the ADA requires places of public accommodation to remove architectural barriers in existing facilities where it is "readily achievable" to do so. The Act defines "readily achievable" to mean "easily accomplishable and able to be carried out without much difficulty or expense." The factors to be considered in determining whether the removal of a particular barrier is readily achievable include: the nature and cost of the action; the financial resources available both to the site and the parent organization; the size and number of employees at the site and overall; and the relationship of the site to the parent organization.

cc: Records; Chrono; Wodatch; Magagna. FOIA
:uddl:udd:magagna:pl.78

01-00777

This is a case-by-case determination, and without all of this kind of information, we cannot make a judgment as to whether, in response to your specific inquiry, installation of an automatic door in a credit union facility would be "readily achievable." Automatic doors, as such, are not required. There may be other less costly measures to make an entrance accessible. The Department's title III regulations, 28 C.F.R. Pt. 36, do suggest that the first priority in barrier removal should be access to the facility, 28 C.F.R. 36.304(c)(1).

Where an entity can demonstrate that removal of a particular barrier is not readily achievable, the entity then has the obligation to take alternative steps to make its goods and services available to persons with disabilities, if such alternatives are readily achievable. The regulations provide several examples that may be relevant to your clients' situations, such as providing curb service or home delivery. 28 C.F.R. S305(b).

The duty to remove barriers is a continuing obligation. Thus, for example, if barrier removal is not now readily achievable due principally to financial constraints but is at some later time due to an improved financial condition, the barriers must be removed at that time.

Title III does not require public accommodations to conduct a self-evaluation to determine barrier removal obligations. However, in its Preamble to the title III regulations, this Department recommends that public accommodations develop an implementation plan to achieve compliance and suggests methods for such development. See 56 Fed. Reg. 35569 (July 26, 1991). The source of your confusion regarding the self-evaluation requirement may be that title II, which covers State and local governments, does have such a requirement.

I have enclosed copies of the Department's title III regulations and Title III Technical Assistance Manual. These materials may assist you in advising clients of their title III obligations. If you have further questions, we will attempt to answer future written inquiries or you may call the ADA Information Line at (202) 514-0301. You indicated that you had previously attempted to call without success. Although we answer hundreds of calls per week, the demand has been very heavy and we regret that some callers have not been unable to get through.

01-00778

We hope that this information will be useful to you.

Sincerely,

Joan A. Magagna
Deputy Director
Office on the Americans with Disabilities Act

Enclosures (2)

01-00779

February 24

John Wodatch, Director
Office on the Americans with Disabilities Act
Civil Rights Division
U.S. Department of Justice
Washington, D.C. 20530

Re: Our File No. 9318-77

Dear Mr. Wodatch:

I am an attorney in Reading, Pennsylvania. I have been attempting for quite some time now, with very little success, to get some aid in understanding the contents of the ADA, which I have reviewed at length. I have repeatedly attempted to utilize the phone numbers provided in the Code of Federal Regulations, without success.

My specific concerns arise from representation of several clients who fall within the rubric of "public accommodations", for purposes of the Act. I have been attempting to discern what obligations they face. For example, one of my clients is a large credit union. They have an immediate question which I have been unable to answer. The question is whether the Credit Union is required to install automatically opening doors in their facility. The expense they would incur is substantial, but no more so than for any other facility installing automated doors. My clients certainly think the ecomonic burdon of installing these doors is unreasonable, but I cannot comfortably advise them as to whether it is unreasonable for purposes of the Act. I have similar questions for other clients, and anticipate more and more of them, particularly as to specific physical characteristics of their accommodations, as time goes on. Please tell me if there is a technical review section to the American with Disabilities Act, and if so, how I may reach them.

Another specific concern I have is as regards the several references I have encountered to a "self-evaluation". I have not been able to discover the standards pursuant to which such an evaluation must be performed. I cannot tell from any of the materials to which I have access whether the self-evaluation must be performed for all public accommodations, whether it can be performed simply by having an employee of the facility inspect the

facility and designate areas he or she believes to be troublesome, or whether a certified engineering service must be hired to perform the evaluation. Alternatively, I have no idea, and cannot discern from the materials to which I have access, whether the evaluation must be performed by somebody with any particular qualifications relating to the Act.

I would greatly appreciate you assistance in resolving these specific questions, and perhaps more importantly providing me with a source for resolving related questions in the future. Thank you for your anticipated cooperation. I look forward to hearing from you.

Very truly yours,

KOZLOFF, DIENER, PAYNE & FEGLEY

Lee E. Sapira

LES:CTCE:daw:077.LTR

01-00781

DJ 202-PL-00048

MAY 12 1992

Ms. Cheryl L. Villaume, Law Clerk
Goldman, Marshall & Muszynski, P.C.
1515 Market Street, Suite 500
Philadelphia, Pennsylvania 19102

Dear Ms. Villaume:

This letter responds to your correspondence requesting clarification of the provisions of title III of the Americans with Disabilities Act (ADA), 42 U.S.C. S12101-12213. Specificality you inquired whether the exemption for religious organizations, section 307, includes church owned or funded hospitals. The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights and obligations under the Act. This letter provides informal guidance to assist you in understanding the ADA's requirements. However, it does not constitute a legal interpretation and it is not binding on the Department.

Title III of the ADA establishes requirements for private entities that own, operate, lease (or lease to) places of public accommodation, such as hospitals. A private entity has no title III obligations, however, if it is a religious entity, that is, a religious organization or a private entity controlled by a religious organization. A private hospital controlled by a religious organization is exempt from title III requirements. A useful discussion of the scope of title III's exemption for religious entities can be found in the Preamble to the Attorney General's Title III regulations. See 56 Fed. Reg. 35544, 35554 (July 26, 1991). A copy is enclosed.

A religious entity, however, is not exempt from the employment requirements of title I of the ADA, which go into effect on July 26, 1992, for hospitals with 25 or more employees. Moreover, if a religious entity receives Federal funds, as most

cc: Records Chrono Wodatch Magagna Beard.ta.307.villaume
FOIA

01-00782

hospitals do, it is subject to section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. S 794, which prohibits disability discrimination in federally assisted programs.

We hope that this information is useful to you in evaluating your rights and obligations under the ADA.

Sincerely,

Joan A. Magagna
Deputy Director
Office on the Americans with Disabilities Act

Enclosure

LAW OFFICES
GOLDMAN, MARSHALL & MUSZYNSKI, P.C.
1515 MARKET STREET
SUITE 500
C. MITCHELL GOLDMAN PHILADELPHIA, PENNSYLVANIA 19102 WASHINGTON OFFICE:
JOSEPH W. MARSHALL, III (215) 563-5800 ONE MASSACHUSETTS AVENUE NW
IRVIN L. MUSZYNSKI, JR SUITE 860
ROBERT A. AUCLAIR FAX (215) 563-4500
R. CHRISTOPHER RAPHAELY WASHINGTON, DC 20001
MICHAEL E. ANDERSON (202) 682-0126
FAX (202) 682-0136
ALSO MEMBER OF D.C. AND N.J. BAR
MEMBER OF VA AND D.C. ONLY
ALSO MEMBER OF N.J. BAR

February 21, 1992

Chief Counsel
Department of Justice
Office on the Americans with Disabilities Act
Civil Rights Division
P.O. Box 66118
Washington, D.C. 20035 - 6118

On February 21, 1992, I spoke with one of your representatives on the "ADA" information line (at 202-514-0301 *5). I was calling to find out if the religious exemption of the Americans with Disabilities Act (S 307) applies to church owned (funded) hospitals and, if so, to what extent it does apply. The representative on the line informed me that it does apply as long as the hospital is controlled/funded by the religious organization. I would like to

confirm this. The Act itself and the legislative history behind it do not offer a concise answer to the question.

Thank you for your time and attention to this matter. It is appreciated.

Very truly yours,

Cheryl L. Villaume
Law Clerk

cc: Bob Auclair

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General Washington, D.C. 20035

MAY 13 1992

Mr. Bert L. Bares
Program Director
Hearing-Impaired Outreach
Montrose Clinic
3400 Montrose Blvd
Suite 315
Houston, Texas 77266-6251

Dear Mr. Bares:

Thank you for your letter concerning title III of the Americans with Disabilities Act (ADA). In it, you asked for clarification of the obligations of public accommodations, including HIV service providers, to provide interpreting services.

The ADA authorizes the Department to provide technical assistance to entities that are subject to the Act. This letter provides informal guidance to assist you in understanding how the ADA may apply to your organization. This technical assistance, however, does not constitute a determination by the Department of Justice of rights or responsibilities under the ADA and does not constitute a binding determination by the Department of Justice.

We agree with your assertion that the roles of case manager and interpreter are very different, and that a case manager, who is also a certified interpreter, should not be asked to interpret in a situation where a client is involved.

When an interpreter is required to ensure effective communication, the public accommodation must provide a qualified interpreter (S 36.303 of the Department's title III rule). A qualified interpreter, according to our title III rule, is one who is able to interpret "effectively, accurately, and impartially" (S 36.104) (emphasis added). Even a certified interpreter may not be considered "qualified" for all situations. For instance, an interpreter may not be suitable, particularly in those situations where emotional or personal involvement or considerations of confidentiality, may adversely affect his or her ability to interpret effectively, accurately, and impartially (56 Fed. Reg. 35,544, 35,553 (July 26, 1991)).

We also agree that if your Center refers a client to another agency for a particular service that is not offered by your Center, then the responsibility for providing an interpreter falls to that agency, not your Center. The agency receiving the referral may not refuse to offer the needed service simply because the client is deaf or because the agency would have to provide interpreting services to ensure effective communication.

Finally, public accommodations that provide workshops, seminars, or support groups are subject to all of the requirements of title III, including the obligation to provide appropriate auxiliary aids and services to ensure effective communication. The fact that a deaf participant may be a client or employee of another agency does not exempt the public accommodation from complying with the title III requirements.

Your letter states that your Center and other service providers all receive Federal funding. Section 504 of the Rehabilitation Act of 1973, as amended, prohibits discrimination on the basis of handicap in federally assisted programs and activities. Like our title III rule, section 504 rules require the provision of appropriate auxiliary aids and services, including interpreting services, that are necessary to ensure effective communication (see e.g., 45 C.F.R. S 84.51(d) (Department of Health and Human Services' section 504 rule for

federally assisted programs)).

Enclosed are copies of our title III rule and title III technical assistance manual. I hope this information has been helpful.

Sincerely,

Stewart B. Oneglia
Chief
Coordination and Review Section
Civil Rights Division

Enclosures (2)

01-00786

U.S. Department of Justice

Civil Rights Division

DJ 192-06-00018

Coordination and Review Section
P.O. Box 66118
Washington, D.C. 20035-6118

MAY 13 1992

Mr. Michael Elias
Vaughan Pools Inc.
RockBridge Shopping Center
Columbia, Missouri 65201

Dear Mr. Elias:

This is in response to your letter to our office concerning the Americans with Disabilities Act (ADA).

The ADA authorizes the Department of Justice to provide technical assistance to entities that are subject to the Act.

This letter provides informal guidance to assist you in understanding how the ADA may apply to you. However, this technical assistance does not constitute a determination by the Department of Justice of your rights or responsibilities under the ADA and does not constitute a binding determination by the Department of Justice.

Currently, there are no requirements for pools in the ADA accessibility Guidelines (ADAAG). A copy of ADAAG, which is an appendix to our ADA title III regulation, is enclosed.

However, the Architectural and Transportation Barriers Compliance Board, the agency that issued ADAAG, is currently considering establishing requirements for swimming pools. Proposed regulations regarding pools may be published in August. In the meantime, if you are looking for guidance in making your pools more accessible, I have enclosed the title III technical

01-00787

assistance manual (see page 44 for mention of pools) and the Department of Interior's interim draft Design Guide for Accessible Outdoor Recreation (see pages 41-43).

I hope this information has been helpful to you.

Sincerely,

Stewart B. Oneglia
Chief
Coordination and Review Section
Civil Rights Division

Enclosures (3)

01-00788

RICHARD VAUGHAN

.

Vaughan Pools, Inc. JIM WISCH

1909 SOUTH COUNTRY CLUB DRIVE
P.O. BOX 104358
JEFFERSON CITY, MISSOURI 65110-4358
TELEPHONE (314) 893-3650

U.S. Dept. of justice

Civil Rights Division
Coordination and Review Section

I am writing in regard to the Americans with Disabilities act (ADA). I am in the swimming pool construction and service business. Accordinly I have numerous hotels and clubs that will have to comply with this act. I have not been able to determine exactly what the stipulations of this act are. Will existing pools have to install ramps, lifts or other devices? Will pools now under construction have to have these devices installed?

I understand all Government facilities regulations are due on July 6, 1992, is this going to be used as a guideline? I would appreciate any information you could send me on this matter.

Thank you

Michael Elias
Vaughan Pools Inc
RockBridge shopping center
Columbia Mo. 65201

01-00789

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General Washington, D.C. 20530

MAY 15 1992

The Honorable Robert A. Roe
U.S. House of Representatives

2243 Rayburn House Office Building
Washington, D.C. 20515-3008

Dear Congressman Roe:

This is in response to your inquiry on behalf of your constituent, XX

Ms. XX(b)(6) seeks information about the Americans with Disabilities Act (ADA). Although we cannot provide legal interpretations or legal advice to individuals, this letter provides informal guidance to assist your constituent in understanding the ADA accessibility standards.

Ms. XX writes that she does all of her shopping by telephone because of her disability. She presents two concerns -- first, that she is required to pay postage and handling fees for merchandise that is mailed to her, and, second, that some stores will not take special orders by telephone. She inquires whether the Americans with Disabilities Act (ADA) affords any recourse in these situations.

Ms. XX(b)(6)suggests that some mechanism should be created whereby stores would be exempt from paying postage for mailing merchandise to persons who can provide proof of disability. The ADA itself has no provisions that require creation of such a mechanism. An amendment to the postal service laws or regulations would be required to implement such a procedure. The ADA does not require a store to pay the postage fees itself in these circumstances if the store is accessible to persons with disabilities.

Ms. XX(b)(6) also states that some stores have policies not to take special orders for out-of-stock merchandise unless the customer appears personally to sign the order. Ms. XX states that she is unable to make a personal visit to the store because of her disability. She is therefore unable to obtain the

special order merchandise she seeks. The ADA requires stores to make "reasonable modifications" in their policies, practices and procedures in order to make their goods and services available to

persons with disabilities, unless a modification would "fundamentally alter" the nature of the goods and services offered. In the circumstance Ms. XX describes, it may be reasonable to require the store to take special orders by telephone from persons with disabilities who cannot visit the store. If the store's concern is obtaining a guarantee of payment that only a signed order would provide, the store may be able to take such orders by mail from persons with disabilities or, in the alternative, take credit card orders by telephone.

We hope this information will be of assistance to you in responding to your constituent.

Sincerely,

W. Lee Rawls
Assistant Attorney General

01-00791

Congress of the United States

House of Representatives

Washington, DC 20515-3008

March 24, 1992

W. Lee Rawls
Assistant Attorney General
Office of Legislative Affairs
Room 1603
10th Street & Constitution Ave, NW
Washington, DC 20530

Dear Assistant Attorney General Rawls:

Enclosed please find a copy of a letter from Ms. (b)(6) (b)(6) a constituent of my Eighth Congressional District in New Jersey, in which she discusses the possibility of exempting disabled individuals from paying postage for store sent items.

I would greatly appreciate your review and comment on this matter.

Thank you again for your time and consideration, if I can be of any additional assistance, please do not hesitate to contact this office.

With all good wishes.

Sincerely,

Robert A. Roe
Member of Congress

01-00792

xx (b)(6)
Upper Montclair, NJ 070

February 15, 1992

Editor, The Montclair Times:

As a disabled citizen, I am delighted and relieved to observe that the Aid to the Disabled act, the most important civil rights legislation of the century, is being implemented on local and state levels as well as federal. I realize that change cannot happen all at once. It will be a gradual "inch by inch, row by row" process.

Since I am forced to do all but grocery shopping by phone, I constantly am confronted by a situation familiar to all who are housebound. No matter what I order--be it a single compact and lipstick, or an audiocassette, whether it comes from a store in downtown Montclair or one of the shopping malls in Essex County--I am required to pay a $4 fee for postage and handling. Since I depend largely on Social Security Disability benefits for income, this can add up to an amount which becomes a financial hardship. Since the ADA is a federal policy, there should be some way that stores would themselves be exempt from paying postage when mailing merchandise to people who, by means of identification--e.g. a photocopy of their Social Security award--can mail in proof of their disability.

Even more frustrating is the situation which arises when the item I wish to purchase--e.g. a record, a book--is not in stock and the store has to place a special order for it. I am told that this can be done only if I appear in person to sign the order. I explain that were I able to appear in person, I wouldn't be making this call in the first place, nor be asking to be notified by phone when the merchandise is in. The clerk then calls the manager, who understands, perhaps even sympathizes with, my predicament but reminds me that he is only quoting store policy. it is a no-win situation for us both. I cannot obtain what I want, and the store loses a customer. There must be a way out. All suggestions are welcome!

XX (b)(6)

cc: Senator Bill Bradley
Senator Frank Lautenberg
Representative Robert Roe

04/ ILLEGIBLE/92

DJ 202-PL-00122

MAY 18 1992

Wodatch Ms. Ann Hafar
Manager
Date Traveler Budget Inn
1210A Avenue East
Oskaloosa, Iowa 52577

LIB Dear Ms. Hafar:
Deputy

I am responding to your letter requesting specific guidance
Date from the Department of Justice about the application of title III of the Americans with Disabilities Act of 1990 (ADA) to the facility that you manage.

Blizard The ADA authorizes the Department to provide technical assistance to entities that are subject to title III. This
Date letter provides informal guidance to assist you in understanding the ADA accessibility requirements. This technical assistance does not constitute a formal policy determination and it is not binding on the Department of Justice.

GYB The ADA does not establish specific requirements regarding alterations that must be made to existing facilities for the
Date purpose of accessibility, if alterations are not otherwise planned. It simply requires that places of public accommodation, including hotels and motels, remove architectural and communication barriers to the extent that it is readily achievable to do so. Congress defined the term "readily achievable" to mean "easily accomplishable and able to be carried out without much difficulty or expense." If it is not readily achievable to remove barriers in an existing facility that is not otherwise being altered, then barrier removal is not required.

If a public accommodation, such as a hotel or motel, is undertaking new construction or altering existing facilities, then the newly constructed or altered area must comply with the ADA accessibility standards in the enclosed Department of Justice regulation for title III of the ADA. These standards are also helpful in determining what readily achievable barrier removal would be appropriate in an existing hotel or motel.

cc: Records, Chrono, Wodatch, Blizard, FOIA
udd:Blizard.ada.interpretation.hafar

01-00794

With respect to your specific questions, the percentage of rooms required to be accessible in new construction is set out at sections 9.1.2 through 9.1.4 of the Appendix to the enclosed regulation. The chart in section 9.1.2 details when accessible showers are required. One bathroom in each accessible unit must comply with the requirements of section 4 of the appendix. In accessible rooms, permanently installed telephones must have volume controls (section 9.3.1). Alterations are addressed in section 9.1.5.

The requirement that "auxiliary aids," such as television decoders and telephone handset amplifiers, be provided, is separate from the requirement that physical barriers be removed in existing buildings. Auxiliary aids are addressed in section 36.303.

You may obtain information on particular products by calling the Architectural and Transportation Barriers Compliance Board at 1-800-USA-ABLE.

I hope that this information is helpful to you.

Sincerely,

John L. Wodatch
Director
Office on the Americans with Disabilities Act
Civil Rights Division

Enclosure

01-00795

TRAVELER BUDGET INN Ph: (515) 673-8333
1210 A Ave. East
on Highway 63 & 92
Oskaloosa, IA 52577

ILLEGIBLE LETTER
01-00796

U.S. Department of Justice
Civil Rights Division

T. 5/11/92
JLW:LIB:HJB:jfh

Washington, D.C. 20530

MAY 19 1992

(b)(6)
San Antonio, Texas 78221

Dear Mr. XX

This letter responds to your correspondence requesting technical assistance with respect to the provisions of the Americans with Disabilities Act (ADA). The ADA authorizes the Department of Justice to provide technical assistance to individuals or entities having rights or obligations under the Act. This letter provides informal guidance to assist you in understanding the ADA accessibility standards. However, it does not constitute a legal interpretation and it is not binding on the Department.

Title III of the ADA imposes on places of public accommodation, such as shopping malls, three different requirements concerning their facilities. When a public accommodation is engaged in new construction of a facility, it must comply with the accessibility provisions of the ADA and the ADA Accessibility Guidelines (ADAAG) established pursuant to it. When a public accommodation is engaged (after January 26, 1992) in an alteration or remodeling of an existing facility, it must comply with ADAAG's alteration requirements, which are sometimes less stringent.

When a public accommodation is engaged in neither new construction nor alteration of a facility, then a third requirement applies: the public accommodation must remove any barriers to individuals with disabilities where the removal of those barriers is "readily achievable" -- that is, where the removal can be done easily and without much difficulty or expense. In so doing, the public accommodation is never required to exceed ADAAG's alteration requirements.

The regulations issued by the Department of Justice discuss the factors that are to be used in determining whether the removal of a particular barrier is readily achievable. These include: the nature and cost of the action; the financial resources available both to the site and the parent organization; the size and number of employees at the site and overall; and the relationship of the site to the parent organization.

cc: Records OADA Wodatch Bowen Beard Arthur FOIA
udd:beard.ta.304 (b)(6)
01-00797

However, where a public accommodation is not able to comply completely with the accessibility specifications of the ADAAG, title III provides that a public accommodation should comply to the extent it is able to do so -- again without much difficulty or expense. With respect to your question about automatic doors in particular, it is important to note that ADAAG does not currently require automatic doors in any case.

I hope that this information is useful to you in understanding the requirements of the ADA.

Sincerely,

L. Irene Bowen
Deputy Director
Office on the Americans with Disabilities Act

01-00798

2-17-92

(b)(6)
SAN ANTONIO TX 78221

TO: U.S. DEPT. OF JUSTICE
CIVIL RIGHTS DIVISION

DEAR SIR(S),
I AM AN AMERICAN WITH A DISABILITY. I AM A QUADRAPLEGIC CONFINED TO A WHEELCHAIR. I WOULD APPRECIATE YOUR HELP IN ANSWERING SOME QUESTIONS CONCERNING ADA. SPECIFICLY IN REFERENCE TO ACCESSIBILITY TO PUBLIC ACCOMMODATIONS. ONE OF MY MAIN PROBLEMS IS GETTING IN-SIDE OF A SHOPPING MALL. SOME MALLS NOT ONLY HAVE ONE DOOR BUT TWO. THESE DOORS DO NOT OPEN AUTOMATIC. THEREFORE, THEY ARE A PHYSICAL BARRIER. AM I CORRECT OR NOT? IF I AM CORRECT THEY MUST BE REMOVED IF REMOVAL IS READILY ACHIEVABLE. MY QUESTION IS, CAN A SHOPPING MALL CLAIM THAT REMOVING THEIR DOOR(S) IS NOT READILY ACHIEVABLE?
I'M SURE THAT A SHOPPING MALL MAKES ENOUGH MONEY TO INSTALL AUTOMATIC DOOR(S). HOW MUCH TIME DOES A PUBLIC ACCOMMODATION HAVE TO REMOVE PHYSICAL BARRIERS, ESPECIALLY SINCE ADA REQUIREMENTS BE-CAME EFFECTIVE JANUARY 26, 1992? I WOULD LIKE TO POINT OUT THAT UNDER ADA HIGHLIGHTS TITLE III , VII IT STATES "FIRST PRIORITY SHOULD BE GIVEN

TO MEASURES THAT WILL ENABLE INDIVIDUALS WITH DISABILITIES TO "GET IN THE FRONT DOOR," IT'S ONLY COMMON SENSE THAT IF WE CANNOT GET IN, WE DO NOT HAVE ACCESS TO PUBLIC GOODS AND SERVICES. IS A SHOPPING MALL IN VIOLATION OF MY CIVIL RIGHTS IF IT IS NOT ACCESSIBLE? THE REASON I ASK THIS QUESTION IS BECAUSE I SPOKE TO AN INDIVIDUAL IN CHARGE OF A SHOPPING MALL. HIS RESPONSE WAS THAT THE MALL WAS IN COMPLIANCE WITH ADA. EVEN AFTER I EXPLAINED TO HIM THAT I COULD NOT GET IN THE FRONT DOOR. GETTING IN THE FRONT DOOR IS VERY IMPORTANT AND MEANS ALOT TO INDIVIDUALS WITH DISABILITIES. I ONLY HOPE THAT WE ARE NOT TOLDED TO USE THE BACK DOOR AS AN ALTERNATIVE TO GET IN TO A PUBLIC ACCOMMODATION. I TRULY APPRECIATE YOUR ASSISTANCE IN THIS MATTER AND LOOK FORWARD HEARING FROM YOU.

SINCERELY YOURS,

xx
(b)(6)

202-PL-00094

01-00799

III-4.4200

#2042106145

MAY 19 1992

The Honorable Robert S. Walker
U.S. House of Representatives
2369 Rayburn House Office Building
Washington, D.C. 20515-3816

Dear Congressman Walker:

This is in response to your inquiry on behalf of your constituent, Robert Anderson.

Mr. Anderson writes that he is a board member of the New Holland Memorial Park Association. He is concerned about the requirements of the Americans with Disabilities Act (ADA) for removal of barriers in the New Holland Park facilities. He asks

for assistance in determining what changes are required to be made and whether Federal funds are available to help pay for such changes.

Although we cannot provide legal interpretations or legal advice to individuals, this letter provides informal guidance to assist your constituent in understanding the ADA accessibility standards.

Section 302(b)(2)(iv) of the ADA requires existing public accommodations to remove architectural barriers "where such removal is readily achievable." Section 301(9) defines "readily achievable" to mean "easily accomplishable and able to be carried out without much difficulty or expense." Section 301(9) also sets forth factors to be considered in determining whether a particular action is readily achievable. These factors include the nature and cost of the action required, the type of facility involved, the nature of the covered entity's business, its overall size and financial resources, and the number, type and location of all its facilities.

cc: Records; Chrono; Wodatch; Magagna; Friedlander; McDowney.
:uddl:udd:magagna:walker.cong

01-00800

Where removal of a barrier is not readily achievable, the public accommodation must take alternative steps to make its goods and services available to persons with disabilities, if it is readily achievable to do so.

With regard to the inquiry about federal funds to assist in barrier removal, neither the Department nor any other Federal agency is authorized to provide financial assistance to covered entities seeking to bring their facilities and operations into compliance with the ADA. However, businesses may be eligible to take Federal tax deductions and some small businesses may be eligible to receive tax credits for removing architectural barriers. Mr. Anderson may wish to contact the Internal Revenue Service to determine whether his organization is eligible for any of these tax benefits.

We have enclosed a copy of the Department's Title III Technical Assistance Manual which may be of further assistance in understanding the obligations imposed by the ADA.

We hope this information will be of assistance to you in responding to your constituent.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

Enclosure

01-00801

Community Memorial Park

March 2, 1992

Robert S. Walker
Congressional Office
50 North Duke Street
Lancaster, PA 17601

Dear Congressman Walker:

I am a board member of the New Holland Memorial Park Association. I was asked by the board to get information about Public Law 101-336, known as the Americans with Disabilities Act and how it will affect the New Holland Park. I contacted your office earlier and they had sent me a copy of the law and a copy of "CRS Report for Congress, The Americans With Disabilities Act: An Overview of Major Provisions" written by Nancy Lee Jones, Legislative Attorney, American Law Division on July 31, 1990. I thank you and your staff for sending that information which I have shared with the other board members. My request was initiated because of an article which appeared in a magazine which one of the parks board members gets. In addition, the park has had a phone call from someone in D.C. asking if the park was in compliance with the act.

You will probably remember the problems the New Holland Park had a year or so ago getting insurance because of a Conrail track through the park. The New Holland Park is a non-profit corporation, "501-C" not part of any government body. That classification, we assumed, made us a public facility even though we are not a unit of government. The materials which were sent confirmed that fact.

Through the years the New Holland Park Board has tried to make changes in restrooms and other building to make most them accessible to the handicap. The swimming pool is not accessible to the handicap. If the park is required to make to the pool accessible to the handicap, it would require the expenditure of a large sum of money. The park simply does not have the funds and could not afford to borrow them at this time. This past year we received over $75,000.00 in donations and that has just barely enough to kept us solvent to pay the bills and debts load which we now have.

Community Memorial Park Association
P. O. Box 62, New Holland, PA 17557-0062

01-00802

I have read the CRS Report which was sent, it states on page CRS-5 "There are some limitations on the nondiscrimination requirement and a failure to remove architectural barriers is not a violation unless such a removal is 'readily achievable.' 'Readily achievable' is defined as meaning 'easily accomplishable and able to be carried out without much difficulty or expense". I can not find this in the legislation and the board is concerned that the federal agency designated to enforce the law may not have the same

interpretation as the CRS Report.

I hope that someone on your staff would be able to help us or give us a person to contact who can help determine what in fact that statement means. In addition, where would we be able to get assistance in determining: (1) what the changes would be, (2) what government funds would be available to help pay for the improvements, and (3) how to qualify for the funds. The park board feels that the cost of these requirements will be so excessive that we will no longer be able to provide any recreational services to the New Holland Community. We are not opposed to helping the handicap but feel this type of expenditure for the possible use of the pool by a handicap person someday will force us to stop serving the many people who now use the park. However, we do not want to get a fine because our interpretation is an incorrect interpretation.

Any help which you or your staff can be in having a determination made by the correct agency on what the New Holland Community Memorial Park must do to meet the requirements under this law would be greatly appreciated.

Sincerely,

Robert Anderson
116 Bergman Road
New Holland, Pa. 17557

01-00803

U.S. Department of Justice
Civil Rights Division

DJ# 192-06-00006

Coordination and Review Section
P.O. Box 66118
Washington, D.C. 20035-6118

MAY 21 1992

Mr. (b)(6)
XX
Indianapolis, Indiana 46219

Dear Mr. (b)(6)xx

This is in response to your inquiry about the Americans with Disabilities Act (ADA) covering payment for certain court costs and provision of auxiliary aids and services necessary to understand court proceedings.

The ADA authorizes the Department to provide technical assistance to entities that are subject to the Act. This letter provides informal guidance to assist you in understanding how the ADA may apply to your case. This technical assistance, however, does not constitute a determination by the Department of Justice of your rights or responsibilities under the ADA and does not constitute a binding determination by the Department of Justice.

There are two Federal laws that require the provision of auxiliary aids and services in court proceedings. If the court receives Federal financial assistance from the Department of Justice, section 504 of the Rehabilitation Act of 1973, as amended, may apply. Section 504 prohibits discrimination on the basis of handicap in federally assisted programs. The Department's regulation implementing section 504, which has been in effect since 1980, requires that State and local courts receiving Federal funding provide auxiliary aids and services where necessary to ensure effective communication with members of the public (28 C.F.R. SS 42.503(e) and (f)). A copy of the Department's section 504 rule is enclosed.

Title II of the ADA, which was effective on January 26, 1992, prohibits discrimination on the basis of disability in all programs, activities, and services provided or made available by State and local governments, instrumentalities, or agencies--regardless of the receipt of Federal funds. The title II regulation is based on regulations implementing section 504. Copies of the title II regulation and a manual explaining the regulation are enclosed. Like the section 504 rule, the title II

rule requires the provision of auxiliary aids and services by courts where necessary to ensure effective communication with an individual who is deaf or hard of hearing (S35.160 of our title II rule).

Title II also prohibits State and local courts from charging an individual with a disability for the costs of auxiliary aids and services (S35.130(f) of our title II rule). If a court transcript is used as an auxiliary aid for you to understand the proceeding, then the court may not charge the cost to you.

For individuals with hearing impairments, auxiliary aids and services include, but are not limited to, qualified interpreters, notetakers, assistive listening devices, assistive listening systems, and transcription services such as computer aided real-time transcription (CART) (S35.104). Public entities must provide the auxiliary aid requested by an individual, unless the public entity can demonstrate that another effective means of communication exists or that providing the requested aid would result in a fundamental alteration in the program or in undue financial and administrative burdens (SS 35.160(b)(2) and 35.164).

The title II rule also requires that a State or local court make reasonable modifications in practices, policies and procedures, if necessary, to avoid discrimination on the basis of disability, unless the court can demonstrate that making those modifications would fundamentally alter the nature of the service, program, or activity (S35.130(b)(7)).

If you believe that you have been subjected to discrimination on the basis of disability by the court under section 504 or title II, you may, within 180 days of the alleged discrimination, file either-

1) An administrative complaint by writing a letter to: Coordination and Review Section, Civil Rights Division, U.S. Department of Justice, P.O. Box 66118, Washington, D.C. 20045-6118; or

2) A private lawsuit in Federal district court.

If you file an administrative complaint that is timely and to which section 504 and/or title II apply, the Department of Justice will investigate the allegations of discrimination. Should we conclude that the public entity violated the Federal law, we will attempt to negotiate settlement to remedy the

violations. If settlement efforts fail, termination of funds or court litigation may be instituted. Please note that to be covered under title II, your complaint must allege discriminatory actions that took place after January 26, 1992.

I hope this information has been helpful to you.

Sincerely,

Stewart B. Oneglia
Chief
Coordination and Review Section
Civil Rights Division

Enclosures (3)

U.S. Department of Justice

Civil Rights Division

MAY 23 1992

DJ# 181-06-0006 Coordination and Review Section
P.O. Box 66118
Washington, D.C. 20035-6118

Mr. William J. Gordon
BHP Petroleum
1401 Eye Street, N.W.
Suite 200
Washington, D.C. 20005

Dear Mr. Gordon:

This letter is in response to your inquiries with respect to the obligations of self-service gasoline stations and convenience stores under the Americans with Disabilities Act (ADA).

The ADA authorizes the Department to provide technical assistance to entities that are subject to the Act. This letter provides informal guidance to assist you in understanding how the ADA may apply to your business. However, this technical assistance does not constitute a determination by the Department of Justice of your rights or responsibilities under the ADA and does not constitute a binding determination by the Department of Justice.

The general provisions applicable to public accommodations, such as self-service gasoline stations and convenience stores, are provided in the regulations implementing title III of the ADA. These regulations were published on July 26, 1991, in the Federal Register. I have enclosed a copy of the regulations for your reference.

The section of the regulation that appears most relevant to your concerns is S36.305, which governs alternatives to barrier removal. The general language of S36.305 and the examples used in the preamble to that section indicate that attendant assistance could be a readily achievable alternative in many cases, if more than one attendant is on duty at the facility. If assistance is provided to an individual with a disability as an alternative to barrier removal under S36.305, the service station may not charge extra for the service provided.

The preamble to S36.305 recognizes, however, that there may be security considerations that would legitimately prevent a cashier from leaving the cash register. The preamble makes clear that the ADA would not require a cashier who is the only employee on duty to leave a cash register to assist a motorist with a disability.

Service stations and convenience stores are subject to the requirements of title III without regard to their size. There is no exemption for small businesses from the ADA's requirements for public accommodations and commercial facilities.

We hope you find this information of assistance.

Sincerely,

Stewart B. Oneglia
Chief
Coordination and Review Section
Civil Rights Division

Enclosures

01-00808

Pacific Resources, Inc.
1401 Eye Street, N.W. Suite 200
Washington, D.C. 20005
Telephone (202) 682-0611
Fax (202) 682-0616

BHP
August 19, 1991 Petroleum

Office of the A.D.A.
Civil Rights Division
U.S. Department of Justice
P.O. Box 66118
Washington, D.C. 20035-6118

Dear Sir/Madam:

Please clarify for me the requirements that will be placed on self-service gasoline stations and convenience stores under the Americans with Disabilities Act and its regulations. If the requirements vary according to the size of the facility, please indicate so. I have heard assorted rumors - ranging from the A.D.A. having no effect on the business practices of these establishments, to the A.D.A. requiring a service station to provide full service to handicapped motorists at self-service prices.

Please respond to me in writing at:

BHP Petroleum
1401 Eye St., N.W.
Suite 200
Washington, D.C. 20005

or by telephone at (202) 682-0611. Thank you for your assistance.

Sincerely,

William J. Gordon
01-00809

T. 5/21/92

DJ 202-PL-00014

MAY 26 1992

Allan Davis Associates, Inc.
488 Main Avenue
Norwalk, CT 06851

Dear Mr. Davis:

This letter responds to your correspondence regarding the application of the Americans with Disabilities Act (ADA) to parking.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities with rights or obligations under the Act. This letter provides informal guidance to assist you in understanding the ADA accessibility standards. However, this technical assistance does not Harland constitute a legal interpretation of the statute and it is not binding on the Department.

Section 4.1.2(5)(d) of the ADA Accessibility Guidelines requires that parking at facilities providing medical care, e.g., parking for inpatient services, employees, or visitors at general hospitals, be provided in accordance with the table in

S4.1.2(5)(a). At outpatient units or facilities, whether stand-alone units or part of a general hospital, 10 percent of the total number of parking spaces serving such unit or facility must be accessible. At units or facilities that specialize in treatment or services for persons with mobility impairments, such as rehabilitation centers or orthopedic hospitals, 20 percent of parking spaces must be accessible.

Section 4.1.2(1) of ADAAG requires at least one accessible route to an accessible building entrance from accessible parking spaces irrespective of their location on a lot or in a parking structure. Furthermore, S4.6.3 specifies that parking access aisles shall be part of an accessible route to the entrance. Though exterior accessible routes may include "crosswalks at

cc: Records, Chrono, Wodatch, Harland, Russell
udd:Harland.Breen.pak

01-00810

vehicular ways," the definition does not allow the vehicular way itself to be used as an accessible route. The design options available in new construction are many and varied, sufficiently so that the knowledgeable and professional designer can develop a satisfactory parking layout with little or no increase in overall size of the lot.

I hope this information is useful to you in complying with the ADA.

Sincerely,

Philip L. Breen
Special Legal Counsel
Office on the Americans with Disabilities Act

ADA ALLAN DAVIS ASSOCIATES, INC. 488 Main Avenue, Norwalk, Connecticut 06851

January 30, 1992

Assistant Attorney General for Civil Rights
U.S. Department of Justice
Civil Rights Division
Coordination and Review Section
P. O. Box 66118
Washington, DC 20035-6118

Subject: Americans with Disabilities Act
28 CFR Part 36

Dear Sir/Madam:

Our firm serves as parking consultant to hospitals and other clients and this letter is to seek clarification of the requirements of Part III of the ADA with respect to the provision of accessible parking spaces. Two clarifications are sought, and

three problems with the standards which may need early revision of the text are pointed out.

CLARIFICATIONS
ADA Accessibility Guidelines for Buildings and Facilities
Section 4.1.2(5)(d)

I can find no definition of the term "mobility impairment". This Section would appear to distinguish between facilities which provide medical care and other services to the general public and those which provide medical care and other services for persons with mobility impairments. May I have your concurrence that hospitals serving the general public, including outpatient units of those hospitals, are not covered by the 10 percent accessible parking space requirement in 4.1.2(5)(d)(i)?

Section 4.3.2(1)

This Section provides that "the accessible route shall, to the maximum extent feasible, coincide with the route for the general public". In parking lots and garages, the walking route for the general public is generally the vehicular aisle. Would you please confirm that, provided the width, passing space, headroom, surface texture, slope, changes in level and provisions for egress and areas of rescue assistance comply with the remainder of Section

Civil Engineering * Traffic Engineering * Parking Studies * Transportation Planning
Tel.: (203) 849-0898 FAX (203) 849-0355
01-00812

4.3, the vehicular travel aisle in a parking lot or garage may serve as part of an accessible route in compliance with Section 4.3.2(1)?

PROBLEMS REQUIRING RESOLUTION BY CHANGING THE TEXT OF THE REGULATIONS

Sections 4.1.2(5)(d)(i)&(ii)

These Sections provide for increased percentages of parking spaces to be accessible at some "facilities providing medical care and other services for persons with mobility impairments". The problem

with this is that persons with mobility impairments, using the natural meaning of the expression, who seek medical care and other services may not be entitled to use accessible spaces. The regulation makes it more difficult rather than less difficult for a person whose mobility is temporarily impaired (bad back, broken leg) or even slightly impaired (not disabled) to obtain the services provided! It would appear that an illustration of the kind of facilities intended to be covered by Section 4.1.2(5)(d) would be helpful, and that a definition of "mobility impairment" which makes it clear that this includes only disabling impairment is required. Alternatively, if it is the intent of the regulation, "persons with disabilities" may be substituted for the phrase "persons with mobility impairments".

These Sections also require the increased percentage to be applied to the total number of spaces serving such facilities, not to those spaces serving patients or clients. Typically, 85 percent of spaces at such facilities are for staff parking. I suggest the wording be changed to remove staff parking from this requirement.

Section 4.1.2

Another difficulty appears to lie in the assumption, implicit in Section 4.1.2, that all parking is part of "Accessible Sites and Exterior Facilities". References are made to "ground surfaces", "the particular lot", and "total parking in lot" in this Section. Section 4.1.3, Accessible Buildings, makes no reference to provision for parking either in a separate building or integral with the main building itself. Parking garages are not mentioned. Is it the intention that parking garages be excluded from the requirements of the ADA?

01-00813

ADA

We have several projects pending where the answers to the points raised above are urgently required. Your early response would be appreciated.

Yours sincerely,

Allan Davis, President

AD:jmh
95-M-ADA.1

01-00814

III.7.5185

DJ 192-180-04985
Mr. James M. Johnson, III
Senior Vice President
Sunshine Bank
Post Office Drawer 2769

Fort Walton Beach, Florida
Dear Mr. Johnson:

I am responding to your letter to Congressman Earl Hutto regarding the requirements of title III of the Americans with Disabilities Act of 1990 (ADA), Pub. L. 101-336, 104 Stat. 327 (July 26, 1990), and this Department's regulation implementing title III, 56 Fed. Reg. 35,544 (July 26, 1991). Specifically, you seek clarification of the requirements applicable to the relocation of automatic teller machines (ATM's).

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities that have rights or responsibilities under the Act. This letter provides informal guidance about the provisions of the ADA. This technical assistance does not constitute a determination by the Department of your rights or responsibilities under the ADA, and it is not binding on the Department.

The requirements for accessible ATM's are established in SS 4.1.3(20) and 4.34 of the ADA Accessibility Guidelines, which are published as Appendix A to this Department's regulation implementing title III. The Guidelines were developed by the Architectural and Transportation Barriers Compliance Board (Access Board).

All newly constructed ATM's must comply with the Guidelines. Alterations to ATM's must comply with the Guidelines unless it is technically infeasible to do so. Cost factors are not to be considered in determining if an accessible alteration is feasible. Existing ATM's that are not otherwise being altered, but are being relocated to improve accessibility, should comply with the Guidelines to the extent that it is readily achievable

cc: Records; Chrono; Wodatch; Breen; Friedlander; McDowney.
:udd:jonessandra:ada.interpretation.jmjohnson

01-00815

for a financial institution to bring them into compliance. The ADA defines readily achievable as "easily accomplishable and able to be carried out without much difficulty or expense," and this Department's regulation sets out the factors to consider in making this determination.

Please note that in response to concerns raised by the American Bankers Association, the requirements set by the Guidelines in SS4.2.5 and 4.2.6 for "reach ranges," as they relate to the location of ATM controls, are under review by the Access Board. This review has the support and concurrence of the Department of Justice. However, while changes to the rule are under consideration, the Department is not in a position to amend the provision on ATM's and we are constrained to enforce the requirements of the ADA regulation now in effect. You should be aware that S2.2 of the ADA Accessibility Guidelines permits departures from particular technical requirements by use of other designs and technologies where the alternative designs and technologies will provide substantially equivalent or greater access to and usability of the facility. If you can demonstrate that particular ATM's, as installed, provide equivalent facilitation, they will be considered as complying with the ADA. You may be able to show that meeting one of the reach ranges specified in S4.2.5 or S4.2.6 provides equivalent facilitation, assuming all other requirements for ATM's contained in S4.34.1, S4.34.2, and S4.34.4 are met.

I have enclosed a copy of our title III regulation, which contains the ATM requirements at S4.34. In addition, the Department recently published a technical assistance manual to assist individuals and entities affected by title III of the ADA to understand their rights and responsibilities under the Act. I am enclosing a copy of that manual for your information. I hope that this information is helpful to you.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

Enclosures (2)
cc: Congressman Earl Hutto

01-00816

SUNSHINE BANK
P.O. Drawer 2769, Fort Walton Beach, Fl. 32549

March 12, 1992

Congressman Earl Hutto
2435 Rayburn House Office Building
Washington D.C. 20515

RE: Clarification of the "Americans With Disability Act"

Dear Earl:

I am writing to request your assistance in obtaining clarification of the applicable guidelines under the "Americans Disability Act" from the Department of Justice. I have been trying to contact the department in regard to my specific request for over thirty days in regard to this matter but have not gotten any further than the recording on the telephone. I have also requested the assistance of Mr. Dan Steck of your office in trying to contact the Department of Justice in regard to this matter. However, he has informed me that his attempt to make inquiries on my behalf have also been fruitless.

Specifically, I have been trying to ascertain the applicability of the American Disability Act to this Bank's proposal to relocate its existing Automatic Teller Machine from its current location on the Hollywood Blvd. side of the bank to a new location at a out building located on the same parcel of property but facing Eglin Parkway. The reasons that we wish to relocate this Automatic Teller Machine are two fold: 1) The current location is less visible and is close to a high crime area. The proposed new location is further away from that area and much more visible to travelers on Eglin Parkway and would add a greater degree of security for potential customers. 2) The current location is neither accessible by drive-up automobile or by individuals confined to wheelchairs. The new installation would make the ATM machine accessible both by automobile and those confined to wheelchairs.

01-00817

I am enclosing for your reference various photos with captions and other documents showing the existing location, the proposed location and the minor addition we are making to the existing building where we wish to relocate the ATM machine.

I apologize for having to impose upon your valuable time to get assistance in this matter. However, I hope you can appreciate the frustrations we have experienced in trying to seek clarifications/ approval for this rather simple matter. Should you have any questions or require further information please do not hesitate to contact at (904) 664-5884. As always, we appreciate your fine support and assistance as well as your excellent representation of our area in the House of Representatives.

Very truly yours,

James M. Johnson, III
Sr. Vice President

enclosures
JMJ/dkl
01-00818
(Form) FORT WALTON BEACH
01-00819
(Form) Proposed New Location for A.T.M.
01-00820
(Form) Bank Complex at corner of Eglin Parkway
and Hollywood Blvd. (facing West)
Existing ATM location on South side oILLEGIBLE
Main Bank buiding (Hollywood Blvd. siILLEGIBLE
Note that ATM is accessable by walkinILLEGIBLE
customers only at current location.
Bookkeeping building in foreground.
Proposed ATM relocation to be at the front
of the Bookkeeping building (North end)
Accessable by drive up autos and wheelchair
customers.

01-00821

(Form) Sunshine Bank
Automatic Teller Building (cost projections)
Front and side elevation of addition to bookkeeping building for ATM relocation. Note: Keyboard and cash dispenser will be at height levels mandated by the "Americans with Disabilities Act" and accessable by both automobile and/or wheelchairs.
01-00822

U.S. Department of Justice
Civil Rights Division

DJ# 181-06-0007

Coordination and Review Section
P.O. Box 66118
Washington, D.C. 20035-6118

Mr. Ken Franklin
Community Liaison, Governor's Advocacy
Council for Persons with Disabilities
1318 Dale Street, Suite 100
Raleigh, North Carolina 27605-1275

Dear Ken Franklin:

This letter is in response to your inquiries with respect to the obligations of self-service gasoline stations and convenience stores under the Americans with Disabilities Act (ADA).

The ADA authorizes the Department to provide technical assistance to entities that are subject to the Act. This letter provides informal guidance to assist you in understanding how the ADA may apply to your concern. However, this technical assistance does not constitute a determination by the Department of Justice of your rights or responsibilities under the ADA and does not constitute a binding determination by the Department of Justice.

The general provisions applicable to public accommodations, such as self-service gasoline stations and convenience stores, are provided in the regulations implementing title III of the ADA. These regulations were published on July 26, 1991, in the Federal Register. I have enclosed a copy of the regulations for

your reference.

The section of the regulation that appears most relevant to your concerns is S 36.305, which governs alternatives to barrier removal. The general language of S 36.305 and the examples used in the preamble to that section indicate that attendant assistance could be a readily achievable alternative in many cases, if more than one attendant is on duty at the facility. If assistance is provided to an individual with a disability as an alternative to barrier removal under S 36.305, the service station may not charge extra for the service provided.

01-00823

The preamble to S 36.305 recognizes, however, that there may be security considerations that would legitimately prevent a cashier from leaving the cash register. The preamble makes clear that the ADA would not require a cashier who is the only employee on duty to leave a cash register to assist a motorist with a disability.

We hope you find this information of assistance.

Sincerely,

Stewart B. Oneglia
Chief
Coordination and Review Section
Civil Rights Division

Enclosures (2)
01-00824

U.S. Department of Justice
Civil Rights Division

DJ# 192-06-00024

Coordination and Review Section
P.O. Box 66118
Washington, D.C. 20035-6118

MAY 28 1992

Mr. Wayne W. Harley
Assistant Director, Beaver County
Emergency Services Center
250 East End Avenue
Beaver, Pennsylvania 15009

Dear Mr. Harley:

This responds to your request for an interpretation of the Americans with Disabilities Act (ADA).

The ADA authorizes the Department to provide technical assistance to entities that are subject to the Act. This letter provides informal guidance to assist you in understanding how the ADA may apply to the situation you describe. However, this technical assistance does not constitute a determination by the

Department of Justice of your rights or responsibilities under the ADA and does not constitute a binding determination by the Department of Justice.

The Department's Technical Assistance Manual for title II of the ADA, which applies to State and local governments, addresses requirements for TDD access to telephone emergency services. It provides that public entities must ensure that these services, including 911 services, are accessible to persons with impaired hearing and speech, and includes the following discussion of the questions you raise:

> Are any additional dialing or space bar requirements permissible for 911 systems? No. Additional dialing or space bar requirements are not permitted. Operators should be trained to recognize incoming TDD signals and respond appropriately. In addition, they also must be trained to recognize that "silent" calls may be TDD or computer modem calls and to respond appropriately to such calls as well.

Title II Technical Assistance Manual at 38 - 39.

01-00825

A copy of the Manual and of the title II regulation are enclosed for your information.

We hope this information is helpful to you.

Sincerely

Stewart B. Oneglia
Chief
Coordination and Review Section
Civil Rights Division

Enclosures (2)

01-00826

BEAVER COUNTY
JAMES ALBERT, CHAIRMAN
DAN DONATELLA
ROGER L. JAVENS
COUNTY COMMISSIONERS

RUSSELL T. CHIODO
DIRECTOR
WAYNE W. HARLEY
ASSISTANT DIRECTOR
WESLEY W. HILL
SARA/FIRE COORDINATOR

EMERGENCY SERVICES CENTER
250 EAST END AVENUE
BEAVER, PENNSYLVANIA 15009
TELEPHONE: 412/775-1700

December 4, 1991

Office on Americans with Disabilities Act
Civil Rights Division
U.S. Department of Justice
P.O. Box 66118
Washington, D.C. 20035-6118

Attn: Legal Interpretation Division

Reference: Section 35.162 of Title 2

Dear Sirs;

I am writing on behalf of the Beaver County Emergency Services Center, Beaver County, PA. We operate a Countywide 9-1-1 Center here in southwestern PA for 185,000 residents. Although we don't have access to Federal Register 28 CFR 35 which details the provisions of Section 35.162 of Title 2 (regarding TDD's), we are aware from trade journal articles that we need to fully comply with this law. We have had a TTY machine for 10 years but it is not directly hooked into 9-1-1. I am asking for guidance regarding whether our current setup is in compliance to the law.

Since 1981 our TTY machine has been hooked up to a dedicated phone number, 728-1222. All the local directories issued for the benefit of our hearing impaired citizens have listed this number for years. A citizen using a TTY or TDD machine and calling this number automatically knows that he will be connected to our TTY machine. We have had Enhanced 9-1-1 here in Beaver County since March, 1988. Our approach to date with 9-1-1 has been to advise those with TTY or TDD machines that they have the option of dialing 9-1-1 to report an emergency, but that they need to hit the spacer bar a number of times to alert our dispatchers. With our Bell of PA Centrex system we can then transfer such a 9-1-1 call to 728-1222 and then communicate via our TTY with the calling party. I think our present system is the best way to go here in Beaver County, but perhaps it is not in

compliance with the law. I'm especially concerned that we'll mistake a TTY/TDD call received via 9-1-1 for a prank call if our dispatcher does not detect the sound of the TTY/TDD machine. What is your interpretation of our system compliance to the law?

Incidentally we've had only one emergency call (a fire) reported via our TTY in the more than 10 years its been in place. I suppose I expected that we'd have received more than 1 call every 10 years.

Please if possible send me a copy of Section 35.162 of Title 2 and offer an opinion as to whether our current setup would be in compliance to the law.

Sincerely,

Wayne W. Harley, Assistant Director
Beaver County
Emergency Services Center

WWH:ljw

01-00828

U.S. Department of Justice
Civil Rights Division

T. 5/23/92
JLW:LIB:HJB:jfh
202-PL-00083 Washington, D.C. 20530

MAY 28 1992

Ms. Tria D. Vikesland
Adaptive Recreation Specialist

Eden Prairie Community Center
16700 Valley View Road
Eden Prairie, Minnesota 55346

Dear Ms. Vikesland:

This letter responds to your correspondence requesting technical assistance with respect to the provisions of the Americans with Disabilities Act, 42 U.S.C. 12101-12213 (ADA). The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist you in understanding the ADA's requirements. However, it does not constitute a legal interpretation and it is not binding on the Department.

You are correct in your understanding that title II of the ADA generally requires that if local governments provide services or programs to residents or non-residents without disabilities, they must therefore provide these programs and services for individuals with disabilities. You inquire whether a local government may now designate some programs as being open to the general public -- both individuals with disabilities and those without disabilities -- and some programs only to residents of your local jurisdiction, again including both individuals with disabilities and those without disabilities. Generally, limiting participation in this way does not appear to be prohibited by title II.

We must caution you, however, against limiting participation to residents only in some programs, but not others, if all programs have historically been open to all. Your reason for offering certain programs only to residents should not be related to the fact that you expect people with disabilities to participate in them. For example, the ADA might be violated if you allowed the general public to use most facilities of a

cc: Records OADA Wodatch Bowen Beard
udd:beard.ta.202.vikesland

01-00829

recreation center (e.g., picnic areas, tennis courts, basketball courts), but you limited use of the swimming pool to residents

when you know that you have no mobility impaired residents and you do not want to provide pool services to individuals with those impairments.

We hope that this information is useful to you. I enclose a copy of the regulations issued by the Department of Justice under both title II and title III (which contains the ADA Accessibility Guidelines, an optional standard for local government use), Title II Highlights, and our Title II Technical Assistance Manual.

Sincerely,

L. Irene Bowen
Deputy Director
Office on the Americans with Disabilities Act

Enclosures

01-00830

16700 Valley View Road * Eden Prairie, MN 55346-3677 * Telephone (612) 937-8727

February 4, 1992

Office on the Americans with Disabilities Act
Civil Rights Division
U.S. Department of Justice
P.O. Box 66118
Washington, D.C. 20035-6118

Dear Sirs:

I am writing to request any new and updated information about the Americans with Disability Act. We also would like to know if anyone has raised the issue of non-resident fees or providing services to non-residents.

The City of Eden Prairie is looking hard at the issue of providing services or programs to non-residents. Past history is that we have, however it has shown to be very costly and at times, very time consuming for a program. To our understanding if we provide services or programs to residents or non-residents without disabilities we therefore must provide for individuals with disabilities. What we are looking at now is if we can legally designate some programs open to the public and some programs just to residents of Eden Prairie, whether they have a disability or not.

Has there been other cities or organizations dealing with this same issue and do you have any information or articles about this?

Please send information to:

Tria D. Vikesland
Adaptive Recreation Specialist
Eden Prairie Community Center
16700 Valley View Road
Eden Prairie, MN 55346

Thank you!
Sincerely,

Tria D. Vikesland
Adaptive Recreation Specialist

TDV:cp

T. 5-26-92

III-1.2000

DJ 202-PL-000120

JUN 1 1992

Craig C. Birker, Esq.
Sandler and Rosen
Suite 510 Gateway West Century City
1801 Avenue of the Stars
Los Angeles, CA 90067

Dear Mr. Birker:

I am responding to your letter requesting an "interpretative ruling" from the Department of Justice that the provisions of title III of the Americans with Disabilities Act of 1990 (ADA) do not apply to the construction of model homes.

The ADA authorizes the Department to provide technical assistance to entities that are subject to title III. This letter provides informal guidance to assist you in understanding how the ADA accessibility standards may apply to model homes. However, this technical assistance does not constitute a legal interpretation, and it is not binding on the Department.

Model homes by themselves do not fall under any of the 12 categories of places of public accommodation. If, however, the sales office for a residential housing development were located in a model home, the area used for the sales office would be considered a place of public accommodation. Although model homes are not covered, the Department encourages developers to voluntarily provide at least a minimal level of access to model homes for potential homebuyers with disabilities. For example, a developer could provide physical access (via ramp or lift) to the primary level of one of several model homes and make photographs of other levels within the home as well as of other models available to the customer.

cc: Records, Chrono, Wodatch, Blizard, Breen
udd:Blizard.ada.interpretation.modelhomes

This Department recently issued a technical assistance manual to assist individuals and entities subject to the ADA to understand the requirements of title III. I have enclosed a copy for your information. I hope that this information is helpful to you.

Sincerely,

John L. Wodatch
Director
Office on the Americans with Disabilities Act
Civil Rights Division

Enclosure

September 5, 1991

VIA FEDERAL EXPRESS

Mr. John Wodatch
Office Of The Americans With
Disabilities Act
Civil Rights Division
U.S. Department of Justice
Rulemaking Docket 003
Box 75087
Washington, D.C. 20013

Re: Americans With Disabilities Act -
Request For Interpretative Ruling
Regarding Certain Model Homes

Dear Mr. Wodatch:

Our law firm represents Pardee Construction Company and Pardee Construction Company of Nevada (collectively "Pardee"), both of which are subsidiaries of Weyerhaeuser Real Estate Company, a subsidiary of Weyerhaeuser Company. Pardee develops master-planned communities in Southern California and Nevada, consisting of single family and multi-family residences, as well as commercial projects. As part of its residential projects, Pardee constructs model homes.

The purpose of this letter is to request an interpretative ruling from the Department of Justice that the provisions of Title III of the Americans With Disabilities Act ("ADA") do not apply to the model homes described herein.

Granting such an exemption will not permit Pardee or other residential real estate developers to discriminate against the disabled. Discriminatory practices in residential real estate

transactions are prohibited by the Fair Housing Act (42 U.S.C. 3601 et. seq.). Section 3605(a) of the Fair Housing Act states as follows:

> "It shall be unlawful for any person or other entity whose business includes engaging in residential real

002P3EMO.972

01-00834

> estate-related transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of race, color, religion, sex, handicap, familial status, or national origin."

We want to emphasize that the subject of our request is limited to model homes and we are not requesting an exemption for sales offices. We also recognize that a blanket exemption for all model homes may not be appropriate. For example, a model home which also serves as a sales or escrow office may be a commercial facility to which the provisions of Title III of the ADA probably should apply.

To evaluate our request, it is important to understand the different functions of model homes and sales offices utilized by Pardee and many other developers in Southern California and Nevada. Although in some cases Pardee's sales offices may be located in the garage of a model home or in a future dwelling unit of a multifamily building, Pardee's model homes and sales offices are separate facilities and serve different purposes.

In the sales office, prospective buyers can review maps, floor plans, photographs and brochures relating to the homes in the development and can discuss their prospective purchase with Pardee salespeople. After prospective buyers have made their decision to purchase, they review and sign purchase documents in the sales office, not in the model home. Pardee's closings are handled through an outside escrow company and do not take place in the sales office or model homes.

Pardee's sales offices are constructed in compliance with all applicable state and local codes relating to commercial facilities, including California and Nevada disability access laws. Pardee's sales offices will be constructed in full compliance with the ADA Accessibility Guidelines, at such time when such compliance is required.

On the other hand, model homes are constructed for the purposes of showing prospective buyers what their home will look like. The model homes are intended to be accurate representations of the homes constructed in the project. When the project has sold out, the model homes are sold to the public. Sales personnel are not stationed in the model homes, but may accompany prospective buyers visiting the models to answer any

questions they may have. Prospective buyers also have the option to visit model homes alone.

Model homes are constructed in accordance with building codes applicable to residences and not commercial facilities. If a model home is required to comply with the ADA Accessibility Guidelines, drastic changes would have to be made in its design and construction. The changes would include the following:

1. Installation of ramps to the front entry area and in some cases to the interior of the model home to provide wheelchair access into and through the unit.

2. Increase the width of hallways to accommodate latch-side clearances.

3 Raise all door heights to 80 inches.

4. Substantially increase the size of bathrooms to provide wheelchair access; redesign toilet and lavatory area; change height of sink; provide foot space below sink; install grab bars; install towel dispensers; raise height of toilet seat; change angles and locations of mirrors; and install lever-operated faucets.

5. Installation of lever hardware for doors.

6. Increase the width of bathroom and bedroom doorways and doors.

7. Add a second handrail to staircase and provide warning devices for sight-impaired persons for low clearances under the stairs.

The cost of these alterations would ultimately be passed on to the consumer. There is no reason to require these substantial permanent alterations to a model home. A disabled person does not intend to live in the model home; he or she only needs to examine it. Pardee will take reasonable steps to provide a disabled prospective homebuyer access to the interior of the model home. Such efforts would include assisting a disabled person in a wheelchair up the front steps and into and through the model home. Restroom facilities for the disabled are already available at the sales office located in close proximity to the model homes.

002P3EMO.972

01-00836

"dwelling" as "any building, structure or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure or portion thereof." A model home is a building or structure designed or intended for occupancy as a residence. It is a "dwelling" covered by the Fair Housing Act, and is not a "commercial facility" under the ADA definition. Therefore, model homes should be subject to the anti-discrimination provisions of the Fair Housing Act and not the ADA.

For all of these reasons, we respectfully request the Department of Justice to issue an interpretative ruling that the model homes described hereinabove are not subject to the provisions of Title III of the ADA.
If you have any questions or need any further information, please contact me at your convenience.

Very truly yours,

Craig C. Birker
of Sandler and Rosen

CCB:mxh

cc: Ms. Marianne McGettigan (Via Federal Express)
Special Assistant to the President/
Policy Development & Legal Policy
Mr. Leonard S. Frank
Pardee Construction Company
Mr. Fred S. Benson (Via Federal Express)
Weyerhaeuser Company
Ms. Creigh H. Agnew (Via Federal Express)
Weyerhaeuser Company

002P3EMO.972

01-00837

T. 5-26-92

DJ 202-PL-00098

JUN 1 1992

DIR
WODATCH Mr. John LaRue
Kompan-BigToys
DATE P.O. Box 529
Tiverton, Rhode Island 02878

Dear Mr. LaRue:
DEPUTY
BOWEN This is in response to your recent correspondence and telephone conversation with our office regarding playground
DATE equipment.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities that are subject
DEPUTY to the Act. This letter provides informal guidance to assist you
MAGAGNA in understanding the ADA's requirements. However, this technical assistance does not constitute a legal interpretation of the

DATE application of the ADA to playground equipment and it is not binding on the Department.

Currently, the Americans with Disabilities Act Accessibility
SPECIAL Guidelines (ADAAG) do not include specific standards for children
COUNSEL or for the unique aspects of recreational facilities, such as
BREEN playground equipment. The Architectural and Transportation Barriers Compliance Board, however, is in the process of
DATE developing such standards. You may contact the Board for further information at 1-800-USA-ABLE.

Other facilities located at playgrounds, however, such as
JOHANSEN walkways and restrooms, must comply with ADAAG.
DATE If you have any further questions, please do not hesitate to contact us.

GYB Sincerely,
DATE

John L. Wodatch
Director
Office on the Americans With Disabilities Act

cc: Records, Chrono, Wodatch, Johansen. Breen
udd:Johansen.Ltr.LaRue

01-00838

KOMPAN
KOMPAN, INC.
RD #2, Box 249
Marathon, NY 13803
Tel: (607) 849-4111
Tel: (800) 553-2446
Fax: (607) 849-6686

September 25, 1991

Mr. John Wodatch
Office of Americans with Disabilities Act
P.O. Box 66118
Washington, DC 20035-6118

Dear Mr. Wodatch,

This is a follow up letter regarding a telephone conversation I had today with Mr. Jeff Floriam at the ADA office. I contacted the office to inquire the legalities regarding the ADA and the playground industry. I am a Certified Therapeutic Recreation Specialist and hold a Masters Degree in Therapeutic Recreation. I work for Kompan Inc. and BigToys which are leading playground manufacturers. We have been involved in

wheelchair accessible/barrier free playgrounds for several years and are quite interested in the implications that the ADA requirements may hold for our industry.

I am looking for better direction on what the implications are. Should playgrounds be:

1) Accessible just to the playground?

2) Accessible to the playground and around all of the equipment?

3) Accessible to the playground, around all of the equipment and on the equipment via ramps?

4) A certain percentage accessible?

These are questions I cannot get answered through the ADA, ATBCB, UFAS or MGRAD. I would like to be notified of someone in your office that holds these interest that would like to develop a line of communication.

I look forward to a response as we make this world accessible for all.

Sincerely,

John LaRue
Certified Therapeutic Recreation Specialist
JL/ka

THE PLAYGROUND COMPANY

01-00839

U.S. Department of Justice
Civil Rights Division

T. 5/28/92
JLW:LIB:HJB:jfh

202-PL-00041 Washington, D.C. 20530

(b)(6) JUN 2 1992
Beavercreek, Ohio 45432

Dear xxx :

This letter responds to your correspondence requesting technical assistance with respect to the provisions of the Americans with Disabilities Act, 42 U.S.C. 12101-12213 (ADA). The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or

obligations under the Act. This letter provides informal guidance to assist you in understanding the ADA's requirements. However, it does not constitute a legal interpretation, and it is not binding on the Department.

The regulations issued by the United States Department of Justice under Title III of the ADA define a disability as a physical impairment that substantially limits one or more of the major life activities of an individual. Physical impairments include

> (1) Any physiological disorder or condition, . . . or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine;
>
> * * *
>
> (iii) The phrase physical or mental impairment includes, but is not limited to, such contagious and noncontagious diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, specific learning disabilities, HIV disease (whether symptomatic or asymptomatic), tuberculosis, drug addiction, and alcoholism.

cc: Records OADA Wodatch Bowen Beard
udd:beard.ta.300(b)(6).2

01-00840

28 C.F.R. S36.104, Disability.

While your lack of the sense of smell is a physical impairment, you would be protected under the ADA only if that impairment substantially limits a major life activity. The regulation defines a major life activity to mean functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. This determination is sometimes made on a case-by-case basis, and it would depend on information that is not disclosed in your letter.

We are enclosing a copy of the regulations this Department issued under titles II and III of the ADA and our "Title II Highlights" and "Title III Highlights." I hope this information is helpful to you.

Sincerely,

L. Irene Bowen
Deputy Director
Office on the Americans with Disabilities Act

Enclosures

01-00841

(Hand Written) 2-3-92

Dear Gentleman:

Could you please inform me if my total lack of the sense of smell (caused in a head injury)

qualifies as a disability?

Thank you

Sincerely,

(b)(6)

01-00842

JUN 2 1992

The Honorable Bob Graham

United States Senator
Post Office Box 3050
Tallahassee, Florida 32315

Dear Senator Graham:

This is in response to your letter on behalf of your constituent, Mr. Doug Heisler, Vice President of Humana, Inc., regarding the Americans with Disabilities Act (ADA) requirements relating to hospitals.

Mr. Heisler requests a reconsideration of ADA regulatory requirements for the construction of accessible hospital facilities because of the economic burden the new law will place on hospital construction. The standards at issue were first developed as Guidelines by the Architectural and Transportation Barriers Compliance Board (Board), and were incorporated as an appendix to the Department of Justice's regulations implementing the ADA with respect to public accommodations, and commercial facilities. 56 Fed. Reg. 35,544.

During development, the Guidelines received intensive public scrutiny. The Board held 14 public hearings and received over 12,000 pages of comments and testimony from more than 2,300 individuals. The Board carefully considered all comments, including extensive comments received from Humana, Inc., and completed a Regulatory Impact Analysis as required by Executive Order 12291. As a result of this process, numerous changes were made in the final Guidelines.

cc: Records; Chrono; Wodatch; Breen; Lusher; McDowney.
:udd:breen:cong.humana.merge

01-00843

In developing regulations under ADA, the Board and the Department of Justice have made every effort to consider and be responsive to the needs of industry as well as the needs of persons with disabilities. We believe that the ADA requirements for new construction of hospital facilities accurately interpret the statute and are fair and balanced. They were developed after extensive public comment and with concern to the costs that these rules would impose on the provision of health care services. The rules were examined by the Board, the Department of Justice, and the Office of Management and Budget under Executive Order 12291. It would be, therefore, duplicative and unnecessary to reexamine the ADA's rules again so soon after such a complete and exhaustive regulatory process.

In addition, section 504 of the Rehabilitation Act of 1973 and Federal regulations implementing section 504 have required the construction of accessible hospitals for entities receiving Federal funds since the late seventies. Because most hospitals in this country receive Federal funds on a regular basis, we expect that the ADA's requirements are supplemental in nature and should prove to add little economic burden.

I hope that you find this information helpful. Please let me know if I can be of further assistance.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

01-00844

Doug Heisler March 18, 1992

The Honorable Bob Graham
United States Senate
U.S. Capitol Humana
Washington, D.C. 20510

Re: Americans with Disabilities Act

Dear Senator Graham:

I am writing this letter both as a healthcare consumer and Vice President, Design & Construction for Humana Inc. Humana Inc. is one of the largest health care companies in the world. The company is noted for its pioneering role in developing integrated health care systems that include high quality hospital services and a variety of health insurance plans. Humana Inc. owns and operates over 77 hospitals in 19 states, one of which you represent.

The Americans with Disabilities Act, Public Law 101-336 (the "ADA") became law in January, 1992. I totally support the concept of making all buildings accessible to disabled person and a national standard for disabled access is more desirable to the design and construction industry than many different regulations for each state or city. Many states have adopted their own separate building code for hospitals; however, regulations implementing the ADA, as applied to hospitals, are either excessive or ambiguous, and go far beyond accessibility. Strict compliance will mean higher healthcare costs to the consumer, a subject that is being discussed every day by state and national officials and candidates. The issue of health care cost containment is debated almost daily in the national media.

Humana Inc. operates its own design and construction department which, over the last ten years, has been responsible for over three billion dollars of hospital new construction and renovation. As such, I can speak to the level of regulation of hospital construction, which is one of the most, if not the most, regulated building construction in the United States. There are specific regulations for hospitals in the areas of fire protection, room and door size, bathroom accommodations, and many more. Whole chapters of every building code are dedicated to hospital design which, as a requirement to the basic function and mission of a hospital, must be designed and built to accommodate wheelchairs, oversized beds,

and other facilities for the temporarily and permanently non-ambulatory patient.

01-00845

Humana

I am asking your support in calling for a review of the regulations implementing the ADA. In the absence of clear, reasonable regulations, hospitals must accomplish new construction and renovation according to individual interpretations without total confidence that they are accomplishing their activities in the least burdensome and least restrictive manner possible.

Again, I emphasize that I support making public accommodations accessible to the disabled; however, the economic burden to the hospital construction and operation industries must be balanced against the perceived inaccessibility to the disabled patient and visitor. As one of your constituents, Humana Inc. requests your support in taking action to contain healthcare costs by calling for a realistic appraisal of the feasibility and economic impact of full implementation of the ADA as promulgated in the regulations covering public accommodations as applied to hospitals. I will look forward to your reply in this matter.

Sincerely yours,

Doug Heisler
Vice President
Design and Construction

DH:md

cc: George Atkins - Humana Inc.

01-00846

U.S. Department of Justice
Civil Rights Division

T. 5/19/92
JLW:LIB:HJB:Jfh
202-PL-00005 Washington, D.C. 20530

JUN 2 1992

Ms. Debra A. Hixson
Stark Manufacturing, Inc.
Post Office Box 633
Paris, Arkansas 72855

Dear Ms. Hixson:

This letter responds to your correspondence requesting technical assistance with respect to the provisions of the Americans with Disabilities Act (ADA). The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist you in understanding the ADA regulations. However, it does not constitute a legal interpretation and it is not binding on the Department.

Specifically, your letter inquires as to the obligations of a manufacturing concern under title III of the ADA.

Title III of the Americans with Disabilities Act governs the obligations of privately-owned places of public accommodation and of commercial facilities to provide access to individuals with disabilities. A commercial facility is a non-residential facility whose operations affect commerce (such as a manufacturing operation), but which does not contain a place of public accommodation such as a showroom, retail sales office, or establishment serving food or drink.

Title III of the ADA imposes three different types of compliance duties on commercial facilities and places of public

accommodation. When a commercial facility or a public accommodation is engaged in new construction of a facility, it must comply with the accessibility provisions of the ADA standards for new construction, including the ADA Accessibility Guidelines (ADAAG). When a commercial facility or a public accommodation is engaged (after January 26, 1992) in an alteration to an existing facility, it must comply with the alterations standards.

When a public accommodation is engaged in neither new construction nor alteration of a facility, then a third and less rigorous duty is imposed: The public accommodation must remove any barriers to individuals with disabilities where the removal
cc: Records OADA Wodatch Bowen Beard
udd:beard.ta.304.hixson

of those barriers is "readily achievable" -- that is, where the removal can be done easily and without much difficulty or expense. If your facility is a place of public accommodation, rather than a commercial facility, you may be required to remove barriers such as the curb.

The Title III regulations discuss the factors that are to be used in determining whether the removal of a particular barrier is readily achievable. These include: the nature and cost of the action; the financial resources available both to the site and the parent organization; the size and number of employees at the site and overall; and the relationship of the sites to the parent organization.

However, where it is not possible to comply completely with the accessibility specifications of the ADAAG, title III provides that a public accommodation should comply as much as possible -- again without much difficulty or expense.

When a commercial facility is engaged in neither new construction nor alteration of its building, then it has no obligations under title III of the ADA. However, as of July 26, 1992, title I of the ADA will become effective, and any employer with 25 or more employees will be covered. Employers with 15 or more employees will be covered after July 26, 1994. Such an employer will be obligated to make a reasonable accommodation for the disabilities of any current or newly hired employee. This may include modifications of the buildings, such as yours, in which the employer conducts his or her business. Decisions about what is reasonable would be made on a case-by-case basis. We are unable to give you more specific guidance; implementation of

title I is within the jurisdiction of the Equal Employment Opportunity Commission. We are enclosing the Title I regulation for your information.

I hope that this information will be of assistance to you in evaluating your obligations under the ADA.

Sincerely,

L. Irene Bowen
Deputy Director
Office on the Americans with Disabilities Act

Enclosure: Title III Regulation
EEOC Title I Regulation

01-00848

STARK MANUFACTURING, INC.
310 Pennington Dr
P.O. Box 633
Paris, Arkansas 72855
(501) 963-3046

January 17, 1992

U.S. Department of Justice
Civil Rights Division
Office of the Americans with Disabilities Act
P.O. Box 66118
Washington, D.C. 20035-6118

RE: TITLE III Public Accommodations Provisions

To Whom it may concern:

A few months ago I wrote to you requesting information on the new ADA act. Your department mailed me a Federal register and a booklet with questions and answers that was very helpful, and I appreciate it.

Within the booklet are phone numbers to call for more specific information about ADA requirements affecting employment. I have called the number a total of ten (10) times, as of today, and have

become very aggravated with the facility I am phoning. The first three (3) times I called, a lady named Brenda took my message and assured me each time that she would have another lady named Mrs. Kay Klugh return my call. The last seven times, (last, Thursday & Friday, and every day this week) I called I have received a recording (which could not clearly be heard) and left a message for Mrs. Klugh to please return my call. It does not look good for an Official Office to handle there business in this manner. It also makes it very difficult to make every effort to comply with the new Act, and not be able to do so because of the very people who are requiring it. The name, address, and phone number of the facility I am referring to it:

Equal Employment Opportunity Commission
1801 L Street NW
Washington, DC 20507
1-800-669-4000

Could you please answer one question for me concerning the ADA Act? I work within a Manufacturing Company. We fully understand the requirements in employing disabled personnel. My question is in reference to Title III (Public Accommodations Provisions). This company hires through an employment agency. We do not accept application forms in our office area. Do we still need to make our front office area accessible to the disabled person, by January 26, 1992, will the front work, the front office ILLEGIBLE ILLEGIBLE

As an example lets say they (any disabled person) did not know we were not accepting applications in the front office area, and they tried to come in to submit one.

There is a 6 ' curb beginning at the front entrance walkway. We will eventually slant that curb, but until then are we in error with the Act?

We realize that plans need to be outlined to comply in theses areas by July 26, 1992.

My Manager is waiting on an answer from me on this single question and I cannot get the answer anywhere, please help!

Sincerely,

Debra A. Hixson
Personnel Assistant

U.S. Department of Justice
Civil Rights Division

T. 5/29/92
JLW:JAM:PLB:HJB:ca:jfh III-4-4200
202-CON

Office of the Assisant Attorney General Washington, D.C. 20035

JUN 3 1992

The Honorable Gary L. Ackerman
U.S. House of Representatives
238 Cannon House Office Building
Washington, D.C. 20515-3223

Dear Congressman Ackerman:

This letter responds to your correspondence regarding an inquiry by your constituent, Ira Farbstein, concerning the obligations of public accommodations with respect to barrier

removal under title III of the Americans with Disabilities Act of 1990.

Depending on the context, title III of the ADA imposes a range of compliance standards on private entities regarding physical barriers in places of public accommodation. When a public accommodation is engaged in new construction of a facility, or in an alteration or remodeling of an existing facility, it must comply with the rigorous requirements of the ADA Accessibility Guidelines.

When a public accommodation is engaged in neither new construction nor alteration of a facility, then a significantly less demanding accessibility obligation is imposed. The public facility must remove any physical barriers to individuals with disabilities where the removal of those barriers is "readily achievable" -- that is, where the removal can be done easily and without much difficulty or expense.

The regulations issued by the Department of Justice discuss the factors that are to be used in determining whether the removal of a particular barrier is readily achievable. These include the nature and cost of the action, the financial resources available both to the site and the parent organization, the size and number of employees at the site and overall, and the relationship of the site to the parent organization. A copy of these regulations is enclosed.

cc: Records OADA Wodatch Bowen Breen Beard McDowney Arthur
udd:Beard.C.302B2AIV.Ackerman

The removal of physical barriers in an existing restaurant should be evaluated under the "readily achievable" standard. Where removal of all barriers is not readily achievable, a public accommodation must still take whatever steps it can under that standard to remove barriers. In addition, the obligation to remove any existing barriers is an ongoing one. What is not readily achievable today may be readily achievable next year.

I hope that you find this information useful in responding to your constituent.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

Enclosure

01-00852

The garden of eating

AN EATING AND DRINKING ESTABLISHMENT

212-02 Union Turnpike * Flushing, N.Y. 11364 * (212) 468-8463

January 15, 1992

(Hand Written)

DEAR SIR,

I AM WRITING YOU IN REGARD TO THE AMERICANS WITH DISABILITIES ACT (ADA) PUBLIC LAW 101-336, AND HOW THIS LAW

WILL AFFECT ME.

I HAVE A SMALL FORTY (40) SEAT RESTAURANT AT ABOVE ADDRESS. MY RESTAURANT HAS ALWAYS BEEN ACCESSIBLE TO THE HANDICAPPED: IE THE BLIND, DOWNS SYNDROME PERSONS, WHEELCHAIR ACCESSIBLE, ETC.

UNFORTUNATELY THE PHYSICAL SETUP OF THE STORE MAKES THE RESTROOMS UNACCESSIBLE TO THE WHEELCHAIR.

IN ORDER TO MAKE THE RESTROOMS WHEELCHAIR ACCESSIBLE I MUST ILLEGIBLE DOWN EXISTING WALL WHICH WILL CAUSE ME TO LOSE EIGHT SEATS. (20% OF ILLEGIBLE SEATING CAPACITY.

ALSO MY PRESENT RESTROOMS WHICH ARE SEPARATED BY A ILLEGIBLE WOULD HAVE TO BE TORN DOWN. ALSO, PART OF MY KITCHEN WALL WOULD HAVE TO BE TORN DOWN AND MOVED BACK. THIS WOULD FORCE ME TO DISCONNECT MY DISHWASHER-MACHINE, MOVE MACHINE AND ILLEGIBLE WITH NEW PLUMBING.

ALL THIS WOULD HAVE TO BE DONE IN ORDER TO MAKE A RESTROOM THAT WILL COMPLY WITH ADA ORDER.

THE COST TO DO THIS WOULD PUT ME IN A SEVERE FINANCIAL BIND AND CREATE MUCH HARDSHIP.

IT SEEMS RIDICULOUS THAT I MUST INVEST ALL THIS MONEY, PLUS LOSS OF BUSINESS AS THE RESTAURANT WOULD HAVE TO BE CLOSED DURING ALTERATIONS.

ITS ALSO UNHEARD OF FOR A BUSINESS OF ANY KIND TO MAKE AN INVESTMENT TO DO LESS BUSINESS. PLEASE ADVISE ME AS TO MY RIGHTS

SINCERELY YOURS

IRV FARESTEIN

P.S. WHEN YOU'RE BACK HOME FROM
YOUR DUTIES IN THE CAPITOL I WOULD
MORE THAN WELCOME A VISIT TO MY
ILLEGIBLE

01-00853

T. 5/1/92
SBO:SK:Arthur
DJ# 182-06-00019

JUN 03 1992

Ms. Julie Klauber
Outreach Services Administrator
Suffolk Cooperative Library
System
627 North Sunrise Service Road
Bellport, New York 11713

Dear Ms. Klauber:

This responds to your request for an interpretation of the Americans with Disabilities Act (ADA) as applied to public libraries.

The ADA authorizes the Department to provide technical assistance to entities that are subject to the Act. This letter provides informal guidance to assist you in understanding how the ADA may apply to you. However, this technical assistance does not constitute a determination by the Department of Justice of your rights or responsibilities under the ADA and does not constitute a binding determination by the Department of Justice.

You requested an opinion on whether the public libraries of Suffolk County are covered by title II or title III of the ADA. Title II of the ADA applies to any "public entity," which is defined in accordance with section 201(1) of the ADA as any State or local government; any department, agency, special purpose district, or other instrumentality of a State or States or local government; and the National Railroad Passenger Corporation, and any commuter authority (as defined in section 103(8) of the Rail Passenger Service Act). Title III applies to public accommodations and commercial facilities, and defines "public accommodation" as a private entity that owns, leases (or leases to) or operates a place of public accommodation. The term "private entity" is defined as a person or entity that is not a "public entity."

cc: Records; CRS; Oneglia; Kaltenborn; Friedlander; Arthur
UDD: Kaltenborn Klauber
01-00854

The libraries in question would, therefore, be covered by title II if they are components of a State or local government. If they are not components of a State or local government, they would be covered by title III as private entities operating a place of public accommodation, i.e., a library. Generally speaking, the question of whether an entity is public or private is not difficult. For example, a municipal library, as a department of the township, would be a public entity covered by title II.

The question may be difficult, however, where an entity has both public and private features. A library operated by a private organization would not be a "public entity" merely because it is open to the public. In such cases, it is necessary to examine the relationship between the entity and the government unit. The factors to be considered include whether the library is operated with public funds; whether the library employees are considered government employees; whether the library receives significant assistance from the government by provision of property or equipment; and whether the library is governed by an independent board selected by the members of a private organization or is elected by the voters or appointed by elected officials.

We hope that this information is helpful.

Sincerely,

Stewart B. Oneglia
Chief
Coordination and Review Section
Civil Rights Division

01-00855

SCLS
Suffolk Cooperative Library System
627 NORTH SUNRISE SERVICE ROAD / BELLPORT, NEW YORK 11713 / TEL. 516-286-1600

October 21, 1991

Mr. Stewart Oneglia
Civil Rights Division
U.S. Department of Justice
P.O. Box 66118
Washington, DC 20035-6118

Dear Mr. Oneglia:

As per my conversation with Brenda Shepherd this morning, I am writing to request a written opinion as to whether the public libraries of Suffolk County, New York fall under Title II or Title III of the Americans with Disabilities Act.

Suffolk has 54 independent public libraries. One is a "municipal" library, one is a "special district" library, and all of the others are "school district" or "association libraries." Attached is a description of the public libraries of New York State and each of these types.

The association libraries were created by groups of individuals as private, not for profit membership organizations, although they generally function in a public capacity. The school district libraries were created by votes of the residents of the respective school districts. The special district library was created by the state legislature, and the municipal library is a department of its township.

With the exception of the municipal library, each of these libraries has its own board of trustees and sets its own policies and budget. These budgets are generally voted upon by the residents of the district, although the taxes themselves are collected by the local school districts.

We have had many conflicting opinions as to which Title of the ADA these libraries fall under, and obviously need this information as quickly as possible in order to assist them in meeting the regulations of this law. I am looking forward to hearing from you.

Sincerely,

Julie Klauber

Libraries, Library Systems and Networks

Some 7,600 libraries serve the people of New York State. Many of these libraries are linked with others in resource sharing systems and networks. These libraries have book collections of some 171 million volumes. Brief summary data on the several types of libraries are shown in the table on the preceding page.

Public Libraries. The people of New York State are served by 733 chartered public libraries and over 390 branch libraries. Of these chartered libraries, 730 are members of the 22 public library systems. Some 63 percent of the libraries (463) in the State are small, serving fewer than 7,500 popu- lation. Only 105 of the libraries (and almost half of these are located on Long Island) serve a population of 25,000 or more. The three public libraries in New York City, (the Brooklyn, The New York and the Queens Borough public libraries) serve more than 40 percent of the population of the State.

In 1985 the total public library operating expenditure in New York State was $383 million. The main financial support for public libraries in New York State (an average of 70 percent) comes from local public funds ($274 million in 1985). The average per capita expenditure for public library service (including that for public library systems) in 1985 was $21.83.

The Regents of The University of the State of New York charter (i.e., incorporate) the public libraries. A library serves a village, town, city, county, school district, a combination of these units, or in exceptional cases a special library district established by the Legislature. These libraries are subject to State Education Law and to the Regulations of the Commissioner of Education.

A board of trustees governs each library, with specific powers and responsibilities under Education Law. Each public library board is autonomous. The four major types of public libraries (and the number in the State) are:

Municipal (209). Created by a village, town, city, or county government (5-11 trustees appointed by local government).

Association (392). Created by a membership association. Contracts with a unit of government

or a school district to provide library services (5-25 trustees elected by the membership of the association).

5

01-00857

DJ 192-06-00005

JUN 3 1992

Ms. M. Angela White
Director
Personnel Department
Room 302
City Hall Annex
Petersburg, Virginia 23803

Dear Ms. White:

This responds to your inquiry concerning medical examinations of City employees.

The ADA authorizes the Department to provide technical assistance to entities that are subject to the Act. This letter provides informal guidance to assist you in understanding how the ADA may apply to you. However, this technical assistance does not constitute a determination by the Department of Justice of your rights or responsibilities under the ADA and does not constitute a binding determination by the Department of Justice.

The Department of Justice's regulation implementing title II of the Americans with Disabilities Act, which applies to all programs and activities of public entities, provides that the requirements of title I of the Act apply to employment by public entities that are covered by title I. Title I will apply to all employers, including public entities, with 25 or more employees, effective July 26, 1992, and to all employers with 15 or more employees effective July 26, 1994. Title I will be enforced by the Equal Employment Opportunity Commission (EEOC), whose implementing regulation you cite in your letter. Inquiries concerning that regulation should be directed to the EEOC at

Equal Employment Opportunity Commission
1801 L Street, N. W.
Washington, D. C. 20507

cc: Records CRS CSU Oneglia Breen FOIA Kaltenborn.white
arthur T. 5/18/92
01-00858

DJ 192-06-00005

FEB 21 1992

Ms. M. Angela White
Director
Personnel Department
Room 302
City Hall Annex
Petersburg, Virginia 23803

Dear Ms. White:

The Civil Rights Division of the Department of Justice has received your request for an interpretation of the Americans with Disabilities Act (ADA). The ADA authorizes the Department of Justice to provide technical assistance to entities that are subject to the Act. The Civil Rights Division will treat your inquiry as a request for technical assistance and will provide informal guidance to you. However, because of the large volume of requests for interpretations of the ADA, we are unable to answer your letter at this time.

Please be assured that the Division will respond to your letter expeditiously. We regret any inconvenience caused by our delay in responding and have enclosed for your information two documents on the ADA: "Title II Highlights," and "Title III Highlights."

Sincerely,

Stewart B. Oneglia
Chief
Coordination & Review Section
Civil Rights Division

Enclosures
cc: Records: CRS CSU Oneglia Kaltenborn: ca T. 2/20/92
UDD: arthur Kaltenborn.Interpretations
01-00859

City of Petersburg
Personnel Department Room 302, City Hall Annex
(804) 733-2324 Petersburg, VA 23803

January 13, 1992

Mr. Stewart Oneglia
Office on the Americans with
Disabilities Act
U.S. Department of Justice
Post Office Box 66118
Washington, D.C. 20035-6118

Dear Mr. Oneglia:

Please provide a written opinion in regard to the appropriate handling of the following situation as it pertains to Title I of the Americans with Disability Act. It is my understanding that the U.S. Department of Justice will enforce Title I as of January 26, 1992 even though the Equal Employment Opportunity Commission does not begin enforcement until July 26, 1992. Consequently, an expeditious response will be appreciated.

Section 1630.14(c) Examination of Employees "permits periodic physicals to determine fitness for duty or other medical monitoring if such physicals or monitoring are required by medical standards or requirements established by Federal, State or local law that are consistent with the ADA and this part in that they are job-related and consistent with business necessity." The City of Petersburg currently conducts a mandatory physical fitness program for sworn fire and police personnel in order to maintain the physical standards necessary to safely perform in these positions. As part of this program medical examinations are required every four years for those

individuals forty (40) years or under and every two years for those over forty (40) years. The program and medical examinations are required by department policy, but not by federal, state, or local law. Are the medical examinations allowed under this act?

Your guidance will be appreciated.

Sincerely,

M. Angela White
Personnel Director
MAW/vrs
01-00860

DJ 202-PL-182

JUN 04 1992

Mr. XXXXX(b)(6)
Seattle, Washington 98103

Dear Mr. xx:

This is in response to your letter requesting information about the Americans with Disabilities Act (ADA). It was referred from the Architectural and Transportation Barriers Compliance Board.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist you in understanding the ADA's requirements. However, it does not constitute a legal interpretation and it is not binding on the Department.

You ask whether movie theaters are considered places of public accommodation under the ADA and, if so, whether the ADA requires them to have some showings with captions.

Movie theaters are places of public accommodation and, therefore, subject to the requirements of the ADA. However, the Act does not require theaters to offer film showings with open captioning. This issue was specifically considered by Congress

during the legislative process and Congress indicated that open captioning would not be required. Closed captioning cannot be used because it is not a technology that is currently compatible with film projection.

I hope this information will be useful to you in understanding your rights under the ADA.

Sincerely,

Joan A. Magagna
Deputy Director
Office on the Americans with Disabilities Act

cc: Records Chrono Wodatch Magagna arthur T. 6/3/92
01-00861

United States
Architectural and Transportation Barriers Compliance Board
1331 F Street, NW * Suite 1000 * Washington, DC 20004-1111 * 202-272-5434
(V/TDD
* Fax 202-272-5447

(b)(6)
XX
Seattle, WA 98103

Dear Mr. XX

We are in receipt of your letter dated February 27, 1992 regarding the Americans
with Disabilities Act of 1990 (ADA).

With respect to the ADA, the Access Board is charged with the development and issuance of the ADA Accessibility Guidelines for Buildings and Facilities (ADAAG). Our technical assistance role is limited to explanation and clarification of the ADAAG's scoping and technical provisions. As the regulatory
authority, the U.S. Department of Justice (DOJ) is responsible for application of the ADAAG and for certain other regulations pursuant to the Act.

Your questions addressed issues under the purview of the ADA Office at DOJ. For
this reason, we are forwarding your letter to:

Office on the Americans with Disabilities Act
Civil Rights Division
U.S. Department of Justice
P.O. Box 66118
Washington, DC 20530

Thank you for contacting the Access Board. If we can be of assistance, please don't hesitate to contact us at the above address or at (800) 872-2253.

Sincerely,

Marsha K. Mazz
Technical Assistance Coordinator

The Access Board

(Handwritten)
TO WHOM IT MAY CONCERN: FEB. 27, 1992

I'M A DEAF PERSON WHO TALKS AND LIPREADS. I HAVE TROUBLE UNDERSTANDING THE DIALOGUE IN MOVIES (EXCEPT WHEN THE MOVIE IS A SUBTITLED FOREIGN FILM): UNDER THE ADA "PUBLIC ACCOMMODATIONS" ARE TO BE ACCESSIBLE TO ALL PEOPLE, INCLUDING THOSE WITH DISABILITIES. COULD THE SHOWING OF A FILM AT A MOVIE THEATRE BE CONSIDERED A "PUBLIC ACCOMMODATION"? IF SO, COULD MOVIE THEATRES BE REQUIRED TO HAVE SOME SHOWINGS OF AMERICAN (OR ENGLISH) FILMS WITH CAPTIONS?

SINCERELY,
(b)(6)

(b)(6)
Seattle, WA 98103

ARCHITECTURAL & TRANSPORTATION
BARRIERS COMPLIANCE BOARD
1111 18th St. NW, Ste ILLEGIBLE
Washington, DC 20036

C USPS 1991
01-00863

DJ 202-PL-86

JUN 04 1992

XXX(b)(6)
Wanaque, New Jersey 07465

Dear Ms. XX

This is in response to your letter requesting information about the Americans with Disabilities Act (ADA).

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist you in understanding the ADA's requirements. However, it does not constitute a legal interpretation and it is not binding on the Department.

Your inquire whether the condominium in which you live is required to provide access for disabled persons, specifically by providing an elevator or lift. The ADA does not apply to strictly residential facilities. The federal Fair Housing Act, as amended, which does apply, does not require the condominium to install a lift or elevator in the circumstance you have described. The condominium would be required to allow you to install a left or elevator but you would have to pay the cost.

There are more extensive accessibility requirements for newly constructed multi-family buildings. There may also be state or local laws that have more stringent requirements.

I am sorry we cannot be of assistance.

Sincerely,

Joan A. Magagna
Deputy Director
Office on the Americans with Disabilities Act

cc: Records Chrono Wodatch Magagna.PL.86 arthur T. 6/4/92
01-00864

XX
Wanaque, NJ 07465
(b)(6)
January 6, 1992

U.S. Department of Justice
Civil Rights Division
Coordination and Review Section
P.O. Box 66118
Washington, D.C. 20035-6118

Dear Sir or Madam:

My 4-year-old daughter XX is multiply handicapped and requires an adaptive stroller for mobility. As she grows and gains weight it is becoming increasingly more difficult to leave the house with her. My problem is the following:

We have lived in this condominium since several years before XX was born. Our unit is two stories high with a basement containing a garage. We own our unit, but everything on the outside belongs to the Condominium Association, even the decks to which we alone have access. Normally, we are not permitted to alter anything on the outside of our units.

The Association has taken the position that it will allow handicapped access which must be pre-approved by them. They, are not willing to provide it themselves.

A local charitable organization was willing to build a ramp, but the contractor looked at the premises and informed us that the slope of the grounds in front of the unit is too steep and the area too small to build a safe ramp. (The grounds behind the unit are lower, so that we can drive into the garage or walk into the basement.)

My daughter's caseworker from N.J. Special Child Health Services then contacted a company which sells and installs elevators

and lifts for the handicapped. The sales representative felt
a lift could be installed next to and leading onto the deck
located directly above the garage door in the rear, which would
bring us into our living room on the main floor. It would also
allow us easy access to the car. An estimate along with the
required documentation of need were submitted to the N.J.
01-00865

Division of Developmental Disabilities; after many months
we were recently told there is no funding available for
this purchase.

Unfortunately, my husband and I are unable to pay for a lift
either, and we have been told ramping is not possible.
We are also in no position to move to a one-floor home, which
we had hoped.

My question pertains to the Condominium Association's position.
This is of course private property, and the outside of the units
is common ground. Does this fact exempt them from being
required to provide access to the handicapped? Unfortunately
we do not have the resources to consult an attorney on this
issue.

If you can provide an answer or suggest alternative resources
I would be very grateful.

Sincerely,

(b)(6)

01-00866

U.S. Department of Justice
Civil Rights Division

T. 5/22/92
SBO:MAF:SK:ca:jfh
DJ# 192-180-07238
Office of the Assistant Attorney General Washington, D.C. 20035

JUN 4 1992

The Honorable Hank Brown
United States Senate
717 Senate Hart Building
Washington, D.C. 20510

Dear Senator Brown:

This responds to your letter requesting information about the Americans with Disabilities Act (ADA) in order to respond to your constituent, Mark H. Schmidt.

The ADA authorizes the Department to provide technical assistance to entities that are subject to the Act. This letter provides informal guidance to assist you in responding to Mr. Schmidt. However, this technical assistance does not constitute a determination by the Department of Justice of Mr. Schmidt's rights or responsibilities under the ADA and does not constitute a binding determination by the Department of Justice.

Mr. Schmidt's letter concerns the paperwork burden of conducting the self-evaluation required by S 35.105 of the Department of Justice's regulation implementing title II of the

ADA. He enclosed with his letter a guide for conducting the self-evaluation distributed by Colorado Counties, Inc. That guide was not produced by the Department of Justice, and the Department of Justice does not require that it, or any other particular guide, be used in completing the self-evaluation. Section 35.105 of the Department's regulation provides that:

> (a) A public entity shall, within one year of the effective date of this part, evaluate its current services, policies, and practices, and the effects thereof, that do not or may not meet the requirements of this part and, to the extent modification of any such services, policies, and practices is required, the public entity shall proceed to make the necessary modifications.

cc: Records CRS Oneglia Friedlander Kaltenborn McDowney
udd:kaltenborn.brown
01-00867

> (b) A public entity shall provide an opportunity to interested persons, including individuals with disabilities or organizations representing individuals with disabilities, to participate in the self-evaluation process by submitting comments.
>
> (c) A public entity that employs 50 or more persons shall, for at least three years following completion of the self-evaluation, maintain on file and make available for public inspection:
>
> (1) A list of the interested persons consulted;
>
> (2) A description of areas examined and any problems identified; and
>
> (3) A description of any modifications made.
>
> (d) If a public entity has already complied with the self-evaluation requirement of a regulation implementing section 504 of the Rehabilitation Act of 1973, then the requirements of this section shall apply only to those policies and practices that were not included in the previous self-evaluation.

This requirement is intended to enable a public entity to identify and correct obstacles to participation in its services, programs, and activities by individuals with disabilities in

order to avoid the necessity for administrative complaints or litigation. It is derived from the regulations implementing section 504 of the Rehabilitation Act of 1973 for programs and activities that receive Federal financial assistance, and is the same as the self-evaluation requirement imposed on Federal Executive agencies under regulations implementing section 504 for federally conducted programs, see, e.g., 28 CFR S 39.110 (Department of Justice).

As explained in the preamble to the regulation,

> Experience has demonstrated the self-evaluation process to be a valuable means of establishing a working relationship with individuals with disabilities, which has promoted both effective and efficient implementation of section 504. The Department expects that it will likewise be useful to public entities newly covered by the ADA.

56 Fed. Reg. 35,701 (July 26, 1991). The requirement in the regulation is both simple and flexible. The Department has not issued detailed guidelines for conducting self-evaluations because it intends to allow public entities to tailor their
01-00868

evaluations to their own programs and needs. However, pages 40-43 of the enclosed Technical Assistance Manual contain some general guidance on self-evaluations. We have not reviewed the document enclosed with Mr. Schmidt's letter and have no opinion on its contents.

I hope that this information is helpful to you in responding to your constituent.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

Enclosure
01-00869

Law Office of
SCHMIDT AND SCHMIDT
P.O. BOX 487, 716 MAIN STREET
SPRINGFIELD, COLORADO 81073
(719) 523-6294
MARK H SCHMIDT

March 25, 1992 HOWARD M. SCHMIDT 1909-1988
WARREN E. SCHMIDT 1924-1987

Honorable Hank Brown
717 Senate Hart Building
Washington, D.C. 20510

Dear Senator Brown:

One of the clients I represent is Baca County. I have become increasingly frustrated by the amount of time County officials and employees and I must devote to complying with

Federal regulations. These include Fair Labor Standards Act, landfills, stormwater, alcohol and drug free workplace, wetlands and others. The most recent is Americans With Disabilities Act (ADA) regulations.

Baca County's population is approximately 4,500. The County employs about 100 full and part-time people. The economy here is heavily dependent on agriculture. We don't have a lot of the problems of more heavily populated parts of the country. Nor do we have some of the human resources that other larger units of government have. It is a considerable burden for us to keep up with the current Federal paperwork requirements.

I have enclosed a copy of the March 19, 1992 memo from Allen E. Chapman, Loss Prevention Manager for CCI. This memo went out to all of the counties in Colorado. In it Mr. Chapman attempts to provide some guidance as to the requirement to conduct self-evaluations under ADA by January 26, 1993.

I challenge any Congressman who voted for the ADA to conduct a similar evaluation of his own office. Even a cursory examination of the proposed checklist would reveal what a time-consuming and basically meaningless exercise this evaluation is.
01-00870

It seems to me that any time some pressure group (in this case that group is the disabled) seeks some assistance from Washington on a perceived problem the answer that comes from the Congress is more regulation, more paperwork, and more bureaucracy. We're literally drowning in paperwork and it affects this country's productivity.

My simple wish is that Congress would show a little faith in state and local officials to deal with these issues

without massive Federal rules, regulations and paperwork requirements. The idea that all problems can or should be solved in Washington has to end.

Sincerely,

Mark H. Schmidt

MHS/nal
Enclosure
01-00871

DJ 202-PL-125 JUN 4 1992

Mr. James D. Harris
Deputy Attorney General
Department of Law and Public Safety
Office of the Attorney General
Legal Affairs
Richard J. Hughes Justice Complex CN 081
Trenton, New Jersey 08625-0081

Dear Mr. Harris:

This is in response to your letter requesting information about the Americans with Disabilities Act.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist you in understanding the ADA's requirements. However, it does not constitute a legal interpretation and it is not binding on the Department.

You inquire what obligations state governments have with respect to nondiscrimination in employment under the ADA. As you recognize, Title I applies to the employment activities of state employers and goes into effect on July 26, 1992 for employers with 25 or more employees and on January 26, 1994, for employers with 15 to 24 employees. Title II, which became effective on January 26, 1992, prohibits discrimination in all of the programs, activities, and services of public entities. Title II also covers the employment practices of public entities, regardless of the number of employees. As you note, the Department's Title II regulations incorporate Title I standards for employment practices covered under Title I. 28 C.F.R. S 35.140(b)(1). Title II and its implementing regulations, became effective on January 26, 1992. However, until Title I becomes effective for an employer, the standards for employment practices under Title II will be the same as those under Section 504 of the Rehabilitation Act.

cc: Records Chrono Wodatch Magagna.PL.125 arthur T. 6/3/92
01-00872

Section 504 prohibits employment discrimination on the basis of disability. It has been in effect for many years and applies to all programs and activities that receive federal financial assistance as many state entities do.

The Department has recently published a Title II Technical Assistance Manual. I have enclosed a copy. I hope this information will be of assistance to you.

Sincerely,

Joan A. Magagna
Deputy Director
Office of the Americans with Disabilities Act

01-00873

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
OFFICE OF THE ATTORNEY GENERAL

ROBERT J. DEL TUFO
ATTORNEY GENERAL

LEGAL AFFAIRS

ALEXANDER P. WAUGH, JR.
COUNSEL TO THE ATTORNEY GENERAL

LEGAL AFFAIRS DIRECTOR
ASSISTANT ATTORNEY GENERAL

March 30, 1992

John L. Wodatch, Director
Office on Americans with Disabilities Act
United States Department of Justice
Civil Rights Division
PO Box 66118
Washington, DC 20035-6118

Re: Written Opinion
Americans With Disabilities Act

Dear Mr. Wodatch:

I am writing on behalf of the Attorney General of the State of New Jersey to request a written opinion on the application of Title I of the Americans With Disabilities Act (ADA) to the New Jersey Division of State Police prior to July 26, 1992, the effective date of that title. There is some confusion about the proper interpretation of Section 35.140(b)(1) of the Department of Justice regulations implementing Title II of the ADA. We have been informed by some sources -- mistakenly I believe, -- that this sub-section provides that the EEOC's Title I regulations are incorporated into Title II and thereby apply to State governments as of January 26, 1992. Having read the materials relied on, it is my belief that this language is more properly interpreted to mean that until a State government is covered by Title I of the ADA on July 26, 1992, the Title II employment non-discrimination requirements applicable are those in the Department of Justice coordination regulations applicable to federally-assisted programs under Section 504 of the Rehabilitation Act of 1973. While this Act and Title I may be similar in many respects, there are distinct differences.

By way of background, you should note that the New Jersey State Police has been under a hiring freeze for the past three and one-half years. Recently, this hiring freeze was lifted by the Governor. Consequently, we are now beginning reprocessing of

609-984-6996

NEW JERSEY IS AN EQUAL OPPORTUNITY EMPLOYER

01-00874

the original group which was put on hold due to the hiring freeze. This selection process must begin now while we have a commitment to fund the academy training and a preliminary commitment in the Governor's budget to provide for the salaries of these academy graduates in fiscal year 1993. We plan to begin the selection process on or about April 24, 1992 with the physical agility test. The training academy then is set to begin on August 23, 1992 and run through January 21, 1993.

For the reasons stated above, the State Police cannot afford to revamp its entire process at this late date in order to meet all the requirements of Title I of the ADA. Again, I do not read Title I of the Act as requiring this; rather, it is my interpretation that the Division of State Police is not bound by Title I of the ADA until July 26, 1992. We have already begun to examine the process to make sure that the next academy class will meet all the requirements of Title I of the ADA.

In light of the above, please advise in writing as soon as possible whether the New Jersey State Police will be bound by Title I of the ADA prior to July 26, 1992. Again, it is my interpretation of the statute and regulations that the crucial date remains July 26, 1992, which will be after the selection process for the next academy class has been completed. Time is of the essence; a response at your earliest convenience would be appreciated. If you need additional information, please do not hesitate to contact me at 609-984-1695.

Very truly yours,

James D. Harris
Deputy Attorney General

c Robert Del Tufo
New Jersey Attorney General
Frederick P. DeVesa
First Asst. Attorney General
01-00875

202-PL-87 JUN 4 1992

Mr. Larry Healey
122 Klondike Avenue
Haverhill, Massachusetts 01832

Dear Mr. Healey:

This letter responds to your correspondence requesting information about the Americans with Disabilities Act (ADA). The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under to the Act. This letter provides informal guidance to assist you in understanding the ADA accessibility standards. However, it does not constitute a legal interpretation and it is not binding on the Department.

Your letter inquires whether a camp composed of a dining hall, three sleeping lodges, administrative buildings, and sleeping tents operated by a volunteer organization is covered by the provisions of the ADA, and what is the nature of the obligations under the Act.

Title III of the ADA covers places of lodging and recreation, and therefore includes camps of the sort you describe.

Title III prohibits covered entities from discriminating on the basis of disability in offering its services and facilities. The camp cannot impose discriminatory eligibility requirements or provide segregated services. The camp also has an obligation to make reasonable modifications in its program and services to accommodate the needs of individuals with disabilities unless doing so would fundamentally alter the nature of the services, accommodations and privileges being offered. There is also an obligation to provide auxiliary aids and services in order to insure effective communication with individuals with hearing, speech, or vision impairments unless doing so would fundamentally alter the nature of the camp's operations or cause an undue burden.

With respect to the physical facilities, the camp is required to remove architectural barriers to accessibility and structural communication barriers if it is readily achievable to

cc: Records Chrono Wodatch Magagna.PL.87 Beard
arthur T. 6/3/92
01-00876

do so. Readily achievable means easily accomplishable without much difficulty or expense. Should the camp engage in new construction or an alteration of any facility, the construction or alterations must comply with the ADA Accessibility Guidelines.

I have enclosed a copy of the Title III Technical Assistance Manual published by the Department of Justice. I hope that this information will be useful to you in evaluating your obligations under the ADA.

Sincerely,

Joan A. Magagna
Deputy Director
Office on the Americans with Disabilities Act

Enclosures
01-00877

January 14, 1992

The Office of the Americans with Disability Act
Civil Rights Division
U.S. Department of Justice
P.O. Box 66118
Washington, D.C. 20035-6118

Dear Sirs:

I am currently involved with a volunteer organization that operates a camp. Primarily this camp is utilized during the months of July and August, however, it is utilized during other months on a limited basis. My inquiry is how does ADA apply to this type of facility?

The camp does have a dining hall and three lodges used for sleeping quarters, as well as various other administrative buildings. Primarily, tents are used for sleeping arrangements.

Which sections of Title III would be applicable, if any, and are there specific other requirements or time frames?

Thank you in advance for your assistance.

Respectfully,

Larry Healey
122 Klondike Avenue
Haverhill, MA 01832

202-PL-00087

01-00878

U.S. Department of Justice
Civil Rights Division

T. 6/3/92
JLW:JAM:HJB:jfh
DJ 202-PL-00031 Washington, D.C. 20530

JUN 4 1992

Mr. Lester A. Holmes
5 Curl Drive
Corona del Mar, California 92625

Dear Mr. Holmes:

This letter responds to your correspondence requesting information regarding the provisions of the Americans with Disabilities Act, 42 U.S.C. S 12101-12213 (ADA). The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights and obligations under the Act. This letter provides informal guidance to assist you in understanding the ADA accessibility standards. However, it does not constitute a legal interpretation and it is not binding on the Department.

Specifically, your letter inquired whether apartment rental units are covered by the ADA.

Residential apartment units are not covered by the Americans with Disabilities Act. However, they are governed by the Fair Housing Act, as amended in 1988, which prohibits discrimination on the basis of disability and sets minimum accessibility standards for new construction of certain multi-family housing units.

Apartment units in a building that are used for nonresidential purposes -- such as a doctor's office -- would be covered by the ADA, because such an entity falls within the ADA's definition of a "place of public accommodation."

We hope that this information is useful to you in evaluating your rights and obligations under the ADA.

Sincerely,

Joan A. Magagna

Deputy Director
Office on the Americans with
Disabilities Act

cc: Records OADA Wodatch Magagna Beard Arthur

udd:Magagna.PL.31
01-00879

LESTER HOLMES ASSOCIATES
Construction and Management Consultants

February 20, 1992

Office of the Americans with Disabilities Act
Civil Rights Division
U. S. Department of Justice
P. O. Box 66118
Washington, DC 20035-6118

Gentlemen,

After several unsuccessful telephone calls to reach an operator, I have decided to send my question in the form of this letter.

Based upon my understanding of the Americans with Disabilities Act, specifically Title III, I have concluded that apartment units, whether rented or leased, are not covered by the Act. They do not appear in the definitions for Public Accommodations or Commercial Facilities.

Please confirm that the Act does not cover residences of this nature. If, however, it does, please advise how this has been determined. Thank you.

Sincerely,

LESTER HOLMES Associates

Lester A. Holmes

5 Curl Drive Corona del Mar. California 92625 Telephone/Fax 714/644-8546
202-PL-006
01-00880

DJ 202-PL-100

Mr. David Kessler
Project Manager
Katherine McGuiness and
Associates, Inc.
267 Moody Street
Waltham, Massachusetts 02154

Dear Mr. Kessler:

This is in response to your letter requesting information about the Americans with Disabilities Act (ADA).

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist you in understanding the ADA's requirements. However, it does not constitute a legal interpretation and it is not binding on the Department.

You inquire whether UFAS or ADAAG should be used for the design and construction of a parking garage built and owned by a state authority but to be operated by a private company.

In the situation you describe, the garage should be built in accordance with ADAAG, but without the elevator exemption.

Title III governs the operations of private entities that provide services to the general public, such as parking. If the private entity leases its facilities from a state or local government, the private entity remains subject to Title III requirements. State and local governments, however, are never subject to Title III, even when leasing to a private entity operating a place of public accommodation. Title III requires

alterations and new construction to comply with ADAAG.

Title II governs the operations of state and local government entities, including services or operations it provides through contract with a private entity. Title II permits covered entities to choose whether to use ADAAG (without the elevator exemption) and UFAS.

cc: Records Chrono Wodatch Magagna.PL.100 Beard
arthur T. 6/3/92
01-00881

In the circumstance you describe, the private entity, as operator of the facility, will be subject to Title III; the state, because it is contracting out what would otherwise be a state function, is subject to Title II. Given the joint nature of the project it would be advisable to use ADAAG, without the elevator exemption. In order to comply with both Titles, you must use ADAAG, without the elevator exemption.

I have enclosed copies of the Department's Title II and Title III Technical Assistance Manuals. I hope this information will be useful to you.

Sincerely,

Joan A. Magagna
Deputy Director
Office on the Americans with Disabilities Act
01-00882

Katherine McGuinness and Associates, Inc.
Architectural
Accessibility
Programs
Space Planning

25 September 1991

Office for the ADA
Civil Rights Division
U.S. Department of Justice
P.O. Box 66118
Washington, DC 20035-6118

Dear Sir/Madam,

Re: Use of UFAS vs. ADDAG in the design and construction of a state facility operated by a for profit private company as an agent for the public authority, for example:

Does a newly constructed addition to a parking garage built and owned by a state authority, to be run by a private company acting as an agent for the authority, come under Title III (as a public accommodation).

This sort of scenario is coming up repeatedly.

Subpart B, paragraph 36.201, prohibits discrimination by any private entity who owns leases, or operates a place of public accommodation. This appears to indicate that the above described facility would come under Title III. Yet, in the discussion of paragraph [b] of 36.201 it states, "Although the statutory language could be interpreted as placing equal responsibility on all private entities, whether lessor, lessee...." The reference to "all private entities" makes me question whether the public authority would be included. Whether to comply with ADAAG or UFAS in the design and construction of the facilities appears to rests on this determination.

I would greatly appreciate your expediting a response to this issue.

Sincerely,

David Kessler
Project Manager
01-00883

202-PL-00019

Mr. Philip E. Kremer, Property Manager JUN 4 1992
J. R. Parrish, Inc.
1960 The Alameda: No. 100
San Jose, California 95126

Dear Mr. Kremer:

This responds to your letter requesting information about the provisions of the Americans with Disabilities Act (ADA). The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist you in understanding the ADA accessibility standards. However, it does not constitute a legal interpretation and it is not binding on the Department.

Your letter requests an exemption from the requirements of the ADA for a an office building located in a converted mansion that is 85 years old. You also indicate that the facility is currently generating a negative cash flow.

Title III of the ADA applies to privately owned or operated

places of public accommodations and commercial facilities. There is no provision under the ADA for granting exemptions to Title III. Neither the historic nature of a building nor its poor financial condition is a basis for avoiding the requirements of the ADA. However, the obligations imposed by the statute are not onerous.

Your letter does not specify, but I am assuming that the businesses located in your building are places of public accommodation within the meaning of the ADA. Among the types of businesses considered places of public accommodation are those providing services to the public (attorneys, accountants, physicians, travel agencies, etc.) and sales and rental operations. A more extensive list is found in the enclosed Title III Technical Assistance manual.

cc: Records Chrono Wodatch Magagna.PL.19 Beard
arthur T. 6/4/92
01-00884

For existing facilities of places of public accommodations, the ADA requires the removal of architectural access barriers and structural communication barriers where such removal is "readily achievable." The statute defines readily achievable to mean easily accomplishable without much difficulty or expense. A number of factors are considered to determine whether a measure is readily achievable. These include: the nature and cost of the action; the financial resources available both to the site and the parent organization; the size and number of employees at the site and overall; and the relationship of the sites to the parent organization. The historic nature of the building in which the place of public accommodation is located is relevant to several of these factors.

Where barrier removal is not readily achievable, alternative steps must be taken to provide access if such measures are themselves readily achievable. However, the obligation to remove barriers is a continuing one. In other words, if removal of a particular barrier is not presently readily achievable because of cost factors, it must be undertaken at whatever point in the future the financial situation improves and makes removal readily achievable.

The ADA imposes additional obligations for making alterations to a building and for new construction. These requirements are described in the enclosed Manual.

We hope that this information is useful to you in evaluating your rights and obligations under the ADA.

Sincerely,

Joan A. Magagna
Deputy Director
Office on the Americans with Disabilities Act

01-00885

Littler, Mendelson, Fastiff & Tichy
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
400 CAPITOL MALL, 16TH FLOOR
SACRAMENTO, CALIFORNIA 95814-4410
(916) 448-7164
FAX (916) 448-7741
February 6, 1992

Ms. Barbara S. Drake
Deputy Assistant Attorney General
Civil Rights Division
U.S. Department of Justice
Washington, D.C. 20530

Re: Request for an Advisory Opinion Regarding the Applicability of Public Accommodation Section of The Americans with Disabilities Act

Dear Ms. Drake:

I am writing this letter to request an opinion regarding the applicability of Title III of the Americans with Disabilities Act ("ADA") regarding public accommodations and services operated by private entities. Specifically, I am requesting an opinion regarding the interaction of Section 307 of the ADA, which states that the provisions of Title III of the ADA shall not apply to religious organizations or entities controlled by religious organizations and of public accommodations otherwise subject to Title III, who lease facilities from religious organizations.

The specific situation we are concerned with involves the operation of a pre-school by a private entity in a facility that is leased from a religious organization. The pre-school itself is not otherwise controlled or operated by the religious organization. The nature of the relationship between the religious organization and the pre-school is one of landlord and tenant. The religious organization leases classrooms located on the religious organization's premises, in buildings adjacent to the place of worship, to the pre-school.

We are concerned with the dichotomy created by the specific exemption from the provisions of Title III for religious organizations and the mandates of the ADA applicable to private entities that operate public accommodations such as day care centers/pre-schools/nurseries.
01-00886

While it is clear that Section 307 of the ADA exempts religious organizations, Section 301(7) (k) specifically states that private entities are considered public accommodations for purposes of the Act if the operation of such entities affects commerce. Section 301(7) (k) includes nurseries as a public accommodation. Section 301(7) (j) specifically includes a day care center or social service center establishment in the list of public accommodations affecting commerce. Here, it is assumed that the pre-school is, in fact, a public accommodation under either Section 301(7) (j) or (k) of the Act.

Pursuant to the comments accompanying the regulations at page S-45, it appears that there is a distinction between the place of public accommodation (in this case the religious organization's premises) and the public accommodation itself (here, the pre-school). The comments state that "it is the public accommodation and not the place of public accommodation" that is subject to the nondiscrimination requirements of Title III. However, the regulations state that in cases of landlord/tenant responsibilities under Section 36.201(b), both the landlord, who owns the building that houses a place of public accommodation, and the tenant, who owns or operates the place of public accommodation, are public accommodations subject to the Act's requirements. Religious entities are exempt from Title III of the ADA however, and, therefore, cannot be considered public accommodations. Thus, we question whether this situation is to be handled similarly to situations where there are places of public accommodation located in private residences. Section 36.207 of the Regulations indicates that the private residences, like the religious organizations, are not covered by the provisions of the Act. However, when a place of public accommodation is located in a private residence, the portion of the residence used exclusively in the operation of the public accommodation is covered by the Act. Thus, we ask your opinion as to whether this is an analogous situation. Our questions are as follows:

1. As the landlord of the public accommodation, does the religious organization have any responsibilities under Title III of the ADA or is it specifically exempt from coverage pursuant

to Section 307 of the ADA?

2. If the religious organization is specifically exempt pursuant to Section 307 of the ADA, which we believe to be the case, are all operations on its premises, including those leased to entities that would otherwise be considered public accommodations, exempt from coverage under Title III of the ADA.

3. Is the pre-school, which may otherwise be considered a public accommodation, exempt from the responsibilities under

Title III of the ADA because it operates a place of public accommodation at a religious organization and/or leases facilities from a religious organization, which is otherwise exempt?

4. If the religious organization is otherwise exempt as appears to be the case from Section 307 of the ADA, is it the sole responsibility of the pre-school, a public accommodation, to meet the requirements of Title III of the ADA with regard to the facility operated by the pre-school and leased from the religious organization?

5. In this situation whose responsibility is it to ensure compliance with Title III of the ADA?

6. Would the pre-school be obligated to ensure that the portion of the religious organization's premises it leases must comply with Title III of the ADA?

7. What is the responsibility and to whom does the responsibility for compliance with Title III belong for common areas used both by the religious organization and the pre-school, such as bathrooms, hallways, stairwells, lobbies, parking lots, etc.?

I would appreciate your consideration of these issues and a written advisory response at your earliest convenience.

Very truly yours,

MARY E. BRUNO

MEB:ed

1069C.477
01-00888

U.S. Department of Justice
Civil Rights Division

T. 6/3/92
JLW:JAM:HJB:jfh
202-PL-00013 Washington, D.C. 20530
202-PL-00154

JUN 5 1992

Ms. Helen C. King, Innkeeper
Babbling Brook Inn
1025 Laurel Street
Santa Cruz, California 95060

Dear Ms. King:

This letter responds to your correspondence requesting information about the provisions of the Americans with Disabilities Act (ADA). The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights and obligations under the Act. This letter provides informal guidance to assist you in understanding the ADA's requirements. However, it does not constitute a legal interpretation and it is not binding on the Department.

Your letter states that you wish to install a jacuzzi type bathtub in two upstairs bathrooms in your bed and breakfast inn. You inquire whether you must also install a jacuzzi in the ground floor acessible rooms.

Your bed and breakfast inn is subject to the requirements of the ADA unless it is occupied by the proprietor and has five or fewer rooms for hire. The ADA does not require you to install jacuzzis in the first floor accessible rooms simply because you are adding those features to other rooms. However, all remodeling or renovation must comply "to the maximum extent feasible" with the ADA Accessibility Guidelines (ADAAG). The installation of a two person jacuzzi is an alteration and must comply with ADAAG requirements for bathrooms and bathtubs even if

those rooms are not accessible.

In addition, when a public accommodation engages in an alteration to a primary function area -- such as a bathroom in an inn -- the ADA imposes a duty to spend an additional maximum of twenty percent of the original cost of the alteration in making that area accessible to persons with disabilities by creating an accessible path of travel from the entrance to the facility to the altered area. If the cost of making the path of travel fully accessible would exceed twenty percent of the original cost, any changes that can be made without exceeding twenty percent must be made.

cc: Records OADA Wodatch Magagna Beard Arthur
udd:Magagna.PL.13
01-00889

Copies of the ADA regulations, which include ADAAG, and the Department's Technical Assistance Manual for Title III are enclosed.

We hope that this information is useful to you.

Sincerely,

Joan A. Magagna
Deputy Director
Office on the Americans with Disabilities Act

Enclosures
01-00890

January 28, 1992

Office of American With Disabilities Act
Director, John Wadatch
Department of Justice
P.O. Box 66118
Washington, D.C. 20035-6118

THE
BABBLING
BROOK
INN

Dear Sir,

For over a year I have been trying to get a building permit to enlarge two bathrooms in my twelve room bed and breakfast inn. In those two bathrooms I would like to install jacuzzi type bathtubs for two persons. My designated handicap bedroom is in the same building downstairs, the other two are upstairs. The local planning department and building department are unclear. I have been told that their interpretation of the law is that I am required to install a jacuzzi tub in the handicap bathroom also. That if I provide an amenity for another guest, I must also provide a jacuzzi bathtub for the handicap. The alternate plan is to provide an elevator to allow the handicap to use the bathrooms upstairs in the other guest's rooms, (obviously this would not be a desireable situation for any of the guests.)

In my telephone conversation this morning with the ADA office in Washington, D.C. I was informed that if the improvements were not being made to ground floor accessable rooms, I would not be required to add an additional jet tub to the handicap room. If I am forced to spend $3,000 to $5,000 improving the handicap bathroom the room

rate must be increased also at least $20 per night to help repay the expense and this will be a hardship to my frequent handicap guests who have not requested, nor will probably ever use the jacuzzi tub. Please clarify your position on the issue. The Santa Cruz Building Department says they have no specifications on a jacuzzi tub for the handicap, and I must also find out what those are before they will issue a permit if I want to put one in the handicap room. If you do not require I do so, naturally I would prefer not to spend the additional funds. My handicap guests like the room just the way it and would most likely stay elsewhere if the rate was increased that much.

A letter or statement from you would be most helpful on your position on this issue so that I may proceed with the plans and construction details with my architect.

Sincerely,

Helen C. King
Innkeeper

Please reply
FAX (408) 427 2457
01-00891

DJ 202-PL-169 JUN 5 1992

Mrs. Hedy Schick
President
Sunrise East Homeowners'
Association, Inc.
2333 Silver Oak Circle
Palm Springs, California 92264

Dear Mrs. Schick:

This is in response to your letter requesting information about the Americans with Disabilities Act (ADA).

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist you in understanding the ADA's requirements. However, it does not constitute a legal interpretation and it is not binding on the Department.

You inquire whether you are required to install ramps in your condominium building for persons with disabilities.

The ADA does not apply to strictly residential facilities. However, the federal Fair Housing Act, as amended, also prohibits discrimination on the basis of disability. That Act does not require the Condominium Association to provide a ramp. However, it does prohibit the Association from refusing to rent or sell to a person with a disability and would require the Association to permit the person with a disability to install a ramp at his or her own expense. There are more extensive requirements for providing accessibility in newly constructed multi-family housing, including condominiums.

cc: Records Chrono Wodatch Magagna.pl.169 arthur T. 6/4/92
01-00892

SUNRISE EAST HOMEOWNERS' ASSOCIATION, INC.

November 29, 1991

Ms. Irene Bowen
Department of Justice
Constitution Avenue & Tenth Street, NW
Washington, D.C. 20530

Dear Madam:

I am the President of our condominium homeowners association in Palm Springs, California, and would like to know the following: Is it the law that we must install ramps for disabled people?

From the information we have received from our local Building Department it is not clear what the position is for an established condominium complex and they suggested we contact you. We have no disabled people living in our condominiums at this time.

I would be grateful to receive an explanation from you at your earliest convenience.

Sincerely,

(Mrs.) Hedy Schick
President
2333 Silver Oak Circle
Palm Springs, CA 92264

Civil Rights Division
Coordination and Review Section
P.O. Box 86118
Washington, D.C. 20035-ILLEGIBLE

01-00893

There may also be state or local laws that have more stringent requirements.

I hope this information is useful to you.

Sincerely,

Joan A. Magagna
Deputy Director
Office on the Americans with Disabilities Act

01-00894

DJ 202-PL-00010 JUN 10 1992

Mr. James Cadwallader
Oreland Laundry Service
60 N. Clinton
Doylestown, Pennsylvania 18901

Dear Mr. Cadwallader:

This is in response to your letter requesting information about the Americans with Disabilities Act.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist you in understanding the ADA's requirements. However, it does not constitute a legal interpretation and it is not binding on the Department.

You inquire whether apartment buildings are subject to the ADA in circumstances both where they house "HUD tenants" and where they do not. I am assuming that your reference to "HUD tenants" means situations where apartment buildings are privately owned (as opposed to being owned by a public housing authority) and where some or all of the apartments are rented to tenants receiving federal housing assistance. I am also assuming that your inquiry is not directed to employment issues. After July 26, 1992, regardless of the nature of their business, all employers with 25 or more employees are subject to the nondiscrimination provisions of the ADA. After July 26, 1994, employers with 15 or more employees are covered.

In a privately owned apartment building, regardless of whether any or all of the tenants receive federal assistance, the individual units used as residences are not covered by the ADA. However, apartment units within a building that are used for nonresidential purposes -- such as a doctor's office -- would be covered by the ADA, because such an entity falls within the ADA's definition of a "place of public accommodation."
cc: Records Chrono Wodatch Magagna.PL.10 arthur T. 6/9/92
01-00895

Although residential uses are not covered by the ADA, other laws prohibiting discrimination on the basis of disability may be applicable, such as the Fair Housing Amendments Act of 1988 and, for entities receiving federal financial assistance, Section 504 of the Rehabilitation Act.

I have enclosed a copy of the Department's Title III Technical Assistance Manual. I hope this information will be useful to you.

Sincerely,

Joan A. Magagna

Deputy Director
Office on the Americans with Disabilities Act

01-00896

ORELAND LAUNDRY SERVICE
60 N. Clinton St.
Doylestown, PA. 18901

January 24, 1992

U.S. Dept. of Justice
Att: Civil Rights Division
Office of American w/Disabilities
P.O. Box 66118
Washington, D.C. 20035-6118
Pho: 202-514-0301

To Whom It May Concern:

I would like to know if apartment houses with HUD Tenants must comply with the NEW A.D.A.? Also apartment houses without HUD tenants?

All the information I have read has not addressed the area. I would appreciate a copy of that part of the new law, if these type of properties must comply, and when?

Thank you for your kind attention to this matter.

Respectfully,

James Cadwallader

JC/cj
file
01-00897

The Honorable Paul E. Gillmor JUN 10 1992

U.S. House of Representatives
1203 Longworth House Office Building
Washington, D.C. 20515-3505

Dear Congressman Gillmor:

This is in response to your inquiry on behalf of your constituent, Louis Fioritto, who has inquired about the enforcement of the Americans with Disabilities Act of 1990 (ADA).

The Department of Justice takes seriously its enforcement obligations under the ADA. We have promulgated final regulations to implement titles II and III. We recently published Technical Assistance Manuals for both titles II and III as well as other informational materials. The Department has also awarded over three million dollars in grants to various groups for them to develop additional educational materials to advise covered entities and individuals with disabilities of the rights and obligations created by the ADA.

The Civil Rights Division has created a new Office on the Americans with Disabilities Act. This Office is responsible for investigating complaints and bringing litigation under title III. It currently has over 240 complaints under investigation. The Office will also be responsible for handling title II litigation based on referral from the Federal agencies designated to investigate title II complaints. The Coordination and Review Section within the Civil Rights Division carries out the title II investigative responsibilities for the Department of Justice. That Section currently has over 120 title II complaints under investigation.

cc: Records; Chrono; Wodatch; Bowen; Magagna; Blizard; McDowney.
:udd:magagna:gillmor.cong
01-00898

The Office on the Americans with Disabilities Act is also responsible for reviewing State and local building codes to determine if they can be certified by the Attorney General as providing accessibility requirements that meet or exceed the minimum requirements of the ADA. The Office has several submissions under review and is working with the major model code organizations toward development of model codes that will meet ADA requirements.

The Equal Employment Opportunities Section within the Civil Rights Division will have the responsibility to enforce the employment discrimination provisions of title I of the ADA against State and local government employers.

In enforcing the ADA, the Civil Rights Division will follow the Department-wide policy of attempting to resolve disputes short of litigation where that is appropriate and possible. However, we will file suits in Federal court, and ask for civil penalties as appropriate, when such efforts are not successful.

I have enclosed copies of the Department's regulations under titles II and III, as well as our Technical Assistance Manuals, regulation highlights, and fact sheets.

I hope that this information is helpful to you in responding to Mr. Fioritto.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

Enclosures (9)
01-00899

ADC ILLEGIBLE

April 14, 1992

Congressman Paul Gillmor
1203 Longworth HOB
Washington, D.C. 20515

Dear Congressman Gillmor:

I am writing this letter as a disabled American. I am totally blind and I am also the principal of a corporation recently formed called American Disabilities Compliance, Inc.

We have formed this corporation in response to the new ADA legislation which was enacted into law on January 26, 1992. The purpose of our company is to assist building owners, agencies, businesses, schools, institutions, etc. to ensure that they are in compliance with the regulations set forth by this Act. We conduct surveys which analyze all 282 points starting from the parking lot through all interior aspects of the building. A conclusive report is compiled and submitted for their use in establishing a barrier removal plan.

I am compelled to write this letter due to the response we are getting from over 200 contacts made to schools, major business and other institutions across the State of Ohio. The consensus we are observing is "this is not serious legislation". In other words, "there will be no fines, we will certainly never be caught".

As a principal of ADC, but more important, as a disabled American, I find this attitude very disheartening. I have been successfully employed since 1969 in many different positions and am currently a self-employed business individual while presiding on the board of ADC. My concern is, how serious is this legislation? Will there be fines? Is this "window-dressing" legislation or is this in fact legislation that will change the outlook and the future for disabled Americans. My request is two-fold: (1) I would like a personal assurance that this legislation is designed to improve the dignity and quality of life for disabled Americans, and (2) a letter from your office detailing the consequences and importance of complying with the ADA standards that we would be able to show to prospective clients clearly stating the responsibility they have to make this legislation effective.

If you have further questions regarding our company or suggestions as to how we can do a more effective service to enhance this Act, Patrick Holmes, the President of ADC, and I will be more than willing to spend time discussing our goals and intentions of ADC. We, of course, are concerned about compliance with ADA; however, our real concern is meeting the spirit of ADA.

Sincerely,
Louis Fioritto

Vice President
Sales and Organizational Rights
01-00900

DJ 202-PL-00042 JUN 11 1992
DJ 202-PL-00163

Ms. Karen R. Fitzpatrick
Pyramid Life Insurance Company
6201 Johnson Drive
Shawnee Mission, Kansas 66202

Dear Ms. Fitzpatrick:

This letter responds to your correspondence requesting information about the provisions of the Americans with Disabilities Act (ADA). The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights and obligations under the Act. This letter provides informal guidance to assist you in understanding the ADA accessibility standards. However, it does not constitute a legal interpretation and it is not binding on the Department.

Your letter inquires as to your responsibilities as tenant and employer with respect to your field offices, and to what extent your responsibilities as a tenant are effected by the provisions of your lease with the building owners.

Your inquiry with respect to your responsibilities as an employer should be directed to the Equal Employment Opportunity Commission (EEOC). That is the agency charged with enforcing the employment provisions in Title I of the ADA. You can write to the EEOC at 1801 L Street, N.W., Washington, D.C. 20507 or call the EEOC information line at (800) 669-EEOC.

Title III of the ADA, which this office enforces, sets forth the obligations of privately owned places of public accommodations.

With respect to the existing facilities, places of public accommodation are required to remove architectural barriers to access and structural communication barriers where it is readily achievable to do so. Readily achievable means easily

cc: Records Chrono Wodatch Magagna.pl.42 Beard
arthur T. 6/9/92
01-00901

accomplishable without much difficulty or expense. The factors to be considered in determining whether the removal of a particular barrier is readily achievable include: the nature and cost of the action; the financial resources available both to the site and the parent organization; the size and number of employees at the site and overall; and the relationship of the sites to the parent organization. If barrier removal is not readily achievable, you must take alternate steps to make services available to the extent such measures are themselves readily achievable. More stringent requirements apply for alterations and new construction.

These obligations are imposed on both owners of the structures in which places of public accommodation are located, and on the operators of the places of public accommodation. These obligations were effective as of January 26, 1992, and cannot be delayed by any lease or other private agreement. The landlord and the tenant may allocate the expense of conforming to the requirements of Title III in their lease agreement, but both landlord and tenant remain obliged under the ADA to comply with its terms and remain liable for any failure to comply.

These and other obligations imposed by the ADA are discussed in the enclosed Title III Technical Assistance Manual recently published by this Department. I hope this information will be useful to you.

Sincerely,

Joan A. Magagna
Deputy Director
Office on the Americans with Disabilities Act
01-00902

PYRAMID LIFE SINCE 1913
THE PYRAMID LIFE INSURANCE COMPANY, 6201 JOHNSON DRIVE, SHAWNEE MISSION,
KANSAS 66202 (913) 722-1110

April 24, 1992
2nd request
OFFICE ON THE ADA
CIVIL RIGHTS DIVISION
US DEPT OF JUSTICE
PO BOX 66118
WASHINGTON DC 20035-6118

Gentlemen:

We are an insurance company with our home office in Shawnee Mission, Kansas, but with 25 field offices located across the country.

1. What are our responsibilities as tenants and employers as regards the field offices?

2. Is the fact that we are incorporating a section in our leases requiring the landlord be responsible for making any alterations to comply with the accessility requirement of the ADA sufficient?

3. If we are in existing leases not due to expire until after July 31, 1992, maywe wait until the lease expires to require the landlord to comply with the ADA?

4. What if the landlord, by signing the lease, agrees to make any changes necessary, but then does not make them? What are our responsibilities at that point?

Thank you for any assistance you can give me. I have read the Public Law 101-336 publication, but cannot find specific answers to the above questions.

Sincerely,

Karen R. Fitzpatrick
Staff Accountant

KRF:msw
01-00903

JUN 11 1992

DJ 202-PL-18
Mr. Mark Lawrence, General Manager
International Inn
662 Main Street
Hyannis, Massachusetts 02601

Dear Mr. Lawrence:

This letter is to follow up my May 11, 1992, letter to you regarding the Americans with Disabilities Act (ADA). The paragraph that begins at the top of page 2 is not totally accurate. That paragraph relates to alterations to guest rooms. ADA Accessibility Guidelines (ADAAG) require that when guest rooms are being altered in an existing facility, at least one sleeping room or suite shall be made accessible for each 25 sleeping rooms, or fraction thereof, of the total number of rooms being altered until the total number of such accessible rooms meets the number required by ADAAG for new construction. The total number of accessible rooms required is not a fixed percentage but is set forth in a table in ADAAG. My earlier letter had stated that all altered guest rooms were required to be made accessible until 5% of the total was reached. I have enclosed a copy of the Department's Title III regulations which includes ADAAG as an Appendix. See generally ADAAG Section 9 and specifically 9.1.5 and 9.1.2.

I regret the confusion and hope that this provides clearer guidance for you. Please feel free to contact this office if we can be of further assistance.

Sincerely,

Joan A. Magagna
Deputy Director
Office on the Americans with Disabilities Act

cc: Records Chrono Wodatch Magagna.pl.18.followup Bread
arthur T. 6/10/92

01-00904

DJ 202-PL-18

MAY 11 1992

Mr. Mark Lawrence, General Manager
International Inn
662 Main Street
Hyannis, Massachusetts 02601

Dear Mr. Lawrence:

This letter responds to your correspondence with several offices of the Department of Justice seeking information about the provisions of the Americans with Disabilities Act (ADA). The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist you in understanding the ADA accessibility standards. However, it does not constitute a legal interpretation and it is not binding on the Department.

Your letter describes various measures the International Inn has taken to comply with the ADA and asks for our further suggestions. You inquire specifically whether 5% of the total number of guest rooms must be made accessible immediately.

We commend you for taking steps to bring your facility into compliance with the ADA. However, short of conducting an in-depth compliance review, we cannot assess the sufficiency of those efforts.

With respect to the 5% requirement, this Department is not authorized to grant a waiver of any statutory requirement. However, the extent of your obligation under the ADA depends on whether you are planning guest room renovations in the ordinary course of business or whether your intent is to make alterations only insofar as required by the ADA.

cc: Records; Chrono; Wodatch; Magagna.
:udd1:udd:magagna:pl.18

01-00905

When a public accommodation is engaged (after January 26, 1992) in an alteration or remodeling of an existing facility in the ordinary course of business, it must comply with the ADA Accessibility Guidelines (ADAAG) to the maximum extent feasible--that is, unless it is virtually impossible to comply because of the structure of the building being altered. Cost is not a consideration. This means that all renovations to guest rooms must comply with ADAAG until the requisite number of rooms are made accessible. Thus, for example, if you now have no accessible rooms and plan to renovate a number of rooms each year, making only one per year accessible, that would not be permissible under the ADA. If you plan full renovations of any rooms, every room so renovated must comply with ADAAG to the maximum extent feasible until 5% of the rooms are made fully accessible. If minor alterations are planned, the altered features in 5% of the rooms must comply with ADAAG.

If no alterations are planned in the ordinary course of business, the hotel's obligation is less rigorous. It must remove architectural barriers to accessibility where it "readily achievable" -- that is, where the removal can be done easily and without much difficulty or expense. There are a number of factors to be used in determining whether the removal of a particular barrier is readily achievable. These include: the nature and cost of the action; the financial resources available both to the site and the parent organization; the size and number of employees at the site and overall; and the relationship of the sites to the parent organization. The hotel must take these factors into account in determining whether making one room per year accessible fulfills the barrier removal obligations.

I am enclosing a copy of the Department's Title III

Technical Assistance Manual which may further assist you in understanding your obligations under the ADA. We hope that this information is useful to you.

Sincerely,

Joan A. Magagna
Deputy Director
Office on the Americans with Disabilities Act

Enclosure

01-00906

International Inn
662 MAIN STREET HYANNIS, CAPE COD, MA 02601 (508) 775-5600

February 3, 1992

Wayne Budd
United States Attorney General
U.S. DEPARTMENT OF JUSTICE
Washington, DC 20530

Dear Mr. Budd,

In our endeavor to conform to the Americans with Disability Act, our Controller contacted the Massachusetts Office on Disability and spoke with Bruce Bruneau. A meeting was set up for January 16, 1992 and the following persons were in attendance:

Bruce Bruneau, Massachusetts Office on Disability
Pam Berkley and Julie Nolan, Cape Organization for Rights of the Disabled
Arthur D. Rittel, President, International Inn
Mark Lawrence, General Manager, International Inn
Paul Larsen, Chief Engineer, International Inn

Let me take this opportunity to state for the record my impression of these fine ladies and gentlemen and their commitment to this cause. On the date of our appointment we experienced a fierce snowstorm and anticipated their cancellation. However, punctually at 10:00AM there these individuals were, ready, willing, and able.

We toured the entire property noting their recommendations in regards to conforming our Sleeping Rooms, Stairways, Indoor and Outdoor Pool accessibility, certain areas of our Registration Lobby, i.e., height of Registrations Desk, Public Restrooms, and Dining Room.

The following will outline each area, along with their recommendations, and what we are doing to conform to these regulations.

-Sleeping Rooms: Presently we lodge four Accessible Accommodations. The only recommendations made to each of these rooms is to change the swing of the door which we anticipate being completed in the near future.

-Stairway: It was recommended that we close in the risers for the stairway located in the Lobby. This has been completed.

01-00907

Mr. Wayne Budd
U.S. DEPT. OF JUSTICE
Page Two

-Indoor Pool: It was suggested to us that we build a ramp leading from the Hallway to the Pool Entrance with a landing located at the turn in the Hallway.
This, too, has been completed.

-Changing Rooms (Located in the Indoor Pool): Widening of the entryways to 36" and building one 5' X 6' Stall to replace the existing stalls was recommended. Also to remove existing vanity and replace with an accessible sink that meets all regulations. At this time, we have completed the widening of the entryways and bringing the interior up to regulation is in process. We are receiving estimates from bidders for the installation of the vanity.

-Outdoor Pool: No recommendations were made due to the inclement weather, however, it has come to our attention that a ramp will be needed to facilitate access to the pool area. In the case of both the Indoor and Outdoor Pools a lift must be installed to enable the disabled full use of these amenities.

-Registration Lobby: Many recommendations were made as outlined below and we intend to adhere to all of them.

1). Portico: Our slated Entrance Way must be regraded for a more accessible

approach to the Front Doors.

2). Registration Desk: A lower-level desk will be installed to enable wheelchair registration.

3). Public Phone: Our Chief Engineer has been in touch with New England Telephone to replace existing equipment with equipment that conforms.

4). House Phone: Our Chief Engineer is presently constructing a split-level phone center to be installed upon completion.

5). Public Restrooms: It was suggested that we create a Unisex Bathroom due to the physical restrictions that are present. We are consulting with Contractors to submit plans for this reconstructive project. This project should be completed by April 1, 1992.

-Dining Room: A tour of the Dining Room was conducted and it appears we meet all required regulations.

In regards to our Accessible Guest Rooms Quota of 5% fo the total number of Guest Rooms, we would like to seek temporary relief in that we presently

have four such rooms and wish to complete the quota on a scale of one room per year for the next four years. We seek this relief simply because of the hard economic times we are all experiencing in the Lodging Industry.

My President, Arthur Rittel, is also owner and operator of The Country Squire Motor Lodge located at 206 Main Street, Hyannis, MA. As this property utilizes less than 25 employees, grosses less than one million dollars annually, and is only open seven months of the year, it is not required to comply until the required date of July 26, 1992. However, in Mr. Rittel's attempt to be an example to others in our community, he intends to begin renovations prior to the hotels opening in April 1992. In this regard, a meeting has been established with The Cape Organizations for the Rights of the Disabled (CORD) to discuss necessary compliance.

I would welcome any suggestions you may have in our endeavor to comply to this long awaited Legislative Ruling. May I have a reply to our request regarding Accessible Rooms Quota? If you require any additional information, please do not hesitate to contact me personally. I anxiously await your reply.

Yours sincerely,
THE INTERNATIONAL INN

Mark Lawrence
General Manager

ML/mhf

cc: Barbara S. Drake, Deputy Asst. Attorney General
Stewart B. Oneglia, Coordination and Review Section
John L. Wodatch, Office of the ADA
Scott Harshbarger, Mass. Attorney General
Bruce Bruneau, Massachusetts Office on Disability
Pam Berkley, CORD
Julie Nolan, CORD
Arthur D. Rittel, CEO International Inn
Christina Canning, GM Country Squire Motor Lodge
Paul Larsen, Chief Engineer, International Inn

01-00909

202-PL-00009 JUN 11 1992

Richard J. Sagall, M.D.
Post Office Box 1069
Bangor, Maine 04402-1069

Dear Dr. Sagall:

This letter responds to your correspondence requesting information about the provisions of the Americans with Disabilities Act (ADA). The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist you in understanding the ADA. However, it does not constitute a legal interpretation and it is not binding on the Department.

You have inquired whether a health care provider may fulfill the obligation under the ADA to ensure effective communication with a hearing impaired patient by requesting a family member to interpret or by using written communication or communication via a computer screen.

The ADA requires health care providers to make available appropriate auxiliary aids and services in order to ensure effective communications. Communication through written notes, communication via computer, and providing sign language interpreters are all considered auxiliary aids and services within the meaning of the ADA. However, a note pad or computer screen may not be sufficient to provide "effective" communication in all circumstances, especially in a doctor's office when a matter of significance is being discussed. The appropriateness of a particular type of auxiliary aid or service will depend on the nature of the services being delivered -- for example, giving a flu shot versus discussing options for surgery. Effective communication is required and the means to provide that will vary depending on the length and complexity of the communication involved.

cc: Records Chrono Wodatch Magagna.p1.9 Beard
arthur T. 6/8/92

01-00910

Asking a family member to interpret for a person with a hearing impairment may be inappropriate because of factors such as emotional or personal involvement or considerations of confidentiality that may adversely affect the ability to interpret effectively.

We encourage health care providers to consult with their individual patients having hearing impairments to ascertain what will be effective for each of them in particular circumstances.

A health care provider is not required to provide any auxiliary aid or service that would result in an undue burden, i.e., significant difficulty or expense. Although a health care provider may not charge individuals for the auxiliary aids and services provided to them, the costs can be spread to all patients, just as other overhead expenses are. Among the factors to be considered in determining whether providing a particular auxiliary aid will cause an undue burden are the nature and cost of the service and the resources available to the care provider. If providing a particular aid or service would be an undue burden, the health care provider must provide an alternative auxiliary aid or service that is not such an undue burden and that ensures effective communication to the maximum extent feasible.

I enclose a copy of the Department's Title III Technical Assistance Manual which may further clarify your obligations under Title III.

We hope that this information is useful to you in evaluating your obligations under the ADA.

Sincerely,

Joan A. Magagna
Deputy Director
Office on the Americans with Disabilities Act

01-00911

Family Health Care
Richard J. Sagall, M.D., F.A.A.F.P. 358 Broadway, Suite 105
Family Practice P O Box 1069
Bangor, ME 04402-1069
207-941-8300
207-947-3134 (FAX)

January 23, 1992

OADA
Civil Rights Division

U. S. Dept. of Justice
PO Box 66108
Washington, DC 20035-6118

Dear Sirs:

I am writing in need of verification of one aspect of the Americans with Disabilities Act. I am a Family Physician practicing in an office with handicap accessibility.

I am writing concerning the requirements for equal accessibility for the hearing impaired. A local agency interpretation of the ADA is that I, as a physician, am required under the Americans with Disabilities Act to arrange and pay for the presence of a sign language interpreter in the office whenever a deaf patient is being seen. They feel that written communication or communication via a computer screen does not meet the requirements of the act.

In the past deaf patients have usually brought a family member or an interpreter provided by a local agency to assist with communication. Many times, when an interpreter is not available, we have communicated in the ways mentioned above without difficulty.

As I understand it, the Act requires modifications unless it results in an undue burden. Since most physicians see a limited number of deaf patients, and paying for the services of an interpreter would result in the health care provider spending more money for the visit than he or she gets paid, I am wondering if the local agency's interpretation is correct?

I would appreciate your input on this issue.

Sincerely yours,

Richard J. Sagall, M.D.

RJS:rjp

01-00912

JUN 12 1992

Mr. Jeffrey H. Schiff
Executive Director
National Association of Towns
and Townships
1522 "K" Street, N.W.

Suite 730
Washington, D.C. 20005

Dear Mr. Schiff:

This is in response to your March 4, 1992, correspondence regarding the Department's analysis of the economic impact of its regulations implementing title II of the Americans with Disabilities Act (ADA). We regret any misunderstanding or inconvenience that may have occurred because we did not respond to your letter, which we regarded as a "comment letter" on our analysis. It is standard rulemaking practice for the Department not to reply individually to comment letters submitted on pending regulations or accompanying impact analyses.

In the July 26, 1991, Federal Register notice containing our final title II regulation, we invited additional comment on the preliminary impact analysis that was prepared in connection with the proposed rule. The notice stated that additional comments would facilitate the development of a final Regulatory Impact Analysis by January 1, 1992. 56 Fed. Reg. 35,694; 35,695.

We submitted our final analysis to the Office of Management and Budget in December 1991. At the time we received your letter in March, however, the analysis had not yet been cleared for public release. During the interim, our policy was to treat letters regarding the analysis as comment letters, particularly when, as in the case of your letter, the correspondence explicitly identified itself as a comment letter.

We believe that the Department's title II regulation is unlikely to have the severe impact on small governments that you foresee. As mandated by section 204(b) of the ADA, 42 U.S.C. 12134(b), the requirements of the title II regulation track the well-known requirements of section 504 of the Rehabilitation Act, as amended, 29 U.S.C. S794. These obligations had wide

:udd:breen:natt

01-00913

application to small governments during the period prior to the termination of the revenue sharing programs in 1986. During that

period, small governments made major efforts to bring their operations into compliance with section 504 and became well-acquainted with such key section 504 concepts as "program accessibility," "effective communication," "integrated setting," "undue hardship," and "undue burden." Interpretation of the title II regulation will be informed by a well-established body of case law and administrative practice under section 504. Even after the termination of the revenue sharing program in 1986, significant portions of local government activity remained subject to section 504 through other Federal funding. Of course, many small governments are also subject to State and local disability rights laws that predate the ADA.

By tracking the requirements of section 504, the title II regulation incorporates the inherent flexibility of section 504. Under the program accessibility requirement, small governments do not, as is widely perceived, have to make all of their facilities accessible. Structural changes are only required when the numerous alternatives, such as relocation of activities, home visits, and delivery of services are inadequate to provide access. Even then, the regulation does not require a government to undertake any activity that will result in undue financial and administrative burdens. With respect to new construction, the cost of incorporating accessibility features is generally estimated to add a mere one-half of one percent to construction costs. Because local jurisdictions are already subject to substantial State and local accessible design requirements, the added cost of the title II requirements for new construction and alterations is truly insignificant.

Title II's requirements with respect to communications are similarly flexible. In most situations, creativity, common sense, and training in the art of common courtesy will go a long way in providing effective communication without the need for more costly auxiliary aids. Again, as with respect to physical access, public entities are not required to take any steps that would result in undue financial and administrative burdens.

We also believe that you need not be as concerned as your letter suggests regarding our compliance with the Regulatory Flexibility Act. Given the marginal impact that the title II regulation was likely to have on small governments, it was determined that the proposed title II rule would not have a significant economic impact on a substantial number of small entities. 56 Fed. Reg. 8538, 8550. Under the terms of section 3(a) of the Regulatory Flexibility Act, initial and final regulatory flexibility analyses are not required when such a determination is made by the head of the rulemaking agency. 5 U.S.C. 605(b).
01-00914

The Office of Management and Budget shared our assessment of the impact of the title II regulation and determined that the proposed rule was not a "major rule" within the meaning of Executive Order 12291. 56 Fed. Reg. 8538, 8550 (1991). Even though the Department was therefore not required to publish a preliminary or final regulatory impact analysis, the Department nevertheless made an analysis available to the public.

Upon publication of the final rule, the Department invited additional comment on its analysis. Although a final regulatory flexibility analysis was not required because of the absence of significant impact on small entities, the Federal Register notice indicated that the analysis prepared by the Department contained the information that would be included in a regulatory flexibility analysis if one were required. 56 Fed. Reg. 35,694; 35,695. A copy of our final analysis is enclosed.

We share your commitment to the effective implementation of the ADA and your concerns that small governments not be overwhelmed by Federal mandates. Throughout the long process of drafting, enacting, and implementing the ADA, the Administration has worked tirelessly to strike a critical balance between the rights of individuals with disabilities to enjoy equal access to the mainstream of American life and the legitimate needs of hard-pressed State and local governments. We believe that the Department's title II regulations strike that balance and we will monitor their implementation to ensure that this balance is maintained.

Sincerely,

Stewart B. Oneglia
Chief
Coordination and Review Section
Civil Rights Division

Enclosure

01-00915

National
Association of
Towns and Townships

March 4, 1992

Mr. John Wodatch, Director
Office of ADA
Department of Justice
P.O. Box 66738
Washington, D.C. 20035-6118

Dear Mr. Wodatch:

On behalf of the National Association of Towns and Townships (NATaT), I am writing to offer comments on the Department of Justice's analysis of the impact of the Americans with Disabilities Act (ADA) on small local governments.

NATaT represents approximately 13,000 mostly small, mostly rural local governments. In a sense, NATaT represents the typical local government, since the vast majority (78 percent) of the 39,000 gen eral purpose units of local government in the United States have fewer than 5,000 residents.

Let me begin by stating, emphatically, that NATaT supports the goals of the ADA. We are currently developing technical assistance materials for use by small local governments so that they will be able to implement the ADA regulations to the letter of the law. We also have a history of working with small governments so that they could comply with Section 504 requirements during the days of the General Revenue Sharing program.

RegFlex Law Not Followed

NATaT has several concerns with the Department of Justice's (DoJ) evaluation of the impact of the ADA on local governments. First, the supplementary information accompanying the proposed ADA Title II regulations states that the Department determined that the proposed rules will not have a significant economic impact on a substantial number of small business entities and therefore are not subject to the Regulatory Flexibility Act.

It is certainly true that the proposed rules have no significant impact

on small business entities because the rules pertain to state and local government service. Nevertheless, the proposed rules have a most significant impact on small local governments, which are also defined

1522 K ILLEGIBLE, N.W., Suite 730, Washington, D.C. 20005
(202) 737-5200

as small entities under the Regulatory Flexibility Act. Since the DoJ is silent on the impact of the rules on small local governments and did not exempt itself from the requirements of the RegFlex Act. It should have conducted a regulatory flexibility analysis for small local governments.

Secondly, the supplementary information to the proposed regulations goes on to reveal that the Department did prepare a preliminary Regulatory Impact Analysis (RIA) pursuant to Executive Order 12291. However, the supplementary information accompanying the final Title II regulations curiously observes that the preliminary RIA contained "all the available information that would have been included in a preliminary regulatory flexibility analysis, had one been prepared under the Regulatory Flexibility Act, concerning the rule's impact on small entities" and that "[t]he final RIA will contain all of the information that is required in a final regulatory flexibility analysis and will serve as such an analysis."

These comments certainly seem to indicate that the Department believes that it now has the obligation to conduct a regulatory flexibility analysis, since DoJ would have the final RIA serve as a regulatory flexibility analysis. Putting aside the point that an RIA is not a regulatory flexibility analysis, what does the Department's RIA say of the impact of Title II on small local governments? Since the final RIA was not made available at the time the final Title II regulations were published, and has yet to be released, one must go to the preliminary RIA for guidance.

RIA Assumptions Are Unfounded

That document notes that "there is considerable uncertainty regarding the precise impact of the Title II regulations..." It goes on to state that Title II extends the program accessibility standards of the Rehabilitation Act of 1973 " ... to the last small remaining portion of the public sector not yet covered by those standards. Virtually all of the public sector ... is already subject to the Rehabilitation Act on account of receipt of Federal funding." That assumption led the authors of the RIA

to believe that the reach of the regulations seems to be limited to state and local court systems not receiving federal aid " ... and to the central 'town hall' operations of those local and special purpose governmental entities that do not receive Federal aid for administrative and other purposes."

The fact of the matter is that since the end of the General Revenue Sharing program in 1986, the vast majority of the 39,000 general purpose units of local governments in the United States -- we estimate 80 percent -- do not receive federal funds, for administrative or any

other purpose. Therefore, they have not been subject to the provisions of Section 504 for quite some time and have had no financial incentive to make their programs and services accessible for disabled persons since that time.

It follows, then, that the impact of Title II on the majority of local governments -- and virtually all small local governments -- is quite significant. All programs must be accessible, physical facilities must be accessible, local governments may have to incur higher costs to construct new buildings or rehabilitate old ones in order to meet certain access requirements, emergency numbers must have TDD access and so forth. To say that there is no significant impact on small local governments simply flies in the face of the facts.

The Department, by not conducting a preliminary regulatory flexibility analysis, disingenuously avoids the key requirements of the Regulatory Flexibility Act. Accompanying the proposed rules should be a preliminary regulatory flexibility analysis, which includes a list of significant alternatives which would accomplish the stated objectives of the ADA and minimize the economic impact of the regulations upon small entities. A preliminary regulatory flexibility analysis was not published in the Federal Register along with the proposed rules.

No one could have known that the preliminary RIA was to serve as a preliminary regulatory flexibility analysis, since that wasn't stated until the final regulations were issued six months later. And in any case, the preliminary RIA was not published in the Federal Register for public scrutiny and comment. The public was required to request it from the Department, and even then, the preliminary RIA contains virtually none of the most important information of a preliminary regulatory flexibility analysis, especially proposed alternatives for small entities that accomplish the goals of the ADA while taking into

consideration the limited resources of small entities. This is a key difference between an RIA and a regulatory flexibility analysis.

Public Was Denied the Chance to Participate

The final regulatory flexibility analysis which accompanies the final regulations should, by statute, include public comments in response to the preliminary analysis, as well as changes made in response to those comments. Most importantly, the final analysis should include a description of each of the significant alternatives to the rule which was considered by the agency, and the reason(s) why each was either accepted or rejected.

By neither performing a preliminary regulatory flexibility analysis nor availing itself of the exemption for small governmental entities, and

implying the need for one upon issuing the final regulations, the Department subverted the regulatory flexibility analysis process. Alternatives weren't proposed -- an obligation placed on the federal government by the Regulatory Flexibility Act -- so there was never a question of small entities being allowed to implement the regulations flexibly.

Groups such as NATaT certainly would have challenged an assertion of no impact on small local governments and, if a RegFlex analysis had been performed, would have participated vigorously in the examination of proposed alternatives. Unfortunately, we were not permitted either of these opportunities specified in the RegFlex law.
The sole flexibility that the regulations give small communities is that they must "reasonably accommodate" a disabled person unless it causes "undue hardship." Unfortunately, those terms are not well-defined and can only be clarified on a case-by-case basis. Small communities are essentially being told by the federal government: "Comply with the law. We won't tell you how, but we will tell you if you do it wrong."

Such an approach can only result in communities complying by investing more than is necessary, in the face of uncertainty, to avoid legal challenges, or by communities learning the hard way through costly lawsuits. Either alternative seems inefficient, uneconomical and unnecessary. This approach is also inequitable for local governments.

For example, two local governments in different states are found to be out of compliance with ADA under the exact same circumstances and

must make physical modifications to their town hall. The courts could compel each jurisdiction to make very different modifications, thereby incurring very different costs. Until there is a wealth of case history, there will be no agreed-upon common approach to resolving such an issue. The same holds true for the employment provisions of the ADA that apply to local governments: what might be a reasonable accommodation or an undue hardship for one local government could be judged the complete opposite elsewhere.

With virtually all small governments responsible for constructing new facilities or rehabilitating existing ones according to set standards, ensuring that their programs -- including new programs mandated by federal and state authorities since the end of General Revenue Sharing -- are accessible to the disabled, and installing TDD or similar equipment to ensure that the hearing impaired can access emergency numbers, it is difficult to believe that the cost of interpreters is going to be the primary program accessibility cost for local governments, as the Department stated in its preliminary RIA.

01-00919

RegFlex Strongly Supported by President Bush

Given the Department's assumption that virtually all public entities were already covered by Section 504 of the Rehabilitation Act (which they are clearly not) it is incumbent upon the Department of Justice to re-evaluate its conclusions about the impact of the Title II regulations on small local governments. We would certainly expect this to be the case for two reasons. First, this is an enormous and all encompassing piece of legislation, directed specifically at local governments. Secondly, at our annual conference this past year, our keynote speaker, President Bush, told our membership that he would instruct all federal departments and agencies to implement the Regulatory Flexibility Act to the full extent of its spirit and intent.

Again, let me reiterate that we support the ADA fully. We are not seeking exemptions for small local governments. We are asking the Department to properly consider the ADA regulations in light of the Regulatory Flexibility Act, specifically the act's requirements that alternative, flexible approaches be proposed and considered that will allow small entities to meet the ADA's requirements. NATaT staff would be glad to offer the Department any assistance we can regarding the impact of Title II on local governments.

Sincerely,

Jeffrey H. Schiff
Executive Director

cc: The Honorable William P. Barr, Attorney General of the United States

Debra Anderson, Deputy Assistant to the President for Intergovernmental Affairs

01-00920

U.S. Department of Justice

Civil Rights Division

Coordination and Review Section
P.O. Box 66118
Washington, D.C. 20035-6118

JUN 15 1992

Captain (b)(6)
XX
Naples, Florida 33942

Dear Captain XX

This responds to your request for an interpretation of the Americans with Disabilities Act (ADA) as applied to retail gasoline sales.

The ADA authorizes the Department to provide technical assistance to entities that are subject to the Act. This letter provides informal guidance to assist you in understanding how the ADA addresses your concerns. However, this technical assistance

does not constitute a determination by the Department of Justice of your rights or responsibilities under the ADA and does not constitute a binding determination by the Department of Justice.

Title III of the ADA requires places of public accommodation to remove architectural barriers in existing facilities to the extent that removal is readily achievable. Where barrier removal is not readily achievable, the public accommodation is required to make its goods and services available through other methods, if those methods are readily achievable. If it would not be readily achievable for a self-service gas station to redesign its gas pumps to enable people with disabilities to use them, the station would be required to provide refueling services upon request to an individual with a disability if that is readily achievable.

A public accommodation may not impose a surcharge on an individual with a disability for the costs associated with the alternative method, so the station would be required to provide the refueling service for individuals with disabilities at the self-service price. The preamble to S 36.305 recognizes, however, that there may be security considerations that would legitimately prevent a cashier from leaving the cash register. The preamble makes clear that the ADA would not require a cashier who is the only employee on duty to leave a cash register to assist a motorist with a disability.

01-00921

To respond to several specific questions you asked: title III of the ADA was effective January 26, 1992, and no enforcement actions have yet been brought, although numerous complaints are under investigation. The Department of Justice has no statistics concerning gas stations on interstate highways. Such information may be available from the Department of Transportation.

As provided in section 36.501 of the Department's regulation implementing title III, you have a right to file a private suit for preventive relief for a violation of the Act that occurs after the effective date. Section 36.505 of the regulation provides that, if you are successful in your suit, the defendant may be required to pay your attorney's fees. You may also request an investigation by the Department of Justice, which can initiate litigation in cases of general public importance or where a pattern or practice of discrimination is found.

Complaints may be directed to:

Office on the Americans with Disabilities Act
P.O. Box 66738
Washington, D.C. 20035-9998

We are enclosing a copy of the title III regulation and the technical assistance manual for that title. We hope that this information is helpful.

Sincerely,

Stewart B. Oneglia
Chief
Coordination and Review Section
Civil Rights Division

Enclosures (2)

01-00922

T. 6/8/92
SBO:MAF:RM:KF

JUN 15 1992

Ms. Leonora L. Guarraia
General Deputy Assistant Secretary
Office of the Assistant Secretary
for Fair Housing and Equal Opportunity
U.S. Department of Housing and Urban
Development
Washington, D.C. 20410-2000

Dear Ms. Guarraia:

We have received your request for an interpretation of section 504 of the Rehabilitation Act of 1973, as amended.

Specifically, you asked whether, for purposes of section 504, an individual with multiple chemical sensitivity should be considered an "individual with handicaps."

The Department addressed a similar issue during the development of regulations to implement the Americans with Disabilities Act (ADA). The Department received numerous comments detailing how exposure to various environmental conditions restricts access for individuals who have a heightened sensitivity to a variety of chemical substances. The commenters asked that environmental illness be recognized as a disability covered by the ADA.

The Department declined to state categorically that environmental illness is a disability. The preambles to both the title II rule (which covers State and local governments) and title III rule (which covers public accommodations and commercial facilities) state that the determination as to whether an impairment is a disability depends on whether, given the particular circumstances at issue, the impairment substantially limits one or more major life activities (or has a history of, or is regarded as having such an effect). Sometimes respiratory or neurological functioning is so severely affected that an

cc: Records, CRS, Oneglia, Friedlander, Mather, Foster
:udd:mather:ltr.guarraia

01-00923

individual will satisfy the requirements to be considered disabled. In other cases, individuals may be sensitive to environmental elements but their sensitivity will not rise to the level needed to constitute a disability. For example, their major life activity may be somewhat, but not substantially, impaired. In such circumstances, these types of sensitivities are not disabilities. (See 56 Fed. Reg. 35,699 (title II rule), and 56 Fed. Reg. 35,549 (title III rule).)

The same analysis would apply under section 504. Decisions

as to whether particular impairments are disabilities must be made on a case-by-case basis.

Copies of the title II and title III rules are enclosed. I hope this information is helpful to you.

Sincerely,

Stewart B. Oneglia
Chief
Coordination and Review Section
Civil Rights Division

Enclosures (2)

01-00924

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, D.C. 20410-2000

March 3, 1992

OFFICE OF THE ASSISTANT SECRETARY

Ms. Stewart B. Oneglia
Chief, Coordination and Review Section
Civil Rights Division
U.S. Department of Justice
10th and Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Dear Ms. Oneglia:

During the past year, the Department of Housing and Urban Development (HUD) issued technical guidance on a controversial disability commonly referred to as Multiple Chemical Sensitivity or "environmental illness." Those who have Multiple Chemical Sensitivity claim to experience adverse reactions after extremely low levels of chemical exposure. The scientific community, as you are probably aware, does not recognize Multiple Chemical Sensitivity as a physical disability because there exists no concrete scientific proof that the illness has physical origins.

Both the scientific community and various advocacy groups for those who claim to have this disability are actively supplying me with literature supporting each position on the matter. I have enclosed the most recent information provided by the scientific community. This information suggests Multiple Chemical Sensitivity is an inaccurate term for the physical disability we previously described in our guidance; they claim the correct term is Chemical Sensitivity.

I understand the Department of Justice, as the coordinating agency for Section 504 of the Rehabilitation Act of 1973, is developing guidance on this subject. It would be helpful if you would supply me with Justice's position on this matter so that HUD can be accurate and consistent in its own guidance. I may be reached on (202) 708-3855.

Very sincerely yours,

Leonora L. Guarraia
General Deputy Assistant Secretary

Enclosure

01-00925

bc
ia

BUSINESS COUNCIL ON INDOOR AIR
1225 19th Street. N.W., Suite 300, Washington, D.C. 20036 (202) 775-5887

February 6, 1992

Ms. Leonora L. Guarraia
U.S. Department of Housing and Urban Development
Fair Housing and Equal Opportunity
451 7th Street, S.W.
Suite 5100
Washington, D.C. 20410

Dear Ms. Guarraia:

Thank you for the opportunity to discuss your agency's position on multiple chemical sensitivity (MCS or environmental illness). As I related at our meeting of January 9, the Department of Housing and Urban Development has clearly confused the definitions of chemical sensitivity or hypersensitivity and MCS. The two examples cited in Mr. Mansfield's letter are examples of the former, not the latter, as suggested by Mr. Mansfield. I have enclosed a copy of his letter for your reference.

After consulting experts in the medical field, I would like to offer the following definitions:

> Chemical hypersensitivy is a state of ordered reactivity in which the body reacts with an exaggerated immune response to a foreign substance (some chemical agents, plant products, animal products). Symptoms may resemble hay fever, asthma, or contact dermatitis. The hypersensitivity reaction is repeatable with similar symptoms each time the individual is exposed to the same or a chemically similar substance. This medical condition can readily be confirmed by using well-recognized and accepted diagnostic techniques and laboratory studies.

01-00926

Chemical hypersensitivity should not be confused with symptoms produced by irritants such as sulfur dioxide, nuisance odors such as paint fumes, or unpleasant odors such as sewer gas.

Multiple chemical sensitivity has been described as an acquired disorder characterized by recurrent symptoms, referable to multiple organ systems, occurring in response to demonstrable exposure to many chemically unrelated compounds at doses far below those established in the general population to cause harmful effect.

The American Medical Association, as recently as December 1991, and other medical societies, including the American Association of Allergy and Immunology, the American College of Physicians, and the American College of Occupational and Environmental Medicine, agree that to date there is inadequate scientific evidence to establish the existence of MCS as a disorder. Research is currently being conducted by a number of institutions and supported in part by federal agencies.

For your information, I have enclosed BCIA's white paper on environmental illness, the American College of Physician's position on the syndrome, and a recent clinical study of 26 subjects demonstrating symptoms that have been attributed to the syndrome. We would greatly appreciate a correction of the guidance document sent previously to your district offices. I will call you in a week or so to discuss this request.

Sincerely,
Paul A. Cammer, Ph.D.
President

Enclosures

01-00927

bc
ia
BUSINESS COUNCIL ON INDOOR AIR
1225 19th Street, N.W., Suite 300, Washington, D.C. 20036 (202) 775-5887

May 1991

ENVIRONMENTAL ILLNESS

"Environmental illness" is a term used to refer to a collection of general symptoms. It is a controversial human health phenomenon similar to other ill-defined syndromes which have been described for over 100 years and has attracted attention from such diverse groups as lawyers, physicians, insurance companies, scientists, industry, and Congress. It is known by at least 20 synonyms, including "multiple chemical sensitivity," "total allergy syndrome," and "twentieth-century disease." Those who suffer from environmental illness maintain that the condition is an acquired disorder resulting in an aversion to a wide variety of synthetic materials, ingested foods, and drugs resulting in symptoms that may be multiple and wide ranging.

The concept of environmental illness is not a new issue. As early as the 1950's, it was postulated that environmental illness resulted from the failure of humans to adapt to modern-day synthetic materials.1-3 According to this theory, the influx of man-made materials has resulted in a new form of medically unexplained, specific sensitivity. Once sensitized, the person generally reacts to increasingly lower concentrations of the causative agent as well as to other chemicals and foods.1-3 This "spreading" effect is one area among many where the environmental illness theory is inconsistent with medically-accepted doctrine concerning allergic sensitivity to individual substances.

Historically, the theory that environmental illness is caused by chemical contact has only weak support. This causation theory has received some attention in recent years, however, because of anecdotal reports of the suffering of certain individuals demonstrating symptoms attributed to this syndrome (e.g., nausea, headaches, dizziness), there are very few symptoms that have not been considered to be related to such an etiology.

While there is a broad variety of claims regarding the

initiation of environmental illness, there are no reliable statistics estimating its prevalence. Some people cite the National Academy of Sciences (NAS) as estimating the incidence of environmental illness in the United States. NAS has stated, however, that they have never made this statement or published such a conclusion.4

Numerous professional medical associations have examined available information regarding environmental illness and the diagnostic criteria that have been proposed by clinical ecologists (practitioners who diagnose and treat this phenomenon). These medical groups have generally found deficiencies in the scientific evidence for the syndrome as a distinct clinical entity.5-13 Moreover, in double-blind studies, the treatment (i.e., provocation- neutralization) of individuals by clinical ecologists has not been indicated to relieve symptoms any better than placebo treatment.14-15 Additionally, the implication of a role for environmental illness in immune system dysfunction has been criticized on both theoretical and empirical grounds. Dr. Abba Terr (Division of Immunology, Stanford University Medical School), whose views on environmental illness have been supported by the American College of Physicians and the American Academy of Allergy and Immunology, states the following:

> The pattern of symptomatology is too wide ranging, nonspecific, and variable to suggest a single pathogenetic mechanism, immunologic, or otherwise. The now well-established pathways for immunologic mediated forms of hypersensitivity each produce specific patterns of tissue inflammation and corresponding organ dysfunction, whereas no clinical or histopathologic evidence of inflammation has been demonstrated in patients with [environmental illness].16

Though the medical profession expresses doubt that environmental illness is, in fact, a distinct clinical entity, it is clear that a small but significant number of people display symptoms from whatever cause that do not conform to our present understanding of allergic disease.17-21 While chemical exposure has often been attributed as the cause of the symptoms, other factors such as biological contaminants, noise, lighting, interpersonal relationships, stress, work station design, and psychological factors22,23 have not been ruled out. Whatever the actual causes of environmental illness, baseline research aimed at identifying the nature of claims for the etiology of symptoms is necessary.

Recommendations

Because of the controversy surrounding environmental illness it is premature to develop any governmental policy based on the vague and anecdotal information currently available. Accordingly, the initial focus of environmental illness research should be to seek clarification of the medical/physiological/psychological nature of the syndrome. To this end, a few state governments are conducting reviews of environmental illness and NAS has conducted a workshop to discuss environmental illness-related research needs.

01-00929

All people deserve quality medical care including correct diagnosis and appropriate treatment. Our nascent understanding of environmental illness, however, does not allow us to determine proper diagnosis or treatment. Therefore, it is of paramount importance that these issues for environmental illness be resolved and the significance of environmental exposure, if any, be established. To address this issue, only research of the soundest scientific design should be supported, employing double-blind, placebo-controlled techniques. A research agenda could include the following:

(1) definition of the syndrome to be studied;

(2) investigation of the role of specific toxicologic (e.g., immunological) mechanisms for environmental illness or for the syndrome defined;

(3) determination of specific, measurable health effects, if any, that can be scientifically attributed to exposure to specific chemical substances and an estimation of the dose necessary to produce these symptoms;

(3a) determination of specific, measurable health effects, if any, that can be scientifically attributed to exposure to a variety of unrelated chemicals and an estimation of the dose necessary to produce these symptoms;

(4) determination of the role of biological contaminants in contributing to symptoms;

(5) determination of the clinical relationship,

if any, between chemical hypersensitivity and environmental illness; and

(6) development of an epidemiological study of symptoms and clinical findings attributed to environmental illness, determining a distribution of prevalence by age, sex, race, education, occupational history, psychiatric status, and geographical region (this would include determination of age at onset of environmental illness). In addition, the natural history of environmental illness should be studied and documented.

01-00930

References

1. Randolph, T.G. (1952). Sensitivity to petroleum including its derivatives and antecedents [Abstract]. J Lab Clin Med. 40: 931-932.

2. Randolph, T.G. (1954). Allergic-type reactions to industrial solvents and liquid fuels; mosquito abatement fogs and mists; motor exhausts; indoor utility gas and oil fumes; chemical additives of foods and drugs; and synthetic drugs and cosmetics. J Lab Clin Med. 44: 910.

3. Randolph, T.G. (1955). Depressions caused by home exposure to gas and combustion products of gas, oil, and coal. J Lab Clin Med. 46: 942.

4. Omenn, G.S. (1989). Letter to The Amicus Journal; Goldstein, B.D. (1989). Letter to The Amicus Journal; Silbergeld, E. (1989). Letter to The Amicus Journal.

5. Golbert, T.M. (1975). A review of controversial diagnostic and therapeutic techniques employed in allergy. J Allergy Clin Immunol. 56: 170-190.

6. Grieco, M.N. (1982). Controversial practices in allergy. J Amer Med Assoc. 247: 3106-3111.

7. Van Metre, T.E. (1983). Critique of controversial and unproven procedures for diagnosis and therapy of allergic diseases. Pediat Clin North Am. 30: 807-817.

8. Health Care Financing Administration. (1983). Medicare

program. Exclusion from medicare coverage of certain food allergy tests and treatments. Fed. Reg. 48: 162, 37716-37722.

9. American Academy of Allergy and Immunology. (1981). Position Statements - Controversial Techniques. J Allergy Clin Immunol. 67: 333-338.

10. American Academy of Allergy and Immunology. (1986). Position Statements - Clinical Ecology. J Allergy Clin Immunol. 78: 269-270.

11. American Academy of Allergy and Immunology. (1986). Position statements - Candidiasis hypersensitivity syndrome. J Allergy Clin Immunol. 78: 271-273.

12. California Medical Association Scientific Board Task Force on Clinical Ecology. 1986. Clinical Ecology - A Critical Appraisal. West J Med. 144: 239-245.

01-00931

13. American College of Physicians. (1989). Clinical Ecology. Annals of Internal Medicine. 111: 2.

14. Jewett, D.L., Phil, D., Fein, G. and Greenberg, M.H. (1990). A Double-Blind Study of Symptom Provocation to Determine Food Sensitivity. The New England Journal of Medicine 323: 7.

15. Kailia, E.W. and Collier, R. (1971). Relieving therapy for antigen exposure. J Amer Med Assoc. 217: 78.

16. Terr, A.I. (1987). Clinical Ecology. Journal of Allergy and Clinical Immunology. 79(3): 423-426.

17. Randolph, T.G. (1962). Human Ecology and Susceptibility to the Chemical Environment. Charles C Thomas, Publisher. Springfield, IL.

18. Dickey, L.D. (1976). Clinical Ecology. Charles C. Thomas, Publisher Springfield, IL.

19. Bell, I.R. (1982). Clinical Ecology: A New Medical Approach to Environmental Illness. Common Knowledge Press. Bolinas, CA.

20. Committee on Environmental Hypersensitivities. (1985).

Report of the Ad Hoc Committee on Environmental Hypersensitivity Disorders. Ministry of Health. Toronto, Ontario.

21. Cullen, M.R. (1987). The Worker with Multiple Chemical Hypersensitivities: An Overview. State Art Rev Occup Med. 2: 655-661.

22. Black, D.W., Rathe, A. and Goldstein, R.B. (1990). Environmental Illness: A Controlled Study of 26 Subjects with '20th Century Disease.' J. American Medical Association. 264: 24.

23. Ashford, N.A. and Miller, C.S. (1989). Chemical Sensitivity. A Report to the New Jersey State Department of Health.

01-00932

June 6, 1991

OFFICE OF THE ASSISTANT SECRETARY
FOR FAIR HOUSING AND EQUAL OPPORTUNITY

MEMORANDUM FOR: All Regional PHEO Directors

FROM: Leonora L. Illegible General Deputy Assistant Secretary for Fair Housing and Equal Opportunity, ED

SUBJECT: Technical Guidance Memorandum 91-3: Multiple Chemical Sensitivity Disorder

HUD has recently seen an increase in housing discrimination complaints from people with Multiple Chemical Sensitivity Disorder (MCSD), sometimes referred to as "environmental illness." HUD presently recognizes MCSD as a "handicap" under the Fair Housing Act. People with this disability are also considered "individuals with handicaps" under Section 304 of the Rehabilitation Act of 1973. Accordingly, PHEO investigators should become familiar with this disability and how those who have this disability are protected by the law.

MCSD is a condition, the origin of which is currently

unknown. Adverse symptoms are caused by exposure to various chemical substances at exposure levels so low that for most people, they are considered harmless. Symptoms appear after a person with MCSD comes into contact with the air, water, food, medication or surface that contains the chemicals to which the individual is sensitive. The most common substances that are believed to cause adverse reactions in people with MCSD are solvents and other volatile compounds, pesticides, formaldehyde, natural gas, disinfectants, detergents, plastics, tobacco smoke, and perfumes. The adverse reactions of individuals with MCSD often include extreme tiredness and an inability to carry out major life activities such as manual tasks and walking. For housing providers, acts which are necessary and accepted business practices, such as cleaning, painting, exterminating the building or fertilizing the lawn, may be threatening events to people with MCSD since exposure to the various chemicals involved can cause severe symptoms.

As with other handicaps, housing providers are required by the Fair Housing Act to provide reasonable accommodations to individuals with MCSD. Housing providers are also required to comply with all other requirements of the Fair Housing Act including the obligation to permit people to make, at their own expense, reasonable modifications to the existing premises, if the proposed modifications are necessary to afford them the full enjoyment of the housing premises.

01-00933

INTERNAL:NOT FOR RELEASE)

Additionally, under Section 504 of the Rehabilitation Act of 1973, housing providers who receive Federal financial assistance are required to modify their housing policies and practices to ensure that these policies and practices do not discriminate on the basis of handicap against qualified individuals with MCSD. Housing providers who receive Federal financial assistance are also obligated to carry out all other requirements of Section 504. This includes operating each housing program or activity receiving Federal financial assistance so that the program or activity, when viewed in its entirety, is readily accessible to individuals with handicaps.

Because people with MCSD suffer adverse reactions as a result of exposure to a wide variety of substances, reasonable accommodations for this disability, as with all disabilities, should be based on the particular circumstances of the tenant or

applicant. To the extent that the elements which trigger adverse reactions in the individual can be identified, requests for reasonable accommodations may be sought to enable the individual to minimize or avoid exposure to these elements.

Although the reasonableness of a particular accommodation request will depend on the circumstances of the individual and an assessment of the feasibility, practicality, and burdens involved in making the accommodation, it is possible to provide examples of accommodations which are considered reasonable:

-- A tenant with MCSD has a sensitivity to chemical pesticides. He requests that the housing provider notify him in advance before fumigating the apartment building and substitute boric acid for the chemicals normally used to spray his apartment.

-- An applicant with MCSD has a sensitivity to the chemicals found in certain types of carpeting. She inquires about an available apartment located in a building in which all the apartments have wall-to-wall carpeting. She requests that the housing provider inform her as to the type of carpeting used throughout the building so that she may determine whether the apartment would suit her needs before renting it.

If you have any questions about this guidance, please contact Mary-Jean Moore, Section 504 Branch Chief, Office of HUD Program Compliance at FTS 458-0015 (TDD).

01-00934

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, D.C. 20410-2000

OFFICE OF THE ASSISTANT SECRETARY FOR FAIR HOUSING AND EQUAL OPPORTUNITY

September 6, 1991

Paul A. Cammer, Ph.D.
President
Business Council On Indoor Air
1225 19th Street, N.W., Suite 300
Washington, D.C. 20036

Dear Dr. Cammer:

Thank you for your letter of July 16, 1991 regarding the Department's policy on multiple chemical sensitivity and its guidance on this issue to regional and field offices.

As noted in the Department's letter to Senator Lautanberg, HUD presently recognizes Multiple Chemical Sensitivity Disorder (MCSD), sometimes referred to as "environmental illness," as a "handicap" under the Fair Housing Act. People with this disability are also considered "individuals with handicaps" under Section 504 of the Rehabilitation Act of 1973.

Accordingly, the Department has instructed its regional and field investigators to become familiar with this disability which is extremely complex and difficult to comprehend. Individuals with MCSD are protected by the law and the Department has provided its regional offices with some general guidelines to ensure compliance with non-discrimination laws and regulations.

As with other handicaps, housing providers are required by the Fair Housing Act to provide reasonable accommodations to individuals with MCSD. Housing providers are also required to comply with all other requirements of the Fair Housing Act including the obligation to permit people to make, at their own expense, reasonable modifications to the existing premises, if the proposed modifications may be necessary to afford them the full enjoyment of the housing premises.

Additionally, under Section 504 of the Rehabilitation Act of 1973, housing providers who receive Federal financial assistance are required to modify their housing policies and practices to ensure that these policies and practices do not discriminate on the basis of handicap against qualified individuals with MCSD. Housing providers who receive Federal financial assistance are also obligated to carry out all other requirements of Section 504. This includes operating each housing program or activity receiving Federal financial assistance so that the program or activity, when viewed in its entirety, is readily accessible to individuals with handicaps.

Finally, because people with MCSD suffer adverse reactions as a result of exposure to a wide variety of substances, reasonable accommodations for this disability, as with all disabilities, should be based on the particular circumstances of the tenant or applicant. To the extent that the elements which trigger adverse reactions in the individual can be identified, requests for reasonable accommodations may be sought to enable the individual to minimize or avoid exposure to these elements.

Although the reasonableness of a particular accommodation

request will depend on the circumstances of the individual and an assessment of the feasibility, practicality, and burdens involved in making the accommodation, it is possible to provide examples of accommodations which are considered reasonable:

-- A tenant with MCSD has a sensitivity to chemical pesticides. He requests that the housing provider notify him in advance before fumigating the apartment building and substitute boric acid for the chemicals normally used to spray his apartment.

-- An applicant with MCSD has a sensitivity to the chemicals found in certain types of carpeting. She inquires about an available apartment located in a building in which all the apartments have wall-to-wall carpeting. She requests that the housing provider inform her as to the type of carpeting used throughout the building so that she may determine whether the apartment would suit her needs before renting it.

I hope the information provided is helpful.

Very sincerely yours,

Gordon H. Mansfield
Assistant Secretary

01-00936

Honorable Frank R. Lautenberg
United States Senate
Washington, D.C. 20510-3002

Dear Senator Lautenberg:

Thank you for your letter of October 11, 1990 regarding your constituent, Mary Lamielle, and her request that the Department of Housing and Urban Development (HUD) prepare a written policy acknowledging those people who are chemically sensitive as a disabled population deserving reasonable accommodation with regard to exposure to chemicals.

HUD presently recognizes Multiple Chemical Sensitivity (MCS) as a disability entitling those with chemical sensitivities to reasonable accommodation under Section 504 of the Rehabilitation Act of 1973. People with MCS are also recognized as disabled under Title VIII of the Fair Housing Amendments Act of 1988. However, because of the unique nature of MCS and the limitless variety of chemical sensitivities possible, HUD has not written a policy that sets forth specific required reasonable accommodation for this disability. Instead, we have acknowledged chemical sensitivity as a disability and accommodated those with various hypersensitivities on a case-by-case basis. As with all disabilities, housing providers are required to provide reasonable accommodations to chemically sensitive individuals, unless those accommodations would cause an undue financial and administrative burden or would result in a fundamental alteration in the nature of the program or activity.

Information about MCS has been disseminated at recent HUD Section 504 Town Meetings in an effort to make housing providers more aware of the needs of those with this disability. To better assure that HUD staff and the public are aware of the need to treat this condition as a disability, HUD is also planning to issue formal guidance on this matter to its Regional and Field Offices.

01-00937

HUD welcomes any information that the National Center for Environmental Health Strategies can provide and will keep Ms. Lamielle informed as new guidance is issued.

I hope that this information has been helpful.

Very sincerely yours,

Timothy L. Coyle
Assistant Secretary

01-00938

U.S. Department of Justice
Civil Rights Division

DJ 192-06-00025

Coordination and Review Section
P.O. Box 66118
Washington, D.C. 20035-6118

JUN 15 1992

Charles E. Scharbrough, AIA, CSI
Paul I Cripe, Inc.
7172 Graham Road
Indianapolis, Indiana 46250

Dear Mr. Scharbrough:

This letter responds to your April 29, 1992, letter requesting a clarification of the relationship of the program accessibility requirements of the Department of Justice's regulation implementing title II of the Americans With Disabilities Act (ADA), 28 C.F.R. part 35, and the accessibility guidelines for newly constructed or altered facilities contained in the Americans With Disabilities Act Accessibility Guidelines (ADAAG). ADAAG was issued by the Architectural and Transportation Barriers Compliance Board (ATBCB) and is found at Appendix A to the Department of Justice's regulation implementing title III of the ADA, 28 C.F.R. part 36. These regulations became effective on January 26, 1992.

The ADA authorizes the Department of Justice to provide technical assistance to entities that are subject to the Act. This letter provides informal guidance to assist you in understanding how the ADA may apply to you. However, this technical assistance does not constitute a determination by the Department of Justice of your rights or responsibilities under the ADA and does not constitute a binding determination by the Department of Justice.

Concerning the requirements for program accessibility, 28 C.F.R. 35.150 provides, in relevant part:

> (a) General. A public entity shall operate each service, program, or activity so that the service, program, or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities.

Recently, the Department issued a Title II Technical Assistance Manual that explains the requirements of program accessibility in existing facilities under section 35.150. We have enclosed a

copy of the manual for your information.

01-00939

On the issue of program accessibility, a city, county, or State may not deny the benefits of its programs, activities, and services to individuals with disabilities because its facilities are inaccessible. The services, programs, or activities, when viewed in their entirety, must be readily accessible to and usable by individuals with disabilities. Public entities, however, are not necessarily required to make each of their existing facilities accessible. See Technical Assistance Manual at 19-20. The primary focus of program accessibility is not on existing facilities but whether the programs, services, or activities provided by a local government are readily accessible to individuals with a disabilities. Program accessibility may or may not require alterations to existing facilities.

With respect to the construction of new facilities or the alteration of existing ones, the title II regulation provides, in relevant part, at 28 C.F.R. 35.151:

> (a) Design and construction. Each facility or part of a facility constructed by, on behalf of, or for the use of a public entity shall be designed and constructed in such manner that the facility or part of the facility is readily accessible to and usable by individuals with disabilities, if the construction was commenced after January 26, 1992.
>
> (b) Alteration. Each facility or part of a facility altered by, on behalf of, or for the use of a public entity in a manner that affects or could affect the usability of the facility or part of the facility shall, to the maximum extent feasible, be altered in such manner that the altered portion of the facility is readily accessible to and usable by individuals with disabilities, if the alteration was commenced after January 26, 1992.

Thus, all facilities designed, constructed, or altered by, on behalf of, or for the use of a public entity must be readily accessible and usable by individuals with disabilities, if the construction or alteration is begun after January 26, 1992.

Under the regulation, public entities may select from two design standards for new construction and alterations -- the Uniform Federal Accessibility Standards (UFAS) or the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (ADAAG), which is the standard that must be used for

public accommodations and commercial facilities under title III of the ADA. 28 C.F.R. 35.151(c). If ADAAG is chosen, however, public entities are not entitled to the elevator exemption (which permits certain buildings under three stories or under 3,000 square feet per floor to be constructed without an elevator). See Technical Assistance Manual at 23. Therefore, the standards for 01-00940

of the ADA. 28 C.F.R. 35.151(c). If ADAAG is chosen, however, public entities are not entitled to the elevator exemption (which permits certain buildings under three stories or under 3,000 square feet per floor to be constructed without an elevator). See Technical Assistance Manual at 23. Therefore, the standards for the construction of new facilities or alterations to existing facilities address the facility itself rather than the program, service, or activity offered there. New facilities must be constructed so that they are readily accessible to and usable by individuals with disabilities without regard to the program, service, or activity that will or may be offered in the facility.

Even where a public entity fully complies with ADAAG or UFAS in constructing new facilities or altering existing ones, if an individual with a particular disability is unable to enter a facility where a program, service, or activity is offered (e.g., a ramp complying with ADAAG standards is too steep for the individual to ascend), a public entity would have to make the program, service, or activity offered in the facility accessible. Program accessibility could be provided through such means as relocating the program, service, or activity to an accessible site. Therefore, program accessibility may impose stricter standards than those required for new construction because all individuals must be served.

In your letter, you reference some ADAAG scoping requirements for parking and assembly seating areas. The ATBCB has determined that these scoping requirements are the minimum standards for these particular elements to make a new facility accessible. This does not mean that existing facilities necessarily would have to be altered to comply with these scoping requirements. Program accessibility is based on whether a government's programs, activities, and services, when viewed in their entirety, are readily accessible and not whether a particular facility is readily accessible to and usable by individuals with disabilities. This determination should be made as part of the public entity's self-evaluation process.

I hope this information is helpful to you.

Sincerely,

Stewart B. Oneglia
Chief
Coordination and Review Section
Civil Rights Division

Enclosure

01-00941

JUN 16 1992

(b)(6)
(b)(6)
Orlando, Florida 32822

Dear Mr. XX

This letter responds to your complaint filed with our office under title II of the Americans with Disabilities Act (ADA). Title II of the ADA protects qualified individuals with disabilities from discrimination in the services, programs, and activities of a State or local government. You have requested an expedited determination from this office due to your need for a decision prior to June 22, 1992.

You are seeking to be placed on the ballot as a nominee for State Representative for the 37th District to the Florida House of Representatives for the Democratic Party primary in September 1992. You contend that Florida's nomination process discriminates against you on the basis of your disability.

In Florida, there are two methods for having one's name placed on a party's primary ballot for a State office. First, an individual can pay a qualifying fee, which is a percentage of the salary of the position sought. Fla. Stat. Ann. 99.092. In your case, you state that you are unable to pay the qualifying fee which would be $1600.00. Second, if an individual does not wish to pay the qualifying fee, he or she may qualify for placement on the primary ballot by the petition method by collecting signatures on petitions from three percent of the voters registered in the party in the district where the individual is running. Fla. Stat. Ann. 99.095. You allege

that you need to collect 1072 signatures, which must be filed by June 22, 1992.

Those individuals selecting the petition alternative, "... shall file an oath with the officer before whom the candidate would qualify for the office stating that he intends to

cc: Records, CRS, Friedlander, Stewart, Foster
:udd:stewart:XX ltr

01-00942

qualify by this alternative method for the office sought." Fla. Stat. Ann. 99.095(1). In addition, "[t]he oath shall be filed at any time after the first Tuesday after the first Monday in January of the year in which the first primary is held, but prior to the 21st day preceding the first day of qualifying for the office sought." Id. Once the oath is filed, an individual and his or her supporters may start collecting signatures from qualified registered voters. We have been informed by a representative of the Division of Elections, Florida Department of State, that the Division has never granted a waiver of the petition requirement because it has no authority to do so.

You allege that you have numerous medical conditions that greatly affect your mobility. As compared to other potential candidates who may use the petition process, you claim that you are discriminated against because you cannot walk door-to-door to collect signatures due to your mobility impairment.

Assuming for purposes of our analysis that you are a qualified individual with a disability, we conclude that the Florida law does not discriminatorily affect you because of your mobility impairment. Florida provides over five months to collect signatures. Individuals who seek nomination through the petition process are not required personally to collect the signatures. Rather, any individual may gather signatures on your behalf. Further, the Florida law does not require that an individual go door-to-door to collect signatures. An individual may gather signatures at any site where qualified registered voters congregate, such as shopping malls, public parks, recreational sites, public buildings, or other areas. In addition, according to the Division of Elections, an individual may mail petitions to potential supporters in his or her district for signing. Thus, an individual need not be able to walk in

order to collect signatures.

The ADA provides for equality of opportunity, but does not guarantee equality of results. The basis for many of the specific requirements of the Department's title II regulation is the principle that individuals with disabilities must be afforded an equal and effective opportunity to participate in or benefit from a public entity's aids, benefits, and services. In this instance, we conclude that the Florida election laws conform to these requirements of title II with respect to your claims of discrimination.

This letter constitutes our letter of findings with respect to your allegations of discrimination in your administrative complaint. If you are dissatisfied with our determination, you may file a complaint presenting your allegations of discrimination in an appropriate United States District Court under title II of the ADA.

This letter does not address other potential claims of discrimination on the basis of disability that may arise under the Florida election laws. Rather, this letter is limited to the application of the Florida election laws to the allegations presented in your complaint.

Under the Freedom of Information Act, 5 U.S.C. S 552, we may be required to release this letter and other correspondence and records related to your complaint in response to a request from a third party. Should we receive such a request, we will safeguard, to the extent permitted by the Freedom of Information Act and the Privacy Act, the release of information which could constitute an unwarranted invasion of your or other's privacy.

Sincerely,

Stewart B. Oneglia
Chief
Coordination & Review Section
Civil Rights Division

cc: Dorothy Joyce, Director
Division of Elections
Florida Department of State

FAXED TO: RITA CRAIG PAGE 1 OF 1

Item 0307198 92/05/15 22:27

From: (b)(6)

To: RITA CRAIG/1-202-3070595@FAX# GEnie FAX

cc: XX XX

Sub: Ballot and the ADA Act

I am sending this message in accordance with a phone call to Wonder Moore on Last Wed., She mentioned that I should send this fax in care of the above name and she would pass it on to the right person for processing. Can you please confirm receipt by calling voice (b)(6) (b)(6) and ask for (b)(6). Thanks!

I wish to be placed on the ballot for the Democratic Nomination of the 37th State House District of Florida's House of Representatives. There are two alternative methods of being placed on the ballot. One is to

pay a required fee, the second is to collect 1072 petitions and return them for certification. Being that I am disabled, and having severe difficulties obtaining the money required, and the petitions filled out I have requested that I be waived of both ways and be placed on the ballot with a waiver under the American with Disabilities Act Title 2. I have requested a ruling from the Florida Board of Elections and have yet to receive a satisfactory reply. Can this be looked into as to my rights of having my name placed on the ballot with a waiver of both methods? Sincerely yours, and awaiting your reply,

(b)(6)

*** END OF MESSAGE ***

01-00945

JUN 16 1992

DJ 202-PL-166

(b)(6)
Carrollton, Texas 75007

Dear Ms. XX

This letter responds to your correspondence regarding the denial of free entrance to Eisenhower State Park in possible violation of the Americans with Disabilities Act (ADA), 42 U.S.C. 12101-12213. The ADA authorizes the Department of Justice to provide technical assistance to individuals or entities having rights or obligations under the Act. This letter provides informal guidance to assist you in understanding the ADA's requirements. However, it does not constitute a legal interpretation, and it is not binding on the Department.

Specifically, you inquire whether a state agency that grants free entrance to those 65 years of age and older and disabled veterans, must grant free entrance to others who are similarly disabled.

Title II of the ADA prohibits discrimination on the basis of a disability, but does not prohibit a state agency from granting a privilege (such a free admission to state parks) to particular groups of individuals with disabilities and groups of individuals without disabilities so long as that decision has neither the intent nor the effect of discriminating against individuals on the basis of their disability. The information that you have given us does not appear to present a violation of the ADA.

We hope that this information is useful to you in evaluating your rights under the ADA.

Sincerely,

L. Irene Bowen
Deputy Director
Office on the Americans with Disabilities Act

cc: Records Chrono Wodatch Bowen Beard.ta.202.(b)(6)
arthur T. 6/3/92

01-00946

APRIL 23, 1992

OFC.ON AMER.WITH DISABILITIES ACT
CIVIL RIGHTS DIVISION
U.S.DEPT.OF JUSTICE
WASHINGTON,D.C. 20530

TO WHOM IT MAY CONCERN;

I AM WRITING TO YOU FOR A COUPLE OF REASONS. I AM A PHYSICALLY CHALLENGED PERSON WHO ENJOYS THE OUTDOORS. I GO CAMPING OFTEN. RECENTLY, I WAS CAMPING AT EISENHOWER STATE PARK. I WAS TOLD PRIOR TO THE OUTING THAT DISABLED PERSONS WERE GIVEN A PASS TO ALLOW ADMITTANCE TO THE

CAMPGROUND WITHOUT HAVING TO PAY AN ENTRANCE FEE. I HAD PROOF OF DISABILITY PENSION FROM SOCIAL SECURITY.

WHEN I ENTERED THE GROUNDS I APPROACHED THE PARK STATION AND INQUIRED ABOUT THE PASS AND THE PROCEDURE TO ACQUIRE ONE THE PARK SUPERVISOR EXPLAINED THAT THE PASSES WERE ONLY GRANTED TO PERSONS 65 AND OLDER OR DISABLED VETERANS. I AM UNDER 65 AND I AM NOT A VETERAN. HOWEVER I AM DISABLED IN A WHEELCHAIR. THIS SEEMED VERY UNFAIR TO ME.

DOES THIS TYPE EXCLUSION SEEM CONTRARY TO TITLE 2, SECTION 202 OF THE AMERICANS WITH DISABILITIES ACT OF JULY, 1990? I WANT VERY MUCH FOR ALL PEOPLE TO RECEIVE FAIR TREATMENT UNDER THIS LAW. YOUR RESPONSE IS APPRECIATED. THANKING YOU IN ADVANCE,

SINCERELY YOURS,

(b)(6)
CARROLLTON, TEXAS 75007

01-00947

T. 6/12/92
SBO:WRW:KGF
DJ# 182-06-00049

JUN 18 1992

Mr. Robert J. Moldashel
President
Lakeland Communications, Inc.
Lincoln Towers
1350 Lincoln Avenue
Holbrook, New York 11741

Dear Mr. Moldashel:

This letter is in response to your letter to the Office on the Americans with Disabilities Act (ADA) concerning TDD access to emergency phone numbers. Specifically, you asked if a volunteer fire department and ambulance service that provides a supplementary seven-digit emergency phone line to speed access to emergency services to the hearing public, in addition to a general 911 system, would be exempt from TDD access requirements.

The ADA authorizes the Department to provide technical assistance to entities that are subject to the Act. This letter provides informal guidance to assist you in understanding how the ADA may apply to the situation you describe. However, this technical assistance does not constitute a determination by the Department of Justice of your rights or responsibilities under the ADA and does not constitute a binding determination by the Department of Justice.

Title II of the ADA, which contains the ADA provisions relating to TDD access, applies to State and local governments. In order to determine whether a volunteer fire or rescue company is covered by the requirements of title II, it is necessary to examine the relationship between the company and the unit of local government. The factors to be considered include whether the company is operated with public funds; whether the employees, if any, are considered government employees; whether the government provides significant assistance to the company by providing equipment or property; and whether it is governed by an independent board selected by the members of a private organization or is elected by the voters or appointed by elected officials.

cc: Records, CRS, FOIA, Friedlander 3, Breen, Worthen
:udd:Oneglia:moldashel

01-00948

The provision regarding TDD access to emergency telephone systems for those entities covered by title II is found in the Department of Justice's regulation implementing that title, specifically 28 C.F.R. S35.162. The Department's Technical

Assistance Manual for title II specifically addresses the question you raise:

> Where a 911 line is available, a separate seven-digit telephone line must not be substituted as the sole means for nonvoice users to access 911 services. A public entity may, however, provide a separate seven-digit line for use exclusively by nonvoice calls in addition to providing direct access for such calls to the 911 line. Where such a separate line is provided, callers using TDD's or computer modems would have the option of calling either 911 or the seven-digit number.
>
> Where a 911 line is not available and the public entity provides emergency services through a seven-digit number, it may provide two separate lines -- one for voice calls, and another for nonvoice calls -- rather than providing direct access for nonvoice calls to the line used for voice calls, provided that the services for nonvoice calls are as effective as those offered for voice calls in terms of time response and availability in hours. Also the public entity must ensure that the nonvoice number is publicized as effectively as the voice number, and is displayed as prominently as the voice number wherever the emergency numbers are listed.

Technical Assistance Manual at pp. 38-39

Copies of the Manual and of the title II regulation are enclosed for your information.

We hope this information is helpful to you.

Sincerely,

Stewart B. Oneglia
Chief
Coordination & Review Section
Civil Rights Division

Enclosures (2)

01-00949

Lakeland Communications, Inc.
Lincoln Towers - 1350 Lincoln Avenue - Holbrook, N.Y. 11741 (516) 467-919ILLEGIBLE

OFFICE ON THE AMERICANS WITH DISABILITIES ACT
CIVIL RIGHTS DIVISION
U.S. DEPARTMENT OF JUSTICE
P.O. BOX 66118
WASHINGTON, DC 20035-6118

DECEMBER 3, 1991

TO WHOM IT MAY CONCERN:

A RECENT ARTICLE PUBLISHED IN THE APCO (ASSOCIATED PUBLIC-SAFETY COMMUNICATIONS OFFICERS) BULLETIN MADE A REFERENCE TO THE MANDATORY IMPLEMENTATION OF TELECOMMUNICATIONS DEVICES FOR THE DEAF (TDD) IN DISPATCH CENTERS UNDER THE AMERICANS WITH DISABILITIES ACT (ADA).

THIS ARTICLE, HOWEVER, WAS UNCLEAR AS TO WHETHER OR NOT ALL DISPATCH CENTERS, INCLUDING SMALL FIRE DEPARTMENTS AND AMBULANCE COMPANIES THAT HAVE THEIR OWN SEVEN-DIGIT EMERGENCY NUMBERS HAVE TO COMPLY WITH THE NEW RULING.

9-1-1 DIALING IS AVAILABLE HERE ON LONG ISLAND BUT MANY OF THE VOLUNTEER FIRE AND AMBULANCE COMPANIES OFFER THEIR OWN EMERGENCY NUMBERS TO THE COMMUNITIES THEY SERVE TO AVOID UNNECESSARY DELAYS FROM THE 9-1-1 DISPATCH SYSTEM. ARE THESE PUBLIC SAFETY AGENCIES EXEMPT OR MUST THEY COMPLY WITH THE NEW RULING? IF THEY MUST COMPLY, DOES THE JANUARY 26, 1992 DEADLINE APPLY AS WELL?

PLEASE SUPPLY US WITH THE NECESSARY DOCUMENTATION THAT ANSWERS THESE QUESTIONS SO THAT WE MAY ALERT OUR PUBLIC SAFETY CUSTOMERS OF THIS NEW RULING. THANK YOU IN ADVANCE FOR YOUR PROMPT RESPONSE.

SINCERELY,

ROBERT J. MOLDASHEL
PRESIDENT

01-00950

JUN 23 1992

DJ 202-PL-165

Mr. Thomas R. Howard
Beck Program Management
1401 Elm Street, No. 4585
Dallas, Texas 75202

Dear Mr. Howard:

This letter responds to your inquiry as to the requirements for barrier removal under the Americans with Disabilities Act (ADA), 42 U.S.C. 12101-12213. The ADA authorizes the Department of Justice to provide technical assistance to individuals or entities having rights or obligations under the Act. This letter provides informal guidance to assist you in understanding the ADA's requirements. However, it does not constitute a legal interpretation, and it is not binding on the Department.

Specifically, you inquire whether any alteration to make a rest room accessible that can be made without requiring the relocation of walls is probably (or necessarily) readily achievable. Further, you inquire whether the same number of accessible entrances to a building are required under the readily achievable barrier removal standard as are required under 4.1.3.(8) of ADAAG.

As you clearly understand, depending on the context, title III of the ADA imposes a range of compliance standards on private entities regarding physical barriers in places of public accommodation. When a public accommodation is engaged in neither new construction nor alteration of a facility, then the least rigorous accessibility obligation is imposed. The public facility must remove any physical barriers to individuals with disabilities where the removal of those barriers is "readily achievable" -- that is, where the removal can be done easily and without much difficulty or expense.

cc: Records Chrono Wodatch Bowen Bea rd.ta.302.howard
arthur T. 6/17/92

01-00951

The regulations issued by the Department of Justice discuss the factors that are to be used in determining whether the removal of a particular barrier is readily achievable. These include the nature and cost of the action, the financial resources available both to the site and the parent organization, the size and number of employees at the site and overall, and the relationship of the site to the parent organization. A copy of these regulations is enclosed.

Because all of these factors must be considered, it is not possible to state a general principle concerning whether the removal of particular existing physical barriers in restrooms is readily achievable. Some alterations requiring the relocation of a wall, particularly an easily moved wall, might indeed be done easily and without much difficulty or expense; but also some modifications, particularly those requiring the moving of plumbing and fixtures, might not be readily achievable.

Whether a particular building entrance to an existing building must be made accessible must be evaluated in the same way. Your clients do not need to make any entrance accessible if to do so would not be readily achievable. However, as all or parts of the existing facility are altered or modified, the facility's owner would have an obligation under the "path of travel" provision of 28 C.F.R. 36.403(e) to spend at least twenty per cent of the original alteration cost to make accessible a path of travel to the original altered area, including an accessible entrance.

Where removal of all barriers is not readily achievable, you must still take whatever steps you can under that standard to remove barriers. In addition, the obligation to remove any existing barriers is an ongoing one. What is not readily achievable today may be readily achievable next year.

We hope that this information is useful to you in evaluating your client's compliance with the ADA.

Sincerely,

L. Irene Bowen
Deputy Director
Office on the Americans with Disabilities Act

01-00952

BECK Program Management
April 24, 1992

The Office of the Americans with Disabilities Act
Civil Rights Division, U.S. Department of Justice
P.O. BOX 66118
Washington, D.C. 20035-6118

Re: Title III of the ADA
Section 36.304 Removal of Barriers

Dear Sir:
BECK Program Management is a construction management firm located in Dallas, Texas, that is involved in ADA compliance. We provide consulting services to clients regarding compliance with Title III of the ADA. More specifically, our firm provides site surveys and inspection services to clients for their existing facilities. In essence, we help our clients develop compliance plans for barrier removal for their existing facilities. We also are a member of a group which among others includes the Kent Waldrep National Paralysis Foundation. This group which was formed in May, 1991 provides seminars and training sessions to public and private groups. All of our services to this group are donated and all proceeds from these seminars are donated directly to the Foundation.

The purpose of this letter is to request clarification on two issues regarding barrier removal in existing facilities or buildings. First, in advising clients
regarding toilet facilities, where does one draw the line between readily achievable and not readily achievable? In general, we advise our clients that if improvements can be made that do not require the relocation of walls, these changes are probably readily achievable and should be undertaken. On the other hand, if the size of a toilet room is such that nothing short of relocating walls will make these rooms accessible, we advise them that such changes may not be required.

Second, regarding accessible entrances into a building, how many accessible routes are actually required into an existing building? Is it the same number as that required for new buildings as specified per 4.1.3.(8) of ADAAG or can less than 50% be accessible for existing buildings? If the building has four entrances and only one of these is accessible, must the building owner make

other entrances accessible?

We would appreciate any input or advice you could provide regarding these areas of compliance. We are constantly confronted with questions regarding these areas of accessibility and would like to know that we are providing accurate and reasonable advice to our clients and associates.

Sincerely,
Thomas R. Howard
ADA Program Administrator
BECK Program Management
01-00953

T. 6-18-92

DJ 202-PL-149

JUN 23 1992

DIR
WODATCH
DATE
Mr. John Lundeen
Building Manager
SPECIAL B-K-P
COUNSEL 9714 Old Katy Road
BREEN Houston, Texas 77055

DATE Dear Mr. Lundeen:

This letter is in response to your request for information about how to comply with title II of the Americans with Disabilities Act.
DEPUTY
BOWEN The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities that are subject
DATE to the Act. This letter provides informal guidance to assist you in understanding the ADA accessibility standards. However, this technical assistance does not constitute a legal interpretation of the application of the statute and it is not binding on the Department.
BLIZARD
Section 36.304 of Title III states that a public
DATE accommodation must remove architectural barriers in existing facilities where such removal is readily achievable. "Readily achievable" refers to barrier removal that is easy to accomplish and can be done without much difficulty or expense. You must
JOHANSEN survey your buildings to find out what barriers to accessibility exist and then decide which barriers are readily achievable to

DATE remove. This office does not attempt to identify in advance specific steps that must be taken with respect to a particular building. This obligation is a continuing one. Therefore, what may not be readily achievable to do this year, may be next year
GYB or sometime in the future.

DATE
cc: Records, Chrono, Wodatch, Johansen, Bowen
udd:Johansen.Ltr.Lundeen

01-00954

We are enclosing a copy of the Title III regulations as well as our Technical Assistance Manual to assist you in surveying your buildings. I hope this information is useful to you.

Sincerely,

L. Irene Bowen
Deputy Director
Office on the Americans with Disabilities Act

Enclosure

01-00955

April 7, 1992

Office On The Americans With Disabilities Act
Civil Rights Division
U.S. Department of Justice
P. O. Box 66118
Washington D.C. 20035-6118

CERTIFIED
RETURN RECEIPT
REQUESTED

"The National Law Journal" dated Monday, August 26, 1991.
ADA - is the first comprehensive civil rights statute to cover the disabled.

The provisions contained in Title III of the ADA, however, will have far reaching ramifications on building design, construction and the development of real estate.

Existing buildings, new construction and alterations are all within the scope of Title III. Moreover, compliance with Title III is the responsibility of almost everyone who has an interest in a covered building, including owners, managers, and tenants.

(As the above statements in "The National Law Journal" dated Monday, August 26, 1991) The partners/owners would like to make improvements that would be necessary.

What name and address do we have to send a letter to so we can find out, if any improvements must be done on building/buildings?

"Location/Locations"
6218 I-85, Norcross Georgia
703 Nursery Road, Linthicum Heights, Maryland 21090
61 Glenn Street, Lawrence, Massachusetts 01845
4525-27 Kingston Street, Denver, Colorado 80239
3815 Nicols Rd., Eagan, Minnesota 55122
2333 Grant Ave., San Lorenzo, California 94580
2007 E. Stewart Street, Tacoma, Washington 98421
1621 Lincoln Avenue, Tacoma, Washington 98421
9135 Spring Branch Drive, Houston, Texas 77080
9137 Spring Branch Drive, Houston, Texas 77080
9144 Spring Branch Drive, Houston, Texas 77080
9714 Old Katy Road, Houston, Texas 77079
14520 Old Katy Road, Houston, Texas 77079
14526 Old Katy Road, Houston, Texas 77079
14530 Old Katy Road, Houston, Texas 77079
11011 South Wilcrest, Houston, Texas 77099

Sincerely,

John Lundeen
Building Manager

01-00956
T. 6/18/92
DJ 202-CON-8

JUN 25 1992

The Honorable Joe Skeen
U.S. House of Representatives
2447 Rayburn House Office Building
Washington, D.C. 20515-3102

Dear Congressman Skeen:

I am responding to your letter to Janet Blizard, of my staff, in which you expressed concern about two matters that pertain to the implementation of the Americans with Disabilities Act of 1990 (ADA): the State of New Mexico's plans to amend its statewide building code to incorporate the ADA accessibility requirements prior to seeking ADA certification from this Department; and the national model building code organizations' plans to revise the model codes to make them consistent with the ADA. You have suggested that for the State or the national code groups to adopt the ADA Accessibility Guidelines without limiting their application to situations in which accessibility is "readily achievable" or "economically feasible" may be inconsistent with the intent of the ADA.

In enacting the ADA, Congress endeavored to strike a balance between the right of people with disabilities to participate fully in American society and the legitimate economic concerns of business owners who are subject to the ADA. The ADA provides that public accommodations subject to the Act are required to remove architectural and structural communication barriers in existing facilities only when it is "readily achievable" to do so. However, this limitation applies only to barrier removal in existing facilities that are not otherwise being altered.

When a place of public accommodation or a commercial facility is newly constructed or altered, a stricter standard applies. New construction of and alterations to places of public accommodation and commercial facilities must be readily

cc: Records, Chrono, Wodatch, Russell
udd: Blizard.cert.ltr.skeen

01-00957

accessible to and usable by individuals with disabilities. New construction must be accessible unless it is "structurally impracticable"; alterations must be accessible to the maximum extent feasible.

This rationale for this stricter standard is found in the report of the House Committee on the Judiciary which notes that:

> The ADA is geared to the future -- the goal being that, over time, access will be the rule rather than the exception. Thus, the [ADA] only requires modest expenditures to provide access in existing facilities, while requiring all new construction to be accessible. The provision governing alterations is akin to new construction because it is only applicable to situations where the commercial facility itself has chosen to alter the premises.

H.R. Rep. No. 485, 101st Cong., 2d Sess., pt. 3, at 63 (1990).

The ADA directs the Architectural and Transportation Barriers Compliance Board (Access Board) to develop guidelines for the design and construction of accessible buildings and facilities, and requires this Department to adopt regulations that are consistent with the Access Board's guidelines. Pursuant to this requirement, in July 1991, the Access Board published the ADA Accessibility Guidelines, which have been adopted by this Department as enforceable standards.

Places of public accommodation and commercial facilities subject to the ADA are, therefore, required by Federal law to comply with the ADA accessibility standards in all new construction and alteration projects. To the extent that State or local codes provide for a lower standard of accessibility, those codes are preempted by the ADA. State or local laws that provide equal or greater access may still be enforced, and if these laws have been certified by the Department of Justice to meet or exceed the requirements of the ADA, building owners, architects, and design professionals will have the assurance that compliance with the certified code will be considered evidence of compliance with the ADA in any litigation to enforce the Act.

The certification process is not mandatory. Nevertheless, many States have expressed their intent to revise their codes to be consistent with the ADA, and to seek ADA certification, because it will facilitate the design and construction process for people working on commercial facilities and places of public accommodation. Certification will not change an entity's obligations under State or Federal law, but it will streamline

the process of design and construction by permitting a covered entity to rely on the State or local code provisions to determine what is required, rather than having to consult both State and Federal regulations.

I believe that the certification of State and local codes will, over the course of time, prove to be an effective mechanism for achieving the goals of the ADA because the incorporation of the ADA requirements into State and local codes will ensure that accessibility is considered at the earliest stages of the construction process. This Department is, therefore, actively working to educate State and local officials about the certification process and to encourage these officials to seek

certification of their codes.

Because the ADA limits certification to State and local codes, model codes cannot be certified. However, the Division has established a procedure through which the national model code organizations can seek technical assistance from the Division to determine whether, and in what respects, the model codes are consistent with the requirements of the ADA. We view the attempts by the national model code organizations to develop of model accessibility codes that are consistent with the ADA as a commendable effort to ensure that future construction is accessible to all Americans. We are prepared to provide assistance to the code groups in this endeavor.

I hope that this information is responsive to your inquiry.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

Enclosures (3)

01-00959

Congress of the United States
House of Representatives

June 2, 1992

Janet Blizzard, Attorney
Public Access Section
P.O. Box 66738
Washington, D.C. 20035-9998

Dear Janet:

I am writing because I have concerns with respect to efforts being made to bring stringent handicapped access requirements into our building codes. This is apparently happening in response to the Americans with Disabilities Act becoming law.

New Mexico is on the verge of adopting Americans with Disability Accessibility Guidelines, taken out of context, into their building codes in order to obtain "certification" from the Department of Justice.

Various provisions such as "readily achievable" and "economically feasible" are an important part of ADA. I believe congress intended that these provisions be preserved, especially under Title Three of the Act, in order to give affected businesses a chance to provide reasonable accommodation. If building codes simply absorb the building design sections of ADA without any provision for other features such as "readily achievable" then I believe we have lost the original intent of ADA.

Our national model building code organizations are rushing to modify their documents, as evidenced by the new Chapter 31 and the appendix on Site Accessibility contained in the Uniform Building Code which we use in New Mexico. Apparently they all feel compelled, or pressured, to modify their model codes, even though this action moves their codes away from their own stated philosophy, which is

> "The purpose of this code is to provide minimum standards to safeguard life or limb, health, property and public welfare by regulation and controlling the design, construction, quality of materials, use and occupancy, location and maintenance of all buildings and structures within this jurisdiction and certain equipment specifically regulated herein.
>
> "The purpose of this code is not to create or otherwise

> establish or designate any particular class or group of persons who will or should be especially protected or benefited by the terms of this code" - Part 1, Chapter, Sec. 102 of the 1991 Uniform Building Code.

This codification of handicapped access guidelines may well be counter to the spirit and intent of the Americans with Disabilities Act as passed by Congress. Before you proceed with "certification" of any building codes, I would appreciate discussing this with you further.

Sincerely,

Joe Skeen
Member of Congress

JS/jr

01-00961

JUN 26 1992

T. 6/23/92

SBO:LMS:KGF
DJ 192-180-08086

The Honorable Wally Herger
Member, United States House of
Representatives
2400 Washington Avenue, Suite 410
Redding, California 96001

Dear Congressman Herger:

This letter responds to your recent inquiry on behalf of the Sasser Development Company, which seeks information on the enforcement and funding of the Americans With Disabilities Act (ADA).

Under title III of the ADA, 42 U.S.C. SS12181-12189, which applies to places of public accommodation and commercial facilities, an individual can institute a private civil action for preventive relief. 42 U.S.C. S12188(a). The Department of Justice may commence a civil action in cases of general public importance or where a pattern or practice of discrimination is found. 42 U.S.C. S12188(b)(1)(B). Remedies in such cases include court orders to stop discrimination, civil penalties, and money damages. 42 U.S.C. S12188(b)(2). Individuals may file complaints with the Department of Justice by writing a letter to the Office on the Americans with Disabilities Act, Civil Rights Division, U.S. Department of Justice, P.O. Box 66738, Washington, D.C. 20035-9998.

Under title II of the ADA, 42 U.S.C. SS12121-12134, which applies to State and local governments, an individual may file a private civil action for preventive relief. 42 U.S.C. S12132. Alternatively, an individual may file an administrative complaint with one of the eight agencies designated in the title II rule. Those agencies and their addresses are listed on pages 46-47 of the enclosed title II technical assistance manual. Agency findings of violations of title II may be enforced by the Department of Justice, which can commence a civil action. 42 U.S.C. S12123. Remedies include injunctions and damages, if applicable. Id.

cc: Records, CRS, FOIA, Friedlander 3, Breen, Stewart, McDowney
:udd:stewart:herger.ltr

01-00962

There is no specific funding source designated for the Department of Justice to enforce the ADA. The Department receives funding through its congressional appropriations to enforce the ADA.

We have enclosed the following publications to assist the Sasser Development Company in understanding the ADA's requirements: (1) Title II regulations; (2) Title II technical assistance manual; (3) Title III regulations; and (4) Title III technical assistance manual.

I hope this information has been helpful to you.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

Enclosures (4)

01-00963

Congress of the United States
House of Representatives
Washington, DC 20515

May 4, 1992

John Collingwood
Inspector-in-Charge
Congressional Affairs Office
Department of Justice
Constitution Avenue and Tenth Street NW
Washington, D.C. 20530

Dear John:

I have been contacted to ascertain information regarding the implementation and enforcement of the Americans with Disabilities Act (ADA), as well as information regarding the funding source designated for the Department of Justice to enforce the Law.

I have contacted the Congressional Research Service and their information packs do not include this information. Sasser Development Company, specifically has requested I try to locate the enforcement provisions because they provide consulting services for the physically challenged. Since Sasser advises others they want their information to be accurate.

I would appreciate you responding to my Redding office, noted above, any information available regarding enforcement and funding of the ADA. Thank you in advance for your assistance to this request.

Sincerely,

WALLY HERGER
Member of Congress

WH/pp
enclosure
cc: Sasser Development Company

01-00964

JUN 26 1992

DJ 202-PL-159

Mr. Charles A. Herman
McCrory-Ambler Architecture
117 S. W. Fifth Street
P.O. Box 2446
Bartlesville, Oklahoma 74005

Dear Mr. Herman:

This is in response to your letter requesting information about the Americans with Disabilities Act (ADA).

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist you in understanding the ADA's requirements. However, it does not constitute a legal interpretation and it is not binding on the Department.

You request confirmation of information you received in telephone conversations with persons from this Department and from the Architectural and Transportation Barriers Compliance Board. Your questions concern the applicability of the ADA to off-shore drilling platforms, any ADA requirements for accessibility of factory machinery and equipment, and the meaning of the term "continuous" as it relates to handrails for ramps in 4.8.5(2) in the ADA Accessibility Guidelines (ADAAG).

Off-shore drilling platforms would not be considered places of public accommodation within any of the categories designated in Title III of the ADA. However, as facilities "whose operations affect commerce," off-shore drilling platforms do fall within Title III's definition of "commercial facilities."

There are no ADAAG requirements for design or building of factory machinery and equipment. However, it may be necessary

under Title I of the ADA to modify equipment or provide alternative equipment as part of a reasonable accommodation to an employee with a disability. ADAAG does require work areas to be designed and constructed so that individuals with disabilities can approach, enter and exit the areas.

cc: Records Chrono Magagna.pl.159 arthur T. 6/25/92

01-00965

We agree with the ATBCB's explanation of the term "continuous handrail" as one without interruption - i.e., the handrail follows the slope of the ramp, continues the length of the landing and becomes an integral part of a contiguous handrail system along a wall or intersects with a guardrail at a floor edge, etc.

I have enclosed the Department's recently published Title III Technical Assistance Manual. I hope this information will be useful to you.

Sincerely,

Joan A. Magagna
Deputy Director
Office on the Americans with Disabilities Act

01-00966

McCrory-Ambler Architecture

May 6, 1992

Mr. John Wodatch
Department of Justice
Office of the Americans with Disabilities Act
Civil Rights Division
P.O. Box 66118
Washington, D.C. 20035-6118

Ref: Title III of the Americans with Disabilities Act and
Accessibility Guideline Interpretations/Applications

Dear Mr. Wodatch,

Enclosed are reproductions of "Reports of Contact" documenting our understanding of responses to interpretation and application questions posed to your "answer-line" representatives regarding off-shore drilling platforms, factory machines/equipment and handrails.

Please review and if our understanding of those answers is erroneous, a revised interpretation would be appreciated. We will presume that the information contained within the reports is correct if we do not receive a timely correction from you.

Sincerely,

Charles A. Herman
Architect

Enclosures-3

92-165-0 1 of 1

01-00967

McCrory-Ambler Architecture
117 S.W. Fifth Street
P.O. Box 2446
Bartlesville, Oklahoma 74005
Tel: 918-336-3512 Fax: 918-337-0379

REPORT OF CONTACT

PROJECT ADA '90 FORM (PP Co) JOB NO.

SUBJECT Accessibility of Off-shore Drilling Platforms DATE April 20, 1992

PERSON CONTACTED ADA Information Line Rep. CONTACTED BY C. Herman

COMPANY U.S. Dept. of Justice (DOJ) COMPANY
Washington, D.C.
ph (202)-514-0301

DISCUSSION Per Information Line Representative of the D.O.J.:
OFF-SHORE DRILLING PLATFORMS are NEITHER
a PUBLIC ACCOMMODATION nor a COMMERCIAL FACILITY
therefore they do NOT need to be access. to disabled

individuals and they do NOT fall under the jurisdication
of the DEPT. OF JUSTICE.....or TITLE III of the ADA.
HOWEVER.....
They may be required to be modified to be accessible
IF an individual with disabilities is EMPLOYED
and must access the platform as a part of the
job/position's ESSENTIAL FUNCTION.
The Department of Justice strongly suggests
contacting the E.E.O.C. @ 1-800-669-4900 for
their interpretation.

COPIES TO: Alanman, Weatherly, Ambler

SIGNED

01-00968

McCrory-Ambler Architecture
117 S.W. Fifth Street
P.O. Box 2446
Bartlesville, Oklahoma 74005
Tel: 918-336-3512 Fax: 918-337-0379 REPORT OF CONTACT

PROJECT ADA '90 FORM (PP Co) JOB NO.

SUBJECT OFF-SHORE DRILLING PLATFORMS and Factory Machines/Equipment. DATE April 17, 1992

PERSON CONTACTED JULIE ZIRLIN CONTACTED BY C. Herman

COMPANY Arch: and Transp. Barriers Compliance Bd. (ATBCB)
Washington, DC COMPANY

DISCUSSION: PER Ms. Zirlin and Mr. Jim Raggio, General Counsel
of the ATBCB -
1) Off-Shore Drilling Platform Accessibility/Usability
required? Contact Dept. of Justice; this question

is concerned with the APPLICATION of the ADA.....not under ATBCB jurisdiction.

2) Accessibility of Factory Machinery/Equipment? Equipment is not covered by ADA Accessibility Guidelines. Per ADAAG 4.1.1(3) "Areas Used only by Employees as Work Areas" - shall be designed and constructed so that individuals with disabilities can approach - enter and exit the areas. Once a disabled individual becomes an EMPLOYEE, then REASONABLE ACCOMMODATIONS must be made per Title I "Employment" of the ADA as required by the Equal Employment Opportunities Commission. (E.E.O.C) for that individual to perform the ESSENTIAL FUNCTIONS of the job/position.

COPIES TO: Weatherly, Ambler, Arley Lanman

SIGNED

01-00969

McCrory-Ambler Architecture
117 S.W. Fifth Street
P.O. Box 2446
Bartlesville, Oklahoma 74005
Tel: 918-336-3512 Fax: 918-337-0379 REPORT OF CONTACT

PROJECT ADA '90 FORM JOB NO.

SUBJECT 4.8.5(2) Handrails @ Ramps DATE April 22, 1992 3:45 pm

PERSON CONTACTED CONTACTED BY

COMPANY ATBCB Answer/Quest Line COMPANY
Washington DC

1-800-872-2253

DISCUSSION

Herman: Please clarify the meaning of "continuous" in the first said sentence of 4.8.5(2)- "If handrails are not CONTINUOUS, they shall extend at least 12"....etc".

ATBCB: A continuous handrail is one without interuption i.e. the handrail follows the slope of ramp, continues the length of the landing and becomes an integral part of a contiguous handrail system along a wall or intersects with a guardrail at a floor edge, etc.

COPIES TO: Arley Lanman, Weatherly, Ambler

SIGNED

01-00970

DJ 202-PL-0015 JUN 26 1992

M. D. Lindeman
U.S. West Business Resources, Inc.
188 Inverness Drive West
Edgewood, Colorado 80112

Dear M. D. Lindeman:

I am responding to your request for clarification of the requirements of title III of the Americans with Disabilities Act of 1990 (ADA), Pub. L. 101-336, 104 Stat. 327 (July 26, 1990), 42 U.S.C.A. SS 12101 et seq., and this Department's regulation implementing title III, 56 Fed. Reg. 35544 (July 26, 1991), to be codified at 28 C.F.R. pt. 36. Specifically, you have asked how

to determine the appropriate basis on which to determine the amount of money that must be spent on alterations to provide an accessible path of travel when the "overall" cost of an alteration to a telephone switching facility includes expenses associated with renovations to electrical or mechanical systems.

The ADA authorizes the Department to provide technical assistance to individuals and entities having rights or responsibilities under the Act. This letter provides informal guidance to assist you in understanding the ADA. However, this technical assistance does not constitute a determination by the Department of Justice of your rights or responsibilities under the ADA and it is not binding on the Department of Justice.

Under the ADA, alterations to commercial facilities such as telecommunications centers must, to the maximum extent feasible, be made accessible to individuals with disabilities. An alteration is any change that affects or could affect the usability of the facility. Normal maintenance, reroofing, painting or wallpapering, asbestos removal, or changes to mechanical and electrical systems are not alterations unless they affect the usability of the building or facility.

cc: Records Chrono Magagna Blizard:ada.interpretation.uswest
arthur T. 6/25/92

01-00971

In addition, alterations that affect the usability of or access to an area of a facility that contains a primary function must include alterations to ensure that, to the maximum extent feasible, the path of travel to the altered area is accessible, unless the cost and scope of such alterations is disproportionate to the cost of the overall alteration. Alterations made to provide an accessible path of travel to the altered area will be deemed disproportionate to the overall alteration when the cost exceeds 20% of the cost of the alteration to the primary function area.

You have asked if in determining the amount of money to be spent on alterations to the path of travel, you should consider the cost of the total alteration, including the amount spent on modernizing electrical and mechanical equipment, or only the cost of physical alterations to the area housing the equipment. Because changes in electrical systems are not included in the regulation's definition of "alterations," you need not include the cost of changes to the electrical and mechanical equipment in calculating the total cost of an alteration in the circumstances you describe where useability is not affected.

This Department recently issued a technical assistance manual to assist individuals and entities subject to the ADA to understand the requirements of title III. I have enclosed a copy for your information. I hope that this information is helpful to you.

Sincerely,

Joan A. Magagna
Deputy Director
Office on the Americans with Disabilities Act
Civil Rights Division

Enclosure

01-00972

U S WEST Business Resources, Inc.
188 Inverness Drive West
Englewood, Colorado 80112

USWEST

January 13, 1992

Ms. Janet Blizzard, General Counsel
The Office of the Americans with Disabilities Act
Civil Rights Division
U.S. Department of Justice
P. O. Box 66118
Washington DC 20035-6118

Dear Ms. Blizzard,

As an introduction, I work for U S WEST, Inc. and manage the building design and construction program for U S WEST Communications, our telecommunications subsidiary, throughout its fourteen state territory. Your name was given to me by Jay Murdoch of BOMA International. He agreed with the following interpretation, but suggested I ask you to confirm that our interpretation of ADA and its application in telephone switching environments is correct.

We have an aggressive network modernization plan which involves replacing old central office switching machines with digital switches, upgrading facilities from copper to fiber optic technology and other network related improvements. A major effort is to upgrade our rural offices with new technology. A typical central office in the rural program has less than 2000 access lines and a typical renovation might cost $100,000. Of this amount, $90,000 would be spent to upgrade HVAC, electrical systems, central office grounding systems, asbestos abatement, and standby power plants, and $10,000 might be spent building a drywall compartment for the new switch. The equipment is compartmentalized for two reasons. One is to provide a very clean, highly filtered environment for the digital equipment, and the second is to provide additional fire protection since these buildings do not have sprinkler systems.

My question is whether the 20% path of travel requirement would be applied to the total project cost of $100,000 or just to the non-electrical mechanical part of the job; the $10,000 amount.

01-00973

As I read the regulations, I interpret the 20% requirement to apply to the $10,000 amount by using the following logic: In section 36.402 (b) (1) it states "Normal maintenance, reroofing, painting or wallpapering, asbestos removal, or changes to mechanical and electrical systems are not alterations unless they affect the usability of the building or facility." (My underlining.) The facility was and continues to be a telecommunications switching facility and its use was not changed.

Section 36.403 (f) (1) reads, "Alterations made to provide an accessible path of travel to the altered area will be deemed disproportionate to the overall alteration when the cost exceeds 20% of the cost of the alteration to the primary function area." It would seem that the 20% clearly would apply only to that part of the job which fits the definition in 36.402 of an alteration.

Clearly, the drywall compartment and any other architectural changes would need to be built in accordance with the new construction requirements of the law.

These buildings are frequently not work reporting locations for any employees. It would seem clear that the intent of the Act is to improve accessibility for people with disabilities to public accommodations and improve accessibility for employees. It is our intention, if this interpretation is correct, to focus our efforts toward improving accessibility in locations which meet the definition of a public accommodation and the commercial facilities in which our 58,000 employees work and to prioritize our investments to impact the work environment positively for the highest number of employees with disabilities.

Thank you for your help in clarifying this matter.

Sincerely,

cc. Barb Japha
Ted Williams
Jerry Weldon
Sherry Jackson

01-00974

T. 6/24/92
SBO:SK:KGF
DJ # 192-180-04495

JUN 28 1992

The Honorable Richard G. Lugar
United States Senate
306 Hart Senate Office Building
Washington, D.C. 20510-1401

ATTN: Ms. Ellen Whitt

Dear Senator Lugar:

This responds to your letter requesting information about the Americans with Disabilities Act (ADA) in order to respond to the Crown Point City Council's inquiry about the applicability of certain ADA provisions to Council activity.

The ADA authorizes the Department of Justice to provide technical assistance to entities that are subject to the Act. This letter provides informal guidance to assist you in responding to the City Council. However, this technical assistance does not constitute a determination by the Department of Justice of their rights or responsibilities under the ADA and does not constitute a binding determination by the Department of Justice.

Title II of the ADA, which covers State and local government, establishes strict accessibility requirements for new construction and alterations. See S 35.151 of the enclosed title II regulation. However, in existing buildings, State and local governments are not required to make physical changes to facilities if the programs offered in the facilities can be made accessible by other means. 28 C.F.R. 36.150. Those other means may include relocating a meeting to another location or providing services in alternate accessible sites. 28 C.F.R. 35.150(b). In many cases, however, providing access to facilities through structural changes may be the most efficient method of providing program accessibility. (See enclosed Department of Justice Title II Technical Assistance Manual, at SII-5.2000.) Public entities must make their programs accessible in all cases, except where doing so would result in a fundamental alteration in the nature of the program or in undue financial and

administrative burdens. 28 C.F.R. 35.150(a).

:udd:kaltenborn:lugar.6.19
cc: CRS, Records, FOIA, Friedlander 3, Kaltenborn, McDowney, Breen

01-00975

The City Council has inquired about whether a "chair lift" may be installed to provide program access, and whether, if so, meetings may be moved while it is being installed. Changes made to comply with the program accessibility requirement must be done in compliance with either the Uniform Federal Accessibility Standards or the ADA Accessibility Guidelines. 28 C.F.R. S 35.150(b)(1). Both of those standards permit the use of a platform lift (or wheelchair lift), if it complies with the specified requirements. See S 4.1.2(5) of the Uniform Federal Accessibility Standards; S 4.1.6(3)(g) of the ADA Accessibility Guidelines. Relocating a meeting to an accessible location would be acceptable as an interim measure while structural changes, such as installing a platform lift, are being made. Such changes may be made over a three year period from January 26, 1992, pursuant to a transition plan that sets out the necessary steps to complete the changes. 28 C.F.R. S 35.150(d).

To respond to another question raised in your inquiry, a public entity must ensure that its communications with individuals with disabilities are as effective as communications with others. The Technical Assistance Manual offers the following illustration: "A deaf individual does not receive an equal opportunity to benefit from attending a city council meeting if he or she does not have access to what is said." Manual at 9. The Manual contains a discussion at pages 35-37 of the requirements for provision of auxiliary aids to ensure effective communications with individuals who have speech, vision, or hearing impairments.

I hope this information is useful to you in responding to the Crown Point City Council.

Sincerely,

John R. Dunne
Assistant Attorney General

Civil Rights Division

Enclosures (2)

01-00976

REPUBLICAN STEVEN J. BAZIN
COUNCILMAN AT LARGE

241 EAST GREENWOOD - CROWN POINT, INDIANA 46307 - (219) 663-4130

February 26, 1992

Senator Richard G. Lugar
U. S. Senate-Indiana
306 Hart Building,
Washington, D.C. 20510

Dear Senator Lugar:

We represent the City of Crown Point, Indiana, both as a City Councilman at Large and as the Republican City Chairman. Since the compliance date of January 26, 1992 of the American Disabilities Act, there has been great confusion in our city. Too many legal opinions and no substantive answers. Therefore, respectfully, we call upon you and your resources to please expedite all avenues to advise us about the legalities of ADA.

We, above all, want to be in harmony with ADA and, in turn, we want to best serve the needs of all our citizens, including our disabled ones. Yet, we pose a question of "reasonable accomodation".

First, we would like to share some relevant information: The City Council Chambers are on the second floor of our two story City Hall. The second story is presently accessible only by stairs. Therefore would the only way for the council chambers to be in compliance dictate a structural change be made? It is our understanding that when a structural change is required to make a facility

accessible that a "grace period" is allowed:--a six month period (from January 26, 1992) to develop a transition plan and a three year period (from January 26, 1992) in which to make the necessary changes.

Therefore, must the council chambers be abandoned now and remain so until the building is retrofitted. Or would "reasonable accomodation" (504, 35, 150) apply until, at least, a chair lift is installed. During that brief and temporary period, could we use the second story council chambers to hold regular committee and council meetings without the risk of the government entity facing a grievance and/or frivolous lawsuit.

01-00977

REPUBLICAN STEVEN J. BAZIN
COUNCILMAN AT LARGE

241 EAST GREENWOOD * CROWN POINT, INDIANA 46307 * (219) 663-4130

The old policy was to move the council meetings to an accessible building when given 48 hours prior notice. Could we continue to do this while a plan is being developed and necessary changes are being made? We have heard two completely opposing opinions on this from legal "experts". Is there a definitive answer?

The current administration has now temporarily moved Council meetings to a School Corporation building. This building has not accomodated our large overflowing crowds. Citizens must stand in the hallway away from the meeting room. Violations of the fire code are apparent with the large crowds. Parking for the disabled citizen is not available and/or reserved. To us, these accomodations are not acceptable to ALL of our citizens.

We have a question pertaining to the wording of elevator exemption. Can this two story City Hall be retrofitted with a chair lift to bring it up to compliance? Or do two story municipal buildings need to have an elevator.

Furthermore, does compliance and discrimination against the disabled impose more urgency on the environment/work place and, in turn, swifter adherence to the 504.35.150 section of the Act than a Council meeting held once a month in a two story building? To ask the question another way, are we, the City Council of Crown Point, unprotected under 504.35.150 from a $50,000.00 law suit even if we've already filed a letter of intent with the proper authorities to be in compliance within the time parameter defined under 9.6 Existing Facilities-504.35.150 and Section 35.151 New Construction and Alterations (c) Time Period for Compliance.

01-00978

REPUBLICAN STEVEN J. BAZIN
COUNCILMAN AT LARGE

241 EAST GREENWOOD * CROWN POINT, INDIANA 46307 * (219) 663-4130

We think "reasonable accomodations" should apply to our case, especially since no alternative meeting place has met the needs of space, parking and fire code.

Also, much of the discussion in Crown Point has been limited to people who are in wheel chairs or have a handicap that in some way restricts ones mobility. Are we being remiss in not also dealing with the hearing and seeing impaired? Should the City be looking to use signers at Council meetings? Should posted agendas, as required by State Statute, also be printed in Braille?

Anything that your office could do to help us determine proper legal couse and compliance with the Am erican Disabilities Act would be greatly appreciated.

Regards,

Steven J. Bazin, Michael Conquest,
Councilman at Large, Chairman,
Crown Point, Indiana Crown Point Republican
Central Committee

01-00979

JUN 29 1992

DJ 202-PL-186

Leonard Perez, M.D.
503 W. Columbus, Suite B
Bakersfield, California 93301

Dear Dr. Perez:

This responds to your request for information about the Americans with Disabilities Act (ADA). The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist you in understanding the ADA accessibility standards. However, it does not constitute a legal interpretation and it is not binding on the Department.

You inquire about your obligations to provide a sign language interpreter when you are treating deaf patients.

The ADA requires health care providers to provide auxiliary aids and services where necessary to communicate effectively with their patients with speech, hearing and vision impairments. Sign language interpreters and communication via pen and paper are both types of auxiliary aids and services. A health care provider can choose among various alternatives as long as the result is effective communication. Whether a particular aid or service will provide effective communication in a particular circumstance depends on the nature and complexity of the communication involved. While a routine appointment for a simple and familiar treatment procedure might not require the services of an interpreter, a lengthier appointment to discuss diagnosis and treatment options might well necessitate such services.

A health care provider cannot charge the patient with a disability for the cost of providing a particular auxiliary aid or service. However, such costs can be treated as any other overhead costs and passed along to all patients.

A health care provider is not obligated to provide a particular auxiliary aid or service if doing so will cause an

undue financial burden. In such a case, however, alternative

cc: Records Chrono Magagna.pl.186 arthur T. 6/26/92

01-00980

auxiliary aids or services that will not cause such a burden must be provided. The factors to be considered in determining whether there is an undue burden include the cost and nature of the service, the size and resources of the covered entity and the number of employees.

I have enclosed a copy of the Department's recently published Technical Assistance Manual which may further assist you in understanding your obligations under the ADA. I hope this information will be useful to you.

Sincerely,

Joan A. Magagna
Deputy Director
Office on the Americans with Disabilities Act
Civil Rights Division

Enclosure

01-00981

Leonard Perez, M.D.
ILLEGIBLE

May 15, 1992

U.S. Department of Justice
Americans with Disabilities
P.O. Box 66118
Washington DC 20035-6118

Re: LAW REQUIRING THE PROVIDING OF A SIGNING INTERPRETER FOR THE DEAF

I have recently become aware of the new law that states one must provide a signing interpreter for a deaf person if one is to provide services to them. I understand that this is at the expense of the one providing the services. Some of the documents that I have read, states that one is not obligated to provide this service at ones expense if it causes a financial burden on the business.

I am in a part-time private medical practice in my community in the specialty of Obstetrics and Gynecology. I have several deaf patients in my practice, all of which I have communicated with on paper quite well. The interpreting services charge $40.00 per hour, with a minimum of one hour of service. Many of my patients are recipients of Medi-Cal (Medicaid). Medi-Cal pays me $14.78 for a return visit whether I spend 10 minutes or one hour with the patient. As you can see, in addition to having to pay for my office and office staff, I must pay $25.22 (40.00-14.78) in order to see this patient. This would put a financial burden on my practice by creating a negative cash flow.

IN THIS SITUATION, WOULD I STILL BE LEGALLY OBLIGATED TO PROVIDE AN INTERPRETER AT MY EXPENSE FOR THESE PATIENTS?

Sincerely,

Leonard Perez, MD

01-00982

JUN 30 1992

DJ 202-PL-88

Jack L. Hockel, D.D.S.
2651 Oak Grove Road
Walnut Creek, California 94598

Dear Dr. Hockel:

This is in response to your letter requesting information about the Americans with Disabilities Act (ADA).

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist you in understanding the ADA's requirements. However, it does not constitute a legal interpretation and it is not binding on the Department.

You inquire about your obligations under the ADA in connection with your operation of a dental practice in an old home that has five steps to the entrance. You state that installing a ramp would affect the beauty and historicity and that installing a lift would be too expensive.

The ADA requires places of public accommodations, such as your dental office, to remove access barriers, such as the entrance steps, where such removal is "readily achievable." The ADA defines readily achievable to mean easily accomplishable without much difficulty or expense. A number of factors are considered in determining whether barrier removal is readily achievable including the nature and cost of the action required and the size and resources of the business involved.

Barrier removal is not considered readily achievable if it would threaten or destroy the historic significance of a building or facility that is eligible for listing in the National Register of Historic Places or is designated as historic under State or local law. In many circumstances, providing access to a historic building will not threaten or destroy its historic significance.

cc: Records Chrono Wodatch Magagna.pl.88 FOIA Library
arthur T. 6/29/92

If removal of a particular barrier is not readily achievable, health care providers must take alternative measures to make their services available to persons with disabilities as long as these alternative steps are themselves readily achievable. Such alternative measures might include providing services in a different location or making home visits.

The obligation to remove barriers is a continuing one. So, for example, if a particular barrier cannot be removed at this time because of financial considerations, but the financial picture subsequently improves, the barrier must then be removed when it becomes readily achievable to do so.

I have enclosed a copy of the Department's recently published Title III Technical Assistance Manual which may further assist you in understanding your obligations under the ADA. I hope this information is useful to you.

Sincerely,

Joan A. Magagna
Deputy Director
Office on the Americans with Disabilities Act

Enclosure

01-00984

JACK L HOCKEL D D S
DAVID N. ARNOLD D.D.S.
BRIAN J. HOCKEL D.D.S.

February 21, 1992

Civil Rights Division
Office on the Americans with Disabilities Act
U.S. Department of Justice
P.O. Box 66118
Washington, D.C. 20035-6118

To Whom It May Concern:

I am interested in clarifying my responsibilities under the Americans with Disabilities Act. I own a dental office which is located in an historic old home. I have had a dental practice here since 1981. There is no ramp or elevator to help people in wheelchairs up the five steps to our front entrance porch (photo enclosed). Am I responsible to construct a ramp (which would affect the beauty and historicity) or install a lift (which would be prohibitively expensive at about $11,000)?

Thank you for an early reply.

Sincerely,

Jack L. Hockel, D.D.S.

MAY 16 1992

2651 OAK GROVE ROAD * WALNUT CREEK, CALIFORNIA 94598 * (415) 934-3434

01-00985

DJ 202-16-0 JUL 2 1992

The Honorable John Breaux
United States Senate
516 Senate Hart Building
Washington, D.C. 20510

Dear Senator Breaux:

This is in response to your inquiry on behalf of your constituent, Valerie S. Reed. Ms. Reed writes requesting information about the Americans with Disabilities Act, 42 U.S.C. S 12181 et seq. She is specifically seeking advice as to the application of the Act to a convenience store that she expects to open and occupy by Labor Day, 1992.

Although we cannot provide legal interpretations or legal advice to individuals, this letter provides informal guidance to assist your constituent in understanding the Americans with Disabilities Act accessibility standards. The Act authorizes the Department of Justice to provide technical assistance to individuals and entities that are subject to the Act. However, this technical assistance does not constitute a determination by the Department of Ms. Reed's rights or responsibilities under the Americans with Disabilities Act and it is not binding on the Department.

The regulations issued by the Department under the Americans with Disabilities Act (enclosed) contain different implementation dates for new construction and alterations. New construction that is first occupied after January 26, 1993, must be readily accessible to persons with disabilities. A new facility will not be subject to the new construction standards if the last application for a building permit is certified to be complete before January 27, 1992, and the first certificate of occupancy for the facility is issued before January 27, 1993. 28 C.F.R. S 36.401 (a)(2). If, however, an alteration to a commercial facility or place of public accommodation is made after January 26, 1992, it must be carried out in such a way that the altered portions are readily accessible to individuals with disabilities. Id. at S 36.402(a).

cc: Records Chrono Wodatch Millerc.Breaux.Cong. McDowney

I have enclosed copies of the Department's regulations under title III as well as our Technical Assistance Manuals, regulation highlights, and fact sheets.

I hope this will assist you in responding to your constituent.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

Enclosures (7)

01-00987

REED'S I-10 SERVICES, INC.
P.O. BOX 1447
JENNINGS, LA 70546

May 12, 1992

John B. Breaux
U.S. Senator
516 Hart Bldg.
Washington, DC 20510

Dear Senator Breaux:

This letter is a request for information! We are negotiating to construct a new Fuel and Convenience Store Facility in Jennings. For the previous twenty-four years, we were Chevron affiliated owner and operator of a Full-Service Station. Due to our unsuccessful bid for an additional long term lease with the Jennings Airport Authority, we are now attempting to build our own facility. As we hope to break ground in four to six weeks, I need some important information as soon as possible from various Governmental Agencies.

We have applied for a "Free Enterprise Zone", and are awaiting permits to begin construction. We expect to celebrate our Grand Opening near Labor Day. It is very important that we make certain our new Conoco Facility meets or exceeds all of the Federal, State, and Local guidelines concerning health, safety, environmental concerns, and especially handicap accessibility for both our employees and customers.

I would appreciate any and all information and assistance you can give us regarding the various Governmental Agencies regulating these aspects of concern, as well as these very important guidelines.

Cordially yours,

Valerie S. Reed
Reed's I-10 Services, Inc.

VSR/aw

01-00988

DJ 202-PL-00114

JUL 02 1992

Ms. Olivia Cromwell Curtis
Property Manager
Rockhurst Corporation
500 Helendale Road
Rochester, New York 14609-3109

Dear Ms. Curtis:

This is in response to your letter requesting information about the Americans with Disabilities Act (ADA).

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist you in understanding the ADA's requirements. However, it does not constitute a legal interpretation and it is not binding on the Department.

You inquire whether a residential condominium building must comply with the ADA requirements for elevators and interior and exterior ramps.

The ADA does not apply to strictly residential facilities. However, the federal Fair Housing Act, as amended, also prohibits discrimination on the basis of disability. That Act does not require the condominium to provide ramps or elevators in existing buildings. However, it does prohibit the refusal to rent or sell to a person with a disability and would require the condominium to permit the person with a disability to make structural modifications at his or her own expense. There are more extensive requirements for providing accessibility in newly constructed multi-family housing, including condominiums.

There may also be state or local laws that have more stringent requirements.

I hope this information is useful to you.

Sincerely,

Joan A. Magagna
Deputy Director
Office on the Americans with Disabilities Act

cc: Records Chrono Wodatch Magagna.pl.114 FOIA Library
arthur T. 7/1/92

01-00989

Scarborough House Condominium

Monday 16 March 1992

U.S. Department of Justice
Office of the American Disabilities Act
ADA Information Line
Washington, D.C. 20530

Dear Sirs:

I am writing on behalf of the Scarborough House Condominium Board of Managers. Scarborough House Condominium is a fifty-seven unit, six-floor building located at 1000 East Avenue in Rochester, NY. Please respond and inform as to the following questions:

1. Does a condominium have to comply with A.D.A. standards with regard to elevator requirements?

2. Does a condominium have to comply with A.D.A. standards with regard to interior and exterior ramp requirements?

Thank you for your attention to these questions. Please feel free to call me at (716) 288-9540 or respond in writing to the address below.

Sincerely,

Olivia Cromwell Curtis
Property Manager
ROCKHURST CORPORATION

Copy: E. Leonard Miller, President
SCARBOROUGH HOUSE CONDOMINIUM

File: Elevator
Repair/Replacement

F:\WP\SHC\ADAQUEST ROCKHURST

CORPORATION
500 Helendale Road Rochester, New York 14609-3109
Telephone 716-288-9540 716-266-4340

01-00990

JUL 2 1992

The Honorable Connie Mack
United States Senator
1342 Colonial Boulevard
Suite 27
Fort Myers, Florida 33907

Dear Senator Mack:

This is in response to your inquiry on behalf of your constituent, Ms. (b)(6), relating to whether service stations must provide refueling service for individuals with disabilities at the "self-service" rate.

The Americans with Disabilities Act of 1990 (ADA) authorizes the Department to provide technical assistance to individuals and entities that have rights or responsibilities under the Act. This letter provides informal guidance to assist Ms. (b)(6) in understanding the ADA. However, this technical assistance does not constitute a determination by the Department of Justice of her rights under the ADA, and it is not binding on the Department of Justice.

The Americans with Disabilities Act does not contain a specific requirement that individuals displaying an emblem indicating that they have a disability must receive refueling service at self-service prices. Our regulations implementing title III of the ADA, however, require public accommodations to make reasonable modifications in their policies, practices, and procedures in order to serve individuals with disabilities, unless they fundamentally alter the nature of the services provided. 28 C.F.R. S 36.302 (title III regulation). The ADA prohibits any cost involved in making a reasonable modification

from being imposed as a surcharge on the individual with a disability who requires the assistance. 28 C.F.R. S 36.301(c).

cc: Records; Chrono; Wodatch; Breen; Willis; McDowney.
:udd:jonessandra:cong.mack

01-00991

The preamble to our regulation provides in an analogous context that assistance is not required where only one attendant is on duty who must remain at the cash register for security reasons. 56 Fed. Reg. 35,544; 35,570 (preamble discussion of 28 C.F.R. S 36.305). The provisions cited in this paragraph may be found in the enclosed copy of our title III regulation.

Under title III of the ADA, which applies to places of public accommodation and commercial facilities, an individual can institute a private civil action to obtain a court order to prevent or stop violations of the ADA. The Department of Justice may commence a civil action in cases of general public importance or where a pattern or practice of discrimination is found. In this regard, individuals may file complaints with the Department of Justice by writing a letter to the Office on the Americans with Disabilities Act, Civil Rights Division, U.S. Department of Justice, P.O. Box 66738, Washington, D.C. 20035-9998.

For further information, you may wish to refer to our Title III Technical Assistance Manual, which is enclosed. I hope that this information is helpful to you in responding to Ms (b)(6) .

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

Enclosures (2)

01-00992

May 4, 1992

Senator Connie Mack
1342 Colonial Blvd., Ste. 27
Ft. Myers, FL 33907

Dear Sir:

I understand there is a law that a handicapped person who drives into a "Self-service" area of a service station and displays the "handicapped" emblem must be given service by an attendant at the "Self-service" rate. I have found a few stations where this is the case, but I have found more where they claim no knowledge of any such law and others where the clerk says something like, "Oh, we don't do that here."

In my case I must use oxygen at all times. Not only do I have to try to handle the pumping of the gas with a small tank of oxygen on my shoulder, I also should not be inhaling the gasoline fumes, which are quite concentrated when a person is bent over the opening to the gas tank. I'm certain I am not the only handicapped person who has run into problems in this situation.

Is there some way this law could be better publicized both to the general public and to service station owners and attendants? What recourse does the handicapped person have when service is refused? I would appreciate hearing from you in regard to these questions.

Thank you very much for your help.

Sincerely,

(Ms.) (b)(6)
(b)(6)
01-00993

JUL 2 1992

T. 6/26/92
SBO:LMS:KGF
DJ 192-180-07642

The Honorable Wayne Owens
U.S. House of Representatives
1728 Longworth House Office Building
Washington, D.C. 20515-4402

Dear Congressman Owens:

This letter responds to your inquiry on behalf of your constituent, Mayor Elden Sandino, Town of Stockton, Utah, who expresses concern about the town's financial ability to make the restrooms in its town building accessible to individuals with disabilities. Mayor Sandino also notes the need for Federal and State funding for the removal of barriers.

The Americans With Disabilities Act (ADA) authorizes the Department of Justice to provide technical assistance to entities that are subject to the Act. This letter provides informal guidance to assist you in responding to your constituent. However, this technical assistance does not constitute a determination by the Department of Justice of your constituent's rights or responsibilities under the ADA and does not constitute a binding determination by the Department of Justice.

Title II of the ADA and the Department of Justice's title II regulation require that a local government provide access to its programs, services, and activities to individuals with disabilities. To the extent that the town provides its programs, services, and activities to the public in its town building, they must be readily accessible to and usable by individuals with disabilities. The concept of program accessibility is discussed on pages 19-22 of the enclosed title II technical assistance manual.

Normally, where toilet facilities are furnished to individuals participating in the programs, services, and activities offered in the town building, those facilities also must be accessible to individuals with disabilities. See title II technical assistance manual at page 19, Illustration 1.

Stockton, however, is not required to make alterations to its facilities, if the town can demonstrate that the expense of

cc: Records, CRS, Friedlander, Stewart, McDowney, Foster
:udd:Stewart:owens1.ltr

01-00994

making its public toilet facilities accessible would result in undue financial and administrative burdens. See enclosed copy of the Department of Justice's title II regulation at 28 C.F.R. S 35.150(a)(3).

If the alterations to the facilities would result in such burdens, the public entity must take other actions that would not result in such hardships but would help to provide access. 28 C.F.R. S 35.150(a)(3). Thus, Mayor Sandino's suggestion for using accessible portable toilet facilities may be an option, should the town determine that undue burdens would result from making its regular toilet facilities accessible. The portable facilities should be available during the periods of time when the regular facilities are available. 28 C.F.R. S 35.130(b)(ii).

With respect to Federal funding for barrier removal, the Department of Housing and Urban Development (HUD) provides community development block grants designed to assist low and moderate income households and communities. These grants may be used to remove architectural barriers that restrict accessibility to publicly owned and privately owned buildings, facilities, and improvements. For information on applying for a community development block grant, Mayor Sandino should contact HUD's Office of Block Grant Assistance at (202) 708-3587.

I hope this information is helpful to you in responding to your constituent's inquiry.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

Enclosures (2)

01-00995

United States
Architectural and Transportation Barriers Compliance Board

1331 F Street, NW * Suite 1000 * Washington, DC 20004-1111 * 202-272-5434
(V/TDD
* FAX 202-272-5447

APR 15 1992

Congressman Wayne Owens
1728 Longworth House Office Building
Washington, D.C. 20515-4402

Attn: Rob Morse

Dear Congressman Owens:

Thank you for your correspondence bringing to our attention the concerns of Mr. Elden Sandino, Mayor of the Town of Stockton, regarding the accessibility
requirements of the Americans with Disabilities Act (ADA).

The Stockton City Hall would be covered by the regulations promulgated by the Department of Justice under title II of the ADA which prohibits discrimination on the basis of disability in State and local government services. Section 35.150 of the regulations outlines the requirements for program accessibility in existing facilities. This section explains the general
provisions of program accessibility for existing facilities; suggests methods for achieving program accessibility; and outlines the time period for compliance. I have enclosed a copy of the regulations.

Because this matter falls within the jurisdiction of the Department of Justice, I am also taking the liberty of bringing this matter to their attention.

Thank you for contacting the Access Board. Please let me know if I can be of further assistance.

Sincerely,

Lawrence W. Roffee
Executive Director

Enc. (2)

The Access Board
01-00996

Town of Stockton
Stockton, Utah 84071

October 25, 1991

Congressman Wayne Owens
125 South State Street
Room 2311
Salt Lake City, Utah 84401

Re: ADA Regulations

Dear Congressman Owens:

We, recently received a copy of the ADA Regulations from the League of Cities and Towns and would like to address some of our concerns.

We support these regulations in theory and are willing to do what we can to abide by them. Unfortunately, like most small towns in the State of Utah, we are very limited in our funds and feel if these regulations are to be imposed upon us, some kind of Federal or State funding or grant also needs to be addressed.

Our building does have a ramp access in the rear, however our restrooms are down stairs. Our building used to be an elementary school and the stairs and stalls in the restrooms are rather small. Making these facilities handicap

accessible would be a major undertaking and very costly. The Town Board has discussed the matter and has decided it would be feasible to rent a handicapped accessible portable toilet for times when many people would be using the building (such as elections) but don't know if this would be an acceptable solution.

We would appreciate these concerns being addressed for small towns in Utah.

Respectively,

Elden Sandino, Mayor

elm

01-00997

DJ 192-180-08479

JUL 6 1992

The Honorable Leon E. Panetta
Member, United States House
of Representatives
380 Alvarado Street
Monterey, California 93940

Dear Congressman Panetta:

This is in response to your inquiry on behalf of your constituent, Michael Sarka, who inquired about the applicability of the Americans with Disabilities Act (ADA) to a rental agency that handles rentals for private homes used as vacation rental homes. He further inquires whether the individual homes are required to meet the accessibility guidelines of the ADA.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist your constituent in understanding the ADA's requirements. However, it does not constitute a legal interpretation and it is not binding on the Department.

Title III of the ADA sets forth twelve categories of entities that are places of public accommodation having

obligations under the Act. Two of these categories are sales or rental establishments and service establishments. The type of rental agency described by Mr. Sarka probably would fall within one or both of these categories. Accordingly, the rental agency itself would be subject to the ADA requirements to have nondiscriminatory policies and procedures, to provide effective communication to persons with disabilities, and to remove architectural barriers in the rental office facilities where it is readily achievable to do so. These obligations are described in more detail in the enclosed Technical Assistance Manual recently published by this Department. See Part III-3.000 (pp. 13-20) and Part III-4.000 (pp. 21-39).

cc: Records Chrono Wodatch Magagna.panetta.cong FOIA Library arthur T. 7/1/92

01-00998

We cannot determine whether the vacation rental homes Mr. Sarka writes about are covered by Title III. Another one of the twelve Title III categories is "an inn, hotel, motel, or other place of lodging, except for an establishment located within a building that contains not more than five rooms for rent or hire and that is actually occupied by the proprietor of such establishment as the residence of such proprietor." Without more specific information about the individual properties and how they are used, it is not possible to determine whether individually owned vacation rental homes would fall within this category. The enclosed Federal Register publication at pp. 35551-35552 and 35559-35560 has a further discussion of these issues.

I hope that this information will be helpful to you in responding to your constituent.

Sincerely,

John R. Dunne
Assistant Attorney General

Civil Rights Division

Enclosures (2)

01-00999

CONSTITUENT REQUEST

DATE: 4/23/92

STAFF MEMBER: MKB

CONSTITUENT NAME: Mr. Michael Sarka

ADDRESS: P.O. Box 1202

Santa Cruz, CA 95061

PHONE: 458-3573

Position/A Information/B Bill Status/C Document/D

VIEWPOINT OR REQUEST

Issue/Subject: Americans with Disabilities Act requirements

Mr. Sarka said that he is the manager of a vacation rental agency. He said that they have been receiving conflicting information on what aspects of the Americans with Disabilities Act apply to his industry.

He understands that his offices must comply with certain aspects of the above legislation, however, they are not being given precise information on the law as it relates to the rentals that they manage.

He needs to know what aspects of the above legislation pertain to the rentals that are managed by a rental agency. He said that such agencies manage either homes or vacation homes for individuals. Such an agency takes care of advertising, maintaining, renting and collecting for such rentals for people.

In other words, are the private homes used as vacation rental homes required to meet the handicapped accessibility regulations of the Americans With Disabilities Act.

01-01000

The Honorable Guy Vander Jagt
U.S. House of Representatives
2409 Rayburn House Office Building
Washington, D.C. 20515-2209

Dear Congressman Vander Jagt:

Your letter to the U.S. Department of Housing and Urban Development on behalf of your constituent, James P. Durfee, was referred to this Department for response.

Mr. Durfee requested information on the existence of grants and low-interest loans for use in making Sugar Ridge Church of the Brethren accessible to individuals with disabilities. Religious entities are exempt from the provisions of the Americans with Disabilities Act. 42 U.S.C. S 12187. This

exemption applies to religious organizations or entities controlled by religious organizations and includes places of worship. It is, therefore, unlikely that Mr. Durfee's church would be required to undergo barrier removal in order to comply with the ADA.

Officials of the Department of Housing and Urban Development have informed us that they do not have grants which they issue directly to churches for the purpose of removing barriers to accessibility. It may, however, be possible to obtain funding from a state or local government which receives community development block grants.

Mr. Durfee may be interested in "That All May Worship", a handbook published by the National Organization on Disability. It provides information on accommodating persons with disabilities in religious settings. Copies of the handbook may be obtained from the Religious and Disability Program, National Organization on Disability, 910 16th Street, N.W., Suite 600, Washington, D.C. 20006. They may be reached by telephone at (202) 293-5960 or (800) 248-ABLE.

cc: Records: Chrono: Wodatch: Russo: McDowney:
Cong.Vanderjagt

01-01001

I hope this information is of assistance to you in responding to your constituent's request.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

01-01002

James P. Durfee
411 S. Main Street
Scottville, MI 49454

March 25, 1992

Representative Guy VanderJagt
2409 Rayburn Building
Washington, D.C. 20510

Dear Representative VanderJagt:

The Sugar Ridge Church of the Brethren is a small rural area church in Mason County, MI. We are in the process of trying to make our church barrier free but need some guidance and assistance.

Please send me any information or direct me to the proper resources on low interest loans or grants that may be available to help complete this proposed project.

A response within two weeks would be appreciated.

Sincerely,

JAMES P. DURFEE
Church Board Chairperson

01-01003

T. 6-30-92

DJ 202-PL-161

JUL 8 1992

DIRECTOR
WODATCH Mr. John Baker
Customer Service Manager
DATE J. L. Industries
4450 West 78th St. Circle
Bloomington, Minnesota 55435
DEPUTY Dear Mr. Baker:
LIB

This letter responds to your correspondence regarding the
DATE application of the Americans with Disabilities Act Accessibility Guidelines to semi-recessed and surface-mounted fire extinguishers with respect to compliance with S4.4 Protruding Objects.

SPECIAL The ADA authorizes the Department of Justice to provide
COUNSEL technical assistance to individuals and entities with rights or
BREEN obligations under the Act. This letter provides informal guidance to assist you in understanding the ADA accessibility
DATE standards. However, this technical assistance does not constitute a legal interpretation of the statute and it is not binding on the Department.

First, you note a potential conflict between fire codes that
BLIZARD require the installation of portable fire extinguishers and the ADA requirement, which prohibits projections of more than four
DATE inches when the leading (bottom) edge of the object is between 27 inches and 80 inches above the floor. Although fire extinguishers traditionally are mounted with the top at 60 to 72 inches above the floor, if the local fire code does not specifically prohibit a lower installation, the required fire
HARLAND extinguishers can be mounted with the lower edge of the protrusion at 27 inches above the floor. When the leading edge
DATE is at or below 27 inches, the presence of the object can be detected in the normal sweep of a long cane used by many individuals who are blind, and the projection of the object can

cc: Records, Chrono, Wodatch, Harland, FOIA
udd:Harland.Baker

01-01004

be more than 4 inches. Mounting the extinguisher lower on the wall also has the incidental advantage of assuring that the highest operable part (the door handle) is within the reach range of a person who uses a wheelchair, as required by S 4.27.3.

Secondly, you ask if the protrusion of the door handle could be exempted from being considered as part of the allowable projection. The ADA standards do not specifically exempt hardware or other operating mechanisms from the requirements for protruding objects in S 4.4.1; therefore, the protrusion of the handle would have to be considered as part of the allowable total. If you choose to mount the semi-recessed cabinet with its lower edge at 27 inches, the projection of the handle is no longer a problem.

I hope this information is useful to you and will assist you in understanding and applying the requirements of the ADA.

Sincerely,

John L. Wodatch
Director
Office on the Americans with Disabilities Act

01-01005

J.L. INDDUSTRIES
4450 West 78th St. Circle
Bloomington, Minnesota 55435
Phone 612/835-6850
Fax (612) 835-2218

April 20, 1992

Ms. Barbara S. Drake
Deputy Assistant Attorney General
Civil Rights Division
U.S. Department of Justice
P.O. Box 66118
Washington, D.C. 20035-6118

SUB: Americans with Disabilities Act,
Public Law 101-336

Dear Ms. Drake:

J.L. Industries is a manufacturer of products for the construction industry. We are writing with two questions of interpretation pertaining to Section 4.4, Protruding Objects, of the ADA Accessibility Guidelines for Buildings and Facilities, as it relates to one of our product lines, fire extinguishers and fire extinguisher cabinets.

Firstly, the most commonly used fire extinguishers on the market (5 lb. and 10 lb. multi-purpose dry chemical) have cylinder diameters ranging from 4-1/4" to 6", dimensions which exceed the allowable projection of 4", per 4.4.1. To be sure, in most cases these units will be housed in metal cabinets, which are then partially recessed into the wall and usually result in a projection of less than 4". However, there are many instances in which an interior wall will not be thick enough to

accommodate a recessed cabinet, necessitating, then, the mounting of the extinguisher in a special bracket on the surface of the wall.

APR 30 1992

01-01006

This will generally project beyond the allowable amount - yet, to delete the fire extinguisher would be to violate the local or national fire code. It would therefore appear that the potential exists for a conflict between the ADA and the fire codes. Our first question concerns how such a conflict would be addressed.

Secondly, most fire extinguisher cabinets are equipped with door-operating hardware, e.g., a pull handle which, in a very small area, projects beyond the surrounding face of the cabinet. (Please note the enclosed drawings which illustrate this). Our second question is, Could such door-operating hardware be exempted from the 4" maximum projection as stipulated in Section 4.4.1? In other words, provided the cabinet itself conforms to the 4" rule, could the hardware only then project beyond the 4"?

Thank you very much for considering these matters. I look forward to your early reply.

Respectfully,

John Baker
Customer Service Manager

JB/ske

cc: Kirby Bayerle
VP Sales & Marketing

01-01007

J. L. INDUSTRIES
4450 W. 78th St. Circle
Bloomington, Minnesota 55435 (Form) SEMI-RECESSED CABINET
Phone 612/835-6850 SCALE 1:4
FAX 612/835-2218

01-01008

JUL 8 1992

202-PL-00020
T. 7/7/92

Ms. Mary E. Bruno
Littler, Mendelson, Fastif & Tichy
400 Capitol Mall
Sacramento, California 95814-4410

Dear Ms. Bruno:

This letter responds to your correspondence requesting technical assistance with respect to the provisions of the Americans with Disabilities Act, 42 U.S.C. S 12101-12213 (ADA). The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist you in understanding the ADA's requirements. However, it does not constitute a legal interpretation and it is not binding on the Department.

Specifically, your letter inquires whether a public accommodation -- a pre-school not otherwise controlled or operated by a religious entity -- that leases facilities from a religious organization is within the exemption granted to religious entities under Section 307 of the ADA, and, if not,

what are the respective obligations of the pre-school, as tenant, and the religious organization, as landlord, under the ADA.

Title III of the ADA establishes requirements for private entities that own, operate, lease (or lease to) places of public accommodation. A private entity has no Title III obligations, however, if it is a religious entity. A religious entity is a religious organization or a private entity controlled by a religious organization.

A non-religious entity that operates a place of public accommodation in space donated by a religious entity is itself exempt from title III's requirements. The nonreligious tenant entity is subject to title III only if a contract exists under which rent or other consideration is paid.

cc: Records Chrono Wodatch Magagna.pl.20 FOIA Library
arthur T. 7/7/92

01-01009

On the other hand, a private entity that rents the religious entity's facilities to operate a place of public accommodation is not exempt, unless it is also a religious entity. If it is not a religious entity, then its activities would be covered by title III. The religious entity, however, would remain exempt, even if its tenant is covered. That is, the obligations of a landlord for a place of public accommodation do not apply if the landlord is a religious entity. Compliance with the requirements of the ADA are the sole responsibility of the tenant, and this would include compliance with respect to common areas of the leased facility.

Neither a religious entity nor a tenant in donated space, however, is exempt from the employment requirements of Title I of the ADA, which go into effect on July 26, 1992, for employers with 25 or more employees. Moreover, if a religious entity receives Federal funds, as may child care facilities do, it is subject to section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. Section 794, which prohibits disability discrimination in federally assisted programs.

I have enclosed a copy of the Department's Title III Technical Assistance Manual. I hope that this information is useful to you in evaluating your rights and obligations under the ADA.

Sincerely,

Joan A. Magagna
Deputy Director
Office on the Americans with Disabilities Act

01-01010
SAN JOSE February 6, 1992 WASHINGTON, D.C.

Ms. Barbara S. Drake
Deputy Assistant Attorney General
Civil Rights Division
U. S. Department of Justice
Washington, D.C. 20530

Re: Request for an Advisory Opinion Regarding the Applicability of Public Accommodation Section of The Americans with Disabilities Act

Dear Ms. Drake:

I am writing this letter to request an opinion regarding the applicability of Title III of the Americans with Disabilities Act ("ADA") regarding public accommodations and services operated by private entities. Specifically, I am requesting an opinion regarding the interaction of Section 307 of the ADA, which states that the provisions of Title III of the ADA shall not apply to religious organizations or entities controlled by religious organizations and of public accommodations otherwise subject to Title III, who lease facilities from religious organizations.

The specific situation we are concerned with involves the operation of a pre-school by a private entity in a facility that is leased from a religious organization. The pre-school itself is not otherwise controlled or operated by the religious organization. The nature of the relationship between the religious organization and the pre-school is one of landlord and tenant. The religious organization leases classrooms located on the religious organization's premises, in buildings adjacent to the place of worship, to the pre-school.

We are concerned with the dichotomy created by the specific exemption from the provisions of Title III for religious organizations and the mandates of the ADA applicable to private entities that operate public accommodations such as day care centers/pre-schools/nurseries.

01-01011

While it is clear that Section 307 of the ADA exempts religious organizations, Section 301(7) (k) specifically states that private entities are considered public accommodations for purposes of the Act if the operation of such entities affects commerce. Section 301(7) (k) includes nurseries as a public accommodation. Section 301(7) (j) specifically includes a day care center or social service center establishment in the list of public accommodations affecting commerce. Here, it is assumed that the pre-school is, in fact, a public accommodation under either Section 301(7)(j) or (k) of the Act.

Pursuant to the comments accompanying the regulations at page S-45, it appears that there is a distinction between the place of public accommodation (in this case the religious organization's premises) and the public accommodation itself (here; the pre-school). . The comments state that "it is the public accommodation and not the place of public accommodation" that is

subject to the nondiscrimination requirements of Title III. However, the regulations state that in cases of landlord/tenant responsibilities under Section 36.201(b), both the landlord, who owns the building that houses a place of public accommodation, and the tenant, who owns or operates the place of public accommodation, are public accommodations subject to the Act's requirements. Religious entities are exempt from Title III of the ADA however, and, therefore, cannot be considered public accommodations. Thus, we question whether this situation is to be handled similarly to situations where there are places of public accommodation located in private residences. Section 36.207 of the Regulations indicates that the private residences, like the religious organizations, are not covered by the provisions of the Act. However, when a place of public accommodation is located in a private residence, the portion of the residence used exclusively in the operation of the public accommodation is covered by the Act. Thus, we ask your opinion as to whether this is an analogous situation. Our questions are as follows:

1. As the landlord of the public accommodation, does the religious organization have any responsibilities under Title III of the ADA or is it specifically exempt from coverage pursuant to Section 307 of the ADA?

2. If the religious organization is specifically exempt pursuant to Section 307 of the ADA, which we believe to be the case, are all operations on its premises, including those leased to entities that would otherwise be considered public accommodations, exempt from coverage under Title III of the ADA.

3. Is the pre-school, which may otherwise be considered a public accommodation, exempt from the responsibilities under

Title III of the ADA because it operates a place of public accommodation at a religious organization and/or leases facilities from a religious organization, which is otherwise exempt?

4. If the religious organization is otherwise exempt as appears to be the case from Section 307 of the ADA, is it the sole responsibility of the pre-school, a public accommodation, to meet the requirements of Title III of the ADA with regard to the facility operated by the pre-school and leased from the religious

organization?

5. In this situation whose responsibility is it to ensure compliance with Title III of the ADA?

6. Would the pre-school be obligated to ensure that the portion of the religious organization's premises it leases must comply with Title III of the ADA?

7. What is the responsibility and to whom does the responsibility for compliance with Title III belong for common areas used both by the religious organization and the pre-school, such as bathrooms, hallways, stairwells, lobbies, parking lots, etc.?

I would appreciate your consideration of these issues and a written advisory response at your earliest convenience.

Very truly yours,

MARY E. BRUNO

MEB:ed
1069C.477

01-01013

T. 6-30-92

DJ 202-PL-147

JUL 8 1992

DIRECTOR
WODATCH
DATE
Mr. M. Wayne Bryant
Vice President
DEPUTY Sears Authorized Driving School
LIB P.O. Box 1266

JAM Arlington, Texas 76004-1266

DATE Dear Mr. Bryant:

I am responding to your inquiry about your obligations under title III of the Americans with Disabilities Act of 1990 (ADA) and this Department's regulation implementing title III.

SPECIAL COUNSEL BREEN Specifically, you have asked if a proprietary driving school is required to provide a sign language interpreter for students attending a defensive driving course.

DATE The ADA authorizes the Department to provide technical assistance to individuals and entities that have rights and responsibilities under the Act. This letter provides informal guidance about the general obligation of private schools to provide auxiliary aids. However, this technical assistance does

BLIZARD not constitute a determination by the Department of Justice of your rights or responsibilities under the ADA and it is not

DATE binding on the Department.

In order to provide equal access to individuals with disabilities, a public accommodation, such as a private school, is required to make available appropriate auxiliary aids when it is necessary to ensure effective communication. An individual who has a hearing impairment that substantially limits his or her ability to communicate is entitled to receive auxiliary aids from a public accommodation unless the public accommodation can demonstrate that providing the auxiliary aid will fundamentally alter the nature of the service being provided or that it will result in undue burdens.

Auxiliary aids and services include a wide range of services and devices that promote effective communication. Examples of auxiliary aids and services for individuals who are deaf or hard of hearing include interpreters, notetakers, written materials, assistive listening systems, telephones compatible with hearing

cc: Records, Chrono, Wodatch, Blizard (2), Library, FOIA
udd:ada.interpretation.Bryant
01-01014

aids, telecommunications devices for deaf persons (TDD's), videotext displays, open or closed-captioned video presentations, and exchange of written notes.

The type of auxiliary aid or service necessary to ensure effective communication will vary with the length and complexity

of the communication involved. Brief exchanges of information would not ordinarily require the use of an interpreter; but presentations of complex issues, such as those involved in a classroom presentation, may require the use of an interpreter or the use of captioned video presentations.

To determine what type of auxiliary aid should be provided, you should consult with your students whenever possible to determine what type of auxiliary aid is needed to ensure effective communication, because it is important to ensure that the auxiliary aid that is used is, in fact, effective. However, the ultimate decision as to what measures to take to facilitate communication rests in the hands of the public accommodation, as long as the method chosen results in effective communication.

When the ADA requires auxiliary aids to be provided, such auxiliary aids must be provided to the individual with a disability at no extra cost. The costs incurred by the public accommodation in providing auxiliary aids to its clients and customers who require auxiliary aids should be regarded as any of the other administrative costs associated with the operation of the business.

The Department of Justice has developed a technical assistance manual to assist individuals and entities affected by title III of the ADA to understand their rights and responsibilities under the Act. I am enclosing a copy of that manual for your use. I hope that this information is helpful to you.

Sincerely,

John L. Wodatch
Director
Office on the Americans with Disabilities Act

Enclosure

01-01015

T. 5-26-92

DJ 202-PL-00103

DIR
WOODATCH
DATE

Deborah C. Craytor, Esq.
Fisher & Phillips
1500 Resurgens Plaza
DEPUTY Atlanta, GA 30326
BOWEN
DATE Dear Ms. Craytor:

I am responding to your request for an opinion concerning the application of the Americans with Disabilities Act of 1990 (ADA), and this Department's regulation implementing title III of
DEPUTY the ADA, to your client, a private university that conducts
MAGAGNA pharmaceutical trials on behalf of manufacturers. This research is conducted by members of the university's medical faculty whose
DATE test subjects are selected from among their patients and the general public. Your letter asserts that the primary purpose of these tests is pharmaceutical research, not medical treatment or education; therefore, title III's barrier removal requirements
SPECIAL should not apply.
COUNSEL
BREEN The ADA authorizes the Department to provide technical assistance to individuals and entities having rights or
DATE obligations under the Act. This letter provides informal guidance to assist you in understanding the ADA. However, this technical assistance does not constitute a determination by the Department of Justice of your rights or responsibilities under
BLIZZARD the ADA and it is not binding on the Department of Justice.
DATE Title III of the ADA prohibits discrimination against individuals with disabilities by public accommodations. In order to be considered a public accommodation, an entity must be
GYB

DATE

cc: Records, Chrono, Wodatch, Blizard, Russell
udd:Blizard.ada.interpretation.craytor

01-01016

private and it must own, operate, lease, or lease to a place of public accommodation. A place of public accommodation is a facility whose operations affect commerce and fall within at least one of the 12 categories identified in the ADA. You have correctly noted that a place of education is a place of public accommodation. The professional office of a health care provider is a also place of public accommodation.

Under the Department's title III regulation, a public accommodation is responsible for ensuring compliance with title III in all of the activities of the place of public accommodation that it owns or operates. This provision is intended to be read broadly. Nothing in the ADA or the Department's regulation supports the conclusion that a place of education is a place of public accommodation only with respect to the administration of its curriculum. Research activities are an integral part of the operations of many colleges and universities, and, in our view, are subject to the requirements of title III.

Please note that the obligations of a public accommodation under title III include more than the obligation to remove barriers. A public accommodation may not discriminate against an individual with a disability in the operation of a place of public accommodation. Individuals with disabilities may not be denied full and equal enjoyment of the "goods, services, facilities, privileges, advantages, or accommodations" offered by a place of public accommodation. The phrase "goods, services, facilities, privileges, advantages, or accommodations" applies to whatever type of good or service a public accommodation provides to its customers, clients, or participants.

A public accommodation has an affirmative obligation to modify its policies and practices to ensure that individuals with disabilities are not excluded from participation. The public accommodation must provide auxiliary aids when it is necessary to ensure effective communication with individuals with disabilities; it must remove architectural, communication, and transportation barriers to the extent that it is readily achievable to do so; and it must ensure that all new construction and alterations comply with the accessibility standards established in the title III regulation.

This Department recently issued a technical assistance manual to assist individuals and entities subject to the ADA to understand the requirements of title III. I have enclosed a copy for your information. I hope that this information is helpful to you.

Sincerely,

John L. Wodatch
Director
Office on the Americans with Disabilities Act

Enclosure

01-01018

LAW OFFICES
FISHER & PHILLIPS
(A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS)
1500 RESURGENS PLAZA
945 EAST PACES FERRY ROAD
ATLANTA, GEORGIA 30326
TELEPHONE (404) 240-4249
TELECOPIER (404) 240-4249
TELEX 54-2331
(404) 240-4278

November 5, 1991

Barbara S. Drake, Esquire
Deputy Assistant Attorney General
Civil Rights Division
United States Department of Justice
Washington, D.C. 20530

Re: Request for Written Opinion on Coverage of Title III
of the Americans with Disabilities Act
Our File No. 1944.0070

Dear Ms. Drake:

We would like a written opinion concerning the application of Title III of the Americans with Disabilities Act to the following situation.

We represent a private university ("University"). Certain of the University's medical faculty are retained by pharmaceutical manufacturers to test the efficacy of new drugs. These research studies take place in buildings owned or leased by the University. The test subjects generally are unpaid volunteers but may be paid for their participation. They are generally patients of the doctor conducting the research, but they are occasionally solicited from the general public through advertisements. The purpose of the research studies is to test the drugs' effectiveness in treating particular physical or psychological conditions, not to provide a health benefit to the

test subject. However, an incidental effect of the study may be an improvement (or worsening) of the subject's condition.

Under these circumstances, we believe that the University facilities within which these drug studies take place are not places of public accommodation and therefore need not comply with Title III's barrier removal obligations. The operation of the drug study is not a part of the University's curriculum or educational program; thus, the facility should not be considered a "place of education." Moreover, the purpose of the study is not to provide a health service to the test subjects; rather, the study is
01-01019

conducted for the primary benefit of the pharmaceutical manufacturer, which bases its decision to market the drug on the success or failure of the study. In this respect, the drug study is akin to a wholesale establishment which sells exclusively to other businesses, and the Title III regulations recognize that such business-to-business transactions are excluded from the definition of public accommodation.

We would appreciate your written confirmation that, with respect to the activity described in this letter, the University is not a place of public accommodation and is not required to undertake readily achievable barrier removal in the space reserved for drug studies. If you have any questions, you may call either me or Tom Rebel.

Very truly yours,

Deborah C. Craytor
For FISHER & PHILLIPS

DCC

FISHER & PHILLIPS
(A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS)
01-01020

T. 6-11-92
202-PL-00110

JUL 8 1992

DIR
WODATCH
DATE Mr. Marvin J. Fischer
Linroc Community Service Corporation
Linden Boulevard at Brookdale Plaza
Brooklyn, N.Y. 11212-3198
DEPUTY
BOWEN Dear Mr. Fischer:

DATE I am responding to your request for clarification of the new construction requirements of title III of the Americans with Disabilities Act of 1990 (ADA), Pub. L. 101-336, 104 Stat. 327 (July 26, 1990), 42 U.S.C. SS 12101-12213, and this Department's
DEPUTY regulation implementing title III, 56 Fed. Reg. 35,544 (July 26,
MAGAGNA 1991), to be codified at 28 C.F.R. pt. 36.

DATE The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities that have rights or responsibilities under the Act. This letter provides informal guidance to assist you in understanding the ADA. However, this
SPECIAL technical assistance does not constitute a determination by the
COUNSEL Department of Justice of your rights or responsibilities under
BREEN the ADA and it is not binding on the Department of Justice.

DATE The new construction requirements of the ADA apply to any place of public accommodation or commercial facility first occupied after January 26, 1993, for which the last application

for a building permit or permit extension was completed after
BLIZARD January 26, 1992. If a facility is constructed under a permit
DATE for which the application was completed prior to January 26, 1992, or the facility is occupied before January 26, 1993, the facility is not subject to the new construction requirements of
GYB the ADA. However, if a facility applies for a permit or a permit extension after January 26, 1992, and it is first occupied after January 26, 1993, the facility is subject to the requirements of
DATE the ADA.

You should also note that places of public accommodation are subject to a continuing obligation to remove architectural, communication, and transportation barriers. Under this continuing obligation, each public accommodation is required to

cc: Records, Chrono, Wodatch, Blizard
udd:ada:interpretation.Fischer

remove barriers in its facilities, to the extent that it is readily achievable to do so.

This Department recently issued a technical assistance manual to assist individuals and entities subject to the ADA to understand the requirements of title III. I have enclosed a copy for your information. I hope that this information is helpful to you.

Sincerely,

John L. Wodatch
Director
Office on the Americans with Disabilities Act

Enclosure

01-01022

LINROC COMMUNITY SERVICE CORPORATION

Linden Boulevard at Brookdale Plaza
Brooklyn, New York 11212-3198
(718) 485-0303
(718) 240-5214
FAX (718) 240-6487

CHARLES H. MEYER, FACHE
President

December 9, 1991
Certified Mail
Return Receipt Requested

Ms. Barbara S. Drake
Deputy Assistant Attorney General
Civil Rights Division
U.S. Department of Justice
Washington, D.C. 20530

Dear Ms. Drake:

The Linroc Nursing Home, Inc., (a subsidiary of Linroc Community Service Corporation) is in the process of starting construction of a Skilled Nursing Facility ("SNF"). The design, plans and specifications have been completed. The project and

design have been approved by the New York State Department of Health (the "Department of Health"). The plans have been reviewed and approved by the City of New York Department of Buildings (the "Building Department").

A Building Permit will be issued by the City of New York prior to January 26, 1992. We intend to break ground in the early spring of 1992 and the SNF is scheduled for completion in November, 1993. The Building Department, as a matter of policy, will not issue a building permit for a period longer than one year. Projects that require a longer construction period are granted extensions as necessary.

It is our understanding that we will not be required to follow the Americans with Disabilities Act (ADA) Accessibility Guidelines for Buildings and Facilities (Final Guidelines, as published in the Federal Register, Vol. 56, No. 144, July 26, 1991) in our construction of the SNF. On December 6, 1991, I telephoned the Office of the General Counsel, Architectural and Transportation Barriers Compliance Board. I spoke with a representative who referred me to Part III of the July 26, 1991 Federal Register, "Subpart D - New Construction and Alterations", Section 36.401, Page 35599. In her opinion, since we received our building permit from the City of New York, as well as the approval of the Department of Health prior

DEC 13 1991

01-01023

to January 26, 1992, we will not be required to comply with the ADA guidelines as we do not fall within the definition of "new construction" as defined in paragraph 36.401(a)(2)(i). She further instructed me to write to your office and request a written reply.

We would appreciate your prompt response to this inquiry as we intend to finalize the start of construction, based on the existing plans, within the next few weeks. Any delay will have a serious impact on both the cost of construction and the occupancy date set for the patients. Thank you in advance for your attention to this matter.

Sincerely,

Marvin J. Fischer, P.E., FACHE
Project Coordinator

MJF:lr

cc: Charles H. Meyer, President
The Linroc Nursing Home, Inc.
A subsidiary of Linroc Community
Service Corporation

01-01024

T. 6-30-92

JUL 8 1992

DJ 202-PL-00077

DIRECTOR
WODATCH Mr. Roy Hendrick
5647 Galleria Avenue
DATE Suite H
Baton Rouge, LA 70816

Dear Mr. Hendrick:

DEPUTY
LIB I am responding to your letter asking if title III of the

Americans with Disabilities Act of 1990 (ADA), Pub. L. 101-336,
DATE 104 Stat. 327 (July 26, 1990), 42 U.S.C.A. SS 12101 et seq.,, and this Department's regulation implementing title III, 56 Fed. Reg. 35544, to be codified at 28 C.F.R. pt. 36, require that elevator access be provided to a mezzanine in a one-story supermarket. You have also asked if the requirement differs if the supermarket
SPECIAL is located in a shopping center or shopping mall.
COUNSEL
BREEN The ADA authorizes the Department to provide technical assistance to individuals and entities that have rights or
DATE responsibilities under the Act. This letter provides informal guidance to assist you in understanding the ADA and the Department's regulation. However, this technical assistance does not constitute a determination by the Department of Justice of your rights or responsibilities under the ADA, and it is not
BLIZARD binding on the Department of Justice.

DATE Title III of the ADA requires all places of public accommodation designed and constructed for first occupancy after January 26, 1993, to be accessible to and usable by individuals with disabilities, including people who use wheelchairs. Therefore, the ADA generally requires that at least one accessible passenger elevator serve each level, including mezzanines, in a newly constructed multistory building.

However, title III contains an exception to this general rule. Elevators are not required in facilities that are less than three stories or have fewer than 3000 square feet per story, unless the building is a shopping center or mall; the professional office of a health care provider; a public transit station; or an airport passenger terminal. To determine if elevator access to a mezzanine in a specific building is
cc: Records, Chrono, Wodatch, FOIA, Library, Blizard
udd:Blizard.ada.interpretation.Hendrick

01-01025

required, you must look to the requirement that applies to the building in which the mezzanine is located.

Section 3.5 of the ADA accessibility guidelines (Appendix A to the Department's title III regulation) defines a "story" as:

> That portion of a building included between the upper surface of a floor and upper surface of the floor or roof next above. If such portion of a building does not include occupiable space, it is not considered a story for purposes of these guidelines. There may be

more than one floor level within a story as in the case of a mezzanine or mezzanines.

A mezzanine is not, itself, considered a "story" for the purpose of determining if an elevator is required.

If you are constructing a grocery store in a building that has fewer than three stories, and is not part of a shopping center or shopping mall, no elevator is required. When no elevator is required in a building, you are not required to provide any accessible means of vertical access to mezzanines within that building.

However, a grocery store with a mezzanine that is part of a shopping center or shopping mall is not eligible for the statutory exemption from the elevator requirement. The Department of Justice regulation implementing title III requires that all floor levels within a newly constructed shopping center or shopping mall be made accessible to people with disabilities; therefore, elevator access must be provided to mezzanines located in grocery stores that are part of a shopping center.

For your information, I am enclosing a copy of this Department's regulation implementing title III of the ADA and the technical assistance manual that we developed to assist individuals and entities subject to the ADA to understand the requirements of title III. The questions you raise are addressed in section III - 7.3110. I hope that this information is helpful to you.

Sincerely,

John L. Wodatch
Director
Office on the Americans with Disabilities Act

Enclosures

01-01026

ROY HENDRICK, AIA ARCHITECT
5647 Galeria Avenue
Suite H
Baton Rouge, Louisiana 70816

February 28, 1992

Mr. John Wodatch, Director

Office of A.D.A.
Civil Rights Division
Department of Justice
P.O. Box 66118
Washington, DC 20035-6118

RE: A.D.A. Elevator Requirements
Grand Union Supermarket
Monroe, NY

Dear Mr. Wodatch:

We have a problem concerning the A.D.A. requirements and cannot get confirmation on the requirements and decisions as they affect our project.

Our architectural firm has been trying to resolve one question since September, 1991 and to date we have not received any written confirmation on Justice Department letterhead.

We have designed a supermarket for the Grand Union Company and based upon our interpretations and telephone conversations with A.D.A. personnel, it is understood that an elevator is not required to the mezzanine in the one-story supermarket.

Ms. Linda King has been extremely helpful in her research and by providing A.D.A. literature to us. We have requested written confirmation since last September and to date no "definitive" written response has been received.

Grand Union is working with many architects and the majority of these architects are interpreting the A.D.A. requirements as "an elevator is required to the mezzanine in a single story supermarket".

Grand Union is requiring us to obtain written confirmation of our interpretation of the A.D.A. requirement that an elevator is not required. Without this written confirmation, we are told to either put an elevator in the building or prepare to be sued in the event a Monroe, New York building inspector demands the elevator should be installed during or after construction. Our decision is complicated, without immediate written confirmation, we are forced

to redesign the building to receive an elevator.

We have previously submitted letters and drawings to the A.D.A. office in September and October of 1991. Weekly telephone calls, mainly to Ms. Linda King and Ms. Irene Bowen have been conducted since November, 1991. On February 21, 1992 Ms. King faxed us several pages of Title III, Technical Assistance Manual which seemed to confuse the issue. According to telephone conversation with Ms. King after receiving the fax, she discussed the elevator problem with Ms. Friedlander who said that "An elevator is never, never required in a single story building, ever, ever. Even if it is in a shopping center or connected to a shopping center".

The problem is that other people have read the pages from the Technical Assistance Manual and the above interpretation is not found. Their opinion, based on the manual, is that an elevator is required.

Please assist us by confirming immediately on letterhead by fax, the correct A.D.A. decision or interpretation one way or the other. Your prompt response would be greatly appreciated.

Sincerely yours,

Roy Hendrick, AIA
Architect

RH/dc

cc: Al Rossi
Richard Krumrich
The Grand Union Company

01-01028

T. 6-30-92

JUL 8 1992

DJ 202-PL-155
Mr. Gregory W. Silliman
DIRECTOR Senior Project Engineer
WODATCH Code Consultants Incorporated
Fire Protection Consultants
DATE 760 Office Parkway
St. Louis, MO 63141

Dear Mr. Silliman:
DEPUTY
LIB This letter responds to your correspondence regarding the application of the Americans with Disabilities Act (ADA) to a
DATE newly constructed parking structure connected to an existing mall building.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities with rights or
SPECIAL obligations under the Act. This letter provides informal
COUNSEL guidance to assist you in understanding the ADA accessibility
BREEN standards. However, this technical assistance does not constitute a legal interpretation of the statute and it is not
DATE binding on the Department.

Your letter states that an accessible entry to each level of the mall will be provided from each level of the parking garage and that the mall building contains accessible elevator service.
BLIZARD You ask if, in lieu of providing an elevator in the parking structure, this provides an adequate degree of accessibility with
DATE respect to ADA requirements.

The parking structure could be regarded as an addition (see ADA Guidelines S 4.1.5) to the existing mall; as such, the design would have to in compliance with the applicable provisions of
HARLAND S 4.1.1 through S 4.35, the requirements for new construction. Where the parking structure connects to the existing mall, that
DATE portion would be considered an alteration to an area of primary function and would trigger the path of travel requirements of S 4.1.6(2). As to the alteration requirements, your affirmative

cc: Records, Chrono, Wodatch, Harland, FOIA
udd:Harland.Silliman

answer from the DOJ ADA hotline was well-reasoned with respect to the path of travel. However, this would be considered correct only if the parking structure is used exclusively for access to the mall building.

If the parking structure could be used independently of the mall (e.g., as parking for another building or as parking when the mall building was not open for business) when direct access to the street would be necessary, we believe that the parking structure would be considered a separate new facility subject to the new construction requirements. In that situation, the Guidelines S 4.1.3(5) would require an elevator serving each level of the parking structure. Also, because the ADA does not affect the application or enforcement of state or local building regulations, if your local building code requires an elevator within the structure, that requirement would have to be satisfied irrespective of ADA requirements.

To assist you in complying with the ADA, attached are the final Title III regulations and a Technical Assistance Manual. We hope this information is useful to you.

Sincerely,

John L. Wodatch
Director
Office on the Americans with Disabilities Act

Enclosures

cc: Dave Yanchulis, Access Board

01-01030

Code Consultants
Incorporated

May 1, 1992

Office of the Americans With Disabilities Act
P.O. Box 66118
Washington D.C. 20035-6118

To Whom It May Concern:

Based upon my conversation on the morning of April 28, 1982 with a Department of Justice "Hotline" representative, I would like to document and verify the items discussed.

The question pertained to an existing two story covered mall building and a newly proposed open parking structure three stories in height connected to the covered mall building. At issue is the need for an elevator within the newly proposed open parking structure based upon the provisions of Section 4.1.3(5) of the Accessibility Guidelines.

As currently designed the covered mall building contains accessible elevator service within the public mall area. The proposed open parking structure adjacent to the covered mall building will provide accessible parking on each level and will provide an accessible entry from each level of the open parking structure to each level of the existing covered mall building. Since the occupants of the proposed open parking structure have an accessible entry into the existing public mall area, the Department of Justice hotline representative indicated that in his opinion, this proposed condition would provide an adequate degree of accessibility for compliance with the ADA.

This opinion was based upon the fact that the open parking structure and covered mall building function together and constitute one facility even though they are technically considered two separate buildings by the local Building Code. It is additionally important to note that the proposed open parking structure will be owned and/or operated by the same firm that owns and operates the covered mall building.

Although we understand that the Department of Justice opinions and written comments are not binding, we would still appreciate acknowledgement of this condition for future reference.

F I R E P R O T E C T I O N C O N S U L T A N T S
760 OFFICE PARKWAY * ST. LOUIS, MO 63141 * 314-991-2633 * Fax 314-ILLEGIBLE
01-01031

If the above meets with your approval please sign on the line provided below and return a copy for our files.

Sincerely,

Gregory W. Silliman
Senior Project Engineer

GS/tc

c: Dave Yanchylis, Access Board - Office of Technical Information,
Washington, D.C.

APPROVED: DATE:

01-01032

T. 6/26/92
SBO:LMS:KGF
XX (b)(6) JUL 9 1992

XX (b)(6)
Hutchinson, Kansas XX

Dear Mr. XX

This letter responds to your April 25, 1992, letter requesting information relating to the accessibility requirements for a State prison.

Section 504 of the Rehabilitation Act of 1973, as amended, prohibits discrimination against qualified individuals with handicaps by recipients of Federal financial assistance. Each agency which provides Federal financial assistance has issued regulations implementing section 504. In 1988, Congress enacted the Civil Rights Restoration Act of 1987 which, among other things, amended section 504. Under the Civil Rights Restoration Act, if a State department of corrections receives Federal financial assistance from a Federal agency, then the State's whole prison system is covered by section 504 including each of its prison facilities. Therefore, if at the time that a State is constructing new prison facilities, its department of corrections is receiving Federal financial assistance, the prison facilities should be constructed in compliance with the construction standards contained in the Federal funding agency's section 504 regulation.

In your letter you asked what accessibility standards would have applied to the construction of a prison in 1989 or 1990. Your specific concern is bathrooms. Most Federal funding agencies, including the Department of Justice, which frequently funds State departments of corrections, have adopted the Uniform Federal Accessibility Standards as the accessibility standards for new construction. Sections 4.21 and 4.22 of those standards cover bathrooms and shower rooms. We have enclosed a copy of those sections of the standards for your information.

Additionally, title II of the Americans With Disabilities Act prohibits discrimination against individuals with

cc: Records, CRS, Friedlander, Stewart, Foster
:udd:stewart: XX (b)(6).ltr

01-01033

disabilities by State and local governments. Under title II, a State must provide access to its programs, services, and activities in those facilities existing on January 26, 1992, the effective date of the title. Thus, the program accessibility requirements of title II would apply to all State prisons, regardless of the date of their construction. The services, programs, or activities of a prison, when viewed in their entirety, must be readily accessible to and usable by individuals with disabilities. Prisons, however, are not necessarily required to make each of their existing facilities accessible. The primary focus of program accessibility is not on existing prison facilities but on whether the programs, services, or activities are accessible to and usable by individuals with disabilities. Program accessibility may or may not require alterations to existing prison facilities.

With respect to new construction begun after January 26, 1992, a State must follow the construction guidelines required by the Department of Justice regulation. See page 23 of the enclosed Technical Assistance Manual on title II.

In response to your question concerning carrying individuals with mobility impairments as a means of providing access to a facility, the Technical Assistance Manual states:

> Is carrying an individual with a disability considered an acceptable method of achieving program

> access? Generally, it is not. Carrying persons with mobility impairments to provide program accessibility is permitted in only two cases. First, when program accessibility in existing facilities can be achieved only through structural alterations (that is, physical changes to the facilities), carrying may serve as a temporary expedient until construction is completed. Second, carrying is permitted in manifestly exceptional cases if (a) carriers are formally instructed on the safest and least humiliating means of carrying and (b) the service is provided in a reliable manner. Carrying is contrary to the goal of providing accessible programs, which is to foster independence.

Technical Assistance Manual at 20-21. Therefore, under limited circumstances, it is permissible to carry individuals with

mobility impairments to provide them access to different parts of a facility.

We hope this information is responsive to your inquiry.

Sincerely,

Stewart B. Oneglia
Chief
Coordination and Review Section
Civil Rights Division

Enclosures (2)

01-01035

JUL 9 1992

DJ 202-PL-214

Philip H. Wolfson, D.M.D.
210 Broadway
Long Branch, New Jersey 07740

Dear Dr. Wolfson:

I am writing in response to your June 18, 1992, letter requesting information about the Americans with Disabilities Act (ADA).

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist you in understanding the ADA's requirements;

however, it does not constitute a legal interpretation and it is not binding on the Department.

Your letter states that you intend to operate a dental practice in the second floor suite of a renovated 1859 Victorian professional building that you believe local officials may have deemed unsuitable for elevators or ramps because of the design of the existing structure. You also inquire whether there is a mechanism to obtain a waiver.

The ADA does not authorize the issuance of an official ruling or waiver exempting individuals or entities from complying with its requirements.

The ADA requires places of public accommodations, such as your prospective dental office, to remove access barriers, such as the entrance steps or stairs, where such removal is "readily achievable." The ADA defines readily achievable to mean easily accomplishable without much difficulty or expense. A number of factors are considered in determining whether barrier removal is readily achievable, including the nature and cost of the action required and the size and resources of the business involved.

cc: Records, Chrono, Wodatch, Magagna, Nakata, FOIA, Library,
Udd:Nakata:PL.214.Wolfson.1

01-01036

Barrier removal is not considered readily achievable if it would threaten or destroy the historic significance of a building or facility that is eligible for listing in the National Register of Historic Places or is designated as historic under State or local law. In many circumstances, providing access to a historic building will not threaten or destroy its historic significance.

If removal of a particular barrier is not readily achievable, health care providers must take alternative measures to make their services available to persons with disabilities as long as these alternative steps are themselves readily achievable. Such alternative measures might include providing

services in a different location or making home visits.

The obligation to remove barriers is a continuing one. For example, if a particular barrier cannot be presently removed because of financial difficulties, the barrier must nonetheless be removed if financial conditions subsequently improve to the point that barrier removal becomes readily achievable.

I have enclosed a copy of the Department's recently published Title III Technical Assistance Manual which may further assist you in understanding your obligations under the ADA. I hope this information is useful to you.

Sincerely,

Joan A. Magagna
Deputy Director
Office on the Americans with
Disabilities Act

Enclosure

01-01037

PHILIP H. WOLFSON, D.M.D.
FAMILY DENTISTRY
210 BROADWAY
LONG BRANCH, NEW JERSEY 07740
ILLEGIBLE

June 18, 1992

Attention: John Wodatch

Office on the ADA
Civil Rights Division
U.S. Department of Justice
P.O. Box 66118
Washington, D.C. 20035-6118

Dear Mr. Wodatch:

I have been referred to you for information as to what conformity to the ADA is required in the following case:

A second floor suite, in a 1859 Victorian renovated professional building, without elevators, was previously occupied by a dentist, and would be occupied by me for similar purpose.

I believe local officials deemed the building as unsuitable for elevators or ramps because of design of existing structure.

What is the mechanism by which we can obtain an official ruling or waiver? Or are we required to conform with elevator? Or if we cannot obtain an official ruling on the building/suite, how can we be protected under the law?

The building's location is Shrewsbury, Monmouth County, New Jersey. Exact address would be supplied if necessary. Thank you.

Sincerely,

Philip H. Wolfson, D.M.D.

01-01038

JUL 21 1992

The Honorable Lloyd Bentsen
United States Senator
961 Federal Building
Austin, Texas 78701

Attention: Edward Lopez

Dear Senator Bentsen:

I am responding to your inquiry on behalf of your constituent, Brett Boaz, concerning the implementation of title III of the Americans with Disabilities Act of 1990 (ADA). Mr. Boaz believes that the ADA will become a vehicle for frivolous lawsuits because there is no mechanism through which the Department of Justice or the Architectural and Transportation Barriers Compliance Board (Access Board) provides binding pre-construction review of building designs.

In responding to this concern, it is important to keep in mind the nature of the ADA and the remedies it provides. The ADA is a civil rights law, not a building code. Therefore, it is enforced through the traditional civil rights mechanism of administrative complaint investigation and case-by-case enforcement in the Federal courts by individuals or the Department of Justice. However, when the ADA was enacted, President Bush and the Congress took care to ensure that there would be no incentive for private litigants to file "frivolous" lawsuits. The only remedy in private litigation is injunctive relief, i.e., an order requiring that a violation be corrected. No compensatory or punitive damages may be awarded. In addition, attorneys' fees may be awarded to the prevailing party at the discretion of the court. In a situation where a court finds that a plaintiff's claim was frivolous, the court may require the plaintiff to pay the attorneys' fees and litigation costs incurred by the defendant.

In addition, the ADA requires that certain Federal agencies provide technical assistance to individuals and entities affected by the ADA to facilitate voluntary compliance. Both this Department and the Access Board provide informal technical assistance regarding the ADA to enable people like Mr. Boaz to become familiar with the requirements of the law. However,

neither agency will function as a "building department" to review plans and specifications, conduct inspections, or issue building permits or occupancy certificates. These functions continue to

be the responsibility of State and local officials implementing State and local requirements. The ADA does not authorize any entities to carry out these functions with respect to the ADA.

Mr. Boaz raised a concern about the specific ADA requirements for accessible door hardware. He believes that these requirements would prevent designers from specifying the use of door locks that are operated by keys. This is a misinterpretation of the rule. The requirements of the rule apply to the construction of the lock itself, not to the mechanism that may be required to operate the lock from the outside. Devices are commercially available that enable people who have limited manual dexterity to use traditionally designed keys.

If Mr. Boaz requires further information on this issue, he should contact the Access Board at 1-800-USA-ABLE. The Access Board's technical specialists are available to provide informal technical assistance to individuals who have questions about the technical requirements of the ADA regulations. In addition, the Access Board may be able to direct Mr. Boaz to sources of accessible products that are available to architects and builders.

I hope that this information is helpful to you in responding to Mr. Boaz.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

01-01040

BRETT B. BOAZ
4508C UNIVERSITY BOULEVARD
DALLAS, TEXAS 75205

02 April 1992

The Honorable Lloyd Bentsen
United States Senate
Washington, D.C. 20510

My Dear Senator Bentsen:

As an overburdened, overregulated taxpaying Architect, I thought I would share with you my disappointments with recent legislation passed by Congress.

One example of Congress' regulation insanity is the American With Disabilities Act (ADA). Although this law was conceived out of compassion for the disabled, it has become nothing more than a vehicle for militant handicap activists to engage in frivolous lawsuits against building owners and design professionals. As with most legislation written by bureaucrats, these guidelines are cloudy, confusing and complicated. It has become virtually impossible to contact the Department of Justice or the Architectural and Transportation Barriers Compliance Board for interpretations to determine if a particular design is in compliance. This leaves the only real source for binding interpretations of the ADA to the Court System. (Congress has an uncanny knack for furthering the legal profession's ability to transfer wealth from those who produce to those who complain.)

Just for your information, I have included the following excerpt from the ADA to highlight one of the absurd requirements now considered law:

> "4.13.9 Door Hardware. Handles, pulls, latches, locks and other operating devices on accessible doors shall have a shape that is easy to grasp with one hand and does not require tight grasping, tight pinching or twisting of the wrist to operate."

In other words, as an Architect, I can be held liable for specifying a door that requires the use of a simple house key to open. How do you expect hard working Americans to stay in business and continue to pay taxes when you pass legislation like this?

Another disappointment with Congress was its inability to predict the devastating effects of the luxury tax. Instead of increasing tax revenues, as promised by the Democrats, it put countless number of Americans (especially boat manufacturers) out of business. When will Congress learn that the most effective way to increase tax revenues is by creating jobs -- not raising taxes. The "politics of envy" preached by your party has got to stop now!

I realize that serving as a Senator can be a thankless job. Your efforts in serving this particular constituent are appreciated; however, throw out the partisan politics in Washington, D.C. and help get this Country moving in the right direction again.

With warmest regards, I remain

Sincerely,

Brett B. Boaz

BB:pc

JUL 21 1992

The Honorable Alan J. Dixon
United States Senate
331 Hart Building
Washington D.C. 20510-1301

Dear Senator Dixon:

This is in response to your inquiry on behalf of your constituent, Ms. Betty Garner, about the applicability of the Americans with Disabilities Act (ADA) to an existing two-story building serving as the offices of a dentist and two orthodontists.

Title III of the ADA and the regulation issued by this Department require that architectural barriers in existing places of public accommodation, such as a professional office of a health care provider, be removed if doing so is "readily achievable," i.e., easily accomplishable and able to be carried out without much difficulty or expense. The regulation and the preamble to the regulation include detailed discussions of this requirement, including the factors to be considered in determining whether the removal of a particular barrier is readily achievable and the priority that should be placed on removing particular types of barriers.

The requirements became effective on January 26, 1992. However, section 310 of the ADA provides that civil actions cannot be brought concerning acts or omissions by businesses with 25 or fewer employees and gross receipts of $1,000,000 or less if the acts or omissions occur prior to July 26, 1992; and civil actions cannot be brought concerning acts or omissions by businesses with 10 or fewer employees and gross receipts of $500,000 or less if the acts or omissions occur prior to January 26, 1993.

The Internal Revenue Code includes a tax credit and

deduction for businesses taking steps to comply with the ADA. Further information on the tax benefits is available from the Internal Revenue Service, Office of the Chief Counsel, P.O. Box 7604, Ben Franklin Station, Washington D.C. 20044, (202) 566-3292.

cc: Records; Chrono; Wodatch; Bowen; McDowney; FOIA; Library.
:udd:bowen:cong.dixon

01-01043

For your information, I am enclosing a copy of the regulation implementing title III of the ADA and the Technical Assistance Manual that was developed to assist individuals and entities subject to the ADA to understand the requirements of title III. Fuller discussion of the points mentioned above is found in sections 36.104 (definition of "readily achievable"), 36.304, and 36.508, and in the preamble discussion of those sections (particularly the discussion in column 3 on page 35568, column 3 on page 35569, and on page 35570).

I hope this information is useful to you in responding to your constituent.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

Enclosures (2)

01-01044

JIM GARNER, CLU, District Agent
#6 Doctors Lane, Macomb, IL 61455
Phone 309-837-5730

Northwestern
Mutual Life

June 2, 1992

Todd Atkinson:

I am writing to seek information regarding the rulings for existing buildings to comply with the Disabilities Act.

Our building, built in 1973, has two floors. The first floor is entered into by 6 steps going down. The 2nd floor is entered into by 8 steps going up. The first floor houses a dentist -working 4 days per week. The second floor houses two ortho-dontists working 1 day per week.

How soon or must facilities be built or installed to comply? Also we would like infor regarding tax credits in connection with the compliance rulings.

Thank you.

01-01045

JUL 22 1992

The Honorable Leon E. Panetta
Member, U. S. House of Representatives
380 Alvarado Street
Monterey, California 93940

Attention: Ken Christoper

Dear Congressman Panetta:

This is in response to your letter requesting information on behalf of Ms. Christine Dowd concerning the applicability of the Americans with Disabilities Act (ADA) to banks.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist your constituent in understanding the ADA's requirements. It does not, however, constitute a legal interpretation and it is not binding on the Department.

As a place of public accommodation, banks are required to have nondiscriminatory policies and procedures, to make reasonable modifications in their policies, practices, and procedures to avoid discrimination against persons with disabilities, provide effective communication with persons with disabilities, and to remove architectural barriers in existing

facilities where it is readily achievable to do so. These requirements are set forth in Subparts B and C of the enclosed title III regulations, at pages 35595 to 35599.

The ADA imposes further accessibility requirements for new construction or alterations to existing facilities. For this purpose, the title III regulations adopt the ADA Accessibility Guidelines promulgated by the Architectural and Transportation Compliance Board (Access Board). There is a specific provision for Automated Teller Machines (ATM's) in section 4.34 of the Accessibility Guidelines. However, the Access Board has recently decided to reopen the issue of ATM accessibility for public comment through a notice in the Federal Register and has held a

cc: Records, Chrono, Wodatch, McDowney, Magagna, Nakata,
Library, FOIA
Udd:Nakata:Congress.letters.Panetta.1

01-01046

public hearing on this matter. While the changes to the rule are under consideration, section 4.34 remains in effect. However, the regulations specifically permit covered entities to use designs and technologies other than those specified in the regulations if they provide substantially equivalent or greater access to and usability of the facility. Such departures are permitted by the "equivalent facilitation" provision in section 2.2 of the Accessibility Guidelines.

Subpart D of the title III regulations includes requirements for new construction and alterations of places of public accommodations at pages 35599 to 35602. The Accessibility Guidelines begin on page 35605. Section 4.34 dealing with ATM requirements is at page 35664 and section 2.2 dealing with equivalent facilitation is at page 35607.

Also enclosed is the Department's Title III Technical Assistance Manual, which may provide further assistance to your constituent.

I hope this information will be useful to you in responding to your constituent.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

Enclosures (2)

01-01047

Congress of the United States
House of Representatives
Washington, DC 20515

June 19, 1992

TO: Assistant Attorney General
Office of Legislative Affairs
U.S. Department of Justice
Washington, D.C. 20530

ENCLOSURE FROM: No enclosures.

RE: Christine Dowd.

Ms. Dowd would like a copy of the Americans with Disabilities Act and the regulations written to comply

with the Act. She works for a bank, and would like information about the requirements that must be met by financial institutions to comply with the ADA; making ATMs accessible, for example, or changes in teller windows to make them accessible.

Would you please research this subject and reply to the questions which Ms. Dowd has brought to my attention?

Thank you for your assistance.

Thank you very much for your attention to this matter.

Sincerely,

LEON E. PANETTA
Member of Congress

PLEASE RESPOND TO ME AT:

380 Alvarado Street
Monterey, California 93940

ATTENTION: Ken Christopher; (408) 429-1976

PRINTED ON RECYCLED PAPER

01-01048

DJ 202-PL-00073

JUL 22 1992

Ms. Pamela Perryman
Galaxy Group Management Corporation
2345 Sand Lake Road: No. 100
Orlando, Florida 32809

Dear Ms. Perryman:

This letter responds to your correspondence and telephone

conversation with this office regarding the requirements of the Americans with Disabilities Act (ADA) for TDD's (telecommunications devices for deaf persons). Your letter specifically inquires whether a timeshare resort is covered by title III of the ADA and is therefore obliged to equip itself with TDD equipment for use by guests and owners.

The ADA authorizes the Department of Justice to provide technical assistance to individuals or entities having rights or obligations under the Act. This letter provides informal guidance to assist you in understanding the ADA's requirements. However, it does not constitute a legal interpretation and it is not binding on the Department.

Assistant Attorney General John R. Dunne, recently responded to a detailed inquiry regarding the ADA's coverage of a timeshare resort operated by a major resort management corporation. His letter may provide guidance as to whether your resort has obligations as a place of lodging under title III, and I enclose a copy for your consideration.

If your resort is covered as a place of lodging by title III of the ADA, then the front desk should be equipped with a TDD. TDD's also must be made available on request to timeshare owners and guests in units where in-room telephone service is provided.

cc: Records, Chrono, Beard, Breen, Wodatch:dhj T. 6/27/92
udd:Beard:TA.302B2AIV.Perryman

01-01049

I hope that this information will be useful to you in understanding your rights and obligations under the ADA.

Sincerely,

Philip L. Breen

Special Legal Counsel
Office on the Americans with Disabilities Act

Enclosure

01-01050

U.S. Department of Justice

Civil Rights Division

DJ 181-06-0002

Coordination and Review Section
P.O. Box 66118
Washington, D.C. 20035-6118

XX
XX
XX

Dear Mr. XX

This letter responds to your August 21, 1991, letter on behalf of XX Ownership Resorts, Inc., (XX), requesting guidance on the application of certain provisions of the Americans with Disabilities Act (ADA) to the timesharing resorts operated by XX under its Vacation Ownership System. Specifically, you have requested guidance as to whether "timesharing that is sold in increments of one week or less is a public accommodation as that term is defined in the ADA."

The ADA authorizes the Department to provide technical assistance to entities that are subject to the Act. This letter provides informal guidance to assist you in understanding how the ADA may apply to your client. However, this technical assistance does not constitute a determination by the Department of Justice of your client's rights or responsibilities under the ADA and does not constitute a binding determination by the Department of Justice.

Based on our review of your letter and supporting materials, it is our understanding that the specific question you pose is the following: Is a vacation property owned in the form of ownership referred to by XX as "timesharing," and sold by

XX in increments of one week or less, a "place of public accommodation" as defined in this Department's regulation implementing title III of the ADA? See, 56 Fed. Reg. 35,544 (July 26, 1991) to be codified at 28 C.F.R. pt. 36.

cc: XX CRS Files XX
XX

01-01051

Based on the representations made in your April 23, 1991, letter, we believe that timeshare facilities in XX

Vacation Ownership System are nonresidential places of public accommodation. In reaching this conclusion we have considered the following factors to be of particular significance:

1. Ownership of timesharing units is sold in intervals of one week or less, which is consistent with the requirement that a place of lodging be a facility that is intended or used for, or permits short-term stays;

2. While ownership to individual units is conveyed in fee simple, recorded restrictive covenants substantially limit rights of ownership and owners have no right to occupy, alter, or exercise other control over any specific unit;

3. Owners of timesharing interests are not required to return to the same unit or project and may utilize various exchange options to exchange their units for units at other resorts; and

4. XX timeshare accommodations are operated like hotels (i.e., reservations, central registration, and room assignments are required) by a company that is in the hotel business.

We wish to stress that we have reached this conclusion based on your description of the ownership and operation of XX Vacation Ownership System. Thus, this conclusion should not be viewed as a general statement of the Department's position with respect to other types of timesharing facilities; our position on this issue may well be different given a different set of facts concerning the ownership and operation of such facilities.

As you note in your April 23, 1991, letter, as places of public accommodation, timeshare facilities are subject to the title III requirements for readily achievable barrier removal; and any new construction or alteration of such facilities must follow the Accessibility Guidelines adopted as Appendix A to the Department's title III regulation. We would also like to point out that, as a public accommodation, XX is also subject to other significant non-discrimination requirements under title III of the ADA. For example, XX must provide auxiliary aids and services to guests with hearing, speech, or vision impairments, unless doing so would result in an undue burden or a fundamental alteration in the nature of the services or accommodations being offered.

I hope this information has been helpful to you.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

01-01053

GALAXY RENTAL RESERVATIONS
GROUP MANAGEMENT CORPORATION (800) 634-3119
2345 Sand Lake Road, Suite 100
Orlando, Florida 32809
(407) 859-8900

March 27, 1992

Ms. Irene Bowen
OFFICE OF THE AMERICANS OF DISABILITIES
Civil Rights Division
POB 66118
Washington, DC 20035

Dear Ms. Bowen:

I was speaking with Dana Jackson at the Mid-Atlantic Center and he referred me to you. I was anxious to know whether a timeshare resort needs to equip itself with the TDA equipment for use by guests/owners. I would appreciate your answer regarding this matter. My telephone number is 407-856-7190, extension 206.

I look forward to hearing from you.

Yours Sincerely,
Pamela Perryman
Corporate Controller

PP/pb

ORBIT ONE BRYAN'S SPANISH COVE ISLE OF BALI PARKWAY INTERNATIONAL
Vacation Villas Vacation Treasure Vacation Paradise Vacation Adventure
01-01054

T. 6-18-92

DJ 202-PL-00050

JUL 28 1992

DIR
WODATCH
DATE

Kevin W. Betz, Esq.
Krieg, Devault, Alexander, & Capehart
SPECIAL One Indiana Square
COUNSEL Suite 2800
BREEN Indianapolis, Indiana 46204-2017

DATE Dear Mr. Betz

I am responding to your letter asking for clarification of the requirements of title III of the Americans with Disabilities Act of 1990 (ADA), Pub. L. 101-336, 104 Stat. 327 (July 26,
DEPUTY 1990), 42 U.S.C.A. SS 12101 et seq., and this Department's
BOWEN regulation implementing title III, 56 Fed. Req. 35544, to be codified at 28 C.F.R. pt. 36.
DATE

The ADA authorizes the Department to provide technical assistance to individuals and entities that have rights or responsibilities under the Act. This letter provides informal guidance to assist you in understanding the ADA and the
BLIZZARD Department's regulation. However, this technical assistance does not constitute a determination by the Department of Justice of
DATE your clients' rights or responsibilities under the ADa, and it is not binding on the Department of Justice.

You have asked whether a retail business that operates two-story facilities in which all customer service activity is carried out on the first floor is required to provide elevator
GYB access to the employee areas on the second floor in either its existing facilities or in the facilities that it is planning to
DATE construct.

In new construction and alterations, title III generally requires that at least one accessible passenger elevator serve each level of a multistory building. However, there is an exception to this general rule. Elevators are not required in facilities that are less than three stories or have fewer than

cc: Records, Chrono, Wodatch, Blizard, Breen
udd:Blizard.ada.interpretation.betz

3000 square feet per story, unless the building is a shopping center or mall; the professional office of a health care provider; a public transit station; or an airport passenger terminal. Therefore, a newly constructed or altered two-story retail facility would only be required to provide elevator access to the second floor if the store is part of a shopping center or mall, as defined in section 36.401(d)(1)(ii) or section 36.404(a)(2) of the title III rule. If a building does not qualify for the elevator exemption, all floors must be served by elevators, even if the floors are used only by employees. Although areas used only as work areas need not be designed to permit maneuvering within the areas, an accessible approach and entrance to the areas must be provided.

In existing facilities that are not otherwise being altered, a public accommodation is required to remove architectural barriers to the extent that it is readily achievable, i.e., easily accomplishable and able to be carried out without much difficulty or expense. The requirements for barrier removal are not to be interpreted to exceed the title III rule's alteration standards. In other words, if an existing building would be eligible for the elevator exemption if it were undergoing alterations, it would never be necessary to install an elevator for purposes of barrier removal. In addition, in most cases installation of an elevator would not be considered "readily achievable" because of the expense.

For your information, I am enclosing a copy of this Department's regulation implementing title III of the ADA and the technical assistance manual that we developed to assist individuals and entities subject to the ADA to understand the requirements of title III. I hope that this information is helpful to you.

Sincerely,

John L. Wodatch
Director
Office on the Americans with Disabilities Act

Enclosures

01-01056

KRIEG * DEVAULT * ALEXANDER
& CAPEHART
ATTORNEYS AT LAW

March 19, 1992

Mr. John Wodatch
Director of the Office of
The Americans With Disabilities Act
Civil Rights Division
U.S. Department of Justice
Post Office Box 66738
Washington, D.C. 20035-9998

RE: Request For Comment From Department of Justice About
Application of Americans With Disabilities Act

Dear Mr. Wodatch:

Please find attached to this letter a situation that we would appreciate your comments upon in relation to the newly enacted Americans With Disabilities Act.

We have attempted to describe all facts of which we are aware, but if you have any questions, please call me at 317-636-4341 or 317-263-9141. Thank you for your assistance.

Respectfully,

Kevin W. Betz

KWB:sbh:870
Attachment

01-01057

SITUATION

We understand that Company A is considering the placement of its employees on the upper (second) level of its two-story retail stores. Customers of Company A will not have access to the upper (second) level of the stores inasmuch as all retail activities will be conducted on the first (ground) floor. The functions to be performed by the employees on the second level would include telemarketing, cash-counting and other detail functions. As many as 12 employees may be utilized for these functions. Currently, there is no elevator which serves the upper (second) level of the stores. Moreover, the current design of new stores do not include elevators. Company A has asked whether, under these circumstances, elevators which would serve the second level will be required by the American With Disabilities Act ("ADA") in Company A stores. If you determine that an elevator would be required, what are your suggested alternatives to installing an elevator?

KWB:sbh:869

01-01058

JUL 28 1992

DJ 202-PL-205

Newton Greenblatt, Esq.
P.O. Box 726
Vineland, New Jersey 08360-0726

Dear Mr. Greenblatt:

This letter responds to your inquiry regarding accessibility requirements under the Americans With Disabilities Act (ADA).

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist you in understanding the ADA's requirements. However, it does not constitute a legal interpretation and it is not binding on the Department.

You inquired whether the entrance to a building occupied by the Vineland Historical and Antiquarian Society must be reconstructed so as to make it accessible to persons with disabilities.

You indicated in your letter that the Vineland Historical and Antiquarian Society is a private entity. Accordingly, it would be considered a "place of public display or collection," one of the categories of places of public accommodation under the ADA. The ADA requires public accommodations to remove architectural barriers in existing facilities where such removal is "readily achievable," i.e., easily accomplishable and able to be carried out without much difficulty or expense. Determining if barrier removal in a public accommodation is readily achievable is necessarily a case-by-case judgment. Whether such action is readily achievable for the Vineland Historical and Antiquarian Society is to be determined according to the following factors:

> (1) the nature and cost of the action needed;
>
> (2) the overall financial resources of the site or sites involved in the action; the number of persons employed at the site, the effect on expenses and resources; legitimate safety requirements

cc: Records, Chrono, Wodatch, Foran, Magagna, Library, FOIA
Udd:Foran:Newestgreenblatt.202.pl.205

01-01059

> necessary for safe operation, including crime prevention measures; or any other impact of the action on the operation of the site;
>
> (3) the geographic separateness, and the administrative or fiscal relationship of the site or sites in question to any parent corporation or entity with respect to the number of employees; the number, type, and location of its facilities;
>
> (4) if applicable, the overall financial resources of any parent corporation or entity; the overall size of the parent corporation or entity with respect to the

number of its employees; the number, type, and location of its facilities; and

(5) if applicable, the type of operation or operations of any parent corporation or entity, including the composition, structure, and functions of the workforce of the parent corporation or entity.

Generally, a public accommodation would not be required to remove a barrier to physical access posed by a flight of steps if removal would require very extensive ramping or an elevator. In contrast, ramping a single step will likely be readily achievable, and ramping several steps will in many circumstances also be readily achievable. Also, you should be aware that if your organization's facility is eligible for listing in the National Register of Historic Places under the National Historic Preservation Act (16 U.S.C. 470, et seq.), or is designated as historic under State or local law, barrier removal would not be considered "readily achievable" if it would threaten or destroy the historic significance of the building. In many cases, however, removing barriers will not threaten or destroy the architectural significance of a building.

Enclosed please find a copy of the Department's Title III Technical Assistance Manual and the Title III regulations. I hope this information will be useful to you.

Sincerely,

Joan A. Magagna
Deputy Director
Office on the Americans With Disabilities Act

Enclosure: (2)
Title III Technical Assistance

01-01061

GREENBLATT & GREENBLATT, P.C.
ATTORNEYS AT LAW
CHEMICAL BANK BUILDING
LANDIS AVENUE AT 7TH STREET
VINELAND, NEW JERSEY

WM. JOSEPH GREENBLATT
COUNSEL TO THE FIRM
NEWTON GREENBLATT
GARY E. GREENBLATT
MEMBER OF N.J. AND D.C. BAR

PLEASE REPLY TO:
P.O. BOX 726
VINELAND, N.J.
08360-0726

TELEPHONE

(609) 696-2323

May 28, 1992 FAX
(609) 696-2324

Office on the Americans with Disabilities Act
Civil Rights Division
U.S. Department of Justice
P.O. Box 66118
Washington, DC 20035-6118

Attn: Architectural Compliance and Review Board

Dear Sirs:

I attach hereto copy of letter I directed to you on February 14 to which I have
had no response. I tried calling the 800 number innumerable times without success. Can you please have someone get in touch with me at an early date concerning this "problem".

Thanking you, I am

Very truly yours,

NEWTON GREENBLATT
NG:ja

Enc.

01-01062

GREENBLATT & GREENBLATT, P.C.
ATTORNEYS AT LAW
CHEMICAL BANK BUILDING
LANDIS AVENUE AT 7TH STREET
VINELAND, NEW JERSEY

WM. JOSEPH GREENBLATT
COUNSEL TO THE FIRM

PLEASE REPLY TO:
P.O. BOX 726

NEWTON GREENBLATT VINELAND, N.J.
08360-0726
GARY E. GREENBLATT
MEMBER OF N.J. AND D.C. BAR TELEPHONE
(609) 696-2323
FAX
(609) 696-2324

February 14, 1992

Office on the Americans with Disabilities Act
Civil Rights Division
U.S. Department of Justice
P.O. Box 66118
Washington, D.C. 20035-6118

Dear Sirs:

I am a member of the Board of Trustees of the Vineland Historical and Antiquarian Society, which was originated here in Vineland in 1864. The Society presently occupies a building erected in 1910 and the entrance to same is by ascending ten steps before entering the front door.

I have attempted to ascertain information by reading the pamphlet of questions and answers entitled "The Americans with Disabilities Act", as well as what was published in the Federal Regulation by the Department of Justice in July 1991.

I appears to me that the Society would fit into the definition of "public accommodation", i.e., museums, libraries, etc., but I am not sure that it is necessary to presently reconstruct the entrance to the building, which is open to the public on a part-time basis and by appointment for those persons interested in genealogy.

If you can give me a simple answer, I would appreciate same. If not, can you please direct me to the source for a response to my inquiry.

Thanking you, I am

Very truly yours,

NEWTON GREENBLATT
NG:dlc

01-01063

T. 7-21-92

DJ 202-PL-183

JUL 28 1992

Mr. Harold McClellan
Maybrook Construction Company
774 State Route 7 N.E.
P.O. Box 53
Brookfield, Ohio 44403

DIRECTOR Dear Mr. McClellan:
WODATCH

I am responding to your letter asking whether title III of
DATE the Americans with Disabilities Act of 1990 (ADA) and this Department's regulation implementing title III would require the installation of an elevator in a newly constructed two-story
DEPUTY building that houses a business that provides home health care
LIB services, if no members of the public or clients of the business receive services at that facility.
DATE

The ADA authorizes the Department to provide technical assistance to individuals and entities that have rights or
ORIGINATOR responsibilities under the Act. This letter provides informal
BLIZZARD guidance to assist you in understanding the ADA and the Department's regulation. However, this technical assistance does
DATE not constitute a determination by the Department of Justice of your clients' rights or responsibilities under the ADA, and it is not binding on the Department of Justice.

In new construction and alterations, title III generally requires that at least one accessible passenger elevator serve each level of a multistory building. However, there is an exception to this general rule. Elevators are not required in facilities that are less than three stories or have fewer than 3000 square feet per story, unless the building is a shopping center or mall, the professional office of a health care provider, a public transit station, or an airport passenger terminal.

cc: Records, Chrono, Wodatch, Bowen, Blizard, FOIA, Library
udd:mercado:policy.letters.certif:blizard.wodatch.mcclellan

This Department's regulation implementing title III defines a "professional office of a health care provider" as a location where a State-regulated professional provides physical or mental health services to the public. If no health care services will be provided at the facility that you are designing, the facility is not the "professional office of a health care provider;" therefore, elevator access to the second floor is not required. Although elevator access to the second floor is not required, the second floor must meet all of the other requirements for accessibility that are established by this Department's regulation.

For your information, I am enclosing a copy of this Department's regulation implementing title III of the ADA and the technical assistance manual that we developed to assist individuals and entities subject to the ADA to understand the requirements of title III. I hope that this information is helpful to you.

Sincerely,

John L. Wodatch
Director
Office on the Americans with Disabilities Act

Enclosures

01-01065

Maybrook Construction Co.
774 STATE ROUTE 7 N.E.
P.O. BOX 53
BROOKFIELD, OHIO 44403
216-448-4086 FAX NO. 216-448-4944

May 26, 1992

The Office of the Americans
With Disabi (illegible)
Civil Rights Div
U.S. Department
P.O. Box 66118
Washington, D.C.

RE: A. Title III
rs

Gentlemen:

ADAAG Section 4.1.3 (5); 4.1.6 (1) (K) (L) indicates elevators are not required in a building less than three stories in height, unless the building is the office of a professional health care provider.

We are designing a two story office building for a company that runs a home health care business. Employees only would use the building, no public and/or patients would have reason to access the building.

Is an elevator required?

Very truly yours,

MAYBROOK CONSTRUCTION COMPANY

HMcC/mlm Harold McClellan, Architect

Member Builders Association of Eastern Ohio and Western Pennsylvania
Equal Opportunity Employer

01-01066

JUL 29 1992

The Honorable Dennis DeConcini
United States Senate
328 Senate Hart Building
Washington, D. C. 20510-6025

Dear Senator DeConcini:

This is in response to your inquiry on behalf of your constituent, XX , who seeks information about the applicability of the Americans with Disabilities Act (ADA) to a housing community that includes common areas sometimes open to the public.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist your constituent in understanding the ADA's requirements. However, it does not constitute a legal interpretation and it is not binding on the Department.

Title III of the ADA imposes certain obligations on places of public accommodation. The Act lists twelve types of entities as places of public accommodation; strictly residential facilities are not among the twelve categories. Accordingly, the individual dwelling units in strictly residential facilities are not covered by title III of the ADA. Similarly, common areas in such facilities are not covered where use is restricted exclusively to residents and their guests. However, if a residential facility opens up its common areas to general use by non-residents, it may lose its strictly residential character and those areas will probably be covered by the ADA if common area activities or facilities fall within one of the twelve categories of places of public accommodation in title III.

To assist in understanding these provisions, please refer to pages 35551-35552 of the enclosed title III regulations for a

listing of the twelve categories of places of public accommodation and a discussion of the circumstances where a residential facility may be covered by title III. Some further discussion of the issue is found at pages 1 to 3 of the enclosed Title III Technical Assistance Manual.

cc: Records, Chrono, Wodatch, Novich, Magagna, McDowney, Library, FOIA
Udd:Novich:Cong.Deconcini.ltr

01-01067

I hope this information will be useful to you in responding to your constituent.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

Enclosures (2)

01-01068

United States Senate
COMMITTEE ON APPROPRIATIONS
Washington, DC 20510-6025

June 8, 1992

Office on the Americans
with Disabilities Act
Civil Rights Division
U.S. Department of Justice
P.O. Box 66118
Washington, D.C. 20035-6118

Dear ADA Specialist:

I am writing on behalf of (b)(6), a constituent who is concerned about the applicability of the Americans with Disabilities Act.

XX is a member of the Homeowner's Association for an elderly residential facility in Mesa, Arizona. Her concern lies in the accessibility requirements of the Act as applied to this facility. It is a large housing community of over 2000 homes with approximately 5000 residents. The common areas of the facility are composed of three buildings which are currently inaccessible to wheelchairs. While most of the activities in these common areas are limited to residents, there are some events which are open to the public.

It would be greatly appreciated if you would look into this matter and respond to the concerns raised by this constituent. If you require any additional information on this matter, please contact Rosalie Lopez at (202)-224-4521.

Sincerely,

DENNIS DeCONCINI
United States Senator

DDC/rlx
01-01069

DJ 202-PL-00188

JUL 29 1992

Ms. Elizabeth A. Lunday
Assistant City Attorney
City of Mesquite Texas
Post Office Box 850137
Mesquite, Texas 75185-0137

Dear Ms. Lunday:

This is in response to your letter, and your subsequent telephone conversation with Ruth Lusher of my staff, about the requirements of title II of the Americans with Disabilities Act (ADA). Your letter asked several questions about the ADA requirements for the installation of curb ramps.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities that have rights and responsibilities under the Act. This letter provides informal guidance to assist you in understanding how the ADA may apply to public entities. This technical assistance, however, does not constitute a determination by the Department of Justice of the City of Mesquite's rights or responsibilities under the ADA and it is not binding on the Department.

Section 35.149 of the Department's regulation implementing title II (enclosed) provides that a public entity must not deny

the benefits of its programs and services to individuals with disabilities because its facilities are inaccessible. A public entity's services, programs, or activities, when viewed in their entirety, must be readily accessible to and usable by individuals with disabilities. However, a public entity is not necessarily required to make each of its existing facilities accessible or to take any action that it can demonstrate would result in a fundamental alteration in the nature of its program or activity or in undue financial and administrative burdens (S35.150(a)).

Section 35.150(d)(2) of the title II rule states that public entities with 50 or more employees and with responsibility for or authority over streets, roads, or walkways must prepare a schedule for providing curb ramps or other sloped areas where existing pedestrian walks cross curbs. Priority must be given to walkways serving State and local government offices and facilities, transportation, places of public accommodation, and employers, followed by walkways serving other areas. This

cc: Records; Chrono; Wodatch; Bowen; Library; FOIA.
:udd:bowen:ada.interpretation.lunday

schedule must be included as part of the required transition plan.

However, section 35.150 does not necessarily require a curb ramp at every existing intersection. Alternative routes to buildings that make use of existing curb ramps may be acceptable under the concept of program accessibility, even if an individual with disabilities may need to travel a longer route to reach a particular building than would a nondisabled individual. Moreover, the fundamental alteration and undue burdens defenses may limit the number of curb ramps required.

In the case of new construction and alterations (as opposed to situations in which a public entity modifies existing walkways solely to provide access), the rule requires that curb ramps be provided at any intersection having curbs or other barriers to entry from a street level pedestrian walkway (S 35.151(e)).

You asked if the ADA Accessibility Guidelines (Guidelines) are mandatory standards. Please note that section 35.151 of the title II regulation requires that all newly constructed or altered facilities comply with one of two Federal accessibility standards. A public entity may choose to follow either the Uniform Federal Accessibility Standards (Uniform Standards) or

the ADA Accessibility Guidelines (except for the title III elevator exemption). A copy of each of these standards is enclosed.

The Architectural and Transportation Barriers Compliance Board (Board), which developed the ADA Accessibility Guidelines, is currently developing specific title II guidelines, which are expected to be proposed for public comment later this summer. At such time as the Board issues final guidelines, this Department will consider adopting them as the standards that must be followed under title II.

In the meantime, when a public entity chooses either the Uniform Standard or the ADA Accessibility Guidelines for a building, facility, or project, it must follow that standard completely. While these standards are similar in most respects, there are differences between the two standards in several areas, which may affect a public entity's choice between them. The Department's Title II Technical Assistance Manual (at pp. 23-32) sets out the major distinctions between the two standards.

For example, one of the areas in which the two standards differ relates to the requirements for detectable warnings on curb ramps, which your letter specifically addressed. The Uniform Standards do not require detectable warnings; the Guidelines require the use of a specific pattern of truncated domes.

Section 4.7.7 of the Guidelines provides that "a curb ramp shall have a detectable warning complying with 4.29.2" Section 4.29.2 requires the use of a specific pattern of detectable truncated domes. Therefore, if the City decides to follow the Guidelines for its curb ramp program, it must comply with the provisions of section 4.7.7. However, as discussed above, the City may choose to follow the Uniform Standards, which do not require detectable warnings on curb ramps.

You also expressed concern in your letter and in the telephone conversation about problems with drainage if curb ramps are constructed to comply with section 4.8.4 of the Guidelines. Section 4.8.4 ("Landings") does not apply to curb ramps. The requirements for curb ramps, which are somewhat different from those for ramps, are set out in sections 4.7.1 through 4.7.11. In lieu of the provision for the level landings required at ramps, section 4.7.5 of the Guidelines ("Sides of Curb Ramps") and Figure 12(a) provide that where the landing at the top of the ramp is less than 48 inches, the slope of the side flares shall

not exceed 1:12. This allows the side flares to be used in traversing the curb ramp as shown in Figure 12(a) of the Guidelines.

It appears that the City of Mesquite's specifications, which you enclosed with your letter, were developed with the intention of complying with section 4.8.4 of the Guidelines, which is not required. In complying with the provisions of section 4.7.1 through 4.7.11, the City of Mesquite should be able to develop simplified specifications and drawings that more closely resemble the examples shown in Figures 12 and 13 of the Guidelines. Please note, however, that a 5/8 inch curb height or lip where the ramp meets the street, shown in the City's drawings, is not allowed by either standard. See SS 4.5 and 4.7.4 of the Uniform Standards and the Guidelines.

I am enclosing copies of the two standards, the title II regulation, and the title II technical assistance manual for your use. I hope that you find this information helpful.

Sincerely,
John L. Wodatch
Director
Office on the Americans with Disabilities

Enclosures (4)

cc: Congressman John Bryant
Senator Phil Gramm
Senator Lloyd Bentsen

01-01072

May 15, 1992

Office on the Americans with Disabilities Act
U.S. Department of Justice
P.O. Box 66118
Washington, D.C. 20035-6118

Re; Handicapped ramp construction.

Dear Sir or Madam:

I have been requested to make inquiry to your office on behalf of the Planning and Engineering divisions of the City of Mesquite, Texas regarding handicapped ramp construction. As with all aspects of the Americans with Disabilities Act, the City of Mesquite is establishing plans and procedures to comply with the requirements of the Act. In doing so, the City is following

the guidelines set out in the American with Disabilities Act Guidelines for Buildings and Facilities.

Due to the manner in which streets in Mesquite are constructed to allow for drainage, certain of the ramp requirements set out in the American with Disabilities Act for Buildings and Facilities have come into question.

Enclosed is a detailed drawing of the current specifications for the construction of wheel chair ramps within the City of Mesquite. These ramps are required to be constructed at all drive approaches, alley intersections and street intersections. If the ramps are constructed to meet the Guideline standards set forth in section 4.8.4 assuming the standards can be met, major reconstruction of City streets would be required. This reconstruction would at a minimum result in diversion of drainage, and in many instances severe drainage problems would occur. It is my understanding that at the present time approximately 1500 handicapped ramps will need to be constructed in the City of Mesquite, therefore the concerns expressed herein have an enormous effect on the City of Mesquite and its infrastructure. The resulting question is, are the guideline standards mandatory, or as suggested by their title, guidelines from which there may be other options or alternatives. If alternative standards may be used, do the City of Mesquite specifications for constructing ramps, as shown in the enclosed drawing, constitute an acceptable alternative? If the Mesquite specifications are not sufficient, are there alternatives that have been approved that may be utilized by the City of Mesquite?

The City of Mesquite also requests interpretation of 4.29.5 and the related section 4.29.2. Section 4.29.5 reads as follows:

> 4.29.5 Detectable Warnings at Hazardous Vehicular Areas. If a walk crosses or adjoins a vehicular way, and the walking surfaces are not separated by curbs, railings or other elements between the pedestrian areas and the vehicular areas, the boundary between the areas shall be defined by a continuous detectable warning which is 36 in (915mm) wide, complying with 4.29.2.

As I read this section, it does not apply to intersections where the curb wraps around either side of a handicapped wrap such as in the design of the ramps constructed in Mesquite (per the enclosed diagram), or in figure 12 of the Guidelines. A copy of figure 12 is enclosed for your convenience. I request you let me know if this interpretation is incorrect. In instances where detectable warnings are required, where this is no curb, railing, etc., are there acceptable alternatives to the truncated domes described in Guidelines S 4.29.2 which reads in part:

B.J. Smith City Attorney
Elizabeth A. Lunday J. Michael Ferrin
Attorneys

01-01073

4.29.2 Detectable Warnings on Walking Surfaces. Detectable warnings shall consist of raised truncated domes with a diameter of nominal 0,.9 in (23mm), a height of nominal 0.2 in (5mm and a center to center spacing of nominal 2.35 in (60mm) and shall contrast visually with adjoining surfaces, either light-on-dark, or dark-on-light.

An example of an alternative warning proposed by the City of Mesquite is scored concrete with the scoring at least 1/2 inch deep and spaced no more

than 1/2 inch apart. Is this an acceptable alternative to the use of truncate domes in concreted areas? Are there alternatives which have been approved on concrete and other surfaces. If so, please provide descriptions of acceptable alternatives to the City of Mesquite.

Thank you for your attention and consideration to the questions and issues raised herein. I look forward to your written response.

Yours truly,

Elizabeth A. Lunday
Assistant City Attorney
City of Mesquite, Texas

enclosures

cc. John Bryant
Phil Gramm
Lloyd Bentsen

01-01074

(Form) TYPICAL WHEELCHAIR RAMP

(Form) B-30 APPENDIX B

01-01076

DJ 202-PL-26

JUL 29 1992

Cynthia M. Shewan, Ph.D.
Director, Research Division
American Speech-Language Hearing Association
10801 Rockville Pike
Rockville, Maryland 20852

Dear Dr. Shewan:

This letter responds to Ms. Lorraine Eyde's request for informal guidance on the three case studies your committee has prepared for inclusion in the multidisciplinary casebook on test misuse being published by the American Psychological Association. The case studies raise important issues for test-takers with disabilities, and we appreciate your committee's efforts to provide accurate guidance to test administrators. As requested, we have reviewed the analysis provided for each case for conformity with the requirements of the Americans With Disabilities Act ("ADA"). In general, we urge that your materials be revised to accurately reflect the statutory framework of Titles II and III of the Americans With Disabilities Act, which is destined to have a major impact on test administration.

I. General Recommendations

We recommend that the analysis of each case study begin by discussing whether the examinee or test-taker is covered by the Americans With Disabilities Act. For purposes of coverage under the ADA, a person with a disability is:

- an individual who has a physical or mental impairment that substantially limits one or more major life activities;

- an individual who has a record of such impairment; or

cc: Records; Chrono; Wodatch; Breen; Foran.
:udd:foran:shewanltr

01-01077

- an individual who is regarded as having such an impairment.

28 C.F.R. S36.104.

The analysis should then point out that once it is determined that the potential test-taker is an "individual with a disability" under the Act, it is necessary to consider the status of the entity administering the test and the purpose of the test. Title III governs private entities offering examinations, while Title II applies to licensing activities by state and local government entities. Only one of the case studies you submitted for our review, Case #90, involves Title III alone. Cases #88 and 89 would be governed by Title III and II both.

A. Title III

All three of the case studies submitted for review involve the administration of examinations by private entities. Accordingly, the analyses for these cases should point out that the regulations promulgated under Title III of the ADA, effective January 26, 1992, provide very explicit requirements for private entities administering examinations, including the following:

- Any private entity that "offers examinations or courses related to applications, licensing, certification, or credentialing for secondary or postsecondary education, professional, or trade purposes" must offer such examinations or courses in an accessible place and manner or offer alternative accessible arrangements for people with disabilities. 28 C.F.R. S36.309(a).

- Examinations must be selected and administered so as to ensure that the examination accurately reflects an individual's aptitude or achievement level, rather than reflecting the individual's impaired sensory, manual or speaking skills. 28 C.F.R. S36.309(b)(1)(i).

- Where necessary, examinations must be modified for people with disabilities. Required modifications may

include changes in the length of the time permitted to complete the exam or adaptation of the manner in which the exam is given. 28 C.F.R. S36.309(b)(2).

- Auxiliary aids and services must be provided for test-takers with disabilities when necessary, unless offering a particular aid or service would "fundamentally alter the measurement of the skills or knowledge the examination is intended to test or would result in an undue burden." 28 C.F.R. S36.309(b)(3).

B. Title II

Two of the three case studies submitted for review also involve licensing activities by state and/or local government entities, and are thus covered by Title II of the ADA in addition to Title III. The analysis of these cases should explain that Title II, which took effect on January 26, 1992, generally prohibits discrimination on the basis of disability by public entities (instrumentalities of state and local government). Specifically, the regulations under Title II prohibit the public entity from discriminating against qualified individuals with disabilities on the basis of disability in the granting of licenses or certification. A person is a "qualified individual with a disability" with respect to licensing or certification if he or she can meet the essential eligibility requirements for receiving the license or certification. Like Title III, the regulations under Title II require the testing entity to make reasonable modifications in testing practices, policies, or procedures. Generally, Title III regulations should be used as a guide in determining what constitutes discriminatory conduct by a public entity in testing situations under both Titles II and III.

II. Individual Case Study Comments

A. Case #88: Reasonable Testing Accommodations for a Person With Attention Deficit Disorder

1 Focus Questions

Both of the "Focus Questions" for Case #88 should be rephrased. Question 1 uses incorrect terminology. The term "reasonable accommodation" actually applies only to Title I of the ADA. The analyses for the three case studies involve Titles II and III of the Act. The phrase "reasonable accommodation" should be replaced with "reasonable modification" throughout. Thus, the question might be rephrased as follows:

"List the criteria for determining what reasonable modifications in testing practices, policies and/or procedures are necessary to avoid discriminating against a test-taker on the basis of disability."

Question Two is also problematic. The question "what are the arguments in favor of granting a person with a disability special administration procedures," suggests that modifying testing practices, policies or procedures for persons with disabilities is a voluntary matter. The question should instead remind testing administrators of their legal duty to provide such modifications. Thus, the question might read:

"What are the legal requirements of testing administrators with respect to modifying testing policies, practices or procedures for persons with disabilities?"

2. Analysis

(a) Paragraph 1

Paragraph 1 of the analysis for Case #88 is not wrong; it is simply incomplete. The analysis should add a section discussing all applicable ADA requirements. In Case #88, the State Education Agency (SEA) administered the test in consultation with a private testing company. The testing company would be covered by Title III's requirements. If the teacher in Case #88 had requested auxiliary aids which would result in an undue burden, or would "fundamentally alter the measurement of the skills or knowledge the examination is intended to test," the company would not be required to provide such aids. 28 C.F.R. S 36.309(b)(3).

Meanwhile, the other entity presented in the case study, the State Education Association (SEA), appears to be a "department, agency,... or other instrumentality of a State," 42 U.S.C. S 12131(1)(B), and would thus be covered by Title II. As a state government entity, the SEA would be prohibited from discriminating against qualified individuals (those who meet essential eligibility requirements) in the granting of licenses or certification. Because the phrase "essential eligibility requirements" is taken from the definitions in the regulations implementing section 504, caselaw under 504 is applicable to its interpretation. It is therefore appropriate for the Case #88 analysis to retain a discussion of caselaw under section 504 -- so long it reflects recent developments in the law, as discussed

below.

(b) Paragraphs 2-4

The major problem with the text of paragraphs 2-4 in the Case #88 analysis is that it is based on a district court decision which was reversed on appeal. In Pandazides v. Virginia Board of Education, 946 F.2d 345 (4th Cir. 1991) (attached), the appellate court found that the district court had erred in concluding that the teacher with learning disabilities in Case #88 was not "otherwise qualified." The appellate court stated that the trial court had to do more than simply determine whether the teacher met all of the stipulated requirements of the Virginia Board of Education (one of which was passing a "communication skills" test) -- the court had to look to the actual requirements of the particular position sought. Thus, the appellate court held that the question of whether the teacher was "otherwise qualified" should involve two factual determinations: (1) whether the teacher could perform the

essential functions of a school teacher, and (2) whether the requirements imposed by the Board actually measured those functions. Moreover, the appellate court held that even if the lower court were to determine that the teacher could not perform her duties, it would have to determine whether modifications could be made to allow her to teach in any event.

Obviously, the appellate and district courts' legal analyses differ markedly, and paragraphs 2-4 in the analysis for Case #88 should be rewritten accordingly. Further, the new analysis should note that the results in Case #88 reflect the judgment of one judicial circuit only; other circuits' interpretation of section 504 may differ.1

B. Passing the Bar Examination With a Learning Disability: Case #89

The analysis for Case #89 suggests that bar examiners follow the recommendation of the National Conference on Bar Examiners and develop a "routine policy" with respect to test-takers with disabilities. This analysis should be rewritten to reflect the ADA's goal of individualized assessment. See preamble to Title II regulations (stating that ascertaining the accommodation needs of individual persons with disabilities will depend on the "individual needs" of that person.) (Preamble to Section 35.130, "General Prohibitions Against Discrimination"). Under the Title III regulations, the focus should be on the examination's measurement of the individual test-taker's skill or aptitude.

See 28 C.F.R. S 36.309(b)(1)(i) (a private entity offering an examination covered by the section must assure that the examination is selected and administered so as to best ensure that the examination accurately reflects an individual's aptitude or achievement level or other factor the examination purports to measure, rather than any impaired sensory, manual, or speaking skills.)

1 See, e.g., Wynne v. Tufts University School of Medicine, 932 F.2d 19 (1st Cir. 1991) (academic institution has statutory obligation to reasonably accommodate persons with disabilities unless it can prove accommodations would result in substantial alteration of the program, or would impose an undue burden); Taylor v. U.S. Postal Service, 946 F.2d 1214 (6th Cir. 1991) (whether individual meets the statutory definition of handicapped under the Act is best suited to a case-by-case analysis); Nathanson v. Medical College of Pennsylvania, 926 F.2d 1368 (3rd Cir. 1991) (stating that "reasonable accommodation" must be decided on a case-by-case basis, and holding there can be no summary judgment on Rehabilitation Act claim, where issue of material fact exists as to whether medical college had reason to know that student's condition was a handicap and whether college provided reasonable accommodation).

The other issue raised in Case #89 concerns documentation of a disability. The analysis should point out that examiners may require evidence that an applicant is entitled to modifications or aids, but requests for documentation must be reasonable and must be limited to the need for the modification or aid requested. Appropriate documentation might include a letter from a physician or other professional, or evidence of a prior diagnosis or accommodation, such as eligibility for a special education program. Preamble to Section 36.309, "Examinations and Courses."

In this connection, the analysis for Case #89 is remiss in suggesting that a person with a newly diagnosed disability who has never before received the benefit of modified testing practices or procedures has a less credible claim to such modifications. The question is whether the individual now qualifies as a "person with a disability" under the Act, and whether it is necessary to modify testing practices or procedures in order to accurately test the individual's skill or aptitude, and not his or her disability.

C. Testing individuals With Physical Disabilities: Case #90

The analysis for Case #90 shares an error common to all three case studies -- failing to use the ADA's analytical framework and terminology. More specifically, Case #90's analysis of the first individual, Karen, should focus on whether she is an individual with a disability for purposes of the Act, and whether modifications in testing policies, practices or procedures should have been provided to ensure that the exam reflected her aptitude and not her disability.

The issues raised by Case #90's second example are slightly different. The analysis states: "It is certainly easier for a school counselor not to have to request special accommodations and proctor the special administration, but failure to request special accommodations for this reason is not professional behavior." If the school were the entity offering the test, and the counselor knew of Paul's "history of need for special accommodation," the counselor's purposeful failure to advise Paul of his right to receive a special test administration would not only be unprofessional -- it might very well be illegal. In Case #90, however, it appears that an entity other than the school administered the college admissions test. Under those circumstances, the counselor may not have a direct legal duty to advise Paul of his right to receive appropriate modifications. Nevertheless, the analysis should be revised to reflect a considerably stronger duty on the part of the school counselor to advise Paul to receive testing modifications than as now stands.

The third example in Case #90 involves an individual who was provided alternative testing arrangements which featured numerous distractions. Such arrangements would be insufficient under the ADA. See 28 C.F.R. S 36.309(b)(4) (comparable conditions must be provided when alternative accessible arrangements are made).

I hope that this information has been helpful to you. If you have any questions, please contact Sheila M. Foran at (202) 616-2314.

Sincerely,

Philip L. Breen
Special Legal Counsel
Office on the Americans with Disabilities Act

Enclosures:
Title II and III Regulations and Technical Assistance Manuals;
"Testing Accommodations for Persons With Disabilities:
A Guide for Licensure, Certification and Credentialling";
Pandazides v. Virginia Board of Education, 946 F.2d 345
(4th Cir. 1991).

01-01083

JUL 31 1992

The Honorable Joseph R. Biden, Jr.
United States Senate
221 Russell Senate Office Building
Washington, D.C. 20510

Dear Senator Biden:

This letter is in response to your inquiry on behalf of your constituent, Marsha Hitch, who has inquired whether the Americans with Disabilities Act (ADA) precludes her from excluding children with HIV or AIDS from her day care center.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or

obligations under the Act. This letter provides informal guidance to assist your constituent in understanding the ADA's requirements. However, it does not constitute a legal interpretation and it is not binding on the Department.

Title III of the ADA prohibits discrimination against persons with disabilities in public accommodations, including day care centers. HIV disease is specifically mentioned in the title III regulations as a disability within the meaning of the ADA. Thus, exclusion from a day care center on the basis of HIV is a violation of the ADA, unless the participation of such individual poses a direct threat (significant risk) to the health or safety of others that cannot be eliminated by a policy or procedural modification. Please note that under this exception an individual may be excluded on the basis of disability only if he or she poses a direct threat to others. Thus, a child with HIV may not be excluded from a day care center on the basis of the risk to that child of acquiring infections from other children.

cc: Records, Chrono, Wodatch, Novich, McDowney, FOIA, Library.
Udd:Novich:cong.biden.ltr

01-01084

Your constituent also expressed concern about admitting children infected with HIV because of a gap for HIV-related accidents in her insurance coverage. The title III regulations specifically prohibit public accommodations from excluding people with disabilities on the basis of limitations in insurance coverage.

Enclosed is a copy of the title III regulations. You may refer to Section 36.104 at page 35593 and pages 35548-35549;

Section 36.208 at pages 35595-35596 and 35560-35561; Section 36.212 at page 35596 and pages 35562-35563, where the regulatory provisions relating to the above discussion appear.

I hope this information will be useful to you in responding to your constituent.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

Enclosure

01-01085

Marsha Hitch Day Care
Rd. 2 Box 117 B
Dagsboro, DE 19939
(302) 539-3618

June 1, 1992

Senator Joseph Biden
221 Russell Senate Office
Washington DC, 20510

Dear Senator Biden,

I'm writing this letter in response to a phone call from your Washington office in April. The call was in regards to a preceding call I placed in February stating my concerns on Public Law 101-336 also known as The Disabilities Act which states under Title III, 7K that people with disabilities including HIV and AIDS Persons are to be permitted in Day Care.

My first concern is looking at HIV or AIDS as a disability. I am not qualified as a Medical Person to care for an HIV or AIDS infected child and do not understand why a child with a weak immune system should be subjected to such risk. Most illnesses are not known for 24-48 hours before the onset of infection. For example; strep throat, pneumonia, chicken pox, influenza and/or viruses (which can not be treated with most medications). This is not a risk free situation for an HIV or AIDS child.

My second concern arose when I tried to obtain Liability Insurance to cover my Day Care business should an AIDS related incident occur resulting in a law suit. All Insurance agents I contacted stated they would not cover such an incident because HIV and AIDS is classified under the Communicable Disease Clause. On one hand I have the Federal Government saying I must care for these children because it isn't a Communicable Disease and on the other hand the Insurance Companies say it is. Where does this leave me?

Thank you for taking time to listen to and investigate my concerns. I await your solution to this dilemma.

Sincerely,

Marsha Hitch
Director

01-01086

T. 7-27-92

DJ 202-PL-187

JUL 31 1992

R.J. Dieter, D.P.M.
Portage Foot Clinic and Surgicenter
756 Portage Avenue
South Bend, Indiana 46616

Dear Dr. Dieter:

DIRECTOR
WODATCH This letter is in response to your correspondence requesting technical assistance with respect to the provisions of the
DATE Americans with Disabilities Act (ADA).

The ADA authorizes the Department of Justice to provide
DEPUTY technical assistance to individuals and entities that have rights
LIB or responsibilities under the Act. This letter provides informal guidance to assist you in understanding the ADA accessibility
DATE standards. However, this technical assistance does not constitute a determination by the Department of Justice of your rights or responsibilities under the ADA, and it is not binding
ORIGINATOR on the Department.
JOHANSEN
7/27/92 Your question deals with your obligations to provide access
DATE to your office, which is located in an older home. Specifically, you ask whether or not you must install a ramp. The ADA does not establish specific requirements regarding alterations that must be made to existing facilities for the purpose of accessibility, if alterations are not otherwise planned. It simply requires that places of public accommodation remove architectural and communication barriers to the extent that it is "readily achievable" to do so. Congress defined the term "readily achievable" to mean "easily accomplishable and able to be carried out without much difficulty or expense." If it is not readily achievable to remove barriers in an existing facility that is not otherwise being altered, then barrier removal is not required. However, if it is not possible to comply completely with the

cc: Records, Chrono, Wodatch, Bowen, Johansen, FOIA, Library
udd:mercado:policy.letters.certif:johansen.bowen.dieter

01-01087

accessibility specifications, title III provides that a public accommodation should comply to the extent that it is able to do so -- again without much difficulty or expense.

We are enclosing a copy of the title III regulations and direct your attention to section 36.304, Removal of Barriers.

I hope this information is helpful to you.

Sincerely,

L. Irene Bowen
Deputy Director
Office on the Americans with Disabilities Act
Civil Rights Division

Enclosure
cc: Congressman Tim Roemer

01-01088

T. 7-31-92

DJ 202-PL-225

JUL 31 1992

Mr. Steven John Fellman
Galland, Kharasch, Morse & Garfinkle, P.C.
Canal Square
1054 Thirty-First Street N.W.
Washington, D.C. 20007-4492

DIRECTOR Dear Mr. Fellman:
WODATCH

This is in response to your letter on behalf of your client,
DATE the National Association of Theatre Owners (NATO), regarding the application of the public accommodations sections of the Americans with Disabilities Act (ADA) to motion picture theaters.
SP COUNSEL Your letter specifically addressed three issues of concern to
PLB NATO: the elevator exemption as applied to mezzanines in theaters; aisle slopes of theater aisles not serving an
DATE accessible part of an accessible route; and line of sight as related to floor slope.

ORIGINATOR The ADA authorizes the Department of Justice to provide
LUSHER technical assistance to individuals and entities that are subject
7/13/92 to the Act. This letter provides informal guidance to assist you
DATE in understanding the ADA accessibility standards. However, this technical assistance does not constitute a legal interpretation of the application of the statute to NATO or theater owners and it is not binding on the Department.

In buildings that qualify for the elevator exemption, elevator access is not required to the mezzanine level of a movie theater. In addition, if the theater is part of a shopping center or shopping mall, and the theater mezzanine is not part of a floor level housing at least one sales or rental establishment, the mezzanine is not considered part of the shopping center or shopping mall, as defined in section 36.401(d)(1)(ii)(B) of the ADA title III regulations, and does not have to be accessible by elevator.

Section 4.33 of the ADA Accessibility Guidelines requires that wheelchair locations in movie theaters adjoin an accessible

route that also serves as a means of egress. Any aisle or portion of an aisle that serves as an accessible route to a

cc: Records, Chrono, Wodatch, Breen, Lusher, FOIA, Library
udd:mercado:policy.letters.certif:lusher.breen.fellman

wheelchair location must comply with all of the requirements in the ADA Accessibility Guidelines for accessible routes including 4.3 Accessible Route and 4.8 Ramps. Under circumstances where wheelchair seating will be located adjacent to a portion of an aisle that serves as an accessible means of egress, then other portions of that aisle and other aisles that do not serve the accessible wheelchair locations are not required to comply with the requirements for ramps. ADA does not specify the location of the accessible means of egress. Therefore, the accessible means of egress from wheelchair locations can be through the rear, the side, or the front of the theater.

We agree that further discussion of the exception to section 4.33.3 of the guidelines relating to sight lines would be appropriate. If you wish to arrange for a meeting on this issue, please contact Philip L. Breen, Special Legal Counsel, at (202) 616-7526.

Sincerely,

John L. Wodatch
Director
Office on the Americans with Disabilities Act

01-01090

July 6, 1992

Mr. Philip L. Breen
Civil Rights Division
Office on the American
with Disabilities Act
Department of Justice
P.O. Box 66118
Washington, D.C. 20035-6118

Dear Phil,

We are writing this letter on behalf of our client, the National Association of Theatre Owners (NATO). NATO has worked diligently to educate its members with regard to application of the public accommodations sections of the Americans with Disabilities Act to motion picture theatres. In this connection, the Association has published a special handbook for motion picture theatre operators explaining how the Act applies to them. Several questions have come up with regard to interpretations of the regulations issued by the Department of Justice. In order to properly answer these questions, NATO representatives have met with the staff of the Office on Americans with Disabilities Act of the Department of Justice. We have set forth below these questions and our understanding of the staff interpretations of the regulations.

1. The Elevator Exemption.
   In motion picture theatres, the projection booth is commonly located on a mezzanine level. This mezzanine level is not open to the public. No other stores, retail space, or other public accommodations are located on this mezzanine. It is

our understanding that theatres subject to the elevator exemption are not required to provide an elevator to this mezzanine/projection booth level. This is so if a theatre is an integrated part of a shopping center or is located in a free-standing building on the parking lot pad of a shopping center, or is on its own independent parcel of ground. Under Section 36.401(d)ii of the ADA regulations, if the theatre is in a shopping center and the mezzanine is not part of a floor level housing at least one retail establishment, the mezzanine is not considered part of the shopping center and does not have to be accessible by elevator.

2. Theatre Aisles Should Not be Classified as Ramps.
Under the regulations, a question has been raised as to whether theatre aisles with a slope greater than 1 in 20 must comply with the requirements for ramps and have a flat resting area every 30 feet. In discussing this issue, we reviewed the configurations of various theatres. In motion picture theatres, wheelchair seating will generally be located in one or more locations along the rear row of seats of the theatre. Such seating must be on an access route that also serves as an accessible means of egress as provide in 4.33.3. Under circumstances where wheelchair seating will be located adjacent to an aisle which is a designated means of egress and the exit will be through the rear of the auditorium into the lobby area, then other portions of that aisle and other aisles that do not serve the accessible wheelchair locations are not required to comply with the

requirements for ramps.

3. Floor Slope vs. Line of Sight - Section 4.33.3
During our discussions, we raised certain questions with regard to application of the exemption for wheelchair seating integration in those portions of an auditorium having sight lines that require slopes of greater than five percent. This is the exemption contained in the footnote to Section 4.33.3 of the ADAAG. We explained that architects and engineering firms that have worked with our industry and other industries have interpreted this exemption to refer to a five percent slope in the floor of the facility. You had indicated to us that there was some question with regard to this interpretation and that, in fact, the ATBCB's interpretation was that the language of the exemption referred to slope of the line of sight. As we explained, line of sight is usually considered in terms of degrees and not "slope" or "percent." Indeed, the degree of line of

sight will vary from seat to seat in a motion picture theatre and also vary from within any given seat to various portions of the screen. After reviewing these issues after our meetings and discussing the matter further with out experts, it is clear to us that the reference involved is to the slope of the floor rather than the line of sight. We would like to discuss this issue with you further if there are still open questions. We would be glad to set up a meeting at your convenience if it is necessary.

We would appreciate your confirming these understandings to us as soon as possible. We have several projects under construction where work may be delayed based on ADA questions. For your information we are attaching a copy of a letter sent to a NATO member by a shopping center developer wherein the NATO member has been asked to indemnify the shopping center developer because of potential liability in applying the elevator exemption.

We thank you for your continued cooperation and assistance.

Very truly yours,

Steven John Fellman

SJF/bj
Enclosure

cc: National Association
of Theatre Owners

01-01093

Cinemark USA, Inc.
Suite 800-LB9
7502 Greenville Avenue
Dallas, Texas 75231
214-696-1644
FAX 214-696-3946

June 19, 1992

Mr. Steven John Fellman
Galland, Kharasch, Morse & Garfinkle, P.C.
Canal Square
1054 Thirty-First Street, N.W.
Washington, D.C. 20007-4492

Re: Wheel Chair - Platform Lift

Dear Mr. Fellman:
Attached please find a letter directed to me from Arrowstreet, Inc. an architectural firm. They have been retained by Sarakreek USA, a developer and landowner to

draw a set of plans for a movie theatre, that when constructed, would be occupied by Cinemark USA under a lease agreement.

The theatre is a single level structure with high ceilings because it houses multiple auditoriums with screens in each. The exception to the single floor is the mezzanine area in which the projection machinery is located along with storage rooms, all of which are not public areas. The mezzanine does not serve as a pathway to or from any accessible areas since it is an equipment room. This is a free standing building next to an existing shopping center.

As a result of our meeting with the Justice Department on 3/26/92 and their subsequent verbal ruling on 3/27/92 that we would be exempt from elevator requirements I instructed Arrowsmith to delete the elevator.

The attached letter is self explanatory and is a perfect example of the dilemma we are faced with if we do not have written confirmation of the Justice Department's ruling. Time is of the essence and the amount of money in question on each project is sizable. Please let me know as soon as you have word on their position.

Thanking you in advance for your help and cooperation.

Sincerely,

CINEMARK USA, INC.

Ron Reid
Director of Construction/Purchasing

RR/dw

Enclosure

xc: Alan Stock
Gary Gibbs
Mary Ann Grasso
01-01095

JUL 31 1992

The Honorable Martin Frost
Member, U.S. House of Representatives
NCNB Tower, Room 720
801 West Freeway
Grand Prairie, Texas 75051

Dear Congressman Frost:

This letter responds to your request on behalf of David L. Barber, Assistant City Attorney of Arlington, Texas, for

information about the interpretation of "service animal" under the Americans with Disabilities Act (ADA).

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities with rights or obligations under the Act. This letter provides informal guidance to assist Mr. Barber in understanding the ADA. However, this technical assistance does not constitute a legal interpretation of the statute and it is not binding on the Department.

As Mr. Barber notes, section 36.302 of the regulation issued by the Department of Justice under title III of the ADA requires that places of public accommodation, such as restaurants, retail establishments, offices of service providers, and hotels, modify their policies, practices, or procedures to permit the use of a service animal by an individual with a disability. Section 36.104 of the regulation defines a "service animal" as an animal that is "individually trained to do work or perform tasks for the benefit of an individual with a disability . . . ." Section 36.301 of the title III regulation does, however, allow a public accommodation to impose eligibility criteria that are necessary for the provision of services and facilities. In particular, paragraph (b) of that section allows for the imposition of legitimate safety requirements that are necessary for safe operation of a facility or service. A copy of the title III regulation is enclosed.

cc: Records; Chrono; Wodatch; Bowen; McDowney; FOIA; Library.
:udd:jonessandra:cong.frost

01-01096

Mr. Barber inquires whether public accommodations can restrict the use of service animals to those that, along with their owners, have completed intensive individualized training in a specific area by an authority whose competence is recognized by rehabilitation agencies. Texas law defines "support dog" in this way.

The Department's ADA regulation does not require that an animal be certified by a State or have a permit nor does it allow a State or public accommodation to require proof of training or

certification. The Department is aware of a wide range of State regulatory definitions of service or support animal that are narrower than the ADA definition. While these definitions may be appropriate for State purposes, they cannot be used to narrow or eliminate the scope of the ADA's coverage.

Mr. Barber expresses several concerns about animal behavior, including the possibility that any animal trained only by its owner (or by a person not specially qualified) is more likely to attack another service animal or person. In our view, such behavior is generally at odds with the concept of an individually trained service animal. In addition, because the ADA allows a public accommodation to impose eligibility criteria, including legitimate safety requirements, a public accommodation could generally exclude from its facility any animal that displays the kind of behavior mentioned, regardless of the kind of training it has received and what function it serves for its owner.

I hope this information is helpful to you in responding to your constituent.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

Enclosure

01-01097

JUL 31 1992

T. 7/31/92
SBO:NM:kgf
DJ# 192-16i-00057

Thomas S. Mollet
Director of Marketing
GameTime

P.O. Box 121
101 Kingsberry Road
Fort Payne, Alabama 35967

Dear Mr. Mollet:

This is in response to your letter concerning requirements for playgrounds under the Americans with Disabilities Act (ADA).

Title II of the ADA covers playgrounds owned and operated by State and local government entities, and title III of the ADA covers playgrounds that are privately owned and operated.

Under title III, privately owned public accommodations and commercial facilities must design facilities in accordance with the title III accessibility guidelines, which appear as an appendix to the Department of Justice's title III rule. Under title II, public entities can choose to design facilities either in accordance with the title III guidelines or in accordance with the Uniform Federal Accessibility Standards. Neither of those standards, however, contains specific sections on playgrounds. Guidelines for recreational facilities are currently in the process of being developed by the Architectural and Transportation Barriers Compliance Board, an independent Federal agency. Until such time as those guidelines are finalized, playgrounds need not be built in compliance with any specific design standards.

I hope this information has been helpful to you.

Sincerely,

Stewart B. Oneglia
Chief
Coordination and Review Section
Civil Rights Division

:udd:milton:adaletters:mollet.playground
cc: Records, CRS, Friedlander, Milton

01-01098
GameTime
P.O. BOX 121/101 KINGSBERRY ROAD/FORT PAYNE, ALABAMA 35967
TELEPHONE - (205) 845-5610 * TELEX: 782-534 GAME TIME FTPY
FACSIMILE NUMBER: (205) 845-2649

June 1, 1992

U.S. Department of Justice
Civil Rights Division
Ms. Stewart B. Oneglia Chief
Coordination and Review Section
P.O. Box 66118
Washington, D.C. 20035-6118

Dear Ms. Oneglia:

I am writing to you for guidance and clarification of the A.D.A. regulations, especially as they pertain to playground and recreation equipment.

GameTime is one of the largest providers of park and playground equipment in the world. We have been developing and building playground equipment for over 63 years, with 5 years of this effort being devoted to developing playground events for the needs of disabled individuals. Obviously, we take a very keen interest in the need to provide accessibility to play events for as many children as is possible.

It is with great interest that I write to you to get clarification of the A.D.A. rules that have been issued. Specifically, GameTime would like to know what specific guidelines we have to build playground equipment to. We want to make sure that we are building the safest, most affordable play equipment possible.

Please feel free to contact me with any questions or ideas you might have. I may be reached at 1-800-633-2394 ext. 5251.

Sincerely,

Thomas S. Mollet
Director of Marketing

AUG 4 1992

The Honorable Thomas J. Bliley, Jr.
U.S. House of Representatives
2241 Rayburn House Office Building
Washington, D.C. 20515-4603

Dear Congressman Bliley:

This letter is in response to your inquiry on behalf of your constituent, Mrs. XX , concerning retirement homes that do not permit use of electric wheelchairs.

The letter from Mrs. (b)(6) provides insufficient information to enable us to determine what provisions of the ADA may apply to the circumstances in question. If Mrs. XX believes that her husband has been discriminated against on the basis of his disability she has two enforcement options under the ADA: (1) She may secure private legal representation and bring an action in Federal court, or (2) she may file a complaint with the Department of Justice.

If Mrs. (b)(6) chooses to file a complaint with the Department of Justice, she should send it to one of two offices of the Civil Rights Division assigned to investigate such complaints. If the nursing home is operated by a State or local government, she should send any relevant information to the Coordination and Review Section, Civil Rights Division, U.S. Department of Justice, P.O. Box 66118, Washington, D.C. 20035-6118. If, on the other hand, the nursing home is operated by a private entity, she should send any relevant information to the Office on the Americans with Disabilities Act, Civil Rights Division, U.S. Department of Justice, Post Office Box 66738, Washington, D.C. 20035-9998. All complaints should be in writing and should set forth, in as complete a manner as possible, the factual circumstances surrounding the complaint.

cc: Records, Chrono, Wodatch, Russo, Breen, McDowney, FOIA,
Library
Udd:Russo:Cong.Blilely

To provide some information about possibly relevant ADA provisions, I have enclosed copies of the Department's Technical Assistance Manuals. Discussion of requirements regarding eligibility criteria and reasonable modifications in policies, practices, and procedures may be found on pages 12-13 of the Title II Manual and pages 21-25 of the Title III Manual. We are also enclosing a copy of the ADA Handbook, which includes a copy of the Act (requested by Mrs. (b)(6) in section V(A).

I hope this information is of assistance to you in responding to your constituent.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

Enclosures (3)

01-01101

CONSTITUENT INFORMATION
INQUIRY #: 80465
RECORD ID: 164485

DATE: SALUTATION:

JS JD BD PB LP X LB

INTEREST: JC09A DC1SA

TEXT: COMMENTS:
the letter to The
ADA office goes
to the attention
of Joe Russo

(b)(6)
XX

(handwritten)
She and her husband want to move into a retirement home. Her husband is a quadroplegic and uses an electric wheelchair. The retirement homes they visited will not allow electric wheelchairs. Isn't this discrimination against the handicap? She wants to know where her rights stand? What about the ADA.
She would like to get a copy of the ILLEGIBLE

01-01102

Congress of the United States
House of Representatives
Washington, DC 20515-4603
June 25, 1992

Mr. John Wodatch
Director
Office on the Americans With Disabilities Act
Department of Justice
P.O. Box 66738
Washington, D.C. 20035-9998

Dear Mr. Wodacth:

I am writing you on behalf of my constituent, Ms. (b)(6) XX She is concerned because she has been informed by a retirement home in Richmond that her husband would not be allowed to reside their due to the fact he operates an electric wheel chair.

Enclosed is a copy of Ms. XX request. I am aware that I am sending you few facts to go by in this case, but it is my hope that you would be able to explain to both Ms. (b)(6) and myself the laws surrounding matters such as this one.

I am looking forward to your response, and I thank you in advance.

With kindest regards, I am

Sincerely,

Thomas J. Bliley, Jr.
Member of Congress

01-01103

AUG 4 1992

The Honorable John A. Boehner
U. S. House of Representatives
1020 Longworth House Office Building
Washington, D.C. 20515

Dear Congressman Boehner:

This letter is written in response to your correspondence to Attorney General William Barr on behalf of your constituent, (b)(6), who alleges that he was discriminated against on the basis of his disability by Booth's Pharmacy.

Title III of the Americans with Disabilities Act of 1990 (ADA) prohibits sales establishments from excluding persons with disabilities from their facilities or from the benefits of their services. Persons who believe that they have been discriminated against on the basis of disability have two enforcement options under the ADA: (1) They may secure private legal representation and bring an action in federal district court, or (2) they may file a complaint with the U.S. Department of Justice.

If Mr. XX wishes to file a formal complaint with the Civil Rights Division, he should send any relevant information to the Office on the Americans with Disabilities Act, Civil Rights Division, U.S. Department of Justice, Post Office Box 66738, Washington, D.C. 20035-9998.

I hope this information is of assistance to you in responding to your constituent's complaint.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

cc: Records, Chrono, Wodatch, Nakata, Bowen, McDowney, Library, FOIA
Udd:Nakata:Congress.ltr.Boehner.1

01-01104
(handwritten)
TO WHOM IT MAY CONCERN,
MAY 26 1992
I HAVE M.S. AND USE A CANE,
BOOTH'S PHARMACY DISCRIMINATES
AGAINST PEOPLE WITH DISABILITIES.
THREE TIMES I ASKED THE OWNER'S
TO PROVIDE A CHAIR FOR HANDICAPED
PEOPLE TO SIT WHILE WAITING TO
GET THIER RX'S FILLED, THEY DID
NOTHING. THEY ARE NOT VERY
HANDICAPED ACCESABLE. THERE IS
NO WAY A PERSON IN A WHEELCHAIR
COULD EASY MOVE AROUND. IT IS
A GIFT SHOP ALSO AND THERE IS
SO MUCH STUFF THERE THAT IT IS
HARD FOR ME TO GET AROUND
WITH A CANE. I WENT THERE
ON MAY 15 AT 4:10-4:30 TO GET
A RX FILLED. MR'S BOOTH TOLD
ME TO "GO TO SUPER X AND GET YOUR
RX FILLED." THEN SHE SAID TO. "LEAVE
AND NOT COME BACK." MR. BOOTH
SAID ABOUT THE SAME COMMENTS.

01-01105

IT IS NOT RIGHT!!, FOR A
BUISNESS TO TREAT ANYBODY
LIKE THIS. I HAVE A FEDERAL
LAW PASSED IN JAN. 92. PROTECTING
PEOPLE WITH DISABILITIES.

I WOULD LIKE THE CONGRESSMAN
TO CHECK BOOTH'S PAARHMCY
OUT AND DO SOMETHING ABOUT
IT. I AM GOING TO COMPLAIN
TO THE CIVIL RIGHTS COMM.
ALSO. I AM, ALSO GOING TO
SUE BOOTH'S PHARAMCY FOR
DISCRIMINATION. PLEASE GET
BACK TO ME AS SOON AS POSSIBLE.

THANKS,
(b)(6)

XX
XX
MIDDLETOWN, OHIO 45044
XX
REG. VOTER

01-01106

The Americans with Disabilities Act

The Americans with Disabilities Act (ADA) gives civil rights protections to individuals with disabilities that are like those provided to individuals on the basis of race, sex, national origin, and religion. It guarantees equal opportunity for individuals with disabilities in employment, public accommodations, transportation, State and local government services, and telecommunications.

I. Employment

* Employers with 15 or more employees may not discriminate against qualified individuals with disabilities. For the first two years after July 26, 1992, the date when the employment provisions of the ADA go into effect, only employers with 25

or more employees are covered.

* Employers must reasonably accommodate the disabilities of qualified applicants or employees, unless an undue hardship would result.

* Employers may reject applicants or fire employees who pose a direct threat to the health or safety of other individuals in the workplace.

* Applicants and employees are not protected from personnel actions based on their current illegal use of drugs. Drug testing is not affected.

1

01-01107

* Employers may not discriminate against a qualified applicant or employee because of known disability of an individual with whom the applicant or employee is known to have a relationship or association.

* Religious organizations may give preference in employment to their own members and may require applicants and employees to conform to their religious tenets.

* Complaints may be filed with the Equal Employment Opportunity Commission. Available remedies include back pay and court orders to stop discrimination.

II. Public Accommodations

* Public accommodations such as restaurants, hotels, theaters, doctors' offices, pharmacies, retail stores, museums, libraries, parks, private schools, and day care centers, may not discriminate on the basis of disability, effective January 26, 1992. Private clubs and religious organizations are exempt.

* Reasonable changes in policies, practices, and procedures must be made to avoid discrimination.

* Auxiliary aids and services must be provided to individuals with vision or hearing impairments or other individuals with disabilities so that they can have an equal opportunity to participate or benefit, unless an undue burden would result.

01-01108

AUG 6 1992

202-PL-00069

The Honorable Donald F. Munson
Senate of Maryland
28 West Church Street
Hagerstown, Maryland 21740-4808

Dear Senator Munson:

This letter responds to your correspondence regarding the

application of the Americans with Disabilities Act, 42 U.S.C. 12101-12213 (ADA) to the limited use of a golf cart on the shoulder of a public highway by an individual with a mobility impairment.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities with rights or obligations under the Act. This letter provides informal guidance to assist you in understanding the ADA's requirements. However, it does not constitute a legal interpretation, and it is not binding on the Department.

The regulations issued by the United States Department of Justice under title II of the ADA, provide that "[a] public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity." 28 C.F.R. S 35.130(b)(7).

Permitting the use of a golf cart as a mobility device on the shoulder of a public highway where pedestrians are permitted to walk, in limited circumstances that do not involve a significant risk to the health or safety of others, would be the type of modification in State policy contemplated by the cited portion of our title II regulation. Any assessment of significant risk must be based on objective evidence and not generalizations or stereotypes about individuals with disabilities.

cc: Records, Chrono, Wodatch, Breen, Beardta.202.munson, arthur

We hope that this information is useful to you in evaluating your constituent's rights under the ADA.

Sincerely,

John L. Wodatch
Director
Office on the Americans with Disabilities Act

01-01110

SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401-1991

March 30, 1992

James D. Bennett, Director
Coordination and Review
Civil Rights Division
Department of Justice
320 First Street, N.W.
Washington, D.C. 20530

Re: American Disabilities Act

Dear Mr. Bennett:

This office has been contacted by a constituent in an effort to clarify a question with regard to the use of a golf cart, as a "temporary" mode of transportation, for a handicapped individual. The golf cart provides my constituent, who is paralyzed from the waist down, with some mobility, which he very much enjoys. Through the use of the golf cart, he is able to visit nearby neighbors and just simply enjoy the outdoors.

On occasion, my constituent, in order to go hunting, takes the golf cart on the shoulder of the road for a distance not to exceed a half mile. (The road is not heavily-travelled). Recognizing that this is not an acceptable practice with the State Police, I am wondering if, under the American Disabilities Act, my constituent's golf cart can be categorized as his "wheelchair". It is my understanding that, under the ADA, "wherever a pedestrian can go, a wheelchair can go." In this case, can the golf cart be used legally, for a short time, on the shoulder of the road, in lieu of the wheelchair?

Thank you for any clarification you can provide regarding this matter.

Very truly yours,

Donald F. Munson
Senator, District 2

DFM:jt
XX (b)(6)

01-01111

The Honorable William S. Cohen
United States Senate
322 Hart Senate Office Bldg.
Washington, D.C. 20510-1901
Dear Senator Cohen:

This letter is in response to your inquiry on behalf of Ms XX , who has expressed concerns about access to restaurants, housing, and common carriers by disabled individuals accompanied by trained assistance animals.

The ADA authorizes the Department of Justice to provide technical assistance to entities that have rights or obligations under the Act. This letter provides informal guidance regarding the ADA's requirements concerning service animals. This technical assistance, however, does not constitute a determination by the Department of Justice of rights or responsibilities under the ADA and does not constitute a binding determination by the Justice Department.

Under title III of the Americans with Disabilities Act (ADA) and section 36.302 of the regulation issued by the Department of Justice, a place of public accommodation, such as a restaurant, hotel, retail store, or theater, is required to modify its policies, practices, and procedures to accommodate the use of a service animal, unless doing so would result in a fundamental alteration or jeopardize the safe operation of the public accommodation. As defined in section 36.104 of the title III regulation, a service animal includes any animal individually trained to do work or perform tasks for the benefit of an individual with a disability. Service animals are not limited to animals that assist people with hearing or sight impairments, but also include those that otherwise assist individuals with disabilities, such as by providing minimal protection or rescue work, pulling a wheelchair, or retrieving dropped items.

cc: Records; Chrono; Wodatch; Barrett; McDowney; FOIA; Library.
:udd:barrett:cong.cohen

01-01408

Likewise, under the ADA regulation issued by the Department of Transportation (49 C.F.R. Part 37) for the provision of transportation services to individuals with disabilities by public and private entities, section 37.167(d) requires those entities to permit service animals to accompany individuals with disabilities in vehicles and facilities. The regulation defines the term "service animal" in the same manner as the Department's ADA regulation.

The Fair Housing Act (42 U.S.C. 3604(f)(3)(B)) prohibits discrimination against a renter or buyer on the basis of disability. Discrimination includes a refusal to make reasonable accommodations in rules, policies, practices, or services, when those accommodations may be necessary to afford a person with a disability equal opportunity to use and enjoy a place of residence. While the Fair Housing Act and the regulations issued by the Department of Housing and Urban Development do not specifically address service animals, it is likely that the Act would at times require that service animals be allowed in a housing facility in order to afford a disabled individual fair use and enjoyment of the facility.

I am enclosing the regulation issued by the Department of Justice for title III of the ADA, as well as the Department's title III Technical Assistance Manual. Information about this subject can be found at sections 36.104 and 36.302 of the regulation, pages 35554 and 35565 of the preamble, and section 4.2300 of the Manual. You may want to request further information from the Department of Housing and Urban Development's Office of Fair Housing, at 202-708-0404, or the Department of Transportation, at 202-366-9305 or 9306, about the regulations they have issued.

I hope the above information is helpful in addressing your constituent's concerns.

Sincerely,

John R. Dunne
. Assistant Attorney General
Civil Rights Division

Enclosures (2)
01-01409

UNITED STATES SENATE
WASHINGTON, DC 20510-1901

June 17, 1992

Ms. Ann Colgrove
Director of Legislative Affairs
Equal Employment Opportunity Commission
1801 L Street, NW
Washington, D.C. 20570

Dear Ms. Colgrove:

Enclosed please find a copy of a letter from a constituent, Ms. XX of Portland, Maine, regarding the exclusion of certain disabled persons from laws that permit use of animals to assist the handicapped. As you can see, Ms. XX is concerned that disabled individuals who are not blind or hearing impaired, but nevertheless require assistance of trained animals for essential care, would not be permitted access to restaurants, housing and common carriers. I would appreciate receiving your comments on Ms. XX concerns.

I appreciate your help with this matter.

With best wishes, I am

Sincerely,
William S. Cohen
United States Senator

WSC:jkv
Enclosure
01-01410

Portland, ME 04101
May 20, 1992

Senator William Cohen
10 Moulton Street
Portland, ME 04101

Dear Senator Cohen:

We have reviewed the following rules and act as well as state rulings for disabled persons who have trained dogs assisting them in their day to day living:

H.R. 2245 dated May 7, 1991
H.R. 2278 dated June 26, 1991
Public Law 102 - 240 dated December 18, 1991

In summary, Public Law 102-240 does provide that as far as transportation carriers are concerned, trained animals that assist disabled indivduals are permitted to accompany them on common carrier transportation.

Present laws permit dogs trained to assist blind and hearing impaired individuals to accompany and stay with said individuals in housing, restaurants, and other businesses.

However, it is important to note that animals trained to provide specialized services for disabled individuals are not covered under federal ruling and Maine State Statutes.

In recent years, programs have started and are running to train and provide dogs and other animals to assist disabled individuals (who are not blind or hearing impaired) in their daily routine. Therefore, strong consideration should be given to ammending the present Federal and State rules including disabled individuals and their assisting animals under the same rules established for the blind and hearing impaired.
Additionally, it will solve embarrassing situations that occur while traveling interstate and within this state.
Thank you for your consideration and help in this matter.

Sincerely,
XX

01-01411

The Honorable Charles E. Grassley
United States Senate
135 Hart Senate Office Building
Washington, D.C. 20510-1501

Dear Senator Grassley:

This letter is in response to your inquiry about coverage (and exemptions) of the Americans with Disabilities Act of 1990.

The Americans with Disabilities Act of 1990 (ADA) authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist your constituents in understanding the ADA's requirements. It does not, however, constitute a legal interpretation and it is not binding on the Department.

Title III of the ADA covers places of public accommodation, including restaurants and other establishments serving food or drink, as well as homeless shelters and other social service establishments. The only places of public accommodation specifically exempted from the coverage of title III of the ADA are private clubs and religious entities. These exemptions are set forth in section 36.104 of the enclosed title III regulations, at page 35594, and the accompanying analysis, at pages 35551 to 35555. Therefore, in the example raised by your letter, the charity soup kitchen would not be exempted from the requirements of title III of the ADA, unless the soup kitchen can be considered either a private club or religious entity.

In addition to these two specific exemptions, the ADA allows smaller public accommodations additional time to comply with the requirements of the ADA. Lawsuits may not be brought for

cc: Records, Chrono, Wodatch, Bowen, Nakata, McDowney, Library, FOIA

violations of the ADA that occurred before July 26, 1992, where the public accommodation has 25 or fewer employees and $1,000,000 or less in gross annual receipts. Lawsuits may not be brought for violations of the ADA that occur before January 26, 1993, where the public accommodation has 10 or fewer employees and $500,000 or less in gross annual receipts.

Even if a public accommodation is subject to the requirements of the ADA, the Act does provide limitations on renovations necessary to make a facility accessible. For instance, while a public accommodation must provide auxiliary aids or services, such as interpreters for people with hearing impairments in order to ensure that persons with disabilities have equal access to services, the public accommodation does not have to provide such aids or services if it would impose an undue burden. Furthermore, a public accommodation has to remove barriers to a facility only if such removal is readily achievable, that is, if it is easily accomplishable and can be carried out without too much difficulty or expense.

In addition to the requirement for barrier removal, the ADA requires that, if a public accommodation makes certain other alterations to existing places of public accommodations, the entity must ensure that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities. However, areas that are used only as work areas, which generally include kitchens, are subject only to the requirements affecting approach and entrance to, and exit from, the work area. While the accessibility requirements do not apply to the interior of the space, certain alterations within the kitchen may trigger additional requirements. The requirements relating generally to alterations are set forth in subpart D of the enclosed title III regulations, at pages 35599 to 35602, and the accompanying analysis, at pages 35574 to 35589.

I have also enclosed the Department's Title III Technical Assistance Manual, which may provide further assistance in understanding the scope of these limited exemptions and limitations to title III of the ADA. Relevant information may be found in sections 1.5000 to 1.6000, 4.3000, 4.4000, 6.0000, 7.3100, and 8.8000.

Title I of the ADA prohibits employment discrimination on the basis of disability but completely exempts employers with fewer than 15 employees. Even those with between 15 and 24 employees are not covered until July 26, 1994. Employers of 25

or more were covered by title I as of July 26, 1992. You may wish to contact the Equal Employment Opportunity Commission, at 1-800-669-EEOC, about title I and its exemptions.
01-01413

I hope this information will be useful to you and your constituents.

Sincerely,
John R. Dunne
Assistant Attorney General
Civil Rights Division

Enclosures (2)
01-01414

United States Senate
WASHINGTON, DC 20510-1501116

June 23, 1992

Mr. W. Lee Rawls
Assistant Attorney General
Office of Legislative Affairs
Department of Justice
10th & Constitution Ave. N.W., Rm. 1603
Washington, D.C. 20530

Dear Mr. Rawls:

I have been contacted by many constituents who are curious about ADA regulations and what types of circumstances would merit exemptions to compliance. One such situation involves a charity soup kitchen with two employees, located in a building owned and operated by the Salvation Army. If such an operation made alterations to its kitchen, would it be required to comply with ADA? If so, what specific laws and regulations should it have to follow?

I appreciate your attention to this request and look forward to a prompt response in regard to this matter.

Sincerely,
Charles E. Grassley
United States Senator

CEG/dl
01-01415

The Honorable Tom Harkin
United States Senator
210 Walnut Street
733 Federal Building
Des Moines, Iowa 50309

Attn: Denita Swenson

Dear Senator Harkin:

This letter is in response to your inquiry on behalf of Ms. Jean Samson of the Iowa Commission on Persons with Disabilities, who requested guidance on providing child care services to children with disabilities under the Americans with Disabilities Act (ADA).

The ADA authorizes the Department of Justice to provide technical assistance to entities that have rights or responsibilities under the Act. This letter provides informal guidance to assist you in understanding how the ADA may apply to public or private entities. This technical assistance, however, does not constitute a determination by the Department of Justice of rights or responsibilities under the ADA and does not constitute a binding determination by the Justice Department.

Title II of the ADA covers public entities, which include any State or local government and any of its departments, agencies, or other instrumentalities. Title III covers public accommodations, which include day care centers.

The regulations issued by the Department of Justice under both title II and title III require that reasonable modifications must be made in policies, practices, and procedures to ensure that children with disabilities have equal opportunity and access to child care services. However, if the modification would fundamentally alter the nature of the child care service, the

modification is not required. (See the enclosed title II rule,
section 35.130, and the enclosed title III rule, section 36.302.)

cc: Records; Chrono; Wodatch; Barrett; McDowney; FOIA; Library.
:udd:barrett:cong.harkin.samson
01-01416

Section 35.130(b)(8) of the title II rule and section 36.301(a) of the title III rule prohibit the use of eligibility criteria that screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any services, unless the criteria can be shown to be necessary for the provision of the services, and section 36.301(b) of the title III rule allows the imposition of legitimate safety requirements necessary for the safe operation of a program. In addition, section 35.130 of the title II regulation and 36.301(c) of the title III regulation prohibit the charging of additional fees for services to children with disabilities when those services are necessary to achieve compliance with the ADA.

The provisions applying to these issues can be found at section 35.130 of the enclosed title II regulations and sections 36.301 and 36.302 of the enclosed title III regulation. In addition to the ADA regulations, I am also enclosing a copy of the Technical Assistance Manual for titles II and III, which should be of further assistance to Ms. Samson in evaluating this issue. It may be especially helpful for her to refer to II-3.0000, on General Requirements, beginning on page 9 of the title II manual, and III-4.0000, on Specific Requirements, beginning on page 21 of the title III manual.

I hope this information is helpful to you in responding to your constituent.

Sincerely,
John R. Dunne
Assistant Attorney General
Civil Rights Division

Enclosures (4)
01-01417

Iowa Commission of Persons with Disabilities
LUCAS STATE OFFICE BUILDING - DES MOINES, IOWA 50319
TERRY E BRANSTAD
GOVERNOR
DONALD W WESTERGARD
ADMINISTRATOR
281-5969

Jean K. Samson
Graduate Intern

MEMORANDUM

TO: Donita Swenson, Caseworker
Office of Senator Tom Harkin

FROM: Jean Samson, Graduate Intern (242-6172)
Commission on Persons with Disabilities

DATE: May 24, 1992

RE: Program Accessibility under ADA for Day Care Providers

Recently at an ADA presentation, a number of child care providers requested information on their requirements to provide program access to children diagnosed with behavioral disorders. There was concern that some child care facilities would be unable to adequately meet the needs of children. with behavior disorders.

A specific example was provided by a public school child care program, which had accepted a child with this diagnosis. The child care program indicated that this child required one on one supervision in order to provide the child a safe environment. The day care center indicated that the child would wander off if not carefully watched., as well as exhibit other serious safety violations. This day care facility had hired extra staff for the summer to work with this child but indicated that this could not continue indefinitely. The day care facility wanted to terminate their services with this child but were uncertain of their requirements under ADA.

The day care industry has asked for guidance on this issue and I would appreciate any information you could provide us in this area. I look forward to hearing from you.

A DIVISION OF THE DEPARTMENT OF HUMAN RIGHTS
01-01418

The Honorable Jim McCrery
Member, U.S. House of Representatives
621 Edwards Street
Shreveport, Louisiana 71101

Dear Congressman McCrery:

This letter is in response to your inquiry on behalf of your constituent, (b)(6), concerning the Americans with Disabilities Act's (ADA) requirements for barrier removal in retail establishments and the proper method of filing a complaint.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities with rights or obligations under the Act. This letter provides informal guidance to assist you in understanding the ADA accessibility standards. However, this technical assistance does not constitute a legal interpretation of the statute and it is not binding on the Department.

Title III of the ADA requires places of public accommodation, including retail establishments and department stores, to undertake readily achievable barrier removal to make the stores accessible to individuals with disabilities including those who use wheelchairs. These requirements are further explained in the enclosed Department of Justice title III regulations at 28 C.F.R. 36.304 and 36.305.

If Ms.XX(b)(6) believes that KMart's failure to widen the checkout lanes has resulted in her daughter being discriminated against on the basis of her disability she has two enforcement options under the ADA: (1) She may secure private legal representation and bring an action in Federal court, or (2) she may file a complaint with the Department of Justice.

If Ms. XX(b)(6) chooses to file a complaint with the Department of Justice, she should send any relevant information to the Office on the Americans with Disabilities Act, Civil Rights Division, U.S. Department of Justice, Post Office Box 66738,

Washington, D.C. 20035-9998. All complaints should be in writing and should set forth, in as complete a manner as possible, the factual circumstances surrounding the complaint.

cc: Records, Chrono, Wodatch, Bowen, Russo, McDowney, Library, FOIA
Udd:Russo:Cong.Mccrery.XX (b)(6)
01-01419

I hope this information is of assistance to you in responding to your constituent.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

Enclosure
01-01420

BENTON, LA 71006

July 1, 1992

Hon. Jim McCrery
United States Representative
621 Edwards Street
Shreveport, LA 71101

In re: (b)(6)

Dear Mr. McCrery:

I would like to call your attention to a situation that I am very concerned about in connection with the Americans with Disabilities Act. My daughter, XX is a disabled American, having been injured in October of 1991 and is now paralyzed and in a wheelchair. I have tried to become familiar with that Act and as I understand Title III as it covers existing "places of public accomodation", the alterations to a facility after January 26, 1992 shall be made so as to ensure that to the maximum extent feasible the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

I have also read about the penalties for noncompliance. It is my understanding that civil actions may be brought by individuals who have been subjected to discrimination or who have reasonable grounds for believing that he/she is "about to be subjected to" discrimination. It is my understanding that the courts may grant injunctive relief, award monetary damages as well as assess civil penalties to the person aggrieved.

My daughter's situation involves the KMart store located at 3045 East Texas in Bossier City, Louisiana. I have shopped at Kmart for many years. Since XX accident, I have tried, even when I am alone, to only go to and buy from stores whose facilities are easily accessible for handicapped/disabled people. Recently, (b)(6) and I went shopping at Kmart and when we were ready to go to pay for the merchandise, the space between the "check-out stands" was not wide enough for her wheelchair to go through. She had to hand me her merchandise and money to pay for her and she had to back out of the line and go to the front of the store to wait for me to pay. I have visited Kmart on two occasions since that time, the last time being approximately one week ago.
01-01421

On the first occasion, I only complained to the person checking me out. On the last occasion, I asked the manager if he knew he was in violation of the law. He said yes. I asked him why no provisions had been made for a person who comes into the store to shop, but cannot pay for his/her purchases. He said he knew it should have been done, but he had no real explanation as to why it had not been done. I further asked him if he thought my daughter was the only person in Caddo/Bossier Parish in a wheelchair. He acknowledged that was doubtful.

I have read several articles lately commending the national Kmart and other corporations for utilizing disabled people in the "mainstream" of their advertising. This was presented as a very positive step for disabled people. I therefore find it baffling that this local Kmart does not even have provisions for a disabled person to pay for their purchases, especially when they are knowingly in violation of Title III of the ADA.

I am asking for your assistance in providing me with the person or agency to contact to file a complaint against Kmart. I certainly appreciate your assistance in this matter. Since my daughter is of the opinion that her disabilities should not stop her from going to college next year, living alone, driving a car, participating in a beauty pageant, and generally doing whatever she wants to do, it is especially distressing to me that simple steps cannot be taken by a major corporation to accomodate her and others who have to use wheelchairs.

I will look forward to hearing from you or your representative regarding this request. Thank you for your assistance in this matter.

Yours very truly,
XX
/frc
cc: Manager - KMart, Bossier City
Mr. William H. Ledbetter, Jr.
Ms. Jan Elkins - KTBS TV
Kmart - Troy, Michigan
01-01422

The Honorable Christopher Shays
Member, U.S. House of Representatives
10 Middle Street
Bridgeport, Connecticut 06604

Dear Congressman Shays:

This letter is in response to your inquiry on behalf of your constituent, Allan Davis, who is seeking clarification of parking space requirements for a hospital outpatient facility under the Americans with Disabilities Act (ADA) as the result of our response to an earlier inquiry from Mr. Davis.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities with rights or obligations under the Act. This letter provides informal guidance to assist you and your constituent in understanding the ADA accessibility standards. However, this technical assistance does not constitute a legal interpretation of the statute and it is not binding on the Department.

Mr. Davis has asked for clarification of the requirements for the number of accessible parking spaces that must be provided under the ADA. Section 4.1.2(5)(d) of the ADA accessibility guidelines (page 35612 of the enclosed ADA title III regulation) applies to hospital outpatient facilities. In general, the section requires that "facilities providing medical care and other services for persons with mobility impairments" must have the number of accessible spaces set forth in a table included in the Guidelines. This section does not apply only to facilities that exclusively serve individuals with mobility impairments. To the contrary, it applies to any medical care facility that provides service to individuals with mobility impairments along with other members of the general public.

cc: Records; Chrono; Wodatch; Breen; Harland; McDowney;
FOIA; Library.
:udd:breen:parking
01-01423

The section includes a specific requirement (in lieu of the table requirements) for outpatient units and facilities that 10 percent of the total number of parking spaces be accessible. In the case of a hospital outpatient facility, the 10 percent requirement would only apply to that proportion of total parking use attributable to the outpatient facility. In addition, if a hospital outpatient facility specializes in services for individuals with mobility impairments, the Guidelines specify a 20 percent requirement in lieu of the table requirements. The 20 percent requirement would only apply to that proportion of a facility's parking use that is attributable to the provision of specialized services.

Mr. Davis is also concerned that people with mobility impairments may not be legally entitled to park in accessible places. This is highly unlikely because it is common practice for States, including Connecticut, to issue accessible parking permits to anyone who has need for accessible parking including those persons who may be only temporarily disabled.

Mr. Davis also seeks clarification of the requirement for accessible routes to parking. In general, an "accessible route," as defined in 3.5 of the Guidelines, may not include a vehicular way. The area behind parked cars in a parking garage, however, may be used as part of an accessible route, if it meets the definition of "marked crossing" under 3.5 of the Guidelines.

I hope that his information is useful in responding to your constituent.

Sincerely,
John R. Dunne
Assistant Attorney General
Civil Rights Division

01-01424

The Honorable Tom Harkin
United States Senate
531 Senate Hart Building
Washington, D.C. 20510-6025

Dear Senator Harkin:

This letter is in response to your inquiry on behalf of your constituent, Lynn Ferrell, who seeks information about the application of the Americans with Disabilities Act (ADA) to a privately owned social services organization providing small group homes for persons with mental disabilities.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist your constituent in understanding the ADA's requirements. However, it does not constitute a legal interpretation and it is not binding on the Department.

According to Ms. Ferrell's description, Polk County Health Services (PCHS) plans to house persons with mental disabilities in small group homes, located in existing houses that it will purchase. PCHS has informed us that it is a private non-profit organization. At present, the organization plans to make six out of its nine homes accessible because it has identified participants from six homes who will need wheelchair accessibility. Because of questions raised by the State of Iowa, Ms. Ferrell asks whether renovation of the six homes will satisfy ADA requirements.

The requirements of title III of the ADA apply to a private entity operating a place of public accommodation. Title III defines a place of public accommodation as a facility that is privately owned, affects commerce, and fits into one of twelve categories. Strictly residential facilities are not included in

cc: Records; Chrono; Wodatch; Novich; McDowney; FOIA; Library.
:udd:novich:cong.harkin.ltr5
01-01425

this list and are not covered by title III. If the PCHS homes are strictly residential, they will not be covered by title III of the ADA. The PCHS homes may, however, be covered by title III if they are social service center establishments. Facilities are considered social service center establishments under the ADA if they provide a significant level of such social services as medical care, meals, transportation, and counseling.

Title III requires that a public accommodation remove architectural barriers to access to existing facilities where their removal is readily achievable. "Readily achievable" means easily accomplished and able to be done without significant difficulty or expense. If each group home is considered a social service center establishment, then title III requires that each one be made accessible to the extent that it is readily achievable to do so. Discussion of these provisions, including the factors to be considered, can be found at pages 35553-54 of the enclosed title III regulation, and at pages 28-32 of the enclosed Title III Technical Assistance Manual.

Ms. Ferrell's letter describes the group homes as ICF/MR facilities. If so, they may be part of a State or local government program and may, as a result, have to consider accessibility issues because of this relationship. Title II of the ADA prohibits discrimination on the basis of disability by State and local governments. If the State of Iowa contracts with private entities for the provision of services, the State must ensure that the contract activities are carried out in a way consistent with the State's title II responsibilities. This principle is set out in sections 35.102(a) and 35.130(b) of the title II regulation and further explained in the preamble to the Department's regulation at page 35696 (first column). Title II and the regulation adopt the principles established under section 504 of the Rehabilitation Act of 1973, as amended, which applies to programs and activities receiving Federal financial assistance.

If the PCHS group homes are part of a State program, your constituent should consider sections 35.149 and 35.150 of the title II regulation, which requires the provision of "program access," which means that the program, when viewed as a whole, must be accessible to qualified persons with disabilities. Achieving program access does not necessarily entail making all facilities used in the program accessible. In addition, sections 35.130(d) and (e) require the government entity to administer services, programs, and activities in the most integrated setting appropropriate to the needs of qualified individuals with

disabilities.
01-01426

Relevant information may also be found in 35.130, 35.149, 35.150, and 35.151 of the enclosed title II regulation and 36.104, 36.203, 36.304, 36.305, and 36.402 of the enclosed title III regulation.

I hope this information is helpful to you in responding to your constituent.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

Enclosures (4)
01-01427

POLK COUNTY HEALTH SERVICES, INC.
610 FLEMING BUILDING 218-6th AVENUE
DES MOINES IOWA 50309
PHONE (515)243-4545 FAX (515)243-8447
July 6, 1992

Ms. Denita Swenson
Office of Senator Tom Harkin
Federal Building
210 Walnut
Des Moines, IA 50309

Dear Denita:

This letter is a follow-up to the telephone conversation you had with Karen Walters of our staff regarding the development of nine four bed ICF/MR facilities. PCHS will be purchasing existing family homes in the community to house those 36 individuals.

At the present time, all 36 persons have been identified for admission to the homes, and we already have an extensive waiting list. By identifying the individuals before the purchase of the homes, we can better identify the needs of the individuals and the adaptations needed for each home. We are projecting that six of the nine homes will be made wheelchair accessible. The reason for this is that the individuals identified for the three homes do not need a fully accessible home at the present time, and it is very costly (estimate of approximately $15,000 to renovate a home for full accessibility). By renovating six homes out of the nine we feel we will have many options if persons will need a wheelchair accessible home in the future. Also if a person in a non-handicap accessible home needs adaptations in the future, we can make further renovations or find a more appropriate living environment.

Some persons with the State of Iowa have questioned whether our plan will comply with requirements of the Americans with Disabilities Act. We believe we will meet ADA requirements, but some sort of written clarification would be very much appreciated.

Thank you for your consideration of this matter. If you have any further questions, please feel free to contact me.

Sincerely,
Lynn D. Ferrell

Executive Director

LDF:ib
01-01428

T. 8/19/92
SBO:LMS:kgf
DJ# 192-180-09673
The Honorable Doug Bereuter
U.S. House of Representatives
2348 Rayburn House Office Building
Washington, D.C.20515-2701

Dear Congressman Bereuter:

This letter responds to your inquiry concerning compliance with the Americans With Disabilities Act (ADA) by public and private schools in the State of Nebraska.

The ADA authorizes the Department of Justice to provide technical assistance to entities subject to the Act. This letter provides informal guidance with regard to the questions you have posed, but does not constitute a determination by the Department of Justice of rights or responsibilities under the ADA and does not constitute a binding determination by the Department of Justice.

Your specific questions and our responses are as follows:

1. Must every area of an existing school facility be made accessible to an individual with a disability?

Section 35.149 of the enclosed title II regulation requires accessibility to programs, services, and activities in facilities existing on the effective date of the statute, January 26, 1992. The principal focus of the program accessibility standard is access to programs, services, and activities, as opposed to access to physical structures. Therefore, not every area of an existing school facility would have to be made accessible, as long as there is access to a school's programs, services, or activities. You may refer to II-5.1000, pages 19-20, of the enclosed Title II Technical Assistance Manual for further discussion.

In addition, section 35.150(b)(1) of the title II regulation

does not require that a school district eliminate structural barriers if it provides access to its programs through alternative methods. You may refer to II-5.2000, page 20, of the Manual for further discussion of alternatives for making a program accessible.

:udd:stewart:bereut.dr5
cc: Records, CRS, Friedlander, Stewart, McDowney, Breen
01-01429

Even if structural alterations are necessary to provide program accessibility, section 35.150(a)(3) states that a public entity is not required to alter its facilities if it can demonstrate that the alterations would cause a fundamental change to its program or that the cost of the alterations would result in undue financial and administrative burdens. These limitations are discussed in II-5.1000, pages 19-20, of the Manual.

As you may know, many Nebraska public school districts have been required to comply with section 504 of the Rehabilitation Act, which prohibits discrimination on the basis of handicap, since 1973, because they receive Federal financial assistance. Since Title II of the ADA merely extended section 504's program accessibility requirements to all programs, services, and activities of a State or local government, title II should impose few added burdens on Nebraska public school districts subject to section 504.

2. Does the term "qualified individual with a disability" apply to students only, or does it apply to visitors? For example, could a grandparent wishing to visit the school sue because of lack of access?

Section 35.104 defines a "qualified individual with a disability" as "an individual with a disability who ... meets the essential eligibility requirements for the receipt of services or participation in programs or activities provided by the public entity." With respect to those qualified to participate in a school district's programs, the preamble to the title II regulation states at page 35696 that "[p]ublic school systems must comply with the ADA in all of their services, programs, or activities, including those that are open to parents or to the public." Therefore, if a public school's programs are open to visitors, access must be provided to them if they are individuals with disabilities.

3. Do the regulations apply to private schools in the same manner as public schools?

As places of public accommodation, private schools are subject to the requirements of title III of the ADA (not title II, which applies to public schools) and the Department's title III regulation. Different standards apply under title III than under title II. For example, under the title III regulation, a private school must remove barriers to accessibility where such removal is "readily achievable."

4. At what point must a school district without a disabled student comply? When a disabled student enters the district or within a certain time frame

after the January 26, 1992, date when structural barriers regulations went into effect?

Under title II, a school district must provide access to its programs, services, and activities after January 26, 1992. Under section 35.150(d) of the title II regulation, a school district with fifty or more employees that identifies structural barriers to program access must develop a transition plan by July 26, 1992. Please refer to II-8.3000, page 43-44, of the Manual for further discussion of the requirements for a transition plan. In addition, section 35.105 requires a school district to conduct a self-evaluation of its current services, policies, and practices and modify those services, policies, and practices that do not comply with the Department's title II regulation. The self-evaluation requirements are discussed in II-8.2000, pages 40-43, of the Manual.

5. Nebraska has many school districts which contain only a one-room elementary school house. Many of these are not accessible to individuals with disabilities; however, there are no disabled students in those districts. How far must these schools go to comply with the ADA? Must they install chair lifts? Must they discontinue classes in their basements? Again, would the level of compliance be different for students and visitors?

Consistent with a longstanding interpretation of section 504 of the Rehabilitation Act by the former Department of Health, Education, and Welfare, (copy enclosed) the apparent lack of individuals with disabilities in a school district's service area does not excuse the school district from taking whatever appropriate steps are necessary to ensure that its programs, services, and activities are accessible to qualified individuals with disabilities. Section 501(a) of the ADA states that the ADA is not to be interpreted as providing a lesser standard than that provided under the Rehabilitation Act. Thus, title II would require that steps be taken even if there are no disabled students in a district.

I hope this information is responsive to your inquiry.

Sincerely,
John R. Dunne
Assistant Attorney General
Civil Rights Division

Enclosures (3)
01-01431

Congress of the United States
House of Representatives
Washington, DC 20515-2701

June 10, 1992

Ms. Stewart Oneglia
Section Chief
Coordination and Review Section
Civil Rights Division
U.S. Department of Justice
P.O. Box 66118
Washington, D.C. 20035-6118

Dear Ms. Oneglia:

I have recently been contacted by several school board representatives in my Congressional District regarding compliance with the Americans with Disabilities Act. Their questions particularly pertain to structural compliance in existing school facilities.

It would seem the recommendations they are receiving from the Nebraska Department of Education go above and beyond the intent of Congress and, from my understanding, the regulations set forth by the Department of Justice. I have listed several of the questions they have raised and would ask you to please respond.

1. Must every area of an existing school facility be made accessible to an individual with a disability?

2. Does the term "qualified individual with a disability" apply to students only, or does it also apply to visitors? For example, could a grandparent wishing to visit the school sue because of lack of access?

3. Do the regulations apply to private schools in the same manner as public schools?

4. At what point must a school district without a disabled student comply? When a disabled student enters the district or within a certain time frame after the January 26, 1992, date when the

structural barriers regulations went into effect?

5. Nebraska has many school districts which contain only a one-room elementary school house. Many of these buildings are not accessible to individuals with disabilities; however, there are no disabled students in those districts. How far must these schools go to comply with the ADA? Must they install chair lifts? Must they discontinue classes in their basements? Again, would the level of compliance be different for students and visitors?

01-01432

I would greatly appreciate an expedient reply to my inquiry. Many school districts in my Congressional District are preparing to spend tens of thousands of dollars in what I am concerned may be unnecessary compliance measures.

Thank you for your consideration of this matter.

Best wishes,
DOUG BEREUTER
Member of Congress

DB/df
01-01433

T. 8/21/92
SBO:SK:KGF
DJ# 192-180-07241
The Honorable William Emerson
U.S. House of Representatives
2454 Rayburn House Office Building
Washington, D.C. 20515

ATTN: Ms. Kelly Hughes

Dear Congressman Emerson:

This letter responds to your request for information about the Americans with Disabilities Act (ADA) on behalf of Missouri State Senator Jerry Howard.

The concerns expressed in Senator Howard's letter and the attachments appear to be based on some misconceptions about the requirements of the ADA for existing facilities. As explained in II-6.1000 (page 23 of the enclosed Title II Technical Assistance Manual), title II, which covers State and local governments, does establish strict accessibility requirements for new construction and alterations. However, these requirements do not apply to existing buildings.

Under title II, a public entity must provide program access to its services, programs, and activities. This requirement does not necessarily mean that all existing facilities must be accessible, but does require that the program, when viewed in its entirety, must be accessible to and usable by individuals with disabilities. The Title II Technical Assistance Manual includes further discussion of program accessibility on pages 19-22.

The attachment to Senator Howard's letter also refers to renovation requirements applicable to businesses. As explained on pages 28-32 in the Department's Title III Technical Assistance Manual (enclosed), title III of the ADA, which applies to public accommodations and commercial facilities, requires that structural barriers in existing places of public accommodation be removed, but only if the removal is "readily achievable." Commercial facilities, such as office buildings, are not subject

cc: Records, CRS, FOIA, Friedlander 3, Kaltenborn, McDowney
udd:kaltenborn:emerson
01-01434

to the requirement for readily achievable barrier removal, but, like places of public accommodation, are subject to the accessibility requirements for new construction and alterations as discussed on pages 43-44 of the Manual.

I hope that this information clarifies the requirements of the ADA and is helpful in responding to Senator Howard.

Sincerely,
John R. Dunne
Assistant Attorney General
Civil Rights Division

Enclosures (2)
01-01435

Congress of the United States
House of Representatives
Washington, DC 20515-2508

April 17, 1992

John L. Wodatch
Director, Office on the Americans
with Disabilities Act
Civil Rights Division, P.O. Box 66118
U.S. Department of Justice
Washington, D.C. 20035-6118

Dear Mr. Wodatch:

Enclosed please find a copy of a letter I received from Missouri State Sen. Jerry Howard. Sen. Howard is concerned with the costs that the State of Missouri may incur in coming into compliance with the Americans with Disabilities Act. I am not familiar with the specific buildings that Sen. Howard describes, but I would be most appreciative if you could address his individual points and let me know of your findings. Please direct your response to Ms. Kelly Hughes of my staff.

Thank you for your attention to this matter. I look forward to your response.

Sincerely,

BILL EMERSON
Member of Congress

BE/k1h
01-01436

MISSOURI SENATE
JEFFERSON CITY
JERRY T. HOWARD BUSINESS 60 WEST
SENATE POST OFFICE P.O. BOX 279
STATE CAPITOL BUILDING RM 428A DEXTER, MO 63841
JEFFERSON CITY, MO 65101 TELEPHONE (314) 524-8778
TELEPHONE (314) 751-3301

January 8, 1992

The Honorable Bill Emerson
United States House of Representatives
418 Canon Office Building
Washington, D.C. 20515

Dear Bill:

Each of us care about handicapped persons. Their talents, skills and intelligence should never be wasted. We always try to accommodate each person whenever possible. Although good intentions are at the root of the Americans with Disabilities Act, this new law may create disastrous situations for our governments and businesses.

Missouri's state government is facing a serious budget crisis. The state cannot continue to support existing programs. The mentally ill, the poor and our children are already suffering because falling revenues have led to painful budget cuts. Many of our schools have pinched pennies for years, while some districts are now confronting bankruptcy. Federal court desegregation decisions have tapped even more money away from our schools across the state, and court challenges exist as to equity of our school formula and the equity of the desegregation order.

Mandated changes from the Americans with Disabilities Act (ADA) will force the state to spend more in the midst of this terrible financial crisis. Currently the state pays $26 million for buildings rented throughout Missouri. ADA required construction changes will increase the cost of our leases to an estimated $80 million a year. An increase of that proportion would be disastrous. New state owned buildings such as the Truman

Building and the Secretary of States newly constructed Information Center will not be in compliance with the latest standards from ADA. Bathrooms, ramps and doors will have to be remodeled. New carpets that meet current standards will have to be ripped out and replaced with 30 pound carpets. Sadly, we have already built or modified existing buildings to comply with current standards. Now ADA will change those standards. To remain within this new federal law the state may have to spend hundreds of millions of dollars to reach extraordinary demands. Our Social Services building in Sikeston alone was rebid. An estimated $800,000 in construction and remodeling costs ensued. This increase was caused by moving to

a new building to meet specifications. Rent on this building has risen from a bid of $6,700 per month to $12,000 per month.

Our financially strapped schools, cities and counties will also have to pay for altering conditions to exceed those a disabled person may enjoy in his or her own home.

The impact on our businesses, along with the jobs they provide, will be substantial. Major corporations such as General Motors and IBM are laying off employees in huge numbers. Brown Shoe Company has closed two facilities in Southeast Missouri alone. Now, during a deep recession, the federal government is going to demand that any enterprise must spend enormous amounts of money on new construction or face penalties and law suits. Anyone can be fined as much as $100,000 just because a parking space fails to meet minimum ADA size requirements. We should not force businesses to attain standards that are so extraordinary.

The ADA will also mean increased exposure to law suits for businesses. Large scale industries may be better prepared to handle the rising costs of liability and legal fees, but the existence of small businesses may be threatened by new vulnerability to litigation. Small business owners will certainly be angry once they learn about the costly alterations and potential liabilities that ADA will create.

People have committed themselves to improvements that would help the handicapped. Achieving previous standards has always been a goal of state government and the business community. Millions of dollars have been spent to make our offices, factories and stores accessible to the disabled. Now ADA will erase any value of those previous efforts. One small example is the Missouri state Probation and Parole building in Kennett, Missouri. Five years ago ramps were constructed because of legal requirements. With ADA, those ramps will have to be replaced.

The same stability that government should lend to the economicprocess is eliminated. Contracts and rental agreements were designed with long term obligations in mind. Such agreements cannot remain unchanged if major construction changes are mandated. It becomes far more difficult to plan for capital investments and anticipate fixed costs.

If ADA has its full impact, who can say what rule changes or new laws might lie ahead. It is completely unreasonable to assume that people can depend on ADA becoming the last word on this issue. Everyone has prepared as though previous laws and regulations would be more lasting. Once again, more money will be bled away to pay for a change today that will be meaningless tomorrow.

I have also included information from others about the implications of the ADA with this letter.

My request is that something be done to phase in the ADA over a long period of time. If this is not possible, the law should be significantly amended so that the practical needs of the entire nation are met, while addressing the needs of the disabled. Without a significant change, Missourians will suffer from greater budget cuts and weakened businesses. Thank you for your efforts to prevent this end.

Very truly yours,

Jerry T. Howard
State Senator
District 25

JTH/pc

01-01439

Consolidated Housing Development
and Management Company
HWY 25 N * 314-276-5386 * MALDEN, MISSOURI 63863

January 7, 1992
Senator Jerry Howard
Missouri State Senate
Jefferson, City, Missouri

Dear Senator Howard:
Fax Message 1-75l-2230

Reference: Federal Register Friday july 26, 1991
Non-discrimination on the basis of Dis-
ability by Public Accommodation and
Commercial Facilities.

I just received my copy of the new law last Friday, when I meet with the staff from Design & Construction to inspect two new offices buildings, that were occupied in July and August of last year. According to the new law, a number of items will not now meet the new law.

These buildings were bid, and built, according to the specifications given us by the state at that time, one is a 5 year lease, and the other a 10 year lease. They were bid on a firm fixed price for the term of the lease.

This new law is going to be DEVASTATING for small business like ourselves that have no recourse, and have to go back and make changes to comply with a new law. It is also going to place an equally burden on Cities, Counties, and the State. Many of the buildings are Handicap accessible, but will not meet the new law, this is going to be an added expense, with really little or no benefit.

We built a new office building in Kennett 5 years ago for Probation & parole to the States specifications, and it was Handicap accessible. When the lease come up for re-new last year, it would not technically meet the law, so we tore out the walk, and re-did it, now 3 months later it will not meet the law again. This is ridiculous, since the building was Handicap accessible to start with, this building should have been "Grandfathered" and us spending our time, energy, and money on something that does not comply. This was an added expense to the owner, with no re-course, and if their was some re-course, it would have been added expense to the State with no real benefit to anyone. In this case it just happened to be a Probation & Parole office, which is just one more example of the "Criminals" having more rights than the average citizen and Tax payer of this country.

01-01440

Senator Jerry Howard 1/9/92

As per your request, I have assembled a reasonable assumption, based on the State's own information, of lease expenditures yearly. Projections are based on past history of known inflationary items, construction costs, insurances, utilities, etc.

From information received, from the Assistant Director of Design and Construction, the State is currently spending in excess of 25,000,000 yearly, for approximately 3,000,000 sq. ft. of leased buildings. This figure exactly doubles the figures I had given you previously. Let's chart these figures out and see what will be spent in the next 20 years.

1st 5 year lease period ---------- $125,000,000
2nd 5 year lease period -(50% increase)-$187,500,000
3rd 5 year lease period -(same)------$281,250,000
4th 5 year lease period -(same)------$421,875,000
$1,015,625,000

The 50% increase in lease costs shown, in 5 year increments, is a reasonable assumption based on the last 5 to 10 years.

If you would divide the known 3,000,000 sq. ft. of leased property, by 114 counties, the average would be 26,000 sq. ft. per county. Current known construction costs for this type building would run approximately $50.00 per sq. ft., for normal office type construction. Total cost per building would run approximately $1,300,000, including parking, and misc. Multiply this times 114 counties, for a total cost of $150,000,000. Pay for it in five years, like they are doing anyway with leased buildings, or pay for them in twenty years with conventional financing. Look at the cost savings to the taxpayers.

Look at all the money that could then be diverted, back towards education, health care, ect. Wouldn't that be a shot in the arm.

Jerry, I had mentioned that I had a copy of the new Americans With Disabilities Act, here on my desk. I'm really not too surprised with it, since it seems now the minorities seem to have more rights now than the majorities. (Their's are written down and Federally mandated.)

One item worth mentioning, no longer are we required to just furnish a low handicapped water fountain, but will have to furnish a water fountain taller than normal as

01-01441
AUG 21 1992
The Honorable Connie Mack
United States Senator
1342 Colonial Boulevard
Suite 27
Fort Myers, Florida 33907

Attn: Helen Bina

Dear Senator Mack:

This letter responds to your correspondence on behalf of your constituent, XX, concerning the Americans with Disabilities Act (ADA) and his experience at Joe Robbie Stadium.

Title III of the ADA bans discrimination by places of public accommodation, including stadiums and concert halls. The ADA requires that those entities remove barriers to access by individuals with disabilities, including those who use wheelchairs, to the extent that removing the barriers is readily

achievable. The title III regulation issued by the Department of Justice (enclosed) requires that wheelchair seating be dispersed throughout seating areas in places of assembly to the extent that doing so is readily achievable. These requirements are further explained in the title III regulation in sections 36.304-36.305 and 36.308.

If Mr. XX believes that Joe Robbie Stadium, Genesis, TicketMaster, and the Sound Shop's actions resulted in discrimination on the basis of his disability, he has two enforcement options under the ADA: (1) He may secure private legal representation and bring an action in Federal court, or (2) he may file a complaint with the Department of Justice.

To file a complaint with the Department of Justice, XX should send all relevant information to the Office on the Americans with Disabilities Act, Civil Rights Division, U.S. Department of Justice, Post Office Box 66738, Washington, D.C.

cc: Records; Chrono; Wodatch; Russo; McDowney; FOIA; Library
:udd:russo:cong.mack. (b)(6)
01-01442

20035-9998. All complaints should be in writing and should set forth, in as complete a manner as possible, the factual circumstances surrounding the complaint.

I hope this information is of assistance to you in responding to your constituent.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

Enclosure
01-01443

T. 8/18/92
SBO:LMS:kgf
DJ# 192-180-11036

AUG 21, 1992

The Honorable Richard Shelby
United States Senate
313 Hart Senate Building
Washington, D.C. 20510-0103

Dear Senator Shelby:

This letter responds to your recent inquiry on behalf ofyour constituent, XX(b)(6).

Mr. XX(b)(6) states that his employment was terminated on March 4, 1992, by a food store in Dora, Alabama, based on his disability. Title I of the Americans With Disabilities Act, which prohibits discrimination by employers with twenty-five or more employees, became effective on July 26, 1992. As the alleged act of discrimination occurred prior to title I's effective date, Mr. XX(b)(6) allegations would not be covered by that title.

Apparently, Mr. XX(b)(6) is also alleging that the store where he was employed is a Federal contractor, and thus, subject to section 503 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of handicap by Federal contractors. Section 503 is enforced by the Office of Federal Contract Compliance Programs, Department of Labor. As the enclosed letter reflects, we have forwarded XX(b)(6) correspondence to that office for review and, if necessary, appropriate action.

I hope this information will assist you in responding to your constituent's inquiry.

Sincerely,
John R. Dunne
Assistant Attorney General
Civil Rights Division

Enclosure

:udd:stewart:shelby.ltr
cc: Records, CRS, Friedlander, Stewart, McDowney FOIA

01-01447

T. 8/18/92
SBO:LMS:kgf
DJ# 192-180-11036

Mr. Jaime Ramon, Director
Office of Federal Contract
Compliance Programs (b)(6)
Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210

Dear Mr. Ramon:

Enclosed is correspondence that was sent to this office by Senator Richard Shelby concerning Mr. XXXXXX of Birmingham, Alabama.

In his letter to Senator Shelby, Mr. XXXXXX states that his employment was terminated on March 4, 1992, by a food store in Dora, Alabama, based on his disability. Apparently, Mr. XXXXXX is alleging that the store where he was employed is a Federal contractor, and thus, subject to section 503 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of handicap by Federal contractors.

We are forwarding Mr. XXXXXX correspondence to your office for review and, if necessary, appropriate action.

Sincerely,

Stewart B. Oneglia
Chief
Coordination and Review Section
Civil Rights Division

Enclosure
:udd: stewart:ramon.ltr
cc: Records, CRS, Friedlander, Stewart, McDowney

01-01448

(b)(6)
Birmingham, Alabama XX

July 9, 1992

The Honorable Richard Shelby
United States Senate
321 Federal Building
1800 5th Avenue North
Birmingham, Alabama 35203

Dear Senator Shelby:

I am respectfully requesting your assistance in obtaining a written determination from the Justice Department, or whomever, for myself and for my attorney, as to my status in relationship to the American Disabilities Act and to the 1988 Revision of Title 29 of the United States Labor Code. After talking to your office, I was advised by Ms. Blair Agricola to send you a written summary of a situation that I find myself involved in. Her advice came after discussion with her on the phone and some investigation on her part.

On August 24, 1990 while employed by a food store in Dora, Alabama, I fell from an electric pallet jack platform in the store stock room. I was taken to Baptist Medical Center Princeton in Birmingham in a semi-conscious state, was examined, released, and knew I had sustained serious injuries. Shortly thereafter I went to an orthopedic surgeon at HealthSouth Hospital in Birmingham. He recommended immediate knee surgery (performed 8-27-90). After an intense rehabilitation program, my doctor allowed me to return to work on "limited time and restricted duty as tolerated". This was 10-29-1990.

I was not allowed by my store manager to work on this basis

and was immediately put back on full 12 hour shifts, which made it impossible for me to continue my therapy as instructed by the surgeon. This resulted in the deterioration of both of my knees, additional swelling, pain and inflammation to the point where the surgeon made it quite clear total reconstructive surgery would be necessary if a program of continuous therapy could not turn the situation around. Consequently, the decision was made that because of the long hours (and lack of therapy) while I was continuing to work, that the damage was not reversable. On 9-29-91 I did have total reconstructive surgery on both

01-01449

knees (dual surgery). The decision to have both knees operated on at the same time was made in an effort to get it all behind me and try to get on the road of recovery as soon as possible so in turn I could return to full employment.

My assigned supervisor had discussed allowing me to return to work on a "limited duty basis" and was working on a "special assignment" which I would be able to carry out and continue with my therapy. In December of 1991 his death occurred and his plan to arrange my duties conforming with the "Disabilities Act" apparently died with him. After his death, while in the process of rehabilitation from the double surgery I was terminated by my employer on 3-4-92. During this time (and as of this date) I am still under the care of my doctor.

I do not know exactly what my now deceased supervisor was referring to in regards to the "special assignment due to disability". Since my termination I have researched employer/employee roles in disability cases. This has made me aware of ADA, and Title 29, Labor Code of 1988 dated January 3, 1989, as well as the Disabilities Act of 1973.

My question to you is: Do the above mentioned laws apply to me and if so in what respect? I do know that Article 793 of the Title 29 Labor Code, Page 1203, outlines the requirement for employment under Federal Contracts and Sub-Contractors. If my employer meets this criteria (of a Sub-Contractor) would the effective date of ADA be 1/26/92 prior to my termination.
My former employer was and is, actively engaged in:

1. Interstate Commerce and Transportation

2. Receiver of Food Stamps

3. Receiver of Women Indigent Children Vouchers

4. Some type of State and Federal Supplement for training and employment

5. Dept of Agriculture Regulations

6. Sale of U.S. Postage Stamps

7. Sale of Money Orders

Again, I respectfully request your assistance in obtaining a written determination from the Justice Department, or whomever, as to my status in relationship to the American Disabilities Act and to the 1988 Revision of Title 29 of the United States Labor Code. On July 26, 1992, my surgeon with

HealthSouth stated by letter that my current disability is approximately 85 to 100%.

01-01450

Let me thank you in advance for your assistance in this matter and for any assistance/information on rehabilitation, retraining, available benefits, or etc. that I might be entitled to, as I have been unable to obtain the "concrete information" that is needed in order to resume as normal and as productive a lifestyle as possible.

Sincerely,
(b)(6)

cc.
.Susan Silvernail, Attorney
800 Park Place Tower
2001 Park Place North
Birmingham, Alabama 35203
.Mrs. Caroly Rodgers, -Disability Examiner
State of Tennessee Department of Human Services
P.O. Box 775
Nashville, Tennessee 37202
01-01451

AUG 21, 1992

The Honorable Robert S. Walker
U.S. House of Representatives
2369 Rayburn House Office Building
Washington, D.C. 20515-3816

Dear Congressman Walker:

This letter is in response to your inquiry on behalf of your constituents, Mr. and Mrs. XXXX. They have requested information about workshops explaining the Americans with Disabilities Act (ADA) to businesses.

While the Department of Justice does supply speakers for ADA seminars and conferences, we currently have no speaking engagements scheduled in Pennsylvania. The XXXXXX may wish to contact the Council of Better Business Bureaus' Foundation, which has received a grant from the Department of Justice to educate small and medium-sized businesses about the ADA's requirements, for information about ADA training activities in their area. The Foundation is located at 4200 Wilson Boulevard, Suite 800, Arlington, Virginia 22203-1804, telephone (703) 276-0100.

Another useful resource is the Region 3 Disability and Business Technical Assistance Center (which serves Pennsylvania, Delaware, Maryland, Virginia, and West Virginia), operated under a grant from the National Institute on Disability and Rehabilitation Research. The Center may be reached through a toll-free number at 1-800-949-4232.

Enclosed are copies of the Department of Justice's ADA title III technical assistance manual and regulation, which provide information on ADA requirements applicable to businesses.

cc: Records; Chrono; Wodatch; Bennett; Breen; McDowney; FOIA.
:udd:breen:congressional.walker

01-01452

I hope this information will be helpful to you in responding to your constituent.

Sincerely,
John R. Dunne
Assistant Attorney General
Civil Rights Division

Enclosures (2)
01-01453

AUTH: 66 DOC: 288743
FILE: BAT:
REF:

June 4, 1992
cd

Mr. and Mrs. XXXX(b)(6)
XX
Millersville, Pennsylvania XX
XX

MEMO VAN STOP, MILLERSVILLE 6/3/92

1. Mr. XXXX(b)(6) wants to know if there are any workshops sponsored by the government in the area to help businesses know what their responsibilities are under the ADA?

Government sponsored seminars would help us get first-hand information and have a question and answer time.

01-01454

DJ 202-PL-115

AUG 28, 1992

XXXX(b)(6)
Xxtree XX
Tacoma, Washington

Dear Ms. XXXX(b)(6)

This letter is in response to your inquiry requesting information about the Americans with Disabilities Act (ADA).

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist you in understanding the ADA's requirements. However, it does not constitute a legal interpretation or legal advice, and it is not binding on the Department.

You have asked whether the ADA would require an amateur clown who performs in facilities such as nursing homes to provide a sign language interpreter for the performance. You have also asked whether the ADA covers persons with mental disabilities.

The ADA places responsibility for providing access to persons with disabilities, including the provision of interpreters to deaf individuals, on any private entity that owns, leases from or to, or operates a place of public accommodation. The twelve categories of places of public accommodations are listed and discussed on page 35551 of the enclosed title III regulation. A nursing home is considered a place of public accommodation, and, as such, must provide auxiliary aids, including sign language interpreters where necessary to afford effective communication, unless to do so would fundamentally alter the nature of the performance or would be an undue burden on the nursing home.

A performer or performing group, however, is not by itself considered a place of public accommodation under the ADA. Therefore, a performer will be responsible for providing

auxiliary aids, or any other access to persons with disabilities, only if he or she leases from the place of public accommodation in which he or she performs. If a clown were to perform in a nursing home, the clown would have no ADA responsibilities unless he or she leased from the nursing home for the performance.

cc: Records, Chrono, Wodatch, Novich, FOIA, Library
Udd:Novich:Policy.PL.115.1tr
01-01455

In response to your second question, the ADA's ban against discrimination protects individuals with mental as well as physical disabilities. The enclosed regulations define a "disability" as including a "mental impairment that substantially limits one or more of the major life activities." See page 35548 for this discussion. I have also enclosed a Title III Technical Assistance Manual, which provides further discussion of the ADA requirements for public accommodations.

I hope this information will be useful to you in understanding the ADA.

Sincerely,

John L. Wodatch
Director
Office on the Americans Disabilities Act

Enclosures (2)
Title III regulations
Title III Technical Assistance Manual
01-01456

(HANDWRITTEN)

Dear Sir

I am thinking about being

an amateur clown not a professional.
Would I still have to provide a
sign language interpreter
for the hard of hearing. For
example if you were performing
as a clown in a nursing home?
How does the laws of ADA to
provide access to public
entertainment options apply to
the problems above. Does the
ADA apply to the mentally
ill as well. Send me any
information to my address:

XXXX(b)(6)
TACOMA WA XX

Thank you,

XXXXX(b)(6)

01-01457

AUG 28, 1992

The Honorable Howard L. Berman
Member, U.S. House of Representatives
14600 Roscoe Blvd., Suite 506
Panorama City, California 91402

Attn: Margaret Mott

Dear Congressman Berman:

This letter is in response to your inquiry on behalf of your constituent, (b)(6) concerning provision of sign language interpreters under the Americans with Disabilities Act (ADA) for medical patients who are deaf.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities with rights or obligations under the Act. This letter provides informal guidance to assist Ms. (b)(6) in understanding the ADA. However, this technical assistance does not constitute a legal interpretation of the statute and it is not binding on the Department.

The ADA requires physicians to furnish appropriate auxiliary aids and services where necessary to ensure effective communication with individuals with disabilities. A physician may not impose a surcharge on any particular individual with a disability to cover the costs of measures, such as providing auxiliary aids, that are required by the ADA. These provisions appear in sections 36.301(c) and 36.303 of the enclosed ADA title III regulation, at pages 35596 and 35597, respectively. Under section 36.301(c) of the regulation, the cost of an interpreter must be absorbed by the doctor in the limited circumstances when an interpreter is necessary. However, as provided in section 36.303(f), a doctor is not required to provide any auxiliary aid that would result in an undue burden.

cc: Records, Chrono, Wodatch, Bowen, Russo, McDowney, Library,
FOIA
Udd:Russo:Cong.Berman. (b)(6)

What constitutes an effective auxiliary aid or service will depend upon the unique facts of each situation, including the length and complexity of the communication involved. Generally, a doctor may satisfy the auxiliary aid or service requirement by using a note pad and written materials where a deaf patient is making a routine office visit. By contrast, a discussion of whether to undergo major surgery may require the provision of a sign language interpreter. Further discussion of this point may be found on page 35567 of the enclosed regulation. Also enclosed is the Department's Technical Assistance Manual, which includes discussion of these provisions at page 26.

If Ms. (b)(6) believes, after reviewing the enclosed materials, that she has been discriminated against on the basis of her disability she has two enforcement options under the ADA: (1) She may secure private legal representation and bring an action in Federal court, or (2) she may file a complaint with the Department of Justice.

If Ms. chooses to file a complaint with the Department of Justice, she should send it to one of two offices of the Civil Rights Division assigned to investigate such complaints. If the medical office is operated by a State or local government, she should send any relevant information to the Coordination and Review Section, Civil Rights Division, U.S. Department of Justice, P.O. Box 66118, Washington, D.C. 20035-6118. If, on the other hand, the medical office is operated by a private entity, she should send any relevant information to the Office on the Americans with Disabilities Act, Civil Rights Division, U.S. Department of Justice, Post Office Box 66738, Washington, D.C. 20035-9998. All complaints should be in writing and should set forth, in as complete a manner as possible, the factual circumstances surrounding the complaint.

I hope this information is of assistance to you in responding to your constituent.

Sincerely,
James P. Turner
Acting Assistant Attorney General
Civil Rights Division

Enclosure (2)
01-01459

AUG 28, 1992

The Honorable Thomas J. Bliley, Jr.
U. S. House of Representatives
2241 Rayburn Office Building
Washington, D.C. 20515

Dear Congressman Bliley:

This letter is in response to your inquiry on behalf of your constituent, Dr. Paul E. Galanti, Deputy Executive Vice President of the Medical Society of Virginia, regarding the cost of providing auxiliary aids or services for persons with disabilities.

The Americans with Disabilities Act (ADA) authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist your constituent in understanding the ADA's requirements. It does not, however, constitute a legal interpretation, and it is not binding on the Department.

The ADA requires physicians to furnish appropriate auxiliary aids and services where necessary to ensure effective communication with individuals with disabilities. A physician may not impose a surcharge on any particular individual with a disability to cover the costs of measures, such as providing auxiliary aids, that are required by the ADA. These provisions appear in sections 36.301(c) and 36.303 of the enclosed ADA title III regulation, at pages 35596 and 35597, respectively. Also enclosed is the Department's Title III Technical Assistance Manual, which may provide further assistance to your constituent. Pertinent discussion may be found at pages 22 (surcharges) and 25-28 (auxiliary aids).

Under section 36.301(c) of the regulation, the cost of an interpreter must be absorbed by the doctor in the limited circumstances when an interpreter is necessary. However, as provided in section 36.303(f), a doctor is not required to provide any auxiliary aid that would result in an undue burden. The flexibility of the auxiliary aids requirement, the undue burden limitation, and the ability to spread costs over all patients should minimize any burden on the medical profession.

cc: Records, Chrono, Wodatch, Breen, Nakata, McDowney, FOIA
Library
Udd:Nakata:Congress.letters.Bliley.1

01-01460

What constitutes an effective auxiliary aid or service will depend upon the unique facts of each situation, including the length and complexity of the communication involved. Generally, a doctor may satisfy the auxiliary aid or service requirement by using a note pad and written materials where a deaf patient is making a routine office visit. By contrast, a discussion of whether to undergo major surgery may require the provision of a sign language interpreter. Further discussion of this point may be found on page 35567 of the enclosed regulation.

Dr. Galanti's letter raises a specific question involving use of interpreters, concerning a deaf patient who brought a sign language interpreter for an office visit and billed the doctor for the cost of the interpreter. Clearly, the auxiliary aid provisions of the ADA (cited above) do not contemplate that a person with a disability can unilaterally decide on the appropriate type of auxiliary aid, make arrangements for the auxiliary aid, and then bill the public accommodation for the service.

I hope this information will be helpful to you in responding to your constituent.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

Enclosures (2)
01-01461

CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES
Washington, DC 20515-4603

June 25, 1992

Mr. John Wodatch
Director
Office on the Americans With Disabilities Act
Department of Justice
P.O. Box 66738
Washington, D.C. 20036-9998

Dear Mr. Wodatch:

I am writing to you in regards to the Americans With Disabilities Act (ADA) and the effect it will have on small business, and, more specifically, doctor's practices.

It has come to my attention that the requirements concerning auxiliary aids contained within the ADA legislation are both unclear in their nature, and potentially detrimental to other health care programs. Doctors in my district have voiced uncertainty about the situations in which they would be required to obtain the services of an interpreter. Not only do these question present a problem, but, should an interpreter be necessary, the cost of the interpreter, about $50.00, is placed on the practice's shoulders. When the patient in question is covered by Medicaid, the doctor could end up paying $50.00 for an interpreter while attending to a $18.00 visit. If this becomes the norm, the Medicaid program could find itself losing a good number of doctors.

I have enclosed a letter from my constituent, Mr. Paul E. Galanti, the Deputy Executive Vice President of the Medical Society of Virginia, concerning this problem. I would appreciate your attention and comments on the matter, and I look forward to hearing your thought. I thank you in advance.

With kindest regards, I am

Sincerely,

Thomas J. Bliley, Jr.
Member of Congress

The Medical Society Of Virginia
4205 DOVER ROAD RICHMOND, VIRGINIA 23221 (804)353-2721

May 13, 1992

The Honorable Thomas J. Bliley, Jr.
U.S. House of Representatives
Washington, D.C. 20515

Dear Tom:

This is a request for assistance with a problem that has cropped up relating to the Americans with Disabilities Act. It was brought to my attention by Dr. Percy Wootton, one of Virginia's most prominent physicians and a member of the AMA Board of Trustees.

As related to me, a medicaid patient who was hearing impaired was treated by Dr. Wootton's practice using a signing translator provided by the patient. This particular treatment is reimbursed $18.00 by Medicaid. Shortly after treatment, the group practicereceived a bill for $50.00 for services provided by the translator who threatened to sue under the Americans with Disabilities Act if not paid.

In a conversation with Mr. Bruce U. Kozlowski, Virginia's Director of the Department of Medical Assistance Services and a very capable administrator, I was informed that there are no provisions under the law to reimburse physicians or any health care provider for this type of service.

This seems terribly unfair to physicians who, in many cases, lose financially by treating Medicaid patients.

I see a potential for abuse-not just in medicine-if this is allowed to be an interpretation of the ADA. I feel certain that the authors of the bill did not have this in mind when they passed it. I also foresee many physicians dropping out of the Medicaid program which could jeopardize the entire program.

I enjoyed getting a brief chance to see you at the Medical Society's Legislative Luncheon in Washington last week and know that you will have sound advice to give Dr. Wootton and other Virginia physicians who are potentially victims of this unsolicited "help."

Thank you in advance for any help you can provide.

With best wishes,

Paul E. Galanti
Deputy Executive Vice
President

Copy: Percy Wootton, M.D.
John W. Hollowell, M.D.
George E. Broman, M.D.
Mr. Bruce U. Kozlowski
Mr. James L. Moore, Jr.

01-01463

U.S. Department of Justice
Civil Rights Division
Office on the Americans with
Disabilities Act

P.O. Box 66738
Washington, D.C. 20035-9998

AUG 28, 1992

Ralph Lancaster, President
The Lancaster Group
2800 North Atlantic Avenue, #16
Daytona Beach, Florida 32118

Dear Mr. Lancaster:

This letter responds to your inquiry concerning cancellation of your group health insurance coverage.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities with rights or obligations under the Act. This letter provides informal guidance to assist you in understanding the ADA. However, this technical assistance does not constitute a legal interpretation of the statute and it is not binding on the Department.

I have enclosed copies of the Department of Justice's regulation under title III of the Americans with Disabilities Act (ADA), as well as our Technical Assistance Manual. Insurance practices are discussed at pages 18-19 of the Manual and pages 35562-63 and 35596 of the regulation. Generally, the ADA prohibits discrimination on the basis of a disability, which is defined as a physical or mental impairment that substantially limits one or more major life activities. However, the ADA's coverage of insurance practices is limited. The ADA does not prohibit the refusal to insure, limitations in the amount,

extent, or kind of insurance, or the charging of different rates for the same coverage (even when based on physical or mental impairment) when such actions are based on sound actuarial principles or are related to actual or reasonably anticipated experience.

After reviewing these provisions, if you wish to file a complaint under the Americans with Disabilities Act, you may write to the Office on the Americans with Disabilities Act, Civil Rights Division, U.S. Department of Justice, Post Office Box 66738, Washington, D.C. 20035-9998.

01-01464

Your letter includes allegations of age discrimination and antitrust violations. For further information regarding age discrimination, please contact Mr. Edward Mercado, Director, Office for Civil Rights, Department of Health and Human Services, 330 Independence Avenue, S.W., Room 5400, Washington, D.C. 20201. Antitrust questions may be directed to the Federal Trade Commission, Washington D.C. 20580.

Finally, because insurance practices are traditionally regulated at the State level, you may wish to direct your complaint to the Florida Department of Insurance, Consumer Services. The mailing address is Post Office Box 7117, Tallahassee, Florida 32314.

I hope this information is of assistance to you.

Sincerely,

John L. Wodatch
Director
Office on the Americans with Disabilities Act
Civil Rights Division

Enclosure (2)
01-01465

THE LANCASTER GROUP

Boulevard Executive Park
555 West Granada Boulevard
Suite D-1
Ormond Beach, Florida 32174
(904) 667-0675
Fax(904) 677-0270

June 1, 1992

The Honorable William P. Barr
Attorney General of the United States
Department of Justice
10th and Constitution Avenue, N.W.
Washington, D.C. 20530

Dear Mr. Barr:

Our company is a small firm with only two full-time employees and a couple of part time workers. For the past ten years or so, we have been an Affiliate Member of the Florida League of Financial Institutions, a group composed of thrift institutions and those who provide services to the thrift industry. Our sole reason for membership in this group was so that we could obtain health insurance under their group insurance plan. Each year, we have paid approximately $1,000 for membership dues in the organization, or some $10,000. And, each year, we have faithfully paid the insurance premium on myself, and Mrs. Gail McTiernan, our other employee. That premium has risen, year after year, and is now $670 per month for the two of us, or an annualized $8,040. This means that, on an annualized basis, plus the $1,000 membership fee we have had to pay to obtain the insurance, the annual health insurance bill for just the two of us is approximately $10,000.

I am 53 years old, and Mrs. McTiernan is 56 years old. During the many years we have been covered by the insurance plan offered by the Florida League of Financial Institutions, both of us, as people our age tend to do, have developed medical conditions, or have medical histories, that make us virtually uninsurable.

The Florida League has traditionally reviewed the group insurance plan each year and at the beginning of each year, has decided to

remain with the existing carrier for one more year (often with an

increase in rates), or retain a new carrier. Regardless of the insuror chosen, however, all members have always been insured.

This year, on January 1, the Florida League selected the Travelers Insurance Co. for coverage for all of 1992. In May of this year, only five months into the Plan year, the Florida League began negotiating with Mutual of Omaha. The end result is that, on May 29, 1992, three days ago, we were advised that, effective today, our firm would no longer be allowed to participate in coverage through the new carrier, Mutual of Omaha, because of requirements dictated by the new carrier that members of the League with 75 or fewer employees must be individually underwritten, and not treated as the rest of the group

The notification to our company, a copy of which is attached, states that, "Unfortunately, due to Mutual of Omaha's decision to evaluate the overall health risk of each League participant separately, (your firm) has been declined for life and health insurance for reasons attributable to adverse medical conditions."

I feel confident that Mutual of Omaha's decision to selectively underwrite was not a unilateral one, but was supported and agreed upon by the Florida League.

So here we are, at ages 53 and 56 respectively, we find ourselves uninsurable, with health problems, and with only three days notice, after being in the same group plan for many, many years, while others in the plan remain fully covered.

It is my strong opinion that these actions violate numerous laws, regulations, rights constitutional guarantees, and various discrimination laws. I believe that both Mrs. McTiernan and I have:

1. Been singled out and discriminated against because we are a small company with less than 75 employees, even though we were

a long standing member of a group where all members are covered.

2. Been discriminated against because of our age.

3. Been discriminated against due to physical impairment.

4. Had our civil rights violated.

5. Not been treated fairly under the terms of our contract and Florida League's agreement with us and the insurance carrier.

6. Been a victim of collusion and a conspiracy that has resulted in a loss of our rights and benefits so that other members of our same group could enjoy lower rates.

7. Been a victim of violations of various anti-Trust laws.

8. Suffered as a result of numerous violations of Federal Trade Commission and State laws and regulations.

The Florida League has offered to "negotiate with the old carrier" and see if they will carry our firm on an individual stand-alone basis until January 1, 1993, and to then see if the new carrier, Mutual of Omaha, will accept us at that time. There is no question in our minds that the old carrier will readily agree to accept us at a much, much higher rate, with severe restrictions, for only a few months, and then drop us, and that Mutual of Omaha will be no more inclined to accept us in January than are they now.

In short, we see these actions as nothing more than a disguised effort to "cull" the entire ranks of the Florida League of folks who are undesirable from an age and/or medical standpoint, using the guise of those with 75 employees or less, so as to reduce overall health costs for the large, influential members of the League.

It is, in our opinion, a blatant act of discrimination, an illegal and unethical business practice, and a shocking example of (a) the health insurance industry gone amok, and (b) a conspiracy between a member of that industry and an insured to hold costs down at the expense of a group that should be protected.

01-01468

We need your help. What can you do to assist us in assuring that this unconscionable act is not allowed to stand?

We thank you in advance for your consideration and your assistance and, even though we know you are busy with numerous other matters, hope you will find time to assist us.

Further, in my opinion, this is a classic test case on such matters. If you wish me to testify, at any time and at any place, as to this situation, I will be more than happy to do so.

Sincerely,

Ralph D. Lancaster
Principal

01-01469

FLORIDA LEAGUE
OF FINANCIAL
INSTITUTIONS
P.O. Box 2246, Orlando, Florida 32801
825 Carland Ave., Suite 200 (407) 425-0581

William D. Hussey, President
May 29, 1992

Ralph Lancaster, President
The Lancaster Group
2800 N. Atlantic Avenue, #16
Daytona Beach, FL 32118

Re: Group Insurance Coverage

Dear Ralph:

As you are aware, the Florida League of Financial Institutions' Group Insurance Program will be transferring coverage to Mutual of Omaha as of June 1, 1992. One of the requirements dictated by the new carrier was the collection and acceptance of health questionnaires from the employees of each group with less than 75 lives.

Unfortunately, due to Mutual of Omaha's decision to evaluate the overall health risk of each League participant separately, the Lancaster Group has been declined for life and health insurance for reasons attributable to adverse medical conditions.

As the normal effective date of renewal coverage for the Travelers program in January 1, 1993, I am prepared to direct on your behalf Alexander & Alexander to negotiate with the Travelers in an attempt to maintain your contract with the Travelers. If they are successful, this will mean that your current level coverage and rates will continue unaffected on an individual stand-alone basis until January 1, 1993. We will also be pleased at that time to ask Mutual of Omaha to reassess the health status of your group in an effort to have you rejoin the League program.

Ralph, we are pleased that the Lancaster Group has been able to participate in the League Group Insurance Program for a long period of time. We regret that the continuing restriction of underwriting policies in the marketplace has made it impossible for you to continue with us at this time. We are hopeful that you will be able to rejoin us at some point in the future.

Again, please notify me immediately if you would like me to direct A&A to attempt to negotiate a continuance of your existing contract with the Travelers. You may also contact the League's benefits representative, Andrew Thiele of Alexander & Alexander (813-273-5512) if you have questions about this action by Mutual of Omaha.

Best regards,
William D. Hussey
President

WDH/cd
052992
01-01470
AUG 28, 1992

The Honorable Larry Pressler
United State Senate
133 Hart Senate Office Building
Washington, D.C. 20510-6125
Dear Senator Pressler:

This letter is in response to your inquiry on behalf of your constituent, Dr. Robert Johnson. Dr. Johnson has asked whether he is required by the Americans with Disabilities Act to provide interpreters to his patients with hearing impairments.

The Americans with Disabilities Act authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist your constituent in understanding the Act's requirements. It does not, however, constitute a legal interpretation, and it is not binding on the Department.

The ADA requires physicians to furnish appropriate auxiliary aids and services where necessary to ensure effective communication with individuals with disabilities. A physician may not impose a surcharge on any particular individual with a disability to cover the costs of measures, such as providing auxiliary aids, that are required by the ADA. These provisions appear in sections 36.301(c) and 36.303 of the enclosed title III regulation, at pages 35596 and 35597, respectively. Also enclosed is the Department's Title III Technical Assistance Manual, which may provide further assistance to your constituent. Pertinent discussion may be found at pages 22 (surcharges) and 25-28 (auxiliary aids).

cc: Records, Chrono, Wodatch, MillerC,-McDowney, FOIA, Library
:udd:millerc:pressler.cong
01-01471

Under section 36.301(c) of the regulation, the cost of an interpreter must be absorbed by the doctor in the limited circumstances when an interpreter is necessary. However, as provided in section 36.303(f), a doctor is not required to provide any auxiliary aid that would result in an undue burden. The flexibility of the auxiliary aids requirement, the undue burden limitation, and the ability to spread costs over all patients should minimize any burden on the medical profession.

What constitutes an effective auxiliary aid or service will depend upon the unique facts of each situation, including the length and complexity of the communication involved. Generally, a doctor may satisfy the auxiliary aid or service requirement by using a note pad and written materials where a deaf patient is making a routine office visit. By contrast, a discussion of whether to undergo major surgery may require the provision of a sign language interpreter. Further discussion of this point may be found on page 35567 of the enclosed regulation.

I hope this information will be helpful to you in responding to your constituent.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

Enclosures (2)

01-01472

June 22, 1992

SENATOR LARRY PRESSLER
SENATE OFFICE BUILDING
HART 133
WASHINGTON DC 20510
Dear Senator Pressler:

I received this letter (copy enclosed) from the South Dakota Association of the Deaf. The tone of the letter is quite mandatory and does not express the real fine job these organizations have done for the deaf-mute. I have also enclosed a copy of the letter I have written to them. I have really enjoyed XX(b)(6) as my patient. We did have a good way of communicating that seemed relatively error-free without an intermediary as an interpreter that interjects another source of possible error.

My purpose for writing you is to ask, what was the purpose of the "Americans with Disabilities Act" 28 C. F. R. 36.104? Was it intended to be used in such a mandatory way? As you can see from my letter, I am not so disturbed by it, even though a "gentler, kinder letter" could have been written with much less chance of antagonizing doctors. Doctors are already beset in the last two years to comply with the new Medicare fee schedule and coding system, the OSHA regulations requiring a documented program for controlling exposure to blood-borne diseases in their offices, the steps necessary to qualify our office labs under the quality standards set out by the Clinical Laboratory Improvement Act of 1988. As a result, we have had to add staff duties to our employees by new expensive computer software programs and education of these programs to comply to all these new regulations. We are feeling pressured to deliver less and less care to our patients with more overhead.

My two ultimate questions to you are:
1. Are we breaking the law if we refuse to use the interpreters here?
2. What was the intention of the Act?

Thank you.

Sincerely yours,

Robert K. Johnson, M.C.

RKJ/drh

Enclosures

01-01473

202-PL-00049

AUG 31, 1992

William T. McNett, Chairman
Bradford County Commissioners
Bradford County Court House
Towanda, Pennsylvania 18848

Dear Mr. McNett:

This letter responds to your correspondence requesting information about the Americans with Disabilities Act, 42 U.S.C. 12101-12213 (ADA). The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist you in understanding the ADA's requirements. However, it does not constitute a legal interpretation and it is not binding on the Department.

Specifically, your letter inquires whether your county government must microfilm or computerize its real estate records in order to accommodate an attorney who states that he has difficulty handling the record books because he has only one arm. You state that county staff have been directed to offer assistance to the individual and that "tremedous expense" would be involved in transforming the records into electronic data.

Title II of the Americans with Disabilities Act (ADA) governs the operations of local and state governments. Title II and its implementing regulations require public entities to make reasonable modifications in their policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity. If, as you indicate, you can provide full access to the records by having staff assist in lifting and handling the record books, further modifications would not be "necessary to avoid discrimination."

cc: Records, Chrono, Wodatch, Magagna, Barrett, FOIA, Library
Udd:Barrett:PL.49

01-01474

I have enclosed copies of the title II regulation and the Department's Technical Assistance Manual. I hope this information will be useful to you.

Sincerely,

Joan A. Magagna
Deputy Chief
Office on the Americans with Disabilities Act

Enclosures (2)
Title II regulation
Title II Technical Assistance Manual

01-01475

County of Bradford
WILLIAM T. MCNETT JONATHAN P.
FOSTER
ROBERT P. HORTON County
Solicitor
RICHARD A. EATON
County Commissioners GARY L. WOOD
Chief Clerk
Commissioners' Office
Court house
TOWANDA, PA. 18848
TELEPHONE: 717-265-5700
February 21, 1992

Justice Department
Civil Rights Division
P.O. Box 66118
Washington, D.C. 20035

Dear Sirs:

I am a County Commissioner in Pennsylvania and our courthouse contains several county offices, among which is the office of "Register and Recorder." Within the Register and Recorder's office are the bound books of real property deeds. These books are of the standard size and weight. They are heavy (about 20 pounds) and they are cumbersome to handle.

We have a county resident who, as a child, lost an arm in a farming accident. He is now a leading attorney and has handled these record books for the past 15 years while searching titles. He has just threatened bringing suit against the county under the Americans with Disabilities Act claiming that our records should be transformed into electronic data so that he can look at records without handling the record books. Our county staff has been directed to offer assistance to the attorney, but this does not satisfy him.

My question is: Does the Justice Department expect local government to incur the tremendous expense involved in transforming all written records into electronic data?

Sincerely,
William T. Mc Nett, Chairman
Bradford County Commissioners

WTM/ljm
01-01476

DJ 202-PL-142

AUG 31 1992

Robert Sweetser, RA
Office of R.S. Griffin
32 All Souls Crescent
Asheville, North Carolina 28803

Dear Mr. Sweetser:

This is in response to your letter requesting information about the Americans with Disabilities Act (ADA).

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist you in understanding the ADA's requirements. However, it does not constitute a legal interpretation or legal advice, and it is not binding on the Department.

You have asked whether a strictly residential building would be covered by the ADA. The ADA does not apply to strictly residential buildings, which offer no social, recreational or other services. Nor does it apply to amenities provided for the exclusive use of tenants and their guests. However, as you correctly noted, it does cover any spaces within the building intended for or used by the public. In addition, the federal Fair Housing Act, as amended, prohibits discrimination on the basis of disability in housing and provides additional accessibility requirements for certain newly constructed housing facilities. There may also be state or local laws that have additional or more stringent requirements.

Please consult the enclosed title III regulations and Technical Assistance Manual for further discussion of ADA issues.

cc: Records, Chrono, Wodatch, Magagna, Novich, Library, FOIA
Udd:Novich:policy.pl.142.ltr
01-01477

I hope this information is useful to you.

Sincerely,

Joan A. Magagna
Deputy Director
Office on the Americans with Disabilities Act

Enclosures (2)
Title III regulations
Title III Technical Assistance Manual

01-01478

R.S. Griffin, Architect

April 17, 1992

Stewart B. Oneglia, Chief, Coordination and Review Section
Civil Rights Division
U.S. Department of Justice
Washington, D.C. 20530

Re: Manor Inn Apartments
Asheville, NC

Dear Mr. Oneglia:

We are currently underway with renovations of The Manor Inn. This is a Federal Register identified historic building constructed 1899-1913 being converted into forty-four rental apartments.

The Americans with Disabilities Act is applicable to all private entities providing places of public accommodations, including places of lodging and places of public gathering. It is our understanding that "places of lodging would exclude solely residential facilities because the nature of a place of lodging contemplates the use of the facility for short term stays" (28 CFR PART 36, p.23) and therefore this solely residential project is excluded from conformance with the ADA. Spaces intended for lease for public use or events shall, however, conform with ADA recommendations as places of public gathering.

At the request of our client, we seek your confirmation of our understanding of the ADA as noted above. We appreciate your assistance in this matter.

Sincerely,

Robert Sweetser, RA
RHS/dr

cc: Manor Inn Apt Group

32 All Souls Crescent * Asheville, N.C. 28803 * (704)274-5979
01-01479

DJ 202-PL-242

SEP 1 1992

Bernard B. Nebenzahl, Esq.
Nebenzahl & Kohn
Suite 800 Glendale Federal Building
9454 Wilshire Boulevard
Beverly Hills, California 90212-2988

Dear Mr. Nebenzahl:

This letter is in response to your request for guidance regarding the obligations under the Americans with Disabilities Act of 1990 ("ADA") of financial institutions that foreclose on public accommodations.

The ADA authorizes this Department to provide technical assistance to entities that are subject to Title III. This letter provides informal guidance to assist you in understanding the ADA and the Department's regulation. However, this technical assistance does not constitute a determination by the Department of Justice of rights or responsibilities under the ADA and does not constitute a binding determination by the Department of Justice.

Section 302(a) of the ADA prohibits discrimination on the basis of disability by "any person who owns, leases (or leases to), or operates a place of public accommodation." See also 28 C.F.R. S 36.104. Accordingly, Title III applies to a financial institution that acquires ownership of a place of public accommodation through foreclosure. Neither the statute nor the Department's regulation has an exemption for a private entity that owns a place of public accommodation because the ownership is temporary or because the private entity, e.g., financial institution, intends to liquidate its interest in the place of public accommodation.

Because a financial institution that owns a place of public accommodation is covered by the ADA, it is responsible for removing existing barriers that are "readily achievable" as

defined by Section 301(9) of the ADA and Section 36.304 of the Department's regulation. For further discussion of the concept

cc: Records, Chrono, Wodatch, Magagna, Delaney, Arthur, Library,
FOIA
Udd:Delaney:ada.ltr.nebenzahl.foreclosure
01-01480

of barrier removal please see pages 35,553-54 of the enclosed regulation and pages 28-39 of the enclosed Technical Assistance Manual. The extent of its obligation to remove existing barriers will depend on a variety of factors, including the nature of the legal relationships between the financial institution and the place of public accommodation and the likely term of ownership. Of course, the exact obligation of any particular financial institution will have to be determined on a case-by-case basis.

I hope this information has been helpful to you.

Sincerely,

John L. Wodatch
Director
Office on the Americans with Disabilities Act

Enclosures (2)
Title III regulation
Title III Technical Assistance Manual

01-01481

LAW OFFICES
NEBENZAHL AND KOHN
A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
SUITE 800 GLENDALE FEDERAL BUILDING
9454 WILSHIRE BOULEVARD
BEVERLY HILLS, CALIFORNIA 90212-2988
JAMES ALLEN KOHN (310) 858-1700
BERNARD S. NEBENZAHL TELECOPIER (310) 275-5714
M. RANDEL DAVIES
RANDALL S. LEFF
GERALD S. FRIM
STUART D. TOCHNER

A PROFESSIONAL CORPORATION

July 6, 1992

United States Department of Justice
Civil Rights Division
Office on the Americans with Disabilities Act
P.O. Box 66118
Washington, D.C. 20034-6118

Dear Sir/Madam:

Several financial institutions which are clients of our office have requested our advice concerning their obligations under the Americans With Disabilities Act of 1990 (42 U.S.C. 12181 et seq.) with respect to public accommodations upon which they foreclose as lenders. Subsequent to a foreclosure, the financial institutions hold these properties for a short term until they are liquidated.

The issue presented here is the ownership and retention of property by lenders as a result of the defalcation of borrowers under their loan obligations, the result of which causes the lender to foreclose upon the collateral, namely the public accommodations. Americans With Disabilities Act provides that there shall be no discrimination on the basis of disability, in connection with, among other things, accommodations of any place of public accommodation by any person who "owns" or operates a place of public accommodation. More particularly, regulations promulgated under the Act (28 C.F.R. 36.304) require that public accommodations shall remove architectural barriers where such removal is readily achievable. The regulations further define what "readily achievable" means with the operable phrases being "without much difficulty or expense."

There is uncertainty with respect to the obligations of a lender under the circumstances recited above when looking at the

affirmative obligations of one who "owns" the public accommodation.

These clients have been told by others (including some persons at the Department of Justice) that their temporary ownership of the public accommodation is a consideration in determining whether or not there is an affirmative obligation to remove barriers under the cited sections.

01-01482

We would appreciate your advice on the following in relation to the current regulations and enforcement policies:

1. Is temporary ownership a basis upon which a lender, who forecloses and owns a public accommodation with a view to liquidate said property and not with a view towards investment or retention, is exempt from Section 36.04?

2. Is there a definition or any advisory opinions on temporary ownership of a public accommodation by lenders?

3. Is a lender which forecloses upon a public accommodation and owns such accommodation for resale only, for a period of less than 12 months (or any other period), required to comply with 28 C.F.R. 36.304?

Thank you for your consideration of this inquiry, and should you have any questions, please do not hesitate to contact me.

Very truly yours,
Bernard B. Nebenzahl

BBN:dh
01-01483

DJ 202-PL-221

SEP 9 1992

Ms. (b)(6)
XX
Lufkin, Texas XX

Dear Ms. (b)(6)

This is in further response to your letter of June 16, 1992, requesting an interpretation of the Americans with Disabilities Act ("ADA").

We are unable to give you an advisory opinion regarding the specific questions raised in your letter. However, I can refer you to the Department of Justice implementing regulation for title III of the ADA that may provide you with some guidance in these matters. See 28 C.F.R. 36.101 et seq. (copy enclosed).

Section 3 of the ADA defines a disabled individual as one who (a) has a physical or mental impairment that substantially limits one or more of the major life activities of the individual; (b) has a record of such impairment; or (c) is regarded as having such an impairment. See, in particular, 28 C.F.R. S 36.104 for the definitions of a person who "has a record of impairment" and one who "is regarded as having such an impairment." See also pages 8-12 of the Title III Technical Assistance Manual (copy enclosed).

The executive branch of the Federal Government is covered by Title V of the Rehabilitation Act of 1973, which prohibits discrimination in services and employment on the basis of handicap. Accordingly, questions concerning disabled persons and whether they are eligible for Social Security benefits should be

cc: Records Chrono Wodatch Bowen Delaney.ada.ltr.(b)(6) (7)(c)
Library FOIA arthur T. 9/8/92
01-01484

addressed to the Social Security Administration, Department of Health and Human Services, 6401 Security Boulevard, Baltimore, Maryland 21235.

I hope this information is helpful to you.

Sincerely,
L. Irene Bowen

Deputy Director
Office on the Americans with Disabilities Act
Civil Rights Division

Enclosure
Title III regulation
Title III Technical Assistance Manual

01-01485
(b)(7)(c)

Lufkin, Texas
June 16, 1992

Director
Americans With Disabilities Act
Enforcement
U.S. Department of Justice
Washington, D.C. 20530

Dear Mr. XX

ILLEGIBLE Americans With Disabilities. In the list at the beginning of the Act are included, after the mentally ill, those who are "thought" to be mentally ill--in a separate classification. Would these include someone who had been committed to a state mental hospital for three months but who was subsequently cleared by an order of a state court of appeals six months after the beginning of the commitment? The court of appeals ruled the commitment to be an error in judgement by the trial court based on five points of error including lack of evidence. The argument before the court of appeals asserted that the person had her constitutional rights violated by this commitment.

This person was unable to find a half-way house that would receive her unless she applied for SSI while still in the hospital. The SSI was awarded based on the diagnosis of the doctors in the state hospital. Social Security awarded the SSI even though they were informed before the issuance of the first check that a state court of appeals had vacated the original order of commitment.

The person told the Social Security officer that they believed that they could be included in SSI under the new law because they suffered the stigma of an illegal commitment and would have great difficulty in getting employment because of this stigma. The Social Security office was informed that the person was seeking legal aid to have the records cleared and that there was no attempt to make a fraudulent claim. She has been unable to get a lawyer to seek a court order to clear the record for fear that she would lose her SSI.

(1) Does the new law include such a person who was committed to a state hospital in violation of the law?

(2) Can she qualify for Social Security benefits for the disabled under the classification of those who are "thought" to be mentally ill as described in the new law?

I would appreciate an answer as soon as possible to my questions in such a form that it could be used as documentation in listing a new basis for the SSI award and as a means to clear the obstacles for clearing the record.

Sincerely,
(b)(7)(c)

01-01486

DJ 202-PL-126

SEP 9 1992

John Tysse, Esq.
McGuiness & Williams
1015 Fifteenth Street, N.W.
Suite 1200
Washington, D.C. 20005

Dear Mr. Tysse:

I am responding to your recent inquiry on behalf of your client, the Schindler Elevator Corporation, and to the Schindler Elevator Corporation's letters to this Department concerning the requirements of title III of the Americans with Disabilities Act of 1990 (ADA) governing the floor plan of accessible passenger elevators.

The ADA authorizes the Department to provide technical assistance to individuals and entities that have rights or responsibilities under the Act. This letter provides informal guidance to assist you in understanding the ADA. However, this technical assistance does not constitute a determination by the Department of Justice of the rights or responsibilities of any individual under the ADA, and it is not binding on the Department of Justice.

The ADA requirements for the design and construction of accessible elevators are contained in section 4.10 of the ADA Accessibility Guidelines, which are adopted as the ADA standard by this Department's title III regulation. Section 4.10.9 provides that:

The floor plan of elevator cars shall provide space for

wheelchair users to enter the car, maneuver within reach of the controls, and exit from the car. Acceptable door opening and inside dimensions shall be as shown in Fig. 22 . . . .

cc: Records, Chrono, Wodatch, Blizard, Bowen, FOIA
Udd:Blizard:ADA.Interpretation.Tysse

01-01487

Figure 22 depicts the minimum dimensions of an elevator car that will permit a person using a wheelchair to enter, turn to reach the controls, and exit the car. The Schindler Elevator Corporation has asked if an alternative elevator floor plan that provides adequate space for a wheelchair user to enter an elevator car and make a "U-turn" to reach the controls is an acceptable alternative to the floor plans specified in Figure 22 or if Figure 22 must be followed exactly.

To eliminate discrimination in the built environment, the ADA required this Department to establish minimum standards for the design and construction of new buildings and for alterations to existing buildings. Compliance with these standards, or building to specifications that provide greater accessibility than these standards require, will constitute compliance with the ADA's new construction and alteration requirements. However, the standards do not constitute a strict formula for design, nor are they intended to constrain design innovations that provide equal or greater access.

The Department recognizes that there may be other ways to provide access to buildings and facilities. Thus while section 4.10.9 specifies the standards for a conventionally designed passenger elevator, it does not establish the only acceptable design for an accessible elevator car. Section 2.2 of the ADA Accessibility Guidelines expressly provides that "[d]epartures from particular technical and scoping requirements of this guideline by the use of other designs and technologies are permitted where the alternative designs and technologies used will provide substantially equivalent or greater access to and usability of the facility." In a specific application of that principle, section 4.1.6(3)(c)(iii) provides that "equivalent facilitation may be provided with an elevator car of different dimensions when usability can be demonstrated and when all other elements required to be accessible comply with the applicable provisions of 4.10. . . ." In addition, the ADA Guidelines for transportation facilities (49 C.F.R. pt. 37, App. A 10.3.2(17)) provide that elevator cars with a clear floor area in which a 60 inch diameter circle can be inscribed may be substituted for the minimum car dimensions of section 4.10.

Neither the Department of Justice nor the Architectural and Transportation Barriers Compliance Board will certify any specific variation from the standards as being "equivalent," but proposed alternate designs, when supported by available data (which may include advisory material from the Appendix to the guidelines), are not prohibited. However, in any ADA enforcement

action, the covered entity would bear the burden of proving that any alternative design does provide equivalent access.

01-01488

I hope that this information is helpful to you.

Sincerely,

John L. Wodatch
Director
Office on the Americans with Disabilities Act

01-01489

DJ 202-PL-63

SEP 11 1992

(b)(6)
XX
Columbus, Ohio XX

Dear Dr. (b)(6)

This letter is in response to your inquiry about whether there is any legal obligation to accept a deaf patient as a new consult referral in a non-emergency situation.

The Americans with Disabilities Act (ADA) authorizes the Department of Justice to provide technical assistance to entities that are subject to the Act. This letter provides informal guidance to assist you in understanding how the ADA may apply to a place of public accommodation. This technical assistance, however, does not constitute a determination by the Department of Justice of rights or responsibilities under the ADA and it is not binding on the Department.

A health care facility, such as a doctor's office, is covered by the provisions of title III of the ADA and the Department's title III regulation as a place of public accommodation (see section 36.104 of the enclosed regulation). The regulation prohibits public accommodations from excluding persons with disabilities from participation in the goods, services, facilities, privileges, advantages, or accommodations provided by a place of public accommodation (section 36.202(a)). A public accommodation is also prohibited from imposing or applying eligibility criteria that screen out individuals with disabilities from fully and equally enjoying goods and services, unless the criteria can be shown to be necessary for the provision of the goods and services being offered (section 36.301(a)).

cc: Records; Chrono; Wodatch; Bowen; Barrett; Friedlander; FOIA
:udd:barrett:pl.63

01-01490

As applied to the situation as you have stated it, the ADA would require generally that, in deciding whether to accept a patient with a disability, you must make that decision on the basis of factors other than the disability. The information you have provided does not enable us to give more specific guidance.

I am enclosing a copy of the Department's title III, Technical Assistance Manual, which may provide further guidance in understanding the ADA's requirements.

I hope this information is helpful to you.

Sincerely,

L. Irene Bowen
Deputy Director

Enclosures:
Title III regulations
Title III Technical Assistance Manual

01-01491

(b)(6)
February 25, 1992

Coordination And Review Section
Civil Rights Division
U.S. Department Of Justice
P.O. Box 66118
Washington, D.C. 20035-6118

RE: THE AMERICANS WITH DISABILITIES ACT

Dear Sirs,

It has come to out attention that this act was recently passed by congress. My specific question is whether or not there is any legal obligation to accept a deaf patient as a new consult referral in a non emergency situation. I recently had occasion to have a deaf patient referred to me and because of a personality conflict elected not to see this patient. I was informed that I was in violation of this act and I am not sure that I understand the implication of this act and I would appreciate a determination from you for future reference.

Sincerely,

(b)(6)

JTS/rls

(b)(6) COLUMBUS, OHIO (b)(6) TELEPHONE (b)(7)(c)

01-01492

DJ 202-PL-118

SEP 11 1992

(b)(6)
XX
Freehold, New Jersey XX
Dear (b)(6)

This is in response to your letter requesting information about the Americans with Disabilities Act (ADA).

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist you in understanding the ADA's requirements. However, it does not constitute a legal interpretation or legal advice, and it is not binding on the Department.

Your letter states that you reside with your wife in a senior citizen housing development consisting of 671 homes and a two-story clubhouse building. You state that the second floor is not accessible to your wife and other persons who use wheelchairs because there is no elevator or wheelchair lift.

The ADA does not apply to strictly residential facilities. Assuming your housing complex is strictly residential and would not be considered a social service center establishment, whether the ADA applies to the clubhouse depends on who is entitled to use the clubhouse. If activities in a clubhouse within a residential complex are intended for the exclusive use of residents and their guests, the facility is considered an amenity of the housing development. It would not be considered a public accommodation subject to the accessibility requirements of the ADA. Nonetheless, the housing units and the clubhouse would be subject to the requirements of the Fair Housing Act, which prohibits discrimination on the basis of disability.

If the clubhouse facilities and activities are made available to the general public for rental or use, they would be covered by the ADA. Once covered by the ADA, the owners or operators of the clubhouse would be required to remove

architectural barriers to accessibility if their removal is

cc: Records, Chrono, Wodatch, Magagna, Novich, Library, FOIA
Udd:Novich:policy.pl.118.ltr

01-01493

readily achievable, that is, without much difficulty or expense. However, because the clubhouse is a two-story facility, it would not be required to have an elevator, even if it were readily achievable to install one. The ADA requirements for new construction mandate elevators only in certain types of two-story buildings -- shopping malls and doctor's offices, for example. The barrier removal obligation for existing facilities does not require a facility to exceed the requirements that would be applicable to new construction.

I have enclosed the Department's Title III Technical Assistance Manual which may provide further guidance on these issues.

I hope this information is useful to you in understanding the requirements of the ADA.

Sincerely,

John L. Wodatch
Director
Office on the Americans with Disabilities Act

Enclosures (2)
Title III regulations
Title III Technical Assistance Manual

01-01494

(b)(6)
XX
Freehold, N.J. XX
March 15, 1992

Office of Americans with Disabilities Act
Civil Rights Division
U.S. Department of Justice
P.O. Box 66118
Washington, D.C. 20035-6118

Dear Sirs;

My wife (who uses a wheelchair) and I reside in a Senior Citizen (over 55 years of age) housing developement which consists of 671 homes and a two story building which is referred to as a clubhouse.

In this clubhouse there is an auditorium and a number of rooms in which different activities are held. However, there is no elevator or wheelchair lift there., which means that my wife, and the other residents here who use wheelchairs are prevented from using the facilities in the upper story of this clubhouse, although we all pay monthly fees for its maintenance.

Your reply will be greatly appreciated.

Yours truly,
(b)(6)

01-01495

DJ 202-PL-175

SEP 11 1992

Edward B. Frankel, M.D.
Assured Management, Inc.
434 S. Euclid Street
Anaheim, California 98202-1247

Dear Dr. Frankel:

This is in response to your letter requesting information about the Americans with Disabilities Act (ADA).

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist you in understanding the ADA's requirements. However, it does not constitute a legal interpretation or legal advice, and it is not binding on the Department.

You have asked whether rental offices within apartment buildings must be made wheelchair accessible under the ADA. You have also described 10-20 year old apartments to which wheelchair access may be physically impossible, and have asked whether these and other older buildings may be "grandfathered" under the ADA.

Title III of the ADA addresses accessibility requirements for public accommodations. Strictly residential facilities are not considered places of public accommodation, but common areas that function as one of the ADA's twelve categories of places of public accommodation within residential facilities are considered places of public accommodation if they are open to persons other than tenants and their guests. Rental offices, which by their nature are open to the public, are places of public accommodation and must comply with ADA requirements.

In response to your second question about older buildings, if the facilities you have described are strictly residences, and if the complex they are within provides-only residential services, they are not places of public accommodation, and title III of the ADA does not apply to them. Please be aware, though, that accessibility and non-discrimination requirements under the

Fair Housing Act, as amended, may be applicable to these units.

cc: Records, Chrono, Wodatch, Magagna, Novich, Library, FOIA
Udd:Novich:pl.60.ltr

01-01496

If the facilities you have described are places of public accommodation, they will not be "grandfathered" under the ADA. No places of public accommodation are exempted from title III requirements, regardless of their age. However, existing facilities need only remove architectural barriers if the removal is readily achievable. Readily achievable means that removal is easily accomplishable and can be done without much difficulty of expense. Any improvements that would be truly "physically impossible" would not be readily achievable, and would not be required under the ADA. Please consult the enclosed title III regulations and Technical Assistance Manual for further discussion of these issues.

I hope this information is useful to you.

Sincerely,

John L. Wodatch
Director
Office on the Americans with Disabilities Act

Enclosures (2)
Title III regulations
Title III Technical Assistance Manual

01-01497

ASSURED MANAGEMENT, INC.
QUALITY INVESTMENTS PROPERTY MANAGEMENT
434 S. EUCLID STREET
ANAHEIM, CALIFORNIA 92802-1247
[714] 520-9432 EXT:214/215
FAX [714] 520-0620

March 17, 1992

Office on the American with
Disabilities Act
Civil Rights Division
U.S. Dept. of Justice
P.O. Box 66118
Washington, D.C. 20035-6118

Dear Sir:

We contacted Benny Howard (415) 556-4592 who indicated that "All public accommodations have to be wheel chair accessible but not the apartments themselves, but possibly the rental office." He indicated this was a gray area and not quite sure "whether rental offices are considered public accommodations."

Are rental offices in an apartment project public accommodations?

In addition, certain apartments which we manage were constructed about 10-20 years ago and it may be physically impossible to run a ramp up elevated areas which involve landscaping and parking. It is the case that, at the time of construction, the City required a certain percentage of site to remain landscaping and parking. Is there any "grandfathering" of older buildings?

Thank you.

Most sincerely,

Edward B. Frankel, M.D.

EBF:1dm

cc: Property Managers
c:office

SEP 11 1992

The Honorable Michael G. Oxley
House of Representatives
2448 Rayburn House Office Building
Washington, D.C. 20615-3804

Attn: Jot Carpenter

Dear Congressman Oxley:

This letter is in response to your inquiry on behalf of your constituent, David A. Kovach, concerning the provision of a reader for a State Board cosmetology test under the Americans with Disabilities Act (ADA).

Requirements for State licensing boards are discussed in section II-3.7000, pages 13-14, of the enclosed Title II Technical Assistance Manual. Under section 35.130(b)(6) of the regulation implementing title II (copy enclosed), a public entity, such as a State licensing board, may not discriminate on the basis of disability in its licensing activities. A person is a "qualified individual with a disability" with respect to licensing, if he or she can meet the essential eligibility requirements for receiving the license. A public entity does not have to lower or eliminate licensing standards that are essential to the licensed activity to accommodate an individual with a disability. Whether a specific requirement is "essential" will depend on the facts of the particular case.

As discussed in section II-3.6000, page 13, of the Manual, a public entity offering an examination must modify its policies, practices, or procedures in order to provide an individual with a disability an equal opportunity to demonstrate his or her knowledge or ability. However, if the public entity can demonstrate that a particular modification would fundamentally alter the nature of the licensing program, the entity is not required to make the modification.

udd:mather:cong.kovach

cc: Records, Chrono, FOIA, Friedlander (3), Breen, Mather

01-01499

Please note that sections 102(B)(6) and 103(b) of the ADA, to which Ms. Keys referred in her June 17, 1992, letter, are contained in title I of the ADA, which covers employment practices. Title I is inapplicable to licensing programs offered by public entities. As noted above, State licensing examinations are covered by title II of the ADA.

If Ms. (b)(6) believes that she has been discriminated against on the basis of her disability, she has two enforcement options under the ADA: (1) She may secure private legal representation and bring an action in Federal court, or (2) She may file a complaint with the Department of Justice.

If Ms. (b)(6) chooses to file a complaint with the Department of Justice, she should send it to the Coordination and Review Section, Civil Rights Division, U.S. Department of Justice, P.O. Box 66118, Washington, D.C. 20035-6118. All complaints should be in writing and should set forth, in as complete a manner as possible, the factual circumstances surrounding the complaint.

I hope this information is helpful to you in responding to your constituent.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

Enclosures (2)

01-01500

ASHLAND COUNTY - WEST HOLMES CAREER CENTER
Board of
Education
1783 State Route 50, RED 5 President
Ashland, Ohio 44805-9377 Vice-President
(419)289-3313 Members
FAX(419)289-3728

July 23, 1992

Mr. Patrick Keys, Director
State Board of Cosmetology
8 East Long Street, Suite 1000
Columbus, OH 43215

Dear Mr. Keys:

As superintendent of the Ashland County-West Holmes Joint Vocational School District I am writing this letter on behalf of (b)(6), a June, 1992 graduate of Hillsdale High School and a completer of our district's Cosmetology program.

Miss (b)(6) was a Learning Disabled (LD) student while in attendance in our school district and the Hillsdale Local School District. She successfully completed the laboratory and classroom hours required to take the State Board Cosmetology test this past spring. While a student, Miss (b)(6) education in our school followed the requirements of the Individual Educational Plan (IEP) as required under the handicapped guidelines. Her IEP identified that she was required to have interventions which included someone reading daily work and reading tests to Miss (b)(6) and permitting her to answer questions orally. Under Ohio and Federal law, handicapped students must follow an IEP in order to insure that the educational plan is followed and, that the student has an equal opportunity to learn without discrimination.

Unfortunately, when Miss (b)(6) took the State Board of Cosmetology written test (taken two times), a reader was not provided to assist her. Therefore, Miss(b)(6) was not provided an equal opportunity to pass the written State Board test without discrimination due to the fact she was not provided a reader to assist her. The purpose of my letter is to request a reader be provided for Miss (b)(6) on the next

testing date she selects. This request has been asked before by our teacher Mrs. (b)(6) and other interested parties.
continued . . .

"Working Together-We Build Successful Careers"

01-01501

Mr. Keys, (b)(6) has the capability to be a licensed Cosmetologist. All(b)(6) needs is an equal opportunity to take the test so she can evidence her knowledge and skill. has the right under the constitution of both the United States and the State of Ohio for an equal opportunity as a handicapped person to take the State Board test.

Section 504 of the Rehabilitation Act of 1973, the American With Disabilities Act of 1990, as well as Titles VI, VII, and IX, give Miss (b)(6) the right as an American citizen and resident of this great State of Ohio to an equal opportunity to take the State Board of Cosmetology test. As superintendent and as an educator interested in the welfare of all students regardless of sex, race, color, religion, national origin, age or handicap, I appeal to you, Mr. Keys, to permit Miss (b)(6) to have the opportunity to use a reader to assist her in the written examination of the State Board of Cosmetology test. I thank you for your time and sincere interest in this very critical issue regarding a student who has successfully completed the Cosmetology program in our school regardless of her handicap! Please give this person an equal opportunity for success and a positive future. I will look forward to hearing from you in the near future.

Sincerely,

David A. Kovach
Superintendent

db
cc: The Honorable George V. Voinovich, Governor
Mr. Lee I. Fisher, Ohio Attorney General
The Honorable Donald J. Pease, U.S. Representative
The Honorable Richard P. Schafrath, Ohio Senator
The Honorable Ronald D. Amstutz, Ohio Representative
The Honorable L. Eugene Byers, Ohio Representative
Mrs. Martha W. Wise, State Board of Education
Dr. Ted Sanders, Ohio Supt. of Public Instruction
Dr. Irene Sandy-Hedden, Asst. Supt. of Public Instr.
Dr. John Herner, Ohio Director of Special Education
Dr. Darrell L. Parks, Dir., Ohio Div. of Vocational Ed.
Ms. Margaret Lawson, Ohio Civil Rights Commission.
American Civil Liberties Union

(b)(6)
Mrs. Vicky Senff, Special Needs Coordinator, AC-WHJVSD
Mrs. Lynn Keefer, Sr. Cosmetology Instructor, AC-WHJVSD
01-01502
DJ 202-PL-175

SEP 11 1992

Peter J. Pitassi
9267 Haven Avenue, Suite 220
Rancho Cucamonga, California 91730

Dear Mr. Pitassi:

This is in response to your letter requesting information about the Americans with Disabilities Act (ADA).

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist you in understanding the ADA's requirements. However, it does not constitute a legal interpretation or legal advice, and it is not binding on the Department.

You have asked whether certain common-use facilities within existing privately owned residential apartment projects must be made accessible under the ADA. You have asked specifically about rental offices, recreational facilities, including clubhouses, swimming pools, spas, game rooms, exercise rooms, and laundry buildings.

Although the ADA does not apply to strictly residential facilities, it does cover public accommodations within residential facilities. Common areas that function as one of the ADA's twelve categories of places of public accommodation and that not intended for the exclusive use of tenants and their guests are considered places public accommodation and are thus required to comply with the ADA. Rental offices, which are by their nature open to persons other than tenants and their guests, are covered. The other facilities you have mentioned will be covered only if they may be used by persons other than tenants and their guests, regardless of whether a fee is charged. If they are not consistently made available to the public, they will be covered by the ADA only for those events that are open to people other than tenants and their guests. Please be aware that even facilities open only to tenants may have accessibility and non-discrimination obligations under the Fair Housing Act of
cc: Records, Chrono, Wodatch, Magagna, Novich, Library, FOIA

1968, as amended. For further information on accessibility standards of the Fair Housing Act, please direct inquiries to the Department of Housing and Urban Development.

Those common areas that are covered by the ADA must comply with the nondiscrimination and accessibility requirements of Title III. In existing facilities, all barriers to accessibility must be removed if the removal is readily achievable. Readily achievable means easily accomplishable and able to be carried out without much difficulty or expense. Section 36.304(b) and (c) of the enclosed title III regulations, at pages 35597-98, provide examples and suggest priorities of barrier removal steps. Public accommodations are urged first to provide an accessible route into the facility from public sidewalks, parking or transportation. Next, a public accommodation should provide access to, in order of priority, areas where goods and services are made available and to restroom facilities. The public accommodation should then provide access to the remainder of its "goods, services, facilities, privileges, advantages, or accommodations." Please consult the enclosed regulations and Technical Assistance Manual for a more complete discussion of barrier removal.

I hope this information is useful to you.

Sincerely,

John L. Wodatch
Director
Office on the Americans with Disabilities Act

Enclosures (2)
Title III regulations
Title III Technical Assistance Manual

01-01504

Pitassi*Dalmau
Architects
Peter J. Pitassi, A.I.A.
Architect
Alain Dalmau, A.I.A.

May 15, 1992

Mr. John Wodatch
Director of the Office
on the Americans with Disabilities Act (ADA)
Coordinate and Review Section
U.S. Department of Justice
Civil Rights Division
P.O. Box 66738
Washington, D.C. 20035-9998

Subject: Americans with Disabilities Act (ADA)
Applicability for Apartment Projects

Dear Mr. Wodatch:

We are writing you on behalf of one of our clients who owns and manages a significant number of apartment projects in the Southern California area. Many of these projects are 20 to 25 years old. It is these projects which are privately owned and not undergoing any remodeling, renovation or addition which generates our inquiry.

In our review of the ADA Title III, the following issues are not clearly defined regarding existing privately owned apartment projects:

1. Does the rental office need to be accessible and on an accessible route?

2. When recreation facilities such as club houses, game rooms, exercise rooms or similar spaces are for the private use and enjoyment of the tenants, do they need to be made accessible?

3. If the recreation building is available to the tenants for a private party, such as a wedding reception, is the status of the facility altered regarding ADA? What if non-residents are guests at

a private gathering in the recreation facility?

4. How is the status of the recreation facility affected if management rents the building to non-residents for their use?

5. Do existing swimming pools and spas, including the main pool and satellite pools, need to be made accessible if they are for the exclusive use of the tenants and their guests?

6. Do accessible routes need to be created for common use tenant facilities such as laundry buildings?

To reiterate, all of these questions are brought to your attention in regards to existing privately owned apartment projects which are not considering additions, remodeling or renovation work.

Mr. Wodatch, we have discussed these issues with Ms. Ronda Daniels, Director of the Legal Department at the National Association of Home Builders, and we have received her opinion regarding several of these questions. She indicated that you would be the most appropriate individual in the Department of Justice to respond to our questions.

Our client is concerned about these issues and fully intends to comply with the law. An official interpretation by your department would greatly clarify his responsibilities and allow him to proceed with his efforts to meet the requirements of the ADA.

If you are in need of any additional information, please advise. Thank you in advance for your prompt response to our inquiry.

Very truly yours,

Pitassi Dalmau Architects
Peter J. Pitassi, AIA
Architects

bcc

01-01506

SEP 11 1992

The Honorable Frank R. Wolf
U.S. House of Representatives
104 Cannon House Office Building
Washington, D.C. 20515-4810

Attn: Anne MacKenzie

Dear Congressman Wolf:

This letter responds to your inquiry on behalf of your constituent,(b)(6) from Winchester, Virginia.

Department of Justice staff from its Office on the Americans with Disabilities Act telephoned (b)(6)on August 25, 1992, and in the ensuing conversation resolved (b)(6) concerns. He was reassured that the actions he had considered onerous were, in fact, not required by the Americans with Disabilities Act (ADA).

Please feel free to encourage your constituents to contact our Office on the Americans with Disabilities any time they have questions or need information. The Department maintains a telephone information line to provide technical assistance regarding the rights and obligations of individuals, businesses, agencies, and others covered or protected by the ADA. This technical assistance is available by calling 202-514-0301 (voice) or 202-514-0383 (TDD) between 11:00 a.m. and 5:00 p.m., Monday through Friday.

I hope the information we have provided is helpful to you and your constituent.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

cc: Records; Chrono; Wodatch; Lusher; McDowney; FOIA; MAF.
:net:ss63:udd:harland:wolf.cong

01-01507

June 25, 1992

Congressman Frank R. Wolf
104 Cannon House Building
Washington, DC 20515

Dear Congressman Wolf:

I am writing this letter in reaction to a situation that has occurred in my efforts to add an office area to my business, a situation that arose due to the new Americans Disability Act.

Although I agree that handicapped individuals should have the opportunity to pursue a productive life, I wonder if you and other law makers really know the problems that now exist for business and property owners.

In order to move three offices, three people, and improve my service to the community of Winchester and Frederick County, I must place a new bathroom and drinking fountain, special kinds, with 30 feet of existing facilities in an area that will see little public use.

The thing that blew my mind most of all is the expense of placing a sidewalk from a major four-lane road to my building. This sidewalk will not be used, as those using my service do not walk into my place of business. In fact, even my postman drives up to the door for mail delivery.

I would hope that when congress enacts such laws, that they would not let the civil servents, who in my mind know very little about the real world of business, write the regulations for these laws.

(b)(6)
01-01508

Please, before you vote on these things, know what is there, debate them, correct them, think of everyone.

Sincerely yours,

(b)(6)
President

DKG/sm
01-01509

SEP 14 1992

The Honorable Richard G. Lugar
United States Senator
SH 306 Senate Office Building
Washington, D.C. 20510

Dear Senator Lugar:

This letter is in response to your inquiry on behalf of your constituent, (b)(6) , concerning the obligation of places of public accommodation to accommodate persons with disabilities.

Title III of the Americans with Disabilities Act (ADA) bans discrimination on the basis of disability by places of public accommodation. The ADA requires that such entities remove barriers to access by individuals with disabilities, including those who use wheelchairs, to the extent that removing the barriers is readily achievable. In situations where barrier removal is not readily achievable, an entity must make its goods and services available through alternative methods, such as the provision of curb service, if those methods are readily achievable. With regard to the provision and maintenance of parking spaces for persons with disabilities, the Department's regulation specifically includes the creation of designated accessible parking spaces as an action that a public accommodation may take to remove architectural barriers.

These requirements are more fully explained in the regulations for title III issued by the Department of Justice (enclosed) at sections 36.304 and 36.305 and in the Department's Title III Technical Assistance Manual (also enclosed) at pages 28-35 and 37-38. If (b)(6) believes that he or his wife has been discriminated against on the basis of disability, he has two enforcement options under the ADA: (1) He may secure private legal representation and bring an action in Federal court, or (2) he may file a complaint with the Department of Justice.

cc: Records, Chrono, Wodatch, Bowen, Russo, McDowney, Library,
FOIA
Udd:Russo:Cong.Lugar (b)(6)
01-01510

If(b)(6) chooses to file a complaint with the Department of Justice, he should send any relevant information to the Office on the Americans with Disabilities Act, Civil Rights Division, U.S. Department of Justice, Post Office Box 66738, Washington, D.C. 20035-9998. All complaints should be in writing and should set forth, in as complete a manner as possible, the factual circumstances surrounding the complaint.

I hope this information is of assistance to you in responding to your constituent.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

Enclosures (2)
01-01511

(b)(6)
Lawrence, IN

July 2, 1992

Dear Senator Lugar:

I am a person with a physical handicap, and I am writing out of concern for myself and other handicap individuals.

It is commonly known to me that Federal Law #504 requires businesses and other public places to provide equal access and opportunities/services for handicap individuals (i.e. ramps, handicap parking, etc.). However, I am also commonly aware that many, many times I see these rules violated (i.e. non-authorized parking in handicapped spaces, no ramps provided or restrooms, etc.). Many times, I have confronted business establishments with much inconvenience and risk on my part. Sometimes, this has been with success; however, other times my efforts have been in vain.

On one particular occasion, I called the police to take action on unauthorized parking in a handicap space, and I was told that they could not do anything because the owners of the property were not supportive of police involvement.

On another occasion, my wife was unable to walk, and in a lot of pain while waiting on a hip replacement. She went to the drive up at Merchants Bank to close our checking, and she was told "you have to come in." My wife explained her situation, and she was again told that basically it did not matter, she still had to come in. When I confronted the Castleton Branch Manager about this, and that there was not a ramp, handicap space, or accessible restrooms, I was told "Well if any handicap person wants to use our services, all they have to do is call me, and I will help them in." My response was simple, "handicap people have the right to use your services like anyone else." The manner he suggests to provide access is without dignity and respect. To this day, there still is not a ramp, handicap parking space, accessible restrooms, or equal services provided at the drive up window.

I find these (2) situations to be frustrating because there is not an agency to report these violations to. Essentially, we

have a law without anyone to enforce it. The EFOC and the Civil Rights office stated that I would have to bring suit against these people on my own, with my own funds. At any rate, the current process is not going to help handicap individuals stand up for themselves any easier.

Something needs to be done to keep situations like those I to make sure these rules are properly enforced.

Furthermore, are you aware that businesses do not provide a discount to disabled/handicap individuals as they do for senior citizens. This does not seem to be acceptable or fair. Many disabled people live on low incomes, and could use this benefit.

If I can be of any assistance, please feel free to notify my at the address and telephone number above.

Thank you for your time,

(b)(6)

B.S.M.A.

01-01513

DJ 202-PL-285

SEP 14 1992

Mr. Dan E. Neal
Neal & Eng
1361 Pearl Street
Eugene, Oregon 97401

Dear Mr. Neal:

This letter is in response to your recent inquiry concerning the application of the Americans with Disabilities Act to your law office.

The Americans with Disabilities Act authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist you in understanding the Act's requirements. However, it does not constitute a legal interpretation and it is not binding on the Department.

Title III of the Americans with Disabilities Act prohibits public accommodations from discriminating in the provision of goods, services and facilities on the basis of a disability. The Act and the Department's implementing regulation specifically include attorney's offices in the definition of public accommodation and require them to remove architectural barriers in existing facilities, where such removal is readily achievable. "Readily achievable" is defined as those activities which are easily accomplishable and able to be carried out without much difficulty or expense, keeping in mind the overall resources available to the public accommodation and the nature and cost of the action needed, among other considerations.

With respect to the specific areas identified in your letter, you are obligated to ensure access to your facility for persons with disabilities, on a readily achievable basis. You may be required to install a ramp or other means of gaining physical access to your offices. You are required to make all modifications to bathrooms specified in the Accessibility

cc: Record Chrono Wodatch Magagna Millerc.neal.pl

Guidelines, appended to the enclosed regulation, and are required to widen entrances in your office, to the extent that you can do these modifications without much difficulty or expense.

Please note that there is no exemption in the Americans with Disabilities Act for buildings which have historic value. Indeed, even buildings eligible for listing in the National Register of Historic Places or designated as historic under State or local law are required to comply with the Americans with Disabilities Act to the maximum extent feasible. Where it is not feasible to comply in a manner that will not threaten the historic significance of the building, alternative methods of access must be provided.

If you offer your clients the opportunity to make outgoing telephone calls on more than an incidental convenience basis, a TDD must be made available on request. In addition, you may be required to make other revisions or modifications to your policies and practices. For example, you are required to ensure effective communication with your clients who have disabilities. In some cases, this may mean that you will be required to provide some form of auxiliary aid, such as a sign language interpreter, for a hearing impaired client.

I have enclosed copies of the Department's regulation under title III of the Americans with Disabilities Act, as well as our Technical Assistance Manual. These materials will provide you with further guidance as to your obligations under the Act.

I hope this information is of assistance to you.

Sincerely,

Joan A. Magagna
Deputy Director
Office on the Americans with Disabilities Act

Enclosures (2)
01-01515

NEAL & ENG
ATTORNEYS AT LAW
1361 PEARL STREET
EUGENE, OREGON 97401
(503) 484-7311

DAN E. NEAL
FERN ENG

August 5, 1992

Office on the Americans With Disabilities Act
Civil Rights Division
U. S. Department of Justice
P. O. Box 66118
Washington, D.C. 20035-6118

Re: Compliance with ADA at 1361 Pearl Street
Eugene, Oregon

To Whom It May Concern:

I understand that your office is available to provide technical assistance and advice on compliance with the ADA. In reviewing the ADA, I believe that our law office is in compliance but I would be most grateful if you would review the situation, as I outline it in this letter, and provide me with your comments. Our law office normally employs three individuals for staff support in addition to serving as the office for four attorneys. The office is the sole occupant of a two story building with approximately 2000 square feet. Two of the attorney's offices are located on the second floor which is accessible by a staircase. The office has one doorway which is open to the public. Entrance to the doorway requires one to climb two steps. I believe that the width of the doorway is less than would be required in new construction. The building itself is nearly 100 years old and is of a somewhat Victorian style. I have been contacted by the local government's Historic Review Board on several occasions about the possibility of having the property formally listed as a historic structure, but thus far, I have been reluctant to ask for the property to be so listed. However, I am quite sensitive about preserving the building. Such structures are rare in Eugene and I believe that it is of value to the community at large to preserve historic structures such as this office.

Our office engages in the private practice of law. In addition, we offer services as court appointed counsel for

qualified members of the public. The City of Eugene provides an office at City Hall where we can perform public defender services. This alternative location is in full compliance with the ADA, as I understand it.

My review of the Act leads me to conclude that we are under no obligation to modify our telephone system (i.e., because there are no pay phones in our building, TDD's aren't required, correct?), install a handicap access ramp, modify our bathroom or widen any

doorways. In addition, I understand that we are under no obligation to undertake any other revisions. If you believe that this conclusion may be incorrect, please let me know as soon as possible. Please feel free to call and you certainly may call collect if you wish. Thank you for your assistance in this matter. I look forward to hearing from you.

Sincerely,

Dan E. Neal

DEN:pap
01-01517

SEP 14 1992

The Honorable Bill Richardson
U.S. House of Representatives
204 Cannon House Office Building
Washington, D.C. 20515-3103

Dear Congressman Richardson:

This letter is in response to your inquiry on behalf of your constituent, Jack C. Milarch, Jr., who represents the New Mexico Home Builders Association.

The Americans with Disabilities Act (ADA) authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist your constituent in understanding the ADA's requirements. However, it does not constitute a legal interpretation, or legal advice, and it is not binding on the Department.

Mr. Milarch opposes efforts in the State of New Mexico to adopt the Americans with Disabilities Act Accessibility Guidelines into the State's building code. The attachments to Mr. Milarch's letter indicate that his organization believes that incorporating the ADA's accessibility standards into the State code would impose a greater obligation on entities constructing or altering facilities than would the ADA itself. This rationale confuses the ADA's requirements for new construction and alterations with its requirements for making "readily achievable" changes to existing buildings.

Title III of the ADA establishes the following requirements for new construction and alterations to existing facilities: For new construction, the ADA requires that a facility comply with

the ADA Accessibility Guidelines. The only exemption from this requirement is where making a particular feature accessible would

cc: Records; Chrono; Wodatch; Blizard; Novich; McDowney; FOIA.
udd:blizard:ada.interpretation.richardson.2
01-01518

be structurally impracticable. This standard does not permit exemptions based on the financial status of the building owner. When alterations are performed to existing buildings, the ADA requires that the altered portions be made accessible to the maximum extent feasible. As with new construction, alterations must meet the ADA Accessibility Guidelines. The phrase "to the maximum extent feasible" allows consideration of the existing structure's technical limitations, not the financial status of the covered entity. The only situation in which cost is a factor in determining ADA obligations for alterations is the determination of the amount that a covered entity is required to spend to provide an accessible path of travel to an altered area containing a primary function of the facility.

For existing facilities that are not otherwise being altered, title III of the ADA establishes a distinct requirement that covered entities remove architectural, transportation, and communication barriers to access if removal is readily achievable. "Readily achievable" is the least rigorous standard and permits consideration of the financial condition of the covered entity. In undertaking readily achievable barrier removal, places of public accommodation should comply with the ADA Accessibility Guidelines if it is "readily achievable" to do so, but they are permitted to deviate from the standards if strict compliance would not be readily achievable.

I have enclosed a copy of the Department's regulation implementing title III and our title III Technical Assistance Manual. You may refer to Section 36.401 at pages 35599-600 and 35574-80 of the title III regulations for a discussion of new construction requirements; sections 36.402 to 36.406 at pages 35600-02 for a discussion of alterations; and section 36.304 at pages 35597-98 and pages 35568-71 for a discussion of barrier removal.

The ADA does not require States to amend their building codes to incorporate the ADA Accessibility Guidelines, but it does establish a procedure by which States can have their building codes certified as meeting the ADA's accessibility standards. Certification will not change an entity's obligations under State or Federal law, but it will streamline the process of design and construction for architects and builders by permitting them to rely on the State or local code provisions to determine what is required, rather than having to consult both State and Federal rules. The Department of Justice is working to educate State and local officials about the certification process and to encourage these officials to seek certification of their codes. Certification is discussed in the enclosed title III regulation

at sections 36.601-36.608 at pp. 35603-04 and at pages 35590-92 and in the enclosed Manual at pages 68-73.

01-01519

I hope this information is helpful to you in responding to Mr. Milarch.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

Enclosures (2)
01-01520

NEW MEXICO HOME BUILDER'S ASSOCIATION

5931 Office Blvd. NE*Albuquerque, N.M. 87109
Phone 344-7072
Outside Alburquerque 1-800-523-8421

Alburquerque Office
JACK C. MILARCH, JR.
Executive Vice-President

May 28, 1992

Congressman Bill Richardson
204 Cannon House Office Building
Washington, D.C. 20515

Dear Congressman Richardson,

Thank you for taking time out of you busy schedule last week to meet with the delegation from the New Mexico Home Builders Association. We particularly appreciate commitment from you and your staff to investigate problems being created by Americans with Disabilities Act as it relates to our building codes.

I have enclosed a packet of information which will give you additional background information on this subject.

We are very concerned about the speed with which efforts to codify strict interpretations of ADA are proceeding. There is no doubt that business operators and building owners know nothing of these efforts, let alone the effect they will have on their buildings. The only backstop for this seems to be the U.S. Department of Justice.

You indicated it was your belief that Congress did not intend this interpretation of ADA. We need your help in preventing an unintended reaction to the new law.

If you or your staff have questions please call me anytime. Thank you.

Sincerely,

Jack C. Milarch, Jr.
Executive Vice President

AFFILIATED WITH THE NATIONAL ASSOCIATION OF HOME BUILDERS

01-01521

BUILDING CODE ADOPTION HEARINGS

AMERICANS WITH DISABILITIES ACT & THE UNIFORM BUILDING CODE

NMHBA CALL TO ACTION

- Support adoption of the 1991 Uniform Building Code WITHOUT the inclusion of Chapter 31, and the Appendix, concerning Site Accessibility.

- Oppose any further inclusion of Americans With Disabilities Act references in our building code, such as the proposed ADAAG document.

CONTACT YOUR CONSTRUCTION INDUSTRIES COMMISSIONERS
MAKE THEM AWARE OF THE FOLLOWING:

- The Federal Government will enforce the Americans With Disabilities Act (ADA), along with other civil rights acts, whether or not the New Mexico building code includes ADA. States are not required to certify their building codes as equivalent to ADA. Congress did not grant funds to the states to enforce ADA.

- ADA is phased to gradually impact more businesses over a period of time. This phasing is lost if Americans With Disabilities Act Architectural Guideline (ADAAG) requirements are brought into the building code. Building owners would lose rights granted by Congress.

- Congress provided certain flexibility in the ADA law which may be lost if ADA Standards of Construction are put into the building code. For example, ADA allows a business owner to be exempt from ADA requirements if the business is financially weak. Code officials would have difficulty accommodating this.

- The New Mexico Legislature specifically declined to fund ADA related education of our building officials and inspectors. It is essential that building owners and their contractors be able to predict the responses of code official to particular building designs.

- Contractor licenses should not be jeopardized because of building owners decisions regarding construction details.

- The proposed Chapter 31 of the Uniform Building Code is inadequate for ADA compliance.
01-01522

BUILDING CODE ADOPTION HEARINGS

AMERICANS WITH DISABILITIES ACT & THE UNIFORM BUILDING CODE

NMHBA CALL TO ACTION

- Support adoption of the 1991 Uniform Building Code WITHOUT the inclusion of Chapter 31, and the Appendix, concerning Site Accessibility.

- Oppose any further inclusion of Americans With Disabilities Act references in our building code, such as the proposed ADAAG document.

CONTACT YOUR CONSTRUCTION INDUSTRIES COMMISSIONERS
MAKE THEM AWARE OF THE FOLLOWING:

- The Federal Government will enforce the Americans With Disabilities Act (ADA), along with other civil rights acts, whether or not the New Mexico building code includes ADA. States are not required to certify their building codes as equivalent to ADA. Congress did not grant funds to the states to enforce ADA.

- ADA is phased to gradually impact more businesses over a period of time. This phasing is lost if Americans With Disabilities Act Architectural Guideline (ADAAG) requirements are brought into the building code. Building owners would lose rights granted by Congress.

- Congress provided certain flexibility in the ADA law which may be lost if ADA Standards of Construction are put into the building code. For example, ADA allows a business owner to be exempt from ADA requirements if the business is financially weak. Code officials would have difficulty accommodating this.

- The New Mexico Legislature specifically declined to fund ADA related education of our building officials and inspectors. It is essential that building owners and their contractors be able to predict the responses of code official to particular building designs.

- Contractor licenses should not be jeopardized because of building owners decisions regarding construction details.

- The proposed Chapter 31 of the Uniform Building Code is inadequate for ADA compliance.
01-01522

SEPT 15 1992

The Honorable Newt Gingrich
U.S. House of Representatives
2438 Rayburn House Office Building
Washington, D.C. 20515-1006

Dear Congressman Gingrich:

This letter is in response to your inquiry on behalf of your constituent, Mr. (b)(6)about requirements of the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (ADA Guidelines). (b)(6) specific concern is the application of maximum reach height limitations for storage shelves and hanging rods to display units in retail sales areas.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities that are subject to the Act. Therefore, this letter provides informal guidance to assist you in responding to your constituent. However, this technical assistance does not constitute a legal interpretation by the Department and it is not binding on the Department.

The ADA Guidelines contain both scoping and technical provisions that set out accessibility requirements for different types of facilities and elements. The scoping provisions that apply to (b)(6) concerns are contained in section 4.1.3(12)(b) of the ADA Guidelines and require only that shelves or display units that allow self-service by customers be located on an accessible route. That section further states explicitly that "requirements for reach range do not apply." Thus the technical requirements for reach height limitations set out in ADA Guidelines sections 4.2.5 and 4.2.6, referred to by (b)(6) do not apply to shelves or display units. These provisions were developed specifically to address many of the concerns expressed in (b)(6) letter. I am enclosing a copy of the regulations with this section marked (p. 35615).

cc: Records; Chrono; Wodatch; Lusher; McDowney; FOIA; MAF.
:udd:mercado:congressional.letters:lusher.gingrich (G)(6)
01-01524

I hope that this information is helpful to you in responding to your constituent.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

Enclosure
01-01525

(b)(6)

Fred Aiken
Field Director
P.O. Box 71028
Suite 140
Marietta, Georgia 30007-1028

Dear Fred:

This letter is in response to our conversation about the A.D.A. law passed by Congress. I apologize for the delay, but it is a comprehensive law and I am having to learn it as I do work relating to the regulations. Its intent is good, but its effect is disastrous for small property owners and business in certain key areas.

The largest problem is 4.2 which deal with the height and minimum reach for shelving or rods for hanging. The maximum height is either 48 inches for forward reach (4.2.5) or 54 inches for side reach (4.2.6). Additionally, the lowest shelf allowed is either 15 inches for forward reach (4.2.5) or 9 inches for side reach (4.2.6). Currently we have rods and shelving as high as 77 inches and as low as 4 inches and carry the amount of stock that we do. This is necessary in order to double hang the merchandise. Men's, lady's and most children's clothes are too long to be able to double hang within 48 to 54 inches. As a matter of fact, many woman's dresses and jeans cannot be hung within that range unless it lays partly on the floor.

To hang the same merchandise per the guidelines would require about a third to a half more space than we currently have. It would also increase the cost of the merchandise due to the following factors: 1) additional rental cost of the extra space 2) additional heating and air cost for the additional space 3) additional cost for electricity 4) additional loss to shoplifting due to more area being available and observed by the same amount of employees. This will seriously effect the cost of doing business for us and other small business when it is increasingly harder to compete against the big stores.

The option for the small store is to expand and increase costs or carry less merchandise. To carry less merchandise can translate in loss of sales and an increase cost to the smaller amount of merchandise for sale. Also that can effect back up the line to the manufacturer who loses sales due to less inventory being carried by its customers and then less jobs.

On this particular item, I request that the regulation be changed to allow for a maximum rod height of 76 inches so that the merchandise can be double racked and properly displayed. One item

that the regulations do not take into consideration, is that stores like ours have clerks there to help. If, something is out of reach for a customer, disabled or not, we get the merchandise for the
01-01526

customer.

We are in the process of moving to our new and smaller location and should be in the location by July 5, 1992. We are a business with under 10 employees and have gross receipts of less than $500,000.00.

Pursuant to Sections 36-401 and 36-402, two conflicting dates are given for compliance. It appears that if the store already has non complying fixtures prior to one date (January 26, 1993) in one area it is safe and may continue in noncompliance. Is there a way of getting a letter from the appropriate authority that will grant permission or confirm that it is legally sufficient to have rods and shelves a maximum height of 77 inches? The space we are moving into is the old First National Bank Building. We have almost completed renovation of the first floor at this point.

Was there any bill or regulation that was passed that delayed the effective date of the regulation? This may also make a difference if we are in the store prior to any delayed effective date.

If you have any questions, you may contact me at xxxx(b)(6) (work) or xxxxx(b)(6) Again, I apologize for the delay of this letter. I will send you other suggestions as I wade through the process.

Sincerely,

Xxxxxx
Vice President,
01-01527

The Honorable Jesse Helms
United States Senate
403 Dirksen Senate Office Building
Washington, D.C. 20510-3301

Dear Senator Helms:

This letter is in response to your inquiry on behalf of your constituent, Boyce B. Dobbins, concerning the application of the Americans with Disabilities Act (ADA) to floor mats.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities with rights or obligations under the Act. This letter provides informal guidance to assist Mr. Dobbins in understanding the ADA. However, this technical assistance does not constitute a legal interpretation of the statute and it is not binding on the Department.

The ADA Accessibility Guidelines (Guidelines) were issued by the Department of Justice as one portion of the regulations implementing title III of the ADA (enclosed). The Guidelines apply only to the design, alteration, and new construction of buildings and facilities, not to movable furniture and equipment, and not to existing facilities not undergoing alterations. If floor mats are not actually built-in as a part of a building or facility, they will not be subject to the provisions of the Guidelines. However, if floor mats are built-in as part of new construction or alterations, and are part of an accessible route, they must comply with the Guidelines, particularly section 4.5.1 General (which requires that "Ground and floor surfaces . . . shall be stable, firm, and slip resistant") and section 4.5.2 Changes in Level. Floor mats are not considered carpeting and, therefore, are not subject to the requirements of section 4.5.3 of the Guidelines.
cc: Records; Chrono; Wodatch; Bowen; Lusher; FOIA; Friedlander.
:udd:bowen:cong.helms2
01-01528

In addition to circumstances in which the Guidelines will apply to built-in floor mats, there may also be circumstances in which different ADA requirements apply to floor mats that are not built in. If movable floor mats impede access for people with disabilities, they may need to be moved or removed under section 36.304 of the title III regulation. That section requires that a public accommodation remove barriers in existing facilities where removing them is "readily achievable," that is, easily accomplishable and able to be carried out without much difficulty or expense. Even though the requirements of the Guidelines would not apply to the mats themselves, the Guidelines can provide helpful guidance in ensuring that mats do not constitute barriers.

I hope this information is helpful in responding to your constituent.

Sincerely,
W. Lee Rawls
Assistant Attorney General

Enclosure
01-01529

UNIFORM Rental Supply, Inc.
1400 Highway 64-70 S.W. * Post Office Box 3113
Hickory, North Carolina 28603 * Telephone 704-324-6775
1-800-635-1114
UNIFORMS - DUST MOPS - WIPING TOWELS - WALK-OFF MATS
Satisfied Customers Are Building Our Business

August 13, 1992

The Honorable Jesse Helms
UNITED STATES SENATE
Washington, DC 20510

Dear Senator Helms:

I am writing on behalf of myself and numerous other North Carolina businesses regarding the applicability of the Americans with Disabilities Act (ADA) to mats manufactured and rented to commercial and industrial users. We urgently need written clarification on this matter.

Over the past few months, many members of our industry have been told by their customers that various ADA compliance experts have advised them that mats do not meet the specifications of the ADA Accessibility Guidelines (ADAAG). Specifically, at training seminars and through newsletters like the one I have enclosed, these experts have advised that the use of mats could violate ADDAG's Section 4.5.3, which requires that "carpet" be "securely attached" and "fastened to floor surfaces."

As a result of this advice, and without any policy interpretation to the contrary, many commercial, retail, and industrial customers have canceled their rental agreements or purchase orders for mats, fearing the prospect of finding themselves out of compliance with the ADA. Unless countered, this incorrect interpretation of the ADA could cause severe economic harm to the entire mat manufacturing and supply industry.

Mats are not carpets and, for the purposes of Section 4.5.3, ought not to be treated as such. Instead, assuming mats are intended to be covered by ADAAG at all, they ought to be subject only to the general provisions of Sections 4.5.1 and 4.5.2, which relate to "Ground and Floor Surfaces."

Section 4.5.1 requires that ground and floor surfaces be "stable, firm [and] slip-resistant," which of course are the very properties that characterize mats. If anything, installing mats -- rather than posing a barrier to the disabled and raising questions of compliance with the ADA -- is one of the easiest and

least expensive things that retail, commercial, and industrial establishments can do to make their places of business more accessible, particularly to those who are ambulatorily disabled.

Whatever assistance you could render as soon as possible would be greatly appreciated. Quite obviously, the longer this incorrect application of the ADA to mats is allowed to continue, the greater the damage will be to mat manufacturers and suppliers in North Carolina and elsewhere.

Thank you very much for your attention to this matter.

Sincerely yours,
BOYCE B. DOBBINS
President
North Carolina Association
of Textile Services

01-01531

We recently wrote this for
our bank newletter. We
feel everyone may benefit
from this information.

H O R T O N

Gary Rosenhamer, CIC, CPCU

INSURANCE AGENCY, INC.

New ADA Legislation Takes Effect

The Americans with Disabilities Act (ADA) officially took effect January 26, 1992. The first phase of the law applies to public accommodations and governmental agencies. These include restaurants, theaters, offices, supermarkets, retailers, museums, schools and BANKS. The ADA guarantees an estimated 13 million disabled Americans equal access to business and fair hiring privileges.

By 1993, the ADA will extend to telecommunications and transportation. Generally, the law requires compliance in two areas: all physical barriers must be removed or altered to enable free access; communication aids must be provided for people with hearing, vision or speech impairments.

Obviously, strict compliance with such broad generalities will be difficult and could be costly. Alterations could range from cutting a curb to constructing a new building. Here are some tips that can be inexpensively implemented:

* Re-arrange furniture, vending machines and equipment.
* Add raised Braille lettering in elevators.
* Post directional signage.
* Remove loose rugs and door mats.
* Install paper cup dispenser beside and otherwise inaccessible water fountain.
* Rewrite job descriptions for disabled employees.
* Hire a part-time employee or student to assist disabled customers or provide "curb service" banking.
* Have one of your employees learn sign language.
* Remove crowd control ropes and dividers in front of teller windows.
* Check building codes revisions before you plan new construction.
* Install ramps around steps.
* Make your landlord aware of the law. Owners are normally responsible for building compliance.
* Install offset hinges to widen doors.
* Install grab bars in bathrooms.
* Provide adequate handicapped parking spaces, including van access areas.
* Provide a portable table as counter desktop for wheelchair accommodations.
* Change door hardware to met new ADA specifications.
* Remove pay phones.
* Post emergency exit routes.

* Make all employees aware of the law.

These are just a few of the many factors any business should consider when reviewing this new law. At the HORTON INSURANCE AGENCY, we realize the effect new legislation may have on bottom lines. We have a professionally staffed risk management department capable of assisting your bank with customer safety and employee training. The law is untested at this time, but it has already facilitated litigation discrimination. Most of the recommendations above are less costly then defending against such litigation.

For more details, order this free brochure:
"ADA" COMPLIANCE
U.S. Department of Justice
P.O. Box 66118
Washington, D.C. 20035-6118
01-01532

T. 9/10/92
RJM:SBO:kgf
DJ# 192-16i-00085

SEP 17 1992

Ms. (b)(6)
P.O. XX
Lorraine, New York XXXXX

Dear (b)(6)

This letter is in response to your request for information about Federal laws pertaining to closed captioning. At least four Federal requirements deal with the provision of closed captioning: titles II, III, and IV of the Americans with Disabilities Act (ADA), and section 504 of the Rehabilitation Act of 1973, as amended.

Title II of the ADA prohibits discrimination on the basis of disability in all programs, activities, and services provided or made available by State and local governments, instrumentalities, or agencies, regardless of the receipt of Federal funds. Title III of the ADA covers public accommodations such as shopping centers, doctors' offices, museums, zoos, private schools, and other private establishments. Copies of the title II and III regulations and manuals explaining the regulations are enclosed.

Regulations implementing titles II and III require the provision of auxiliary aids and services by public and private entities where necessary to ensure effective communication with an individual who is deaf or hard of hearing (section 35.160, p. 35721, of the title II rule; and section 36.303, p. 35597, of the title III rule, respectively). For individuals with hearing impairments, auxiliary aids and services include, but are not limited to, qualified interpreters, closed captioning, and transcription services such as computer aided real-time transcription (section 35.104, p. 35717, of the title II regulation; and section 36.303 (b) (1), p. 35597, of the title III regulation).

The title II regulation covers television and videotape programming produced by public entities. Access to audio portions of such programming may be provided by closed captioning. Page 35712 of the title II regulation explains this concept.

:udd:mather:ltr.cedar
cc: Records, CRS, FOIA, Friedlander (3), Mather, Breen
01-01533

The title III regulation, section 36.307, p. 35598, does not require that video-tape rental establishments stock closed-captioned video tapes, although the most recent titles in the establishments are, in fact, close-captioned. Further discussion of this point can be found on p. 35571 of the title III regulation. Neither are movie theaters required by title III to present open-captioned films. However, other public accommodations that impart verbal information through soundtracks on films, video tapes, or slide shows are required to make such information accessible to persons with hearing impairments. Captioning is one means to make the information accessible to individuals with disabilities. Page 35567 of the title III regulation explains this concept.

Title IV of the ADA requires that any public service announcements that are wholly or partially funded by the Federal government include closed captioning of the verbal content of the announcement. Individual television stations will not be required to supply the closed captioning for any announcements that do not include closed captioning. For more information on this requirement, please contact the Federal Communications Commission, which is responsible for implementing and enforcing title IV.

Section 504 of the Rehabilitation Act of 1973, as amended, prohibits discrimination on the basis of handicap in federally conducted and assisted programs. Like the title II regulation, regulations implementing section 504 require that Federal agencies and recipients provide auxiliary aids and services whenever necessary to ensure effective communications with members of the public. Services include the provision of closed captioning.

I hope this information is helpful to you.

Sincerely,

Stewart B. Oneglia
Chief
Coordination and Review Section
Civil Rights Division

Enclosures (4)
01-01534

(b)(6)
P.O. Box
Lorraine, N.Y.
Voice TDD

JUL 23 1992

U.S. Dept. of Justice
Civil Right Division
Coordination and Review Section
P.O. Box 66118
Washington, D.C. 20035-6118

Dear Sir:

I would like to know more about Laws 504 and other Laws certaining Hearing Impaired and Closed Captioning For trying to start a Closed Captioning business. Need all the laws dealing with it. Thank you.

Thank you,

(b)(6)

01-01535

DJ 202-PL-30

SEP 17 1992

(b)(6)
XXXXXXXX
Nanticoke, Pennsylvania XXXXX

Dear Mr. (b)(6)

This is in response to your letter requesting information about the Americans with Disabilities Act (ADA).

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist you in understanding the ADA's requirements. However, it does not constitute a legal interpretation or legal advice, and it is not binding on the Department.

You ask whether titles II and III of the ADA apply to the conversion of a fire-damaged hotel into a personal care center for the elderly where inspection, licensing, and occupancy will occur after January 26, 1992. You also ask whether the State can obtain a waiver of the Americans with Disabilities Act Accessibility Guidelines (ADAAG) for this building. You indicate that the facility will receive financial assistance from a state or local government.

Title II of the ADA applies to the programs, activities, and services of State or local governments. It does not apply to private entities that receive assistance from a State or local government. Thus, if the facility in question receives financial assistance but is not owned or operated by the State or local government, title II does not apply. If the facility receives Federal funding, the Rehabilitation Act of 1973 applies and bans discrimination on the basis of disability and prescribes accessibility requirements for the facility.

Title III of the ADA applies to privately owned or operated facilities that fall within one of the twelve categories of "places of public accommodation" listed in that title. If the facility provides a significant enough level of social services that it can be considered a social service center establishment,

cc: Records, Chrono, Wodatch, Magagna, Novich, Friedlander, FOIA

it is thus covered by title III. Social services in this context include, for example, medical care, meals, transportation, and counseling. If, however, the facility is strictly residential in nature or only minimal services are provided to residents, it is not covered by title III. In this situation the facility may be covered by the nondiscrimination and accessibility requirements of the Fair Housing Act, as amended. A facility that provides extensive "personal care" services is likely to be a social service center establishment covered under the ADA.

Assuming the facility is covered as a place of public accommodation under title III, and assuming that the conversion is a building alteration rather than a new construction project, the title III alterations requirements apply, if the alteration began after January 26, 1992. If so, the alteration must meet the standards of the ADA Accessibility Guidelines "to the maximum extent feasible." If the alteration began before January 26, 1992, the building is subject to the requirements applicable to existing facilities -- that is, to remove architectural barriers to accessibility where it is "readily achievable" to do so.

No State or municipality may obtain a waiver of ADA requirements or architectural standards. A State or municipality may obtain from the Department of Justice a certification that its standards meet or exceed ADA requirements. The certification process allows for public notice, comment and hearing. A building that is constructed in strict compliance with a certified code, without waivers or variance, may use the certification as rebuttable evidence of ADA compliance.

State and local governments are not required to obtain certification or to enact building codes that conform to the ADA, nor are State or local officials required to enforce the requirements of the ADA. However, owners and builders should be aware that compliance with State or local accessibility code requirements may be insufficient to meet their ADA obligations.

For further discussion of these issues, please consult the enclosed ADA regulations under titles II and III and Technical Assistance Manuals dealing with both titles.

I hope this information is useful to you.

Sincerely,

John L. Wodatch
Director

Office on the Americans with Disabilities Act

Enclosures (4)

01-01537

Dec. 7, 1991
(b)(6)
Nanticoke,Pa.

XXXX

Dear Sir,

Recently I contacted the Penna. Dept. of Labor and Industry to find out if a fire damaged hotel in my community, being converted to a 75 room personal care center for the elderly, and scheduled to be inspected,licensed and opened after Jan. 26, 1992 had to comply with Title II & III of the Americans with Disabilities Act for accessibility. It is to receive financial help from what I believe to be an instrument of the state and local government.

I was told that Labor and Industry will address this after Jan.1,1992 and then he proceeded to tell me how Pa. would like to get a waiver from the federal govt., to use their standards of accessibility instead of the Architectural Barriers Comm. standards.

Some parts of the project, such as concrete work, have a life expectancy of decades and will effect the disabled for many years. I would like to know if projects in Pa. scheduled to be completed, licensed and opened after Jan. 26,1992 are covered by Title II & III of the Act? If so, then why isn't Labor and Industry enforcing it?

As for the waiver of your standards, I am against it. A disabled person traveling around the country has a right to know what to expect. That is what's meant by the term "Uniform"standards. A disabled person should not have to check out all irregularities of design to see if that particular state has different rules or had a shoddy inspector or granted some political croonie a varience. Standards should be uniform in all states. If such a waiver is granted however, it should state that in conflicting rules, the more stringent of the two rules shall apply.

Sincerely,

(b)(6)

01-01538

202-PL-00097

SEP 19 1992

Mr. Todd Corey
Project Architect
Henningson, Durham & Richardson, Inc.
8404 Indian Hills Drive
Omaha, Nebraska 68114-4049

Dear Mr. Corey:

This letter responds to your correspondence regarding the application of the Americans with Disabilities Act (ADA) to toilet rooms containing one toilet and one lavatory.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities with rights or obligations under the Act. This letter provides informal guidance to assist you in understanding the ADA accessibility standards. However, this technical assistance does not constitute a legal interpretation of the statute and it is not binding on the Department.

Following are answers to each of your questions as written in your letter dated October 22, 1991, a copy of which is enclosed.

#1 - The clear floor space required at the toilet shown in Fig. 28 in the Americans with Disabilities Act Accessibility Guidelines (ADAAG), the clear floor space at the lavatory shown in Fig. 32, and the turning space complying with Section 4.2.3. may overlap according to ADAAG 4.22.3.

#2 - Although there is no restriction against swinging a door into a toilet room, 4.22.2 stipulates that doors shall not swing into the clear floor space required for any fixture. A door swing may encroach upon only the required turning space.

#3 - The architect would comply with the local code by designing to local requirements. But he or she must also comply with the ADA, even if the ADA imposes stricter requirements.

cc: Records, Chrono, Wodatch, Bowen, Friedlander, FOIA
Udd:Cager:Corey
01-01539

#4 - Section 4.1.3(11) requires that, in new construction, each public or common use toilet room or bathroom be accessible. Staff locker rooms and toilets are considered "common use" facilities. They are similar on this respect to employee lounges and exercise facilities, discussed at page 35557 (column 1) of the title III regulation (enclosed).

#5 - Yes. All common use toilet rooms and bathrooms must be accessible with at least one of each type fixture provided in each room being accessible.

#6 - Yes. A staff toilet in a newly constructed surgery suite would be considered a common use toilet room and would be required to be accessible.

#7 - Yes. A unisex toilet room, if provided for nursing station staff, would be required to be accessible when newly constructed.

#8 - Yes. Section 4.1.3(11) requires that, in new construction, each public or common use toilet room be accessible regardless of proximity.

#9 - If the local building or plumbing code allows the installation of a unisex toilet room for the use of staff, and if it were built in compliance with the appropriate ADAAG requirements, it would be in compliance with the ADA regulations.

#10 - If a toilet room is built for the use of a single occupant of a specific space, it may be adaptable. A toilet room is considered to comply with the ADAAG definition of adaptability if all space requirements have been met and the walls are prepared for the future addition of grab bars.

Attached please find a marked-up copy of your sketch and a copy of the Technical Assistance Manual for title III. We hope these answers and materials will assist you in complying with the ADA.

Sincerely,

John L. Wodatch
Director
Office on the Americans with Disabilities Act

Enclosures
Title III Manual
Title III Regulation

October 22, 1991

Mr. John Wodatch
Director
Office on ADA
Civil Rights Division
Department of Justice
P.O. Box 66118
Washington, D.C. 20035-6118

RE: Code Issues

Dear Sir:

Regarding the Federal Register printed July 26, 1991, I would like to ask your assistance in clarifying some issues.

The first series of questions deal with Section 4.16, Water Closets, which pertain to "water closets not in stalls". Figure 28 shows the clear floor space required to access the fixture. Other provisions of the code require a 60 inch turning circle within the toilet. It is my assumption that these two measures of accessibility may, in fact, overlap.

Question 1: Is this true?

Question 2: In many cases, even in new construction, it is not feasible to swing the door out. In fact, it can be hazardous to swing a door into an exit corridor. Assuming the door can swing into a handicap accessible toilet, by how much can the door swing overlap the turning circle and/or the clear floor space requirements?

I have attached an illustration from an Illinois code which addresses the same issue. Another example; I'm told North Carolina allows a 12 inch maximum overlap. Further clarification on this matter would help many others like myself who work in various jurisdictions.

Question 3: Obviously a local authority may impose more stringent requirements than those contained in the ADA Code. However, when the local code criteria is less stringent than the ADA criteria, is it lawful for an architect to knowingly use the lesser criteria?

The ADA regulations seem to concentrate on the areas of public accommodations, however, within the Health Care Occupancy Group, there are some questions which frequently occur. These are in regards to provisions for staff, including locker rooms and staff toilets.

Question 4: Does the ADA require that staff locker rooms be provided which are accessible?

01-01541

Question 5: If the answer to question 4 is yes, then does this apply to all categories of locker rooms, i.e. doctors lockers, nurses lockers, etc.?

Question 6: If a staff toilet is provided within an area such as Surgery Suite, must it be accessible?

Many times a single unisex toilet room is provided for a limited use situation, such as near a nurse station for staff.

Question 7: Would this require accessibility?

Question 8: Would this require accessibility even if an accessible public toilet is nearby?

Question 9: If it were designed to be accessible, would a single unisex staff toilet suffice?

On a given floor of a new office building, accessible public toilets have been provided. Within a suite on that floor a tenant has additionally provided a staff toilet.

Question 10: Will this toilet be required to be accessible?

I would appreciate your thoughts on these matters. Thank you very much.

Sincerely,

HENNINGSON, DURHAM & RICHARDSON, INC.

Todd Corey
Project Architect

TC/mg
cc: File
01-01542

(Form) PLAN - 1 SINGLE USER TOILET ROOM
01-01543

T. 9/17/92
AMP:SBO:kgf
DJ# 181-06-00013

SEP 21 1992

Mr. James T. Martin
Vice President
Saxelbye, Powell, Roberts & Ponder, Inc.
Architects & Planners
The Saxelbye Building
201 Hogan Street, Suite 400
Jacksonville, Florida 32202

Re: Americans with Disabilities Act Accessibility Guidelines

Dear Mr. Martin:

Thank you for your letter regarding the accessibility standards required by the Americans with Disabilities Act (ADA). I am pleased to hear that you found the Jacksonville seminar useful. I apologize for the delay in responding to your inquiry, which has resulted from the large volume of requests we have received for interpretations of the ADA.

The ADA authorizes the Department of Justice to provide technical assistance to entities that are subject to the Act. This letter provides informal guidance to assist you in understanding how the ADA may apply to you. However, this technical assistance does not constitute a determination by the Department of Justice of your rights or responsibilities under the ADA and does not constitute a binding determination by the Department of Justice.

We have reviewed the mailing attached to your letter. We have clarified some of the statements therein and referred to the applicable sections of either the title II or title III regulation. Please keep in mind that, in some cases, requirements differ according to whether the facility in question is constructed or altered by, on behalf of, or for the use of an entity covered by this Department's title II regulation, or whether it is a place of public accommodation or a commercial facility covered by the title III regulation. All regulatory references contained in discussions below relating to title II

:udd:pecht:martin.ltr
cc: Records, CRS, FOIA, Friedlander (3), Pecht, Breen
01-01544

are to the title II regulations to be codified at 28 C.F.R. Part 35. Title III references are to the regulations to be codified at 28 C.F.R. Part 36. Copies of both sets of regulations as well as both the title II and title III Technical Assistance Manuals are enclosed.

1. "All new construction which is begun after January 26, 1992 must comply with these new requirements [referring to the Americans with Disabilities Act Accessibility Guidelines (ADAAG)]." This statement is misleading with respect to both titles II and III, although for different reasons.

   A. Title II - New construction and alterations that are commenced after January 26, 1992, must meet ADA accessibility requirements. See S 35.151. However, the use of ADAAG is not mandated. Instead, the design must conform to either the Uniform Federal Accessibility Standards (UFAS) or ADAAG, except that the elevator exemption contained in sections 4.1.3(5) and 4.1.6(1)(j) of ADAAG is not available. The preamble to S 35.151 states that facilities under design on January 26, 1992, will be governed by that section if the date that bids were invited falls after that date.

   B. Title III - Any alteration to a place of public accommodation or commercial facility undertaken after January 26, 1992, must comply, to the maximum extent feasible, with ADAAG. See S 36.402(a)(1). An alteration is undertaken after January 26, 1992, if physical alteration to the property begins after that date. The preamble to S 36.402 notes that the Department will interpret the provision to apply to alterations that require a permit, if physical alterations made pursuant to the terms of the permit begin after January 26, 1992.

   The requirements for new construction are somewhat more complex. New facilities designed and constructed for first occupancy after January 26, 1993, must be constructed in accordance with ADAAG. As S 36.401(a)(2) states:

   For purposes of this section, a facility is designed and constructed for first occupancy after January 26, 1993, only

   (i) If the last application for a building permit or permit extension for the facility is certified to be complete, by a State, County, or local government after January 26, 1992 (or, in those jurisdictions where the government does not certify completion of applications, if the last application for a building permit or permit

extension for the facility is received by the State, County, or local government after January 26, 1992); and

(ii) If the first certificate of occupancy for the facility is issued after January 26, 1993.

Therefore, the actual date construction commenced is irrelevant for purposes of determining whether compliance with ADAAG is required.

However, when compliance with UFAS or ADAAG is required as described above, the mailing is correct in stating that "[P]lans reviewed by State and local inspection authorities (for compliance with ANSI 117.1 and the Barrier Free Design Standard) WILL NOT MEET the new requirements!"

2. "All existing buildings and facilities must be brought into compliance with the provisions of ADA by January 26, 1992. Buildings which were constructed in accordance with ANSI 117.1 and/or the Barrier Free Design Standard WILL NOT MEET the new requirements for existing buildings."

A. Title II - State and local governmental entities are not required to remove physical barriers in all existing buildings or to bring existing buildings into compliance with any particular design standard as long as they make their programs accessible to individuals who are unable to use an inaccessible existing facility. See, S 35.150. However, such entities may need to make some changes to existing facilities if program access cannot be achieved through alternative methods such as relocating a public service from an inaccessible to an accessible location. Any alterations made must comply with the standards discussed in paragraph 1(a) above.

B. Title III - Under title III, public accommodations are required to remove architectural barriers in existing facilities, including communications barriers that are structural in nature, where such removal is readily achievable, that is, "easily accomplishable and able to be carried out without much difficulty or expense." See, S 36.304. The title III regulation lists examples of readily achievable barrier removal such as installing ramps, making curb cuts at sidewalks and entrances, widening doorways, and adding raised letters or braille to elevator control buttons. What is "readily achievable" will be

determined on a case-by-case basis in light of the factors listed in the regulation (including the resources available through any parent corporation). See, S 36.104.

As with title II, public accommodations are not required to retrofit existing buildings to bring them into compliance with the Accessibility Guidelines. However, any "readily

achievable" changes made in existing facilities should generally be made in accordance with ADAAG. See, S 36.304(d) (2).

I hope this information has been useful. Thank you again for your interest in the successful implementation of the Americans with Disabilities Act.

Sincerely,

Stewart B. Oneglia
Chief
Coordination and Review Section
Civil Rights Division

Enclosures (4)
01-01547

23 September 1991

Stewart B. Oneglia
Chief, Coordination & Review Section
U.S. Department of Justice
Civil Rights Division
Post Office Box 66118
Washington, DC 20035-6118

RE: Americans With Disability Act Accessibility Guidelines

Dear Ms. Oneglia:
I attended the seminar entitled "The ADA: Getting Down To Business" in Jacksonville, Florida on August 16, 1991 which you spoke at. The seminars and my conversation with you during breaks were very helpful in helping me understand the intentions of the ADA Legislation. I am writing for two reasons, the first being a request for the July 26, 1991 issue of ADA. The second reason concerns the attached mailing I received from James G. Munger & Associates, Inc.

I am very concerned about the underlined statement since I got the impression from the seminars that compliance with ANSI A117.1 would basically comply with ADA. I understand that there may be some differences and as we discussed the most stringent requirements should be complied with. Our company has been keeping our clients informed about developments concerning the ADA and I am afraid that mailings such as the attached may cause undue alarm. It is obviously an advertisement for their services, but I ask you, is it verging on untruth or at least misleading.

I would be very interested in discussing this with you to get your opinions since our company is studying this legislature carefully so that we may provide accurate advice and consulting services to our established clients and others when we feel we have an adequate understanding of it. As yet we have not advertised this service and feel the advertisements like the attached are misleading to the client, possibly scaring him into some service he may not need. Please feel free to call me if you do not have time for a written response.

Thank you for your help in this matter and I look forward to hearing from you and reviewing the up-to-date ADA Guidelines.

Sincerely,
James T. Martin, AIA/CSI/CCS
Vice President

JIM:re
Enclosure
cc: Larry N. Ponder

JTM File.
SUITE 100 * THE SAXELBYE BUILDING * 201 HOGAN ST. * JACKSONVILLE, FL 32202 *
904/354-7728
01-01548

JAMES G. MUNGER AND ASSOCIATES, INC.
P.O. Box 1773 James G. Munger,
CFPS,CFPS,
Cullman, Alabama 35056 President
(205) 739-3755 David Munger, CP
Williams J. Munger, PE
IMPORTANT CODE UPDATES Consulting Engineer

SEPTEMBER 1991

NEW HANDICAPPED REGULATIONS ISSUED

The United States Attorney General has issued the final regulations setting out the handicapped accessibility requirements as required by the ADA. The final regulations were issued on July 26, 1991. The ADAAG (American with Disability Act Accessibility Guidelines) apply to virtually all buildings in the United States both new and existing.

All new construction which is begun after January 26, 1992 must comply with these new requirements. The enforcement of the provisions of this civil rights legislation is on the FEDERAL LEVEL ONLY. Plans reviewed by state and local inspection agencies (for compliance with ANSI 117.1 and the Barrier Free Design Standard) WILL NOT MEET the new requirements!

All existing buildings and facilites must be brought into compliance with the provsions of ADA by January 26, 1992. Buildings which were constructed in compliance with ANSI A117.1 and/or the Barrier Free Design Standard WILL NOT MEET the new requirements for existing buildings.

While these regulations affect the construction of buildings and other physical facilities, it should be remembered that the ADA is civil rights legislation. Failure to comply with the requirements can result in a civil lawsuit in Federal District Court.

Our firm is qualified to preform the review of our plans and specifications for compliance with the new requirements. Our reviewing process will help assist you and your clients in complying with the new requirements.
01-01549

SEP 22 1992

The Honorable Lloyd Bentsen
United States Senator
961 Federal Building
Austin, Texas 78701

Dear Senator Bentsen:

This letter responds to your inquiry on behalf of your constituent, (b)(6) concerning the enforcement of provisions requiring accessible parking and curb ramps for individuals with disabilities, particularly in public and private parking lots serving hospitals and other such facilities.

The Americans with Disabilities Act (ADA) authorizes this Department to provide technical assistance to individuals and entities that have rights or responsibilities under the ADA.

Therefore, this letter provides informal guidance to assist you in responding to (b)(6) However, this technical assistance does not constitute a legal interpretation and it is not binding on the Department of Justice.

Title II of the ADA requires that State and local governments with responsibility over streets, roads, or walkways provide curb ramps, giving priority to walkways serving State and local government offices and facilities, transportation, places of public accommodation, and employers. For a fuller discussion of this issue, please refer to section 35.150(d) (2) of the enclosed title II regulation and pages 19-22 of the enclosed Title II Technical Assistance Manual.

Under title III of the ADA, a public accommodation, including a private hospital or health care facility, is required to remove architectural barriers to access by individuals with disabilities in existing facilities where such removal is readily achievable. For a fuller discussion of this issue, please refer to section 36.304 of the enclosed title III regulation and pages

28-39 of the enclosed Title III Technical Assistance Manual.

cc: Records, Chrono, Wodatch, McDowney, Breen, Delaney, FOIA
Udd:Delaney:ada.cong. bentsen (b)(6)
01-01550

The ADA provides remedies to enforce the substantive provisions of the statute. Private individuals may file a court action to enforce rights under title II and title III of the ADA. They may also file complaints with the Federal government. For a further discussion of the enforcement provisions of the ADA, please refer to the enclosed title II and III regulations (SS35.170-178 and SS36.501-508) and the Technical Assistance Manuals at pages 45 and 64-67, respectively. However, neither the statute nor the implementing regulations directly address the enforcement of local parking restrictions. State and local authorities generally are responsible for ensuring that parking restrictions are enforced in accordance with state and local law.

I hope this information is helpful in responding to your constituent.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

Enclosures (4)
01-01551

July 7, 1992

(b)(6)

Dear Senator Bentsen,

I regret having to write you on such a trivial matter in light of the great problems facing the nation. However, if you can assist me in finding the right person or agency to communicate with, I would be most appreciative.

I would like to know who the enforcing arm of the various applications of The Americans With Disabilities Act are. Of particular concern at this moment are ramps to hospitals and other such facilities. We have had one accident and many near misses with the Elderly and Handicapped vans run by the city of Port Arthur. Governor Ann Richards and State Senator Parker have assured me that legislation will be forthcoming in the next legislative session of the state of Texas to cover public thoroughfares regarding the safety of these vans. However, they are reluctant to cover private parking lots in their legislation. The city attorney has said that the city has no jurisdiction in such matters. The U.S. attorney's office in Beaumont has said that it is not a criminal offence, therefore, they do not have jurisdiction. Security at the mall in this city has said they have no teeth to enforce any sign they may put up. It seems to be overkill to send out the National Guard to see that ramps are kept clear for the elderly and handicapped to have access to a facility. However, it seems equally stupid to have a law mandating ramps to a given facility and yet not be able to enforce it. Rather frankly, I do not know where to turn.

You have been most helpful in the past. I would appreciate your assistance in this matter.

(b)(6)

01-01552

SEP 22 1992

The Honorable Bob Dole
United States Senator
444 S.E. Quincy
Topeka, Kansas 66683

Dear Senator Dole:

This letter is in response to your inquiry on behalf of your constituent, Frank Buehler, Chairman of the Claflin United Methodist Church Administrative Council. Mr. Buehler asks about the application of the Americans with Disabilities Act (ADA) to the Church.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities that are subject to the Act. Therefore, this letter provides informal guidance to assist you in responding to your constituent. However, this technical assistance does not constitute a legal interpretation by the Department and it is not binding on the Department.

Section 307 of the ADA specifically provides that religious organizations and entities controlled by religious organizations are not subject to the provisions of the ADA. Thus, the Claflin United Methodist Church is not required to make improvements increasing accessibility for individuals with disabilities. Further, any improvements the Church voluntarily chooses to make would not need to comply with ADA standards. However, nonreligious entities may be subject to title III if they conduct activities in the Church facilities. Enclosed are the Department's Title III Technical Assistance Manual and the Department's implementing regulation for further guidance. A discussion of the religious exemption may be found on pages 4-5 of the Technical Assistance Manual and page 35,554 of the regulation.

cc: Records Chrono Wodatch Magagna Foran McDowney FOIA
Friedlander:udd:foran:dolecongressional

For information regarding voluntary measures by religious organizations to improve access for persons with disabilities, you may wish to direct Mr. Buehler's attention to a handbook published by the National Organization on Disability entitled "That All May Worship: An Interfaith Welcome to People with Disabilities." A copy of the handbook can be obtained by writing: National Organization on Disability, Religion and Disability Program, 910 16th Street, N.W. Suite 600, Washington, D.C. 20006.

I hope this information is helpful in responding to your constituent.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

Enclosures (2)

FRANK BUEHLER
P.O. BOX 317
CLAFLIN, KANSAS 67525
JULY 25, 1992

Senator Bob Dole
141 Hart Senate Office Bldg.
Washington, D. C. 20510

Dear Bob:

The Claflin United Methodist Church anticipates making some improvements relative to accessibility for those who may have physical handicaps. One of the people who sell the equipment we are looking at tells us that we will at some point in time need to comply with Federal mandates pertaining to access for the handicapped.

In order to help us reach a decision on what equipment to install, we would like to know if there is in fact some federal requirement, and if so, to what extent would it apply to a Church building that is used exclusively for worship purposes, as opposed to a facility that is rented or made available for public use.

Could you ask one of your staff to research this problem and inform me of your determination? Since we are currently involved in. this consideration, a quick response would expedite our ability to proceed.

Claire and I are both doing well and we look forward to seeing and working for you in the upcoming campaign.

With Best Regards

Frank Buehler, Chairman

Claflin United Methodist Church
Administrative Council

SEP 22 1992

The Honorable Patrick Leahy
United States Senate
516 Senate Hart Building
Washington, D.C. 20510-4502

Dear Senator Leahy:

This letter is in response to your inquiry on behalf of your constituent, (b)(6) who is seeking advice as to the application of the Americans with Disabilities Act (ADA) to Camp Kiniya, a private children's summer camp.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities that are subject to the Act. This letter provides informal guidance to assist your constituent in understanding the ADA's requirements. However, this technical assistance does not constitute a determination by the Department of (b)(6) rights or responsibilities under the Americans with Disabilities Act, and it is not binding on the Department.

(b)(6) concerned about the expense of making Camp Kiniya's facilities and services accessible to children with disabilities. Under section 36.304 of the enclosed ADA title III regulation (pages 35,568-35,570 and 35,597-35,598), Camp Kiniya would have to remove barriers in existing facilities only where such removal is "readily achievable," i.e., easily accomplishable and able to be carried out without much difficulty or expense. Discussion of the barrier removal requirement may be found on pages 29-37 of the enclosed Title III Technical Assistance

Manual.

The focus of Camp Kiniya, which is "physical challenges," including hiking, riding, mountain climbing, waterskiing, and sailing, does not have to be changed because of the ADA. However, under section 36.302 of the enclosed regulation (pages 35,564-35,565 and 35,596-35,597), the Camp will have to make reasonable modifications in practices when necessary to accommodate individuals with disabilities, unless the

cc: Records; Chrono; Wodatch; Foran; McDowney; FOIA; MAF
:udd:foran:leahycongressional
01-01553

modifications would fundamentally alter the nature of the services. However, the ADA does not prohibit public accommodations such as Camp Kiniya from imposing neutral rules and criteria that screen out, or tend to screen out, individuals with disabilities, if the criteria are necessary for the safe operation of the public accommodation. Discussion of these provisions may be found at pages 21-25 of the Technical Assistance Manual.

(b)(6) points out that specially designed camps for children with disabilities already exist, and asks why children's camps other than church camps have not been exempted from the requirements of the Americans with Disabilities Act. One of the primary purposes of the ADA is the integration of persons with disabilities into the mainstream of American society. Accordingly, several provisions of the Act prohibit exclusion and segregation of individuals with disabilities and the denial of equal opportunity. These provisions are discussed on pages 13-15 of the Technical Assistance Manual.

I hope this information will assist you in responding to your constituent.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

Enclosures (2)
01-01554

(b)(6)

June 15, 1992

Camp
Kiniya 77 CAMP KINIYA RD., COLCHESTER, VT 05446

"A Good CAMP FOR GIRLS SINCE 1919"

Dear Senator Leahy,

I have just discovered, to my dismay, that the American With Disabilities Act, evidently passed by the Congress last year, rather profoundly affects our small business. Because this is now the law, our organization, The American Camping Ass'n. is following the law, and requiring those of us who are accredited members, to:provide access to children with handicaps (all businesses with 15 employees or more, except (and I am astonished that only they are exempt) church camps. As a private children's summer camp, in the woods with roots, rocks, and on 3 levels, (which even healthy children have occasional trouble traversing) we must evidently have ramps into cabins in areas, in which handicapped children could only reach if they were carried. Our beach is 100 yds. down a very steep path - and a ski tow would be the only way we could get a wheel chair bound person to the water. The entire focus of our particular summer camp is physical challenges.

I would really appreciate an explanation as to why exemptions were not included for children's camps other than church camps. There are quite a few special camps for children with handicaps and I cannot understand how a traditional children's summer camp such as ours (founded in 1919) which specializes in hiking, riding, mountain climbing, waterskiing, sailing, etc. can or should have to shoulder the enormous expense of putting in the sort of facilities that would be necessary for disabled children. We are a private business, and have access to no federal funds; nor do we ask for them. If the Congress feels this bill necessary than it should provide funding.

Could you further tell me if this bill has been challenged in the courts. I would also like to know how you voted on this issue.

Cordially,
(b)(6)

01-01555

SEP 22 1992

The Honorable Norman F. Lent
U.S. House of Representatives
2408 Rayburn House Office Building
Washington, D. C. 20515

Dear Congressman Lent:

This letter is in responses to your inquiry on behalf of your constituent, Dr. David A. Grossman, regarding the Americans with Disabilities Act's (ADA) requirements for accessible parking and curb ramps. Specifically, Dr. Grossman stated his concern that his landlord has failed to provide parking and curb access for use by patients who have disabilities.

The ADA authorizes the Department of Justice to provide technical assistance individuals and entities with rights or obligations under the Act. This letter provides informal guidance to assist you in answering Dr. Grossman's inquiry. However, this technical assistance does not constitute a legal Interpretation of the statute, and it is not binding on the Department.

Title III of the ADA requires public accommodations to remove barriers to access by individuals with disabilities, including those who use wheelchairs, to the extent that it is readily achievable to do so. The installation and maintenance of parking spaces and curb ramps are among the actions required by the ADA when readily achievable. For further discussion of title III's barrier removal requirements, please refer to pages 29-32 of the enclosed Title III Technical Assistance Manual.

The ADA, however, specifies that the duty to undertake readily achievable barrier removal falls both upon the landlord and the tenant in instances where, as here, a place of public accommodation is located in space leased from another entity. The lease agreement may, however, be used to allocate

cc: Records; Chrono; Wodatch; Russo; McDowney; FOIA; MAF.
:udd:russo:cong.lent.grossman

responsibility between the landlord and tenant for actually removing the barrier. Please refer to page 3 of the enclosed Manual for further discussion of landlord and tenant liability.

If Dr. Grossman feels that the refusal of Grand Baldwin Associates to provide parking spaces and curb ramps for persons with disabilities constitutes a violation of the ADA, he has two enforcement options under the ADA: (1) He may secure private legal representation and bring an action in Federal court, or (2) he may file a complaint with the Department of Justice. If Dr. Grossman chooses to file a complaint with the Department of Justice, he should send any relevant information to the Office on the Americans with Disabilities Act, Civil Rights Division, U.S. Department of Justice, Post Office Box 66738, Washington, D.C. 20035-9998. All complaints should be in writing and should set forth, in as complete a manner as possible, the factual circumstances surrounding the complaint. Enforcement procedures are discussed on pages 64-67 of the enclosed Manual.

I hope this information is of assistance to you in responding to your constituent.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

Enclosure

DAVID A. GROSSMAN, DDS
l685 GRAND AVENUE
SUITE 209
BALDWIN, NY 11510-1894

July 20, 1992

Grand Baldwin Associates
333 Jericho Turnpike
Jericho, New York 11753

ATT'N: Emma Dixon
Property Manager

Dear Ms. Dixon;

It has been almost one year since I first brought to your attention the problem handicapped people face when attempting to use your parking facility located at 1685 Grand Avenue in Baldwin. Despite four letters I have sent you, a plea for some common decency, and the institution of the Americans with Disabilities Act, I find it abhorrent that you continue to ignore this serious problem. Now that a Subway restaurant is due to open any day, handicapped persons will face even GREATER difficulty should they attempt to use your lot.

As stated in "Removing Barriers in Place of Public Accommodation, " a publication of the Eastern Paralyzed Veterans Association, the A.D.A. states that

A reserved parking space is one which is eight feet wide with an adjoining access aisle five feet wide. However, one in every eight handicapped parking spaces, but not less than one, should have an eight foot wide access aisle and be designated as "van accessible...
Curb cuts should be designed to be three feet in width, have a slope of 1 in 12 and have level areas at top and bottom.

Ms. Dixon- even if there was no law stipulating access for handicapped persons, I would still appeal to your sense of common decency. As I mentioned in my letter of March 3, 1992, I have already had wheelchair-bound patients telephone me from inside their van while parked in the lot, complaining they were unable to access the sidewalk (and subsequently my office) . How would you feel if this happened to a member of YOUR family?

I am not looking for any more "we will look into it" letters from you or any of the well-respected parties listed at the end of this letter. Nor do I believe that the "barrier removal efforts" involved here would be very costly or time-consuming, and I believe that there might even be a tax credit for removing these "barriers." Regardless, I find your disregard of this matter quite appalling, and I AGAIN beseech you to attend to this serious issue.

Sincerely,

David A. Grossman, D.D.S.
President, Baldwin Chamber of Commerce

cc: Hon. Alfonse M. D'Amato
United States Senate
Hon. Norman F. Lent
United States House of Representatives
Hon. Norman J. Levy
New York State Senate
Hon. Charles O'Shea
New York States Assembly
Hon. Thomas S. Gulotta
Nassau County Executive
Hon. David A. Levy
Councilman, Town of Hempstead
Don Dreyer, Director
Office for the Physically Challenged
Joseph Nocella, First Deputy Commissioner
Town of Hempstead Department of Buildings
Eastern Paralyzed Veterans
Association
Disabled American Veterans
Jewish War Veterans
United Properties Corp.

(HANDWRITTEN)

XXXXXXXXXXX
XXXXXXXXXXX

February 27, 1992

David A. Grossman, DDS
1685 Grand Ave. Suite 209
Baldwin, NY 11510

Dear Dr. Grossman:

As you are aware on Tuesday Feb 24 I had great difficulty in keeping my 5:30 PM appointment. My wife & I , being confined to wheelchairs, were unable to gain access to your office because the curb clips for wheelchairs was blocked by a parked vehicle. This problem, at this location, has presented itself on other occasion and I feel very strongly that better arrangement should be worked out for your disabled patience.

We do appreciate your coming down to the parking lot lifting us up the curb however we feel that a problem of this nature should be corrected & not be a burden on anyone. We

would appreciate if you would once again notify the landlord or other authorities so that this can be corrected-very (illegible) and economically. Thanks once again for your help.

Sincerely,

XXXXXX

SEP 22 1992

The Honorable Jim McCrery
Member, U.S. House of Representatives
621 Edwards Street
Shreveport, Louisiana 71101

Dear Congressman McCrery:

This letter responds to your inquiry concerning your previous correspondence on behalf of (b)(6). Enclosed is a copy of our letter of August 12, 1992, addressing that inquiry. Included is a copy of the enclosure that accompanied that response.

I hope you find this information helpful in responding to your constituent's request.

Sincerely,

James P. Turner
Acting Assistant Attorney General

Civil Rights Division

Enclosures

cc: Records; Chrono; Wodatch; Breen; McDowney; FOIA.
:udd:breen:cong.mccrery
01-01556

U.S. Department of Justice
Civil Rights Division
Office of the Assistant Attorney General Washington, D.C. 20038

The Honorable Jim McCrery
Member, U.S. House of Representatives
621 Edwards Street
Shreveport, Louisiana 71101

Dear Congressman McCrery:

This letter is in response to your inquiry on behalf of your constituent, (b)(6) concerning the Americans with Disabilities Act's (ADA) requirements for barrier removal in retail establishments and the proper method of filing a complaint.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities with rights or obligations under the Act. This letter provides informal guidance to assist you in understanding the ADA accessibility standards. However, this technical assistance does not constitute a legal interpretation of the statute and it is not binding on the Department.

Title III of the ADA requires places of public accommodation, including retail establishments and department stores, to undertake readily achievable barrier removal to make the stores accessible to individuals with disabilities including those who use wheelchairs. These requirements are further explained in the enclosed Department of Justice title III regulations at 28 C.F.R. 36.304 and 36.305.

If (b)(6) believes that KMart's failure to widen the checkout lanes has resulted in her daughter being discriminated against on the basis of her disability she has two enforcement options under the ADA: (1) She may secure private legal representation and bring an action in Federal court, or (2) she may file a complaint with the Department of Justice.

If(b)(6)chooses to file a complaint with the Department of Justice, she should send any relevant information to the Office on the Americans with Disabilities Act, Civil Rights Division, U.S. Department of Justice, Post Office Box 66738, Washington, D.C. 20035-9998. All complaints should be in writing and should set forth, in as complete a manner as possible, the factual circumstances surrounding the complaint.

I hope this information is of assistance to you in responding to your constituent.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

Enclosure
01-01558

U.S. Department of Labor
The Honorable Jim McCrery
Member, U.S. House
of Representatives
621 Edwards Street
Shreveport, Louisiana 71101

Dear Congressman McCrery:

Thank you for your July 7 letter, with enclosure, regarding your constituent, XXXXXX. Your correspondence was referred to the Office of Federal Contract Compliance Programs (OFCCP) for response.

OFCCP administers and enforces three equal employment opportunity programs: Executive Order 11246, as amended; Section 503 of the Rehabilitation Act of 1973, as amended; and the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. 4212. Taken together, these programs prohibit contractors and subcontractors from discriminating on the bases of race, color, religion, sex, national origin, handicap or veteran status. These laws and their implementing regulations require that a complaint be filed within 180 days from the alleged discriminatory act.

The concerns your constituent expresses regarding Title III of the Americans with Disabilities Act of 1990 are not within OFCCP's jurisdiction. Title III is enforced by the Department of Justice. Accordingly, we have referred your correspondence to the official listed below for consideration:

Mr. John Wodatch
Director
Americans with Disabilities Act Unit
Coordination and Review Section
Civil Rights Division
U. S. Department of Justice
HOLC Building
320 First Street, N.W.
Washington, D.C. 20532

Thank you for your interest in this matter.
Sincerely,
Robert B. Greaux
Director
Division of Program Operations
cc: Washington, DC Office
01-01559

BENTON, LA
July 1, 1992

Hon. Jim McCrery
United States Representative
621 Edwards Street
Shreveport, LA 71101

In re:

Dear Mr. McCrery:

I would like to call your attention to a situation that I am very concerned about in connection with the Americans with Disabilities Act. My daughter, is a disabled American, having been injured in October of 1991 and is now paralyzed and in a wheelchair. I have tried to become familiar with that Act and as I understand Title III as it covers existing "places of public accomodation", the alterations to a facility after January 26, 1992 shall be made so as to ensure that to the maximum extent feasible the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

I have also read about the penalties for noncompliance. It is my understanding that civil actions may be brought by individuals who have been subjected to discrimination or who have reasonable grounds for believing that he/she is "about to be subjected to" discrimination. It is my understanding that the courts may grant injunctive relief, award monetary damages as well as assess civil penalties to the person aggrieved.

My daughter's situation involves the KMart store located at 3045 East Texas in Bossier City, Louisiana. I have shopped at Kmart for many years. Since accident, I have tried, even when I am alone, to only go to and buy from stores whose facilities are easily accessible for handicapped/disabled people. Recently, and I went shopping at Kmart and when we were ready to go to pay for the merchandise, the space between the "check-out stands" was not wide enough for her wheelchair to go through. She had to hand me her merchandise and money to pay for her and she had to back out of the line and go to the front of the store to wait for me to pay. I have visited Kmart on two occasions since that time, the last time being approximately one week ago.

01-01559

On the first occasion, I only complained to the person checking me out. On the last occasion, I asked the manager if he knew he was in violation of the law. He said yes. I asked him why no provisions had been made for a person who comes into the store to shop, but cannot pay for his/her purchases. He said he knew it should have been done, but he had no real explanation as to why it had not been done. I further asked him if he thought my daughter was the only person in Caddo/Bossier Parish in a wheelchair. He acknowledged that was doubtful.

I have read several articles lately commending the national Kmart and other corporations for utilizing disabled people in the "mainstream" of their advertising. This was presented as a very positive step for disabled people. I therefore find it baffling that this local Kmart does not even have provisions for a disabled person to pay for their purchases, especially when they are knowingly in violation of Title III of the ADA.

I am asking for your assistance in providing me with the person or agency to contact to file a complaint against Kmart. I certainly appreciate your assistance in this matter. Since my daughter is of the opinion that her disabilities should not stop her from going to college next year, living alone, driving a car, participating in a beauty pageant, and generally doing whatever she wants to do, it is especially distressing to me that simple steps cannot be taken by a major corporation to accomodate her and others who have to use wheelchairs.

I will look forward to hearing from you or your representative regarding this request. Thank you for your assistance in this matter.
Yours very truly,

(b)(6)

/frc
cc: Manager - KMart, Bossier City
Mr. William H. Ledbetter, Jr.
Ms. Jan Elkins - KTBS TV
Kmart - Troy, Michigan
01-01559

SEP 22 1992

The Honorable William V. Roth, Jr.
United States Senate
104 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Roth:

This letter responds to your request for information concerning the Americans with Disabilities Act (ADA) in response to an inquiry from your constituent, Dr. David M. August, D.O. Dr. August requested an opinion on whether current Medicare policy could be interpreted as a violation of the ADA. Specifically, he questions the Medicare policy of reimbursing 80 percent of doctors' charges for treating physical illness and 65 percent of doctors' charges for treating mental or emotional illness.

The ADA authorizes this Department to provide technical assistance to individuals and entities that have rights or responsibilities under the ADA. Accordingly, this letter provides informal guidance to assist you in responding to Dr. August; however, this technical assistance does not constitute a legal interpretation and is not binding on the Department of Justice.

While we cannot issue a legal opinion on this question, we can point out that the ADA, in some respects, was modeled after the Rehabilitation Act of 1973, which prohibits discrimination in federally conducted and federally assisted programs and activities, and that legal challenges under the Rehabilitation Act to similar classifications of types of medical treatment have not been successful. For example, in Alexander v. Choate (469 U.S. 287 (1985)), the United States Supreme Court determined that a state reduction of the number of days of inpatient hospital care under the Medicaid program was lawful, noting the "States' longstanding discretion to choose the proper mix of amount, scope, and durational limitations on services."

cc: Records, Chrono, Wodatch, Breen, Magagna, McDowney, Delaney,
FOIA
Udd:Delaney:ada.cong.roth.medicare arthur T. 9/14/92

I hope this information is helpful in responding to your constituent.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

01-01563

DAVID AUGUST, D.O.
BOARD CERTIFIED PHYCHIATRIST
Red Mill Office Center
467 Highway One
Lewes, DE 19958
Phone (302) 645-9076
Fax (302) 645-2870

May 1, 1992

Senator William V. Roth, Jr.
3021 Federal Building
844 King Street
Wilmington, DE 19801

Dear Senator Roth:

I am writing to you about a matter that has come to my attention concerning Medicare's treatment of the mentally ill. I am a psychiatrist treating patients in Delaware and I have discovered that Medicare has a policy of specifically discriminating against mentally ill patients in their reimbursements for medical treatment.

It is Medicare policy to reimburse patients for what Medicare considers to be a physical illness 80% of doctors charges. If Medicare considers the patient to have a mental or emotional illness, the patient will only be reimbursed 65% of the doctor's charges.

This Medicare policy makes it very difficult for mentally ill patients to obtain psychiatric care. This Medicare policy could also violate federal laws such as the American Disabilities Act or perhaps other constitutional guarantees. I am requesting an opinion from your office as I am considering pursuing this inequity, either through legislation or the court system.

Sincerely,

David M. August, D.O.

DMA/cv
01-01564

T. 9/10/92
AMP:SBO:kgf
DJ# 192-180-12198

SEP 22 1992

The Honorable Rick Santorum
Member, United States House of
Representatives
200 Fleet Street, Suite 4000
Pittsburgh, Pennsylvania 15220

Dear Congressman Santorum:

This letter responds to your inquiry on behalf of your constituent, Kathryn Bommer, who seeks information regarding what action her volunteer fire department must take in order to comply with the Americans with Disabilities Act (ADA). She also requests information regarding the availability of Federal financial assistance to make changes mandated by ADA.

The ADA authorizes the Department of Justice to provide technical assistance to entities that are subject to the Act. This letter provides informal guidance to assist you in responding to your constituent. However, this technical assistance does not constitute a determination by the Department of Justice of your constituent's rights or responsibilities under the ADA and does not constitute a binding determination by the Department of Justice.

When the fire department uses its second floor banquet facilities for public fund raising activities or private parties, the department is considered to be a public accommodation subject to the responsibilities of title III of the ADA. The general obligations of public accommodations under title III are discussed in the enclosed title III Technical Assistance Manual.

With respect to barrier removal obligations, which seem to be of particular concern to your constituent, title III of the ADA and this Department's implementing regulations, 28 C.F.R. Part 36 (copy enclosed), only require the removal of barriers in existing facilities where such barrier removal is "readily achievable", that is, "easily accomplishable with little

difficulty or expense." The requirement for readily achievable barrier removal is discussed in more detail in section 36.304 of the title III rule and on pages 28-36 of the Technical Assistance Manual.

:udd:pecht:santorum.ltr
cc: Records, CRS, FOIA, Friedlander (3), Pecht, McDowney, Breen
01-01565

As discussed in section 36.104 of the rule, whether barrier removal is readily achievable is to be considered in light of a number of factors including the overall financial resources available to the entity. The obligations of a volunteer fire department under this standard would certainly never, as suggested by your constituent, rise to a level that would require the fire department to close its doors.

The use of the volunteer fire department's banquet hall as a polling place is covered by the Voting Accessibility for the Elderly and Handicapped Act of 1984, 42 U.S.C. 1977ee-1. For further information on the applicability of that Act to the situation described by your constituent, you may wish to contact the Federal Election Commission.

You should also be aware that, where the operations of a volunteer fire department are closely linked to those of a local governmental entity, the operations of that volunteer department may be covered by title II of the ADA, which covers State and local governmental entities. In order to determine whether a volunteer fire department is covered by the requirements of title II, it is necessary to examine the relationship between the company and the unit of local government. The factors to be considered include whether the company is operated with public funds; whether the employees, if any, are considered government employees; whether the government provides significant assistance to the company by providing equipment or property; and whether it is governed by an independent board selected by the members of a private organization or is elected by the voters or appointed by elected officials.

If a volunteer department is considered an entity covered by title II, it must operate its programs and activities so that, when viewed in their entirety, such programs and activities are readily accessible to and usable by individuals with disabilities. The concept of "program access" is discussed in sections 35.149 and 35.150 of this Department's title II regulations, 28 C.F.R. Part 35, and on pages 19-22 of the title II Technical Assistance Manual (copies enclosed). However, as stated in section 35.150(a)(3) of the title II rule, a title II entity is not required to take any actions that it can demonstrate would result in a fundamental alteration of its services, programs, or activities, or in undue financial and administrative burdens.

With respect to Federal funding for barrier removal, the Department of Housing and Urban Development (HUD) provides community development block grants designed to assist low and moderate income households and communities. These grants may be used to remove architectural barriers that restrict accessibility to publicly owned and privately owned buildings, facilities, and

improvements. For information on applying for a community development block grant, Ms. Bommer should contact HUD's Office of Block Grant Assistance at (202)708-3587.
01-01566

I hope this information is helpful to you in responding to your constituent's inquiry.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

Enclosures (2)
01-01567

OPTION INDEPENDENT FIRE COMPANY
OF BALDWIN BOROUGH
825 STREETS RUN ROAD
PITTSBURGH, PA 15236

August 06, 1992

Congressman Rick Santorum
200 Fleet Street
Room 4000
Pittsburgh, PA 15220

Dear Congressman Santorum:

I am writing to you as a follow up to my phone conversation with Bruce Barron on 08/05/92. We, the members of the Option Independent Fire Company are in need of you and your staffs assistance. We are in need of some answers pertaining to the American Disabilities Act, which was recently put in to effect. We are a non-profit, all volunteer organization in Baldwin Borough, which serves as a polling place for the fifth district and we have a small banquet hall that we rent out for private gatherings and we use for fund raising events that is on the second floor. Our problem is we are unable to make all of the necessary changes to our hall as mandated by the American Disabilities Act without causing severe financial problems to our association.

We are asking if there is any type of Federal grants or assistance available for the needed structural changes, and since we are both a public polling place and a private banquet hall, where do we fall in the eyes of the Act?

We use our banquet hall for public fund raising activities such as Lenten fish fries, spaghetti dinners etc., as well as private parties to help pay for our State loans that we currently have on our new fire trucks. If we are forced to close our banquet hall due to non compliance of the Act, because of all the necessary mandated changes to make our fire company accessible to the handicapped for both the polling center and banquet hall, we would soon have to close our company due to lack of funds.

We have spoken with an architect who stated the necessary changes include widening the entrance door, replacing two (2) bathrooms, one on each floor and changing them to be handicapped accessible and to install a chair lift on the staircase to the second floor. He stated the cost to be under ten thousand (10,000.00) dollars.

We are asking for any help that your office can give us in this matter, since it is not our intention to have to close our doors to the public.

Thank you for your attention to this matter. If you have any questions, please feel free to contact me at 412-881-5158.

Sincerely,

Kathryn R. Bommer
Secretary
DJ 202-PL-00034

SEP 23 1992

Mr. Luther Field
Batt-Chief/Critical Issues
Municipal Building, 8th at Colorado
Post Office Box 1088
Austin, Texas 78767

Dear Mr. Field:

This letter responds to your inquiry concerning fire station modifications that may be required by the Americans with Disabilities Act, 42 U.S.C. 12131-12134 ("ADA"). The ADA authorizes the Department of Justice to provide technical assistance to individuals or entities having rights or obligations under the Act. This letter provides informal guidance to assist you in understanding the ADA's requirements. It does not, however, constitute a legal interpretation and it is not binding on the Department.

Title II of the ADA prohibits State and local governments from discriminating against persons with disabilities. Title II and the Department's implementing regulation, 28 C.F.R. pt. 35 (enclosed), also require that new construction and alterations of government buildings ensure accessibility and that programs in government facilities be made accessible. ADA 204(b); 28 C.F.R. 35.149 -.150. More specifically, all State and local government buildings constructed or altered after January 26, 1992, must meet federal accessibility standards by complying with either the Uniform Federal Accessibility Standards (UFAS) or the Americans with Disabilities Act Accessibility Guidelines (ADAAG). 28 C.F.R. 35.151.

A different standard applies to services, programs, or activities conducted in State or local government facilities. Each such service, program, or activity must be operated so that, when viewed in its entirety, it is readily accessible to and usable by individuals with disabilities.

cc: Records, Chrono, Wodatch, Bowen, Friedlander, FOIA, Nakata
Udd:Nakata:202.PL.00034
01-01569

> [T]itle II requires a public entity to make its programs accessible in all cases, except where to do so would result in a fundamental alteration in the nature of the program or in undue financial and administrative burdens.... [T]he program access requirement of title II should enable individuals with disabilities to participate in and benefit from the services, programs, or activities of public entities in all but the most unusual cases.

56 Fed. Reg. 35,708 (1991).

Program access required by title II can be achieved by various means, including physical changes to existing buildings, the acquisition or redesign of equipment, the reassignment of services to accessible buildings, and the delivery of services at alternate accessible sites. 28 C.F.R. 35.150(b). For instance, you may wish to provide tours of accessible existing facilities as a means of making that aspect of your activities accessible. You would not necessarily be required to alter other inaccessible facilities for that purpose. If this approach would impose undue burdens, program access may be achieved by providing an audio-visual display of inaccessible areas in an accessible location on the ground floor. I have included a copy of the Department's Title II Technical Assistance Manual, which may provide further assistance in this area at Section II-5.0000.

This letter does not address other accommodations that may be required under the employment requirements of title I of the ADA.

Thank you for your inquiry in this matter.

Sincerely,

L. Irene Bowen
Deputy Director
Office on the Americans with Disabilities Act

Enclosures (2)
Title II Technical Assistance Manual
Title II regulation
01-01570

City of Austin
Founded by Congress, Republic of Texas, 1839
Municipal Building, Eighth at Colorado, P.O. Box 1088, Austin, Texas 78767

Telephone 512/499-2000

March 2, 1992

Civil Rights Division
Office on the Americans with Disabilities Act
U.S. Department of Justice
P.O. Box 66118
Washington, D.C. 20035-6118

Dear Sirs:

As a member of the Austin Fire Department's ADA compliance committee I am contacting the Justice Department directly to obtain guidance in the matter of requirements for Fire Stations under the Americans with Disabilities Act. We seem to be getting conflicting interpretations of the ADA pertaining to this question. I am hoping you can inform us as to what extent Fire Stations are required to be made accessible under the ADA.

Our stations are primarily used to house firefighters, trucks and equipment. We conduct no scheduled programs or activities at the stations involving the public other than tours of the stations and equipment upon request by interested groups, usually school children. My interpretation of the ADA requirements are that the stations do not need modifying since our programs and services, when viewed in their entirety, are accessible. I would appreciate any clarification you could supply on this matter as soon as possible and in writing, please. If you have any questions or I can be of help in any way, please contact me at (512) 477-5784.

Sincerely,

Luther Field
Batt. Chief/Critical Issues
Austin Fire Department
01-01571

SEP 29 1992

The Honorable Scott Klug
Member, U.S. House of Representatives
16 North Carroll Street
Madison, Wisconsin 53703

Dear Congressman Klug:

This letter is in response to your inquiry on behalf of Matt Logan, seeking clarification of sign requirements under the Americans with Disabilities Act (ADA).

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities that are subject to the Act. Therefore, this letter provides informal guidance to assist you in responding to your constituent. However, this technical assistance does not constitute a legal interpretation by the Department and it is not binding on the Department.

Mr. Logan's questions relate to the requirements of section 4.30.4 of the ADA Accessibility Guidelines for Buildings and Facilities, as applied to pictograms (pictorial symbol signs) that are used to identify permanent rooms and spaces, such as restrooms. Section 4.30.4 requires that "pictograms shall be accompanied by the equivalent verbal description placed directly below the pictogram," and that "the border dimension of the pictogram shall be 6 inches minimum in height." This means that the field used for the pictogram must be 6 inches in height and that the verbal description must be placed below the 6 inch field. Based on our discussions with staff from the Architectural and Transportation Barriers Compliance Board, we understand that the Society for Environmental Graphic Design interprets these requirements in the same way. Section 4.30.4 further requires the raised letters and numerals used in the verbal description below the pictogram to be a minimum of 5/8 inches in height and to be accompanied by Grade II Braille.

cc: Records; Chrono; Wodatch; Lusher; McDowney; FOIA; MAF
:udd:mercado:congressional.letters:lusher.klug.logan
01-01572

The Department is unable to certify or to endorse products as complying with the requirements of the ADA. However, based on the photocopy of the sign we received, it does not appear that your constituent's product complies with the requirement that the border dimension of the pictogram be a minimum of 6 inches in height, since the measurement from the top of the sign to the top of the characters is approximately 5 1/4 inches (see attached).

I hope that the information we have provided is helpful to you and your constituent. If you or Mr. Logan have questions about this letter, please feel free to contact Ruth Lusher of my staff at (202) 434-9300.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

Enclosure
01-01573

(Form) RESTROOMS
01-01574

Sterling Rogers Keane Newell

August 29, 1992

Hon. Scott Klug
Member of Congress
16 North Carroll St.
Room 600
Madison, WI 53703

Dear Scott:

I would like to take this opportunity to thank your office for your prompt response to my inquiry of August 26. It's not so much that we're having difficulties with the ADA it's that we're having trouble understanding the application of the code as interpreted by the Society for Environmental Graphic Design that put out a white paper on the subject. I fully believe that our signs are in compliance and will provide great benefit to the visually impaired of our country. I would like to get this confirmed through your office as quickly as possible so that we can continue our market introduction. The signs were developed around an industry standard 5x7 size that met the 6" minimum height requirement as we read it (Sec. 4.30.4 Raised and Brailled Characters and Pictorial Symbol Signs). I believe these signs will allow the small business owner to comply with the ADA's sign requirements without unnecessary cost.

Thanks again for your attention to this matter during the busy "election season" that is underway.

Sincerely,

Matt Logan
Product Manager
01-01575

OCT 14 1992

The Honorable Jeff Bingaman
United States Senate
524 Hart Senate Office Building
Washington, D.C. 20510-3102

Dear Senator Bingaman:

This letter responds to your recent inquiry concerning the Americans with Disabilities Act of 1990 (ADA).

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities that have rights and responsibilities under the Act. This letter provides informal guidance but does not constitute a determination by the Department of Justice of any State's rights or responsibilities under the ADA, and it is not binding on the Department.

You have raised five specific questions about the ADA. Those questions and our responses are as follows:

1) What is a State's liability under the Act if the State does not amend its law to comply with ADA?

States are required to operate all programs, services, and activities in a manner consistent with title II of the ADA, and could be held liable for noncompliance. However, States are not required to adopt a State law comparable to the ADA.

2) What is a State's liability under the Act for building code violations after the State informs contractors of the requirements of Federal law?

Under title II, all buildings or facilities constructed or altered by or for the State itself must comply with the ADA, and the State may be liable for ADA violations if contractors employed by or on behalf of the State fail to comply with the requirements of title II of the ADA, even if the State has informed the contractors of the ADA requirements.

cc: Records; Chrono; Wodatch; Blizard; Bowen; McDowney; FOIA.
:net:ss63:udd:blizard:ada.interpretation.bingaman.2

The ADA does not authorize or require State officials, including State building code officials, to enforce the ADA as it applies to private entities. If a private entity that is subject to the ADA fails to comply with the requirements of title III, that entity may be subject to ADA enforcement through Federal court litigation initiated by the Department of Justice or by private parties.

3) Are the States required to amend their building codes to comply with ADA, or does the Federal law preempt existing State law?

The ADA does not require states to amend building codes that apply to the construction of private buildings. However, private entities are required to comply with the ADA's accessibility requirements, rather than State code requirements, in circumstances where local code requirements are less stringent than the ADA.

States that choose to amend their codes may ask the Attorney General to review the accessibility requirements of the State code and to certify that these provisions meet or exceed the requirements of title III of the ADA. In ADA litigation, compliance with a certified code will constitute rebuttable evidence that a building or facility complies with the ADA.

4) What is the State's resultant liability? If the State amends its law, can it be involved in a civil suit for violations of the State law?

Simply by adopting a building code that is consistent with title III, a State does not become liable for the failure of private entities to comply with the ADA. However, the operation of some State statutes or case law may affect the State's liability for failure to enforce State laws or regulations.

5) What resources are available to the States to assist them in interpreting and implementing the access provisions, as well as the other sections, of ADA?

The ADA requires that each Federal agency with an ADA implementation role (Department of Justice, Department of Transportation, Federal Communications Commission, Equal Employment Opportunity Commission, and Architectural and Transportation Barriers Compliance Board) provide technical assistance to individuals and entities affected by the agency's ADA regulations. Pursuant to this requirement, the Department of Justice has published technical assistance manuals for both title

II and title III of the ADA, as well as other informational materials.

01-01577

In addition, the Department has awarded over three million dollars in grants to nineteen groups, including representatives of the business community and of people with disabilities. These groups are developing additional educational materials to advise covered entities and individuals with disabilities of the rights and obligations created by the ADA. The Department also operates an ADA telephone information line (202/514-0301 (voice) or 202/514-0381 (TDD)) and an electronic bulletin board (202/514-6193).

I am enclosing copies of the Department's regulations implementing titles II and III, our technical assistance manuals for titles II and III, and a list of our technical assistance grant projects for your information.

Sincerely,

W. Lee Rawls
Assistant Attorney General

Enclosures (5)
01-01578

United States Senate
May 27, 1992

The Honorable William Barr
Attorney General
Department of Justice
Constitution and Tenth Street NW
Washington, D.C. 20530

Dear Attorney General Barr:

I would appreciate your assistance with the following matter.

As a member of the Senate Labor and Human Resources Committee and a cosponsor of the Americans with Disabilities Act (ADA), I have been actively involved in the drafting and implementation of this landmark legislation. Throughout this legislative process, I have been preoccupied with several pressing questions regarding the states' liability under ADA. Specifically, I would like your response to the following questions:

1) What is a state's liability under the Act if the state does not amend its law to comply with ADA?

2) What is a state's liability under the Act for building code violations after the state informs contractors of the requirements of the federal law?

3) Are the states required to amend their building codes to comply with ADA, or does the federal law preempt existing state law?

4) What is the state's resultant liability? If the state amends its law, can it be involved in a civil suit for violations of the federal law?

5) What resources are available to the states to assist them in interpreting and implementing the access provisions, as well as the other sections, of ADA?

Thank you for your attention to my inquiry. I am looking forward to hearing from you in a timely manner. I send my best regards.

Sincerely,

Jeff Bingaman
United States Senator

JB/mh

ALBURQUERQUE LAS CRUCES ROSWELL SANTA FE
(505) 766-3636 (505) 523-6561 (505) 622-7113 (505) 988-6647
01-01579

OCT 15 1992

The Honorable George J. Mitchell
United States Senate
176 Russell Senate Office Building
Washington, D.C. 20510-1902

Dear Senator Mitchell:

This letter is in response to your inquiry on behalf of(b)(6) expressing concern that certain persons with disabilities who use service animals may be excluded from restaurants and other places of public accommodation, and that such individuals are not protected by Federal law.

The Americans with Disabilities Act of 1990 ("ADA") authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist your constituent in understanding the ADA's requirements. However, it does not constitute a legal interpretation and it is not binding on the Department.

Title III of the ADA specifically prohibits the use of eligibility criteria that tend to screen out individuals with disabilities from using places of public accommodation, unless such criteria are necessary for the operation of the public accommodation. This section, and the title III implementing regulations promulgated under it, directly address the concerns raised by (b)(6).

The Department's title III regulation makes clear that places of public accommodation are prohibited from separating individuals with disabilities from their service animals. The regulation specifically provides that a public accommodation shall modify policies, practices, or procedures to permit the use of a service animal by an individual with a disability. Further, service animals are defined to include any guide dog, signal dog,

cc: Records; Chrono; Wodatch; Contois; McDowney; FOIA; MAF.
:udd:contois:cgl.mitchell
01-01580

or other animal individually trained to do work or perform tasks for the benefit of an individual with a disability, including not only those animals that assist hearing or visually impaired individuals, but also those animals that provide minimal protection or rescue work, pull a wheelchair, or retrieve dropped items.

For your information, I am enclosing a copy of this Department's regulation implementing title III of the ADA and the Technical Assistance Manual that was developed to assist individuals and entities subject to the ADA to understand the requirements of title III. The ADA's requirements on service animals can be found at Sections 36.104 and 36.302(c) at pages 35594 and 35397 of the Department's rule and page 23 of the Department's manual.

I hope this information is useful to you in responding to (b)(6)

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

Enclosures (2)
01-01581

INDEPENDENCE DOGS INC.
LOVE-LIBERTY

146 STATE LINE ROAD
HADDSFORD, PA 19317
(215) 358-2723

M. JEAN KING
PRESIDENT

WHAT IS NEEDED TO MAKE A RELATIONSHIP WITH A SERVICE DOG WORK.

1. A NECESSARY REALIZATION ON THE RECIPIENTS PART.
   That his dog is fully trained upon his arrival.
   The recipient must further realize that his dog is obeying the trainer implicitly at this time. It is now the recipients' responsibility to transfer this love and obedience to himself. The trainer will aid in this process as much as she can but can not accomplish it until the recipient has won the dogs' love and respect.

2. BONDING
   To the point where the dog chooses to stay by your side even though the dog knows he's on free time to be where ever he wants. For this to occur the dog should go everywhere you go and apply the following guide lines.

3. MUTUAL RESPECT & UNDERSTANDING.
   To the point where the dog wishes to work and please his person instead of the trainer.
   To be in tune with your dog to the point where a new situation arises and you are able to problem solve and resolve the problem.

4. TO BE ABLE TO VOCALIZE TO YOUR DOG IN DIFFERENT TONES AND EMOTIONS. ie. To know when you need to command and when to enthusiastically motivate your dog to listen and obey.

5. CONFIDENCE IN YOUR DOG.
   To always think positive when asking your dog to do something which due to lack of bonding he has refused to do for you before and also when it's something you ask of your dog to do for the first time.

01-01582

QUESTIONS MOST FREQUENTLY ASKED ABOUT INDEPENDENCE DOGS

What kind of dog is Shantih?

An Akbash Dog from Turkey. This breed is 8,000 years old and is used now to guard sheep. They are called the "Guard Dog of the Sultans". There are only 800 of these dogs in the U.S. at this time. They area very loyal and highly intelligent breed.

How long is the training period for an Independence Dog?

From 6 to 8 months depending on the individual dog and depending also on the need of the recipient.

What breeds of dogs are used in the program?

Akbash Dogs, Rottweilers, German Shepherds, Collies, Chesapeake Bays, Labrador Retrievers, Golden Retrievers, are used for walkers and wheelchair dogs.

How much does an Independence Dog cost?

It costs approximately $8,000 to breed, raise and train one dog but the recipient is only asked to pay $150.00 and arrangements may be made to pay this amount in small installments if necessary. It has been our experience to have those who are financially able express a desire to contribute more than the minimum requirement. Such gifts are most gratefully accepted and are tax deductible.

Who is eligible for an Independence Dog?

Any man, woman or child who is mobility impaired, i.e. people suffering from muscular dystrophy, multiple sclerosis, polio, cerebral palsy, rheumatoid arthritis, etc.

What must a person do to obtain an Independence Dog?

* They must have their physicians fill out a form stating that there is a need for such a dog and describing the patient's physical condition.
* They must be willing to spend 2-4 weeks training with their dog.
* They must have a desire to live life to the fullest in spite of their handicap.
* They must agree to pay a minimum of $150 for their dog.
* They must be able (or have someone who is) to provide proper care for their dog, such as grooming, feeding, veterinary care, etc.
* They must agree to allow Independence Dogs the right to periodically ascertain that the dog is being well cared for and properly utilized.

Is there an age requirement for recipients?

Yes and no! In general Independence Dogs will be trained for anyone between the age of 10 to 65. However, there is not a hard and fast rule because each recipient is carefully screened and judged upon their individual circumstances. We have known many "old" youngsters of eight, and many "young" adults of seventy!

Isn't there a possibility that such a dog would cause their recipient to become "lazy" and not get enough exercise?

Yes, this is a possibility but we hope to circumvent it by working closely with the recipients physical therapist or occupational therapist. We feel very strongly that if properly utilized, our dogs can and will encourage their masters to attempt to do more for themselves - become more independent!

My child is still in school and we live in an apartment where dogs are not allowed, how can we have an Independence Dog?

ILLEGIBLE
ILLEGIBLE
ILLEGIBLE
ILLEGIBLE
Such bills have already been passed into law in twenty four other states and we are currently trying to have such legislation passed on a national level.

Are Independence Dogs friendly?

Yes! But we ask that our dogs not be petted by the public. They are, as are dog guides for the blind, working dogs and their full attention must be on their masters at all times! Even a moment's distraction could, in some instances, be a matter of life or death for the team.

Is Independence Dogs the only organization of this kind?

No. C.C.I. (Canine Companions for Independence) has been doing similar work for over 10 years, but they are located in Santa Rosa, California, and a recipient must pay their own transportation out and motel cost for the four week training period. They have, to date, established no other branches. It is our understanding that they are planning an extensive expansion program within the next ten years.

Handi-Dogs in Tucson, Arizona are also training "companion type" dogs. However, it is their policy to train the dog and handicapped person together which requires a much longer period of involvement for the handicapped person. These dogs are not as specialized in their training for the handicapped, neither do Handi-Dogs have other branches.

To the best of our knowledge, Support dogs for the Handicapped of Saint Louis is the fourth and final large training school for dogs serving the mobility impaired. They are located in Saint Louis, Missouri and are producing top notch service dogs. According to their director and founder they, also, have no plans for future expansion.

Independence Dogs is the first organization of its scope on the east coast. We are pleased to announce that initial steps have been taken preparatory to future cooperation and accreditation among these schools.

Will Independence Dogs protect their masters if the need arises?

Yes! They are not attack dogs or personal protection dogs, but they will be trained to give protection if and when there is a need.

How are your dogs trained?

With as much love and patience and as little discipline as it is possible to give. Our dogs work because they want to and are proud of what they are

doing not because they are afraid not to! Our dogs are trained to be intelligent "thinking" partners in a team - they do not work for us - they work with us!
Their reward is the bond we share with them - our companionship and our undying love. They are not trained "robots" they are partners-in-living.

How is Independence Dogs. Inc. financed?

Independence Dogs.Inc. is a "not-for-profit organization" and as such relies on private contributions, fund raisers, contributions from service organizations and grants from philanthropic foundations. At the present time all of our help professional and nonprofessional is volunteer, with the exception of a full time trainer and her part time assistant.

Have any provisions been made to house out-of-town students during the training periods with their dogs?

Yes, there will be rooms available for such students at our school Independence Knoll. 146 State Line Road, Chadds Ford, Pennsylvania, 19317. There will be no charge for this service (to the recipient). If the

ILLEGIBLE
ILLEGIBLE
ILLEGIBLE
ILLEGIBLE
May a recipient request a special breed of dog?

In general, no. Our dogs and recipients are carefully screened so as to achieve the "perfect match" as concerns activity level, temperament, strength, etc. These factors will, in the long run, become much more important to the recipient than the appearance or breed of the dog.

Is this a "good" life for a dog?

Yes indeed! An Independence Dog can and does go anywhere with its master. They are rarely, if ever, left alone. They receive the love and gratitude of their master many, many times a day. They are proud of their work. They feel wanted and very needed. They have the best of care, personal and veterinary, and also enjoy times of recreation and "dog" play everyday. What better life could a dog have?

We have other dogs and cats in the family who are pets, can I still have an Independence Dog?

Yes. All Independence Dogs are well socialized and non-aggressive. Advice will be given concerning the best methods to be used when introducing your Independence Dog into a home where there are other pets.

What is meant by the terms: Wheelchair Dog and Walker Dogs?

* A Wheelchair Dog is an especially trained dog to aid persons who are confined to a chair. These dogs are taught to pull their partners up ramps, through shopping malls, grocery stores, etc.: stand and brace enabling their partner to change from a wheelchair to another chair, car or bed and in the event that there is a fall from the chair this last maneuver will help the person to get back into their chair. These dogs are taught to retrieve articles which their masters may drop, turn off light switches, open heavy mall doors, pop curbs, pick up a telephone receiver and carry packages in their especially constructed back packs.

* A Walker Dog is trained to assist a partner who has difficulty walking needing perhaps a cane, crutches or human assistance. With the use of these dogs the person with cerebral palsy, multiple sclerosis or muscular dystrophy can throw away one crutch or cane and by leaning on the dog with the use of an especially designed harness be assisted up and down stairs, over curbs and out of chairs. These dogs will, of course, perform all other tasks such as retrieving etc. which are enumerated above.

In addition to services enumerated for the various categories mentioned above,

all of our dogs provide a fount of non-judgemental love, loyalty and understanding that cannot be obtained from any other source.

Whom may we contact about Independence Dogs, should we wish to contribute, volunteer our services or have need of a dog?

M. Jean King, President

Independence Dogs, Inc.
146 State Line Road
Chadds Ford, PA 19317
Phone (215) 358-2723

(Form) CURB POPPING SEQUENCE.
With Shan's aid curbs are no longer a barrier.
01-01588

(Form) Shantih provides one dog power to take Jean Shopping.
01-01589

United States Senate
Washington DC 20510-1902
July 27, 1992

Mr. James C. Lafferty
Director of Legislative Affairs
U.S. Equal Employment Opportunity Commission
1801 L Street, N.W.
Washington, DC 20507

Dear Mr. Lafferty:

I am writing on behalf of of (G)(6) Portland, Maine. I am enclosing a letter I received from (G)(6) with regard to the use of dogs to assist sighted disabled individuals to accompany them on common carrier transportation. I am interested in knowing if there is any flexibility within your regulations to address the issues raised in her correspondence.

I appreciate your consideration and I look forward to hearing from you soon.

With best wishes.

Sincerely,
George J. Mitchell

Enclosure
01-01590

(Form) INDEPENDENCE DOGS CALLING

01-01591

(b)(6)
Portland, Me

May 20, 1992

Senator George Mitchell
U S Senate
Washington, DC 20510-1902

Dear Senator Mitchell:

We have reviewed the following rules and act as well as state rulings for disabled persons who have trained dogs assisting them in their day to day living:

H. R. 2245 dated May 7, 1991
H. R. 2278 dated June 26, 1991
Public Law 102 - 240 dated December 18, 1991

In summary, Public Law 102-240 does provide that as far as transportation carriers are concerned, trained animals that assist disabled individuals are permitted to accompany them on common carrier transportation.

Present laws permit dogs trained to assist blind and hearing impaired individuals to accompany and stay with said individuals in housing, restaurants, and other businesses.

However, it is important to note that animals trained to provide specialized services for disabled individuals are not covered under federal ruling and Maine State Statutes.

In recent years, programs have started and are running to train and provide dogs and other animals to assist disabled individuals (who are not blind or hearing impaired) in their daily routine.

Therefore, strong consideration should be given to ammending the present Federal and State rules including disabled individuals and their assisting animals under the same rules established for the blind and hearing impaired.

Additionally, it will solve embarrassing situations that occur while traveling interstate and within this state.

Thank you for your consideration and help in this matter.

Sincerely,
(b)(6)

SPONSOR: Sen. Neal
Sen. Cook, Holloway
Berndt, Bane
Rep. Di Pinto, Boykin,
Maroney

DELAWARE STATE SENATE
134TH GENERAL ASSEMBLY
SENATE BILL NO. 143

AN ACT TO AMEND TITLE 6, CHAPTER 45 OF THE DELAWARE CODE RELATING TO SUPPORT ANIMALS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each House thereof concurring therein):

Section 1. Amend S4501, Title 6, Delaware Code by adding a new subsection 3, as follows:

"(3) 'Handicap' includes the use of support animal(s) because of a physical handicap of the user. Support animal means any animal individually trained to do work or perform tasks to meet the requirements of a physically disabled person, including, but not limited to, minimal protection work, rescue work, pulling a wheelchair, or fetching dropped items."

Section 2. Amend S4504(a), Title 6, Delaware Code by adding the following:

"For the purposes of training support animals to be used by the handicapped, all trainers and their support animals shall be included within the those covered by this subsection."

SYNOPSIS

At the end of the 133rd General Assembly, the word 'handicap' was added to the list of those against whom discrimination is prohibited. This Bill includes within the definition of handicap the use of support animals for such persons as those in wheelchairs. Currently, the blind and deaf already have similar legal protection in Title 31, S2117. This Bill also gives the trainers of support animals the same rights for the purposes of training these animals. This Bill requires a two-thirds majority vote due to the criminal penalties attached to violation of the Equal Accomodation Chapter.

Author: Sen. Neal

SR:JPN:rs 1 of 1
01-01593

No. 1986-186

AN ACT

HB 141

Amending the act of October 27, 1955 (P.L. 744, No. 222), entitled, as amended,

"An act prohibiting certain practices of discrimination because of race, color, religious creed, ancestry, age or national origin by employers, employment agencies, labor organizations and others as herein defined; creating the Pennsylvania Human Relations Commission in the Department of Labor and Industry; defining its functions, powers and duties; providing for procedure and enforcement; providing for formulation of an educational program to prevent prejudice; providing for judicial review and enforcement and imposing penalties," further providing for definitions; prohibiting certain discriminatory acts and practices; prohibiting the imposition of certain quotas; and reestablishing the commission and providing for its composition and compensation.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Sections 2 and 3 of the act of October 27, 1955 (P.L. 744, No. 222), known as the Pennsylvania Human Relations Act, amended April 8, 1982 (P.L. 284, No. 80), are amended to read:

Section 2. Findings and Declaration of Policy. -

(a) The practice or policy of discrimination against individuals or groups by reason of their race, color, religious creed, ancestry, handicap or disability, use of guide [dogs] animals because of blindness or deafness of the user, use of support animals because of a physical handicap of the user or because the user is a handler or trainer of support or guide animals, age, sex, or national origin is a matter of concern of the Commonwealth. Such discrimination foments domestic strife and unrest, threatens the rights and privileges of the inhabitants of the Commonwealth, and undermines the foundations of a free democratic state. The denial of equal employment, housing and public accommodation opportunities because of such discrimination, and the consequent failure to utilize the productive capacities of individuals to their fullest extent, deprives large segments of the population of the Commonwealth of earnings necessary to maintain decent standards of living, necessitates their resort to public relief and intensifies group conflicts, thereby resulting in grave injury to the public health and welfare, compels many individuals to live in dwellings which are substandard, unhealthful and overcrowded, resulting in racial segregation in public schools and other community facilities, juvenile delinquency and other evils, thereby threatening the peace, health, safety and general welfare of the Commonwealth and its inhabitants.

(b) It is hereby declared to be the public policy of this Commonwealth to foster the employment of all individuals in accordance with their fullest capacities regardless of their race, color, religious creed, ancestry,

use of support animals because of a physical handicap of the user or because the user is a handler or trainer of support or guide animals, age, sex, or national origin, and to safeguard their right to obtain and hold employment without such discrimination, to assure equal opportunities to all individuals and to safeguard their rights [at places of] to public accommodation and to secure [commercial housing] housing accommodation and commercial property regardless of race, color, religious creed, ancestry, sex, handicap or disability, use of guide [dogs] animals because of blindness or deafness of the user or national origin.

(c) This act shall be deemed an exercise of the police power of the Commonwealth for the protection of the public welfare, prosperity, health and peace of the people of the Commonwealth of Pennsylvania.

Section 3. Right to Freedom from Discrimination in Employment, Housing and [Places of] Public Accommodation. - The opportunity for an individual to obtain employment for which he is qualified, and to obtain all the accommodations, advantages, facilities and privileges of any [place of] public accommodation and of [commercial housing] housing accommodation and commercial property without discrimination because of race, color, religious creed, ancestry, handicap or disability, age, sex [or], national origin [are], the use of a guide or support animal because of blindness, deafness or physical handicap of the user or because the user is a handler or trainer of support or guide animals is hereby recognized as and declared to be [civil rights] a civil right which shall be enforceable as set forth in this act.

[The opportunity of an individual to obtain all the accommodations, advantages, facilities and privileges of commercial housing without discrimination due to the sex of an individual or to the use of a guide dog because of blindness or deafness of the user is hereby recognized as and declared to be a civil right which shall be enforceable as set forth in this act.]

Section 2. Section 4(c), (i), (j), (l) and (q) of the act, amended February 28, 1961 (P.L.47, No.19), November 27, 1967 (P.L.622, No.284), November 29, 1967 (P.L.632, No.291),' December 10, 1970 (P.L.882, No.278) and December 9, 1982 (P.L.1053, No.247), are amended and the section is amended by adding a clause to read:

Section 4. Definitions. - As used in this act unless a different meaning clearly appears from the context:

* * *

(c) The term "employee" does not include (1) any individual employed in agriculture or in the domestic service of any person, (2) any [individual] individuals who, as a part of [his] their employment, [resides] reside in the personal residence of the employer, (3) any individual employed by said individual's parents, spouse or child.

* * *

(i) The term "housing accommodations" includes (1) any building [or], structure, mobile home site or facility, or portion thereof, which is used or

occupied or is intended, arranged or designed to be used or occupied as the home residence or sleeping place of one or more individuals, groups or fami-
ILLEGIBLE
01-01594

land offered for sale [or], lease [for commercial housing] or held for the purpose of constructing or locating thereon any such building, structure, mobile home site or facility. The term "housing accommodation" shall not include any personal residence offered for rent by the owner or lessee thereof or by his or her broker, salesperson, agent or employee.

(j) [The term "commercial housing" means housing accommodations held or offered for sale or rent (1) by a real estate broker, salesman or agent, or by any other person pursuant to authorization of the owner; (2) by the owner himself; or (3) by legal representatives, but shall not include any personal residence offered for rent by the owner or lessee thereof, or by his broker, salesman, agent or employee.] The term "commercial property" means (1) any building, structure or facility, or portion thereof, which is used, occupied or is intended, arranged or designed to be used or occupied for the purpose of operating a business, an office, a manufactory or any public accommodation; and (2) any vacant land offered for sale, lease or held for the purpose of constructing or locating thereon any such building, structure, facility, business concern or public accommodation.

* * *

(l) The term "[place of] public accommodation, resort or amusement" means any [place] accommodation, resort or amusement which is open to, accepts or solicits the patronage of the general public, including but not limited to inns, taverns, roadhouses, hotels, motels, whether conducted for the entertainment of transient guests or for the accommodation of those seeking health, recreation or rest, or restaurants or eating houses, or any place where food is sold for consumption on the premises, buffets, saloons, barrooms or any store, park or enclosure where spirituous or malt liquors are sold, ice cream parlors, confectioneries, soda fountains and all stores where ice cream, ice and fruit preparations or their derivatives, or where beverages of any kind are retailed for consumption on the premises, drug stores, dispensaries, clinics, hospitals, bathhouses, swimming pools, barber shops, beauty parlors, retail stores and establishments, theatres, motion picture houses, airdromes, roof gardens, music halls, race courses, skating rinks, amusement and recreation parks, fairs, bowling alleys, gymnasiums, shooting galleries, billiard and pool parlors, public libraries, kindergartens, primary and secondary schools, high schools, academies, colleges and universities, extension courses and all educational institutions under the supervision of this Commonwealth, nonsectarian cemeteries, garages and all public conveyances operated on land or water or in the air as well as the stations, terminals and airports thereof, financial Institutions and all Commonwealth facilities and services, including such facilities and services of all political subdivisions thereof, but shall not include any accommodations which are in their nature distinctly private.

* * *

(q) The term "permanent hearing examiner" shall mean a full-time employe who is an attorney [or other person knowledgeable in human relations matters designated by the Commission to conduct hearings required to be held under this act. The person knowledgeable in human relations matters must demonstrate such knowledge through a written examination created,

developed and administered by the Commission].
* * *
(s) The term "commercial profit" means any form of ILLEGIBLE money, or which can be measured in terms of money.
Section 3. Section 5 of the act, reenacted, amended or added February 28, 1961 (P.L. 47, No. 19), December 27, 1965 (P.L. 1224, No. 497), November 29, 1967 (P.L. 632, No. 291), July 9, 1969 (P.L. 133, No. 56), June 9, 1972
(P.L. 368, No. 102), December 19, 1974 (P.L. 966, No. 318), January 10, ILLEGIBLE
(P.L. 1, No. 1), December 9, 1980 (P.L. 1122, No. 198) and April 8, ILLEGIBLE (P.L. 284, No. 80), is amended to read:
Section 5. Unlawful Discriminatory Practices.--It shall be an ILLEGIBLE discriminatory practice, unless based upon a bona fide occupational qualification, or in the case of a fraternal corporation or association, unless based upon membership in such association or corporation, or except where based upon applicable security regulations established by the United States or the Commonwealth of Pennsylvania:
(a) For any employer because of the race, color, religious creed, ancestry, age, sex, national origin or non-job related handicap or disability of an individual to refuse to hire or employ, or to bar or to discharge from employment such individual, or to otherwise discriminate against such individual with respect to compensation, hire, tenure, terms, conditions or privileges of employment, if the individual is the best able and most competent to perform the services required. The provision of this paragraph shall not apply, to (1) termination of employment because of the terms or conditions of any bona fide retirement or pension plan, (2) operation of the terms or condition, of any bona fide retirement or pension plan which have the effect of a minimum service requirement, (3) operation of the terms or conditions of any bona fide group or employee insurance plan, (4) age limitations placed upon entry into bona fide apprenticeship programs of two years or more approved by the State Apprenticeship and Training Council of the Department of Labor and Industry, established by the act of July 14, 1961 (P.L. 604, No. ILLEGIBLE),
known as "The Apprenticeship and Training Act." Notwithstanding any provision of this clause, it shall not be an unlawful employment practice for a religious corporation or association to hire or employ on the basis of sex in those certain instances where sex is a bona fide occupational qualification because of the religious beliefs, practices, or observances of the corporation, or association.
(b) For any employer, employment agency or labor organization, prior to the employment or admission to membership, to
(1) Elicit any information or make or keep a record of or use any form of application or application blank containing questions or entries concerning the race, color, religious creed, ancestry, age, sex, national origin or past handicap or disability of any applicant for employment or membership. An employer may inquire as to the existence and nature of a present handicap or disability. To determine whether such handicap or disability substantially

interferes with the ability to perform the essential function of the employ-
01-01595

ment which is applied for, is being engaged in, or has been engaged in, the employer must inquire beyond the mere existence of a handicap or disability.

(2) Print or publish or cause to be printed or published any notice or advertisement relating to employment or membership indicating any preference, limitation, specification or discrimination based upon race, color, religious creed, ancestry, age, sex, national origin or non-job related handicap or disability.

(3) Deny or limit, through a quota system, employment or membership because of race, color, religious creed, ancestry, age, sex, national origin, non-job related handicap or disability or place of birth.

(4) Substantially confine or limit recruitment or hiring of individuals, with intent to circumvent the spirit and purpose of this act, to any employment agency, employment service, labor organization, training school or training center or any other employee-referring source which services individuals who are predominantly of the same race, color, religious creed, ancestry, age, sex, national origin or non-job related handicap or disability.

(5) Deny employment because of a prior handicap or disability.

Nothing in clause (b) of this section shall bar any institution or organization for handicapped or disabled persons from limiting or giving preference in employment or membership to handicapped or disabled persons.

(c) For any labor organization because of the race, color, religious creed, ancestry, age, sex [or], national origin or non-job related handicap or disability of any individual to deny full and equal membership rights to any individual or otherwise to discriminate against such individuals with respect to hire, tenure, terms, conditions or privileges of employment or any other matter, directly or indirectly, related to employment.

(d) For any person, employer, employment agency or labor organization to discriminate in any manner against any individual because such individual has opposed any practice forbidden by this act, or because such individual has made a charge, testified or assisted, in any manner, in any investigation, proceeding or hearing under this act.

(c) For any person, [whether or not an] employer, employment agency, labor organization or employe, to aid, abet, incite, compel or coerce the doing of any act declared by this section to be an unlawful discriminatory practice, or to obstruct or prevent any person from complying with the provisions of this act or any order issued thereunder, or to attempt, directly or indirectly, to commit any act declared by this section to be an unlawful discriminatory practice.

(f) For any employment agency to fail or refuse to classify properly, ILLEGIBLE for employment or otherwise to discriminate against any individual because of his race, color, religious creed, ancestry, age, sex, national origin or non-job related handicap or disability.

(g) For any individual seeking employment to publish or cause to be published any advertisement which [specifies or in any manner expresses his race, color, religious creed, ancestry, age, sex or national origin, or] in any manner expresses a limitation or preference as to the race, color, religious creed, ancestry, age, sex [or], national origin or non-job related handicap or disability of any prospective employer.

(h) For any person to:

(1) Refuse to sell, lease, finance or otherwise to deny or withhold [commercial housing] any housing accommodation or commercial property from any person because of the race, color, religious creed, ancestry, sex, national origin or handicap or disability of any prospective owner, occupant or user of such [commercial housing,] housing accommodation or commercial property, or to refuse to lease [commercial housing] any housing accommodation or commercial property to any person due to use of a guide [dog] animal because of the blindness or deafness of the user, or use of a support animal because of a physical handicap of the user or because the user is a handler or trainer of support or guide animals.

(1.1) Evict or attempt to evict an occupant of any housing accommodation before the end of the term of a lease because of pregnancy or the birth of a child.

(2) Refuse to lend money, whether or not secured by mortgage or otherwise for the acquisition, construction, rehabilitation, repair or maintenance of [commercial housing] any housing accommodation or commercial property or otherwise withhold financing of [commercial housing] any housing accommodation or commercial property from any person because of the race, color, religious creed, ancestry, sex, national origin [or], handicap or disability or the use of a guide or support animal because of the blindness, deafness or physical handicap of the user or because the user is a handler or trainer of support or guide animals, of any present or prospective owner, occupant or user of such [commercial housing] housing accommodation or commercial property.

(3) Discriminate against any person in the terms or conditions of selling or leasing any [commercial housing] housing accommodation or commercial property or in furnishing facilities, services or privileges in connection with the ownership, occupancy or use of any [commercial housing] housing accommodation or commercial property because of the race, color, religious creed, ancestry, sex, national origin [or], handicap or disability or the use of a guide or support animal because of the blindness, deafness or physical handicap of the user or because the user is a handler or trainer of support or guide animals, of any present or prospective owner, occupant or user of such [commercial housing or to discriminate against any person in the terms of leasing any commercial housing or in furnishing facilities, services or privileges in connection with the occupancy or use of any commercial housing due to use of a guide dog because of the blindness or deafness of the user] housing accommodation or commercial property.

(4) Discriminate against any person in the terms or conditions of any loan of money, whether or not secured by mortgage or otherwise for the acquisition, construction, rehabilitation, repair or maintenance of [commercial housing] housing accommodation or commercial property because of the race, color, religious creed, ancestry, sex, national origin or handicap or disability of any present or prospective owner, occupant or user of [such commercial housing] any housing accommodation or commercial property.

01-01596

(5) Print, publish or circulate any statement or advertisement: (i) relating to the sale, lease or acquisition of any [commercial housing] housing accommodation or commercial property or the loan of money, whether or not secured by mortgage, or otherwise for the acquisition, construction, rehabilitation, repair or maintenance of [commercial housing] any housing accommodation or commercial property which indicates any preference, limitation, specification, or discrimination based upon race, color, religious creed, ancestry, sex, national origin or handicap or disability, or [to print, publish or circulate any statement or advertisement relating to] (ii) relating to the lease of any [commercial dwelling] housing accommodation or commercial property which indicates any preference, limitation, specification or discrimination based upon use of a guide [dog] or support animal because of the blindness [or], deafness or physical handicap of the user or because the user is a handler or trainer of support or guide animals.

(6) Make any inquiry, elicit any information, make or keep any record or use any form of application, containing questions or entries concerning race, color, religious creed, ancestry, sex, national origin or handicap or disability in connection with the sale or lease of any [commercial housing] housing accommodation or commercial property or loan of any money, whether or not secured by mortgage or otherwise for the acquisition, construction, rehabilitation, repair or maintenance of [commercial housing] any housing accommodation or commercial property, or to make any inquiry, elicit any information, make or keep any record or use any form of application, containing questions or entries concerning the use of a guide [dog] or support animal because of the blindness [or], deafness or physical handicap of the user or because the user is a handler or trainer of support or guide animals, in connection with the lease of any [commercial housing] housing accommodation or commercial property.

(i) For any person being the owner, lessee, proprietor, manager, superintendent, agent or employe of any place of public accommodation, resort or amusement to:

(1) Refuse, withhold from, or deny to any person because of his race, color, sex, religious creed, ancestry, national origin or handicap or disability, or to any person due to use of a guide [dog] or support animal because of the blindness [or], deafness or physical handicap of the user or because the user is a handler or trainer of support or guide animals, either directly or indirectly, any of the accommodations, advantages, facilities or privileges of such place of public accommodation, resort or amusement.

(2) Publish, circulate, issue, display, post or mail, either directly or indirectly, any written or printed communication, notice or advertisement to the effect that any of the accommodations, advantages, facilities and privileges of any such place shall be refused, withheld from or denied to any person on account of race, color, religious creed, sex, ancestry, national origin or handicap or disability, or to any person due to use of a guide [dog] or support animal because of the blindness [or], deafness or physical handicap of the user, or that the patronage or custom threat of any person, belonging to or purporting to be of any particular race, color, religious creed, ancestry, national origin or handicap or disability, or to any person due to

ILLEGIBLE guide [dog] or support animal because of the blindness [or], deafness or physical handicap of the user or because the user is a handler or trainer of support or guide animals, is unwelcome, objectionable or not acceptable, desired or solicited.

Nothing in clause (h) of this section shall bar any religious or denominational institution or organization or any charitable or educational organization, which is operated, supervised or controlled by or in connection with a religious organization or any bona fide private or fraternal organization from giving preference to persons of the same religion or denomination or to members of such private or fraternal organization or from making such selection as is calculated by such organization to promote the religious principles or the aims, purposes or fraternal principles for which it is established or maintained. Nor shall it apply to the rental of rooms or apartments in a landlord occupied rooming house with a common entrance.

(j) For any person subject to the act to fail to post and exhibit prominently in his place of business any fair practices notice prepared and distributed by the Pennsylvania Human Relations Commission.

(k) For any employer to discriminate against an employe or a prospective employe because [he] the employe only has a general education development certificate as compared to a high school diploma. However, should vocational technical training or other special training be required with regard to a specific position, then such training or special training may be considered by the employer.

This section of the act [as amended] shall not be construed to prohibit the refusal to hire or the dismissal of a person who is not able to function prop- erly in the job applied for or engaged in. Section 4. Section 5.1 of the act, added July 20, 1968 (P.L. 454, No. 213), is amended to read:

Section 5.1. Religious Observance: Public Employes.--(a) It shall be an unlawful discriminatory practice for any officer, agency or department of the State or any of its political subdivisions, to prohibit, prevent or disqualify any person from, or otherwise to discriminate against any person in, obtaining or holding employment by the State or by any such subdivision, because of [his] such person's observance of any particular day or days or any portion thereof as a sabbath or other holy day in accordance with the requirements of [his] the person's religion.

(b) Except as may be required in an emergency or where [his] personal presence is indispensable to the orderly transaction of public business, no person employed by the State or any of its political subdivisions shall be required to remain at [his] the place of employment during any day or days or portion thereof that, as a religious requirement [of his religion, he], the person observes as [his] the sabbath or other holy day, including a reasonable time prior and subsequent thereto for travel between [his] the place of employment and [his] home, provided however, that any such absence from work shall, wherever practicable in the judgment of the employer, be made up by an equivalent amount of time and work at some other mutually convenient

nient time, or shall be charged against any leave with pay ordinarily granted, other than sick leave, provided further, however, that any such absence not so made up or charged, may be treated by the employer of such person as leave taken without pay.

(c) This section shall not be construed to apply to any position dealing with the public health or safety where the person holding such position must be available for duty whenever needed, or to any position or class of positions the nature and quality of the duties of which are such that the personal presence of the holder of such position is regularly essential on any particular day or days or portion thereof for the normal performance of such duties with respect to any applicant therefor or holder thereof who, as a religious requirement [of his religion], observes such day or days or portion thereof as [his] the sabbath or other holy day.

Section 5. Section 5.2(a) of the act, added October 10, 1973 (P.L.278, No.78), is amended to read:

Section 5.2. Abortion and Sterilization; Immunity from Requirement to Perform; Unlawful Discriminatory Practices.-(a) No hospital or other health care facility shall be required to, or held liable for refusal to, perform or permit the performance of abortion or sterilization contrary to its stated ethical policy. No physician, nurse, staff member or employee of a hospital or other health care facility, who shall state in writing to such hospital or health care facility [his] an objection to performing, participating in, or cooperating in, abortion or sterilization on moral, religious or professional grounds, shall be required to, or held liable for refusal to, perform, participate in, or cooperate in such abortion or sterilization.

***

Section 6. The act is amended by adding a section to read:

Section 5.3. Prohibition of Certain Real Estate Practices.-It shall be an unlawful discriminatory practice for any person to:

(a) Induce, solicit or attempt to induce or solicit for commercial profit any listing, sale or transaction involving any housing accommodation or commercial property by representing that such housing accommodation or commercial property is within any neighborhood, community or area adjacent to any other area in which there reside, or do not reside, persons of a particular race, color, religious creed, ancestry, sex, national origin, handicap or disability, or who are guide or support animal dependent.

(b) Discourage, or attempt to discourage, for commercial profit, the purchase or lease of any housing accommodation or commercial property by representing that such housing accommodation or commercial property is within any neighborhood, community or area adjacent to any other area in which there reside, or may in the future reside in increased or decreased numbers, persons of a particular race, color, religious creed, ancestry, sex, national origin, handicap or disability, or who are guide or support animal dependent.

(c) Misrepresent, create or distort a circumstance, condition or incident for the purpose of fostering the impression or belief, on the part of any owner, occupant or prospective owner or occupant of any housing accommodation or commercial property, that such housing accommodation ILLEGIBLE

commercial property is within any neighborhood, community or area adjacent to any other area which would be adversely impacted by the residence, or future increased or decreased residence, of persons of a particular race, color, religious creed, ancestry, sex, national origin, handicap or disability,
or who are guide or support animal dependent within such neighborhood, community or area.

(d) In any way misrepresent or otherwise misadvertise within a neighborhood or community, whether or not in writing, that any housing accommodation or commercial property within such neighborhood or community is available for inspection, sale, lease, sublease or other transfer, in any context where such misrepresentation or misadvertising would have the effect of fostering an impression or belief that there has been or will be an increase in real estate activity within such neighborhood or community due to the residence, or anticipated increased or decreased residence, of persons of a particular race, color, religious creed, ancestry, sex, national origin, handicap or disability, or the use of a guide or support animal because of the blindness, deafness or physical handicap of the user.

Section 7. Section 6 of the act, amended August 4, 1961 (P.L. 922, No.402), is amended to read:

Section 6. Pennsylvania Human Relations Commission. There shall be, and there is hereby established in the [Department of Labor and Industry] Governor's Office a non-partisan, departmental administrative commission for the administration of this act, which shall be known as the "Pennsylvania Human Relations Commission," and which is hereinafter referred to as the "Commission."

Said Commission shall consist of eleven members, to be known as Commissioners, who shall be appointed by the Governor by and with the advice and consent of [two thirds of all] a majority of the members of the Senate, not more than six of such Commissioners to be from the same political party, and each of whom shall hold office for a term of five years or until his successor shall have been duly appointed and qualified[: Provided, however, That in making the first appointments to said Commission one member shall be appointed for a term of one year, two for a term of two years, two for a term of three years, two for a term of four years and two for a term of five years. The two members added to the Commission hereby shall be appointed for terms to run concurrently with the term of the member or his successor who was appointed for a one year term when the Commission was first established]. Vacancies occurring in an office of a member of the Commission by expiration of term, death, resignation, removal or for any other reason shall be filled in the manner aforesaid for the balance of that term. Commission members failing to attend meetings for three consecutive months shall forfeit their seats unless the chairperson of the commission receives written notification from the member involved that the absence was due to personal illness or the death or illness of an immediate family member.

Subject to the provisions of this act, the Commission shall have all the powers and shall perform the duties generally vested in and imposed upon

departmental administrative boards and commissions by the act, approved the ninth day of April, one thousand nine hundred twenty-nine (Pamphlet Laws 177), known as "The Administrative Code of one thousand nine hundred twenty-nine," and its amendments, and shall be subject to all the provisions of such code which apply generally to departmental administrative boards and commissions.

The Governor shall designate one of the members of the Commission to be its chairman who shall preside at all meetings of the Commission and perform all the duties and functions of the chairman thereof. The Commission may designate one of its members to act as chairman during the absence or incapacity of the chairman and, when so acting, the member so designated shall have and perform all the powers and duties of the chairman of the Commission.

Six members of the Commission or a majority of those duly appointed and qualified shall constitute a quorum for transacting business, and a majority vote of those present at any meeting shall be sufficient for any official action
taken by the Commission.

Each member of the Commission shall receive per diem compensation at the rate of [fifteen dollars ($15)] sixty dollars ($60) per day for the time actu-
ally devoted to the business of the Commission. Members shall also receive the amount of reasonable traveling, hotel and other necessary expenses incurred in the performance of their duties in accordance with Commonwealth regulations.

The Commission shall adopt an official seal by which its acts and proceed-
ings shall be authenticated, and of which the courts shall take judicial notice.
The certificate of the chairman of the Commission, under the seal of the Commission and attested by the secretary, shall be accepted in evidence in any judicial proceeding in any court of this Commonwealth as adequate and sufficient proof of the acts and proceedings of the Commission therein certified to.

Section 8. Section 7(i), (j) and (k) of the act, amended July 9, 1969 (P.L.133, No. 56) and November 26, 1978 (P.L.1292, No. 309), are amended and the section is amended by adding clauses to read:

Section 7. Powers and Duties of the Commission.-The Commission shall have the following powers and duties:
***

(c.1) To conduct mandatory training seminars on the Pennsylvania Human Relations Act and other applicable Federal and State law procedures and rules for all investigative personnel.

(c.2) To afford complainants and respondents the opportunity for comments after the final disposition of a complaint. These comments shall be provided to the Commission members.

(c.3) To appoint attorneys to perform the following functions: (1) render legal advice to Commission members on matters appearing before it; or (2) give legal assistance to complainants appearing before the Commission or hearing examiners. These responsibilities shall require a separate staff of attorneys to perform each function.

***

(i) To create such advisory agencies and conciliation councils, local or state-wide, as will aid in effectuating the purposes of this act. The Commission may itself or it may empower these agencies and councils to (1) study the problems of discrimination in all or specific fields of human relationships when based on race, color, religious creed, ancestry, age, sex [or], national origin or handicap or disability, and (2) foster, through community effort or otherwise, good will among the groups and elements of the population of the State. Such agencies and councils may make recommendations to the Commission for the development of policies and procedure in general. Advisory agencies and conciliation councils created by the Commission shall be composed of representative citizens, serving without pay, but the Commission may make provision for technical and clerical assistance to such agencies and councils, and for the payment of the expenses of such assistance.

(j) To issue such publications and such results of investigations and research as, in its judgment, will tend to promote good will and minimize or eliminate discrimination because of race, color, religious creed, ancestry, age, sex [or], national origin or handicap or disability.

(k) From time to time but not less than once a year, to report to the [Leg-
islature] General Assembly and the Governor describing in detail the investigations, proceedings and hearings it has conducted and their outcome, the decisions it has rendered and the other work performed by it, and make recommendations for such further legislation concerning abuses and discrimination because of race, color, religious creed, ancestry, age, sex [or], national origin or handicap or disability as may be desirable.

***

(m) To submit annually a report to the Labor and Industry Committee of the Senate and the State Government Committee of the House, with a description of the types of complaints received, status of cases, Commission action which has been taken, how many were found to have probable cause, how many were resolved by public hearing and the length of time from the initial complaint to final Commission resolution.

(n) To notify local human relations commissions of complaints received by the Pennsylvania Human Relations Commission involving persons within a commission's jurisdiction.

(o) To prepare and publish all findings of fact, conclusions of the law,

final decisions and orders made after a public hearing by the hearing examiners, Commission panel or full Commission.

(p) To give public access to the commission's compliance manual.

(q) To preserve opinions rendered by the Commission for five years from the date of publication.

Section 9. Section 8 of the act is amended to read:

Section 8. Educational Program.-

[In order to eliminate prejudice among the various racial, religious and nationality groups in this Commonwealth and to further good will among such groups, the] The Commission, in cooperation with the [Department of Public Instruction] Department of Education, is authorized to prepare a comprehensive educational program, designed for the students of the schools

in this Commonwealth and for all other residents thereof, in order to eliminate prejudice [against such groups] against and to further good will among all persons, without regard to race, religious creed, ancestry, age, sex, national origin, handicap or disability.

Section 10. Section 9(a), (b), (l) and (g) of the act, amended December 9, 1982 (P.L.1053, No.247), are amended to read:

Section 9. Procedure.--(a) Any [Individual] person claiming to be aggrieved by an alleged unlawful discriminatory practice may make, sign and file with the Commission a verified complaint, in writing, which shall state the name and address of the person, employer, labor organization or employment agency alleged to have committed the unlawful discriminatory practice complained of, and which shall set forth the particulars thereof and contain such other information as may be required by the Commission. Commission representatives shall not modify the substance of the complaint. The Commission upon its own initiative or the Attorney General may, in like manner, make, sign and file such complaint. Any employer whose employes, or some of them, hinder or threaten to hinder compliance with the provisions of this act may file with the Commission a verified complaint, asking for assistance by conciliation or other remedial action and, during such period of conciliation or other remedial action, no hearings, orders or other actions shall be taken by the Commission against such employer.

(b) (1) After the filing of any complaint, or whenever there is reason to believe that an unlawful discriminatory practice has been committed, the Commission shall make a prompt investigation in connection therewith.

(2) The Commission shall send a copy of the complaint to the named respondent within thirty days from the date of docketing the complaint.

(3) A respondent shall file a written, verified answer to the complaint within thirty days of service of the complaint. The Commission, upon request of the respondent, may grant an extension of not more than thirty additional days.

* * *

(l) If, upon all the evidence at the hearing, the Commission shall find that a respondent has engaged in or is engaging in any unlawful discriminatory practice as defined in this act, the Commission shall state its findings of fact, and shall issue and cause to be served on such respondent an order requiring such respondent to cease and desist from such unlawful discriminatory practice and to take such affirmative action, including, but not limited to, reimbursement of certifiable travel expenses in matters involving the complaint, not to exceed fifty dollars ($50), compensation for loss of work in matters involving the complaint, not to exceed two hundred dollars ($200), hiring, reinstatement or upgrading of employees, with or without back pay, admission or restoration to membership in any respondent labor organization, the making of reasonable accommodations, or selling or leasing specified [commercial housing] housing accommodations or commercial property upon such equal terms and conditions and with such equal facilities, services and privileges or lending money, whether or not secured by mortgage or othnance of [commercial housing] housing accommodations or commercial property, upon such

equal terms and conditions to any person discriminated against or all persons as, in the judgment of the Commission, will effectuate the purposes of this act, and including a requirement for report of the manner of compliance. When the respondent is a licensee of the Commonwealth, the Commission shall inform the appropriate State licensing authority of the order with the request that the licensing authority take such action as it deems appropriate against such licensee. An appeal from the Commission's order shall act as a supersedeas and stay such action by the State licensing authority until a final decision on said appeal. If, upon all the evidence, the Commission shall find that a respondent has not engaged in any such unlawful discriminatory practice, the Commission shall state its findings of fact, and shall issue and cause to be served on the complainant an order dismissing the said complaint as to such respondent.

(g) The Commission shall establish rules or practice to govern, expedite and effectuate the foregoing procedure and its own actions thereunder. Three or more members of the Commission or a permanent hearing examiner designated by the Commission shall constitute the Commission for any hearing required to be held by the Commission under this act. The recommended findings, conclusions and order made by said members or permanent hearing examiner shall be reviewed and approved or reversed by the Commission before such order may be served upon the parties to the complaint. The recommended findings, conclusions and order made by said members or permanent hearing examiner shall become a part of the permanent record of the proceeding and shall accompany any order served upon the parties to the complaint. Any complaint filed pursuant to this section must be so filed within [ninety] one hundred eighty days after the alleged act of discrimination. Any complaint may be withdrawn at any time by the party filing the complaint.

Section II. Section 12(b) of the act, amended December 19, 1994 (P.L.966, No.318), is amended and the section is amended by adding a subsection to read:

Section 12. Construction and Exclusiveness of Remedy. -

* * *

(b) Except as provided in subsection (c), nothing contained in this act shall be deemed to repeal or supersede any of the provisions of any existing or hereafter adopted municipal ordinance, municipal charter or of any law of this Commonwealth relating to discrimination because of race, color, religious creed, ancestry, age, sex, national origin or handicap or disability, but as to acts declared unlawful by section five of this act the procedure herein provided shall, when invoked, be exclusive and the final determination therein shall exclude any other action, civil or criminal, based on the same grievance of the complainant concerned. If [such] the complainant institutes any action based on such grievance without resorting to the procedure provided in this act, [he] such complainant may not subsequently resort to the procedure herein. In the event of a conflict between the interpretation of a ILLEGIBLE of this ILLEGIBLE and the interpretation of a similar provision contained

in any municipal ordinance, the interpretation of the provision in this act shall apply to such municipal ordinance.

* * *

(c.1) Notwithstanding subsections (a) and (c) or any other provision of this act, nothing in this act shall be deemed to authorize imposition by the Commission of remedial quota relief in cases involving hiring or promoting of employees of the Commonwealth, its agencies or instrumentalities or employees of local governments and school districts in this Commonwealth. This subsection shall not, however, prohibit the voluntary adoption of an affirmative action plan designed to assure that all persons are accorded equality of opportunity in employment.

* * *

Section 12. Section 12.1 of the act is amended by adding a clause to read:

Section 12.1. Local Human Relations Commissions.--* * *

(e) The local human relations commission shall notify the Pennsylvania Human Relations Commission of complaints received involving discriminatory acts within that commission's jurisdiction.

Section 13. This act, with respect to the Pennsylvania Human Relations Commission, constitutes the legislation required to reestablish an agency under the act of December 22, 1981 (P.L.508, No. 142), known as the Sunset Act.

Section 14. The Pennsylvania Human Relations Commission shall continue together with its statutory functions and duties until December 31, 1991, when it shall terminate and go out of existence unless reestablished or continued by the General Assembly for an additional ten years. Evaluation and review, termination, reestablishment and continuation of the agency beyond December 31, 1991, and every tenth year thereafter, shall be conducted pursuant to the act of December 22, 1981 (P.L.508, No.142), known as the Sunset Act.

Section 15. The presently confirmed members of the existing Pennsylvania Human Relations Commission, as of December 31, 1986, shall continue to serve as members until their present terms of office expire and until their successors are appointed and qualified.

Section 16. Each rule and regulation of the Pennsylvania Human Relations Commission in effect on December 31, 1986, shall remain in effect until repealed or amended by the Pennsylvania Human Relations Commission.

Section 17. This act shall be retroactive to December 31, 1986, if enacted
after that date.

Section 18. This act shall take effect immediately.

APPROVED - The 16th day of December, A.D. 1986.

DICK THORNBURGH

No. 1986-187

AN ACT

HB 241

Providing for the operation of vending facilities by licensed blind persons: creating a Committee of Blind Vendors; granting powers to and imposing duties

upon the committee; and granting powers to and imposing duties upon an administrative unit in the Department of Public Welfare.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Short title.

This act shall be known and may be cited as the Little Randolph Sheppard Act.

Section 2. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Blind person." A person whose central acuity does not exceed 20/200 in the better eye with correcting lenses or whose visual acuity, if better than 20/200, is accompanied by a limit of the field of vision in the better eye to a degree that its widest diameter subtends an angle of no greater than 20 degrees. In determining whether an individual is blind, there shall be an examination by a physician skilled in diseases of the eye or by an optometrist.

"Bureau" or "Bureau of Blindness and Visual Services." The administrative unit in the department, under the commissioner, which provides services to the blind and visually impaired.

"Commissioner." The Commissioner of the Bureau of Blindness and Visual Services of the department.

"Committee." The Committee of Blind Vendors established by section 3.

"Department." The Department of Public Welfare of the Commonwealth.

"Rental fee." The fee fixed by the commissioner and the committee for the rental of the snack bar location and equipment.

"State property." Property owned or leased by the State government or an agency of the State government and designated by the bureau as appropriate for participation in the Business Enterprise Program. The definition shall not include property which is owned or leased for:

(1) Rest, recreation and safety rest areas on the national system of interstate and defense highways.

(2) Institutions of higher learning except as provided in section 9.

(3) Institutions of the Department of Corrections.

T. 10/13/92
SK:SBO:kgf
DJ# 192-180-11554

OCT 16 1992

The Honorable Alan Cranston
United States Senate
112 Hart Senate Office Building
Washington, D.C. 20510

ATTN: Melissa Baker

Dear Senator Cranston:

This responds to your letter requesting a response to your previous correspondence of July 18, 1991, which transmitted an inquiry from Mr. Herb Levine, Program Services Coordinator of the Independent Living Resources Center in San Francisco, California.

We regret that we have been unable to locate a record of your previous letter. However, we have ascertained that on behalf of Mr. Levine, you expressed concerns about access to substance abuse treatment programs for individuals with disabilities.

Since January 26, 1992 (six months subsequent to Mr. Levine's original inquiry), substance abuse treatment programs offered by State or local governments have been covered by title II of the Americans with Disabilities Act (ADA), which applies to all services, programs, and activities provided by public entities. If the programs receive Federal financial assistance, they are also covered by section 504 of the Rehabilitation Act, which applies to programs and activities that receive Federal financial assistance and to programs and activities conducted by Federal Executive Agencies. Both the ADA and section 504 prohibit discrimination against individuals with disabilities, and their requirements are generally similar. These requirements are explained in the enclosed Technical Assistance Manual for title II.

Private entities that operate substance abuse treatment

programs are not covered by title II of the ADA, but would be covered by section 504 if they receive Federal financial assistance. Since July 1992, they have also been covered by

:udd:kaltenborn:cranston
cc: Records, CRS, FOIA, Friedlander (3), Kaltenborn, Breen
01-01602

title III of the ADA as places of public accommodation. The requirements of title III, which are similar to those of title II, are explained in the enclosed Technical Assistance Manual for title III.

If Mr. Levine is aware of specific cases in which the ADA or Section 504 requirements are being violated, he may file a complaint with the appropriate Federal agency. Complaints alleging violations of title II or III of the ADA that have occurred since January 26, 1992, may be filed under the procedures for filing complaints under the ADA as explained in sections II-9.2000 and III-8.3000 of the Manuals. A complaint may be filed by an individual who believes that he or she or a specific class of individuals has been discriminated against, and must describe the alleged discriminatory action in sufficient detail to enable the agency to investigate the allegations.

Complaints under section 504 should be filed with the civil rights office of the agency that provides the Federal financial assistance to the program or activity. Also, an individual may file a private suit under title II or III of the ADA or section 504 and is not required to exhaust administrative remedies before doing so.

I hope that this information is helpful to you in responding to Mr. Levine.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

Enclosures (2)
01-01603

Independent Living
RESOURCE CENTER SAN FRANCISCO
FREEDOM OF CHOICE
FOR INDIVIDUALS
WITH DISABILITIES

May 23, 1991

Senator Alan Cranston
Hart Bldg. #112
Washington, D.C. 20510

Dear Senator Cranston:

Enclosed you will find correspondence from San Francisco Community Substance Abuse Services, the San Francisco Task Force on Alcohol, Drugs and Disability and Independent Living Resource Center relating to serious concerns about access to substance abuse treatment programs for people with disabilities.

We are dismayed and alarmed that the substance abuse treatment system may be largely inaccessible to people with disabilities. Reports from the Little Hoover Commission, State Alcohol and Drug Programs and the California Attorney General's Commission on Disability speak of such lack of access. Is ADA to be a sign of change or empty ILLEGIBLE? Does the War on Drugs exclude people with disabilities?

We request the advocacy of your office to demand a prompt compliance review, evaluation and monitoring of San Francisco Community Abuse Services by the office of Civil Rights with a firm action plan to address areas where compliance is lacking. We trust that you will see this request as consistent with your record of concern with and advocacy for the rights of people with disabilities.

Yours truly,

Herb Levine
Program Services Coordinator
csc4/represv.ltr
70 - 10th Street, San Francisco, CA 94103 * (415) 863-0581 (415) ILLEGIBLE

(TDD)
01-01604

Independent Living
RESOURCE CENTER SAN FRANCISCO
FREEDOM OF CHOICE
FOR INDIVIDUALS
WITH DISABILITIES

May 23, 1994

Jonathan Botelho
Branch Chief, Investigations Division
Stanley K. Yarnell, M.D. Dept. of Health and Human Services
President of the Board Office of Civil Rights
Kathy Uni, M.S., M.P.A. 50 United Nations Plaza
Executive Director San Francisco, CA 94102

Dear Mr. Botelho:

Enclosed is a packet of correspondence between the San Francisco Task Force on Alcohol, Drugs and Disability and San Francisco Community Substance Abuse Services regarding 504 compliance and accessibility of facilities, programs and services to people with disabilities. Independent Living Resource Center addresses the following questions to your office:

1. Has there been a compliance evaluation and review since 1978? Was there a plan or agreement to provide accessibility where it did not exist? If so, has this agreement been reviewed for compliance?
2. Is provision of access to the ILLEGIBLE of services by modality an equal benefit? Does there need to exist a priority waiting list for those services which are accessible?
3. If a program is "drug free", is that a discriminatory eligibility criteria for people with disabilities using disability-related medication?
4. Does Independent Living Resource Center have standing to request a compliance review, formal action plan and monitoring of compliance? If so, consider this to be such a request. If not, what must be done to achieve this?

We would appreciate your prompt attention to this matter.

Yours truly,
Herb Levine
Program Services Coordinator
Enc.

psc4/504compl
70 - 10th Street, San Francisco, CA 94103 * (415) 863-0581 (415) ILLEGIBLE
(TDD)
01-01605

ILLEGIBLE
ILLEGIBLE

ILLEGIBLE of Comm. Substance Abuse Services
ILLEGIBLE Disability Program Coordinator
Carol ILLEGIBLE, Board of Supervisors
Representative Nancy Peiosi
Representative Barbara Boxer
Senator John Seymour
Senator Alan Cranston
psc4/504compl
01-01606

T. 10/19/93
SBO:WRW:rjc
DJ#192-06-00035

OCT 19 1992

Ms. Sandra D. Burns
State of Colorado
Department of Social Services
Rehabilitation Services
1575 Sherman Street, 4th Floor
Denver, Colorado 80203-1714

Dear Ms. Burns:

This responds to your letter seeking written guidance on implementation of title II of the Americans with Disabilities Act (ADA).

The ADA authorizes the Department to provide technical assistance to entities that are subject to the Act. This letter provides informal guidance to assist you in understanding how the ADA may apply. However, this technical assistance does not constitute a determination by the Department of Justice of your rights or responsibilities under the ADA and does not constitute a binding determination by the Department of Justice.

You have asked whether the application of the ADA Accessibility Guidelines (ADAAG) rather than use of the Uniform Federal Accessibility Standards (UFAS) by an entity covered by section 504 of the Rehabilitation Act of 1973, as amended, would violate section 504.

Under section 504 regulations, departures from UFAS are permitted whenever substantially equivalent or greater access is provided. As your letter notes, the ADAAG standard is the newer standard. Generally, it provides for greater accessibility than mandated by UFAS, where the two standards differ.

Records, CRS, Worthen, Friedlander, FOIA, Breen
Worthen:Citizen:Colorado.UFAS.ADAAG.9.92
01-01607

There are, however, a few areas where UFAS requires greater access than demanded by ADAAG (e.g., UFAS requires a specified percentage of prison cells to be accessible, but ADAAG contains no such requirement). In these few circumstances, compliance with ADAAG alone would not constitute compliance with section 504.

I hope this information will be of assistance to you.

Sincerely,

Stewart B. Oneglia
Chief
Coordination and Review Section
Civil Rights Division

01-01608

STATE OF COLORADO
DEPARTMENT OF SOCIAL SERVICES
REHABILITATION SERVICES
1575 Sherman Street, 4th Floor
Denver, Colorado 80203-1714
Phone (303) 866-4390

Roy Romer
Governor

ANTHONY J. FRANCAVILLA
Manager

Steven V. Berson
Acting Executive Director

May 26, 1992

Coordination and Review Section
P. O. Box 66118
Civil Rights Division
U. S. Department of Justice
Washington, D. C. 20035-6118

Gentlepersons:

The State of Colorado, as part of its efforts to meet the Title II requirements of the Americans with Disabilities Act, has established an ADA Implementation Committee, consisting of the ADA Coordinators for the state agencies and community representatives with disabilities.

A portion of the discussion has centered around the advantages and disadvantages of using the ADA Architectural Guidelines (ADAAG) as opposed to the Uniform Federal Accessibility Standards (UFAS), both for purposes of meeting the Transition Plan requirements and for purposes of alterations and new construction.

The Committee understands that the ADAAG is the newer standard and that the intent is to eventually eliminate the UFAS as a separate standard. Therefore, we are disposed toward using ADAAG.

However, a question has been raised with regard to this:

> The regulations relating to Section 504 of the Rehabilitation Act of 1973 require application of the UFAS in new construction or remodeling projects involving the use of Federal funds. Would application of the ADAAG in such projects constitute a violation of 504?

The Committee would appreciate a written response, as we would like to arrive at a decision and would prefer not to be applying different standards to different types of projects.

Sincerely,

xc: David Leavenworth
State Buildings
Division
01-01609

Sandra D. Burns
on behalf of the
ADA Implementation Committee

OCT 20 1992

The Honorable Porter J. Goss
Member, U.S. House of Representatives
2000 Main Street
Suite 303
Fort Myers, Florida 33901

Attn: Jan Manriquez

Dear Congressman Goss:

This letter is in response to your inquiry on behalf of Stan Enebo, concerning applicability of the Americans with Disabilities Act (ADA) to his condominium community. Mr. Enebo writes that a homeowner has asked the Board of Directors of the Myerlee Gardens Condominium Association to remove speed bumps at the entrance to the residential area and golf course, because driving over them aggravates his back and neck problems.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist your constituent in understanding the ADA's requirements. However, it does not constitute a legal interpretation and it is not binding on the Department.

The only provisions of the ADA that may apply to this situation appear in title III, which imposes certain obligations on "places of public accommodation." The Act lists twelve types of entities as places of public accommodation. Residential facilities are not among the twelve categories. Accordingly, the individual dwelling units in residential communities are not covered by title III of the ADA, and common areas and facilities in such communities are not covered where use is restricted exclusively to residents and their guests, and not open to the public. Likewise, assuming that the golf course and other complexes that are accessible only through the entrance with speed bumps are restricted to residents or members, and not open to the public, they are not covered by title III.

cc: Records; Chrono; Wodatch; Mobley; McDowney; FOIA; MAF.
:udd:mobley:congressionals:goss.letter

I hope this information is useful to you in responding to your constituent.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

01-01611

Condominium Association, Inc.
1351 MYERLEE GARDENS AVENUE, FORT MYERS, FLORIDA 33919

AUG 14 1992

Congressman Porter Goss
2000 Main Street
Suite 303
Fort Myers, Florida 33901
August 13, 1992

Dear Congressman Goss:

I am the chairman of the Myerlee Gardens Condominium Association. We are an Association with 210 units, here in South Fort Myers. Our streets and sidewalks and most of our facilities are readily access free for those with disabilities.

We have one owner who has asked the board to remove the only speed bumps that we have that are at the entrance/exit to our complex. The past board and the membership has turned this down twice. Their main reason has been that this entrance/exit enters into the only road to the golf course and other complexes There is heavy traffic on this road and it could be a hazard if not for these speed bumps and the thru stop.

The owner who has back and neck problems has gone around the speed bumps by going on the sidewalk. The board, two years ago installed a pipe on the edge of the sidewalk at the entrance/exit. The board felt that this driving on the sidewalk was not safe.

The Federal Americans Disabled Act has now come into the controversy and we would like to have an opinion on this matter before the board acts. (see letter, pictures and layout)

The Association will appreciate any help to clear up this problem. Thank you,

Respectfully,

Stan Enebo, Chairman
01-01612

(b)(6)

August 4, 1992

Myerlee Gardens Condominuim Association
1351 Myerlee Gardens Avenue
Fort Myers, Fl. 33919

Dear Board of Directors:

I do not feel that the Myerlee Gardens Condo Association are within regulations with HUD and American Disability Act. At this time i can not go out or the complex without getting in and out of the car, and walking across the speed bumps. My back and neck are just too fragile to cross over the bumps. I have letters from two different neurosurgeons stating that any sudden jar or bump could cause more damage, with more surgery and long term problems with my back and neck. There is no way that I can drive my car in and out. If my family should have an emergency and I would need to drive my car I would not be able to do so. According to the disability act you are not in compliance with the law.

Before someone had the pipes put in the sidewalks I could drive on the sidewalk and get out without crossing the bumps. The mailman does this all the time. I don't understand why the pipes were put in to obstruct the sidewalk like they do.

If you and the other residents who live here want the speed bumps you could cut them down or make them longer so you don't have the sudden jerk that you do now. The bumps are hard on the car also.

The new Disability Laws states that all person that are disable must have access to all places. I feel that I am being discriminated by not being able to have access to my own home.

I have had to spend over $10,000 in doctor and hospital bill, because of the bumps. I am still under the care of a neurosurgeon, because of this problem.

Any help that you could give to me and my family would be greatly appreciated. I don't want to have to take legal action without giving the Condo Assoc. a Chance to correct this matter.

I want to thank all of the board members for all their time working for all of The residents here in Myerlee Gardens. I am sure that no one realize the time spend for all of us. I feel that this board understand the needs of all the residents much better than any past board.

Sincerely,

(b)(6)
01-01617

SOUTHWEST COMMUNITY RESOURCES
572 East Sixth Avenue
Durango, Colorado 81301

(303) 259-1086 FAX: 259-2037

September 21, 1992

Office on the ADA
Civil Rights Division
U.S. Department of Justice
Box 66118
Washington, D.C. 20035

Dear Office,

Southwest Community Resources is a non-profit community-based organization providing housing-related programs and services in a five-county area of Southwest Colorado. Please send us any appropriate material which can provide us with guidance on how we can or must comply with the ADA.

We also have some specific questions:

1. SCR rents its office space. It is a small house with one bathroom. We have a staff of 14. Are we required to convert our bathroom to be accessible. (This may not be possible.) If we adopt a policy which says that the organization does not have a bathroom available to the general public, would we still be required to make it accessible?

2. We are concerned about making sure that SCR has policies which clearly define how all our programs and services are available to persons with disabilities, including visual and hearing impairments. Could you send any sample policies that we might follow to ensure that we comply with the act?

Thank you.

Sincerely,

Peter Tregillus
Executive Director
01-01615

DJ 202-PL-193

OCT 20 1992

A. V. Pusateri
President
National Apartment Association
Suite 900
1111 Fourteenth Street, N.W.
Washington, D.C. 20005

Dear Mr. Pusateri:

This is in response to your letter requesting information about the Americans with Disabilities Act (ADA).

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist you in understanding the ADA's requirements. However, it does not constitute a legal interpretation or legal advice, and it is not binding on the Department.

You have asked whether the ADA governs a "business/rental clubhouse" within a residential complex. You have explained that the clubhouse is used primarily to coordinate on-site staffs and collect rent, but also occasionally to lease to tenants' friends, as a meeting place with outside brokers and for leasing to the public. You have specified that only "[a] very, very small percentage of the actual leasing is conducted with the public."

Although the ADA does not apply to privately owned strictly residential facilities, it does cover places of public accommodation within residential facilities. Common areas that function as one of the ADA's twelve categories of places of public accommodation and that are not intended for the exclusive use of tenants and their guests are considered places of public accommodations and are thus required to comply with the ADA. An office that is used for rental transactions with the public is a public accommodation under the ADA, regardless of the extent of actual use by the public. Other common areas, such as party rooms, swimming pools, and tennis courts, that are intended for the exclusive use of residents and their guests, are amenities of the residential facility and not places of public accommodation.

cc: Records, Chrono, Wodatch, Magagna, Novich, Library, FOIA
Udd:Novich:policy.pl.193.ltr
01-01618

Such facilities are not subject to the accessibility requirements of the ADA, but to the requirements of the Fair Housing Act. If these common areas are opened up beyond residents and their guests on intermittent occasions, the facilities are subject to the ADA only for those events that are open to non-residents and their guests. Please consult the enclosed title III regulations and Technical Assistance Manual for further discussion of ADA issues.

I hope this information is useful to you.

Sincerely,

John L. Wodatch
Director
Public Access Section

Enclosures (2)
Title III regulations
Title III Technical Assistance Manual

01-01613

NATIONAL APARTMENT ASSOCIATION

Suite 900, 1111 Fourteenth Street, N.W., Washington, D.C. 20005 * Phone 202/842-4050 * FAX 202/842-4056

May 26, 1992

Mr. John Wodatch, Director
Office on the Americans with Disabilities Act
Department of Justice
P.O. Box 66738
Washington, D. C. 20035-9998

Dear Sirs,

I am the President of the National Apartment Association, representing 8 million rental units. The majority of these units are built in configurations of 100 plus units, which require an on-site business/rental clubhouse. The usage of these facilities, is primarily as a private business location coordinating the on-site staffs and collection of rental payments.

In addition, a very small area of these business offices are occasionally utilized to leasing to friends of the existing tenants and as a meeting place for appointments made telephonically with outside leasing brokerage concerns. A very, very small percentage of the actual leasing is conducted with the public.

I would use your country club example as a parallel example.

We highly screen and qualify potential residents in our business office. We occasionally have individuals who drive into the apartment community and are given a tour and documents for review and signature similar to a private country club.

All common facilities usage at the apartment properties are restricted to use by the qualified, rent paying observing residents at the communities. Again, parallel to the usage of a country club, golf course, tennis courts, club house, restaurants, swimming pools etc.

Due to these similar examples, I urge the ADA and the Department of Justice to allow all of the offices, facilities and physical improvements involved with housing to remain under the Fair Housing Regulations already in existence and successfully working.

Sincerely,

A. V. Pusateri, CPM, CSM, CAPs

President

Rec'd 6/12/92

01-01614

T. 10-14-92

DJ 202-PL-283

OCT 22 1992 (STAMP)

Philip D. Mosciski, AIA
The Tecton Partnership
One Hartford Square West
Hartford, Connecticut 06106

Dear Mr. Mosciski:

This letter is in response to your letter requesting clarification of the application of section 403(g) of this Department's regulation implementing title III of the Americans with Disabilities Act (ADA).

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or responsibilities under the Act. This letter provides informal guidance to assist you in understanding the ADA. However, it does not constitute a legal opinion or legal advice, and it is not binding on the Department.

Your letter indicates that you represent a client who is altering a primary function area in a commercial facility. Your client plans to modify the path of travel to provide access to the altered area according to the priorities established in section 403(g), but your client does not plan to spend the full 20 percent of the cost of the alteration to the primary function area. You have asked if your client is required to spend the full 20 percent to make all of the restrooms and drinking fountains on the path of travel accessible.

Section 36.403 of this Department's regulation requires a public accommodation or commercial facility that is altering an area containing a primary function to spend up to 20 percent of the cost of the overall alteration to make the path of travel to the altered area and the restrooms, drinking fountains, and telephones serving the altered area accessible. The full 20 percent must be spent unless the path of travel (including the restrooms, drinking fountains, and telephones serving the altered area) may be brought into compliance with the ADA Accessibility

Guidelines for a lesser amount. Section 403(g) establishes the

cc: Records, Chrono, Wodatch, Breen, Blizard, FOIA, Library
udd:mercado:policy.letters.certif:blizard.wodatch.mosciski
01-01616

priorities that should be followed only when it is not possible to make the path of travel accessible without exceeding 20 percent of the cost of the alteration.

Your letter also asks if it is necessary to make all of the restrooms and drinking fountains on the path of travel accessible if this can be done without exceeding the 20 percent limit. The ADA only requires that restrooms, drinking fountains, and telephones that serve the altered primary function area must be made accessible. Determining which particular elements must be made accessible requires a case-by-case assessment of the area that is being altered to determine which elements actually serve that area.

For your information, I have enclosed copies of this Department's regulation implementing title III and our Title III Technical Assistance Manual. I hope that this information is helpful to you.

Sincerely,

John L. Wodatch
Chief
Public Access Section

Enclosures (2)
01-01619

the
tecton
P A R T N E R S H I P

TECHNICAL
SERVICES
GROUP

One Hartford Square
West
Hartford, CT 06106
203 522-7202
Fax 249-2531

August 13, 1992

Office of the Americans with Disabilities Act
Civil Rights Division
Department of Justice
P.O. Box 66738
Washington, D.C. 20035-9998

RE: 28 CFR Part 36 36.403(g)(2)

Dear Sir/Madam:

I would like a written clarification on section 36.403(g)(2) in regards to disproportionality. A commercial building owner is making alterations to their facilities and plan on complying with the priority list as stated in the above mentioned section for making the path of travel accessible. The costs for the planed changes to the path of travel do not reach 20% of the costs of alterations. Also, there are more restrooms and drinking fountains along the path of travel that are not going to be made compliant. Does the owner have to keep going and make more restrooms and drinking fountains accessible until the path of travel costs reach 20% of the costs for the alterations?

To date this question is affecting our commercial clients. We see the need to get clarification on this same section in regards to our "Public Accommodations" clients also. A written clarification will be helpful in our efforts to make sure we are informing our clients appropriately for complying the the Americans with Disabilities act.

Sincerely,

Philip D. Mosciski AIA

ADA
AMERICANS WITH
DISABILITIES ACT
AUG 19 1992
(STAMP)

pc: deskcopy
ADA\PR

ada\doj1
01-01620

DJ 202-PL-241

OCT 22 1992

Mr. Bruce Mims
Vice President
FOUR POINT DESIGN, INC.
1575 Catamount Road
Fairfield, Connecticut 06430

Dear Mr. Mims:

This is in response to your correspondence of July 7 and 8 and September 25, 1992, regarding the Americans with Disabilities Act and comments attributed to me concerning the steps to be taken by pharmacists in communicating with persons with hearing impairments.

Section 36.303 of the regulation implementing title III of the ADA requires that a public accommodation make available appropriate auxiliary aids and services to ensure that communication with individuals with disabilities is as effective as that with nondisabled persons. The auxiliary aid requirement is a flexible one and the type of auxiliary aid or service necessary to ensure effective communication will vary in accordance with the length and complexity of the communication involved.

In many instances, the exchange of written notes with a person with a hearing impairment will suffice to ensure effective communication. In other instances, however, the use of other auxiliary aids or services may be required. There are a wide variety of services and devices for ensuring effective communication, e.g., qualified interpreters, notetakers, computer-aided transcription services, written materials, telephones compatible with hearing aids and/or videotext displays; and the use of the most advanced technology is not required as long as effective communication is achieved. See, e.g., 56 Fed. Reg. 35,565-68; 35,597 (36.303); see also 4.3000-4.3600 of the Title III Technical Assistance Manual at pages 25-28 (copies enclosed).

cc: Records Chrono Wodatch Magagna FOIA MF
Delaney.ada.ltr.mims.pharmacy arthur T. 10/15/92
01-01621

We encourage pharmacists, health-care providers and other public accommodations to consult with persons with hearing impairments to determine what types of auxiliary aids or services can be made available to ensure effective communication.

Sincerely,

John L. Wodatch
Chief
Public Access Section

Enclosures (2)
Title III Regulations
Title III Technical Assistance Manual
01-01622

FOUR POINT DESIGN INC.
FAX 202-307-2227
202-307-0595

Mr. John Wodasch
Director, Compliance Department July 8, 1992
Civil Rights Division ADA re PHARMACIES...WHAT?
U.S. Department of Justice
PO Box 6118

Washington, DC 20035-6118

Dear Sir:

This is to supplement a mailgram sent to you last evening.
In considering what to use at pharmacists' counters in drug stores so that the pharmacist could make himself understood by a hearing-impaired person to conform to ADA, we were told WHY BOTHER? All you need is a pencil and a pad.....You were quoted by name as the source for this statement.

Were you properly quoted?

If a hearing-impaired person asks for help at the prescription counter is a pencil and pad what he can expect to get?...All he is entitled to get? At this moment about 760 drug stores will be affected by your answer. We would very much appreciate an answer by FAX.

Yours very truly,

Bruce Mims
Vice President
FOUR POINT DESIGN, INC.

To reply please
FAX 203-259-8054

1575 Catamount Road Fairfield, Connecticut 06430 (203) 259-1174
01-01623

BRUCE MIMS WESTERN
PO BOX 153 UNION MAILGRAM
GREENS FARMS CT 06436 07PM

1-01381OK189 07/07/92 ICS IPMBNGZ CSP WHSB
2032591174 MGMB TDBN GREENS FARMS CT 100 07-07 0834P EST

JOHN WODASCH
HEAD OF COMPLIANCE DEPARTMENT
CIVIL RIGHTS DIVISION U S DEPT OF JUSTICE
WASHINGTON DC 20035

DEAR SIR:
YOU HAVE BEEN QUOTED BY VARIOUS PEOPLE IN THE DRUG CHAIN INDUSTRY AS STATING THAT A PENCIL AND PAD AT A PHARMACY COUNTER IS SUFFICIENT TO COMPLY FOR HEARING IMPAIRED PRESCRIPTION CUSTOMERS WITH THE PUBLIC ACCOMODATIONS PORTION OF ADA. PLEASE FAX ME AT 2032598054 "THUS THE AVAILABILITY OF A PAD AND PENCIL CONSTITUTE COMPLIANCE WITH THE PUBLIC ACCOMODATION PORTION OF ADA FOR HEARING IMPAIRED CUSTOMERS ?"
THANK YOU.
BRUCE MIMS
FOUR POINT DESIGN, INC.
1575 CATAMOUNT ROAD, FAIRFIELD CT 06430

20:32 EST

MGMCOMP
01-01624

10-2-92

OCT 22 1992

DJ 202-PL-257
Michael Reynolds, Esq.
St. John & King
500 Australian Avenue South
West Palm Beach, Florida 33401

Dear Mr. Reynolds:

This letter is in response to your letter requesting information about the Americans with Disabilities Act (ADA).

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or responsibilities under the Act. This letter provides informal guidance to assist you in understanding the ADA. However, it does not constitute a legal opinion or legal advice, and it is not binding on the Department.

You have asked about the certification process under the ADA. Section 308(b)(1)(A)(ii) of the ADA permits State and local governments to ask the Department of Justice to certify that the accessibility requirements of a State or local building code that applies to places of public accommodation or commercial facilities meet or exceed the requirements of the ADA. In ADA enforcement actions, compliance with a certified State or local code will constitute rebuttable evidence of compliance with the ADA. State laws other than those that govern the construction or alteration of facilities subject to title III of the ADA are not eligible for certification.

Requests for certification must be made by an authorized State or local government official. The Department's review will be limited to the accessibility requirements that apply to new construction or alteration of places of public accommodation and commercial facilities subject to title III of the ADA. This includes any interpretations of the code by a State Attorney General or State courts that is included in the request for certification. Certification will apply to the State or local code as it has been formally interpreted prior to the request for certification. Subsequent interpretations that alter the way the code is applied would not be certified unless a new request for

c: Records, Chrono, Wodatch, Breen, Blizard, FOIA, Library
dd:mercado:policy.letters.certif:blizard.wodatch.reynolds
01-01625

certification is made. Individual "interpretations" or variances permitted by building inspectors reviewing specific buildings or building plans under the certified code are not certified.

The procedures for applying for certification are established in subpart F of the Department's regulation implementing title III of the ADA (28 C.F.R. SS 36.601-36.608) and explained on pages 68-73 of our Title III Technical Assistance Manual. Copies of the regulation and the Manual are enclosed for your information.

You also asked what procedure an entity should follow to determine if it is in compliance with the ADA if the State or local code has not been certified. In addition, you inquired whether there is State enforcement of the ADA. There is no Federal procedure for "preclearance" of a covered entity's operation. Title III enforcement will be carried out through case-by-case adjudication. Enforcement litigation may be initiated in the U.S. District Court by private parties or by the Department of Justice. No title III enforcement authority is delegated to State or local agencies. The enforcement procedures for title III are addressed in subpart E of the enclosed regulation (28 C.F.R. SS 36.501-36.508) and at pages 64-67 of the Technical Assistance Manual.

Finally, you have asked about the application of the ADA to private multifamily residences such as condominiums. Title III of the ADA imposes certain obligations on places of public accommodation. The Act lists twelve types of entities as places of public accommodation; strictly residential facilities are not among the listed categories. In addition, strictly residential facilities do not qualify as commercial facilities. Because strictly residential facilities are neither places of public accommodation nor commercial facilities, they are not covered by title III of the ADA. Portions of residential facilities that are used for a business purpose that would fall within the definition of place of public accommodation, such as the professional office of a health care provider, are subject to the requirements of title III. In addition, strictly residential facilities may have obligations under the Federal Fair Housing Act.

Common areas in residential facilities are not subject to title III if their use is restricted exclusively to residents and their guests. However, if a residential facility makes its common areas available for general use by nonresidents, it may lose its strictly residential character and be subject to the requirements of title III, if the common area facilities fall within one of the statutory categories of public accommodation.

Please refer to pages 35,551-35,552 of the enclosed regulation to find the twelve categories of public accommodation
01-01626

and a discussion of the circumstances in which a residential facility may be covered under title III. Some further discussion may be found at pages 1-3 of the enclosed Technical Assistance Manual.

I hope that this information is helpful to you.

Sincerely,

John L. Wodatch
Chief
Public Access Section

Enclosures (2)
01-01627

LAW OFFICES
ST. JOHN & KING
SUITE 600
500 AUSTRALIAN AVENUE SOUTH
WEST PALM BEACH, FLORIDA 33401
DAVID ST. JOHN, P.A.
WM. REEVES KIN
LEON ST. JOHN, P.A.
EDWARD DICKER
LOUIS CAPLAN
GEORGE SCHWIND
STEVE PRESS
TELEPHONE (407) 655-8994
TELECOPIER (407) 659-0850

July 13, 1992

Office on the Americans with
Disabilities Act
Civil Rights Division
U.S. Department of Justice
P.O. Box 66118
Washington, D.C. 20035-6118

re: the certification of state laws and the ADA's application to condominiums and other cooperative housing associations

To whom it may concern:

I have just recently begun investigating the ADA, specifically its effects on housing associations such as condominiums. I have some specific questions about the application of the bill's public accommodations section and possible state laws' certification, however my phone conversations haven't yielded any answers (when I can actually get through). I realize how busy your office must be at this time, but any assistance you could provide in response to these questions would be greatly appreciated.

1. What agency would have knowledge or be in charge of the certification of existing Florida laws under the ADA?

1a. If a state law was properly certified, would previously-issued state attorney general opinions interpreting that law be valid under the ADA? This question specifically relates to a 1980 opinion issued by the Florida attorney general which exempted condominiums as private residences from the then-existing accessibility standards for the disabled. If those laws

were certified (and, truthfully, I have not yet received any confirmation of the opinion's continuing validity in Florida), would the exemptions be rebuttable evidence against charges of discrimination?

Extend the question to include court interpretations of existing state laws. Basically I would like to know: when a state law is certified, do all of the state's interpretations of that law, in courts and regulations, continue to govern the implementation and effect of the laws, or will those interpretations have to be reconsidered in light of the ADA?
01-01628

3. Can a private entity request the certification of existing state laws? Could a condominium ask the state of Florida to certify the aforementioned accessibility standards and the existing exemptions? This question, if answered in the positive, also brings up the issue of correct procedure for such a request.

4. If no state laws have been certified, what is the correct procedure for an entity to determine if its actions and accommodations comply with the ADA's standards?

5. How do the ADA's public accommodations standards apply to private multi-family residences such as condominiums? Under the Federal Fair Housing Act Amendments of 1988, condominiums have followed certain standards. Will these change?

I am specifically interested in the ADA's application to the non-housing sections of a condominium or any other kind of private housing association. Most of these associations have recreational facilities where members can assemble for association meetings or for social activities. Where such a facility is open to the public (a golf course, for example), I understand the law to require appropriate accommodation. However, where the facility is only for the members of the association, is strict compliance with public accommodation standards required?

Any information you can provide will be very helpful. Further, if you could direct me to the proper state agencies in charge of Florida's implementation and interpretation of the ADA, I will direct all further inquiries to them.

Thank you very much for your time and assistance.

Sincerely yours,

Michael Reynolds

01-01629

OCT 26 1992

The Honorable Dennis DeConcini
United States Senate
328 Hart Senate Office Building
Washington, D.C. 20510

Attn: Ms. Susan D. Scott

Dear Senator DeConcini:

I am writing in response to your inquiry on behalf of (b)(6) regarding requirements for signs under the Americans with Disabilities Act (ADA).

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist XX in understanding the ADA's requirements. This technical assistance, however, does not constitute a determination by the Department of Justice of rights or responsibilities under the ADA, and it is not binding on the Justice Department.

In existing facilities, title III of the ADA requires places of public accommodation to remove architectural barriers where it is readily achievable to do so, that is, where it is "easily accomplishable and able to be carried out without much difficulty or expense." Because signs in a facility may themselves create barriers to access by individuals with disabilities, installing new signs or altering existing signs is one action that should be considered when determining which barriers to remove. This obligation is, however, limited to places of public accommodation and is not imposed on the broader category of existing commercial facilities.

Because we do not know the nature of (b)(6) business, we are unable to determine whether the sign provisions apply to his business or to provide more specific guidance for

cc: Records; Chrono; Wodatch; Barrett; McDowney; FOIA; MAF.
:udd:jonessandra:ada.deconcinil
01-01630

him. However, further information is provided in the enclosed copy of the Department's title III regulation. The types of businesses that are considered places of public accommodation are listed in Section 36.104 on page 35594. The readily achievable standard is discussed at Section 36.304 on page 35597. Also enclosed is a copy of the Department's Title III Technical Assistance Manual. Discussion of removal of existing barriers appears at pages 28-35. These materials should provide guidance for XX in determining if and to what extent the ADA applies to his business.

Compliance with the ADA Accessibility Guidelines, which apply only to new construction and alterations, is not required for existing facilities, but the Guidelines can serve as a useful guide in determining what barriers may exist in existing facilities. For example, the Guidelines detail standards for lettering, finish and contrast, character proportion and height, and the height and location of signs designating permanent rooms and spaces, exit signs, and directional signs. The ADA Accessibility Guidelines appear as an Appendix to the enclosed rule, and Section 4.30, relating to signs, is on page 35659.

Congress enacted the ADA to ensure uniform protection for persons with disabilities across the country, and considered it inappropriate to allow each State unlimited discretion in setting standards for the removal of existing architectural barriers. As noted above, existing places of public accommodation must remove barriers only where it is readily achievable to do so. Accordingly, XX should not be overly concerned that the ADA requirements will have a negative impact on the conduct of his business.

I hope this information is helpful in answering (b)(6) inquiry.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

Enclosures (2)
01-01631

DENNIS DeCONCINI
ARIZONA

COMMITTEES

APPROPRIATION
JUDICIARY
VETERAN AFFAIRS
INDIAN AFFAIRS
RULES AND ADMINISTRATION
INTELLIGENCE

COMMISSION ON
SECURITY AND COOPERATION
IN EUROPE/CHAIRMAN

WASHINGTON OFFICE
328 HART SENATE OFFICE BUILDING
WASHINGTON, DC 20510

United States Senate
Washington, DC 20510

PHOENIX OFFICE:
323 WEST ROOSEVELT #C-100
PHOENIX, AZ 85003
(602) 261-6756

SOUTHEASTERN ARIZONA OFFICE
2424 EAST BROADWAY
TUCSON, AZ 85719

EAST VALLEY OFFICE:
40 NORTH CENTER STREET #110
MESA, AZ 85211
(602) 261-4998

September 8, 1992

The attached inquiry from:

(b)(6)
Tucson, AZ 85705

is respectfully referred to:

Department of Justice

Initially, my office asked for comment on this subject by the Department of Labor. I have enclosed their correspondence which indicates that the Department of Justice will be enforcing provisions of ADA regarding public accommodation. As (b)(6) has concerns regarding the rules in ADA on non-compliant signs, I would appreciate DOJ's input. Please clarify whether non-compliant signs must be removed altogether at a business or whether other accommodations may be made. Your comments regarding this matter will be most appreciated.

Sincerely,

DENNIS DeCONCINI
United States Senator

Please reply to:
The Honorable Dennis DeConcini

United States Senate
Washington, D.C. 20510
attention: Ms. Susan D. Scott
01-01632

(Handwritten)

ILLEGIBLE-29-ILLEGIBLE

Dear Senate Dennies Deconcini

I feel the removable of nonconforming signs, would negatively impact my business, and other, also put people out of work and use dollar's much need elsewhere. Why not leave it to each state? (ISTA) - FHWA Docket no 92-22

Thank you,
(b)(6)
01-01633

OCT 26 1992

The Honorable Bob Graham
United States Senator
Post Office Box 3050
Tallahassee, Florida 32315

Attention: Xalina LaBarge

Dear Senator Graham:

This letter responds to your inquiry on behalf of (b)(6) concerning his experiences in reserving hotel rooms to accommodate his disability.

The Americans with Disabilities Act (ADA) authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist your constituent in understanding the ADA's provisions. However, it does not constitutes a legal interpretation, and it is not binding on the Department.

We understand the factual situation described by Mr. (b)(6) to be as follows: Through his travel agent, he attempted to secure a guaranteed reservation for a particular room to accommodate his disability. The request was made to the international reservation center of a major hotel chain, which advised the travel agent that the specific hotel would have to be contacted directly to arrange for the special type of accommodation requested. The hotel was contacted directly, and the desired reservation was made. Mr. (b)(6) concern seems to be that his request could not be accommodated through the central reservations center.

To assist Mr. (b)(6) in understanding all of the ADA's requirements applicable to public accommodations such as hotels, I have enclosed copies of the Department of Justice's Title III regulation and technical assistance manual. In this particular

cc: Records; Chrono; Wodatch; Breen; McDowney; FOIA; MAF.
:udd:jonessandra;ada.graham1
01-01634

instance, the applicable provisions are those included in Section 36.302, concerning modifications of practices. Discussion of this provision appears on pages 35564-5 and 35596-7 of the regulation, and on pages 22-3 of the manual.

Based on the information contained in Mr. (b)(6) letter, we are unable to conclude that the actions in question violate the ADA. The company was able to meet his request for a guaranteed reservation of a particular type of room and to insure its availability on his arrival, by asking him to call the specific hotel directly. Based on the information provided, we are unable to determine whether the company would be required to modify its central reservation system to be able to accommodate requests for individual hotels through that system.

I hope that this information assists you in responding to your constituent.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

Enclosures (2)
01-01635

(HANDWRITTEN)

Aug. 22, 1992
Senator Bob Graham,
c/o U.S. Senate Office Bldg.
Washington, D.C. 20510

Honored Sir:

Enclosed are copies of a letter sent to
Best Western International Inc. and their
reply to me.
ILLEGIBLE
ILLEGIBLE
ILLEGIBLE
ILLEGIBLE
Jan. 1, 1992.
ILLEGIBLE
ILLEGIBLE
ILLEGIBLE
ILLEGIBLE
ILLEGIBLE
ILLEGIBLE
ILLEGIBLE
situation such as this?
ILLEGIBLE
to this letter.
Sincerely,
(b)(6)
ILLEGIBLE
01-01636

Best Western International Inc.
P.O. Box 10203
Phoenix AZ, 85064-0203

Attention: Reservation Supervisor

I have always enjoyed staying at Best Western Motels, and have used your facilities whenever possible.

I am now 75 years of age, handicapped for various reasons including removal of cancerous kidney, heart and breathing problems, and an artificial hip. I have a disabled card from Florida which is good in all states.

Yesterday Aug. 6, 1992 AAA called your reservation center for advansed guaranteed reservations at ILLEGIBLE S. and ILLEGIBLE Tenn for the nights of Sept 14th and 15th and was told that guaranteed reservations for handicapped persons were not your policy.

The AAA representative immediately called the motels mentioned and received assurance for complete cooperation of our request.

I was under the impression that accommodation for handicapped persons was a Federal Law as of Jan 1, 1992.

I feel that this a very unfair condition for we who are handicapped and I would appreciate a letter stating that this situation could and would be remedied.

I would appreciate a prompt reply to this letter as we do appreciate and enjoy staying with you.

Sincerely
(b)(6)

P.S. It is not necessary for the bars and rods are not necessary, as a down and out room would suffise.

Copies of this letter (which is not word for word to the original sent to Best Western as a few changes were made from original rough draft).

Senator Bob Graham
v. Connie Mack
Congressman Cliff Stearns.
01-01637
International Headquarters
P.O. Box 10203, Phoenix, AZ 85064-0203, U.S.A.
6201 N. 24th Pkwy., Phoenix, AZ 85016-2023, U.S.A.
(602)957-4200

August 19, 1992

Mr. (b)(6)
Leesburg, FL

Dear Mr. (b)(6)

Thank you for taking the time to make us aware of the problems you encountered with the Best Western International Reservation Center. We are concerned and wish to apologize for any inconvenience you may have experienced.

When you call our toll-free number, our reservation sales agents are trained to provide you with every assistance in booking your reservations. Our computer system provides our agents with the most up to date information available on rates, room availability and special requests for each of our hotels. This is provided to us by the management of each hotel. In a situation such as yours, you were informed that we could not guarantee a handicapped room at the Best Western member establishments that you requested. If we are unable to confirm the special room type requested, the reservations sales agents will then advise the guest to contact the hotel directly.

Without comments such as yours, we would be unable to provide the value, quality and service Best Western is known for worldwide. We look forward to another opportunity to serve your lodging needs.

Sincerely,

KATHRYN MARTIN
Senior Customer Service Representative
01-01638

T. 10/22/92
RJM:SBO:kgf
DJ# 192-06-00029

OCT 26 1992

Ms. Corey Hudson
Executive Director
Canine Companions for Independence
4350 Occidental Road
P.O. Box 446
Santa Rosa, California 95402-0446

Dear Ms. Hudson:

This is in response to your letter concerning service animals under title III of the Americans with Disabilities Act (ADA). We apologize for the delay in responding.

The ADA authorizes the Department to provide technical assistance to entities that are subject to the Act. This letter provides informal guidance to assist you in understanding how the ADA may apply to public accommodations. This technical assistance, however, does not constitute a determination by the Department of Justice of rights or responsibilities under the ADA and does not constitute a binding determination by the Department of Justice.

Under section 36.302 of the enclosed title III rule, a public accommodation must make reasonable modifications in its policies, practices, and procedures to avoid discrimination. A public accommodation must modify its policies to permit the use of a service animal by an individual with a disability, unless doing so would result in a fundamental alteration of the goods or services provided. These concepts are further discussed in section III-4.2000 of the enclosed title III technical assistance manual. As defined in section 36.104, the term "service animal" includes any guide dog, signal dog (e.g., a "hearing dog"), or other animal individually trained to do work or perform tasks for the benefit of an individual with a disability.

You asked how public accommodations will determine whether an accompanying animal is a service animal. The title III regulation does not permit public accommodations to require any type of identification or certification of status to be shown.

:udd:mather:1tr.hudson.servcanimals
cc: Records, CRS, FOIA, Friedlander, Mather, Breen
01-01639

Moreover, the fact that a particular State law may require the showing of identification is irrelevant for purposes of determining rights under the ADA. However, section 36.301(b) of the title III regulation permits a public accommodation to impose legitimate safety requirements that are necessary for safe operation of the public accommodation. Thus, a public accommodation may ask that the animal be removed when such removal is necessary for safe operation.

You also asked about the relationship between title III and State laws. Title III does not preempt any State law, if that State law provides protection for individuals with disabilities at a level greater or equal to that provided by the ADA. As explained in section 36.103(c), the ADA does, however, prevail over any conflicting State laws, or those laws that provide lesser protection against discrimination.

For example, assume that an individual with a disability, accompanied by a monkey as a service animal, enters a hotel in a State where the State law requiring access for service animals is limited to "guide dogs." Because this provision would result in a level of access that is less than that provided by title III, the hotel may not rely on the State law as a basis for prohibiting access for the monkey. A similar conclusion would apply to the situation you are concerned about, in which presentation of certification verifying the status as a service animal is a prerequisite to granting access to a place of public accommodation under a State law. Because the State law provides a level of access that is less than that provided by title III, the ADA would not permit the hotel to require presentation of such certification.

I hope this information has been helpful to you.

Sincerely,

Stewart B. Oneglia
Chief
Coordination and Review Section
Civil Rights Division

Enclosures (2)
01-01640

CANINE COMPANIONS for INDEPENDENCE, founded in 1975
Exceptional Dogs for Exceptional People
Bonita M. Bergin, Ed.D.
Founder
Director of Research

October 23, 1991

Robert Mather
Office on the Americans with Disabilities Act
Civil Rights Division
US Department of Justice
Washington, DC 20530

Dear Mr. Mather,

I spoke with you the week of October 1, 1991, concerning the ADA Rules and Regulations as they pertain to service animals.

As you will recall we discussed how a public accommodations was to determine what animals/dogs were properly trained and therefore should be granted access as opposed to a person merely wishing to gain access with his/her pet. In response to how was the public accommodation to make this judgement, I believe you responded the public accommodation would have to make a good faith assumption that all animals/dogs were trained and entitled to access. Therefore all animals should be granted access with no further qualifications like a special ID card or an identifying cape or backpack.

While Canine Companions for Independence and other members of Assistance Dogs International are pleased that the ADA recognizes service animals, we are also concerned that the law not be abused by others.

To this concern I believe your response was that the existing state laws/rules of access for service animals/dogs should be what determines access at this local level.

By our most recent count, 13 states do not have laws providing for the access of assistance dogs. What do you propose our clients do, for example in Maine or the District of Columbia for that matter? Will Federal ADA prevail? Will the passage of ADA in January 1992 make it mandatory on the 18 states to

pass laws defining how a public accommodation is to determine a pet poodle from a properly trained service dog?
01-01641

In April 1991, Robin Dickson, President of Assistance Dogs International, Canine Companions for Independence and I believe several other Assistance Dog Schools/Centers submitted suggestions (see attached) that ADA regs. provide for some ID for properly trained assistance dogs. I am again making this request. Is it possible to have the matter reconsidered?

If not, what action do you suggest we take or advise our clients to take in gaining as problem free access to public accommodations as possible?

I have enclosed some Canine Companions for Independence material in the hopes you may become more familiar with the Assistance Dog concept and the Schools/Centers that perform the valuable training.

Looking forward to your response.

Sincerely,

Corey Hudson
Executive Director

CH/law

Enclosures

cc: Robin Dickson, President, Assistance Dogs International
Mike Roche, Chairperson, Assistance Dogs International
Sub-Committee

States without Service Dog Laws: Alabama
Alaska
Arkansas
District of Columbia
Idaho
Louisana
Maine
Montana
Nebraska
Rhode Island
South Dakota
Vermont

April 12, 1991

Mr. John L. Wodatch
Office of American Disabilities Act
Civil Rights Division Department of Justice
Rule Mailing Docket 003
P.O. Box 75087
Washington, DC 20013

Dear Committee Members:

Assistance Dogs International, Inc. is a coalition of representatives of Guide Dog, Hearing Dog, and Service Dog organizations. Our purpose is to facilitate communication amongst members, provide opportunities for learning amoung members, and work on assuring that top quality training goes into every dog and organization that is a part of Assistance Dogs International.

The purpose of this letter is to address teh issue of rights of access for all disabled persons who are accompanied by Assistance Dogs. An Assistance Dog is defined as a Guide Dog for the visually impaired, a Hearing Dog for the hearing impaired, or a Service Dog for the mobility impaired. GUIDE DOG is defined as a dog which has been trained or is being specially trained for or in conjunction with a school for guide dogs to lead in harness and serve as an aid to the mobility of a particulare blind person.

HEARING DOG is defined as a dog which has been or is being specially trained by or in conjunction with a school for hearing dogs to alert a particular deaf or hearing impaired person to certain sounds.

SERVICE DOGS is defined as a dog which has been or is being specially trained by or in conjunction with a school for service dogs to the individual requirements of a physically disabled person, including but not limited to any of the following:

1. Pull wheelchair as needed
2. Retrieve/carry dropped items
3. Open/close doors
4. Provide balance/counter balance

Each school for Assistance Dogs provides illegible of certification, such as an identification illegible individual illegible of disabled person and Assistance Dog.

In addition:
A GUIDE DOG is identified by wearing a harness.
01-01643

CANINE COMPANIONS FOR INDEPENDENCE
THE CCI PROGRAM

Canine Companions for Independence (CCI) has changed the lives of hundreds of men, women, and children through its unique program of providing highly trained assistance dogs for individuals with disabilities. By helping them overcome physical and social barriers, the dogs enable CCI's participants to lead more independent, satisfying lives.

Most Canine Companions come from CCI's own breeding program. They are placed in volunteer "foster homes" for 16 months to be socialized and to receive initial obedience training. From there, the puppies are sent to one of CCI's regional centers for six months of advanced training. By two years of age, each dog has learned 89 commands and is ready to be matched with a participant from CCI's waiting list.

The matching of participants and canines takes place through a process that has earned the name, Boot Camp. During this intensive two-week training course, participants learn the techniques to command and control their new companions, as well as how to later expand the range of commands to meet their particular needs. In addition, each participant must demonstrate the ability to provide for the dog's care and well-being before graduating with a Canine Companion.

Graduation ceremonies at CCI are inspirational and emotional events, signalling the beginning of a new phase of life rich with promise for the new participant/canine teams. For some CCI graduates, having a Canine Companion means the ability to live without a full-time attendant for the first time; for others, it is a chance to regain independence lost through illness or accident.

A Canine Companion not only provides physical assistance, but offers companionship and unconditional love as well. It was early graduate teams who inspired the motto for Canine Companions Independence: "Exceptional Dogs for Exceptional People."

In 1975, Canine Companions for Independence pioneered the concept of the Service Dog. Since the program's inception, over 525 certified Canine Companions have been placed across the nation and abroad.

National Headquarters: P.O. Box 446, Santa Rosa, CA 95402
(707) 528-0830

COMMONLY ASKED QUESTIONS ABOUT CANINE COMPANIONS FOR INDEPENDENCE

Q. What is Canine Companions for Independence?

Canine Companions for Independence (CCI) is a 501(c)(3) non-profit organization that trains assistance dogs to serve people with disabilities other than blindness, providing them with greater independence.

Q. What types of dogs does CCI train?

CCI trains four types of dogs:

Service Dogs work-for people with physical disabilities, performing such tasks as turning on and off light switches, pushing elevator buttons, retrieving items, and pulling a wheelchair.

Signal Dogs are trained to alert people who are hearing-impaired to crucial sounds, such as a telephone, alarm clock, smoke alarm or baby's cry.

Social Dogs work for people with developmental disabilities by providing the loving interaction known as pet facilitated therapy.

Specialty Dogs are trained to help meet the needs unique to people with multiple disabilities, such as a hearing-impaired individual who also uses a wheelchair.

Q. What does it cost to receive a Canine Companion?

There is a $25 application fee and a $100 class registration fee, which includes the necessary canine supplies. These are the only charges to a CCI participant, even though the actual cost of breeding, raising and training each dog is over $10,000.

Q. How is CCI funded?

CCI is funded by donations, group and service club contributions, grants, and ongoing fundraising activities.

Q. Who can apply for a Canine Companion?

Any person with a disability wanting increased independence through the use of a dog, or a facility that wishes to institute a pet therapy program may apply for a Canine Companion.

(over)

newspaper clipping

'She's made me
self-reliant'

Together a boy and his dog do what he cannot do alone-live a normal life

Lots of kids want pets, but some kids need them. Really need them. Such kids as Travis Stout, who is unable to move his ankles, bend his knees and elbows or even wiggle his toes.

For Travis, who was born with a rare muscle condition called arthrogryposis multiplex congenita, the actions that are commonplace for any other nine-year-old boy were all impossible.

He couldn't, for instance, grab a snack from the fridge, switch on a light, carry books to school, even clean his room. Then a Labrador retriever came into his life.

Kosmic is Travis's dog, a highly trained canine companion able to obey 89 verbal commands. "She's my best friend," he says. Kosmic is also Travis's hands and feet...

Because Travis's arms and legs are "locked," he needs help even to get out of bed. Kosmic lies down on the floor, Travis slides himself off the bed, tummy up, and across Kosmic's back. "Then I say, 'Stand,'" says Travis, "and Kosmic gets up, getting me up too."

Kosmic carries Travis's books in a pack on her back. At school, where Travis is enrolled in a program for the gifted, Kosmic waits patiently.

"The school principal was really great about Kosmic," says Travis's mother, 32-year-old Kay. "He said keeping Travis from having his dog in school would be like telling another child he couldn't have his wheelchair."

At home, Kosmic tugs on a towel tied to the refrigerator door and fetches food from the bottom shelf for Travis.

In the Stout household, which includes dad Tom, 33, and brother Kendra, four, when Kay orders, "Pick up your clothes!" Kosmic picks them up.

Dogs like Kosmic aren't trained to protect, but if a stranger approaches Travis when his mother isn't nearby, Kosmic growls.

"If someone wanted to hurt Travis, they could," says Kay. "He can't run away or defend himself. I can't tell you what peace of mind that dog gives me!"

Three years ago, Kay read an item in an Ann Landers column about Canine Companions for Independence, a nonprofit organization in Santa Rosa, California, that provides trained dogs for the disabled free of charge.

Travis went through his instruction sessions alone, with his mother only watching. And because a disabled person's life may depend on it, the trainers must be certain that every match is perfect, so there was no guarantee that Travis would go home with a dog. But he's glad he did. "I love her so much," he says.

And Kosmic loves him back. "If I go visit my friends without her, she cries until I get back. Then she leaps into the air and licks my face. I'm never lonely. And she's made me a lot more self-reliant."

That sounds like a big word for a fourth-grader, but Travis has always been bright. His mother says he was saying "please" and "thank you" at age 10 months. He spoke in complete sentences by 18 months. Now Travis loves to read, and he can even use a computer.

"We're so proud of him," says his mom. "But we can't take much of the credit. Travis has been a joy from the start."

Right, Kosmic would say, in a language every boy understands: the wag of a dog's tail.

by Amy H. Berger

For more information contact:
Canine Companions for Independence
P.O. Box 446, Santa Rosa, CA 95402-0446

707-528-0830 V/TDD

01-01646

Brochure

Canine Companions for Independence,
a non-profit organization, brings
new and exciting dimensions to the lives
of people with disabilities by providing
them with highly skilled assistance dogs.
01-01647

OCT 26 1992

The Honorable Sandra Swift Parrino
Chairperson
National Council on Disability
800 Independence Avenue, S.W.
Suite 814
Washington, D.C. 20591

Dear Sandy:

I am responding to your recent letter asking about our strategies and funding for Americans with Disabilities Act (ADA) enforcement efforts in the next fiscal year.

The Civil Rights Division will devote extensive resources to ADA compliance activities in this fiscal year. Fortunately, during fiscal year 1992 we were able to secure staffing increases for our ADA complaint resolution efforts. Following is a survey of our staff resources available for processing complaints by Section.

1) Our newly created Public Access Section (formerly the Office on the Americans with Disabilities Act) investigates title III complaints against public accommodations and commercial facilities. Since the January 26, 1992, effective date, the Public Access Section has received 545 complaints alleging violations of title III. We currently have 10 staff attorneys and one paralegal involved in processing these title III complaints. Nine of the attorney positions and the one paralegal position were filled after June 1, 1992.

2) Our Coordination and Review Section handles all title II complaints against State or local governments involving programs, services, or regulatory activities relating to law enforcement, public safety, and the administration of justice.

cc: Records; Chrono; Wodatch; Breen; Willis; FOIA; MAF.
:net:ss63:udd:willis:letter.dunne.parrino
01-01648

Since the January 26, 1992, effective date, the Coordination and Review Section has received 304 title II complaints falling within its subject matter jurisdiction. We currently have 8 staff attorneys and 5 staff investigators involved in processing these title II complaints.

3) Our Employment Litigation Section handles all title I complaints against State or local governments that are referred to us by the Equal Employment Opportunity Commission after that agency has made a determination that there is reasonable cause to believe that a violation of title I has occurred and after its efforts to conciliate the matter have proven unsuccessful. This Section also has independent authority to bring "pattern or practice" suits. With title I only taking effect on July 26, 1992, the Employment Litigation Section has focused its efforts on three ADA investigations that it has initiated under its pattern or practice authority. No additional staffing has been provided for these efforts.

Our technical assistance program, which is the responsibility of the Public Access Section, plays a crucial role in our efforts to promote ADA compliance and minimize the need for complaints and litigation. The Section will continue its public outreach, education, and technical assistance activities to raise public awareness of the ADA's requirements. These activities include:

* Operating a speakers bureau that has provided expert speakers to more than 150 conferences and seminars nationwide, reaching over 19,000 individuals;
* Distributing copies of the title II and title III rules, technical assistance manuals, and other ADA reference materials to as wide an audience as possible. Over 1.75 million documents have been sent;
* Staffing a telephone information line that receives nearly 3,000 inquiries per week from the public about the Department's title II and title III rules;
* Issuing technical assistance letters to clarify certain provisions in the title II or title III rules; and
* Awarding grants to selected business and disability rights organizations to promote voluntary compliance with titles II and III. Nineteen grants have been awarded thus far totaling $3.4 million.

For fiscal year 1993, Congress has appropriated $4.5 million for technical assistance activities. We anticipate that a substantial portion of this sum will be spent on new grants. The remainder will be used to support our ongoing technical

assistance efforts.

01-01649

We believe that with the resources at our disposal, we can mount a credible enforcement program. The highly dedicated professionals of the Civil Rights Division have a long track record of producing results even under the most difficult circumstances. If our complaint load continues to increase at the current rate, however, we may at some point need additional resources.

We believe that ADA Watch has an important role to play in ensuring the effective implementation of the ADA by Federal agencies. If we can be of further assistance to you in this effort, please let me know.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

01-01650

National Council on Disability
800 Independence Avenue, S.W.
Suite 814
Washington, DC 20591
202-267-3846 voice
202-267-3232 TDD
An Independent
Federal Agency

September 16, 1992

Mr. John R. Dunne
Assistant Attorney General
Civil Rights Division
Department of Justice
Tenth Street & Constitution Ave., NW
Room 5643
Washington, DC 20530

Dear John:

On behalf of the members of the National Council on Disability (NCD), I am writing to ask you to inform us about your strategies and plans to provide adequate funding, within the confines of budgetary constraints, for effective compliant resolution under the Americans with Disabilities Act (ADA) for the next fiscal year. I am writing to all of the agencies which enforce the ADA in order to request this information.

As you may know, NCD is very concerned about the adequate implementation of the ADA. As you may also know, we have initiated an ADA Watch program to gather information about the implementation of the Act. We know that several federal agencies have not received sufficient funds to effectively implement the titles of the Act for which they are responsible. NCD stands ready to act as an advocate to help make your case to Congress and the Administration for increased funding in order to fully implement the Americans with Disabilities Act.

Thank you for your help in this matter. I look forward to hearing from you and to working with you in the future.

Sincerely,

Sandra Swift Parrino
Chairperson
01-01651

OCT 27 1992

The Honorable Conrad Burns
United States Senator
2708 First Avenue North
Billings, Montana 59101
Attention: Kathy McLane

Dear Senator Burns:

This letter responds to your inquiry of September 18, 1992, requesting information about the applicability of the Americans with Disabilities Act (ADA) to Federal agencies, enforcement of the ADA, and distribution of ADA regulatory materials.

The ADA does not apply to Federal agencies, but it does apply to private and public entities as described below. Similar Federal statutes which do apply to practices and facilities of Federal agencies are the Rehabilitation Act of 1973 and the Architectural Barriers Act.

With regard to the ADA, it applies and is enforced as follows: title I covers private employers and State and local governments and is enforced by the Equal Employment Opportunity Commission; title II applies to State and local governments and agencies, and enforcement is coordinated by the Department of Justice; title II also covers public transportation, and to that extent is enforced by the Department of Transportation; title III applies to public accommodations and commercial facilities and is enforced by the Department of Justice; title IV relates to telecommunications and is enforced by the Federal Communications Commission.

cc: Records; Chrono; Wodatch; Breen; McDowney; FOIA; MAF.
:udd:jonessandra:ada.burnsl

01-01652

We have enclosed copies of the title II and III regulations and technical assistance manuals published by the Department of Justice. Regulatory materials promulgated by other enforcing agencies are available directly from those agencies.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

Enclosures (4)
01-01653

CONRAD BURNS
MONTANA

United States Senate
WASHINGTON, DC 20510-2603

COMMITTEES:
COMMERCE, SCIENCE, AND TRANSPORTATION
ENERGY AND NATURAL RESOURCE
SMALL BUSINESS
SPECIAL COMMITTEE ON AGING

September 18, 1992

John Wodatch, Director
Americans With Disabilities
Post Office Box 66738
Washington, DC 20035-9998

Dear Mr. Wodatch,

My office has been contacted by a constituent with concerns regarding the Americans With Disabilities Act (ADA). This constituent requests the following information:

1) What agencies and federal departments, if any, are exempt from complying with the ADA law?

2) How are materials informing agencies about new regulations distributed; such as by bulletin or publication?

3) What agency enforces the Americans With Disabilities Act?

Any information or help you can provide my staff to enable us to assist in responding to our constituent will be greatly appreciated. Please direct any correspondence or questions regarding this inquiry to my office at:

Senator Conrad Burns

Attention: Kathy McLane
2708 First Avenue North
Billings, Montana 59101
(406) 252-0550

Thank you for your assistance in this matter. If there is additional information you require, please feel free to contact Kathy.

Sincerely,

Conrad Burns
United States Senator

CRB/klm
01-01654

OCT 27 1992

The Honorable Phil Gramm
United States Senator
2323 Bryan Street, #1500
Dallas, Texas 75201

Attention: Clarissa Clarke

Dear Senator Gramm:

This letter responds to your inquiry on behalf of (b)(6) concerning limitations on insurance coverage and the applicability of the Americans with Disabilities Act to her situation.

The Americans with Disabilities Act (ADA) authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist your constituent in understanding the ADA's provisions. However, it does not constitutes a legal interpretation, and it is not binding on the Department.

The provisions of the ADA applicable to insurance company practices are somewhat limited, and are set forth in Section 36.212 of the Department of Justice's title III regulation, a copy of which is enclosed. The provision appears on page 35596, and additional discussion on this issue is included in the regulatory preamble on pages 35562-3. Also enclosed is a copy of our title III Technical Assistance Manual, which includes

information on this point on pages 18-9.

We are unable to determine from the information provided whether the situation described by Ms. (b)(6) is a potential violation of title III of the ADA. If, after reviewing the enclosed information, Ms. (b)(6) believes there may be such a violation, she can proceed to remedy it by proceeding as described on pages 64-7 of the Manual.

cc: Records; Chrono; Wodatch; Breen; McDowney; FOIA; MAF.
:udd:jonessandra:ada.gramm2
01-01655

There is also a possibility that Ms. (b)(6) may have a claim under title I of the ADA, which is enforced by the Equal Employment Opportunity Commission. It is clear from her letter that she has already forwarded the information to the EEOC, and I assume that she will hear from that agency concerning the title I ADA provisions that may apply.

I hope this information assists you in responding to your constituent.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

Enclosures (2)
01-01656

Security 80/100

A COMPREHENSIVE MAJOR MEDICAL INSURANCE PLAN

FOR INDIVIDUALS AND SMALL GROUPS

ONE TO FOURTEEN LIVES

NO PARTICIPATION REQUIREMENTS

NO CONTRIBUTION REQUIREMENTS

SIMPLIFIED UNDERWRITING

FEW INDUSTRY RESTRICTIONS

RIDERS AND WAIVERS AVAILABLE

COMPANY BEST RATING A+ (SUPERIOR)

MATERNITY

PREVENTIVE MEDICAL CARE

ADMINISTERED BY
PROFESSIONAL BENEFITS ADMINISTRATION
P.O. BOX 31810
DALLAS, TX 75231

UNDERWRITTEN BY
DURHAM LIFE INSURANCE COMPANY
RALEIGH, NORTH CAROLINA

A+ SUPERIOR BEST RATING

01-01657

EMPLOYEE: All full time employees on the company payroll and working a minimum of 30 hours per week or more.

NEW EMPLOYEES: First of the month following the completion of one month full time employment.

DEPENDENT: Whenever used herein shall mean - (A) An employee's spouse and (B) unmarried child(ren) including stepchildren, legally adopted children, or foster children who have the same legal residence as the employee, who have not attained their 19th birthday, and who are not members of the armed forces; provided that any child over age 19, but less than 25, shall be considered as a dependent only if he is attending an accredited institution of learning as a full-time student and is primarily dependent on the employee for support and maintenance and claimed as an income tax deduction.

GENERAL EXCLUSIONS: Charges for eye glasses, eye refractions and hearing aids, alcoholism or drug addiction, miscarriage, abortion, confinement or care in any government hospital or institution, charges in connection with war or an act of war or participation in a riot or insurrections; or self-inflicted injuries, or sickness, or an attempted suicide, while sane or insane; exogenous obesity; and any other expenses not necessitated by an accident or sickness, including male or female sterilization or reversals thereof, whether voluntary or otherwise. Charges for illness or injury arising out of the Military Service; charges which a person is not legally required to pay; treatment of corns, callouses, bunions, trimming of toenails except as provided in the Policy. Service or treatment due to altering the size or shape of the breast, or any other anatomical part of the body, male or female, whether voluntary or otherwise.

Any care or treatment of the teeth or gums or for the fitting or wearing of dentures; or any care or treatment of teeth, jaws, or jaw joints, including, but not limited to: atrophy of the lower jaw; malocclusion; maxillo-facial surgery; tempero-mandibular joint dysfunction; and retrognathia; except for treatment of a congenital anomaly in a child born while the person is insured for Medical Expense Benefits under this plan. However, with respect to Section 11 - Benefits - Employee - Part EDMM - Employee and Dependent Major Medical Expense Insurance, this exclusion shall not apply to treatment of accidental injury to sound natural teeth (including their replacement) if the injury occurs while insured and the treatment is given within six months after the date of the injury. Charges incurred for a deviated nasal septum, unless sustained in an accident which occurs while the person is a covered person under the Policy.

GENERAL LIMITATIONS: Charges for Jaw, Dental and/or Cosmetic treatment or Surgery, except for charges resulting from an accident occurring while insured hereunder, and except for congenital defect in a newborn child. Psychiatric treatment out of hospital will be limited to a benefit of 50% of the eligible charge for treatment or consultation, up to a maximum eligible charge

of $30.00 per treatment or consultation. Lifetime maximum of $5,000 on mental and nervous conditions for covered expenses incurred in and/or out of hospital. Charges for any care/service or supplies provided in connection with hernia, tonsillitis, adenoids; any disease or disorder of reproductive system, gall bladder, tuberculosis, cancer, tumor, varicose veins or rectal disease will not be considered eligible charges unless such charges are incurred after the end of 6 consecutive months, during which the medical expense benefits have continuously been in force for the covered person; provided, however, the covered person has satisfied all other conditions of the policy including the Pre-Existing Condition Limitation. Benefits payable for all charges for or in connection with an organ transplant are limited to a lifetime maximum of $25,000. No benefits are payable for charges related to the donor or for the organ itself. The maximum for all benefits payable while the person is a covered person under the policy for care or treatment related to or resulting from Acquired Immune Deficiency Syndrome (AIDS), on and after the date such disease has been diagnosed, shall be $10,000. For the purposes of this provision, care or treatment shall include, but not be limited to, care or treatment of conditions such as Kaposi's sarcoma, pneumonia, pneumocystitis, viral diseases, and other infectious diseases, but shall not include care or treatment of any disease or injury which is clearly not related to the person having contracted or having AIDS. Preventive medical care: $200 maximum per family per year; includes immunizations, mammograms, routine physicals and pap smears.

Hospital charges incurred on Friday, Saturday or Sunday in connection with an admission on any of those days are excluded unless the admission is for:

(a) an emergency condition requiring immediate medical care: or
(b) diagnostic tests or procedures, or surgery if performed within 24 hours from the time of admission.

RATE CHANGE: Based on claims experience - Any premium due date with 30 days advance written notice after completion of selected rate guarantee. Rate guarantee not valid if medical history provided is not complete and accurate.

TERMINATION: By Class - Non-payment of Premium - Material Misstatement.

LIFE INSURANCE CONVERSION POLICY: If application is received within 31 days of employment termination.

EXTENSION OF BENEFITS: Covered Medical expenses as a result of injury or sickness originating prior to the dates of termination of employment will be payable up to 12 months after termination providing the insured is wholly and continuously disabled as a result of such injury or sickness from the date of termination of employment to the date of incurred expense, however no benefits are payable for expenses incurred more than 3 months after termination of insurance with respect to the participating employer, or after the master policy terminates, or the date you or your dependents are covered under any

other group plan, whichever occurs first.

INSTRUCTIONS: PROCEDURE FOR SALE AND ENROLLMENT

1. Fill out name of company and "Date & Presented By" spaces on cost calculation page.
2. Select and circle plan of life and medical coverage and any optional plans of coverage desired.
3. Enter name, ages and dependent status for each employee on cost calculation page.
4. Use rates for proper coverage by age and dependent status and enter on cost calculation page.
5. Carry all rates totalled by benefit to the bottom of the cost calculation page.
6. Enter totals of columns one (1) thru four (4) and bring these figures to the right hand side of the cost calculation page under "PREMIUM SUMMARY" heading.
7. Add the $15.00 billing charge and the $1.00 per employee participation fee.
8. Total these figures. This total will be the first month's remittance and must be submitted with the application.
9. Complete the Employers Agreement and Subscription to the Trust and the agents statement which is on the reverse side of the cost calculation page and obtain the employers signature in the space provided.
10. Separate the cost calculation/Employers Agreement from the Outline of Benefits page and mail this page with the completed enrollment cards, a check for the first month's remittance, and include all material as requested by the underwriting requirements to:

Professional Benefits Administration, Inc. P.O. Box 31810 Dallas, Texas 75231
214-349-1996

REV.8/89

01-01658

September 10, 1992

STATE BOARD OF INSURANCE
P. O. Box 149091
Austin, TX 78714-9091

I applied for medical insurance with a group at the office. A period from about June 19th - August 6th, 1992 went by, along with an incurred cost to me to release medical records, and postage to cover our numerous correspondence. Finally a notice was sent stating the following "we must respectfully decline coverage on this applicant due to medical and underwriting regulations". Would this not be in writing somewhere under the General Exclusions or General Limitations in the handbook? Upon asking the agent over the phone if there was a medical or regulation number, she replied that she along with her head underwriter had decided this over the phone, and that there was nothing in writing to be seen. I HAD BEEN COMPLETELY HONEST AT THE OUTSET WITH THEM...COULD I NOT EXPECT THE SAME?

It was explained to me that since I had sustained a spinal cord injury 20 years ago, and that I am ambulatory they could not risk protecting me from falls... CAN THEY ASSUME THAT I AM GOING TO FALL? They were going to exclude my lower extremities and my back, but since I am ambulatory, they could not risk against falls. Can't they cover me for a cold, or virus? I had a complete physical last year, with excellent results -- above the average as a matter of fact. My condition has been stable for some time now, and I am in great condition.

I had insurance for 13 years with Prudential, and took my policy portable when I left my previous employer. After the second premium didn't arrive in the mail at my address, consequently I was cancelled with no notice--it was my word against the mail carriers, I guess. Here again my fate is decided over the phone.

First of all, I am just wondering about some kind of pre-existing time frame on insurance. Not that I am planning in any way to take advantage of the coverage I can get -- I never have and never will. I do occasionally catch a cold or virus that perhaps an able bodied person passed on to me. I just want the peace of mind to know that if something catastrophic does happen, I would be covered. The least they could do would be refund the money that I paid to have my records released, knowing they were not going to cover me from the beginning.

I am wondering how this cannot be discrimination. It might help if someone would come out first hand to take the application and see whose fate they're deciding upon. In light of the Civil Rights Act of 1991, and the ADA (Americans with Disabilities) Regulations, treatment should be getting better to those of us making a significant contribution to society. NOW I AM FORCED TO USE THE TAXPAYERS DOLLARS FOR HEALTHCARE, AND I WOULD RATHER USE MY OWN

MONEY.

Respectfully submitted,

(b)(6)
Dallas, TX

Enclosures

cc: DEPARTMENT OF JUSTICE; Washington, DC
EEOC REGULATIONS DEVELOPMENTS; Washington, DC
CONGRESSMEN & SENATORS
01-01659

OCT 27 1992

The Honorable Phil Gramm
United States Senator
712 Main Street, Suite 2400
Houston, Texas 77002

Attention: Sherrie Parks

Dear Senator Gramm:

This letter responds to your inquiry on behalf of (b)(6) concerning the applicability of title III of the Americans with Disabilities Act (ADA) to car rental companies.

The Americans with Disabilities Act (ADA) authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist your constituent in understanding the ADA's provisions. However, it does not constitutes a legal interpretation, and it is not binding on the Department.

Title III of the ADA, which prohibits public accommodations from discriminating against persons with disabilities, does apply to rental establishments, including car rental companies. Specifically, there are two different provisions that may apply to the circumstances (b)(6) has described: those relating to barrier removal and those relating to modifications of policies. Both provisions are discussed in detail in the Department's title III regulations and technical assistance manual, copies of which are enclosed.

Barrier removal is addressed beginning with Section 36.304 (page 35599) of the regulation and at page 28 of the manual. Modification of policies is discussed in Section 36.302 (page 35597) and on pages 22-4 of the manual. An additional provision of the regulation may be relevant: Section 36.301 of the regulation (page 35596) addresses the prohibition against

surcharges for accommodations required under the ADA, including barrier removal and modification of policies.

cc: Records; Chrono; Wodatch; McDowney; Breen; FOIA; MAF.
:udd:jonessandra:ada.gramml
01-01660

I have also enclosed for (b)(6) information a pamphlet that generally addresses ADA requirements for car rental agencies. The pamphlet was developed by the Council of Better Business Bureaus Foundation under a grant from the Department of Justice.

It is not possible for us to determine from the information provided in XX correspondence whether the actions of the company she described violated the provisions of the ADA noted above. If, on receiving this information and reviewing the regulations and manual, she wishes to request the Department to pursue an investigation to determine whether a violation did occur and, if so, to pursue the statutory remedies, she may do so in accordance with the procedures discussed in the manual on pages 64-6.

I hope this information assists you in responding to your constituent.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

Enclosures (3)
01-01661

6/29/92

TO: Sharon

FROM: (b)(6)

This is to follow up our conversation last week, regarding Title III of the ADA and our trouble in trying to get Hertz to accommodate our needs for a van rental with the rear seat removed.

As you can see from the letter, we have a partial victory. My perseverance has gotten us the van, but at a much higher cost than we should have to pay, or can afford. I should be able to pay the original price quoted when I first tried to rent, since service should have been in place at that time. That is what I am trying to accomplish now.

But as you can tell from all this, companies will only obey the law if you force them into it. People less knowledgable will still be getting jerked around. A few wellplaced phone calls might get some of the major companies to comply. Hertz doesn't even have a toll free customer service number. I have been calling the Customer Relations Manager in Oklahoma City, Carol Loud, (405) 721-6440.

Thanks for any help you can give.

(b)(6)
01-01662

(b)(6)
June 27, 1992

Mr. Craig R. Koch, President
Hertz North American Rental
225 Brae Blvd.
Parkridge, NJ 07656

Dear Mr. Koch,

Although my husband has Multiple Sclerosis, we like to travel like any other family. I am writing to report a problem I am having with your company, Hertz Car Rental.

My husband now needs to travel with a three-wheel mobility cart, and therefore we need a minivan to fit the cart, luggage and family in. Even with a van, the rear seat would have to be removed to accommodate the cart.

In early June I called several car rental companies to inquire about rates and availabilities. We will be traveling to San Diego on July 11, returning to Dallas on July 18. Hertz is the only company with on premises rental in San Diego, which is necessary with the cart.

The rate quoted for one week, unlimited mileage, was $268.99. However, the reservationist said that Hertz's policy was that the rear seat could not be removed. I was told it was because customers had damaged the vehicles. I explained why we needed it, and that the removal would be done by the agent. I was told the only thing that could be done was to call San Diego directly and ask the manager if he would do it. Money was spent to call San Diego Hertz twice to get the manager, and again be told, no.

We then reserved a full size car, since that seemed to be the only option, but this would make travel very difficult. The cart seat must be detached. The body of the cart, which is much harder to lift into a trunk, would take up the whole space in the trunk, and the seat and my son would take up most of the back seat, leaving no room for regular suitcases.

During this time, we learned that Title III of the Americans With Disabilities Act, which covers companies selling goods and services to the public, is already in effect. Hertz has to make reasonable accommodations; and certainly, what we were asking is reasonable, since it

costs nothing.

I then pursued it further. I asked reservations for a corporate customer service phone number. All I could get was a P.O. box in Oklahoma City. I had to call information myself to find a phone number. I called and spoke to the secretary of Carol Loud, the Customer Relations manager, and left a message. The phone call was not returned by the next day. I also spoke to Senator Phil Gramm's legislative aide, who was ready to investigate when I put it in writing. I decided to make another call to Carol Loud, and finally got her on the phone. The problem was explained.

01-01663

Her tone was curt and somewhat defensive. She said Hertz was providing for the handicapped with hand controlled cars, which has nothing to do with our needs. However, since I was knowledgeable of the new law, she knew she had better deal with it. She said she'd "check it out". She called back in about an hour and said, "as of today, Hertz's policy had changed, and that a van, with rear seat removed, would be available for us in San Diego". A victory, we thought! But short lived. The price she quoted, even with a 5% discount we had, was $468. This is more that we can afford, and $200 more than the original quote. I called reservations for an explanation, and was told that the first few van rentals on a certain date were at a special "promotional price" and that successive rentals got more expensive as fewer vans were left. What a terrible and unfair policy!

We believe that we should get our rental at the original $268 price quoted in early June, since that is when we would have reserved if the service we needed (and which should have been-available) was allowed then. If not, we will have to struggle with the car, which will greatly diminish our much looked forward to vacation.

Time is short, so I hope you will act on this quickly. I will be calling Carol Loud again next week. (Customer service really should have a toll free number.)

We have never used Hertz before, and I hope we can become satisfied and long-term customers. We are also in touch with many other handicapped people through the MS Society who will be very happy to learn of your new accommodations. Please don't make us suffer for being ground-breakers.

I can be reached days at(b)(6) or evenings at (b)(6).

Thank you for your help.

Sincerely,
(b)(6)

cc: Sen. Phil Gramm
Sen. Lloyd Bentsen
01-01664

DJ 202-PL-328

OCT 27 1992

Mr. Louis A. Green, P.S.
Land Planners and Surveyors
684 Country Club Drive
Xenia, Ohio 45385

Dear Mr. Green:

This letter is in response to your inquiry of September 18, 1992, about the potential conflict between the Americans with Disabilities Act ("ADA") and the local zoning ordinances of Xenia, Ohio.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist you in understanding the ADA's requirements. However, it does not constitute a legal interpretation or legal advice and it is not binding on the Department of Justice.

Your letter indicates that the city of Xenia initially approved your use of a new facility and then reversed itself, disapproving your use. If you have reason to believe that the city reversed its decision because you employ persons with disabilities, then you may wish to file a complaint under title II of the ADA, which generally prohibits discrimination by State and local governments against persons with disabilities. You may file such a complaint with Ms. Stewart Oneglia, Chief, Coordination and Review Section, Civil Rights Division, United States Department of Justice, Post Office Box 66118, Washington, D.C. 20035-6118.

If, on the other hand, the city disapproved your use of the new facility for reasons unrelated to the fact that you employ persons with disabilities, then, based on the facts stated in your letter, it is unlikely that the ADA applies to your situation.

cc: Records, Chrono, Wodatch, Contois
Udd:Contois:pl.zoning

01-01665

Thank you for your inquiry. I hope this information is useful to you in understanding the requirements of the ADA.

Sincerely,

John L. Wodatch
Chief
Public Access Section

01-01666

LOUIS A. GREEN AND ASSOCIATES
LAND PLANNERS AND SURVEYORS
684 COUNTRY CLUB DRIVE
XENIA, OHIO 45385
513-372-5038
LOUIS A. GREEN FAX = 513-372-8420

September 18, 1992

Ms. Lori Kohn
U.S. Department of Justice
Civil Rights Division
Washington, D.C. 20035

Re: The Americans with Disabilities Act

Dear Ms. Kohn:

I want to express my appreciation to you for the assistance you have provided recently. I especially want to thank you for sending us copies of the Federal Register (dated 7/26/91) and the Title II Technical Assistance Manual. They have been very helpful.

Yesterday, September 17, I met with my attorney to discuss several issues pertaining to our business operation including our pending move into a new facility. I am the owner of a consulting engineering business which employees two certifiably disabled persons (one since 1978). Our business is a highly technical low traffic business and not a detriment to the property values or quality of life in any area in which it would operate.

Our business has experienced positive growth such that it has outgrown our present office. We have agreed to lease a new facility which will allow us to hire another engineer who incidentally also is certifiably disabled. The location we wish to move into is presently zoned residential although it has been used as a retail business for 23 years and is adjacent to other business properties.

The City of Xenia, Ohio originally approved our use of this facility and then without notification, held a subsequent meeting in which they reversed their decision. The outcry from citizens, business associates and other public officials has been in total support of us. We have been advised that in as much as we employ certifiably disabled persons that our business is exempt from local zoning and interference under The Americans with Disabilities Act. In addition, the owner of our facility

will by contract (as allowed and stipulated in our lease) work

with the State of Ohio Agencies, and use part of the facility for technical rehabilitation of other disabled professional persons.

My attorney, Alan G. Anderson, feels that we have a very strong legal case. However, he would like to have answers to the following specific questions:

> "I am somewhat familiar with the Federal Fair Housing Act Amendments of 1988 and cases like Oxford-Evergreen v. City of Plainfield 769 F. Supp. 1329 (DNJ 1991). I understand that practically speaking a municipality cannot zone to keep out disabled group homes, and that local zoning is pretty much powerless. However, to switch to business under ADA: Does the same apply? Can my client, Louis A. Green and Associates, operate a consulting business in a residential area (it is important to note that the property was used as a business for 23 years prior to their lease, and that there is other business use around the facility by variance)? The owner of the facility has contracts with State Rehabilitation Departments to retrain certifiably disabled persons, and Louis A. Green and Associates does and will employ certifiably disabled persons in the course of their business, are they in effect exempt from such local zoning in this case? Is this a type of case in which the U.S. Justice Department would participate?"

Again, I appreciate your help and any advice or assistance you might provide.

Sincerely,

Louis A. Green, P.S.

LAG:bh

OCT 27 1992

The Honorable Robert S. Walker
U.S. House of Representatives
2369 Rayburn House Office Building
Washington, D.C. 20515-3816

Dear Congressman Walker:

This letter responds to your inquiry on behalf of (b)(6) concerning the Americans with Disabilities Act (ADA).

The Americans with Disabilities Act authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist your constituent in understanding the ADA's provisions. However, it does not constitutes a legal interpretation, and it is not binding on the Department.

We understand (b)(6) inquiry as follows: He uses a wheelchair. Presumably because of a State or local law or regulation relating to land use, he has been prohibited from installing running water in a cabin that he owns. He has asked whether the ADA includes any provisions that would require that he be given permission to install running water in his cabin.

Title II of the ADA prohibits State and local governments from discriminating against individuals with disabilities. The general provisions of this title are discussed in the enclosed Department of Justice regulation. Specifically, the provisions that may apply to this situation are in Section 35.130(b)(7), which appears beginning at the bottom of page 35718, and requires a public entity to make reasonable modifications in policies when necessary to avoid discrimination on the basis of disability. Further discussion of this provision is included on page 13 of the enclosed Technical Assistance Manual for title II.

cc: Records; Chrono; Wodatch; Breen; McDowney; FOIA; MAF.

We are unable to determine from the information provided whether these provisions would require the State or local entity to permit (b)(6) to install running water on his property. If, after reviewing the enclosed materials, (b)(6) believes the ADA requires such a modification of the rule creating the prohibition, he can proceed as explained on pages 45-8 of the Manual.

I hope this information assists you in responding to (b)(6)

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

Enclosures (2)

01-01670

September 30, 1992

CONGRESSIONAL INQUIRY
(b)(6)
Stevens, Pennsylvania

(b)(6) is confined to a wheelchair. (b)(6) owns a cabin in State Run, Pennsylvania. He has been told that since he owns less than an acre of land he is unable to put a toilet and running water in the cabin. (b)(6) was wondering if there is a provision within the Americans with Disabilities Act which would allow him to place a toilet and running water in his cabin.

This Congressional office requests information that will allow for a satisfactory reply to my constituent.

Bm

01-01671

OCT 28 1992

(b)(6)

Dear Mr. (b)(6:

This letter is in response to your inquiry concerning the responsibilities of a private, non-profit organization that intends to build a foster care home for children under the Americans with Disabilities Act (ADA).

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist you in understanding the ADA's requirements. However, it does not constitute a legal interpretation and it is not binding on the Department.

Senator Harkin has informed us that your organization, The Baptist Children's Home and Family Ministries, Inc. (BCH), is privately owned and non-profit, and is licensed by the State of Iowa. You further informed us that BCH has no affiliation with State or local government entities, other than its State license, and it receives no funding from Federal, State, or local government entities. Senator Harkin stated that you seek information about BCH's ADA responsibilities in building a foster home for eight children. This letter concerns BCH's responsibilities as a public accommodation under title III of the ADA. BCH may also have ADA obligations as an employer, under title I of the ADA. You may contact the Equal Employment Opportunity Commission at 1801 "L" Street, N.W., Washington, D.C. 20507, (800) 669-4000 for further information about BCH's title I obligations.

Because BCH is a private organization and has no affiliation to State or local governmental entities, the applicable ADA provision is title III, which applies to private entities

cc: Records; Chrono; Wodatch; Novich; McDowney; FOIA, MAF.
:udd:novich:congress:harkin2. (b)(6)
01-01672

operating places of public accommodation. Title III defines a place of public accommodation as a facility that is privately owned, affects commerce, and fits into one of twelve categories. Strictly residential facilities are not included in this list. If the BCH home is strictly residential, is not covered by title III of the ADA. It will, however, be covered by title III if it provides a significant enough level of social services that it can be considered a social service center establishment. Social services in this context include, for example, medical care, meals, transportation, counseling, and social activities. You may consult the enclosed title III regulation, at pages 35551-35552 for further discussion of social service center establishments.

Even if the BCH home is a social service center establishment, title III will not apply if the home is controlled by a religious entity. Section 307 of the Act exempts religious or religiously controlled entities from their title III obligations, even where those entities operate facilities that would otherwise be covered as places of public accommodation. You informed us that BCH receives 80% of its funding from Baptist churches and individuals in those churches, and that the entire BCH Board of Directors is Baptist, including both pastors and laypersons from Baptist churches. Although we are unable to determine whether BCH would qualify for title III's religious exemption, funding sources and the composition of a board of directors are relevant factors in such a determination. You may consult section 36.102(e) at page 35593 of the enclosed title III regulations, with further discussion at page 35554, for explanation of the religious entity exemption. Please be aware that religious entities are not exempt from their responsibilities under title I.

Therefore, if the foster care home BCH intends to build is a social service center establishment, and if BCH is not religiously controlled, the BCH home would be subject to the title III requirements for new construction, found in section 303 of the ADA. Section 303 governs new construction of facilities for which: (a) the last application for a building permit or permit extension was certified to be complete after January 26, 1992; and (b) the first certificate of occupancy is issued after

January 26, 1993. Section 303 requires that such facilities be designed and constructed to be readily accessible to and usable by individuals with disabilities. The effective dates and requirements for new construction can be found in section 36.401 of the enclosed title III regulation, at pages 35599-35600, with further discussion at pages 35574-35580. A facility will be considered readily accessible and usable if it is designed and constructed in strict compliance with the technical specifications found in the Americans with Disabilities Act Accessibility Guidelines, which are appended to the enclosed title III regulation, beginning at page 35605.
01-01673

Once the BCH home is built and operational, it must comply with section 302 of the ADA, which prohibits discrimination on the basis of disability in existing facilities. Pursuant to that section, the BCH home must: (a) eliminate discriminatory eligibility criteria for the home's participants; (b) make reasonable modifications to discriminatory policies, practices, and procedures; (c) provide auxiliary aids and services when necessary for effective communication with participants with disabilities; and (d) remove architectural barriers to access where such removal is readily achievable. Please consult Subparts B and C of the enclosed title III regulation, at pages 35595-35599, with further discussion at pages 35555-35574, for explanation of the ADA responsibilities for existing facilities.

I hope this information is helpful to you.

Sincerely,

John L. Wodatch
Chief
Public Access Section

Enclosure

cc: The Honorable Tom Harkin
United States Senate

01-01674

TOM HARKIN (202) 224-3554
IOWA TTY (202) 224-4633

COMMITTEES

United States Senate AGRICULTURE
WASHINGTON, DC 20510-1502 APPROPRIATIONS
SMALL BUSINESS
LABOR AND HUMAN
RESOURCES

August 27, 1992

John Wodatch, Director
Office of the Americans with Disabilities Act
Civil Rights Division
United States Department of Justice
P.O. Box 66738
Washington, DC 20035-498

Dear Mr. Wadotach:

A constituent of mine, (b)(6) contacted my Des Moines office to request information pertaining to the Americans with Disabilities Act of 1990.

(b)(6) is employed with the Baptist Children's Home and Family Ministries, Inc. This is a private/non-profit

organization which is licensed by the State to provide foster care services. They are presently in the process of planning to build a foster care home in order to provide services for eight children.

(b)(6) would like to know what the agencies' obligations are under the Americans with Disabilities Act. I would appreciate any assistance you could provide to (b)(6) regarding this issue. His address is (b)(6). The telephone number is (b)(6).

Thank you, in advance, for your assistance regarding this matter.

Sincerely,

Tom Harkin
United States Senator

TH/ds

01-01675

OCT 28 1992

The Honorable Amo Houghton
Member, U.S. House of Representatives
Federal Building, Room 122
Jamestown, New York 14701

Attention: Carol Sheldon

Dear Congressman Houghton:

This letter responds to your inquiry on behalf of (b)(6) concerning roadway conditions in the trailer park where he resides. You have asked whether the Americans with Disabilities Act (ADA) requires the roadways to be accessible to(b)(6).

The Americans with Disabilities Act (ADA) authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist your constituent in understanding the ADA's provisions. However, it does not constitutes a legal interpretation, and it is not binding on the Department.

Title III of the ADA regulates "places of public accommodation," as listed under Section 36.104 of the enclosed title III regulation on page 35594. Residential facilities and

communities are not included under the ADA as places of public accommodation. Therefore, if the trailer park in question is open only to residents and their guests, and does not otherwise include facilities qualifying as a "place of public accommodation," neither the park nor its roadways would be subject to ADA regulation. Of course, residential facilities may be subject to the nondiscrimination and accessibility requirements of the Fair Housing Act.

cc: Records; Chrono; Wodatch; Breen; McDowney; FOIA; MAF.
:udd:jonessandra:ada.houghtonl

01-01676

The only other ADA provisions that may apply would be those of title II, which governs State and local government programs and services. However, it does not appear from your inquiry that the roadways in question are under the authority of a State or local government entity. Nevertheless, I have also enclosed a copy of the Department's title II regulation, which describes accessibility requirements applicable to State and local services.

If (b)(6) feels, after reviewing the enclosed information, that the roadway conditions in question are violative of either of the regulations, he may proceed as explained on page 45 of the enclosed Title II Technical Assistance Manual (for a title II violations) or, for a title III violation, as described on pages 64-7 of the enclosed Title III Technical Assistance Manual. These two manuals also include additional discussion of the general applicability of the ADA.

I hope this information assists you in responding to your constituent.

Sincerely,

John R. Dunne

Assistant Attorney General
Civil Rights Division

Enclosures (4)

01-01677

Illegible Illegible
34th DISTRICT, NEW YORK

MEMBER:
NORTHEAST-MIDWEST
COALITION
NORTHEAST AGRICULTURE
CAUCUS

COMMITTEES:
BUDGET
FOREIGN AFFAIRS
SELECT COMMITTEE ON
AGING

Congress of the United States
House of Representatives

May 26, 1992

Mr. Velva Walter
Office of Justice Programs
Room 1244
633 Indiana Avenue, NW
Washington, D.C. 20531

Dear Mr. Walter:

My Jamestown District Office has recently been contacted by XX XXXX XXXXXX XXXXXX XXXXXXX XXXXXXX XXXXXXX New York 14733, regarding difficulties he is encountering with handicapped access.

(b)(6) is confined to an electric three-wheel vehicle (much like a wheelchair) and his son is confined to an electric wheelchair. Due to roadway speed bumps neither are able to access the roadway or sidewalk. They need help to get over each speedbump. Since these speedbumps are part of the trailer park roadway, would the trailer park be subject to ADA regulations? Would these speedbumps be considered a removable obstacle?

Any insight you may be able to provide would be greatly appreciated. I would request a written response. All correspondence should be addressed to me at the Jamestown District Office, P.O. Box 908, Jamestown, New York 17401 - 0908. Should you have any questions, please do not hesitate to contact the Jamestown office. Carol Sheldon, one of my staff assistants, will be happy to help you. Thank you for your help in this matter.

Sincerely,

Amo Houghton
Member of Congress

AH/cas

1216 LONGWORTH HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-3234
PHONE (202) 225-3161

01-01678

OCT 28 1992

The Honorable Jim Saxton
Member, U.S. House of Representatives
1 Maine Avenue
Cherry Hill, New Jersey 08002

Attention: Dee Denton

Dear Congressman Saxton:

This letter responds to your inquiry on behalf of (b)(6) requesting information on the applicability of the Americans with Disabilities Act (ADA) to the Merchantville Community Center.

The Americans with Disabilities Act authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist your constituent in understanding the ADA's provisions. However, it does not constitutes a legal interpretation, and it is not binding on the Department.

It is not possible for us to determine, from the information your constituents have provided, what provisions of the ADA may apply to this facility. We are enclosing copies of the Department's regulations and Technical Assistance Manuals for both title III, which applies to public accommodations (as defined in the Act and the regulations), and title II, which applies to state and local government activities. There are different standards and provisions under the two different titles.

We recommend that your constituents review the enclosed information, and determine whether either of these titles applies to the Community Center. They may then proceed to remedy any violations in the manner described under the "Enforcement" section at the end of each Manual. I should note that there are different procedures for each title.

cc: Records; Chrono; Wodatch; Breen; McDowney; FOIA; MAF.
:udd:jonessandra;ada.saxton1
01-01679

I hope this information assists you in responding to your constituent.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

Enclosures (4)

01-01680

AUG 27 1992

August 25, 1992

Congressman James H. Saxton
1 Maine Avenue
Cherry Hill, New Jersey

Dear Honorable Congressman Saxton:

My wife and I are writing to you with regard to the Merchantville Community Center and its lack of handicap facilities.

(b)(6) and myself belong to the Merchantville Assembly and have occasion to rent the Merchantville Community Center four (4) times a year. Our concern is that there are three (3) members of our assembly who are handicapped, and the Community Center does not have any handicap facilities, i.e., lavatory and entrance.

For the past year, I have been in communication with the Community Center authorities, and have asked them to seriously consider installing a wheel chair entrance. I have had no success with my request.

We are writing to you to ask for your intervention on our behalf. Any assistance you can give us with this endeavor will be greatly appreciated.

Sincerely,

(b)(6)

Cherry Hill, New Jersey 08003

01-01681

OCT 30 1992

The Honorable Scott Klug
Member, U. S. House of Representatives

16 North Carroll Street, Room 600
Madison, Wisconsin 53703

Attention: Sam Gold

Dear Congressman Klug:

This letter responds to your inquiry on behalf of (b)(6) concerning application of the Americans with Disabilities Act (ADA) to a restaurant owned by his client.

The ADA authorizes this Department to provide technical assistance to individuals and entities having rights or responsibilities under the ADA. Accordingly, this letter provides informal guidance to assist you in responding to (b)(6) However, this technical assistance does not constitute a legal interpretation, and it is not binding on the Department of Justice. (b)(6) has raised a number of questions to which the following information is responsive:

Section 302(a) of the ADA prohibits discrimination on the basis of disability by "any person who owns, leases (or leases to), or operates a place of public accommodation." Accordingly, title III applies to both the owner and a lessee of a public accommodation, and both are responsible for removing existing barriers when it is "readily achievable," as defined by Section 301(9) of the ADA.

As provided in the definition of "readily achievable" in Section 36.104 of the title III regulation, factors to be taken into account in determining whether an action is readily achievable include the overall financial resources of the facility and the effect of the action on expenses and resources of both the owner and the lessee, as well as a number of other factors. The exact obligations of an owner and lessee would be determined on a case-by-case basis, and we cannot anticipate whether (b)(6) client's entire portfolio of businesses would be considered in this instance.

cc: Records; Chrono; Wodatch; Breen; Delaney; McDowney; FOIA;
MAF. :udd:jonessandra:ada.klugl
01-01682

Further discussion of landlord/tenant responsibilities appears on pages 35555-56 and in Section 36.201 of the title III regulation. Discussion of barrier removal is included on pages 3553-54 and in Sections 36.304-305 of the title III regulation, and pages 28-39 of the Title III Technical Assistance Manual. A full discussion of the enforcement provisions of the ADA can be found in Sections 36.501-508 of the title III regulation and in the Technical Assistance Manual at pages 64-67. Since we understand (b)(6) has copies of the materials referred to, we have not enclosed copies with this letter.

The Department of Justice does not perform inspections of public accommodations except in the course of conducting an investigation for noncompliance. However, informal technical assistance regarding the ADA accessibility standards is available by calling our telephone information line, (202) 514-0301. His client can also receive such guidance from local building professionals, who should be familiar with the ADA's requirements.

I hope this information is helpful in responding to your Constituent.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

01-01683

SCOTT KLUG
SECOND DISTRICT WISCONSIN

EDUCATION AND LABOR COMMITTEE
GOVERNMENT OPERATIONS COMMITTEE

Congress of the United States
House of Representatives
Washington, DC 20515-4902

September 16, 1992

Mr. John L. Wodatch
Director
Office On The A.D.A.
Department of Justice
P.O. Box 66738
Washington, DC 20035-6738

Dear Mr. Wodatch:

I am writing on behalf of my constituent, (b)(6) would like to receive a written reply concerning some questions he has about the Americans with Disabilities Act (ADA).

(b)(6) has a client who would like to rent space as a restaurant/bar. His client not only owns this restaurant, but has other substantial commercial and residential assets in the city. It is my understanding that the restaurant is not part of a chain.

We have been told by DOJ officials that the restaurant would have to make changes to conform with ADA which are are "readily achievable", i.e., "easily accomplishable without much difficulty or expense." (b)(6) central question is this: Will DOJ evaluate the criterion of "readily achievable" on the basis of the financial status of the restaurant alone or will they evaluate it on the basis of the entire portfolio of his client? In addition, he would like to know who would be primarily responsible for making any changes, the lessee or the lessor.

(b)(6) would also like to know if it is possible for a DOJ official or representative to look at the property or examine in greater detail the specifics of the case in advance and let him know what kind of changes, if any, would need to be made. In addition, he would like information on the enforcement mechanism.

I would appreciate it if you would direct your correspondence in reply to this inquiry to my District Office in

Madison. (b)(6) already has copies of the regulations and Technical Assistance Manual, but the information is not clear. Please feel free to contact Sam Gold of this office if you have any questions.

PLEASE RESPOND TO:
1224 LONGWORTH HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-4902
(202) 225-2906

15 NORTH CARROLL STREET
ROOM 600
MADISON, WI 53703
(808) 257-9200

Thanks for your time and help with this matter.

Sincerely,

Scott Klug
Member of Congress

SK/sg
01-01685

DJ 202-PL-267

NOV 3 1992

Tom Gallagher
Manager, Research and Planning
Department of Employment
P.O. Box 2760
Casper, Wyoming 82602

Dear Mr. Gallagher:

Your letter to the Architectural and Transportation Barriers Compliance Board requesting information about the Americans with Disabilities Act (ADA) was referred to this office for response.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist you in understanding the ADA's requirements; however, it does not constitute a legal interpretation and it is not binding on the Department.

Your letter describes an ordinance, adopted by the city of Casper, Wyoming, allowing certain individuals, including persons with disabilities, to purchase curbside parking rights on a monthly basis. Under this ordinance, persons with disabilities are allowed to park along a curb for up to eight hours a day for a monthly fee of $25. Your letter questions whether some recourse is available to you because you believe that this ordinance is discriminatory. Included with your letter was a brochure describing the city's parking regulations in the downtown area of Casper, Wyoming.

The ADA prohibits State and local government entities from denying benefits or services to any person with a disability, if that person would otherwise be entitled to those benefits or services. 42 U.S.C. 12132; 28 C.F.R. 35.130. Furthermore,

> [a] public entity may not place a surcharge on a particular individual with a disability or any group of individuals with disabilities to cover the costs of measures ... that are

required to provide that individual or group with nondiscriminatory treatment required by the Act or this part.

cc: Records, Chrono, Wodatch, Magagna, Friedlander, Nakata, FOIA
Udd:Nakata:202.PL.267.Gallagher

01-01686

28 C.F.R. 35.130(f).

According to the brochure included with your letter, the city of Casper allows free curbside parking for up to two hours in the downtown area. Ordinarily, curbside parking is not allowed beyond two hours. Because persons with disabilities are allowed to stay at the curbside for longer periods of time, the city is offering persons with disabilities a service not generally available to the public. The Department of Justice's regulation specifies that the ADA does not prohibit a local government from providing a benefit or service to persons with disabilities that goes beyond those required by the ADA. 28 C.F.R. 35.130(c).

Furthermore, the $25 per month fee does not appear to be discriminatory. Long-term parking is provided in the city's Parking Garage Structure for a cost of $.35 per hour after the first two hours. Therefore, a person working an eight-hour day in the downtown area could park along the curb for two hours, then move to the Parking Garage Structure, stay for free for two hours, then pay $.35 for the remaining four hours. Therefore, a person could park in the downtown area for $1.40 per day or $28 per month (assuming a 20-day work month). Because the $25 per month curbside parking fee for persons with disabilities is less than the parking fee that a non-disabled person would ordinarily have to pay for monthly parking in the downtown area, the $25 fee does not appear to be a discriminatory surcharge.

Under certain circumstances, a city's parking policy might be discriminatory. For instance, if the monthly parking fee in the city's parking garages were higher for persons with disabilities than for persons without disabilities or if these garages did not provide adequate parking spaces for persons with disabilities, the city might be in violation of the ADA. These circumstances, however, are not indicated in your letter.

I have enclosed a copy of the Department's recently published Title II Technical Assistance Manual which may further assist you in understanding the obligations of public entities under the ADA. I hope this information is useful to you.

Sincerely,

John Wodatch
Director
Public Access Section

UNITED STATES
ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD
1331 F Street, NW * Washington, DC 20004-1111 * 202-272-5434 (Voice)
202 272-5449 (TDD) * 202 272-5447 (FAX)

Mr. John Wodatch
Office on the Americans with Disabilities Act
Civil Rights Division
U.S. Department of Justice
Washington, DC 20530

Dear Mr. Wodatch:

Please find enclosed two letters addressed to the Access Board requesting assistance regarding the ADA. It is our opinion that they address issues more appropriately under the purview of the Department of Justice.

Please respond directly to the parties requesting assistance. We have notified them that we have forwarded their inquiries to your office.

Sincerely,

Marsha K. Mazz
Technical Assistance Coordinator

Enclosures

The Access Board
JUL 27 1992

01-01688

MIKE SULLIVAN
GOVERNOR
DEPARTMENT OF EMPLOYMENT
Division of Research and Planning
P.O. BOX 2760 (307) 265-6905
CASPER, WYOMING 82602

June 23, 1992

Architectural and Transportation
Barriers Compliance Board
1111 18th Street NW
Suite 501
Washington DC 20036

Dear Sir/Madam:

I am an employer situated in down town Casper Wyoming. By city ordinance a handicapped individual may purchase, for a monthly fee of $25, the right to park for 8 hours curbside for 8 hours. Others who may purchase these same rights are disabled veterans, taxi companies and hospitals.

Until last month, I employed a disabled individual whose disability required her to park in front of the entrance to our place of work. For this reason, I paid the city a monthly fee of $25. Because I perceive a city imposed rental fee for curbside parking, exclusive to the disabled and taxi companies, to present a barrier to the employment of the disabled I also wrote two letters to the Mayor and city council requesting that the city's ordinance be modified and made non-discriminatory. As you can see from the enclosed brochure, the city is managing downtown parking to support downtown merchants.

It certainly appears to me that the City is in violation of ADA. My question is this: Since the city refuses to commit itself to the development of a nondiscriminatory ordinance, what is the next step available to me as an employer?

My work number is 307-265-6715 and I am available from 8 AM to 5 PM Mountain time.

Thank you for your time and consideration.

Sincerely,

Tom Gallagher
Manager, Research and Planning

PARKING ORDINANCE PUBLIC INFORMATION FLYER

HOW SERVICE IS PROVIDED:

Parking enforcement is provided by the City through the Casper Police Department's Traffic Division. The Parking Enforcement Personnel, and scooters are a familiar sight in the Downtown area.

The Division serves as a source of enforcement and information on parking in Downtown Casper. Parking Enforcement Personnel serve this dual role of insuring turnover of parking spaces for customers and visitors to the Downtown, and answering question about the community.

Remember, parking enforcement is a public service. The Traffic Division of the Casper Police Department welcomes your comments. Sgt. W. Sandfort at 235-8261.

FREQUENTLY ASKED QUESTION

Q: WHEN WILL THE PARKING METERS BE REMOVED?

A: All parking meters in Downtown area will be removed by June 1, 1992.

Q: WILL THERE STILL BE A 2-HOUR PARKING LIMIT?

A: Yes, parking spaces in the Downtown area are limited to two hours of free parking except in those areas which are specifically marked. The parking restriction will be Enforcement Clerks utilizing hand-held computerized ticket writers that will record the amount of time that a space is occupied by each vehicle.

Q: CAN I AVOID A CITATION BY MOVING MY VEHICLE TO AN ADJACENT SPACE EVERY TWO HOURS?

A: No. The parking ordinance has been amended to help maintain parking availability for customers and clients of Downtown businesses. The regulations make it a violation to park more that two hours in any block face in the Downtown. Long-term parking spaces are available in the Parking Garage Structure located at 230 South Wolcott for a cost of $.35 per hour after the first two hours for shoppers or clients. Employees are encouraged to lease spaces in the city-owned parking lot at 1st and Center or in the Parking Garage Structure.

Q: WHEN WILL THE NEW PARKING REGULATIONS GO INTO EFFECT?

A: The effective date of the Ordinance is May 1, 1992. The Parking Enforcement Personnel will be issuing courtesy tickets for a 30-day "grace period" between May 1 and May 31, 1992. Regular parking citations will be issued for violation for June 1, 1992.

Q: WILL THERE BE A CHANGE IN THE HOURS OF ENFORCEMENT?

A: Yes. The new ordinance provides that the two hour parking restrictions will be enforced daily from 8:00 a.m. to 5:00 p.m. on weekdays and from 8:00 a.m. to 2:00 p.m. on Saturdays. enforced on Sundays and Legal Holidays.

Q: WILL THERE BE AN INCREASE IN FINES FOR PARKING VIOLA TIONS?

A: Yes. The new Ordinance provides for a change in the line structure for parking violation. The fine for the first violation in a 24 hour period will increase from $2.00 to $5.00. The second violation will result in a $10.00 fine and the third violation in a 24 hour period will carry a $20.00 fine. All fines will double if not paid in 10 days.

Q: WILL THERE BE CHANGES IN THE COST OF PARKING IN THE CITY'S PARKING GARAGE?

A: The cost of parking in the Parking Garage will continue to be $.35 for every hour or portion of an hour after the first two hours. The parking Garage is located at 230 S. Wolcott with entrances on Wolcott and on Center. Spaces are also available for lease on a monthly basis. Contact the City of Casper Finance Office for more information on the cost for leasing spaces in the Parking Garage.

Q: WHAT WILL BE THE RESTRICTIONS ON PARKING IN THE CITY PARKING LOT AT 1ST AND CENTER?

A: The long-term parking spaces in the Parking Lot at 1st and Center will be converted to lease spaces only under the provisions of the new ordinance. For more information on the costs of leasing spaces in the Parking Lot contact the Finance

01-01690

(Form) Parking: In Downtown Casper

01-01691

U.S. Department of Justice
Civil Rights Division
Public Access Section
DJ 202-PL-00044 P.O. Box 66738
Washington, D.C. 20035-6738

NOV 3 1992

Mr. Michael Milroy
Director of Operations
Deepwood Center
8121 Deepwood Boulevard
Mentor, Ohio 44060

Dear Mr. Milroy:

Thank you for your letter dated February 5, 1992, in which you requested guidance regarding the number of parking spaces required at certain facilities under your control.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities that are subject to the Act. This letter provides informal guidance to assist you in understanding the ADA accessibility standards. However, this technical assistance does not constitute a legal interpretation of the application of the statute to parking and it is not binding on the Department.

Section 4.1.2(5) of the ADA Guidelines (ADAAG) lists the requirements for parking. Section 4.1.2(5)(d)(ii) of the ADAAG states that units and facilities that specialize in treatment or services for persons with mobility impairments must make 20 percent of the total number of parking spaces accessible. This provision applies to facilities and units that offer medical services if the facility is one where clients may stay for a period of time exceeding twenty-four hours, i.e., overnight.

Section 6.1 of the ADA Accessibility Guidelines. If the facility or unit is providing "other services" particularly for people with mobility impairments (including vocational rehabilitation services), the overnight requirement does not apply. Since your workshop offers occupational and physical therapy services to persons with mobility impairments, it would appear to be covered by the 20 percent requirement of section 4.1.2(5)(d)(ii).

However, since your entire facility is not used exclusively by people with mobility impairments, you should try to determine what proportion of people with mobility impairments use your facility for physical therapy and make 20 percent of that number of spaces accessible rather than 20 percent of the entire parking lot.

01-01692

We are enclosing a copy of the title III regulation and this Department's title III Technical Assistance Manual to assist you in complying with the ADA.

I hope this information is useful to you.

Sincerely,

John L. Wodatch
Director
Public Access Section

Enclosures (2)

01-01693

NOV 4 1992

The Honorable Robert E. Andrews
Member, U. S. House of Representatives
63 N. Broad Street
Woodbury, New Jersey 08096-4602

Dear Congressman Andrews:

This letter is in response to your inquiry on behalf of (b)(6) XXX concerning inaccessibility of convenience stores.

The Americans with Disabilities Act (ADA) authorizes the Department of Justice to provide technical assistance to individuals with rights or responsibilities under the ADA. This letter provides informal guidance to assist (b)(6) in understanding the ADA requirements. However, this technical assistance does not constitute a legal interpretation, and it is not binding on the Department of Justice.

The ADA requires that physical barriers to entering and using existing places of public accommodation (which include convenience stores) be removed when removal is "readily achievable." This provision is applied on a case by case basis, and may or may not require that specific actions be taken in an individual case.

Enclosed are copies of the Department's Title III regulation, regulation highlights and technical assistance manual, which include detailed discussion about the requirements for accessibility under the ADA. If, after reviewing this information, (b)(6) believes there are facilities operating in violation of the ADA, he can proceed as explained in the section on enforcement in the manual, beginning on page 64.

cc: Records; Chrono; Wodatch; Breen; McDowney; FOIA; MAF.
:udd:jonessandra:ada.andrewsl
01-01694

(b)(6) letter includes a question concerning Social Security Disability Insurance, which should be directed to the Social Security Administration, Department of Health and Human Services, 6401 Security Boulevard, Baltimore, Maryland 21235.

I hope this information assists you in responding to your constituent.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

Enclosures (3)
01-01695

September 30, 1992

(b)(6)

Robert E. Andrews
63 North Broad Street
Woodbury, NJ 08096-4602

Dear Congressman Andrews,

I am writing you today for two very specific reasons. First, I am confined to a wheelchair; due to a Developmental Disability. I am very perplexed with a problem in my community and the surrounding area. No "Convenience Store"; such as, Wa Wa Food Market, Cumberland Farms, and 7-11 are accessible. When I speak of accessibility in this case, I do not mean as defined by the Americans with Disabilities Act (ADA), I cannot even enter the front door at most stores. This does not make them very "convenient" for me, just frustrating. I am mainly referring to the stores in my vicinity, but most of these stores (on a much larger scale) has many factors which make them inaccessible to someone confined to a wheelchair. Factors such as: (1) no "handicapped parking", (2) no "curb cuts", (3) doors are not wide enough, (3) and all of the counters are to high. The real joke about the whole situation is that some of these stores display a blue stickers with a stick figure of a person confined to a wheelchair, saying "Ask for assistance". I would, if I could get into the store. Usually when I have a problem of this nature, I attempt to find the name(s) and address(s) of the people responsible, but I do not know where to begin in this case. Would you help me - please?

Secondly, I collect Social Security Disability Insurance (S.S.D.I.) and S.S.I. which entitles me to Medicare Insurance Benefits through the S.S.D.I. and Medicaid Insurance Benefits through the S.S.I. My question is - Would I lose my Medicaid Insurance Benefits if I were to get a part-time job?

Finally, again I just want to thank you, your assistant, Ms. Kathy Hogan, and your entire staff for all of your/their help. You and they have been nothing but a pleasure to work with throughout the past few months. It seems everywhere I turn or any paper I read you are their (all good things!). When I saw you in the Courier-Post for spending a few days assisting in the clean-up of Hurricane Andrew I felt chills up my spine. I believe your biggest reason for being down there was just because you care. Being a twenty-two year old young adult, anti-government is a big sentiment with people my age, but I believe if

those young adults could meet and work with you, they would definitely change their mind.

1

01-01696

If you have any questions, please do not hesitate to call or write. Thank you!

Sincerely,
(b)(6)

2

01-01697

NOV 4 1992

The Honorable Thomas J. Bliley, Jr.
U. S. House of Representatives
2241 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Bliley:

This letter responds to your inquiry on behalf of Dr. John R. Partridge, regarding the regulatory requirements of the Americans with Disabilities Act (ADA) for accessible rest rooms in professional offices open to the public.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities with rights or obligations under the Act. This letter provides informal guidance to assist your constituent in understanding the ADA accessibility standards. However, this technical assistance does not constitute a legal interpretation of the statute and it is not binding on the Department.

The ADA Accessibility Guidelines (which apply to new construction such as the facility planned by Dr. Partridge) do not specify the number of rest rooms required in any type of building or facility. Any number of rest rooms beyond what may be required by local building codes or plumbing codes is determined entirely at the discretion of the owner. Section 4.1.3 (11) of the Guidelines (page 35614 of the enclosed regulation) stipulates accessibility requirements for new construction of toilet rooms as follows:

> If toilet rooms are provided, then each public and common use toilet room shall comply with 4.22. Other toilet rooms provided for the use of occupants of specific spaces (i.e., a private toilet room for the occupant of a private office) shall be adaptable.

cc: Records; Chrono; Wodatch; Harland; McDowney; FOIA; MAF.

:udd:mercado:congresional.letters:harland.bliley.partridge

01-01698

Rest rooms associated with examination rooms, laboratory facilities, and staff support areas would be considered common use toilet rooms. All such rest rooms must be fully accessible. A doctor's private rest room, on the other hand, need only be adaptable. In other words, it must be designed to satisfy all space requirements but need not initially have grab bars or knee space below the lavatory, as long as such features can be added or modified without much difficulty when the need arises.

The technical provisions for accessibility of individual elements such as doors or turning spaces are referenced in S4.22. Accessibility requirements do require some increase in floor area within a single-user rest room but, through careful and knowledgeable planning of a new building, there is often no increase in the overall size, or cost, of the facility.

Please feel free to encourage your constituents to contact the Public Access Section any time they have questions or need information. The Department maintains a telephone information line to provide technical assistance regarding the rights and obligations of individuals, businesses, agencies, and others covered or protected by the ADA. This technical assistance is available by calling 202-514-0301 (voice) or 202-514-0383 (TDD) between 1:00 p.m. and 5:00 p.m., Monday through Friday.

I hope the information we have provided is helpful to you and your constituent.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

Enclosure
01-01699

Congress of the United States
House of Representatives
Washington, DC 20515-4603
September 10, 1992

Mr. John Wodatch
Director
Office of Americans With Disabilities Act
Department of Justice
P.O. Box 66738
Washington, D.C. 20036-9998

Dear Mr. Wodatch:

I am writing you on behalf of my constituent, Dr. John R. Partridge, in regards to the problems he has encountered in complying with the Americans With Disabilities Act (ADA). Dr. Partridge is in the midst of planning a new health care facility and has run into, what we both believe to be, overly extensive and very costly compliance requirements.

The health facility planned will house seventeen specialists, dividing them into several groups, each of which will occupy suite-like areas boasting seventeen or eighteen rest rooms. Such a set up would bring the total number of rest rooms to approximately sixty.

Yet, according to the ADA, each of these rest rooms, regardless of how close together they are located or how the facility is designed as to their accessibility to disabled people, is required to comply to ADA standards. As you know, these standards include a sixty inch wheelchair turning area or a t-shaped space, and an eighteen inch distance from the door to the corner. The loss of rent as well as the construction costs of such requirements will result in at least $500,000 in aggregate additional expense in the first decade of occupancy alone. These costs will be passed along to the consumer, and tacked onto the already high costs of medical care.

In my mind, there must be a more economical way in which to make sure that facilities are accessible to disabled individuals, while keeping in mind the resources of small businesses. Perhaps by concentrating on the location and the arrangement of the

01-01700

bathrooms, as opposed to merely mandating that all bathrooms comply, a compromise can be reached.

Enclosed is a copy of Dr. Partridge's letter for your comments. As building will begin shortly, time is an important factor in this situation.

I thank you in advance for your time, and look forward to the benefit of your views.

With kindest regards, I am

Sincerely,

Thomas J. Bliley, Jr.
Member of Congress

TJBj/elb
01-01701

CHIPPENHAM OB-GYN ASSOCIATES, LTD.
7151 JAHNKE ROAD
RICHMOND, VIRGINIA 23225
804-272-5808
1447 JOHNSTON WILLIS DRIVE
RICHMOND, VIRGINIA 23235
804-323-3525

JOHN R. PARTRIDGE, M.D., F.A.C.O.G. L. DANIEL CROOKS, JR., M.D. (1942-1991)
DAVID C. REUTINGER, M.D., F.A.C.O.G.
WARREN A. BROOCKER, M.D., F.A.C.O.G. MARK S. KEGEL, M.D.
J. HARRY ELLEN, JR., M.D., F.A.C.O.G. INGRID A. PROSSER, M.D.

August 28, 1992

The Honorable Thomas J. Bliley, Jr.
U.S. House of Representatives
2241 Rayburn House Office Building
Washington, DC 20515

Re: Americans With Disability Act
Dear Congressman Bliley:

I am writing to you to seek urgent assistance from your staff in obtaining from the appropriate administrative agencies relief from certain provisions of the Americans With Disability Act, Title III from the Federal Register dated July 26, 1991, volume 56, number 144, section 4.22 regarding restrooms in facilities open to the public including professional offices.

I am the senior partner of a six physician obstetrical practice that is seeking to build a new office at the new hospital facilities being constructed at Johnston-Willis Hospital in Bon Air, VA. The physicians listed below are likewise heads of their respective practices and together we comprise a group of seventeen specialists in our field, all of whom are anticipating occupying new offices in the Atrium Building. Altogether, we render medical care for thousands of your constituents yearly; and the decisions we make affect numerous procedures, tests, and hospitalizations totalling many millions of dollars a year in medical care within your district.

In designing our new offices, we have run up against what we feel to be totally unreasonable and unrealistic bureaucratic requirements for compliance under the above act. Specifically, in the design of restrooms for our office, we are being told that each restroom in the facility must have a five foot turning radius inside and the door must be eighteen inches from the corner of the room. In the case of each bathroom so affected, the requirement for additional square footage is considerable and, indeed, almost doubles the size of the restroom. This may

be of relatively minor consequence in a fast food restaurant with one or two restrooms, but is of major consequence in a medical office in which there are 17 or 18 restrooms per group of
01-01702

doctors. The total number of restrooms that will be constructed for the groups to whom I have referred will be in the range of 60. When one considers the additional construction costs of this extra square footage and the additional yearly rent that each of the groups will pay for extraneous bathroom space, the total tab faced at this one facility just for obstetrics becomes rather staggering. We will face at least $500,000 in aggregate additional expense that we would not have faced under former design requirements, just in the first decade of occupancy. It is illogical to suppose that we will not have to pass these costs on to our patients, who are your constituents. At a time when health costs are a concern to all Americans, including their congressmen, such a waste of expense seems unconscionable.

What we would propose as a remedy under this act would be to give an exemption to bathrooms totally over a certain number per square foot of office space. For example, in a one practice office of 6,000 square feet, one might reasonably argue that one bathroom equipped and suitably scaled for handicapped for each physician that would be actively seeing patients in the office at any one time would suffice. In our case for my practice, that would mean three or perhaps four such bathrooms for the total office. We would thus save on the expense of the other 14 bathrooms without impairing access of disabled individuals to medical care at all. The cost savings would obviously be passed on to the consumer.

Time is of the essence if any relief is to be obtained for our facility since construction is under rapid progress and plans are being finalized. If we do not have relief within the next 60 days, we will be forced to go ahead with the more stringent provisions, but, again, this will significantly impact on health care costs in your district.

Please take action to help us in our plight.

Sincerely,

John R. Partridge, M.D.

JRP/sos
cc: Erika M. Blanton, M.D.
Adam J. Fiedler, M.D.
Marijan Gospodnetic, M.D.
01-01703

NOV 4 1992

The Honorable Jim Sasser
United States Senate
363 Russell Senate Office Building
Washington, D.C. 20510-4201

Attn: Kim Bengston

Dear Senator Sasser:

This letter is in response to your inquiry on behalf of Paul Voiles, regarding the accessibility of restrooms to visually impaired individuals.

The Americans with Disabilities Act (ADA) authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist Mr. Voiles in understanding the ADA's requirements. However, it does not constitute a legal interpretation, and it is not binding on the Department.

Title II of the ADA applies generally to public entities such as State and local governments, and requires that new construction meet certain accessibility requirements. For existing facilities, Title II requires that covered state and local governments make "reasonable modifications" of programs and services to make them accessible to persons with disabilities, which may include modifications to make restrooms accessible to visually impaired persons. Discussion of the title II requirements appears in the enclosed title II regulation at section 35.151 on pages 35710-11 and 35720 (new construction), and section 35.103(b)(7) on pages 35718-19 (reasonable modifications). These issues are also addressed in the enclosed Title II Technical Assistance Manual at pages 11, 20, and 23.

cc: Records; Chrono; Wodatch; Mobley; McDowney; FOIA; MAF.
:udd:jonessandra:ada.sasserl
01-01704

Title III of the ADA applies generally to places of public accommodation, as defined in the ADA. For existing facilities, it requires removal of barriers in existing facilities, if removal is "readily achievable." Such required barrier removal may include modifications to make restrooms accessible to visually impaired persons. For new construction and alterations, places of public accommodation must comply with the Accessibility Guidelines (Guidelines) promulgated by the Department of Justice, which include specific requirements relating to restroom accessibility. Discussion of the title III requirements appears in the enclosed regulation at sections 36.401-402 on pages 35599-600 and 35574-75 (new construction and alterations), section 36.104 on page 35594 and pages 35553-54 (definition of "readily achievable"), and sections 4.30.4, 4.30.5, and 4.30.6 of the Guidelines at page 35659 (specific signage requirements). There is further discussion of these issues in the enclosed Title III Technical Assistance Manual at pages 29, 43, 48, and 57.

All Department of Justice publications are available in large print, braille, audiocassette, and computer disk. They may be obtained by calling this office, (202) 514-0301, Monday through Friday, 1:00 p.m. through 5:00 p.m., E.S.T., or by requesting those documents in writing at the address listed above.

I hope this information is helpful in responding to your constituent.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

Enclosures (4)
01-01705

The Blind & Visually Impaired
Support Group
Greeneville and Greene County
Route 1, Box 357
Mosheim, TN 37818

June 9, 1992

Representative Tommy Haun
202 War Memorial Building
Nashville, TN 37243-0108

Dear Representative Haun:

We, as a concerned group, wish to commend the State of Tennessee for the fine job they have done in their campaign to help the handicapped. However, we believe that a group of handicapped, the blind and visually impaired, have been left out.

We especially feel that this is true as far as restroom facilities are concerned. A visually impaired person has no way in which to distinguish the men's restroom from the ladies restroom. We think that the words for the respective restrooms could be printed in Braille. A hand rail could be installed on the wall just inside the door as a guide to a stall.

Also at public rest stops and facilities on the interstates, we feel that the same idea could be implemented or even a family restroom facility could be built for the visually impaired and their families.

We would appreciate whatever help and support you can give us in helping us obtain our goal.

Thanks,

Paul Voiles, President

01-01706

NOV 4 1992

The Honorable Harold L. Volkmer
U.S. House of Representatives
2411 Rayburn House Office Building
Washington, D.C. 20515-2509

Dear Congressman Volkmer:

This letter responds to your inquiry on behalf of (b)(6) requesting information about the Americans with Disabilities Act (ADA).

(b)(6) is interested in obtaining information to help make her work place more available to the public. If her work place is privately owned or operated, the ADA provisions that govern are those in title III, which applies to public accommodations and commercial facilities. If her work place is owned or operated by a state or local government, title II would be applicable. Enclosed are copies of the Department regulations and technical assistance manuals for both titles II and III of the ADA.

We regret that (b)(6) experienced difficulty in obtaining this information through our ADA telephone line. Unfortunately, due to the volume of calls handled through this line, there are occasions when calls cannot be promptly answered. We are continually revising our procedures to provide the best service possible given the high volume of requests, and we appreciate (b)(6) bringing to our attention the problems she experienced.

I hope this information assists you in responding to your constituent.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

Enclosures (4)

cc: Records; Chrono; Wodatch; Breen; McDowney; FOIA; MAF.
:udd:jonessandra:ada.volkmerl
01-01707

SEP 29 1992

(b)(6)
Columbia, MO 65203
September 22, 1992

Mr. John R. Dunne
Assistant Attorney General
Civil Rights Division
US Department of Justice
10th Street and Constitution Avenue, NW
Washington, D.C. 20530

Dear Mr. Dunne:

Will you please send me information about the Americans with Disabilities Act. I am particularly interested in current information about accessibility and other applications which will help make the facility at my workplace more available to the public.

In searching for information about the new ADA, the ACCESS office at the University of Missouri-Columbia gave me a telephone number to call: (202) 514-0301. I called the number at 8:00 a.m. CDT, assuming the office would open at 9:00 EDT. I was greeted with a message which began: the office is open from 11:00-5:00. After this initial greeting, I hung up, thinking I was being told to call again later. I called again at 11:30 CDT, and thought office personnel were probably at lunch. I called again at 2:30 CDT and listened through much of the recording--until I was finally given an "800" number. Before reaching the 800 number, however, I was informed that the information--which I never got to--was not legal advice, and that if I was on hold for more than five minutes I should hang up and try again. What arrogance! I was calling for information. A long distance call during your open hours is not inexpensive. If I had been calling about a problem with the ADA, I would have been furious. I strongly recommend that you either create a more explicit answer for your machine or provide an "800" number-- especially if limited office staff makes a wait of five minutes routine.

I include this information in the hope that my experience will help someone else. I trust something will be done to improve this situation.

Sincerely,

(b)(6)

cc: President George Bush
Senator Christopher S. Bond
Senator John C. Danforth
Representative Harold L. Volkmer

DJ 202-PL-325

NOV 5 1992

(b)(6)
Plantation, Florida 33317

Dear (b)(6)

This letter is in response to your inquiries of September 3, 1992, and October 2, 1992, requesting information about the effect of title III of the Americans with Disabilities Act ("ADA") on your plans to purchase an antebellum house and operate it as a bed and breakfast inn.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist you in understanding the ADA's requirements. However, it does not constitute a legal interpretation or legal advice and it is not binding on the Department of Justice.

As discussed in your recent telephone conversation with Thomas Contois of this office, there are four general requirements that appear to apply to your plans for the bed and breakfast. First, the ADA requires existing facilities to take certain steps to make their services accessible to persons with disabilities. In particular, title III and the Department of Justice's implementing regulation require existing facilities to provide auxiliary aids and services to ensure effective communication -- for example, telecommunications devices for deaf persons and closed caption decoders -- and to remove barriers to access where it is readily achievable to do so. These requirements for existing facilities are spelled out in sections 36.303 and 36.304 of the title III regulation (which is included as Part III of the ADA Handbook).

Second, you indicated that you intend to make certain changes to the rooms on the second floor of the inn. The ADA requires that any alterations to existing facilities that take place after January 26, 1992, must comply with the ADA Accessibility Guidelines. These guidelines are also included in the ADA Handbook, as Appendix B. You will want to look particularly at part 4, which sets out requirements for several types of building features and facilities, and part 9, which sets

out additional requirements for places of transient lodging.

cc: Records, Chrono, Wodatch, Breen, Contois, Friedlander, FOIA
Udd:Contois:PL.bednbreakfast

01-01709

Third, you should be aware of the path of travel requirements that are triggered by alterations to primary function areas. As section 36.403 of the title III regulation spells out, whenever a place of public accommodation alters a part of its facility that contains a primary function -- as, for instance, guest rooms or bathrooms at a bed and breakfast inn -- the place of public accommodation must also provide an accessible path of travel to the altered area. You are not required to spend more than 20% of the total cost of the alterations on the path of travel, but you are obligated to make necessary expenditures up to that 20%. This requirement is further explained in the enclosed Title III Technical Assistance Manual, at pages 49-51.

Finally, because the house you are considering buying is an historic building, some of the ADA requirements that would ordinarily apply may be relaxed. The special provisions that apply to historic buildings are set out in part 4.1.7 of the ADA Accessibility Guidelines, and are explained at pages 52-53 of the Technical Assistance Manual.

Thank you for your inquiry. I hope this information is useful to you in understanding the requirements of the ADA.

Sincerely,

Philip L. Breen
Special Legal Counsel
Public Access Section

Enclosure
Title III Technical Assistance manual
01-01710

XX (b)(6)
OF FORT LAUDERDALE

October 2, 1992

TO: Office of the Americans with Disabilities

FROM: (b)(6)

SUBJECT: Attached letter of September 3, 1992

To date I have not received and answer to letter that is attached to this correspondence.

I now desire to make an offer on the property in question but still need the answers to the questions I have raised in my letter of September.

I cannot make an offer if I am not assured that certain items of the Americans with Disabilities Act will prevent me from using the property as a bed and breakfast inn.

Please review my letter of September and answer the questions raised.

I thank you for your cooperation

Sincerely,

(b)(6)

(b)(6)

01-01711

(b)(6)
OF FORT LAUDERDALE

September 3, 1992

TO: Office on the Americans with Disabilities Act.

From: (b)(6)

Subject: Interpretation of Handbook

I have received the subject handbook and have spent many hours trying to find the answer/s to my application of the Disabilities Act to a business my wife and I are pursuing. We will purchase a antebellum house in West Georgia that is on the Historical Register due to it's age, former use and classic neo-Greek design which is one of the few in the United States. We desire to establish this facility as a Bed and Breakfast Inn. The proposed conditions are the following.

1. The inn will have six (6) bedrooms, and in the future possibility 10, all on the second floor.

2. We will also live in the facility as our permanent and only residence.

3. We are greatly restricted by the historical society as to the changes and modifications we can make to the facility.

4. What faction, Act or Society, has jurisdiction in this situation?

I thank you for your cooperation in answering these questions and interpretation of the Disabilities Act as it applies to my situation.

Sincerely,

(b)(6)
Plantation, FL.
33317

01-01712

T. 9/30/92
SK:SBO:kgf
DJ# 192-06-00009

NOV 5 1992

Mr. Evan Gifford Smith
Illinois Department of Mental Health
and Developmental Disabilities
State of Illinois Center
100 West Randolph Street, Suite 6-400
Chicago, Illinois 60601

Dear Mr. Smith:

This responds to your request for an interpretation of the Americans with Disabilities Act (ADA).

The ADA authorizes the Department to provide technical assistance to entities that are subject to the Act. This letter provides informal guidance to assist you in understanding how the ADA may apply to the situation you describe. However, this technical assistance does not constitute a determination by the Department of Justice of your rights or responsibilities under the ADA and does not constitute a binding determination by the Department of Justice.

As discussed in S II-1.1000 of the enclosed Title II Technical Assistance Manual, title II of the ADA prohibits discrimination on the basis of disability in all services, programs, and activities provided or made available by "public entities," i.e., State and local governments or any of their instrumentalities or agencies, whether or not they receive Federal financial assistance. Title II does not apply to private entities and does not authorize or require State or local governments to enforce its requirements for private businesses. (The obligations of private entities that operate places of public accommodation, including health care providers, are discussed in the enclosed Title III Technical Assistance Manual.)

Section 35.130(b)(6) of the title II regulation prohibits discrimination by public entities in administering certification and licensing programs. However, the programs or activities of private entities licensed or certified by a public entity are not

:udd:kaltenborn:smith.ill
cc: Records, CRS, FOIA, Friedlander(2), Kaltenborn, Breen

01-01713

themselves programs or activities of the public entity merely because they are licensed by the public entity. Section II-3.7000 of the Manual for title II discusses licensing.

On the other hand, section 35.130(b) of the title II regulation prohibits discrimination in all governmental activities of public entities, even if they are carried out indirectly through other entities. Section 35.130(b)(3) states that public entities may not, directly or through contractual, licensing, or other arrangements, utilize criteria or methods of administration that have the effect of discriminating. Thus, as a public entity, the Illinois Department of Mental Health and Developmental Disabilities must ensure nondiscrimination by entities, such as community agencies, with whom it enters into contractual or other arrangements to carry out its programs.

I hope this information is helpful to you.

Sincerely,

Stewart B. Oneglia
Chief
Coordination and Review Section
Civil Rights Division

Enclosures (2)

01-01714

Illinois Department of
Mental Health and
Developmental Disabilities
Central Office
March 2, 1992

Ms. Stewart B. Oneglia
Chief, Coordination and Review Section
U.S. Department of Justice
Civil Rights Division
P.O. Box 66118
Washington, D.C. 20035-6118
Re: Request for Assistance in Resolving Issues under
Title II of the American with Disabilities Act
Dear Ms. Oneglia:

I am a staff attorney with the Illinois Department of Mental Health and Developmental Disabilities (DMHDD). On February 24, 1992, I called the Americans with Disabilities Act Help Line and had the pleasure of discussing some issues regarding the ADA at some length with a Department of Justice attorney, Bill Worthen. I later spoke again with Wonder Moore, a DOJ investigator, who suggested that I write or FAX you to possibly obtain some written clarification of issues under the ADA.

The main issue that Mr. Worthen and I discussed concerned S 35.130(b)(6) of the Regulations pertaining to Title II of the ADA. Mr. Worthen was very helpful in clarifying a misunderstanding that we at DMHDD had concerning that section. The Department takes a very active role in the monitoring of community agencies that it funds, certifies and licenses. As such, we were under the impression that DMHDD would be responsible in large part for the compliance of community agencies with the ADA. As Mr. Worthen explained, this issue was considered in depth when the ADA was being drafted, and the clear intent of section 35.130(b)(6) is not to extend such a responsibility to government agencies. As stated in the preamble to the Regulations at page 35704, "Paragraph (b)(6) does not extend the requirements of the Act or this part directly to the programs or activities of licensees or certified entities themselves. The programs or activities of licensees or certified entities are not themselves programs or activities of the public entity merely by virtue of the license or certificate." Based on that section of the preamble, as well as Mr. Worthen's discussion of the history and intent of section 35.130(b)(6), it does not appear that DMHDD should integrate ADA compliance into its requirements for certification or licensure or make certification or licensure dependent upon ADA compliance (at least, not beyond ensuring that DMHDD certification and licensure standards do not subject qualified individuals with disabilities to discrimination on the basis of disability).

State of Illinois Center

100 West Randolph Street Suite 6-400
Chicago, Illinois 60601
312-814-2735
01-01715

This is clearly a significant departure from our original approach to S 35.130(b)(6), which would have assumed DMHDD responsibility for ADA compliance for all the agencies it licenses or certifies. Given the significant impact this recent information has on DMHDD policies regarding the ADA, I hope you understand our request for written confirmation concerning the interpretation of S 35.130(b)(6) of the Regulations. I would greatly appreciate it if you could send to me anything in writing concerning the interpretation and intent of this section that was explained to me by Mr. Worthen. Legislative history and comments that were submitted would be very helpful.

There is another related issue which you may be able to help us resolve. As discussed in the preamble to the Regulations at page 35704, S 35.130(b)(1)(v) of the Regulations "provides that a public entity may not aid or perpetuate discrimination against a qualified individual by providing significant assistance to an agency, organization, or person that discriminates on the basis of a disability in providing any aid, benefit, or service to beneficiaries of the public entity's program." This may be significant for DMHDD, as the Department funds a vast number of community agencies and programs. DMHDD involvement with these agencies ranges from merely funding through contracts or agreements to funding as well as certifying and licensing. DMHDD merely audits or provides technical assistance with specific problems at those agencies that only receive DMHDD funding, while agencies that are certified or licensed are thoroughly surveyed annually by the Department. It may be significant for purposes of this subsection that these agencies do not provide services to direct beneficiaries of DMHDD's services. When a recipient is discharged from a state operated facility, he or she may choose to go to one of these agencies. The facility will help facilitate that process, but the individual is no longer receiving services directly from the state.

To what extent is DMHDD required to ensure that it is not funding agencies that do not comply with the ADA? Is a clause in the funding contract or agreement in which the agency certifies that it is in compliance with the ADA sufficient for purposes of S 35.130(b)(v)? We are planning to train DMHDD auditors, surveyors, and technical assistance staff as to the general requirements of the ADA for the purpose of observing clear ADA violations on site visits, but again, we are unclear as to the sufficiency of this course of action.

The last area with which we have concern also relates to community agencies. Section 35.130(b)(1) provides, generally, that a public entity may not, directly or through contractual means, provide its

services to beneficiaries in a way that would discriminate against a qualified individual on the basis of disability. DMHDD operates 21

01-01716

mental health and developmental disability facilities in Illinois. As discussed above, many of our recipients are discharged and placed in community agencies. While the services received by these individuals are not provided directly by DMHDD in state operated facilities, it could be argued that DMHDD is "providing" those services indirectly by placing individuals in community agencies that are licensed, certified, or funded by DMHDD. Our concern is whether the Department may be liable under S 35.130(b)(1) for placing individuals upon discharge into agencies where, without DMHDD knowledge, ADA violations may occur. If this is the case, is DMHDD then, in a sense, responsible for ADA compliance by these agencies, as we originally thought we were under S 35.130(b)(6)?

As you can see, making our way through the ADA is a complicated and, at times, circular task. On behalf of the Illinois Department of Mental Health and Developmental Disabilities, I greatly appreciate any assistance you can give us in resolving these issues as we develop policies to comply with the ADA. If you have any questions, please feel free to contact me directly at 312/814-2752 (FAX: 312-814-3793). If I am not available, you may contact our ADA Coordinator, David Neff, at 217/782-5018. As I will be out of town for most of March, would it be possible to also send Mr. Neff a copy of your response? His address is 100 N. Ninth Street, 1st Floor, Springfield, IL, 62765. Thank you again for your time and assistance in this matter.

Sincerely,

Evan Gifford Smith

EGS/dc

cc: Owen M. Field
David Neff
Sue Rentsch
George Bengel
01-01717

NOV 12 1992

The Honorable Gus Yatron
U. S. House of Representatives
2205 Rayburn House Office Building
Washington, DC 20515

Dear Congressman Yatron:

This letter responds to your inquiry on behalf of Opal I. Lebo of Reading Rehabilitation Hospital, concerning the requirements of the Americans with Disabilities Act (ADA) for accessible parking spaces.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities with rights or obligations under the Act. This letter provides informal guidance to assist Ms. Lebo in understanding the ADA accessibility standards. However, this technical assistance does not constitute a legal interpretation of the statute, and it is not binding on the Department.

Existing private medical care facilities are subject to the readily achievable barrier removal requirements of the title III ADA regulations (section 36.304 on page 35597 of the enclosed document). Readily achievable is defined as being easily accomplishable and able to be carried out without much difficulty or expense. Modifications to existing facilities undertaken to remove barriers should be done in conformance with the applicable standards for alterations if it is readily achievable to do so (section 36.304(d)).

When new construction or alterations are undertaken, full compliance with the accessibility standards is required. The standards for parking are found in sections 4.1.2 (5) and 4.6 of the Accessibility Guidelines (pages 35612 and 35631 of the enclosed document). Section 4.1.2(5)(d)(ii) states that units and facilities that specialize in treatment or services for persons with mobility impairments must make 20 percent of the total number of parking spaces accessible.

cc: Records; Chrono; Wodatch; Harland; McDowney; FOIA; MAF.

:net:ss63:udd:harland:yatron.lebo.cong
01-01718

Barrier removal requirements apply to the public portions of places of public accommodation. The 20 percent standard would not apply to parking areas reserved only for employees. Provision of parking spaces to employees is a matter of reasonable accommodation, required under titles I and III of the ADA for an employee with a disability. Reasonable accommodation is determined according to the needs of the individual and the hospital on a case-by-case basis.

I hope the information we have provided is helpful to you and your constituent.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

Enclosure
01-01719

READING
REHABILITATION
HOSPITAL

October 2, 1992

The Honorable Gus Yatron
1940 North 13th Street
Reading, PA 19604

Dear Congressman Yatron:

This is to request your assistance in relating the new "Americans with Disabilities Act Accessibility Guidelines for Facilities and Buildings" to our hospital. As you already know, this 92 bed hospital is dedicated to serving the physically disabled. We are committed to doing whatever is necessary and appropriate to meet the needs of our patients in service to this community.

In addition to the In-patients, we serve approximately 1200 outpatients annually. Eighty (80%) to ninety (90%) percent of our outpatients are driven to the hospital by family or Barta bus, dropped off and picked up under the canopy at the front entrance. Wheelchairs are located nearby for those who need them to get to the therapy areas.

Being built on a hillside poses its special parking challenges. We have four (4) parking lots, A, B, C and D. The A-level parking lot has 118 spaces, 65 of which are dedicated to outpatients and visitors. Nine (9) of these spaces on A-level are reserved for handicapped parking. Except for four spaces in B-level parking lot, lots B, C, and D are dedicated to staff parking. Lots B and C are carved out of the hillside and accessible only by a steep, narrow road. Lot D is fairly level, but accessibility is also limited to the steep, narrow road. Handicapped staff are provided parking privileges in Lot A.

Questions:
1. Does the "20% rule" mentioned in the attached article, apply to all our parking spaces, including staff parking, or may we apply the rule to the spaces reserved for patients/visitors? This would mean adding four (4) spaces to give a total of thirteen (13) handicapped spaces (.20 X 65 = 13).

R.D. 1 Box 250, Morgantown Road * Reading, PA 19607-9727 * (215) 777-7615

01-01720

2. Since the front entrance has designated, protected spaces for vehichles to load and unload passengers, this decreases the need for handicapped parking spaces. Might this be taken into consideration in assessing how well we are meeting our handicapped parking space needs?

Thank you for your consideration and assistance.

Sincerely,

Opal I. Lebo, V.P., Patient Support Services

01-01721

T. 11-12-92

DJ 202-PL-00092

NOV 16 1992

Mr. Richard J. Furman
Furman and Furman Architects, P.C.
60 Cutter Mill Road
Great Neck, New York 11021-3131

Dear Mr. Furman:

CHIEF
WODATCH I am writing in response to your letter requesting information on the application of the requirements of the
DATE Americans with Disabilities Act (ADA) to mezzanines in food stores.

SP COUNSEL The ADA authorizes the Department of Justice to provide
PLB technical assistance to individuals and entities that are subject to the Act. This letter provides informal guidance to assist you
DATE in understanding the ADA Accessibility Guidelines. However, this technical assistance does not constitute a legal interpretation and it is not binding on the Department.

ORIGINATOR
LUSHER In new construction and alterations, the Guidelines
11/12/92 generally require that at least one accessible passenger elevator
DATE serve each level of a multistory building, including mezzanines (S 4.1.3(5)). However, there is an exception to this general rule. Elevators are not required in facilities that are less than three stories or have fewer than 3000 square feet per story, unless the building is a shopping center or mall, the professional office of a health care provider, a public transit station, or an airport passenger terminal. Similarly, elevators are not required in a one-story building.

As defined in S 3.5 of the Guidelines, a story is "occupiable" space, which means space designed for human occupancy, contained between the upper surface of a floor and the upper surface of the floor or roof above. Basements designed or intended for occupancy are considered "stories." Mezzanines are not counted as stories, but are levels within stories.

If the food store is in a multistory building that is part of a shopping center or a shopping mall, then the mezzanine level must be served by an elevator. This is required unless (1) the

cc: Records, Chrono, Wodatch, Breen, Lusher, FOIA, Library
udd:mercado:policy.letters.certif:lusher.wodatch.furman
01-01722

mezzanine is an "observation gallery used primarily for security purposes" (S 4.1.1(5) (b)(i)), or (2) the mezzanine is both located within an area used solely by employees as a "work area" and also contains only space used solely by employees as a "work area" (S 4.1.1(3)).

In the latter case the mezzanine need not be accessible because the larger area in which it is located must only comply with the requirements for work areas contained in S4.1.1(3). That section provides that:

> Areas that are used only as employee work areas shall be designed and constructed so that individuals with disabilities can approach, enter, and exit the areas. These guidelines do not require that any areas used only as work areas be constructed to permit maneuvering within the work area or be constructed or equipped (i.e., with racks or shelves) to be accessible.

For example, if the mezzanine is located completely within a work area, such as the warehouse portion of a food store, and the mezzanine itself contains only work areas (meaning it does not contain public use or common use areas such as toilets or an employee lounge), the mezzanine area would not be required to be accessible. The work area accessibility requirement would be satisfied as long as the larger warehouse area could be approached, entered, and exited.

I hope this information is helpful. I am enclosing for your use a copy of the Department's ADA Title III Technical Assistance Manual. Further discussion of this issue may be found on page 56 of the Manual. Please feel free to contact our ADA Information Line for further assistance on (202) 514-0301.

Sincerely,

John L. Wodatch
Chief
Public Access Section

Enclosure

01-01723

FURMAN AND FURMAN ARCHITECTS, P.C.
60 CUTTER MILL ROAD, GREAT NECK, N.Y. 11021-3131
TELEPHONE: 516-487-8933
FAX: 516-466-8904

20 December 1991

Mr. John Wodatch
Director of the Office on ADA
Civil Rights Division
Department of Justice
P.O. Box 66118
Washington, DC 20035-6618

Re: Shoprite Food Store
Montgomery, NY

Dear Mr. Wodatch:

I am writing this letter to you for a formal interpretation of the requirement of the ADA with regard to the necessity for passenger elevators in a food store. The food store in question is part of a strip center and has a small mezzanine at the front for administrative personnel. This mezzanine also includes a "break room" and toilet facilities. There are toilet facilities for the physically handicapped provided on the first floor.

My understanding of requirements of the ADA with regard to elevators are as follows:

1. Section 4.1.3. of the ADA indicates that a facility less than three stories in height is exempt from the requirement of an elevator, unless it is a shopping center.

2. Appendix III of the ADA defines the term "shopping center" as only including floor levels containing at least one sales or rental establishment or any floor level designed or intended for use by at least one sales or rental establishment. This section also states that grocery stores incorporating mezzanines, housing administrative offices were sought for exemption by the commentors on this code.

3. Appendix III further states in section 36.401 that the facility housing a shopping center or shopping mall only includes floor levels housing at least one sales or rental establishment or any floor level designed or intended for use by at least one sales or rental establishment.

The code is somewhat confusing with regard to these requirements. Does the term "used by at least one sales or

rental establishment" mean mercantile use for the public? The
above stated information appears to point in that direction? Rec'd 12/20/91
202-PL.00092
01-01724

Mr. John Wodatch
Shoprite Food Store
Montgomery, NY
20 December 1991
Page 2

If you need further information with regard to the design of
this building, please do not hesitate to contact me directly.
Your assistance in this matter is greatly appreciated.

Yours very truly,

Richard J. Furman

RJF/mb

Enclosure

cc: L. Davis w/encl.
E. Sadleir w/encl.
J. Mench w/encl.
A. Dorado w/encl.
G. Holz w/encl.

VIA FAX
01-01725

T. 11/13/92
RJM:SBO:kgf
DJ# 192-06-00051

NOV 17 1992

Mr. Carl Keeling
Deaf Services Coordinator
Johnson County Deaf Services
301 A S. Clairborne
Olathe, Kansas 66062

Dear Mr. Keeling:

This is in response to your inquiry regarding the Americans with Disabilities Act (ADA) as it applies to probation meetings involving a hearing adolescent whose parent is deaf.

The ADA authorizes the Department to provide technical assistance to entities that are subject to the Act. This letter provides informal guidance to assist you in understanding how the ADA may apply to your case. This technical assistance, however, does not constitute a determination by the Department of Justice of your rights or responsibilities under the ADA and does not constitute a binding determination by the Department of Justice.

Title II of the ADA prohibits discrimination on the basis of disability by public entities. It applies to all programs, activities, and services provided or operated by State and local governments, including probation meetings.

Section 35.160 of the enclosed title II regulation requires that public entities provide auxiliary aids and services where necessary to afford an individual with disabilities an equal opportunity to participate in, and enjoy the benefits of, the public entity's program or activity, or otherwise to ensure effective communication with members of the public. This requirement is further explained in section II-7.0000 of the enclosed title II Technical Assistance Manual. Where parental participation, either voluntary or mandatory, is part of the probation program, parents who are deaf must be provided with

auxiliary aids so that they can receive the benefits of the program, unless to do so would result in an undue burden or a fundamental alteration in the nature of the program. These concepts are explained in section II-7.1000 of the Manual.

:udd:mather:ltr.keeling
cc: Records, CRS, FOIA, Friedlander, Mather, Breen
01-01726

I hope this information has been helpful to you.

Sincerely,

Stewart B. Oneglia
Chief
Coordination and Review Section
Civil Rights Division

Enclosures (2)
01-01727

Johnson County
Kansas

August 25, 1992

U.S. Department of Justice
Stewart B. Oneglia Chief
Coordination and Review Section
Civil Rights Division
P.O. Box 66118
Washington, D.C. 20035-6118

Dear Mr. Oneglia:

I wrote you last year concerning an issue about whether doctor's offices had to provide interpreting services for deaf people under the ADA. I am happy to say that more and more doctor's are providing this service in our area.

I have another issue I would like clarification about. As coordinator of deaf services for Johnson County government, I interpret probation meetings for court services in our area. I interpret both adult and youth probation meetings. We have a little different situation that involves a hearing adolescent whose mother is deaf. Court services likes to keep contact with the parents, but do not require the parent to be present at every probation meeting. I have been interpreting every meeting as a courtesy to the mother. A meeting was set up unexpectedly without contacting our services. When I asked about the meeting I was told by the probation officer that they did not have to provide an interpreter for the mother, they only had to provide an interpreter to the youth, if the youth is deaf. I disagreed.

My question is, if a deaf parent wants to be present at a probation meeting, and their child is hearing, should the court services be responsible for providing an interpreter? I would appreciate your response. Thank you.

Sincerely,

Carla Keeling
Deaf Services Coordinator
Human Resources & Aging Department 301 A S. Clairborne Olathe, Kansas 66062
(913) 764-7007/V
Johnson County Deaf Services
01-01728

NOV 20 1992

The Honorable John F. Kerry
United States Senator
One Bowdoin Square
Tenth Floor
Boston, Massachusetts 02114

ATTN: Bonnie Cronin

Dear Senator Kerry:

This is in response to your request for assistance on behalf of XX concerning the Americans with Disabilities Act (ADA). In XX letter to you, XX indicated that (b)(6) uses a wheelchair and has experienced difficulty finding accessible facilities during recent travels in New York and (b)(6) Pennsylvania.

Title III of the ADA prohibits discrimination against persons with disabilities by places of public accommodation, including restaurants, hotels, theaters, and retail stores. The Department of Justice investigates alleged violations of title III. An investigation may be requested by any individual who believes that he or she has been discriminated against or that a specific class of persons has been discriminated against in violation of title III.

We have enclosed copies of the title III regulation and technical assistance manual to provide more information to (b)(6) If XX wishes to file a complaint alleging specific violations of the ADA, XX may submit the complaint to the address below. The complaint should include the name and address of the place of public accommodation, the date, and a detailed account of the alleged incident or pattern of discrimination and should be mailed to: Public Access Section, Civil Rights Division, U.S. Department of Justice, P.O. Box 66738, Washington, D.C. 20035-9998.

cc: Records; Chrono; Wodatch; Barrett; McDowney; FOIA; MAF.
:udd:barrett:sen.kerry. (b)(6)
01-01729

I hope this information is helpful in addressing (b)(6) concerns.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

Enclosures (2)
01-01730

PRESCOTT
HOUSE
Nursing Home

August 24, 1992

Dear (Handwritten) Senator John Kerry

Again a disappointing experience as I, with some assistance recently traveled in Massachusetts and New York. At all public places the International Symbol of Access-ability was a parking space - curb ramp and wide door. I am a double, (above the knee) amputee. Nowhere did the toilet facilities comply with the Title III Provisions of the American with Disabilities Act*.

I have the arm strength to lift down but no way (just impossible) for me to raise my body the inches needed to return to the wheelchair. In a private home, I accept the need of assistance but it should not be necessary in a public facility, that has a handicap sign.

This is not a new situation. The International Symbol at a public place, a public restaurant has no meaning re-garding toilet rooms **toilet***. To become accessible for me - the new - the unknown- needs to be investigated. This is one of the many barriers for me and is also one of the many violations of the rules and regulations of the ADA.

* ADA Survey Form 16 4.16.3
** ADA Survey Form 16 4.22
*** ADA Survey Form 16 4.13 (II)

COPIES TO:
Gov. William Weld
Sen. Edward Kennedy
Sen. John Kerry
Rep. Nicholas Mavroules
St. Rep. Barbara Hildt XX
St. Rep. Joseph Herman
St. Sen. James Jajuga
Com. Joseph Gallant
American Automobile Ass.
Ma. Civil Liberties Union
Ma. Federation of Nursing Homes
Jack Pacak/Super Motel,s Inc.
Ma. Turnpike Authority

Sincerely,

(b)(6)

Resident of Prescott House

140 Prescott Street

ILLEGABLE

01-01731

NOV 20 1992

Ms. Sheri L. Mabey
Office Manager
2059 E. Sahara, Suite C
Las Vegas, Nevada 89104

Dear Ms. Mabey:

This letter responds to your inquiry regarding the provision of an interpreter for a hearing-impaired patient.

The Americans with Disabilities Act (ADA) authorizes the Department of Justice to provide technical assistance to individuals having rights or obligations under the Act. This letter provides informal guidance to assist you in understanding the ADA's requirements. It does not, however, constitute a legal interpretation, and it is not binding on the Department.

The ADA requires a physician to furnish auxiliary aids and services when necessary to ensure effective communication, unless an undue burden or fundamental alteration of the physician's services would result. What constitutes effective communication depends upon the facts of each situation, including the length and complexity of the communication involved. For instance, a discussion of whether to undergo major surgery may require the provision of a qualified sign language interpreter, while a routine office visit may not. While the physician is encouraged to consult with the patient in determining what is needed to ensure effective communication, the ultimate decision as to what measures to take to ensure effective communication rests with the physician. Thus, a hearing-impaired patient cannot insist or require that an interpreter be provided at the physician's expense in every situation.

Relevant ADA provisions appear in section 36.303 of the enclosed ADA title III regulation at page 35597, and related discussion is found in the preamble to the regulation at page 35553. In response to your particular inquiry, please note that use of family members as interpreters should be approached with

01-01732

caution, as discussed on page 35597 of the preamble. Also enclosed is the Department's Title III Technical Assistance Manual. Pertinent discussion appears at pages 25-28.

I hope this information is helpful to you.

Sincerely,

John L. Wodatch
Chief
Public Access Section
Civil Rights Division

Enclosures (2)

cc: The Honorable Harry Reid
01-01733

R. Garn Mabey, Jr., M.D.
Obstetrics and Gynecology
2059 E. Sahara, Suite C
Las Vegas, Nevada 89104
(702) 369-4200

July 30, 1992

Donnie Loux
Nevada Developmental Disabilities Council

Dorothy Porther, Director
Equal Employment Opportunity Commission

RE: Hearing Disabled Patients

Dear Mr. Loux:

Last Friday Sami from your council contacted me to discuss my payment arrangements for an interpreter for one of our hearing impaired patients. He informed me at that time that it was Federally mandated that I pay for this interpreter.

After reviewing the file with the office staff and Dr. Mabey, it was apparent that the patient did not need an interpreter present, but because in the past it was something she did not have to pay for, she would continue to request that service. The patient has been coming to our office for over two years; this is the second pregnancy Dr. Mabey has taken care of her for; she has a mother-in-law, husband and brother who can all communicate to her if there is a problem, and at least one or more is present at each visit, and on prior visits, the interpreter was there as well.

Dr. Mabey can communicate with her without any interpreter--family member, etc., present. Her visits at our office are for routine pregnancy care--they are straightforward and direct. Dr. Mabey's questions to her can be easily answered by pen and paper if needed.

After reviewing some of the guidelines from the Washington office and Senator Reid's office locally, we have complied with all needed requirements with respect to this patient.

As I explained to Sami, the cost for us to provide this service to a patient would exceed the amount we would be reimbursed for Dr. Mabey's time and expertise. This would place an undue hardship on our office in that we would not only be providing an interpreter free of charge, but her care as well. This is against the ADA

guidelines.

01-01734

A standard office visit for a new patient, after being reimbursed by the carriers, would mean approximately $10-15 of income for that patient if we were required to pay for an interpreter. On a pregnant patient, for the 10-12 visits prior to their delivery, the delivery time and postpartum care, it is possible that the interpreter's fee alone could be over two-thirds of the amount reimbursed for the total nine-months of care provided by Dr. Mabey. This seems to be an extreme hardship--especially in light of the fact that there are family members, in this particular case, that are able and willing to provide that service at no charge.

You should also note that patients frequently are late, and forget to call to cancel their appointments. This patient was over 30 minutes late for the appointment Sami wanted me to pay for an interpreter.

We believe we have made every effort to reasonably accommodate all patients.

Sincerely,

Sheri L. Mabey
Office Manager

cc: Senator Harry Reid
John Wodatch, Director, ADA

01-01735

NOV 20 1992

The Honorable Marge Roukema
Member, U.S. House of Representatives
61 Spring Street
Newton, New Jersey 07860

Attention: Carol Ann Dougherty

Dear Congresswoman Roukema:

This letter responds to your inquiry on behalf of (b)(6), regarding the accessibility of performance areas to individuals with visual impairments.

The Americans with Disabilities Act (ADA) authorizes the Department of Justice to provide technical assistance to individuals and entities that are subject to the Act. This letter provides informal guidance to assist your constituent in understanding the requirements of the ADA. However, this technical assistance does not constitute a determination by the Department of rights or responsibilities under the ADA, and it is not binding on the Department.

Title III of the ADA prohibits discrimination against persons with disabilities by places of public accommodation, including restaurants, hotels, retail stores, and theaters of the type mentioned in XX's letter. Specifically, the ADA and the regulation issued by the Department under title III of the ADA require a public accommodation, such as an arena, civic center, or auditorium, which is privately owned and operated, to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford services, facilities, or accommodations to individuals with disabilities. Please refer to section 36.302 of the title III regulation and pages 22-25 of the Title III Technical Assistance Manual, enclosed, for a discussion of this requirement.

cc: Records; Chrono; Wodatch; Foran; McDowney; FOIA; MAF.
:udd:foran:roukemacongressional

01-01736

Without further information about the incident at issue, it is not possible to determine whether the entity may have violated the ADA. Should XX wish to file a complaint with the Department of Justice, however, the matter will be further investigated. A complaint should include the name and address of the place of public accommodation, and a detailed account of the alleged incident or pattern of discrimination, including the date. Complaints can be mailed to: Public Access Section, Civil Rights Division, U.S. Department of Justice, P.O. Box 66738, Washington, D.C. 20035-9998.

If (b)(6) would like to obtain further information about his rights under the ADA, relevant Department of Justice publications are available in alternative formats such as large print, braille, audiocassette, and computer disk. They may be obtained by calling (202) 514-0301, Monday through Friday, 1:00 p.m. through 5:00 p.m., E.S.T., or by requesting those documents in writing at the address listed above.

I hope this information will assist you in responding to your constituent.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

Enclosures (2)
01-01737

MARGE ROUKEMA
9TH DISTRICT, NEW JERSEY
WASHINGTON OFFICE
2244 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20516
(202) 226-4465

NEW JERSEY OFFICES
1200 EAST RIDGEWOOD AVENUE
RIDGEWOOD NJ 07450
(201) 447-3900
61 SPRING STREET
NEWTON NJ 07960

COMMITTEES:
BANKING, FINANCE AND
URBAN AFFAIRS COMMITTEE
RANKING REPUBLICAN--
HOUSING AND COMMUNITY DEVELOPMENT
FINANCIAL INSTITUTIONS SUPERVISION,
REGULATION AND INSURANCE
ECONOMIC STABILITY
EDUCATION AND LABOR COMMITTEE
RANKING REPUBLICAN
LABOR--MANAGEMENT RELATIONS
ELEMENTARY, SECONDARY AND
VOCATIONAL EDUCATION

Congress of the United States
House of Representatives
Washington, DC

August 4, 1992

Mr. Steve Kelmar
Department of Health & Human Service
Assistant Secretary for Legislation
U.S. Department of Health and Human Services
Room 416G
Hubert Humphrey Building
200 Independence Avenue, S.W.
Washington, D.C. 20201

Dear Mr. Kelmar:

We are writing to you on behalf of our constituent, (b)(6) of Hope, New Jersey.

According to XX feels that XX family is being discriminated against. XX called about four weeks ago to Waterloo Village for visual handicapped seats for XX family. XX was told that there was handicapped seats for wheelchairs. XX family is not in wheelchairs.

We respectfully request your assistance in resolving this serious matter. I have enclosed a copy of (b)(6) correspondence for your review.

Thank you for your time and attention. Should you require additional information, please do not hesitate to contact me in the Newton District Office of Congresswoman Marge Roukema.

Sincerely,
Carol Ann Dougherty
Special Assistant to
Congresswoman Marge Roukema

CAD/Dd
Enclosure
01-01738

(b)(6)
Hope NJ 07844
July 25, 1992

The Honorable Marge Roukema
58 Trinity St.
Newton NJ 07860
Dear Madam:

Why does discrimination exist in New Jersey? (b)(6)
XX are being discriminated against because XX are Legally Blind. Four weeks ago, I called requesting Visual Handicapped Seating for a concert at Waterloo Village. After three weeks being hassled from one person to another and not getting return calls, I was told that there was no accommodations since this was a field concert. The person who called, XX was rude, abusive and arrogant ILLEGIBLE XX. Can you picture a visually handicapped person racing across a field along with hundreds of other people to get a seat close enough to see the concert? I was also told that Waterloo Village does not discriminate. There are handicapped seating for wheel chairs in tent concerts and they even have a handicap ILLEGIBLE. This is all well and good - if you are in a wheel chair. But I, along with many other New Jersey residents, need Visually Handicapped Seating. It does my (b)(6) or any other Visually Handicapped person no good to be in a wheel chair section at the rear of a tent concert - or field concert.

Why does Handicapped only mean wheel chair disability? Legs? Blindness is also a disability and yet it is ignored. There are facilities that recognize this problem: Yankee Stadium: ILLEGIBLE ILLEGIBLE Arena: ILLEGIBLE

01-01739

Arena at Lehigh University in Bethlehem, Pa. and especially Allentown Fair Grounds in Allentown, Pa. They even distinguish between Wheel Chair, Visual and Hearing disabilities. I purchased tickets from Allentown Fair Grounds for the same concert that will be in Waterloo Village. I will be met and escorted to Visually Handicapped Seating by a member of the staff.

Why must I travel out of the state to enjoy a concert with XX (b)(6) family? As an elected official of New Jersey, ILLEGIBLE your help to rectify this abominable and discriminatory practice.

Sincerely yours,
(b)(6)

01-01740

DJ 202-36-0

NOV 24 1992

The Honorable Charles H. Crawford
Commissioner
The Commonwealth of Massachusetts
Executive Office of Human Services
Commission for the Blind
88 Kingston Street
Boston, Massachusetts 02111-2227

Dear Commissioner Crawford:

This letter responds to your inquiry regarding the content of certain materials reportedly produced by a grantee of the Department of Justice. You have not identified the grantee or the materials in question.

The Americans with Disabilities Act (ADA) authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist you in understanding the ADA's requirements. However, it does not constitute a legal interpretation or legal advice and it is not binding on the Department of Justice.

Your letter expresses concern that certain technical assistance materials containing a summary of compliance steps for public entities do not discuss computer text files and descriptive video as additional means of providing effective means of communication to individuals with disabilities under the ADA.

The ADA requires public entities to furnish appropriate auxiliary aids and services to ensure that communication with persons with disabilities is effective. The title II regulation lists several examples of such auxiliary aids and services. Although computer text files and descriptive video are not specifically cited as examples, the list is not in any sense intended to be exhaustive or all-inclusive. In fact, the portion of the regulation addressing auxiliary aids and services that may be required for persons with vision impairments is written

cc: Records; Chrono; Wodatch; Foran; McDowney; FOIA; MAF.

broadly to include "other effective methods of making visually delivered materials available to individuals with visual impairments." 28 C.F.R. s 35.104.

In explaining the limited nature of the list of examples included in the regulation, the Justice Department's interpretive commentary or "preamble" to the regulation states:

> A substantial number of commenters suggested that additional examples be added to this list. The Department has added several items to this list but wishes to clarify the list is not an all-inclusive or exhaustive catalogue of possible or available auxiliary aids or services. It is not possible to provide an exhaustive list, and such an attempt would omit new devices which will become available with emerging technology.

56 Fed. Reg. 35697.

The preamble to the regulation also specifically discusses additional examples of aids and services for making visually delivered materials accessible to persons with visual impairments. As the preamble states, although these examples are not included in the regulation, they would nonetheless be considered auxiliary aids and services under the ADA.

Many commenters proposed additional examples such as signage or mapping, audio description services, secondary auditory programs, telebraillers, and reading machines. While the Department declines to add these items to the list, they are auxiliary aids and services and may be appropriate depending on the circumstances.

56 Fed. Reg. 35697. For more information on auxiliary aid requirements see section 35.104 of the enclosed federal regulation at page 35717 and the additional discussion at page

35697 and pages 35711-35712.

I hope this information is useful to you in understanding the requirements of the ADA.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

Enclosures (2)

The Commonwealth of Massachusetts
Executive Office of Human Services
Commission for the Blind
88 Kingston Street, Boston, MA 02111-2227

WILLIAM F. WELD
GOVERNOR
ARGEO PAUL CELLUCCI
LIEUTENANT GOVERNOR

DAVID P. FORSBERG
SECRETARY
CHARLES H. CRAWFORD
COMMISSIONER

October 15, 1992

The Honorable William Pelham Barr
Attorney General of the United States
Department of Justice
Tenth and Constitution Avenues N.W.
Room 4400
Washington DC 20570

Dear Mr. Attorney General:

I am writing to convey my concern after speaking with a person who operates with funding from the Department of Justice on a project to advise the public with respect to obligations under the Americans with Disabilities Act. I had an opportunity to read a summary of compliance steps that public entities would have to execute under the ADA and was surprised and disappointed at the omission of important points relative to information access for blind and otherwise print handicapped person.

Rightfully, entities were advised that they would have to provide information in an "equally effective" fashion and consistent with the preferences of the person requesting the information. Correctly, they went on to point out that print materials could be made accessible through audio tapes, large print, and Braille. Unfortunately, they omitted the critical

consideration of how print materials are generated and the advantages associated with proper attention to computer based text files as both a means of accommodating the information needs of computer literate persons who are print handicapped, and the ability of the text file to be easily printed in large print, sent to Braille printers or even output to high quality speech processors for audio tapes when such speech is acceptable to the user. Moreover, the computer file is amenable to word processing where the user is then able to use the source material much more effectively than the passive reading of it.

In view of the thrust of the thrust of the current Administration along with the platforms of all major contenders for the Presidency endorsing increased automation, I am seriously concerned at the lack of mentioning text files as a prime method of information accessibility.

The above is only worsened by the representation made to me that the information had been reviewed by the Department of Justice in advance of my reading it. If this is so, then an immediate education process is in order at the Department to avoid similar instances.

My other concern at the document was the rightful articulation of "closed captioning" as a viable means of information access for persons who are deaf and watching videos, but no mention at all of the same type "descriptive video" access for persons who cannot see what is happening on the screen.

I realize the difficulties associated with attempting to implement a major piece of legislation which contains many concepts not in the ordinary public discourse, however, misinformation cannot be tolerated if we are to achieve our common goal. If I can be of any further assistance in this regard, please contact me at the above address or call (617)-727-5550 extension 4503 to speak with me.

Sincerely,

Charles H. Crawford
Commissioner

NOV 24 1992

Jeffrey H. Flora, CAE
Managing Director
The Electric Association of
Missouri & Kansas
638 W. 39th
Kansas City, Missouri 64141-4168

Dear Mr. Flora:

This letter is in response to your request for a statement of our policy for enforcing the Americans with Disabilities Act (ADA).

As with other Federal civil rights statutes protecting Americans against employment discrimination, the ADA will be enforced with reason and fairness. I am confident that our enforcement policy will not contribute to the litigation crisis, but rather will provide expanded opportunities for businesses, as well as potential employees and consumers.

Our general enforcement strategy is a simple one and can be summarized in a phrase: educate, negotiate and litigate only when those efforts fail. Our goal is voluntary compliance with the ADA through an active outreach and public education effort. We will attempt first to resolve complaints through a process of

technical assistance and negotiation, and resort to litigation only when necessary to achieve compliance after those efforts.

To date, this policy has been very successful. Daily, we advise owners and managers of businesses on ways to comply with the ADA, and they express a great interest in doing so voluntarily - not to avoid litigation, but because it is the right thing to do. In the long run, compliance will also make them more competitive in the marketplace.

cc: Records; Chrono; Wodatch; Breen.
:udd:jonessandra:disabling.america

01-01745

It is true that litigation will be unavoidable in some circumstances. The ADA and the Federal regulations, however, strike a careful balance between the rights of individuals with disabilities to equal access to the mainstream of American life and the legitimate needs of business for efficiency and profitability. The ADA's incorporation of such limiting concepts as "readily achievable," "undue burden" and "undue hardship" takes into consideration the economic health of individual businesses and simultaneously protects essential rights and promotes economic growth.

The day has long passed when individuals with disabilities can be shunted away in segregated programs or denied employment. Now is the time for all American institutions to reassess their policies and practices to ensure that all individuals are included in their activities, services, and employment opportunities. It's good business, it makes sense, and it's

fair.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

01-01746

The Electric Association OF MISSOURI & KANSAS
638 W. 39TH * P.O. BOX 414168 * KANSAS CITY, MISSOURI 64141-4168 *
816-561-5323
FAX
#816-561-1249

August 31, 1992

Immediate Past President
DON ANDERSON
SCHOOLER & ASSOCIATES, INC.
* * * * * *
Vice Presidents
UTILITIES
SYLVERSTER BYRD
BOARD OF PUBLIC UTILITIES
MANUFACTURERS
PAUL BODDE
THE WIREMOLD CO.
CONTRACTORS
DICK YATES
YATES ELECTRIC CO.
SUPPLY WHOLESALERS
TERRY MASTERS
BERNIE ELECTRIC
AGENTS
GARY SNEATHEN
MOKAN ELECTRICAL SALES
AT LARGE
ART MALLE
KANSAS POWER & LIGHT
MAINT-REPAIR-SERVICE
LARRY HURST
HUNT MIDWEST
* * * * * *
Board of Directors
DIANE BECHMANN
KANSAS CITY POWER & LIGHT
LARRY LaBOUNTY
T&B MFG.
GRANT HILBURN
BOESE-HILBURN ELECTRIC
RAY HAWKINS
MISSOURI VALLEY ELECTRIC
JOHN MARIETTI
CBM INC.
CHRIS HEDGES
CHRISTOPHER HEDGES CO.
BOB VAN LANDINGHAM
LOGIC CONTROL SALES
DON ALBER
WALKER LOUDERMILK CO.
WALT WESTMORELAND
MISSOURI VALLEY ELECTRIC
TOM ISENBERG
WESTERN EXTRALITE

Mr. John R. Dunne
Assistant Attorney General
Civil Rights Division
U.S. Justice Department
Washington, D.C. 20515

Dear Mr. Dunne:

I read with much interest your letter to the editor in the August 20th issue of the Wall Street Journal.

Our Association represents approximately 600 members who are individual businesses and business owners and who are also very concerned about the impact of the employment provisions of Title I of the Americans With Disabilities Act which went into effect in July, 1992.

We would appreciate very much for you to write the Electric Association of Missouri & Kansas a memo on Justice Department stationery outlining the policies that you stated in your letter to the Wall Street Journal.

I look forward to hearing from you soon.

Sincerely,

Jeffrey H. Flora, CAE

IDA MAY EDMISTEN Managing Director
MISSOURI VALLEY ELECTRIC

JHF/dh
cc: Ernest Isenberg
Legislative Committee Chairman
cc: John Wodatch

01-01747

THE WALL STREET JOURNAL
DATE:
8-20-92
PAGE: A xx

Letters to the Editor

Unsupported Fears About the ADA

Your July 24 editorial "Disabling America" is misleading and fosters unsupported fears about the consequences of the employment provisions of Title I of the Americans With Disabilities Act (ADA), which went into effect last month. As with other federal civil rights statutes protecting Americans against employment discrimination, Title I will be enforced with reason and fairness. I am confident that our enforcement policy will not contribute to the litigation crisis, but rather will provide expanded opportunities for employers, as well as potential employees.

Our compliance strategy is a simple one and can be summarized in a phrase: educate, negotiate and litigate only when those efforts fail. Our goal is voluntary compliance with the ADA through an active outreach and public education effort. We will attempt first to resolve complaints through a process of technical assistance and negotiation, and resort to litigation only when compliance is required.

You confuse the administrative enforcement procedures for the ADA's various provisions and actual court litigation. Your reference to 320 cases filed with our department and the "20% jump in discrimination lawsuits, or 15,000 new cases a year," is a reflection of this confusion. These statistics refer to the number of administrative complaints filed with our department and those that may be lodged with the Equal Employment Opportunity Commission (EEOC) during the coming year. Some of the department's cases go to litigation, but the vast majority will be settled voluntarily. Similarly, a very small percentage of EEOC's cases will result in litigation.

To date, our experience has been very

different from the bleak view you present. Daily we advise the owners and managers of businesses on ways to comply with the ADA and they express a great interest in doing so voluntarily -- not to avoid litigation, but because it is the right thing to do. Moreover, in the long run, compliance will make them more competitive in the marketplace.

It is true that litigation will be unavoidable in some circumstances. The ADA and the federal government's regulations, however, strike a careful balance between the rights of individuals with disabilities to equal access to the mainstream of American life and the legitimate needs of government and business for efficiency and profitability. The ADA's incorporation of such limiting concepts as "readily achievable," "undue burden" and "undue hardship" takes into consideration the economic health of individual businesses and state and local governments, and simultaneously protects essential rights and promotes economic growth.

The day has long passed when individuals with disabilities can be shunted away in segregated programs or denied employment. Now is the time for all American institutions to reassess their policies and practices to ensure that all individuals are included in their activities, services and employment opportunities. It's good business; it makes sense, and it's fair.

JOHN R. DUNNE
Assistant Attorney General
Civil Rights Division
U.S. Justice Department
Washington

* * *

You accurately describe fears many people have about the ADA. You point out that there is a fear that there will be many costly lawsuits and that ultimately we may find costs of "reasonable accommodation" to be excessive.

One of the uncertainties that breeds fear is that there is no consensus on the

definition of disability. Who counts under the ADA as having a disability is simply not known. Also, the face of disability is changing quickly due to the rise of AIDS, the recurrence of tuberculosis in our cities and the overall aging of the population (thus increasing the prevalence of disability).

JOHN B. WINGATE
Executive Director
International Center for the Disabled
New York

* * *

Your editorial is unfortunately a reflection of the fear, ignorance and patronizing attitudes that made the ADA necessary in the first place. It's not only remarkable for its misstatement of fact, but for its complete misunderstanding of the spirit and history underlying the ADA, of which I was the primary sponsor in the Senate.

Let's remember for a moment why the ADA enjoyed such sweeping bipartisan support when it was passed: because Congress and the White House recognized that "compassion for the accidents of birth or circumstance that limit some people" (your phrase) has been insufficient to guarantee to individuals with disabilities the rights that are taken for granted by others in our society. With the ADA, for the first time, people with disabilities have those same rights.

While you see the ADA as a potential "Lawyer's Annuity Act," people with disabilities see it as the one law that will help them achieve inclusion and independence in the mainstream of society. For the same reason that soldiers hate war most because they have the most to lose, people with disabilities have the greatest interest in seeing the effective and non-adversarial implementation of the law -- because they have the most to lose if the ADA fails.

However, your editorial suggests that fear of legal liability under the ADA will result in increased employment discrimination against people with disabilities. But

your conclusions are contradicted by your own reporters. The Journal has previously documented not only the existence of rampant job discrimination in the absence of legal protection, but also the benefits to the work force as a whole when protections are in place.

As early as January 1976, in reporting on the change in employment practices resulting from the Rehabilitation Act of 1973, a Journal article highlighted the limitations that had been placed on American businesses, not by civil rights laws, but by erroneous perceptions of the value of disabled Americans in the workplace. Regarding the efforts by the Disability Rights Education and Defense Fund (DREDF): Far from the lawsuit-happy "Barrier Busters" you portrayed, DREDF has worked from the beginning of the ADA to bring the business and disability communities together, to educate and clarify misperceptions.

Finally, your editorial quotes economist Walter Ol as saying the ADA will "make the disabled more dependent on the government." A Harris Poll recently found that two-thirds of all working-aged people with disabilities are on the public dole. Case after case has found that when given a chance, people with disabilities perform as well as the non-disabled. Little wonder the EEOC projects not only productivity gains of $164 million under the ADA, but a $222 million net benefit from decreased support payments coupled with increased revenue. Far from making people with disabilities more dependent on government, this law is truly a mandate for transforming tax-users into taxpayers.

TOM HARKIN (D., Iowa)
U.S. Senate
Washington

* * *

22 Cont
01-01748

T. 11/18/92
SK:SBO:ca
DJ# 193-180-15348

NOV 24 1992

The Honorable Arlen Specter
United States Senator
Suite 9400, Federal Building
600 Arch Street
Philadelphia, PA 19106

ATTN: Ms. Mary Clark

Dear Senator Specter:

This letter is in response to your inquiry on behalf of Marie A. Midas, Chief Clerk, County of Carbon, who requested a response to her letter of May 13, 1992, to the Office on the Americans with Disabilities Act. We regret that we have been unable to locate a record of that letter.

The ADA authorizes the Department of Justice to provide technical assistance to entities that are subject to the Act. This letter provides informal guidance to assist you in responding to Ms. Midas. However, this technical assistance does not constitute a determination by the Department of Justice of the County's rights or responsibilities under the ADA and does not constitute a binding determination by the Department of Justice.

As indicated in section II-5.0000 of the enclosed Technical Assistance Manual, title II of the Americans with Disabilities

Act requires for existing facilities that programs and activities operated by public entities must be accessible to individuals with disabilities. Title III of the ADA establishes different requirements for places of public accommodation operated by private entities, and a copy of our Title III Manual is also enclosed for your information. The relationship between the title II requirements for public entities and the title III requirements for private entities is discussed in section II-1.2000 of the Title II Manual, and the examples in that section may be relevant to Ms. Midas' concerns. Illustration #2 indicates that when a city leases to a restaurant, newsstand, and travel agency, the city is a landlord subject to title II even

cc: Records, CRS, Friedlander, Kaltenborn, McDowney, FOIA, Breen
:udd:kaltenborn:specter

01-01749

though the tenants are public accommodations covered by title III. Also, section II-5.5000 of the Manual discusses the application of the program accessibility requirements to programs operated in historic properties.

I hope that this information is helpful to you in responding to Ms. Midas.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

Enclosure

01-01750

OFFICE OF THE
CARBON COUNTY COMMISSIONERS
COMMISSIONERS COUNTY COURT HOUSE ANNEX
DEAN D.W. DELONG, CHAIRMAN OF JIM THORPE, PA
TOM C. GERHARD, VICE-CHAIRMAN 18229-1238
JOHN D. MOGILSKI CARBON *
PENNSYLVANIA TELEPHONE (717) 325-3611
FAX (717) 325-3622

May 13, 1992

US Department of Justice
Civil Rights Division
Office on the Americans with Disabilities Act
Washington, DC 20035

Dear Sir/Madam:

The County of Carbon owns a downtown historic structure and in turn rents space to a bank, tourist agency and small railline. It has been brought to my attention as ADA Coordinator that the bank (branch) is not handicapped accessible due to a threshold step at the entrance to same.

I am aware that the County as landlord is subject to Title II

regulations of the ADA Act. However, the bank is governed by Title III. If a ramp, portable or otherwise is erected, the doorway would not accommodate wheelchair passage. Consequently, a full accommodation would result in a structural change. The building in question is an 1888 train station within a National Historic District. Thus, historic standards would also apply. Any historical modification would be cost-prohibitive at this time.

The bank has a main location which is approximately 1 1/2 miles from the branch site. As the bank has provided full banking services at a main office which is handicapped accessible, safer, less congested, including adequate parking and within close proximity to the branch, have they met ADA compliance? What regulations would govern in this case? Would a service doorbell and appropriate signage satisfy accessibility standards?

The County would appreciate your written response in this matter. Thank you for your time and consideration.

Sincerely,

Marie A. Midas
Chief Clerk
COUNTY OF CARBON

MAM
cc: Carbon County Board of Commissioners
County Administrator

01-01751

OFFICE OF THE
CARBON COUNTY COMMISSIONERS

COMMISSIONERS COUNTY COURT HOUSE ANNEX
DEAN D.W. DELONG, CHAIRMAN OF JIM THORPE, PA
TOM C. GERHARD, VICE-CHAIRMAN 18229-1238
JOHN D. MOGILSKI CARBON *
PENNSYLVANIA TELEPHONE (717) 325-3611
FAX (717) 325-3622

May 14, 1992

Senator Arlen Specter
Room 342
Russell Senate Ofc. Bldg.
Washington, D.C. 20510

Dear Senator Specter:

Commissioner Dean DeLong has requested that I forward the enclosed correspondence for your handling in obtaining a timely response from the US Department of Justice relative to our concern.

Thank you for your kind assistance.

Sincerely,

Marie A. Midas
Chief Clerk
COUNTY OF CARBON

MAM
Enclosure

01-01752

OFFICE OF THE
CARBON COUNTY COMMISSIONERS
CHIEF CLERK
MARIE A. MIDAS
COUNTY
OF
CARBON
PENNSYLVANIA
COURT HOUSE ANNEX
JIM THORPE, PA
18229-1238
*
TELEPHONE (717) 325-3611
FAX (717) 325-3622

August 28, 1992

Honorable Arlen Specter
Philadelphia Office
Room 9400
600 Arch Street
Philadelphia, PA 19106

Dear Senator Specter:

Attached is a copy of a letter previously forwarded to your Washington office at the request of Commissioner Dean DeLong. With the communication, I had sent an original letter addressed to the US Department of Justice for disposition via your office.

To date, I have not received any acknowledgement or response. We would appreciate a written communique from the Department relative to the County's concern.

Any assistance in this matter of importance would be most appreciated.

Respectfully,

Marie A. Midas
Chief Clerk
COUNTY OF CARBON

MAM
Attachment
cc: Commissioner Dean DeLong
01-01753

NOV 25 1992

The Honorable Thomas W. Ewing
U.S. House of Representatives
1632 Longworth House Office Building
Washington, D.C. 20515-1315

Dear Congressman Ewing:

This letter responds to your inquiry regarding the

requirements of the Americans with Disabilities Act (ADA).

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities that are subject to the Act. This letter provides informal guidance to assist your constituents in understanding the requirements of the ADA. However, this technical assistance does not constitute a determination by the Department of rights or responsibilities under the ADA, and it is not binding on the Department.

As you may know, a member of the Public Access Section at the Department of Justice spoke to Eric Nicoll, a staff person in your Washington office, several weeks ago regarding the questions posed in your letter of inquiry. This letter provides written confirmation of the information provided to Mr. Nicoll.

You have asked how the ADA would apply to a small manufacturing plant in your district. Manufacturing plants are not considered public accommodations and thus are not required to undertake removal of barriers in existing facilities. A manufacturing plant would, however, be considered a commercial facility for purposes of the ADA. This means that any alterations undertaken by the plant after January 26, 1992, must be in accordance with the ADA Accessibility Guidelines. New construction undertaken by the plant is also covered by the ADA. For more information about requirements for alterations and new construction, please refer to sections 36.401-36.406 of the title III regulation and pages 43-53 of the Title III Technical Assistance Manual (enclosed).

cc: Records, Chrono, Wodatch, McDowney, Foran, FOIA, MAF
Udd:Foran:ewingcongressional

01-01754

A manufacturing plant may also be required to comply with title I of the ADA, the provisions that require non-discrimination in employment. For more information on the requirement to provide reasonable accommodations to employees with disabilities, please see section III of the enclosed Title I

Technical Assistance Manual.

Your letter also asks a series of questions about the applicability of the ADA to businesses with financial difficulties. A business covered by the ADA is only required to remove barriers in existing facilities where "readily achievable" to do so. "Readily achievable" means easily accomplishable and able to be carried out without much difficulty or expense. Further discussion of section 36.304 of the title III regulation can be found in the interpretive guideline or preamble to the regulation at 56 Fed. Reg. 35568-35570 and pages 29-35 of the Title III Technical Assistance Manual. There are several sources of financial assistance to help businesses comply with ADA requirements. An eligible small business may take a tax credit of up to $5000 per year for a wide variety of expenditures made to improve access. There is also a tax deduction of up to $15,000 per year for any business for expenses of removing specified architectural and transportation barriers. Information on the Section 44 tax credit and the Section 190 tax deduction can be obtained from a local IRS Office or by contacting the Office of Chief Counsel, Internal Revenue Service.

I hope this information will assist you in responding to your constituent.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

Enclosures (3)

01-01755

WASHINGTON OFFICE
THOMAS W. EWING 1632 LONGWORTH HOUSE OFFICE BUILDING
151TH DISTRICT, ILLINIOS WASHINGTON, DC 20515-

1315
(202) 225-2371
COMMITTEES:
AGRICULTURE CONGRESS OF THE UNITED STATES DISTRICT OFFICES
SUBCOMMITTEE ON 70 MEADOWVIEW CENTER, SUITE
200
DEPARTMENT OPERATIONS RESEARCH KANKAKEE, IL
60901-2047
AND FOREIGN AGRICULTURE HOUSE OF REPRESENTATIVES (815) 937-0875
PUBLIC WORKS AND TRANSPORTATION 2401 E. WASHINGTON STREET, SUITE
101
WASHINGTON, DC 20515-1315
SUBCOMMITTEES: BLOOMINGTON, IL
61704-4409
AVIATION (309) 662-9371
WATER RESOURCES
PUBLIC BUILDINGS AND GROUNDS 210 WEST WATER STREET
PONTIAC, IL
61764
(815) 844-7660

September 21, 1992

Ms. Thomasina Rogers
Legal Counsel
Equal Employment Opportunity Commission
1801 L Street, N.W.
Washington, D.C. 20507

Dear Ms. Rogers:

I am writing to you because I have some questions about the Americans with Disabilities Act. I was not in Congress when this legislation was enacted, and I hope you can be of assistance. Please get back to me by October 15.

I know of a small manufacturing plant in my district which produces wood trusses and wall panels. The company has approximately 45 employees. The company has a small office with two small bathrooms. The owner of the company tells me that there is no room for a bathroom which is accessible to the disabled even if he were to combine the present two small bathrooms. Such a modification would require a major structural change at great expense. The owner of this company tells me that he cannot afford this expense and that other expenses already have left the company

with a difficult financial burden.

This business is not a retail building supplier dealing with the general public. Their customers are building contractors who are not disabled. The owner has even informed me that if he did have a disabled customer, he would go to that customer to conduct his business.

This situation brings up many questions which I would like you to answer. Does the Act allow for exemption in the case of businesses facing financial difficulties? If the Act does not allow this flexibility, is there some federal program which can assist financially-strapped businesses to meet these mandates? If so, please give me the specifics and how a business can obtain an exemption from the Act or he could go for financial assistance. After all, if the expenses incurred by this Act drive businesses out of businesses, many jobs can be lost. Can an exemption be obtained for a business which can clearly demonstrate that there is not a demand for handicapped accessibility at his place of business? How would a businessman apply for an exemption? Again, I would like specifics.

01-01756

I would greatly appreciate it if you would get back to me with the answers to these questions by October 15. Any additional comments you have would be appreciated. If you have any questions, please have your staff contact Eric Nicoll in my Washington, D.C. office at (202) 225-2371.

Sincerely,

Thomas W. Ewing
Member of Congress

01-01757

NOV 25 1992

The Honorable Dan Glickman
Member, U. S. House of Representatives
401 N. Market Street, Room 134
Wichita, Kansas 67202

Attention: Janet Anderson

Dear Congressman Glickman:

This letter responds to your inquiry on behalf of (b)(6) XX concerning the regulatory requirements of the Americans with Disabilities Act for curb side locations for accessible parking spaces.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities with rights or obligations under the Act. This letter provides informal guidance to assist your constituent in understanding the ADA accessibility standards. However, this technical assistance does not constitute a legal interpretation of the statute and it is not binding on the Department.

The ADA Accessibility Guidelines in section 4.6.2 (page 35631 of the enclosed Federal Register document) do require that accessible parking spaces serving a particular building be located on the shortest accessible route of travel to an accessible entrance. In some instances, local fire engine access requirements prohibit parking immediately adjacent to a building. If such is the case, a marked crossing may be used as part of the accessible route to the entrance.

I hope this information will be helpful to your constituent.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

Enclosure

cc: Records, Chrono, Wodatch, McDowney, Magagna, Harland,
Udd:Harland:glickman.cong.(b)(6)

01-01758

NOV 25 1992

The Honorable Charles S. Robb
United States Senator
Old City Hall
1001 East Broad Street
Richmond, Virginia 23219

Dear Senator Robb:

This letter responds to your inquiry on behalf of XX (b)(6) concerning the Martinsville Speedway. XX has complained that personnel at the Speedway refused to admit him after he asked permission to carry a lawn chair onto the premises to accommodate his disability.

The Americans with Disabilities Act (ADA) authorizes this Department to provide technical assistance to individuals and entities that have rights or responsibilities under the ADA. Therefore, this letter provides informal guidance to assist you in responding to (b)(6) xx However, this technical assistance does not constitute a legal interpretation, and it is not binding on the Department of Justice.

Under title III of the ADA, a public accommodation, including a place of recreation such as a speedway, is obligated to make reasonable modifications in its policies, practices, or procedures when the modifications are necessary to ensure that individuals with disabilities have access to its goods and services, unless the modifications would fundamentally alter the nature of those goods and services. For a fuller discussion of this issue, please refer to section 36.302 of the enclosed title III regulation and pages 22-24 of the enclosed Title III Technical Assistance Manual.

cc: Records; Chrono; Wodatch; Delaney; McDowney; FOIA; MAF.
:udd:delaney:ada.cong.robb.(b)(6)

01-01759

We cannot ascertain solely on the basis of the information provided whether the Speedway is in violation of the ADA. If (b)(6)xx wishes to file a formal complaint with the Department of Justice to initiate an investigation of this matter, he should send a written complaint to: Public Access Section, Civil Rights Division, Post Office Box 66738, Washington, D.C. 20035-6738.

I hope this information is helpful in responding to your constituent.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

Enclosures (2)

01-01760

(ILLEGIBLE) 1992
Copy
Dear Sirs: Ridgeway, Va.

On Sept. 24 at 9am I was vehemently refused entrance to the Martinsville Speedway after requesting to carry a ILLEGIBLE mesh lawn chair in explaining to the man at the entrance I needed it to sit in having 100% disability resulting from 2 failed back operations, ILLEGIBLE severe cronical pain in lower back, hips, both legs, and numbness down both legs all the way to my toes. This has left me handicap in walking, standing sitting and restricting my movements and activities.

It would have been impossible for me to sit on those hard cement & metal seats they have. My request was for that day only. My request should have been heeded. (ILLEGIBLE) is only a few

people there to see practing on this
day. The ticket collector agreed with me.
On being sent to the office to ask
permission & explaining my problems
an older lady seemed to become furious
ILLEGIBLE & eventually chewing me out
the 2 men at the gate for sending me
up there. Coming back she said no exceptions
could be made to anyone, that the rules
were no chairs could be taken through the
gates. I am aware that Federal Laws was
passed not long ago giving disabled and
handicap people ample, and special cond-
itions. I want to register a complaint:
Through the proper channels and request
ILLEGIBLE prudent emotional, damages
ILLEGIBLE trouble to correct this problem.
I am mailing 2 copies of
this letter one to Health & Human Service
Roanoke, Va. & Honorable Senator Charles
Robb. Please advise if you can help. I
ILLEGIBLE 62 ticket would
be XX (b) (6)
$500 Regular Charge

Sincerely Yours
(b) (6)
01-01761

DJ 202-PL-340
Mr. George A. Zitnay
President and Chief Executive Officer
National Head Injury Foundation
1776 Massachusetts Ave., Suite 100
Washington D.C. 20036

Dear Mr. Zitnay:

This letter is in response to your inquiry regarding whether individuals who have experienced traumatic brain injury are protected by the Americans with Disabilities Act (ADA).

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist you in understanding the ADA's requirements. However, it does not constitute a legal interpretation or legal advice, and it is not binding on the Department of Justice.

The ADA defines the word "disability" as a physical or mental impairment that substantially limits one or more of an individual's major life activities; a record of such an impairment; or being regarded as having such an impairment. 42

U.S.C. S12102(2). Section 36.104 of the Department's ADA title III regulation (enclosed), at page 35,593, provides that:

(1) The phrase physical or mental impairment means --

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; ...

(iii) The phrase physical or mental impairment includes, but is not limited to, such contagious and noncontagious diseases and conditions such as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple

cc: Records, Chrono, Wodatch, Breen, Perley, Friedlander, FOIA
Udd:Perley:zitnay.pl

01-01762

sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, specific learning disabilities, HIV disease ..., tuberculosis, drug addiction, and alcoholism ... (emphasis added).

In your letter you state that "because disability from traumatic brain injury is not specifically identified in the ADA statute or regulations, there is concern that persons with TBI are not protected by the ADA." Please be assured that traumatic brain injury is an impairment covered by the statute. As explained in the section-by-section analysis of the regulation at page 35,548, "traumatic brain injury is a physiological condition

affecting one of the listed body systems [in paragraph (1)(i)], i.e., 'neurological'." Indeed, the absence of traumatic brain injury in paragraph (1) (iii) does not mean that it is not a physical or mental impairment as defined by the Act. The list of diseases and conditions in this paragraph is not an exhaustive one; it merely provides examples of the broad range of impairments included under the ADA.

I hope this information is helpful and dispels any concerns that you may have.

Sincerely,

John L. Wodatch
Chief
Public Acess Section

Enclosure
Title III Regulation

01-01763

mailed between
December 2, 1992 and
December 14, 1992

Mr. Steven J. Cole
Vice President and General Counsel
Council of Better Business Bureaus, Inc.
4200 Wilson Boulevard
Arlington, Virginia 22203-1804

Dear Steve:

This letter is in response to your inquiry regarding whether physicians must assist patients with disabilities in dressing and undressing.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist you in understanding the ADA's requirements. However, it does not constitute a legal interpretation or legal advice and it is not binding on the Department of Justice.

The ADA requires public accommodations to make "reasonable modifications in policies, practices, or procedures when the modifications are necessary to afford goods [and] services . . . to individuals with disabilities, unless the public accommodation can demonstrate that making the modifications would fundamentally alter the nature of the goods [or] services . . . ." 28 C.F.R. S 36.302(a). In most cases, we believe that providing assistance in dressing and undressing would not fundamentally alter the nature of the service provided by a physician.

You are quite correct to point out that the regulations generally do not require a public accommodation to provide its customers or clients with services of a personal nature, including dressing. 28 C.F.R. S 36.306. We do not think, however, that this limitation to the general rule applies to assistance in dressing and undressing provided by physicians. The personal services limitation is a narrow one and must be interpreted in light of the nature of the services provided and the assistance required. Because the nature of medical services is inescapably very personal, it is not unreasonable to require physicians to provide assistance with dressing or undressing, even though other public accommodations may not be required to

cc: Records, Chrono, Wodatch, Breen, Contois, Friedlander, FOIA
Udd:Contois:PL.dressingandundressing
01-01764

provide such assistance. Moreover, because undressing is commonly crucial to the provision of medical services, applying the personal services limitation to assistance in dressing and undressing would inappropriately deny medical care to large numbers of individuals with disabilities.

I regret the long delay in answering your request and hope that the delay has not created a hardship for you. I really do appreciate the fine work that the Council of Better Business

Bureaus' Foundation has done in helping implement the ADA. I especially value Barbara Bode's efforts on the technical assistance grant and out on the hustings. She has been an invaluable resource and has helped open communications between business and the disability rights community.

Thanks again for your inquiry, and let me know if we can be of any further help to you.

Sincerely,

John L. Wodatch
Chief
Public Access Section

cc: James McIlhenny
Barbara Bode

01-01765

COUNCIL OF BETTER BUSINESS BUREAUS, INC.
THE INTERNATIONAL ASSEMBLY OF BETTER BUSINESS BUREAUS

MEMORANDUM

TO: JOHN WODATCH, Director
Office of Americans With Disabilities Act
Civil Rights Division, Department of Justice

FROM: Steven J. Cole
Vice President and General Counsel

RE: CBBBF Technical Assistance Grant--
Outpatient Medical Facilities

DATE: July 20, 1992

I hope that this is finding you well. I know that you must be exceedingly busy, but I hope that all of the hard work you and your staff have been doing is now beginning to pay off.

We have received and incorporated your staff's helpful comments on the final set of industry-specific brochures, and Jim McIlhenny has given final approval of copy for printing, which is now imminent.

In the brochure directed to outpatient medical facilities we have included a sentence that was in the draft reviewed and accepted by the DOJ reviewer but that, in my mind, raises a question under your regulations.

I would appreciate it if you would be able to provide for our use in connection with questions that might arise after the booklets are distributed, or for future printing, a confirmation of DOJ's interpretation.

The brochure will ask the following question:

> "What assistance must health care facilities provide for patients and clients who use wheelchairs or other mobility devices to ensure equal and effective treatment and services?"

Our answer includes the following sentence:

> "Medical and health care facilities must provide assistance to undress and dress as needed or requested by patients with disabilities unless doing so fundamentally alters the services provided."

4200 Wilson Boulevard Arlington, VA 22203-1804 (703) 276-0100 FAX (703) 525-8277

It was my understanding that services of a personal nature, defined to include assistance in dressing, 28 CFR S 36.306, are not required by Title III, ibid.

At the same time, it was my understanding that notwithstanding the personal services limitation on all requirements of the regulation, 1 a public accommodation that customarily provides a personal service to its customers must do so for persons with disabilities who require the assistance. See 56 Fed. Reg. 35571 (July 26, 1991) and DOJ Technical Assistance Manual, III-4.2600, p. 24 (January 24, 1992).

Accordingly, it would be very helpful to receive from you a confirmation that we have correctly advised medical facilities that they are obligated to provide dressing and undressing assistance where needed or requested (in the absence of a showing that such services would fundamentally alter the services of the facility), whether or not the facility customarily provides the services to its patients.

Thank you for your prompt attention to this. And, again, thank you and your staff for the excellent cooperation we have received on this important project.

cc: James McIlhenny
Barbara Bode

1 The preamble to the final rule explains that this limitation applies to all requirements, including those pertaining to modifications to policies and procedures, a point not clear in the proposed rule. See 36 Fed. Reg. 35571 (July 26, 1991).

01-01767

T. 12/1/92
SBO:RJM:ca
DJ# 192-16i-00101

DEC 3 1992

XXXXXX
XXXXXX(b)(6)
Myrtle Beach, South Carolina 29577

Dear XX

This is in response to your correspondence regarding the Americans with Disabilities Act (ADA) and interpreting services. The first issue you raise, concerning the postal exam, is under the primary jurisdiction of the Equal Employment Opportunity Commission, and, accordingly, it is more appropriate for that Commission to respond. The Commission is responsible for the implementation and enforcement of section 501 of the Rehabilitation Act of 1973, as amended. Section 501 imposes upon the Federal government affirmative action requirements to hire and promote qualified individuals with disabilities. For more specific information about Title I, please contact EEOC, 1801 L Street, N.W., Washington, DC 20507, (800) 699-EEOC (voice) or (800) 800-EEOC (TDD).

We are unable to assist you in your complaint about lack of sufficient community resource centers. Regarding your fourth concern involving vocational rehabilitation counselors, the U.S. Department of Education, Office of Special Programs and Rehabilitation Services, Rehabilitation Services Administration is responsible for implementing the Rehabilitation Act of 1973, as amended, in rehabilitation service programs. You may want to contact that office. Its address is: 330 C Street, SW, Washington, D.C. 20202.

Your second concern involves payment of interpreters. Title II of the ADA prohibits discrimination on the basis of disability by public entities. It applies to all programs, activities, and services provided or operated by State and local governments. Title III covers private entities in places of public accommodation.

:udd:mather:ltr. (b)(6)
cc: Records, CRS, FOIA, Friedlander, Mather, Breen

Section 35.160 of the enclosed title II regulation requires that public entities provide auxiliary aids and services where necessary to afford an individual with disabilities an equal opportunity to participate in, and enjoy the benefits of, the public entity's program or activity, or otherwise to ensure effective communication with members of the public. This requirement is further explained in section II-7.0000 of the enclosed title II Technical Assistance Manual. Among auxiliary aids and services that promote effective communication are qualified interpreters.

Private entities are required to furnish appropriate auxiliary aids and services where necessary to ensure effective communication with individuals with disabilities. These provisions appear in section 36.303 of the enclosed title III regulation and section III-4.3000 of the enclosed title III Technical Assistance Manual.

When an interpreter or other auxiliary aid or service is necessary to ensure effective communication, the public or private entity must absorb the cost for this aid or service. The entity, however, is not required to provide any auxiliary aid that would result in an undue burden.

Federal agencies have similar obligations under section 504 of the Rehabilitation Act of 1973, as amended. Section 504 regulations for federally conducted programs require that Federal agencies take appropriate steps to ensure effective communication with personnel of other Federal entities, applicants, participants, and members of the public. The agencies must provide auxiliary aids at no cost to individuals with disabilities.

If you believe, after reviewing the enclosed materials, that you have been discriminated against on the basis of your disability, you have two enforcement options under the ADA: (1) You may secure private legal representation and bring an action in Federal court, or (2) you may file a complaint with the Department of Justice.

If you choose to file a complaint with the Department of Justice, you should send it to one of two offices of the Civil Rights Division assigned to investigate such complaints. If the program is operated by a State or local government, you should

send any relevant information to the Coordination and Review Section, Civil Rights Division, U.S. Department of Justice, P.O. Box 66118, Washington, D.C. 20035-6118. If, on the other hand, the program is operated by a private entity, you should send any relevant information to the Public Access Section, Civil Rights Division, U.S. Department of Justice, Post Office Box 66738, Washington, D.C. 20035-9998.

01-01769

If the program is conducted by a Federal agency, you should file a complaint with that agency. All complaints should be in writing and should set forth, in as complete a manner as possible, the factual circumstances surrounding the complaint.

I hope this information is helpful to you.

Sincerely,

Stewart B. Oneglia
Coordination and Review Section
Civil Rights Division

Enclosures (4)

01-01770

Civil Rights (b)(6)
Myrtle Beach, S.C. 23577
Coordination & Review Section
Civil Rights Division
U.S. Department of Justice
P.O. Box 66118
Washington, D.C. 20035-6118
Dear Sir,

I hope this is the right Department I am referring to. If not, please give this letter to the proper people in the department. Thank you.

I am writing this letter on the behalf of the deaf communities and you will notice some letters have deaf people's signatures.

The state of S.C. is not well serving the deaf communities as it ought to or nothing at all.

I had written complaint letters to South Carolina Association of the Deaf (S.C.A.D.), South Carolina Protective and Advocacy (S.C.P.A.) and the Community Resources Center (C.R.C.) about these problems. They all seem don't care or play their games with the deaf people's lives doing nothing about these problems.

NO. 1 PROBLEM--There is no way to find or contact an interpreter in the South Carolina area. A deaf man called me and asked me to look for an interpreter for Post Office exam tomorrow. I really don't know where to contact one, but I had to call around to find one. The deaf man asked me if the Post Office will pay for the interpreter and I don't have no idea and I am sure that the interpreter had to convince the Post Office to pay for his interpreting fee, but I doubt the interpreter got paid for his service.

NO. 2 PROBLEM--This is a big hassle-- all STATE and FEDERAL agencies or private sectors should pay for an interpreter's service. Everywhere the deaf people go they have to wrestle with all kinds of agencies to pay for the interpreter's fee. Majority of them refuse to pay. SOLUTION:-- Set up on Interpreter Referral Center, in a good location, has all the interpreter's name, address and qualification in the computer. The Interpreter Referral Center (IRC) will seek grants and funds from the State and Federal Government to pay for the interpreter's fee instead of the deaf trying to find one and trying to make sure the interpretor are being paid by the agencies. It is a lot of hassle to find an interpreter and make sure the agencies or private sectors paying for the interpreter.

PROBLEM NO. 3-- I wrote a letter to Community Resources Center (CRC) at S.C. School for the Deaf & Blind in Spartanburg, S.C. asking them to provide C.R.C. in the Northeastern part of S.C. and they said the Deaf Services Center in Horry County is enough and they told me they were looking for C.R.C. director and will contact us later. I haven't heard from them months and months. All I hear is the State is cutting back on grants and funds and they can't provide money to set up another C.R.C. in the northeastern part of S.C. We have a Deaf Services Center

(DSC) in Myrtle Beach, S.C. (Horry County) but lack of money and fund to continue the services to the deaf communities. I was involved with the Deaf Services Center (DSC) as a chairman and I knew it was tough to get
01-01771

grant us any more money. DSC only supports by the Sertoma Clubs and the Christmas Gift Wrapping by deaf volunteers. The DSC did request money from the Horry County Council but they said we were last in priority. I assume they play game with our lives and maybe the Horry County refuse to give the DSC the money to hire a full-time director and a secretary to run the DSC.

PROBLEM NO. 4--You can read the letters that I attached with this letter. Many deaf people are disgusted with the Vocational Rehabiliation (VR) in S.C. and the deaf refuse to go back to ask for help because the VR counselors won't help the deaf in training for a future job and the VR wants most of the deaf to start working in the sweat workshop. I know many deaf people went to the Company to ask for a job and the company refers them to the VR and the VR counselors do nothing to help the deaf get that job. I think it is time for the VR to provide a better training for the deaf and others to get a better future job.

Many deaf peoples complained by talking among other deaf communities but they give up fighting the problems alone.

All I am asking you to help the deaf communities for better services. We have been denying services for too long. You are our last person or department I can refer to seek help.

I want to take some legal action than talking about these problems. Must get the South Carolina Assoc. of the Deaf, South Carolina Protective and Advocacy and the Community Resources Center and the Deaf communities together and see what can be done better to serve the deaf communities thruout whole S.C.

I wrote letters to all agencies and nothing had been done about these problems. I am going to give you the name of the agencies and their addresses.

Please let me know what you will do to help us.

I had lived in Virginia for a long time and the state provides the deaf communities good services. I can call TOLL FREE in Richmond to get an interpreter free. I feel if I live in America so why can't all the states in America have same services for the deaf..

AGENCIES AND ADDRESSES:

S.C. Assoc. of the DEAF, Inc. (S.C.A.D)
1735 Augusta Rd.
West Columbia, S.C. 29169-5631

Vocational Rehabiliation Center (VR)
Mr. Bud Harrelson, Deaf Service
P.O. Box 15
West Columbia, S.C. 29171

South Carolina Protective and Advocacy (SCPA)
501 W. Evans St.
Florence, S.C. 29501

Community Resources Center
Craig Jacob, manager of Program
Cedar Spring Station

Spartanburg, S.C.
THANK YOU
(b)(6) xx
01-01772
Letter All
DATE:
NAME:
ADDRESS:
CITY/ZIP CODE:
Dear Sir:

We, the deaf communities in the northeastern part of S.C. would like to discuss some issues that need to be solved.

1. No Community Resources Center to provide services to the deaf in the northeastern part of S.C.

2. Vocational Rehabilitation won't train deaf people for the proper future job and help deaf people get a Post Office job.

3. No agency in the S.C. area to contact for an interpreter's services.

The northeastern part of S.C. like Florence, and Horry County as well other counties need a Community Resources Center like the one in South Carolina School for the Deaf & Blind in Spartanburg. They have been neglected the services to the deaf for too long. We prefer a BRAND NEW Community Resources Center rather than trying to join with another Services Center because the deaf people will not use that Services Center because of their personal reasons. We would like to have a BRAND NEW CENTER maybe located in Florence.

You can read the article that attached to this letter about Vocational Rehabilitation (Voc. Reh.) won't provide the proper training for future job and several deaf people went to Voc. Reh. to seek help to get a Post Office job and the Vocational Reh. counselor won't help them. Don't know why. Maybe the Florence, Myrtle Beach, Conway Post Office or elsewhere won't hire the deaf for some reasons. If deaf people are able to work the Post Office in Columbia, Greenville, and Orangeburg, then why can't the deaf people work the Post Office anywhere.

There is such a big problem in S.C. nationwide, you can't get an interpreter service anywhere. There should be an agency like Community Resources Center as Main Network, maybe located in the middle of S.C. to be able to have all the names of interpreters and their qualifications stored in computer and where the interpreters live. The Community Resources Center should seek grants or funds to have liability insurance for all interpreters and pay for the interpreter's fee and transportation expenses. They should pay interpreter good wages and benefits. MAJORITY of deaf people in S.C. can't afford to pay for interpreter's fee like $25.00 or more an hour plus transportation expenses. Of Course, we highly recommend South Carolina Association of the Deaf (S.C.A.D.) to be the overseer of this project. If I need an interpreter to see a doctor, I can call the Main Community Resources Center TOLL FREE and the Community Resources Center will look for an interpreter nearby where I live and contact one if I get an interpreter.

I highly recommend if I don't like what they offer of an interpreter, then I have the right for the Center to look for another interpreter. OR South Carolina Association of the Deaf (S.C.A.D.) can establish a Main Network Center with all the names and addresses of all interpreters thruout the S.C. area in the computer storage and S.C.A.D. will evaluate all the interpreters' qualifications and provide the deaf the
ILLEGIBLE
01-01773

fees and transportation expenses. This project will be overseen by S.C.A.D. but it will become independence. Or S.C.A.D. prefers the Community Resources Center to be responsible for the interpreter services. Fine with us.

These vital problems of services for the deaf have been ignored or neglected for too long. We are getting tired of running around like a dog chasing a cat and get nothing solved.

If any of you, the organization or the agencies won't pitch-in in solving these problems, then maybe we will take some legal action to get something done in someway. We will give you 60 days fair warning to come up with some answers. Please don't play games with our lives. Our life is so valuable to be neglected.

Thank you for taking the time to listen to this letter.

There will be a list of names signed below who want something be done.

SIGNED:
(b)(6) (b)(6)
(b)(6) (b)(6)
(b)(6) (b)(6)
(b)(6)
(b)(6)
(b)(6)
(b)(6)
(b)(6)
(b)(6)

(b)(6)
cc:South Carolina Assoc. of the Deaf (Charlie McKinney, Executive Director)
cc: South Carolina Protective and Advocacy
cc: Community Resources Center (Craig Jacobs)

cc: S.C. Vocational Rehabilitation Dept. (Bud Harrelson)

01-01774

(b)(6)
Myrtle Beach, S.C. 29577
XX
SCSDB Community Service Center
Cedar Spring School for the Deaf
Spartanburg, S.C.
ATTN: Director
Dear Sir:

Let me explain the obstacles that the deaf community face in reality thruout the Horry, Florence and Sumter Counties as well as other counties. The S.C. School for the Deaf has Community Resources Centers in Spartanburg, Columbia and Charleston and has nothing in the northeastern part of S.C.

The deaf/hearing impaired can't get an interpreter for a doctor consulation or other services. Many deaf professional are frustrated in getting an interpreter for any situations. Most deaf people can't afford an interpreter. Most interpreters want to get paid well for their services. and I don't blame them.

I am getting tired of hearing the State is cutting back on the fund and no money for the services. Also I am getting fed up that S.C. Deaf Community Resources Centers in Spartanburg base the statistics or the measurement of how many times deaf person use the interpreter services then they will be able to establish Community Resources Center in Florence area. Don't you measure with my life, when it comes to be serious problem.

You know the American Disability Act passed in Congress not too long ago. You can't deny me the services like other areas.
Suppose I have a heart attack and the hospital couldn't find me an intepreter to communicate or don't know where to fine one. Then you better start thinking about this and it can be very serious matter. I am being denying for an interpreter service. I want the hospital to know there is a deaf client and need an interpreter, so they can contact the Community Resources Center in Florence to find an qualified interpreter close by.

Let me tell you something. Don't play with my life. If I can't get nothing out of you, then I will take this matter to S.C. Protective and Advocacy and if nothing happens there, then I will take this matter to the next step.

In Virginia, they have a Center in the middle of the state and they get money from the State to pay for the interpreters service and have a list of interpreters that live in different regions. If a deaf calls toll-free phone no. for an interpreter, then that Center will find one nearby where he lives. Also it depends on what case an interpreter can handle. Not all interpreters can handle court case.

I won't give up, I will fight til I get what I deserve. I can make a lot of noise too.

So I want you to get your sleeves roll up and act on this matter.

There are many interpreters in Florence, Conway and Myrtle Beach,

01-01775

up to help the deaf/hearing impaired in the community.

I am sure the Deaf community wants a Community Resources Center in Florence that sponsored by the SCSDB.

I will be hearing from you within a month.

Thank You

(b)(6)
01-01776

SOUTH CAROLINA
Vocational Rehabilitation Department
JOE S. DUSENBURY, Commissioner
1410 Boston Avenue * Post Office Box 15 * West Columbia, South Carolina 29171-0015

June 15, 1992

(b)(6)
Myrtle Beach, South Carolina 29577

Dear XX

I received your letter today dated June 10, 1992, which expressed your concerns with regard to employment by deaf individuals in the post office, particularly the Florence, Myrtle Beach and Conway Post Offices.

I certainly understand your feeling since the post office for many years has been an excellent place of employment, but there is some information that I would like to share with you that will perhaps clarify some of your concerns.

I have talked with several people in the personnel divisions of the post offices throughout the state concerning the hiring of deaf and hearing impaired. The post office officials explained to me that there is a nationwide "downsizing" of permanent employees with the United States Postal Service. What this means is that the post office is not hiring anyone, hearing or non-hearing, in "career" jobs at this time. Several years ago, the post offices throughout the country had 800,000 employees. They currently have approximately 700,000 and their goal by 1995 will be to eliminate another 200,000 jobs, reaching their employment ceiling at 500,000 employees.

What the post office is hiring are "casual" employees which are temporary employees who work for 90 days with no benefits included. Basically, this is manual labor and an individual can only receive two 90 day appointments during the course of a year, again with no insurance or vacation. The reason that the post office is eliminating jobs is because of automation which is assuming a lot of the duties that

people did. Therefore, if an individual is interested in being a "temporary" employee at the post office with no benefits, then he/she may apply through the personnel office or Vocational Rehabilitation will assist the client with an application.

I hope this information helps you realize that there are no permanent career positions being accepted currently by the United States Postal Service and that this is not a lack of effort on anyone's part, but a policy of the post office, according to post office officials. If I can be of any further service to you, please contact me directly.

Sincerely,

Larry M. Harrelson
State Coordinator for the Deaf

jam
pc: J. Charlie McKinney
S.C. Association of the Deaf
Larry C. Bryant

Voc. Reh.

Better Services Needed from Vocational Rehabilitation

By (b)(6)

We are getting tired of deaf/hearing impaired being shoving around by the Vocational Rehabilitation Dept. (VR) in Horry and Florence County as well as elsewhere in training for a job and helping deaf/hearing-impaired people get a job in the Post Office (P.O.) for a long time.

Asking help from the S.C.A.D. about the VR problems, they told us to write a complaint letter to the South Carolina Protection & Advocacy System. We are not accusing anyone in the SCAD but how the SCAD as an organization is set up like an information-referral center rather than getting involved to fight and help meet deaf's physical needs because SCAD is afraid to say something that might cause them to lose money from the state. Every SCAD member should make noise for all deaf communities thruout S.C. We would be better off joining the N.A.C.C.P. because they watch after their own people. Tell you the truth, most deaf people live way below proverty which is a sad situation.

If we complain to the South Carolina Protection and Advocacy System for the Handicapped, Inc. (SCPA), we wouldn't get anywhere. It is unfair for all handicapped people trying to improve the services for themselves. Even worse, deaf citizens are the least of handicapped people that would get aid or attention--the worst ignored group of all. We thought the VR is a place where you go to get help and training for a future job. You know where they usually send them? To a simple sweat job doing piece-work in their own VR "training" workshop or to a work-place with lousy position at low pay with no future in it.

Focusing on the Post Office job, several deaf, in Myrtle Beach and Florence, tried in vain to apply for any kinds of P.O. job. They even

went to the VR to seek help but nothing happened. Don't know why the VR counselors are not helping the deaf with the P.O. job in every city?

The impression came from deaf people when one deaf person get fired from the P.O. for any reason, then the P.O. would not hire any more deaf people. Don't the normal White, Black & Spanish people get fired from the P.O., too? Of Course!! Why penalize all good deaf people trying to seek any job in the P.O.?

It doesn't make any sense at all that it is okay for deaf people to work in the big P.O. cities like Columbia or Greenville and can't work in the small P.O. cities like Myrtle Beach or elsewhere.

The deaf, with an excellent driving record and production, will make a wonderful mail carrier or worker of any kind of P.O. career.

Hope everyone is listening to what we have to say now. Most deaf people, known as little people are afraid to say anything and they know you won't listen to them; thus, they have been neglected for years. So DO something NOW!

01-01779

SCSDB Community Service Ctr. Program
Cedar Spring Station
Spartanburg, S.C. 29302
ATTN: Craig Jacobs, Director

Dear Sir:

We the deaf/hearing impaired would like to have a Deaf Community Resources Center located maybe in Florence to provide interpreter services thruout Florence, Horry and Sumter counties as well as other counties. Not only interpeter services but we also want other services that Community Resources Center in Spartanburg can provide.

We feel that Community Resources Center has neglected in providing assistances to the northeastern part of S.C. like Florence, Horry and Sumter counties.

We would like for you to talk with us as a deaf community in a group to discuss this matter.

There will be a list of deaf or hearing people's name listed below.

We only want a brand new Community Resources Center located maybe in Florence.

Thank you for your cooperation.

We don't want Day Service Center in Myrtle Beach, S.C.

List of Names: XX

XX
XX

XX
(b)(6)

01-01780

202-PL-358

DEC 4 1992

Ms. Martha L. Mann
Special Legislative Counsel
Division of Legal Counsel
The City of New York
Law Department
100 Church Street
New York, New York 10007

Dear Ms. Mann:

This letter responds to your request for guidance concerning the application of title II of the Americans with Disabilities Act (ADA) to a proposed franchise for the installation and operation of public toilet facilities in the City of New York. It does not address any obligations that a private provider or operator of these toilet facilities may have under title III of the ADA.

By the end of this year, the Architectural and Transportation Barriers Compliance Board (Access Board) will issue proposed accessibility guidelines for newly constructed or altered facilities covered by title II of the ADA (Title II Accessibility Guidelines). Among other things, these proposed Guidelines will address scoping and technical standards for fixed public toilets on public streets. The title II regulation issued by the Department of Justice currently allows public entities to choose between the Uniform Federal Accessibility Standards (UFAS) and the ADA Accessibility Guidelines adopted in the Department's title III regulations (without the elevator exemption). When final Title II Accessibility Guidelines are issued, the Department of Justice will eliminate this choice and those Guidelines will be the sole standard for title II compliance. Neither of the current UFAS or ADAAG provisions for single user portable toilet units would appear to apply to your proposed fixed toilet facilities.

cc: Records, Chrono, Wodatch, Breen, FOIA, Friedlander
Udd:Breen:toilets.nyc

01-01781

The Access Board has announced its intention to provide a 90-day period for public comment on the proposed Title II Accessibility Guidelines. It also intends to hold public hearings at five locations throughout the country during the second half of the comment period. After analyzing the comments received, the Access Board will issue final Title II Accessibility Guidelines that will have legal effect once the Department of Justice issues an amendment incorporating the Guidelines into its title II regulation.

We believe that this title II rulemaking process will provide the appropriate forum for addressing the concerns raised in your letter. We invite and encourage you to participate fully in this process so that this important issue may be resolved in the fairest and most comprehensive manner possible.

Sincerely,

John L. Wodatch
Chief
Public Access Section

01-01782

LAW DEPARTMENT

100 CHURCH STREET
NEW YORK, N.Y. 10007

O. PETER SHERWOOD (212) 788-
Corporation Counsel

October 6, 1992

John Wodatch, Director
Office on the Americans with Disabilities Act
Civil Rights Division
U.S. Department of Justice
P.O. Box 66738
Washington, D.C. 20035-9998

Dear Mr. Wodatch:

We are writing to request guidance as to how the Americans with Disabilities Act (the "ADA") applies to a proposed franchise for public toilets that is under consideration in the City of New York.

On June 30, 1992, the City of New York commenced a four month pilot project for which three pairs of public toilets were installed at three designated sites in the City -- West 34th Street across from Macy's Department Store; Chambers Street at City Hall Park; and 125th Street in front of the Adam Clayton Powell Jr. State Building. The public toilets come in two models, one of which is accessible to persons who use wheelchairs, and were donated and installed by their French manufacturer, J.C. Decaux International. J.C. Decaux International is also servicing the units during the pilot project's duration.

After the pilot project is completed, the City of New York's Department of Transportation will make public a written evaluation of the pilot project. This evaluation will be considered for purposes of making a determination as to whether to proceed through the franchise process set forth in the New York City Charter for the permanent installation of pay toilets throughout the City of New York. It is with this anticipated franchise process in mind that we currently request the Department of Justice to comment upon the City of New York's obligations under the ADA.

As already noted, three pairs of public toilets manufactured and donated by J.C. Decaux International have been

installed for the pilot project. The smaller, kiosk-size units are self-cleaning and coin-operated. The larger, wheelchair accessible units are not self-cleaning, but are monitored by

attendants who clean the units after each use. Users can only gain access to the wheelchair accessible units with card keys that have been distributed free of charge to disabled persons by the City of New York. The card keys are distributed at sites near each wheelchair accessible facility during all hours that the facilities are in operation. The attendants at the three sites also have card keys on hand to assist users in gaining access.

For the pilot project, the City of New York used the two different types of Decaux units available because of public safety concerns triggered by the larger size of the wheelchair accessible models. Since more than one person can occupy the larger models, which contain 29.7 square feet of public room compared to the 8.5 square feet of public room contained in the kiosk-size models, the larger models might be used for criminal or other improper activities. In order to prevent abuse of the larger models, they are made accessible only to persons who have received card keys. These card keys have been distributed to individuals whose disabilities preclude them from using the kiosk-size models. Use of the card keys was also made necessary because J.C. Decaux indicated that it would not provide coin-operated wheelchair accessible models because of potential tort liability.

Thus far, the pilot project has proven to be enormously successful as well as popular with both residents and visitors. J.C. Decaux International has reported that the smaller, kiosk-size units are averaging 100 to 150 flushes per day whereas in Paris they only average 70 flushes. These statistics indicate that the units are meeting a substantial need in our community, and it is likely that the City of New York will want to proceed with a permanent installation.

Any franchise granted by the City of New York must comply with all applicable federal, state and local laws relating to accessibility for persons with disabilities. If during the solicitation process the City obtains a proposal for a single model toilet that would be accessible for use by all members of the population without posing risks to public safety or being susceptible to improper uses, that proposal, provided it met other requirements, would be awarded the franchise. However, in the event that we do not receive such a proposal, we are seeking guidance as to whether and how a franchise allowing for two models of public toilets could be implemented in a manner consistent with the ADA.

Our own analysis of the final rules implementing Titles II and III of the ADA leads us to analogies premised upon single user portable toilets and restrooms. The Title III regulations, which incorporate the final guidelines issued by the Architectural and Transportation Barriers Compliance Board

("ATBCB"), provide that "[f]or single user portable toilet ... units clustered at a single location, at least 5% but no less than one toilet unit ... complying with 4.22 or 4.23 shall be installed at each cluster whenever typical inaccessible units are provided." Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities ("ADAAG") 4.1.2(6). The ADAAG rules also provide that where less than six toilet stalls are provided in a common and public use toilet room, only one toilet stall is required to be accessible. 1

With respect to the final rules issued under Title II of the ADA, Section 35.151(c) establishes two standards for accessible new construction and alteration. Design, construction or alteration of facilities in conformance with either the ADAAG rules, discussed supra, or the Uniform Federal Accessibility Standards ("UFAS"), contained in Appendix A to 41 C.F.R. S101-19.6, is deemed to comply with the requirements of the section with respect to the particular facilities. 2

The UFAS rules contain specific provisions related to toilet rooms that are similar to the ADAAG rules. These rules state that toilet facilities required to be accessible must, inter alia, have doors that do not swing into the clear floor space required for any fixture. Appendix A 4.22.2. This and other applicable provisions are not mandatory for "single user portable toilets ... clustered at a single location," as to which "at least one toilet unit complying with 4.22 ... should be installed at each location whenever standard units are provided." Appendix A 4.1.1(6).

The ATBCB has announced its intention to issue Title II guidelines in the future. However, for the time being, either UFAS or ADAAG compliance presently satisfies the Title II requirements. Finally, the Title II rules also recognize that "[d]epartures from particular requirements of those standards by the use of other methods shall be permitted when it is clearly evident that equivalent access to the facility or part of the facility is thereby provided." Id. (emphasis added).

_____

1 ADAAG 4.22.4 and 4.23.4; see also Federal Register, Volume

56, No. 144, July 26, 1991 at page 35421. In response to the different needs of persons with mobility impairments, the final ADAAG guidelines also state that where six or more toilet stalls are provided, a 36 inch wide alternate stall with parallel grab bars will be provided in addition to the 60 inch wide standard stall. Id.

2 S35.151(c) The only limitation is that the elevator exemption contained in section 4.1.3(5) and 4.1.6(1)(j) of ADAAG shall not apply under Title II of the ADA. Id.

If the analogies to single user portable toilets and/or public restrooms are appropriate, the installation of accessible and smaller size units, if pursued for the permanent installation by a prospective franchisee, would appear to meet existing requirements under the ADA. Regardless of the appropriateness of these analogies, however, it is our view that safety concerns may still warrant a permanent installation of two different types of units. The final rules under Title III of the ADA recognize that "[a] public accommodation may impose legitimate safety requirements that are necessary for safe operation [provided] [s]afety requirements [are] based on actual risks and not on mere speculation, stereotypes, or generalizations about individuals with disabilities." S36.301(b). The City's concerns about the risks posed by the larger accessible models are not based on stereotypes or generalizations about individuals with disabilities. Rather, based on unfortunate past experience with public restrooms in subways and parks, the City is concerned that facilities larger than kiosk-size increase the risk of criminal and other improper activity, and threaten the safety of their users.

These safety concerns also support a system of limiting access to the larger, wheelchair accessible units to persons who have been issued card keys based on a determination that a disability prevents their use of the smaller facility. The card keys would be issued through government offices and organizations in the disability community, and it is also contemplated that they would be available at sites at or near the accessible units. By limiting access to those persons with disabilities who cannot patronize the kiosk-size units, the City hopes to ensure legitimate usage of the wheelchair accessible units and the safety and well-being of all the City's residents and visitors. 3

One question that neither the ADA nor its implementing regulations address is how close a kiosk-size unit and a wheelchair accessible unit would have to be to constitute a "cluster" of portable toilets or to fit within the analogy of

multiple stalls in a single public use toilet room. It is our belief that the two units could be placed within several blocks of one another and still fall within either of these analogies.

---

3 The report to be published by the City's Department of Transportation will evaluate the safety of the facilities used during the pilot project. However, the presence of attendants at the wheelchair accessible models during the pilot project may undermine the utility of the safety data collected. It will be difficult to predict, based on the experiences the City has had while attendants have been present, the extent to which accessible models that are self-cleaning and not watched by attendants might be abused.

The constraints of site selection in a geographic area as densely populated as the City of New York warrant a several block radius for placement of the two units. The City has many rules and regulations limiting placement of facilities on its streets for reasons including, but not limited to, provision of a clear path for pedestrians, freeing busy intersections and eliminating blockage of bus shelters and subway entrances. Sewer and water connections also place limitations on the siting of such units.

If the City of New York does not get a satisfactory proposal for a single model toilet unit, the City believes that it would be in compliance with the ADA and its implementing regulations if it awards a franchise for the permanent installation of two different models of toilets, one of which is accessible to persons who use wheelchairs. The City also believes that it would be in compliance with the ADA and its implementing regulations if it limited access to the larger units to those persons whose disabilities prevented them from using the kiosk-size facilities. The City of New York would ensure that all qualified persons could obtain card keys to gain access to the wheelchair accessible units through government offices and organizations in the disability community. It is also contemplated that the card keys would be available at sites at or near the wheelchair accessible units.

The City of New York asks for the Department of Justice's opinion on these matters. If the Department of Justice confirms that the use of two different units complies with the ADA, the City of New York also hereby seeks the Department of Justice's guidance with respect to the issues of (1) placement of the facilities, and (2) the permissibility of using special

security measures such as card keys to prevent abuse of the larger facilities.

We appreciate your assistance in this matter. If you would like further information, please call me at 212-788-1084, or Assistant Corporation Counsel Nancy Batterman, at 212-788-1104.

Sincerely yours,

Martha L. Mann
Special Legislative Counsel
Division of Legal Counsel

01-01787
T. 11-20-92
Control No. X92101515120

DEC 7 1992

AAG
JRD
DATE
The Honorable Phil Gramm
United States Senator
DAAG 2323 Bryan Street, #1500
BSD Dallas, Texas 75201

DATE Attn: Clarissa Clark

Dear Senator Gramm:

CHIEF
WODATCH This letter is in response to your inquiry on behalf of (b) (6) , who is concerned about the application of the
DATE Americans with Disabilities Act (ADA) to cruise ships, particularly those registered under foreign flags, that operate United States ports.

The ADA authorizes the Department to provide technical assistance to individuals and entities that have rights or

DATE responsibilities under the Act. This letter provides informal guidance to assist you in responding to XX . However, this technical assistance does not constitute a determination by
ORIGINATOR the Department of Justice of xx rights or
BLIZARD responsibilities under the ADA, and it is not binding on the Department.
DATE

Cruise ships may be subject to the requirements of both the Department of Justice and the Department of Transportation regulations implementing title III of the ADA. This Department's regulation implementing title III applies to private entities that own, operate, lease, or lease to a private entity whose operations fall within one or more of twelve specified categories. Among those categories are places of lodging, places that serve food or drink, places of public gathering, and places of recreation or entertainment. Because cruise ship operations fall within several of the listed categories, cruise ships are places of public accommodation, and would be subject to the Department of Justice title III regulation to the extent that the operators are subject to the laws of the United States.

cc: Records, Chrono, Wodatch, Breen, Blizard, FOIA, Library
udd:mercado:congressional.letters:blizard.gramm.(b)(6)
01-01788

As places of public accommodation, cruise ships must comply with the full range of title III requirements, which include nondiscriminatory eligibility criteria; reasonable modifications in policies, practices, and procedures; provision of auxiliary aids; and removal of barriers in existing facilities. However, a ship is not required to comply with a specific accessibility standard for new construction or alterations because no Federal standard for the construction of accessible ships has been developed.

Coverage of cruise ships is discussed in the preamble to section 36.104 of this Department's title III regulation (at page 35550) and in section III-5.3000 of the Title III Technical Assistance Manual. Copies of the regulation and the Technical Assistance Manual are enclosed for your information.
Under the regulation issued by the Department of Transportation, which was published in the Federal Register on September 4, 1991 (56 Fed. Reg. 45584), cruise ships are classified as "specified public transportation, "because they are operated by a private entity that is primarily engaged in the business of providing transportation. Entities operating forms of specified public transportation may not discriminate on the basis

of disability in providing transportation services.

The Department of Transportation has not yet established specific requirements applicable to cruise ships; however, that Department has stated that ships registered under foreign flags that operate in United States ports may be subject to United States regulations (which would include the title III regulation discussed above) unless there are specific treaty prohibitions that preclude enforcement. Additional information about the regulation issued by the Department of Transportation may be obtained from the Office of the General Counsel, U.S. Department of Transportation, 400 7th Street, S.W., Washington, D.C. 20590.

The ADA establishes two avenues for enforcement of the requirements of title III, private suits by individuals and suits by the Department of Justice in cases that involve a pattern or practice of discrimination or that raise an issue of general public importance. If (b)(6) believes that his rights under the ADA have been violated, he may file a lawsuit in a United States District Court, or he may request an investigation by the Department of Justice by writing to the Public Access Section, Civil Rights Division, U.S. Department of Justice, P.O. Box 66738, Washington, D.C. 20035-6738.

01-01789

I hope that this information is helpful to you in responding to (b)(6) xx.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

Enclosures (2)

01-01790

XX
San Antonio, Texas, 78233
xx (b)(6)

Condi-Nast Travel
c/o Ombudsman
360 Madison Ave.
N.Y., N.Y. 10017

Dear Sirs:

My first enclosure is the text of a letter sent to my travel agent to be forwarded to the powers to be at the Carnival Cruise line headquarters. My second enclosure is a copy of the response to me from Carnival. I believe that the largest percentage of carnival business is drawn from United States of America and therefore they should be in compliance with the American Disabilities Act and not allowed to hide behind Liberian Registry.

We were told by a crew member during the cruise that nothing had been done bring that ship in compliance and they simply told the people whatever the thought we wanted to hear. Further that the Carnival ship "Celebration" had no intentions of ever bringing that ship into line with the Disabilities act.

I would appreciate your attention to this matter.
Sincerely,

(b)(6)
(b)(6)
(b)(6)
CC(5)

Office of the Governor
State Office Building
Austin, Texas
c/o Consumers Advocate Division

Cruise Center
5410 Fredericksburg Rd.
San Antonio, Texas 78229
c/o Ms. Marie Baxter

Attorney General Office
State of Texas
Austin, Texas

Honorable Phil Gramm
U. S. Senate Building
Washington, D. C. 20510

Congressman Lamar Smith
U. S. Rep. Dist 21
10010 San Pedro Suite 530

ILLEGIBLE

01-01791
TEXT ENCLOSURE# 1
(b)(6)
(b)(6)
San Antonio, Texas 78233
Cruise Center
54k9 Fredericksburg Rd.
San Antonio, Texas 78229
c/o Ms. Marie Baxter

Dear Marie:

This letter is a follow up of our phone conversation about Carnival Cruise Lines cruise on the M.S. Celebration from June 20, 1992 to June 27, 1992. The list of complaints follows:

1. 6 1/2 " step into bathroom from the bed area.

2. Bath area not large enough to get a wheel chair, scooter or even a walker in.

3. No T. V. remote control --- T. V. on wall --- disabled could not reach controls.

4. The gangplank (not in Miami) in San Juan, St. Thomas, St. Maartin was about 22 inches wide. The wheelbase on adult disabled equipment is wider than that. St. Maartin was completely unavailable because of a long flight of steps.

5. Steps on each end of gangplank meant carrying person and chair and any other equipment.

6. Food in "Wheelhouse Bar and Grill " was horrible.

7. Room service was limited in variety.

8. Promenade unavailable without lifting patient and chair or scooter. a ramp would have made it more accessable.
(HANDWRITTEN) 202-76-0
9. The final "Midnight Buffet" was unaccessable to the disabled and not allowed to take food to the disabled out of the dining room..

All in all we found disabled facilities to be limited or non-existant and certainly not adequate for one disabled as was the indication when ticket were purchased. After lengthy conversations with other disabled passengers

we feel that this is a fair and accurate portrayel of the situation. In fact some of them experienced even worse problems than we did. Had XX been provided with more disabled facilities XX trip would have been a much more enjoyable experience. The total objective of this trip was a week of stress free relaxation since we had not been able to take a vacation in 3 years due to XX surgeries. Due to heavy lifting XX is also experiencing some strain in never before troubled joints.

The N.S. Celebration is not in compliance with United States law for the disabled and should be XX until they are in compliance. We realize the ship is a Liberian Registry but they are doing business in the United States and should XX.

.

We believe this to be a completely accurate appraisal and could go further disabled facilities needed. However, we are not the ones doing business and therefore will close on this note.

Sincerely,

(b)(6)

01-01793

U.S. Department of Justice
Civil Rights Division

DJ# 192-T2-0001

Coordination and Review Section
P.O. Box 66118
Washington, D.C. 20035-6118

XXXXX(b)(6) DEC 16 1992
XXXXX
Tulsa, Oklahoma 74127

RE: Complaint Number 192-T2-00001

Dear XX

This letter responds to your complaint against the State of Oklahoma under title II of the Americans with Disabilities Act (ADA).

Your complaint alleges that the State of Oklahoma draws its jury selection lists from the lists of individuals who hold Oklahoma driver's licenses and of individuals who have volunteered for jury service. You claim that this method of jury selection excludes individuals with disabilities who are not able to drive, and thereby violates the ADA.

The Civil Rights Division has completed its investigation of your complaint. As detailed below, our investigation revealed that the jury lists used by the State of Oklahoma include individuals who have obtained non-driver identification cards issued by the Oklahoma Department of Public Safety, in addition to those with driver's licenses. State law also permits counties to include individuals who have volunteered for jury service. On that basis; we have concluded that the State's jury selection procedures do not violate title II of the ADA.

The procedures for the selection of jurors appear in 38 Okl. St. Ann. 18, which provides that jury selection pools include lists of individuals compiled by the Department of Public Safety and comprised of persons who:

1. reside in the county;
2. are 18 years or older; and
3. hold a current driver's license or a current identification license issued by the Department of Public Safety.

The Department of Public Safety issues and renews non-driver identification cards in the same manner as driver's licenses. The cards are available to any person over the age of 12,

including individuals with disabilities who do not drive. All persons holding such cards aged 18 and older will automatically be included on the jury selection list for their county of residence.

In addition to the names of individuals holding driver's licenses and non-driver identification cards, the statute provides that county jury selection lists may be supplemented by adding the names of residents aged 18 and over, who have completed a "Voluntary Jury Service" form available from the court clerk's office. This list can include individuals with disabilities who do not hold either a driver's license or non-driver identification card.

Based on the foregoing information, we have concluded that the procedures utilized by the State of Oklahoma for jury selection do not deny individuals with disabilities an equal opportunity to be selected as potential jurors. Therefore, the policy for selecting jurors in Oklahoma does not violate title II of the Americans with Disabilities Act.

This letter constitutes our letter of findings with respect to your allegations of discrimination in your administrative complaint. If you are dissatisfied with our determination, you may file a private complaint in the United States District Court under title II of the ADA.

Under the Freedom of Information Act. 5 U.S.C. S 522, we may be required to release this letter and other correspondence and records related to your complaint in response to a request from a third party. Should we receive such a request, we will

safeguard, to the extent permitted by the Freedom of Information Act and the Privacy Act, the release of information which could constitute an unwarranted invasion of your or another's privacy.

Sincerely,

Stewart B. Oneglia
Chief
Coordination and Review Section
Civil Rights Division

cc: Don Austin
Tulsa County Court Clerk

01-01795

DEC 16 1992

The Honorable Arlen Specter
United States Senator
The Federal Building
Liberty Avenue and Grant Street
Pittsburgh, Pennsylvania 15222
Attn: Vernon Jackson

Dear Senator Specter:

This letter is in response to your inquiry on behalf of (b)(6)xx regarding his difficulty in locating a cellular phone that is compatible with a hearing aid.

The Americans with Disabilities Act ("ADA") authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist XX in understanding the ADA's requirements. However, it does not constitute a legal interpretation, and it is not binding on the Department.

Title III of the Americans with Disabilities Act prohibits discrimination on the basis of disability by public accommodations. Even if manufacturers of cellular phones were considered

places of public accommodations, the Act does not require a public accommodation to alter its inventory to include accessible or special goods that are designed for, or facilitate use by individuals with disabilities. Discussion of this issue appears in the enclosed title III regulation at section 36.307 on page 35,996. Further clarification can be found in the regulation's preamble, which states on page 35,571 that "the purpose of the ADA's public accommodations requirements is to ensure accessibility to the goods offered by a public accommodation, not to alter the nature or mix of goods that the public accommodation has typically provided."

cc: Records; Chrono; Wodatch; McDowney; Perley; FOIA; MAF.
:udd:perley:congressional.specter.phones

01-01796

Please note, however, if cellular phones compatible with hearing aids do become available, stores that sell cellular phones would be required to special order such phones if the store in the normal course of its operation, made special orders for unstocked goods.

I have enclosed a list of organizations that may be able to help (b)(6)xx in search for cellular phones that are compatible with hearing aids. Of these organizations, the American Speech-Language-Hearing Association would be the most likely source of information for XX

I hope this information is helpful in responding to your constituent.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

Enclosures (2)

01-01797

ABLEDATA
Newington Children's Hospital
181 East Cedar St.
Newington, CT 06111
(800) 344-5405

Alexander Graham Bell Association for the Deaf, Inc.
3417 Volta Place NW
Washington, DC 20007
(202) 337-5220

American Speech-Language-Hearing Association
10801 Rockville Pike
Rockville, MD 20852
(301) 897-5700
(800) 638-8255

Job Accommodation Network

West Virginia University
809 Allen Hall
PO Box 6123
Morgantown, WV 26506-6123
(800) 526-7234

National Association of the Deaf
814 Thayer Ave.
Silver Spring, MD 20910-4500
(202) 347-3066

National Information Center on Deafness
Gallaudet University
800 Florida Ave., NE
Washington, DC 20002
(202) 651-5051

Self-Help for Hard of Hearing People
7800 Wisconsin Ave., NW
Bethesda, MD 20814
(301) 657-2248

Telecommunications for the Deaf, Inc.
8719 Colesville Road, Suite 300
Silver Spring, MD 20910
(301) 589-3786

01-01798

(b)(6)

PHONE ANSWERS 24 HOURS A DAY
HOURS: DAILY, EVENINGS AND SATURDAY BY APPOINTMENT

(Handwritten)

Dear Senator Spector INSTRUCTIONS

A number of weeks ago I spoke to your assistant, Mr. Vernon Jackson about a

problem I am trying to resolve.
I am 60 years old, in an active eye practice
in Mt. Lebon, Pa. I have a severe Hearing
loss in 1 ear and no hearing in the other
ear. I wear, full time, a powerful
hearing aid in 1 ear. That is telephone
compatable (I/E Induction coil compatability).
In attempting to purchase a cellular
mobil telephone that would be Hearing
Aid compatable I have found that
all manufactures have, for some reason,
chosen to ignore this problem and
have no intention of doing so now
or in the future.
I believe legislation was enacted
recently (For Disabled people) that
addresses this issue Directly.
(ie the Disability Act)
Could your office direct me to the
appropriate federal agency to whom
I could direct my complaint and
possibly solve this situation for myself
and other seriously Hearing Impaired Citizens.
Cordially,

PS/Good luck in the
(b)(6) xx Election--We need you

01-01799

DEC 17 1992

The Honorable Mel Levine
Member, U.S. House of Representatives
5250 West Century Boulevard
Suite 447
Los Angeles, California 90045

Attention: Joan Lerner

Dear Congressman Levine:

This letter is in response to your inquiry on behalf of (b)(6) xx , concerning the protections afforded by the Americans with Disabilities Act to persons with memory impairments.

The Americans with Disabilities Act of 1990 ("ADA") authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist your constituent in understanding the ADA's requirements. However, it does not constitute a legal interpretation, and it is not binding on the Department.

The ADA defines "disability" to include any physical or mental impairment that substantially limits one or more of an individual's major life activities, such as walking, seeing, hearing, speaking, breathing, learning, working, or caring for oneself. The definition is a broad one, and includes persons with brain injuries if their injury substantially limits one or more of their major life activities. Accordingly, such a person would be entitled to all of the protections of the ADA, including its general prohibitions against discrimination by both public and private entities, and the requirement to make reasonable modifications in policies and procedures where necessary to provide equal opportunity.

Enclosed are the Department's Title II and Title III Technical Assistance Manuals and the Department's implementing regulations for further guidance. A discussion of the definition of disability may be found on pages 3-5 of the Title II Technical

cc: Records; Chrono; Wodatch; McDowney; Contois; FOIA; MAF.
:udd:contois:cgl:cgl.levine

01-01800

Assistance Manual and pages 8-10 of the Title III Technical Assistance Manual, and on pages 35,698-35,700 of the Title II regulation, and pages 35,548-35,550 of the Title III regulation. Both of the Technical Assistance Manuals and both of the regulations provide extended discussions of the ADA's general and

specific prohibitions of discrimination against persons with disabilities.

I hope this information is useful to you in responding to your constituent.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

Enclosures (4)

01-01801

TH DISTRICT CALIFORNIA 132 ILLEGIBLE HOUSE
OFFICE
ILLEGIBLE ILLEGIBLE
TELEPHONE: ILLEGIBLE

COMMITTEE ON ILLEGIBLE
ILLEGIBLE
DISTRICT OFFICE:
ILLEGIBLE
WEST CENTURY BOULEVARD
SUITE ILLEGIBLE
COMMITTEE ON THE JUDICIARY
LOS ANGELES, CA
ILLEGIBLE
SELECT COMMITTEE ON NARCOTICS ABUSE AND CONTROL ILLEGIBLE
TELEPHONE
ILLEGIBLE

CO-CHAIR
HOUSE ILLEGIBLE TASK FORCE

Congress of the United States
House of Representatives
Washington, DC 20515

TELEFAX COVER SHEET

TO: (Handwritten) John Wodatch

FROM: DISTRICT OFFICE, REPRESENTATIVE MEL LEVINE

CONTACT: (Handwritten) Joan (ILLEGIBLE)

PHONE: (213) 410-9415
FAX: (213) 649-2308
(310)

NUMBER OF PAGES INCLUDING COVER 16

MESSAGE:

October 16, 1992

Dear Mr. Wodatch:

I am faxing the following information and request to you on behalf of constituent XX , a head injury victim who has been in touch with this office for many years. I am sending material at his request XX has requested a letter from Bobby Silverstein at the Subcommittee on Disability Policy clarifying the ADA bill on three specific issues. Attached is the letter that Linda Hinton sent to XX . This letter was not helpful to (b)(6)xx and Bobby suggested that perhaps you would be the correct person to address his request. He would like to have a letter suitable to present to legal representatives or any agencies he may need to contact in the future for assistance with his memory impairment including the issue of telecommunication i.e. transcripts being made available at public forums etc. He has

included letters he received from legal advocates turning him down for assistance and letters he has written stating needs of the memory impaired. Bobby had assured him that his needs are included in the ADA and basically he wants something specific in lay man's language to point out to agencies that they must adhere to the ADA and assist him. Anything appropriate you can do for him would be greatly appreciated. Thank you so much for taking time out from your busy schedule to consider this request.

01-01802

EDWARD M. KENNEDY, MASSACHUSETTS, CHAIRMAN
ILLEGIBLE, RHODE ISLAND ILLEGIBLE, UTAH
HOWARD M. ILLEGIBLE, OHIO NANCY LANDOW ILLEGIBLE, KANSAS
CHRISTOPHER J. DODD, CONNECTICUT ILLEGIBLE, VERMONT
ILLEGIBLE, ILLINOIS DAN COATE, INDIANA
TOM ILLEGIBLE, IOWA ILLEGIBLE, SOUTH CAROLINA
ILLEGIBLE, WASHINGTON DAVE ILLEGIBLE, MINNESOTA
ILLEGIBLE, MARYLAND THAD COCHRANE, MISSISSIPPI
JEFF ILLEGIBLE, NEW MEXICO United States Senate
ILLEGIBLE, STAFF DIRECTOR AND CHIEF ILLEGIBLE COMMITTEE ON LABOR AND
ILLEGIBLE A. IVERSON, MINORITY STAFF DIRECTOR HUMAN RESOURCES
WASHINGTON, DC 20510-6300

September 25, 1992

(b)(6)
XX
Marina Del Ray, CA 90295

Dear XX ,

Enclosed is a copy of the section of S. 3065, the Rehabilitation Act Amendments of 1992, relating to the Protection and Advocacy of Individual Rights. I have also included the report language that explains the rationale for the changes that are made by this legislation.

S. 3065 addresses the concern that there are individuals with disabilities who are not served by the current protection and advocacy system. In addition, S. 3065 reiterates the principles of the Americans with Disabilities Act in the findings, purpose, and policy section of the bill. A copy of this section is also enclosed. This section specifically addresses your concern that materials be accessible to persons with disabilities. The values expressed in this section are repeated throughout S. 3065.

I hope this information is helpful to you. We are currently in the process of working out the differences between the House and Senate versions of the bill so that the reauthorization can be passed before Congress adjourns.

Sincerely,

Linda Hinton
Legislative Assistant

01-01803

December 20, 1990

Rep. Mel Levine
2443 Rayburn HOB
Washington, D.C. 20515

Dear Congressman Levine,

I am writing to you as a constituent with a mental impairment. I suffered a brain injury as the result of a violent crime 5 years ago. I am writing for myself and many others who suffer the frustration of day to day life with this type of disability.

I am urging you to contact the committee which will implement the Americans with Disabilities Act to inform them of our special needs. Mental impairment is only mentioned one time in the ADA in section 3(2)A. Our needs must be addressed in all public arenas where accommodations are required for the other disabled, hearing impaired, blind and those with ambulatory needs.

There are three major areas of concern: public forum, education and legal assistance. Written transcripts should be made available in a timely manner (one week or less). In addition audio tapes should made available at the end of each day forum.

In Title II, Section 201,202 Qualified individual with a disability is defined and it is stated that "no qualified individual with a disability shall by reason of such disability, be excluded from participation in or be denied the benefits of the services programs or activities of a public entity, or be subjected to discrimination by any such entity. This definition provides that no "barrier" shall deter these individuals from their rights. Tapes and transcripts are remedies for the barriers of the memory impaired. A liaison should be available at all public functions to assist the needs of people with my

disability.

In Title III, section 302(A,B,C,D) Integrated Settings: Opportunity to participate and Administrative methods

01-01804

DEC 21 1992

The Honorable Dan Glickman
Member, U.S. House of Representatives
401 N. Market Street
Room 134
Wichita, Kansas 67202

Attention: Janet Anderson

Dear Congressman Glickman:

This letter is in response to your inquiry on behalf of Reverend Roy Nelson, concerning the compliance obligations of churches under the Americans with Disabilities Act.

The Americans with Disabilities Act of 1990 ("ADA") authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist your constituent in understanding the ADA's requirements. However, it does not constitute a legal interpretation, and it is not binding on the Department.

Section 307 of the ADA specifically provides that religious organizations and entities controlled by religious organizations are not subject to title III of the ADA. Thus, the 10th Avenue United Methodist Church is not required to provide an elevator, and if it does provide an elevator, the elevator is not required to comply with the ADA Accessibility Guidelines. However, any nonreligious entities that are places of public accommodation and that lease space to conduct activities in the church facilities would have to comply with ADA requirements. Enclosed are the Department's Title III Technical Assistance Manual and the Department's implementing regulation for further guidance. A

discussion of the religious exemption may be found on pages 4-5 of the Technical Assistance Manual and page 35,554 of the regulation.

cc: Records, Chrono, Wodatch, Contois, MaDowney, FOIA, MAF
udd:Contois:CGL.Glickman

01-01805

Please note that although religious organizations are exempt from the facilities requirements of title III, they are not exempt from the title I requirements for employment. Information about title I can be obtained by writing to the Equal Employment Opportunity Commission, 1801 L Street, N.W., Washington, D.C. 20501.

For information regarding voluntary measures by religious organizations to improve access for persons with disabilities, you may wish to direct Mr. Nelson's attention to a handbook published by the National Organization on Disability entitled "That All May Worship: An Interfaith Welcome to People with Disabilities." A copy of the handbook can be obtained by writing to the National Organization on Disability, Religion and Disability Program, 910 16th Street N.W., Suite 600, Washington, D.C. 20006.

I hope this information is useful to you in responding to your constituent.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

Enclosures (2)

01-01806

DAN GLICKMAN
FOURTH DISTRICT-KANSAS

COMMITTEES:
AGRICULTURE
CHAIRMAN, SUBCOMMITTEE ON
WHEAT, SOYBEANS AND FEED GRAINS
JUDICIARY
SELECT COMMITTEE ON INTELLIGENCE
SCIENCE, SPACE, AND TECHNOLOGY
DEMOCRATIC STEERING AND POLICY

ASSISTANT MAJORITY WHIP

2311 RAYBURN BUILDING
WASHINGTON, DC
20515-1604
(202)225-6216

401 N. MARKET ST.
ROOM 134
WICHITA, KS 67202
(316)262-8396

335 N. WASHINGTON
SUITE 220
HUTCHINSON, KS 67501
(316)669-9011

CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES
WASHINGTON, DC 20515-1604
OCTOBER 20, 1992

John Wodatch
Director
Office on the ADA
U.S. Department of Justice
P.O. Box 66738

Washington, D.C. 20035-9998

Dear John:

I am writing this letter in regard to a request for assistance from Roy Nelson, Pastor of the 10th Avenue United Methodist Church in Hutchinson, Kansas.

Rev. Nelson would like information regarding the ADA requirements for churches. He wants to know if there is a timeline in which churches will be required to comply with the ADA guidelines in regard to elevators. If so, if a church already has an elevator, what will be required to comply with the guidelines? If a new elevator is to be installed, what is required? I would greatly appreciate any information you could share with me regarding Rev. Nelson's concerns. If you have questions or desire additional information, please feel free to contact Janet Anderson in my Wichita office as she is assisting me in this matter.

With best regards,
Dan Glickman
MEMBER OF CONGRESS

DG:joa

01-01807
202-PL-265 DEC 21 1992

Donn B. Murphy
President and Executive Director
The National Theatre
1321 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Dear Mr. Murphy:

This letter is in response to your request for information concerning the responsibilities of theatres under the Americans with Disabilities Act (ADA).

Enclosed is our Department of Justice regulation promulgated under title III of the ADA, which applies to places of public accommodation and commercial facilities. Theatres, as places of public accommodation, must comply with all of the relevant

requirements in this regulation.

The title III requirements for wheelchair locations and auxiliary aids in existing theatres may be found in sections 36.308 and 36.303 of the enclosed regulation, pages 35598 and 35597, respectively. In addition, section 4.33 of the ADA Accessibility Guidelines, which begins on page 35662 of the enclosed regulation, contains the requirements for wheelchair locations and assistive listening systems in newly constructed or altered theatres.

I have also enclosed our Title III Technical Assistance Manual, which explains the regulation and provides examples. If after you review this information you have specific questions, you may call our information line on weekdays between 1:00 p.m. and 5:00 p.m. at (202) 514-0301 (voice) or (202) 514-0838 (TDD).

cc: Records, Chrono, Wodatch, Novich, Breen, Friedlander, FOIA
Udd:Novich:policy:pl.265

01-01808

I hope this information is helpful to you.

Sincerely,

Philip L. Breen
Special Legal Counsel
Public Access Section

Enclosures (2)
Title III Regulation
Title III Technical Assistance Manual

01-01809

The National Theatre
Executive Offices

June 30, 1992

Mr. Edward Mercado
Director
Office for Civil Rights
United States Department of
Health and Human Services
330 Independence Avenue, S.W.
Washington, D.C. 20201

Dear Mr. Mercado:

The National Theatre in Washington, D.C. is a 501c.3 not-for-

profit organization.

We want to insure that we are in compliance with applicable requirements of the Americans With Disabilities Act.

I would appreciate whatever guidelines for theatres and places of entertainment you may be able to provide.

We are also interested in relevant distinctions between organizations which receive U.S. Government subsidies and those which do not.

Thank you very much for assisting us to meet the requirements of this law.

Sincerely,

Donn B. Murphy, Ph.D.
President
and Executive Director

cc: John B. Adams, Jr. Chairman
Sterling Tucker, Vice President
Margaret E. Lynn, Treasurer
John Ryan, Secretary
Robert Snyder, Member-At-Large, EXCOM
Harry Teter, Jr. General Manager
Joan Langer, Program Administrator
Carol M. Hayes, Theatre Manager
Box Office Treasurer, Barbara Jones
Beverly Ruffin, Head Usher

1321 Pennsylvania Avenue, N.W. Washington, D.C. 20004 (202) 783-3370

01-01810

DEC 21 1992

The Honorable Harris Wofford
United States Senator
9456 Federal Building
600 Arch Street
Philadelphia, Pennsylvania 19106

Attention: Allen Wolinsky

Dear Senator Wofford:

This letter responds to your inquiry on behalf of XX (b)(6)xx concerning the installation of a ramp and accessible parking at the Cedarhook Hill Apartments and an adjacent building that contains a doctor's office in Wyncote, Pennsylvania.

The Americans with Disabilities Act ("ADA") authorizes this Department to provide technical assistance to individuals and entities that have rights or responsibilities under the ADA. Therefore, this letter provides informal guidance to assist you in responding to XX . However, this technical assistance does not constitute a legal interpretation and it is not binding on the Department of Justice.

Under title III of the ADA, strictly residential facilities are expressly exempt from ADA coverage, unless they also include one of the 12 categories of places of public accommodation (see pages 35551 and 35594 of the enclosed title III rule). If a residential facility includes a social service center, for example, the facility would be considered a place of public accommodation.

Places of public accommodation, including doctors' offices and other health care facilities, are required to remove architectural barriers to access by individuals with disabilities in existing facilities where such removal is readily achievable. Example of steps to remove barriers include the installation of ramps and the relocation of designated accessible parking spaces. For a fuller discussion of this issue, please refer to section 36.304 of the enclosed title III regulation and pages 28-39 of the enclosed Title III Technical Assistance Manual.

cc: Records; Chrono; Wodatch; McDowney; Delaney; FOIA; MAF.
:udd:delaney:ada.cong.wofford.(b)(6)xx

01-01811

We cannot ascertain solely on the basis of the information provided whether the apartment complex or the adjacent building is in violation of the ADA. If (b)(6)xx wishes to file a formal complaint with the Department of Justice to initiate an investigation of this matter, she should send a written complaint to: Public Access Section, Civil Rights Division, Post Office

Box 66738, Washington, D.C. 20035-6738.

I hope this information is helpful in responding to your constituent.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

Enclosures (2)

01-01812

(Handwritten Letter)

Senator Harris Wofford - Sept. 22, 1992
9456 Federal Bldg.
600 Arch St.
Phila. Pa. 19106

Re Amer. with Disability Act

Dear Sen. Wofford-

I live at (b)(6) in Wyncote, Pa. For the past 5 or 6 months I have asked the Manager of the apts, plus the Mgr. of Bldg. 3 to please instal a ramp for handicapped people, with no help from them. When I go to my Dr. (Stephen Margolis) in Bldg. 3 I must take a cane. I have great difficulty in going up a step from the street, but even more in going down this fairly high step to get to my car - which I must park in one, or more spaces for the Handicapped, which are not near the

202-62-0

01-01813

the entrance I must use for
this part of the Bldg -
I would greatly appre-
ciate it if you could
help me in this regard.
There are also Doctors'
offices beyond Dr. Marglis'.
Thank you very
much for your assitance
in this matter.

Sincrely,

(b)(6)
XX

01-01814

DEC 23 1992

The Honorable Tom Harkin
United States Senate
531 Senate Hart Building
Washington, D.C. 20510-6025

Dear Senator Harkin:

This letter is in response to your inquiry on behalf of Richard J. Lewis, who expressed concern about several statements made at a seminar by Thomas Youngblood, a representative of the American Hotel and Motel Association, concerning the provision auxiliary aids by places of lodging under the Americans with Disabilities Act (ADA).

Mr. Lewis has separately addressed his concerns to this Department. A copy of the Department's response to Mr. Lewis is attached. As we advised him, the American Hotel and Motel Association received a grant from this Department to develop technical assistance materials under the ADA. However, the presentation by Mr. Youngblood at the seminar was not a grant-sponsored event, and, accordingly, we had no occasion to review his remarks.

Our letter also set forth the ADA requirements for hotels and motels to provide auxiliary aids and services for persons who are deaf or hearing impaired. Finally, we provided information about our complaint processing procedures and confirmed our strong commitment to enforcement of the ADA.

I hope this information will be useful to you in responding to Mr. Lewis.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

Enclosure

cc: Records, Chrono, Wodatch, Magagna, McDowney, Novich

Udd:Novich:congress:harkin3

01-01815

DEC 23 1992

Richard J. Lewis
Language Seminars, Inc.
13614 N.W. 14th Place
Vancouver, Washington 98685

Dear Mr. Lewis:

This letter is in response to your inquiry about the Americans With Disabilities Act (ADA). Your letter expresses concern about the correctness of several statements about auxiliary aids made at a recent ADA seminar in Oregon by Tom Youngblood, a representative of the American Hotel and Motel Association.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist you in understanding the ADA's requirements. However, it does not constitute a legal interpretation or legal advice, and it is not binding on the Department.

As you know, the American Hotel and Motel Association received a grant from the Department of Justice to develop technical assistance materials to assist hotel and motel operators in understanding their obligations under the ADA. The written materials produced pursuant to the grant were carefully reviewed by the Department. However, Mr. Youngblood's presentation at the Oregon seminar was not a grant-sponsored activity and, accordingly, we had no occasion to review his remarks.

The ADA requires several types of communication aids for persons who are deaf or hard of hearing in places of transient lodging. The standards for new construction and alteration of these facilities can be found in section 9.1.3 of the Accessibility Guidelines, which are appended to the Department's title III regulation (copy enclosed), which requires a percentage of sleeping rooms to be equipped with visual alarms, notification devices, telephones with volume control, and accessible outlets for telecommunication devices for person who are deaf (TDD's). Section 36.303 of the title III regulation requires that hotels

cc: Records, Chrono, Wodatch, McDowney, Novich, Friedlander,
FOIA
Udd:Novich:policy:PL.375

provide closed-caption decoders and TDD's on request to persons with hearing impairments, and that the hotel have a TDD at the front desk for communication with rooms lodging persons who are using a TDD.

In addition to communication aids in sleeping rooms, the Accessibility Guidelines, at sections 4.1.3(17)(b) and (c), contain requirements for public phone banks in lobbies and other public areas. Finally, enclosed is a copy of this Department's title III Technical Assistance Manual, which addresses auxiliary aids at pages 25-29 and 54.

The Department of Justice has received and is investigating over 700 complaints under title III of the ADA. A number of the complaints concern hotels and motels and allege failure to provide auxiliary aids for patrons who are deaf or hearing impaired. When possible in our investigations, we attempt to negotiate a resolution of the complaints short of litigation. In the case of a number of complaints relating to hotels and motels, we have been successful in obtaining commitments to purchase and install various auxiliary aids as required under the ADA. Our files on these complaints will not be closed until we are satisfied that the entities have followed through with their commitments.

I hope this information is responsive to your inquiry.

Sincerely,

John L. Wodatch
Chief
Public Access Section

Enclosure
Title III Regulation

01-01817

SIGN
LANGUAGE
SEMINARS, INC.

(STAMP) 92 OCT 27 AM 11:40

October 22, 1992

The Honorable Thomas Harkin
210 Walnut Street
Room 733
Des Moines, IA. 50309

Dear Senator Harkin:

I am enclosing a copy of the letter that I wrote to DOJ today. I thought that you might be interested in how some of the provisions of the ADA legislation are being mis-represented by "experts". I hope the fact that a paid lobbyist, such as Mr. Tom Youngblood, can be hired to come to our State and deliberately mis-quote the ADA, infuriates you as much as it does me. I really don't have much power to prevent such travesties, but I think that YOU do.

Thank you.

Sincerely,

Richard J. Lewis
Vice President

(STAMP) 202-82-0

COMMUNICATION WITH THE DEAF IS GOOD BUSINESS
1-800-322-KAYE

01-01818

SIGN
LANGUAGE
SEMINARS, INC.

October 22, 1992

Ms. Joan Magagna
Asst. Director, Civil Rights Division
OFFICE OF AMERICANS WITH DISABILITIES ACT
Department of Justice.
P.O. Box 66738
Washington, D.C. 20035-9998

Dear Ms. Magagna:

This letter is in reference to a speech made at the Oregon Lodging Association annual convention by Mr. Tom Youngblood, on October 20, 1992. You may recall that my business partner, Mr. Dominick Faraca, discussed our concerns with you by telephone yesterday. We have differing views with Mr. Youngblood regarding interpretation of the ADA law. It is these differing views that we wish to discuss with you and your department.

First of all, let me explain what our company is all about. One of our areas of expertise is providing assistive listening devices for the hearing impaired. We also teach deaf awareness seminars to various businesses, in an attempt to show businesses how to effectively communicate with the hearing impaired/deaf employee. We teach sign language courses to hospitals, police organizations, and others that have expressed concerns regarding effective communication with the hearing impaired/deaf population. We teach a college course in deaf awareness. Deaf awareness is our only business and we feel that we are very professional at what we do.

It is in the context of our assistive listening devices that we met Mr. Tom Youngblood. We had a booth at the Oregon Lodging Association convention in which we displayed our array of assistive listening devices for the hearing impaired. (I enclose a brochure on our products for your perusal). Mr. Youngblood came by our booth and introduced himself to us. He explained to us that he was to be the guest speaker the next day and would be giving his views on the ADA law. In previewing with Tom some of the topics that he was going to discuss, we realized that there were some differences between how he interpreted the ADA law and how

we interpreted it. As our conversation with Tom continued, it became very apparent that he was going to espouse some interpretations of the ADA law that were contrary to ours. He invited us to come to his lecture, but admonished us to not ask questions as he did not want "to provide a forum for marketing our products".

COMMUNICATION WITH THE DEAF IS GOOD BUSINESS
1-800-322-KAYE

01-01819

During Tom's speech he said the following things that we strongly question.

1. THE ADA LAW HAS VERY LITTLE TEETH. THE CHANCE OF HAVING A FINE LEVIED IS NEXT TO ZERO. THE WORST THAT COULD HAPPEN WOULD BE THAT A CITIZEN MAY SUE THE HOTEL AND THAT THE ONLY PENALTY TO THE HOTEL WOULD BE THAT THE HOTEL WOULD HAVE TO COMPLY WITH WHATEVER IT WAS THAT WAS IN DISPUTE. IN ADDITION, THE CITIZEN MAY OR MAY NOT BE AWARDED ATTORNEYS FEES.

   IN ADDITION, SHOULD THE DEPARTMENT OF JUSTICE GET INVOLVED, THE WORST THAT WOULD HAPPEN IS THAT THE HOTEL "MAY" GET A LETTER AND A SLAP ON THE WRIST. THE CHANCES OF THE "DOJ" LEVYING ANY FINES ARE ABOUT ZERO.

   MR. YOUNGBLOODS COMMENT WAS, QUOTE, "DON'T WORRY ABOUT THE TERMS OF THE ADA LAW, AND LET YOUR HEART BE YOUR GUIDE". End quote. (I submit to you, Ms. Magagna, that if it were left to people to settle these matters with their "hearts" that there would have been no necessity for the ADA legislation.)

2. THE ONLY ASSISTIVE LISTENING DEVICES REQUIRED BY ADA ARE TWO TDD TELEPHONES, AND ONE CLOSED CAPTION TELEVISION DECODER PER HOTEL LOCATION. (On pages 30 & 31, in Mr. Youngbloods own handbook on ADA, are listed text telephones, closed caption TV decoders, visual alarm smoke detectors, visual door knock alerting devices, and visual devices available or in-place so that guests with hearing disabilities are afforded the effective communication services and benefits equal to those provided to other guests.) THESE PAGES ARE IN DIRECT CONFLICT WITH TOM'S SPEECH. WHEN WE ASKED TOM TO EXPLAIN THIS DISCREPANCY, HIS RESPONSE WAS THAT "YOU GUYS ARE JUST ASKING THIS QUESTION BECAUSE YOU WANT TO SELL MORE EQUIPMENT", AND ENDED HIS LECTURE ON THAT POINT.

COMMUNICATION WITH THE DEAF IS GOOD BUSINESS
1-800-322-KAYE
13614 N.W. 14th Place * Vancouver, Washington 98685 * Office 1-800-322-KAYE
01-01820
SIGN
LANGUAGE
SEMINARS, INC.

3. THERE HAS YET TO BE A SINGLE COMPLAINT FILED UNDER TITLE III OF ADA. FURTHER, THERE HAVE ONLY BEEN A HAND FULL OF COMPLAINTS FILED UNDER TITLE I. DON'T WORRY FOLKS, NOT MUCH CHANCE OF GETTING CAUGHT.

4. THERE ARE NO REGULATIONS WITH REFERENCE TO THE NUMBER OF ROOMS IN AN EXISTING HOTEL THAT MUST BE EQUIPPED WITH ASSISTIVE LISTENING DEVICES. (I refer you to the chart on page 54 of his own book, in which definite numbers of rooms are stated. Further, on page 59 of his book, there is a check-list for rooms for guests with hearing disabil-ities. This check list refers directly to auxiliary devices, that Tom said aren't provided for under the ADA law.)

It is not my intention, Ms. Magagna, to make an example or cause any "heat" for Mr. Tom Youngblood, or anyone else. Tom just happens to have been the one that was purporting to hotel owners and managers in my State that what he had to say was in fact the law. I am merely trying to get at what this ADA legislation is all about. Does the law have "teeth"? Have there been any complaints filed with DOJ under Title III? If so, to what end. Is it extremely unlikely that a non-complier will ever be subject to enforcement? Are there regulations for the number of assistive listening devices to be provided in a hotel, or are they not? We have been in this business for a long time, and I like to think that we have a reputation for honesty and professionalism. We have a long list of clients that spread nationwide, and we are proud of that. We do not wish to misrepresent any provision that is contained in the ADA law. However, as you can see, we are somewhat in a quandary having heard Mr. Youngbloods version of the law. We are extremely uncomfortable, as advocates for the deaf, with the idea of letting companies determine compliance with the ADA law with their "hearts".

COMMUNICATION WITH THE DEAF IS GOOD BUSINESS
1-800-322-KAYE

13614 N.W. 14th Place * ILLEGIBLE

01-01821

It is my hope that you will give this letter careful consideration. We are seeking guidance from your office as to how this ADA legislation should be interpreted with regard to our business. I feel that we have been operating under the correct interpretation of the law. That feeling has now been challenged by Mr. Tom Youngblood. So, again, we seek your guidance.

One more thing. Prior to his lecture, Mr. Youngblood handed out a booklet entitled "Accommodating All Guests", by John Salmen, made possible by a grant from the US Department of Justice, Civil Rights Division. We feel that this book is correct in its interpretation of ADA. What we do not understand is how the person that handed out the book could differ so widely with its views. I hope that Mr. Youngblood's wages are not subsidized by a grant. Are they?

Thank you, Ms. Magagna, for your attention. I look forward to your reply.

Sincerely,

Richard J. Lewis
Vice President/Mktng.

Encs.

C.C. Mr. Phil Peach, Oregon Lodging Association
Mr. Tom Youngblood, American Hotel & Motel Association
Mr. Toby Olson, State of Washington Governors Committee on Disability Issues and Employment
The Honorable Thomas Harkin, Senator, Iowa

1-800-322-KAYE

13614 N.W. 14th Place * Vancouver, WashingtonILLEGIBLE
01-01822

Civil Rights Division
T. 12/30/92
SBO:MAF:EK:SK:jfh
DJ# XX

Coordination and Review Section
P.O. Box 66118
Washington, D.C. 20035-6118

(b)(6) (STAMP) DEC 31 1992
XX
XXX
XXXX

RE: Complaint Number XX

Dear Ms. XX

This letter responds to the complaint you filed against the California State Department of Corporations, alleging discrimination on the basis of disability. Your complaint was forwarded to us by the U.S. Department of Health and Human Services, Office for Civil Rights, because the Department of Justice is the agency responsible under title II of the Americans with Disabilities Act of 1990 (ADA) for investigating this complaint.

Your complaint alleges that the California Health and Safety Code discriminates against individuals with mental impairments by failing to require health insurance plans to continue coverage of dependent children with mental impairments, other than mental retardation, beyond the limiting age for dependent children specified in the policy, while requiring such continued coverage for children with mental retardation or physical handicaps. The Civil Rights Division has completed its review of this issue and has determined that the California State Department of Corporations is not in violation of title II of the ADA for the reasons explained below.

Title II prohibits public entities from enforcing regulatory requirements that would require private entities to discriminate against individuals with disabilities. However, title II generally permits State and local governments to provide benefits to certain classes of individuals with disabilities that they do not provide to individuals with different disabilities. 28 C.F.R. 35.130(c). Where a benefit is limited to a particular class of individuals with particular types of

disabilities (here, those with mental retardation and physical disabilities), discrimination is determined by comparing the treatment of all individuals with disabilities to the treatment provided to similarly situated individuals without disabilities.

cc: Records CRS Friedlander Keenan Kaltenborn djh
udd:Keenan. XX .LOF
01-01823

In this case, adult children without disabilities are not eligible for continued coverage under their parents' health insurance policies. In addition, adult children with mental impairments other than mental retardation are also ineligible for continued coverage. Therefore, the situation you have raised does not constitute discrimination under the Americans with Disabilities Act.

Please be advised that your right to file a complaint is protected by Federal law. A State or local government may not intimidate, threaten, coerce, or engage in other discriminatory conduct against anyone who has either taken action or participated in an action to secure rights protected by the ADA. If at any time you feel you are being harassed or intimidated because of your dealings with the Department of Justice, we urge you to let us know immediately. This office would investigate such a complaint if the situation warrants.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that we receive such a request, we will seek to protect, to the extent provided by law, personal information which, if released, could constitute an unwarranted invasion of privacy.

This letter constitutes our letter of findings with respect to your allegations of discrimination in your administrative complaint. If you are dissatisfied with our determination, you may file a private complaint in the United States District Court.

Sincerely,

Stewart B. Oneglia
Chief

Coordination & Review Section
Civil Rights Division

cc: California State Department
of Corporations

01-01824

DJ XX

JAN 12 1993

XX
XX
XX

Dear Mrs. XX

This letter is in response to an inquiry on your behalf from Ms. Kathleen F. Rush about the requirements of the Americans with Disabilities Act ("ADA") for gasoline stations.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist you in understanding the ADA's requirements. However, it does not constitute a legal interpretation or legal advice, and it is not binding on the Department of Justice.

Title III of the ADA and its implementing regulation include provisions relating to accessibility of privately owned or operated places of public accommodation, including gasoline stations. I have enclosed copies of the Department of Justice's title III implementing regulation, 28 C.F.R. Part 36, and a copy of the Department's Title III Technical Assistance Manual. The requirements for removing architectural barriers or providing alternative access are set out in sections 36.304 and 36.305 of the title III regulation, at pages 35,597 and 35,598 of the Federal Register, and are explained in the Technical Assistance Manual at pages 28-34 and 37-38. Please note especially Illustration 3 at the top of page 38, and Illustration 1 in the middle of that page, both of which deal specifically with self-service gasoline stations. Finally, you may also find useful some additional explanatory material regarding alternatives to

barrier removal in the Preamble to the title III regulation, at page 35,570 of the title III regulation.

cc: Records, Chrono, Wodatch, Bowen, McDowney, Contois, MAF, FOIA
Udd:Contois:policyletters:rush

01-01825

I hope this information is useful to you in understanding the requirements of the ADA.

Sincerely,

John L. Wodatch
Chief
Public Access Section

Enclosures (2)

cc: Ms. Kathleen F. Rush
Assistant Village Administrator
Village of Woodridge
1900 West 75th Street
Woodridge, Illinois 60517-2699

01-01826

Village of Woodridge
Village Hall * 1900 West 75th Street * Woodridge, IL 60517-2699 * (708) 852-7000 * FAX (708) 719-0021

December 10, 1992

William P. Barr
Department of Justice
Constitution Avenue and Tenth Street NW
Washington, D.C. 20530

Dear Mr. Barr:

Re: Gasoline Station Accessibility

I am writing on behalf of a resident of the Village of Woodridge who cannot pump her own gasoline. Please provide any information available which you may have regarding the gas stations' ability to require premium payment for full service. Who would regulate the premium? Are gas stations required to provide services without a premium service charge?

Please direct your response to XX XX , with a copy to my attention, 1900 West 75th Street, Woodridge, IL 60517. Thank you.

Very truly yours,

VILLAGE OF WOODRIDGE

Kathleen F. Rush
Assistant Village Administrator

dk
c: ADA File
Tickler File: 1/15/93

01-01827

JAN 12 1993

The Honorable Mark O. Hatfield
United States Senator
Special Districts Center
727 Center Street, N.E.
Suite 305
Salem, Oregon 97301

Dear Senator Hatfield:

This letter is in response to your inquiry on behalf of XX regarding the effects of the Americans with Disabilities Act (ADA) on small organizations. Specifically, XX XX stated his concern that implementation of the Act had forced the discontinuance of guided tours at the XX XX .

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities with rights or obligations under the Act. This letter provides informal guidance to assist you in answering XX inquiry. However, this technical assistance does not constitute a legal interpretation of the statute, and it is not binding on the Department.

Title III of the ADA requires existing public accommodations, like the gallery at the XX to remove barriers to access by individuals with disabilities, including those who use wheelchairs, to the extent that it is readily achievable to do so. Such barrier removal may include installation of ramps or wheelchair lifts. In situations where barrier removal is not readily achievable, an entity must make its goods and services available through alternative methods. With regard to the provision of public tours of facilities like the XX , if barrier removal is not readily achievable, an acceptable alternative may include a presentation by a tour guide using photographs or videotape of the areas observed during the tour.

cc: Records, Chrono, Wodatch, McDowney, Russo, FOIA, MAF
:udd:russo:cong.hatfield. XX

01-01828

These requirements are more fully explained in the regulations for title III issued by the Department of Justice (enclosed) at sections 36.304 and 36.305 and in the Department's Title III Technical Assistance Manual (also enclosed) at pages 28-35 and 37-38.

I hope this information is of assistance to you in responding to your constituent.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

Enclosures (2)

01-01829

MARK O. HATFIELD
OREGON
United States Senate
WASHINGTON, DC 20510-3701

November 23, 1992

U.S. Department of Justice
P.O. Box 66118
Washington, D.C. 20530-6118

Dear Friends:

Enclosed is a copy of a letter I recently received from XX XX who expresses his concern about the affect the Americans With Disabilities Act is having on small organizations, in particular the XX . You will note that Mr. XX has for years conducted informal tours of the sawmill and because of the law, the sawmill has had to terminate those tours rather than be in non-compliance.

Because I want to do everything possible to be responsive to all constituent requests and concerns, I would be grateful if you would offer an interpretation of this law as it pertains to public accommodations and services operated by private entities. Please reply to my Salem office at Special Districts Center, 727 Center Street N.E., Suite 305, Salem, Oregon 97301.

Thank you in advance for your prompt attention to this inquiry.

Sincerely,

Mark O. Hatfield
United States Senator

MOH:eb
Enclosure
53163
PRINTED ON RECYCLED PAPER

01-01830

Senator Mark Hatfield
711 Hart
Senate Office Building
Washington, D.C. 20510

Dear Senator Hatfield,

For the past twenty years I had the pleasure of escorting visiting friends and relatives from the more eastern parts of the United States through the XX local sawmill. They have built a fine gallery and stairway so that visitors can look down on the mill floor and see the whole operation. They do not have a guide service, but allow visitors to conduct themselves at their own leisure. I am personally acquainted with the owner of the mill and many of his old time employees.

Just this week I was informed that they can no longer allow visitors to enter the mill due to a federal anti-discrimination law that in affect says that they cannot allow visitors unless they modify the mill at their expense so that visitors in wheel chairs can visit any place in the mill that other visitors are allowed. The XX people were very apologetic, but felt that they could not justify rhis expense.

As we left I personally felt that I, as a member of the majority had been discriminated against by a minority. I certainly cannot find fault with the XX people since they were very generous in building the stairway and gallery for the visitors benefit.

I feel so affected by that I thought that I should write to you about this. Perhaps this is a mis-interpretation of the law. Perhaps it is a mis-application of the intentions of the law.

I don't know if there is anything that you can do about this, but I thought that it is something that you should be aware of.

Thanks for your consideration.

XX

01-01831

JAN 13 1993

The Honorable Larry E. Craig
United States Senate
302 Hart Senate Office Building
Washington, D. C. 20510

Attention: Nicole L. Gaul

Dear Senator Craig:

This is in response to your inquiry on behalf of Dr. J. Roger Curran concerning applicability of the Americans with Disabilities Act to the Federal government.

The Americans with Disabilities Act, which became effective on January 26, 1992, does not cover the executive branch of the Federal government, primarily because an earlier law, the Rehabilitation Act of 1973, prohibits discrimination on the basis of disability in employment and in programs and activities conducted by Federal executive agencies. The Architectural Barriers Act of 1968 also imposes accessibility requirements for buildings and facilities constructed or leased by the United States. The United States Congress and agencies of the legislative branch are, however, covered by section 509 of the Americans with Disabilities Act.

I hope this information is helpful in responding to your constituent.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

cc: Records; Chrono; Wodatch; McDowney; MillerC; FOIA; MAF.
:udd:millerc:craig.cng

LARRY E. CRAIG
IDAHO
Hart Senate Office Building
(202) 224-2752

AGRICULTURE, NUTRITION
AND FORESTRY
ENERGY AND NATURAL
RESOURCES
SPECIAL COMMITTEE
UNITED STATES SENATE ON AGING
WASHINGTON, DC 20510-1203

November 23, 1992

Mr. W. Lee Rawls
Assistant Attorney General
Office of Legislative Affairs
Department of Justice
Constitution and 10th Street, NW
Washington, DC 20530

Dear Mr. Rawls:

Enclosed please find a copy of an inquiry I recently received from Dr. J. Roger Curran.

As you will note, Mr. Curran is concerned about the Federal government exempting itself from the Americans with Disabilities Act. He has enclosed an article exemplifying his concerns. I would appreciate your review and response to these concerns. Please forward your response to the address below:

Senator Larry E. Craig
302 Hart Office Bldg.
Washington, D.C. 20510
Attention: Nicole L. Gaul

Thank you for your assistance.

Sincerely,

LARRY E. CRAIG
U.S. Senator

LEC\nlg
Enclosure

01-01833

JAN 14 1993

The Honorable E. Clay Shaw
U. S. House of Representatives
2338 Rayburn Building
Washington, D.C. 20515-0915

Dear Congressman Shaw:

This letter responds to your inquiry on behalf of Mr. John Hume of Coral Springs, Florida, concerning a "notice of noncompliance" issued by a group describing itself as "Americans with Disabilities Act Specialists, Inc."

The Americans with Disabilities Act gives the Attorney General the authority to investigate complaints under the Act and to initiate litigation in cases involving a pattern of discrimination or raising issues of general public importance. The Act gives no legal effect to notices made by private individuals or groups.

It is unclear whether this notice was transmitted through the United States Postal Service. If it was, there is the possibility that postal fraud is involved. In that regard, your constituent may wish to contact the Postal Service, as follows: Mr. Al Holmes, Branch Manager, Fraud and Prohibited Mailings Branch, United States Postal Service, 475 L'Enfant Plaza West, S.W., Washington, D.C. 20260-2166.

Your constituent may also wish to contact the Council of Better Business Bureaus Foundation, at 703-247-3655, or his local Better Business Bureau. The Council of Better Business Bureaus is coordinating the investigation of complaints about questionable business practices relating to the Americans with Disabilities Act, and publicizing the results of its investigations.

cc: Records; Chrono; Wodatch; McDowney; MillerC; FOIA; MAF.

I hope this information is helpful in responding to your constituent.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

01-01835

E. CLAY SHAW
15th DISTRICT,
REPLY TO
2338 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-0915
(202) 225-3026
DISTRICT OFFICE:
1512 EAST BROWARD BOULEVARD
SUITE 101
FORT LAUDERDALE, FL 33301
(305) 522-1800

COMMITTEE
FLORIDA WAYS AND MEANS
SUBCOMMITTEES
OVERSIGHT
HUMAN RESOURCES
RANKING MEMBER

Congress of the United States
House of Representatives
Washington, DC 20515-0915

November 19, 1992

The Honorable William P. Barr
Attorney General
U.S. Department of Justice
Main Building Room 4111
10th & Constitution Avenue, NW
Washington, D.C. 20530

Dear Bill:

I am writing regarding a letter and enclosure I recently received from Mr. John Hume of Coral Springs, Florida.

I would appreciate your assessment of the "notice of non-compliance" Mr. Hume forwarded for my attention. Specifically, I am interested in learning whether this mailing constitutes a violation of the law and whether the practice of sending such "notices" is widespread. Whether legal or not, this tactic seems highly questionable to me.

I appreciate your consideration of this matter, and I look forward to your response.

Sincerely,

E. Clay Shaw, Jr.
Member of Congress

ECS:mws
Enclosure

01-01836

LAW OFFICES
HUME & JOHNSON P.A.
SUITE 301
1401 UNIVERSITY DRIVE
CORAL SPRINGS, FLORIDA 00071-6088
JOHN HUME TELEPHONE
755-9880
HENRY W. JOHNSON AREA CODE 305
CATHERINE W. ZIPPAY TELECOPIER
755-9899

October 23, 1992

The Honorable E. Clay Shaw
299 E. Broward Blvd.
Fort Lauderdale, FL 33301

Re: "Notice of Non-Compliance" enclosed

Dear Clay:

Enclosed is what appears to be a formal notice. On close examination, it appears that it may be little more than a scam based on the Americans with Disabilities Act. I think there are a number of these charlatan operations that have sprung up because of the act. It was bad legislation to begin with and now it is being twisted by opportunists to extort money.

Sincerely,

HUME & JOHNSON, P.A.

JOHN HUME

JH:rs
enc

01-01837

Urgent: Notice of Non-Compliance

We have been notified that your facilities are not in compliance with title III of the "Americans With Disabilities Act" (ADA). The ADA is equal rights legislation that has been in effect since January 26, 1992. This means that you should have taken action by now. Failure to comply with the ADA can result in violations of up to $100,000.00. Such violations are levied by the Department of Justice (DOJ) and they act on behalf of the 1 in twelve Americans with some form of disability.

Advocacy groups for the disabled report violators to us before contacting the DOJ so that an evaluation may be performed and unwarranted civil suits may be avoided. We inform these groups of your efforts toward compliance. If you have already taken steps, inform us promptly so that your file may be updated.

Notice #920115

Date of Issuance 10-19-92 (Handwritten)

Property Name Marwayne Office Plaza (Handwritten)

Address 2425 E. Commerical Blvd

Ft. Lauderdale, FL 33308 (Handwritten)

Contact Alice Carlson (Handwritten)

Phone (305)491-1431 (Handwritten)

Notice Issued By (Illegiblae)

American Disabilities Act Specialists, Inc. is a consulting group. We do not represent the government. We represent those who are actively enforcing the ADA, the over 43+ million disabled Americans, and organized advocacy groups. This three part notice will be sent to the following parties:
*White - ADA Specialists file.
*Pink - Complaintant
*Yellow - Violating Party

Please respond to this notice at the phone number below.

(305)923-ADA2 American Disabilities Act Specialists, Inc.
(305)923-2322
2 South Federal Highway, ILLEGIBLE, Florida ILLEGIBLE

01-01838

JAN 14 1993

Ms. Susan Taylor
Mastersoft, Inc.
6991 E. Camelback Road
Suite A-320
Scottsdale, AZ 85251

Dear Ms. Taylor:

This letter is in response to your inquiry concerning the applicability of the Americans with Disabilities Act (ADA) to computer software manufacturers.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist your constituent in understanding the ADA's requirements. It does not, however, constitute a legal interpretation and it is not binding on the Department.

Title III of the ADA applies to the operations of places of public accommodation and commercial facilities. As noted on page 24 of the enclosed Title III Technical Assistance Manual, however, the ADA does not require that manufacturers provide accessible formats for warranties or operating manuals packed with a product.

I hope that this information will be helpful to you.

Sincerely,

John L. Wodatch
Chief
Public Access Section

Enclosure

cc: Rosalie M. Lopez
Assistant to Senator Dennis DeConcini

cc: Records; Chrono; Wodatch; Magagna; Nakata; McDowney; FOIA;
MAF. :udd:nakata:congress.letters:deconcini.2

01-01839

MASTERSOFT
6991 E. Camelback Rd., Suite A-32
Scottsdale, AZ 85251
602-277-0900
Fax 602-970-0706

12-2-92

Senator Dennis DeConcini
c/o Ms. Rosalie Lopez
323 W Roosevelt Street
Suite C-100
Phoenix, AZ 85003

Dear Senator DeConcini,

It is our understanding that your office may be of assistance in determining our legal obligations to the visually impaired.

We are a computer software developer in Scottsdale with eighteen employees. We produce a text conversion utility called Word For Word. The text conversion filters that we develop are supplied on diskette and are accompanied by a printed user manual.

Recently we have been repeatedly contacted by XX
XX has angrily demanded that we provide our now printed user manual in diskette form, in compliance with "recent legislation". He is also threatening legal action if we do not provide this service immediately. There has been no prior demand for this, and before undertaking such an expense, we would like more information.

What legal obligations, if any, do we have as a product manufacturer under the mandates of the Americans With Disabilities Act and related legislation. Any information you are able to provide will be greatly appreciated. We would also like to forward any available material to XX

Thank you very much for your assistance in this matter.

Respectfully,

Susan Taylor

MASTERSOFT, Inc.

01-01840

DENNIS DECONCINI
ARIZONA

COMMITTEES:
APPROPRIATIONS
JUDICIARY
VETERANS' AFFAIRS
INDIAN AFFAIRS
RULES AND ADMINISTRATION
INTELLIGENCE
COMMISSION ON
SECURITY AND COOPERATION
IN EUROPE/CHAIRMAN

PLEASE DIRECT YOUR RESPONSE
TO THE PHOENIX OFFICE

United States Senate

WASHINGTON OFFICE
328 HART SENATE OFFICE
BUILDING
WASHINGTON, DC 20510
(202) 224-4521

PHOENIX OFFICE:
323 WEST ROOSEVELT #C-100
PHOENIX, AZ 85003
(602)379-6756

SOUTHERN ARIZONA OFFICE
2424 EAST BROADWAY
TUCSON, AZ 85719
(602) 670-6831

EAST VALLEY OFFICE:
40 NORTH CENTER STREET
#110
MESA, AZ 85211
(602) 379-4998

December 3, 1992

Mr. John Wodatch
Chief, Public Access Section
Civil Rights Division
U.S. Department of Justice
1333 F Street, NW
Washington, D.C. 20004

Dear Mr. Wodatch:

Enclosed you will find an inquiry which Senator DeConcini has received from his constituent, Ms. Susan Taylor, regarding compliance with the Americans with Disabilities Act.

Ms. Taylor is the owner of a company that develops computer software. As her inquiries indicates, they have been receiving complaints from a customer who has demanded the user manual be transkated in diskett form for use by individuals who are blind.

It would be greatly appreciated if you would review this request and provide Ms. Taylor with an interpretation of their responsibility to comply with this request under the mandates of ADA.

Sincerely,

ROSALIE M. LOPEZ
Assistant to the Senator
Office of Dennis DeConcini

323 West Roosevelt, #C100
Phoenix, Arizona 85003

RML/R
01-01841

JAN 15 1993

W. Yates Trotter, M.D.
The Internal Medicine Group, Ltd.
National Avenue Medical Building
1900 S. National Avenue
Suite 2200
Springfield, Missouri 65804-2275

Dear Dr. Trotter:

This letter is in response to your inquiry concerning the responsibilities of medical offices under the Americans with Disabilities Act of 1990 (ADA).

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist you in understanding the ADA's requirements. However, it does not constitute a legal interpretation and it is not binding on the Department.

Title III of the ADA requires public accommodations, including medical offices, to ensure effective communication with persons with disabilities. To ensure effective communication, a medical office may be required to provide auxiliary aids to an individual with a disability.

Medical offices must provide the above auxiliary aids or services to persons with disabilities, if such an auxiliary aid or service is necessary for effective communication, unless doing so would constitute a fundamental alteration of the service or an undue burden to the public accommodation. In cases involving medical treatment, writing and notetaking may provide effective communication in routine situations, but a qualified interpreter or other auxiliary aid may be necessary in others to allow for informed treatment recommendations and decisions. While the ultimate choice of the means of communication rests with the physician the regulation strongly encourages a doctor to consult with a patient before providing a particular aid or service, to

cc: Records; Chrono; Wodatch; McDowney; Novich; FOIA; MAF.
:udd:novich:hancock

01-01842

determine the most appropriate way to ensure that communications are in fact effective. The medical office may be held liable for an ADA violation if the communication is not effective for that person with a disability. A medical office may require reasonable prior notice of the need for an auxiliary aid or service, depending, among other things, on the exigency of the treatment.

Further discussion of provision of auxiliary aids and services appears in section 36.303 of the enclosed title III regulation, at page 35597, and in the preamble discussion of that section, at pages 35566-68. Further explanation appears at pages 25-27 of the enclosed Title III Technical Assistance Manual. Please also consult the definition of "qualified interpreter" in section 36.104 of the regulation, at page 35594, and in the preamble discussion at page 35553.

I hope this information is helpful to you in responding to your constituent.

Sincerely,

John L. Wodatch
Chief
Public Access Section

Enclosures (2)

cc: Congressman Mel Hancock

01-01843

THE INTERNAL MEDICINE GROUP, LTD.

NATIONAL AVENUE MEDICAL BUILDING - SUITE 2200
1900 S. NATIONAL AVENUE * SPRINGFIELD, MISSOURI 65804 - 2275*(417) 887-4000

September 25, 1992

Melton D. Hancock
318 Cannon House Office Building
Washington, D.C. 20515

Dear Representative Hancock:

I am writing you in regard to the recent Federal Disability Act. You will see a copy of a bill sent to me by an interpreter service related to a deaf mute patient, XX I took care of XX (b)(6) for eight or ten years without the benefit of an interpreter. When XX was recently in the hospital with a perforated bowel it was necessary to have an interpreter because matters were very complex. Recently XX had shown up with an interpreter and I am being billed $50.00 for a 15-20 minute office call, whereas my charges to the patient are $39.00. My attorneys tell me that if I refuse to see the patient or attempt to get other reimbursement that I am subject to federal penalty. Obviously this is a flaw in the bill which should be corrected, as in the long term it will have a negative rather than a positive effect on disabled people. My only recourse at present is to refuse to have the interpreter unless I have prearranged some payment agreement ahead of time. As you will note in my reply, I am paying the bill simply to avoid trouble which such a bureaucratic entanglement could bring about.

Incidentally, I would very much appreciate your supporting the movement to make English the official language of the United States. If this is not done we will have the same problem with all sorts of nationalities including Turks, Vietnamese, Japanese, et cetera, who might appear in our office and demand interpreter service because they would be considered disabled in that they could not speak the English which I ordinarily use with my patients. We are long overdue in making English our official language as it is essentially the official second language of an entire World now. The cost to our government and to citizens if we do otherwise will be disastrous. Furthermore, the tendency for Hispanics and other minority groups to demand their elementary and secondary education in their own tongue can only be disruptive to the melting pot effect which our country should achieve.

Sincerely,

DEPARTMENT OF JUSTICE

W. Yates Trotter, M.D.

WYT:lv
Enclosure
01-01844

INVOICE
INTERPRETER REFERRAL SERVICE

INVOICE #1287

INVOICE DATE: August 31, 1992

SERVICES RENDERED TO: Dr. Yates Trotter
1900 South National Suite 2200
Springfield MO 65804
DATE/TIME: 8/31 2:15-3:05pm (2 hours)
NAME OF CLIENT/PATIENT: XX
CONTACT PERSON: Dr. Trotter
INTERPRETER'S NAME: Lorene Joslin
TERMS: $25.00 PER HOUR / 2 HOUR MINIMUM
TOTAL DUE: $50.00

PLEASE COMPLETE THE QUESTIONS BELOW AND RETURN WITH YOUR INVOICE.

FEEDBACK: Was Interpreter sufficient? Yes No
Was communication understood? Yes No

Would you use this interpreter Yes No Only if needed
again?

COMMENTS: (Handwritten) The bill is paid with protest. We did not ask or require interpreter services for these calls. No arrangements were made beforehand with you. In future, unless we request services you will not be paid.
THANK YOU FOR USING LAKES COUNTRY INTERPRETER REFERRAL SERVICE!

Please remit to: LAKES COUNTRY REHABILITATION CENTER
Federal Tax ID #43-1035671
2626 West College Road
Springfield MO 65802

01-01845

JAN 19 1993

The Honorable Lane Evans
Member, U. S. House of Representatives
1640 North Henderson Street, Suite 1
Galesburg, Illinois 61401

Dear Congressman Evans:

This letter is in response to your inquiry on behalf of Allan Smith, who asks whether a public entity must comply with the Americans with Disabilities Act of 1990 (ADA) in existing buildings.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist your constituent in understanding the ADA's requirements. However, it does not constitute a legal interpretation, or legal advice, and it is not binding on the Department.

Your constituent asks whether public entities have ADA responsibilities in existing buildings. He states that he believes public entities have no ADA responsibilities unless an existing building undergoes "substantial remodeling." This understanding of the ADA is incorrect. The ADA has provisions that affect existing public facilities, and it has additional provisions that apply when a public facility is altered.

Title II of the ADA applies to the programs and facilities of state or local government, or "public entities." Title II, and the Department's regulation promulgated under that title, contain many provisions with which public entities must comply in existing facilities, affecting structural and non-structural aspects of each public entity's operations. The title II regulation and a Technical Assistance Manual interpreting the

regulation are enclosed with this letter. Some of the obligations of public entities in existing facilities may be found in the title II regulation in sections 35.140, 35.149-35.150, and 35.160-35.164, at pages 35719-35721, and in the corresponding preamble sections on pages 35707-35713. In the Technical Assistance Manual, discussion of obligations in existing facilities may be found at pages 9-22, and 35-39.

cc: Records, Chrono, Wodatch, Bowen, McDowney, Novich, FOIA, MAF
Udd:Novich:congress:evans

01-01846

With regard to structural aspects of existing public facilities, title II requires that programs of public entities be accessible to people with disabilities. This means that each program, when viewed in its entirety, must be accessible. It does not necessarily mean that each building must be made accessible. These provisions apply to public facilities even if no alterations are planned. You may consult section 35.150 of the enclosed regulation, at pages 35719-35720 and 35708-35709, for a discussion of the program accessibility requirement. In addition, when public facilities are altered, section 35.151 of the title II regulation requires that alterations affecting usability be done so as to make the altered area accessible, to the maximum extent feasible. Section 35.151 appears at pages 35720-35721 of the title II regulation, with corresponding preamble discussion at pages 35710-35711.

I hope this information is helpful to you in responding to your constituent.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

Enclosures (2)

01-01847

AL SMITH & ASSOCIATES
R R 3
GALESBURG, ILLINOIS 61401-9348

CONGRESSMAN LANE EVANS
1040 N. HENDERSON STREET
GALESBURG
ILLINOIS 61401

6 NOVEMBER 1992

FIRST AND FOREMOST: CONGRATULATIONS!

SECOND: WOULD YOU PLEASE DIRECT THE FOLLOWING REQUEST FOR INFORMATION TO THE PROPER AGENCY?

WE REQUIRE A LETTER FROM THE AGENCY RESPONSIBLE FOR ENFORCEMENT OF THE AMERICANS WITH DISABILITIES ACT THAT CLEARLY STATES WHETHER OR NOT A PUBLIC BODY CAN EVER BE FORCED TO COMPLY WITH THE PROVISIONS OF THE AMERICANS WITH DISABILITIES ACT IN AN EXISTING BUILDING.

WE BELIEVE THAT THE ONLY TIME A PUBLIC BODY CAN BE REQUIRED TO COMPLY WITH THE PROVISIONS OF THE AMERICANS WITH DISABILITIES ACT IN AN EXISTING BUILDING IS DURING A PERIOD OF "SUBSTANTIAL REMODELING".

WE ALSO UNDERSTAND THAT "GOOD FAITH" EFFORTS MUST BE MADE TO CORRECT NON COMPLIANT AREAS. AN EXAMPLE OF "GOOD FAITH" EFFORT WOULD BE TO REPLACE AN EXISTING DEFECTIVE DRINKING FOUNTAIN WITH A TYPE SUITABLE FOR USE BY THE ENTIRE PUBLIC.

THANK YOU FOR YOUR ASSISTANCE.

ALLAN L. SMITH

01-01848

JAN 19 1993

The Honorable Ernest F. Hollings
United States Senate
125 Russell Office Building
Washington, D.C. 20510-4002

Dear Senator Hollings:

In response to your inquiry on behalf of (b)(6) , I am enclosing a copy of our response to XX concerning the regulatory requirements of the Americans with Disabilities Act for slip resistance of floors.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

Enclosure

cc: Records; Chrono; Wodatch; McDowney; Harland; FOIA; MAF.
:udd:jonessandra:hollings.cgl

01-01849

(b)(6)
XX
Columbia, South Carolina 29224

Dear XX

This letter responds to your inquiry concerning the regulatory requirements of the Americans with Disabilities Act (ADA) for slip resistance of floors.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities with rights or obligations under the Act. This letter provides informal guidance to assist your constituent in understanding the ADA accessibility standards. However, this technical assistance does not constitute a legal interpretation of the statute and it is not binding on the Department.

Section 4.5.1 of the Americans with Disabilities Act Accessibility Guidelines (page 35628 of the enclosed document) requires ground and floor surfaces along accessible routes and in accessible rooms and spaces to be stable, firm, and slip-resistant. There are no enforceable standards for coefficients of friction in the regulations. The Appendix to the Guidelines, which is advisory only, discusses recommended coefficients of friction in section A4.5.1 (page 35678). Because coefficients of friction for flooring materials in place can be affected by water, cleaning compounds, or other factors, and because it is difficult to measure these coefficients under varying environmental conditions, the recommended coefficients are provided only as advisory guidance and not as regulatory requirements.

cc: Records; Chrono; Wodatch; McDowney; Harland; FOIA; MAF.
:udd:mercado:congltrs:hollings.ewh

01-01850

Additional information regarding slip-resistance is available from the Access Board by calling 800-USA-ABLE and requesting its publication titled "Slip-Resistant Surfaces." In addition, the Department of Justice maintains a telephone information line to provide technical assistance regarding the rights and obligations of individuals, businesses, agencies, and others covered or protected by the ADA. This technical assistance is available by calling 202-514-0301 (voice) or 202-514-0383 (TDD) between 1:00 p.m. and 5:00 p.m., Monday through Friday.

I hope the information we have provided is helpful to you.

Sincerely,

John L. Wodatch
Chief
Public Access Section

Enclosure

01-01851

(b)(6)
XX
Columbia, SC 29224
XX

The Honorable William Barr
U.S. Attorney General
U.S. Department of Justice, Room 5111
10th and Constitution Ave. N.W.
Washington, D.C. 20530 November 10, 1992

Dear Sir:

We are greatly concerned about the apparent lack of enforcement by the Justice Department of the slip-resistant floor requirement of the Americans With Disabilities Act of 1990. XX has called on hundreds of businesses throughout the eastern part of South Carolina (Columbia to Charleston) in an effort to bring a safer environment to these organizations XX(b)(6) In many cases XX tested the floors for the coefficient of friction with a slip meter. Virtually none of the floors tested comply with the ADA 0.6 coefficient of friction standard for public-access facilities set forth in the Act and most are not even close. Even though the law called for all work to have been completed by January of 1992, XX have been told by businessmen that they will only correct their problems when it becomes expedient to do so. (meaning enforcement by your organization.) Several have even gone so far as to XX .

It is difficult for me to write this letter XX
XX problem and we would
XX these businesses to comply with the law. The complete lack of response on the part of the business community however, has prompted me to write. XX
XX

We would appreciate knowing what plans you have for enforcing the law.

Sincerely,
(b)(6)
XX

cc: Senator Strom Thurmond
Senator Ernest Hollings

01-01852

(STAMP) JAN 19 1993

The Honorable John F. Kerry
United States Senator
One Bowdoin Square
Tenth Floor
Boston, Massachusetts 02114

Attn: Ms. Bonnie Cronin

Dear Senator Kerry:

In response to your inquiry on behalf of John Ness, I am enclosing a copy of our response to Mr. Ness, concerning requirements for permanent signs under title III of the Americans with Disabilities Act (ADA).

I hope this information is helpful to you and your constituent.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

Enclosures (2)

cc: Records, Chrono, Wodatch, Lusher, McDowney, FOIA, MAF
data2:Udd:mercado:congltrs:kerry.rhl

01-01853

JAN 19 1993

Mr. John Ness
Vice President
Merrimack Engraving and Marking Company, Inc.
P.O. Box 424
Methuen, Massachusetts 01844

Dear Mr. Ness:

This letter is in response to your letter concerning requirements for permanent signs under title III of the Americans with Disabilities Act (ADA).

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities that are subject to the Act. Therefore, this letter provides informal guidance to assist you in understanding the ADA's requirements. However, this technical assistance does not constitute a legal interpretation by the Department and it is not binding on the Department.

In general, the Department's standard for accessible design, contained as Appendix A to our title III regulation, does not require that signs be provided in buildings and facilities. When signs are provided in a building, section 4.1.3(16) of the standard requires that certain types of signs comply with specific characteristics intended to accommodate persons with varying degrees of visual impairments. Signs designating permanent rooms and spaces are required to have raised and Brailled numbers and characters, making them tactually readable. In addition, elevator car controls, floor markings on elevator hoistways, and elevator identification adjacent to emergency communication, are also required to be tactually readable.

Because tactual signs are intended to be used by persons who are blind or severely visually impaired, strict requirements for the location and placement of such signs exist to ensure ease of location and use. The requirements apply to the room numbers portions of all permanent signs, including those for offices, kitchens, hotel rooms, classrooms, and any other type of room

cc: Records, Chrono, Wodatch, Lusher, McDowney, FOIA, MAF
Udd:Mercado:congltrs:kerry.rhl

that has a room number, as well as signs at exits and toilet rooms. The requirements for tactual signs do not apply to signs that provide information about the room or space such as the function or purpose nor to temporary signs that may provide the name of the current occupant or user of a space.

The signage requirements contained in the Department's standard apply to new buildings intended for first occupancy after January 26, 1993 or any building for which alterations were initiated after January 26, 1992. Further, existing public accommodations must undertake barrier removal in existing facilities where it is readily achievable. The Department's recommended priority list includes providing raised character and Brailled signs in its second highest category.

I hope that this information is helpful to you.

Sincerely,

John L. Wodatch
Chief
Public Access Section

01-01855

MEMCO
MERRIMACK ENGRAVING & MARKING CO., INC.
P.O. BOX 424 (508) 686-4777
METHUEN, MA 01844 FAX: (508) 681-0909
November 23, 1992

Bonnie Cronin
Office of Senator John Kerry
1 Bowdoin Square 10th Floor
Boston, MA 02114

Dear Bonnie,

In response to our telephone conversation last Friday, I am enclosing the information I received about permanent room sign requirements for the Americans with Disabilities Act.

A problem has risen due to a letter written by Assistant Attorney General John Dunne. In a letter he wrote to Michael J. Davis, Editor of the Engravers Journal (a trade publication), Mr. Dunne states that the only rooms and areas considered permanent are: mens and womens restrooms, room numbers and exits. Mr. Dunne refers Mr. Davis to page 59 of the Title 3 Technical Assistance Manual. When you look at that page, it clearly states that what Mr. Dunne has listed as the only permanent rooms are merely some examples of permanent rooms and areas. Mr. Dunne neglected to include the eg. before his list of rooms and areas.

I question as to why elevators, stairwells, business offices, kitchens, etc. would not be considered permanent rooms or areas. Section 4.30.4 of the Federal Register Vol. 56, No. 144 Part 3 of the Americans with Disabilities Act requires that all permanent rooms or areas be designated with a sign that contains raised lettering, grade 2 braille and, when applicable, the appropriate international symbol.

All the information I have heard and read about the A.D.A. has been stressing the fact that this law is intended to allow all handicapped people become more independent by removing physical and communication barriers. If that is the case, then wouldn't it make sense to identify all rooms and areas with raised lettering and grade 2 braille? This would allow a handiapped person to move independently throughout hospitals, hotels, restaurants and the like.

This matter greatly concerns me due to the fact that my company is a small family-run business and we have invested a great deal of time and money to manufacture signs to comply with the A.D.A. If it were a case of the law being amended, we could understand Mr. Dunne's letter, but it is his error that now has the Justice Department considering just three types of rooms to be permanent
rooms.

I hope that something can be done to correct this error and I will look forward to hearing from you regarding this matter. Thank you for your time and cooperation.

Respectfully,

John Ness
Vice President

01-01856

(STAMP) JAN 26 1993

DJ 202-PL-16

Mr. J. Keith Ausbrook
Collier, Shannon & Scott
3050 K Street, NW
Washington, DC 20007

Dear Mr. Ausbrook:

This letter is in response to your inquiry on behalf of the American Car Rental Association ("ACRA") to determine whether its members must provide vehicles equipped with hand controls when doing so would be readily achievable, and to identify the circumstances under which providing vehicles equipped with hand controls would be readily achievable.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist you in understanding the ADA's requirements. However, it does not constitute a legal interpretation or legal advice and it is not binding on the Department of Justice.

Title III of the ADA imposes certain obligations on places of public accommodation. The Act lists twelve types of entities as places of public accommodation, including the category of rental establishments. Please see the enclosed title III regulation at section 36.104 on pages 35594 and 35551 for more on the definition of a place of public accommodation.

The owners and operators of places of public accommodation may not discriminate on the basis of an individual's disability when providing goods and services to that person. To prevent such discrimination, the owners and operators must remove barriers to accessibility of their goods and services if removal is readily achievable, i.e., easily accomplished and able to be carried out without much difficulty or expense. Installation of

vehicle hand controls is an example included in the title III regulation of a step towards barrier removal. Please see the regulation at section 36.304 on page 35597 and pages 35568-70 for further discussion.

cc: Records, Chrono, Mobley, Wodatch, FOIA, Friedlander, Breen
udd:Mobley:ACRA.Letter

01-01857

The failure to provide hand controls is considered a barrier that must be removed if providing hand controls is readily achievable. Whether it is readily achievable depends on a host of factors such as those mentioned in your letter at page two. Your main concern appears to be the cost of obtaining and installing hand controls. As cited above, expense is one factor that may properly be weighed in determining whether ACRA's members must obtain and install hand controls on rental cars. The Department has declined to establish any kind of numerical formula for determining whether an action is readily achievable. Instead, the Department has approved a flexible case-by-case balancing of the listed factors. Please see the enclosed title III regulation at section 36.104 on pages 35594 and 35554 for further discussion.

The readily achievable standard also addresses legitimate safety considerations. To the extent that certain vehicle models cannot safely be fitted with hand controls, provision of hand controls on those vehicles is not readily achievable. However, for a safety concern to be considered legitimate it must be based on actual risks and must be necessary for the safe operation of the services provided.

Another factor to be considered under the readily achievable standard is whether or not the customer has provided the rental car company with adequate notice. What constitutes adequate notice will vary depending on factors such as the remoteness of the location, the availability of trained mechanics, the availability of hand controls, and the size of the fleet. For example, notice of an hour or less may be adequate at a large city site where it is readily achievable to stock hand controls and to train mechanics in how to install them properly. On the other hand, notice of two days might be inadequate for a small, rural site where it is not readily achievable to keep hand controls in stock and where there is only a part-time mechanic who has been trained in the proper installation of controls. These examples should not be construed as hard and fast rules; in any given situation, a wide variety of factors must be weighed to determine whether barrier removal is readily achievable.

ACRA members should note that the obligation to engage in readily achievable barrier removal is a continuing one. Over time, barrier removal that initially was not readily achievable may later be required because of changed circumstances. For example, a site that has a full-time trained mechanic only during the summer months may have to shorten the notice period it requires of its customers during those months.

I have also enclosed this Department's Title III Technical Assistance Manual which was written to guide individuals and entities having rights and obligations under the Act toward a
01-01858

fuller understanding of the law. Pertinent discussion is found at page two (definition of a place of public accommodation) and pages 28-32 (readily achievable barrier removal).

I hope this information is useful to you in understanding the requirements of the ADA.

Sincerely,

John L. Wodatch
Chief

Enclosures (2)
Title III Technical Assistance Manual
Title III Regulation

01-01859

Collier, Shannon & Scott
Robert A. Collier (1917-1984) Attorneys-at-Law Kathleen Weaver Cannon
Thomas F. Shannon Daniel J. Harrold
William W. Scott 3050 K Street, N.W. T. Michael Jankowski
David A. Hartquist Mary T. Staley
R. Timothy Columbus Washington, D.C. 20007 Robert M. Huber
Lauren R. Howard R. Randal Black
Paul D. Cullen Marcy M. Rehberger
Kathleen E. McDermott Telephone: (202) 342-8400 William A. Henry
Michael D. Sherman Telecopier: (202) 338-5534 J. Keith Ausbrook
Mark L. Austrian Robin A. Fastenau
John B. Williams Writer's Direct Dial Number Robin H. Gilbert
Paul C. Rosenthal Martin A. Wright
James R. Loftis, III William M. Guerry, Jr.
John L. Wittenborn Bernard A. Nigro, Jr.
Jeffrey L. Leiter (202) 342-8583 Dawnmarie D. Sanok*
Michael R. Kershow Carolyn O. Tillman
Jeffrey S. Beckington Kerrie L. Hook
Judith L. Oldham January 31, 1992 Alexander H. Pitofsky
Jeanne M. Forch Virginia R. Metallo
Laurence J. Lasoff Joanna K. McIntosh
Christopher J. MacAvoy Catherine A. Micklitsch
Patrick J. Coyne Sean L. Collin**
Karen M. Lockwood Andrea B. Wenderoth*
Dennis J. Whittlesey Jason M. Branciforte
Douglas W. Charnas Stephen A. Jones
William C. MacLeod* Alan A. B. McDowell*
Sean F. X. Boland William W. Funderburk, Jr.*
Patrick B. Fazzone* Carole Klein
K. Michael O'Connell Lisa A. Jose*
Harold W. Furman II* Jeffrey S. Longsworth*
William J. Rodgers John E. Villafranco*
Elise Kirban
RESIDENT IN AUSTRALIA D. Hamilton Peterson
*NOT ADMITTED IN D.C.

Mr. Phillip Breen
Office on the Americans with Disabilities Act
Civil Rights Division
United States Department of Justice
Washington, D.C. 20530

Dear Mr. Breen:

The American Car Rental Association ("ACRA") respectfully requests

that the Department of Justice ("DOJ") provide technical assistance in ensuring that its members comply with certain provisions of the public accommodations section of the Americans with Disabilities Act, Pub. L. 101-336, 104 Stat. 327 (1990) ("ADA") and the regulations issued thereunder, which became effective on January 26, 1992. 56 Fed. Reg. 35,543 (1991). Specifically, ACRA seeks (1) to determine whether its members must provide vehicles equipped with hand-controls when doing so would be readily achievable and (2) to identify the circumstances under which providing vehicles equipped with hand-controls would be readily achievable.

First, conflicting provisions of the regulations raise the question of whether car rental companies must provide vehicles equipped with hand-controls even if doing so would be readily achievable. On the one hand, Section 36.304(b)(21) identifies the installation of vehicle hand-controls as a barrier removal that is required if readily achievable. On the other hand, Section 30.307 specifically states that a public accommodation is not required to alter its inventory to include special goods that facilitate use by individuals with disabilities. Rental cars equipped with hand-controls could be considered altered inventory that facilitate use by individuals with disabilities. While car rental companies have historically made vehicles equipped with hand-controls

available whenever possible, the extent of the obligation to provide such vehicles is rendered uncertain by these two provisions of the regulations. ACRA seeks your assistance in resolving this uncertainty.

Second, if providing vehicles equipped with hand-controls is required if readily achievable, ACRA seeks to identify the relevant factors that apply to this industry in determining whether providing vehicles equipped with hand- controls is readily achievable. The ADA and the final regulations state that in determining whether any action is readily achievable the factors to be considered include:

> (1) the nature and cost of the action;
> (2) the overall financial resources of the site or sites involved in the action; the number of persons employed at the site; the effect on expenses and resources; legitimate safety requirements that are necessary for safe operation, including crime prevention measures; or the impact otherwise of the action upon the operation of the site;
>
> (3) the geographic separateness, and the administrative or fiscal relationship of the site or sites in question to any parent corporation or entity;
>
> (4) if applicable, the overall financial resources of any parent corporation or entity; the overall size of the parent corporation or entity with respect to the number of its employees; the number, type, and location of its facilities; and
>
> (5) if applicable, the type of operation or operations of any parent corporation or entity, including the compensation, structure, and functions of the workforce of the parent corporation.

56 Fed. Reg. at 35,594 (1991) (to be codified at 28 C.F.R. S 36.104). Under these requirements, ACRA seeks to identify with greater specificity the factors that are most relevant to providing vehicles equipped with hand-controls by car rental companies.

Clearly, cost is a significant factor. The equipment costs approximately $200 and the installation and removal by a trained mechanic cost about $28, which is the average daily rental charge. While the cost of the equipment may be spread over many rentals, the installation and removal costs are incurred every time the vehicle must be so equipped. These recurring costs differentiate this type of accommodation from other "barrier removals" such as widening doors or removing carpeting. Thus, ACRA seeks to determine whether the length of the rental is relevant in evaluating whether providing a vehicle equipped with hand- controls is readily achievable. What

is readily achievable for a week-long rental may not be readily achievable for a day's rental.

01-01861

Similarly, an additional cost of providing the hand-controls may include the cost of delivery of the equipment from another location. May ACRA members properly consider this cost in determining whether providing the vehicle is readily achievable?

ACRA is further concerned that even if the cost is not prohibitive, the availability of the equipment may be limited. With notice of at least 48 hours, most car rental companies believe that they would be able to obtain the equipment by overnight delivery. However, if ACRA members receive no notice or less than 48 hours notice, they may not be able to provide the equipment at all because the equipment is not kept on site or is already in use by another customer. Moreover, at least 48 hours notice assures that a mechanic is available to install the equipment; many locations, usually the smaller ones, do not have a mechanic continuously on-site or immediately available to perform the installation. Thus, ACRA seeks to determine whether notice is relevant in evaluating whether such an accommodation is readily achievable.

Finally, ACRA seeks to determine how many hand-controls a location must have on site based on all the relevant factors. ACRA members vary greatly in their operations. However, the availability of a mechanic, the overall financial resources, the impact on expenses of making the accommodation are almost all dependent upon the number of vehicles at a location and the historical frequency of requests for this equipment. Is there a specific number of hand-controls that ACRA members should have immediately available based on the size of the location and the historical frequency of requests?

ACRA looks forward to working with you to resolve these issues. Thank you for your consideration.

Sincerely,

J. KEITH AUSBROOK
Counsel for the
American Car Rental Association

01-01862

DJ 202-PL-332 JAN 1993

Mr. C. Todd Jones
Assistant Counsel for
Industrial Rehabilitation and ADA Issues
National Association of Rehabilitation Facilities
Post Office Box 17675
Washington, D.C. 20041

Dear Mr. Jones:

This letter is in response to your inquiry of September 21, 1992, about the definition of "public entity" under the Americans with Disabilities Act ("ADA") and the application of that definition to institutions providing medical, vocational, and residential services.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist you in understanding the ADA's requirements. However, it does not constitute a legal interpretation or legal advice, and it is not binding on the Department of Justice.

Your letter inquires whether public funding alone converts an otherwise private entity into a public entity for purposes of the ADA, and what other factors the Department of Justice might consider in determining whether a particular entity is public or private. In response, I wish to confirm that the answer you received over the ADA Information Line is correct: public funding alone does not convert an otherwise private entity into a public entity.

In general, the Department of Justice looks to several factors in determining whether an entity that has both public and private features is covered by title II or title III. These

include, but are not necessarily limited to:

cc: Records, Chrono, Wodatch, Breen, Contois, Frieldander, FOIA
Udd:Contois:policyletters:jones

01-01863

1) whether the entity is operated with public funds;

2) whether the entity's employees are considered government employees;

3) whether the entity receives significant assistance from the government by provision of property or equipment; and

4) whether the entity is governed by an independent board selected by members of a private organization, or a board elected by the voters or appointed by elected officials.

In many cases, different entities engaged in providing the same service may have different obligations. For instance, if a public entity, such as a State or local government, provides a service or program through a contract with a private entity, the public entity would be required to make sure that the program or service is accessible to persons with disabilities under the requirements of title II, while the private entity, if it qualifies as a public accomodation, would have to comply with the requirements of title III.

I have enclosed a copy of the Department of Justice's Title II Technical Assistance Manual. The definition of a public entity is discussed on page one, and examples of its application to particular situations are given on page two.
I hope this information is useful to you in understanding the requirements of the ADA.

Sincerely,

John L. Wodatch
Chief
Public Access Section

Enclosure
Title II Technical Assistance Manual

01-01864

NATIONAL ASSOCIATION OF REHABILITATION FACILITIES
James S. Liljestrand, M.D. Robert E. Brabham, Ph.D.
President Executive Director

September 21, 1992

John Wodatch, Director
Office of the Americans with
Disabilities Act
Civil Rights Division
United States Department of
Justice
P.O. Box 66118
Washington, DC 20035

Dear Mr. Wodatch,

I am writing to confirm my telephone conversation on September 14, 1992 with Lucille Johansen on the Americans with Disabilities Act Information Line. She asked me to write to the Office to receive an official response to my query.

The National Association of Rehabilitation Facilities (NARF) is the principal national membership organization of institutions providing medical, vocational, and residential services. I am writing on their behalf to confirm an interpretation of the Americans with Disabilities Act as it relates to our facilities that work with state and local entities.

ADA and its implementing regulations define a "public entity" as "any department, agency, special purpose district, or other instrumentality of a State or States or local government." (emphasis added) ADA S 201(1)(B), 28 C.F.R. SS 35.104, 36.104. Many NARF service providers receive funding and other support from state and local governments and agencies. The issue for those providers is whether they are "other instumentalit[ies]" based on state or local funding or any other support, making them public entities, or whether they are private entities, being defined as an entity other than a public entity. ADA S 301(6), 28 C.F.R. S 36.104. As you know, this distinction is critical for determining if an entity is governed by ADA Title II as a public entity or ADA Title III as a private entity.

During our telephone conversation, Ms. Johansen assured me that funding alone would not give rise to "public entity" status for a service provider as an "other instrumentality." She stated that this section was intended to apply to corporations owned by governments. NARF agrees with this interpretation of the law. The point in need of guidance, however, is in this principle's application.

P.O. Box 17675, Washington, D.C. 20041 * (703) 648-9300 * Fax: (703) 648-0346

01-01865

For example, a corporation to promote and market services and products created by providers for use by state agencies might be created with the State itself as a minority or majority shareholder. The question to be determined in that case and, more generally, is at what point does an organization become an instrumentality and what factors would the Department of Justice examine in making that determination.

I realize that this determination could also have implications for the application of section 504(B)(1)(A) of the Rehabilitation Act, which has language similar to that used in ADA. Your comments on the relationship between these two provisions would also be of service to our providers.

NARF wishes to provide guidance to NARF member institutions based the Department of Justice's interpretation of ADA. If any further information is required for your response, please let me know.

Cordially,

C. Todd Jones
Assistant Counsel for
Industrial Rehabilitation
and ADA Issues

01-01866

202-PL-289 JAN 26 1993

Mr. Ed Semchenko
Lockwood Greene Engineers, Inc.
1500 International Drive
P.O. Box 491
Spartanburg, South Carolina 29304

Dear Mr. Semchenko:

This letter is in response to your inquiry about employee work areas under the Americans with Disabilities Act (ADA).

You asked whether section III-7.3110 of the Title III Technical Assistance Manual, which provides that building owners may not construct inaccessible employee areas in new buildings based on a belief that persons who use wheelchairs cannot perform the types of job that will be performed in those areas, is inconsistent with ADA provisions.

The discussion to which you refer relates only to new construction and alterations of work areas in places of public accommodation and commercial facilities. The ADA regulation and accessibility guidelines require that work areas be designed and constructed so that persons with disabilities may approach, enter, and exit the areas. They do not require that each individual work station be made fully accessible at the design and construction phase.

The ADA sections that you cite as potentially inconsistent with the statement in the Technical Assistance Manual focus on employment discrimination and barrier removal in existing facilities. Individual capabilities, of course, are relevant in determining whether with reasonable accommodation an individual with a disability is qualified for a particular job. In some cases, existing work areas and individual work stations will need to be made accessible as a reasonable accommodation.

cc: Records, Chrono, Wodatch, Breen, Novich, Friedlander, FOIA
Udd:Novich:policy:289

01-01867

I hope this information has been helpful to you.

Sincerely,

John L. Wodatch
Chief
Public Access Section

01-01868

LOCKWOOD GREENE
Planners Engineers Architects Managers
Lockwood Greene Engineers, Inc.
1500 International Drive
P.O. Box ILLEGIBLE Spartanburg, SC 29304
Main (803)578-2000 Fax (803)599-0436

August 6, 1992

Mr. John R. Dunne
Assistant Attorney General
Civil Rights Division
U. S. Department of Justice
P. O. Box 66118
Washington, DC 20035-6118

Dear Mr. Dunne:

Thank you for sending me a copy of your Title III Technical Assistance Manual. It has been a great aid to us. I do however have an issue that I would like clarified.

Article III-7.3110 Paragraph 5 of the Technical Assistance Manual reads in part as follows:

> What if an owner of a building believes that an individual who uses a wheelchair could never do the kind of job that will be performed in the particular area? Does the area still have to be made accessible? Yes. The ADA does not permit such assumptions to be made about the capabilities of individuals with disabilities.

As an architect dealing primarily with industrial clients, I often deal with work areas which require very heavy manual labor in wet or otherwise difficult working conditions. These areas are found in some textile and food processing facilities and do not appear to be practical for wheelchair employees.

ADA Title I Sec. 102(b)6 reads as follows:

> (6) using qualification standards, employment tests or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities unless the standard, test or other selection criteria, as used by the covered entity, is shown to be job-related for the position in question and is consistent with business necessity;. . .

ADA Title I Sec 103(a) says that screening which is ". . .job related and consistent with business necessity..." may be a defense to a charge of discrimination.
01-01869

ADA Title III Sec 301(9) reads in part as follows:

> In determining whether an action is readily achievable, factors to be considered include--...(D) the type of operation or operations of the covered entity, including the composition, structure and functions of the workforce of such entity;...

To me, the wording in the Technical Manual is not fully consistent with the provisions of the law. It appears that the ADA does provide for an evaluation of the capabilities of individuals with disabilities. Please clarify this issue so we can properly carry out the intent of the ADA.

Thank you for your service. We appreciate your response in this matter.

Sincerely,

LOCKWOOD GREENE

Ed Semchenko

ADADUNNE.LTR

01-01870

T. 12-18-92

DJ 202-PL-153 JAN 26 1993

Mr. Donald E. Sievers
D.E. Sievers & Associates, Ltd.
National Association of the Deaf
6309 Bradley Boulevard
Bethesda, Maryland 20817-3243

Dear Mr. Sievers:

This letter responds to your correspondence expressing concern about a specific product that is being marketed as a way to accommodate persons with hearing impairments as required by the Americans with Disabilities Act.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities that are subject to the Act. This letter provides informal guidance to assist you in understanding the ADA accessibility standards. However, this technical assistance does not constitute a legal interpretation of the application of the statute, and it is not binding on the Department.

We appreciate your concern about this product and the material that you forwarded with your letters. However, as Ms. Ruth Hall Lusher of my staff informed you by telephone, we are unable to comply with your request to contact the manufacturer of this product. The Department does not evaluate or rule on the legality of particular products. Further, it is important to point out that requirements contained in section 9.3.1 of the ADA Accessibility Guidelines (cited in your letter), like all provisions contained in the Guidelines, apply only to elements that are "built-in" as part of a building or facility. The product that you discuss is a portable device provided as an auxiliary aid and is therefore not covered by section 9.3.1 of

the Guidelines.

The Department may, however, as part of a complaint investigation, determine that discrimination has occurred because a portable device provided by a public accommodation is not effective in providing equivalent service to persons with

cc: Records, Chrono, Wodatch, Breen, Lusher, FOIA, Library
udd:mercado:policy.letters.certif:lusher.wodatch.sievers

01-01871

disabilities. Although the requirements of the Guidelines do not apply to portable devices provided as auxiliary aids, the Guidelines can provide helpful guidance in determining whether particular devices are as effective as built-in equipment.

I hope that the above information is helpful.

Sincerely,

John L. Wodatch
Chief
Public Access Section

01-01872

D.E. SIEVERS & ASSOCIATES, LTD.
Fire Safety Consultants
National Association of the Deaf

April 17, 1992

Mr. John Wodatch
Director, Office on ADA
Civil Rights Division
Department of Justice
320 First Street N.W.
Washington, D.C. 20001

Dear Mr. Wodatch:

Enclosed please find our letter of March 11,1992, addressed to Mr. James Raggio, General Counsel for the ATBCB. During a conversation today, discussing the subject of that letter, he suggested that we contact you, because he considered it a matter for the Department of Justice.

A subsequent conversation with the very knowledgeable, Ms. Ellen Harland, of the Department's staff, concluded with a suggestion of a review of the letter and its enclosure and a determination by you.

A false sense of security is generated to both the owner of the place of public accommodation and the deaf patron when safety in accordance with the ADA is expressly implied. The Final Rule prohibits the connection of visual notification with visual alarm appliances. Auxilliary aids not meeting the requirements of the Final Rule or Guidelines, and absent standards, do not comply with the ADA, and provide a false sense of security to people who think they do.

In as much as we are very much concerned with effective early warning to deaf persons, the danger of loss of life, and compliance with the ADA, in places of public accommodation, we request that you direct American Phone Products, Inc. to cease and desist communicating, in any way, that their product "Alert-Plus" provides compliance with the ADA. In addition, we request that you further direct American Phone Products, Inc. to contact all places of public accommodation where "Alert-Plus" has been sold, and inform each, in writing, that "Alert-Plus" does not, in fact, provide compliance with the ADA.

We respectfully ask that you take immediate action in this matter because of the very real danger of loss of life, as well as noncompliance with the ADA. We would appreciate a copy of your ac-

tion at your earliest possible convenience.

Sincerely,

Donald E. Sievers
DES: mo
cc: Charles Estes, Executive Director, NAD
Marc Charmatz, NAD Legal Defense Fund
6309 Bradley Blvd. - Bethesda, MD 20817-3243 - Voice (301) 469-0278 - TDD
(301)
469-0524

01-01873

D.E. SIEVERS & ASSOCIATES, LTD.
Fire Safety Consultants
National Association of the Deaf

March 11, 1992

Mr. James Raggio
General Counsel
Architectural & Transportation Barriers Compliance Board
1111 Eighteenth Street N.W.
Washington, D.C. 20036

Dear Mr. Raggio:

36 CFR Part 1191 Americans With Disabilities Act (ADA) Accessibility Guidelines for Buildings and Facilities; Final Guidelines Section 9.3.1 and 28 CFR Part 36 Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities; Final Rule Section 9.3.1 both state "In sleeping rooms required to comply with this section, auxillary visual alarms shall be provided and comply with 4.28.4. Visual notification devices shall be provided in units, sleeping rooms and suites to alert room occupants of incoming telephone calls and a door knock or bell. Notification devices shall not be connected to auxillary visual alarm signal appliances. ..."

Some manufacturers, in attempts to convince members of the lodging industy to purchase products allegedly complying with the ADA Guidelines and Final Rule, needlessly risk the lives of deaf and hard of hearing persons. People who depend on visual alarms warning them of the danger of death or injury due to fire do not have time, in an emergency, to determine which feature of an combination device is activating, if it is correct, and working properly. Such devices threaten the life safety of deaf people who rely upon visual alarms which are duly tested and listed by a nationally recognized testing laboratory for the purpose of warning of fire.

We have a compelling concern that products combining door knock and telephone notification with visual alarms in one unit violates Section 9.3.1 above. Conversations with members of the ATBCB technical staff concur with our findings and recommended this letter requesting an official ruling from you.

Enclosed please find literature describing a product called "Alert-Plus" which expressly implies compliance with the ADA while at same time pictures and describes the combined features of smoke detector alarm activation with telephone and door knocking notifi-

cation. We therefore request that you rule whether this device is in compliance with section 9.3.1 of the Guidelines and Final Rule and advise us accordingly. In addition, if you find that the device does not meet the qualifications of the Guidelines and Final Rule, we request that you also notify the manufacturer of your findings and direct the manufacturer to cease and desist communicating that the product enables the transient lodging facility to comply with the ADA.

6309 Bradley Blvd. * Bethesda, MD 20817-3243 * Voice (301) 469-0278 * TDD (301) 469-0524

01-01874

We realize that you are faced with many issues dealing with the ADA and its compliance requirements. At the same time, the life safety of deaf people is threatened. We would appreciate your ruling as soon as possible.

Sincerely,

Donald E. Sievers

DES:mo

Enclosure

cc: Charles Estes, Executive Director
Marc Charmatz, Legal Defense Fund

01-01875

IS YOUR PROPERTY
ADA COMPLIANT?

(picture)

ALERT-PLUS* provides an EASY, QUICK, SIMPLE and INEXPENSIVE way of accommodating your hearing impaired guests as stipulated by the Americans with Disabilities Act.

01-01876

(PICTURE)

High Intensity strobe light alerts guests

Powerful bed shaker alerts asleep guests

Room noise indicator assures proper operating room noise environment.

Door transmitter easily clipped onto door

Sensitive microphone "listens" for the hearing impaired.

Easy to read and back-lighted panel with blinking lights informs guests to cause of activation.

Loud audio buzzer with volume and tone control.

Your hotel logo here.

Easy to read simple operating instructions.

Power on indicator.

One-touch button resets the unit after activation.

Battery back-up (batteries not included)

Amplification handset with volume control. (optional)

EASY! No additional wiring or reconstruction is required.

QUICK! Just plug it in. All-in-one unit alerts guests with bright strobe light, bed shaker and loud audio buzzer to:

* Smoke detector alarm activation
* Telephone ringing
* Door knocking
* Alarm clock sounding

A telephone amplification handset is also included. (optional)

SIMPLE! Self-contained in a briefcase for convenient storage and easy assignment during check-in.

INEXPENSIVE! Few units will satisfy the ADA requirements for the hearing impaired for your entire property.

ALERT-PLUS* makes your guests' stay convenient, secure and much more enjoyable.

AMERIPHONE 5192 Balsa Avenue, Suite #5
AMERICAN PHONE PRODUCTS, INC. Huntington Beach, CA 92619 (800) 874-3005

*patent pending

01-01877

D.E. SIEVERS & ASSOCIATES, LTD.
Fire Safety for the Hearing Impaired

Date:

FAX Transmission to: Name

Company/Organization

FAX Telephone Number

Voice Telephone Number

Via Third Party (if necessary)

Third Party FAX Number

Third Party Voice Number

Message to Recipient FAX Operator:

Number of Pages of this FAX Transmission (NOT INCLUDING THIS COVER PAGE)

IN CASE OF ANY DIFFICULTY, PLEASE ADVISE SENDER AT:

(301) 469-0278 Voice

(301) 469-0524 TDD

OUR FAX NUMBER IS (301) 469-7541

6309 Bradley Blvd * Bethesda, MD 20817-3243 * Voice (301)469-0278 * TDD(301) 469-0524

01-01878

D.E. SIEVERS & ASSOCIATES, LTD.
Fire Safety for Deaf and Hard of Hearing People

November 24,1992

Philip L. Breen, Esquire
Special Legal Counsel
Office on the Americans with Disabilities Act
Civil Rights Division
U.S. Department of Justice
320 First Street N.W.
Washington, D.C. 20001

Dear Mr. Breen:

On April 17, 1992 we addressed our concerns to Mr. John Wodatch regarding the compelling issue of potential loss of life by deaf and hard of hearing people and Section 9.3.1 of the Final Rule as it relates to the prohibition of linking notification devices with fire alarms.

In your letter of May 20, 1992, you assured us of an expeditious response. It has now been six months since your letter arrived. We are enclosing copies of our original correspondance and formally request a written response, within 10 working days, which would also address the concerns raised below.

Recognizing that Section 9.3.1 prohibits the combining of notification devices with visual alarms in new construction and alterations, and the absence of standards for existing buildings and auxillary aids, how can the Department allow the risk to life in existing buildings while prohibiting that risk in new construction and alterations? Does the Department intend to at least protect the hearing impaired public with a requirement that such products be tested and Listed by a nationally recognized testing laboratory (such as Underwriters Laboratories) if any feature includes visual warning for fire protection, for those products claiming compliance with the ADA?

This is a matter of compelling importance to deaf and hard of hearing people. May we please have your written response as indicated?

Very truly yours,
Donald E. Sievers

DES:mo
Enclosures

cc: Ms. Nancy Block, Executive Director, NAD
Marc Charmatz, Esq., NAD Legal Defense Fund
01-01879

FEB 1

The Honorable Conrad Burns
United States Senator
2708 First Avenue North
Billings, Montana 59101

Dear Senator Burns:

This letter is in response to your inquiry on behalf of a constituent who has a family member with a vision impairment who resides in a nursing home. The constituent reports that it is difficult for the resident to navigate from his bed to the bathroom due to his impairment and the location of the bathroom door in relation to his bed. You have inquired whether the Americans with Disabilities Act (ADA) has any applicability in this circumstance.

The ADA authorizes the Department of Justice to provide technical assistance to individuals or entities having rights or obligations under the Act. This letter provides informal guidance to assist your constituent in understanding the ADA's requirements. However, it does not constitute a legal interpretation and it is not binding on the Department.

The Department's ADA regulation includes many requirements intended to increase accessibility for persons with vision impairments, such as the provision of certain tactile and braille signs, audible alarms, and detectible warnings at transit platforms and hazardous areas. However, although the ADA does require that certain elements of a physical space be accessible, it does not mandate a specific floor layout. Instead, architects are allowed flexibility to conform to the needs of the space, while incorporating accessible elements.

cc: Records; Chrono; Wadatch; McDowney; Magagna; FOIA; MAF.
:udd:magagna:congress:burns

I have enclosed the Department's title III regulation implementing the ADA, which includes the ADA Accessibility Guidelines, for your reference. I have also included a copy of the Department's Title III Technical Assistance Manual. I hope this information will assist you in responding to your constituent.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

Enclosures (2)

01-01881

CONRAD BURNS
MONTANA

COMMITTEE:
COMMERCE SCIENCE, AND
TRANSPORTATION
ENERGY AND NATURAL RESOURCES
SMALL BUSINESS
SPECIAL COMMITTEE ON AGING

United States Senate
WASHINGTON, DC 20510-2603

November 9, 1992

Mr. John Wodatch, Director
Americans with Disabilities Act
Post Office Box 66738
Washington, DC 20035-9998

Dear John,

One of my constituents has contacted my office requesting information on barrier removal as it relates to the "Americans with Disabilities Act".

This constituent has informed my staff that a family member has recently been admitted to a nursing home. He apparently has a number of physical limitations, including limited eyesight. Our constituent tells us that the bathroom door enters into the room and towards the patient's bed; therefore, it is very difficult for him to see his way to the bathroom. They would like to know if the "Americans with Disabilities Act" has any rules or regulations that apply to this type of situation.

Any information or help you can provide my staff to enable us to assist in reaching a favorable solution will be greatly appreciated. Please direct any correspondence or questions regarding this inquiry to my office at:

Senator Conrad Burns
Attention: Connye Hager
2708 First Avenue North
Billings, Montana 59101
(406) 252-0550

Thank you for your assistance in this matter. If there is additional information you require, please feel free to contact Connye.

Sincerely,

Conrad Burns
United States Senator

CRB/clh
01-01882

FEB 1 1993

The Honorable Sam Nunn
United States Senator
75 Spring Street, S.W.
Suite 1700
Atlanta, Georgia 30303

Dear Senator Nunn:

This letter is in response to your inquiry on behalf of James L. Cherry, concerning the American National Standards Institute's technical specifications for the design of accessible buildings and facilities (ANSI A117.1-1992).

The Americans with Disabilities Act (ADA) authorizes the Department to provide technical assistance to individuals and entities that have rights or responsibilities under the Act. This letter provides informal guidance to assist you in responding to Mr. Cherry. However, this technical assistance does not constitute a determination by the Department of Justice of the rights or responsibilities of any individual under the ADA, and it is not binding on the Department of Justice.

The Department of Justice regulation implementing title III of the ADA establishes the requirements that govern the new construction of facilities subject to title III. The regulation adopts the ADA Accessibility Guidelines as the Federal accessibility standard for places of public accommodation and commercial facilities. The ADA does not require States to amend their building codes to incorporate the ADA Accessibility Guidelines, but it does establish a procedure by which States can request the Department to certify that their accessibility codes meet or exceed the ADA's requirements.

The ADA does not authorize the Department to certify model codes or other private sector standards, such as the American National Standards Institute, but the title III regulation provides that the Department will, upon request, provide

cc: Records; Chrono; Wodatch; McDowney; Blizard; FOIA; MAF.
:udd:blizard:control:nunn

01-01883

technical assistance to the ANSI committee and other private sector organizations that develop model accessibility standards and model codes to assist them in determining if their models are consistent with the requirements of the ADA. Even though we are reviewing a June draft of the ANSI A117.1 Standard at the request of the Council of American Building Officials, which serves as the secretariat for the ANSI A117.1 Committee, the Department has not received the Committee's final proposal so that it is not possible to determine whether the draft Standard will be consistent with ADA requirements. We plan to respond to the Council of American Building Officials inquiry as promptly as our resources permit.

In his letter, Mr. Cherry noted that he wants to recommend the adoption of the 1992 ANSI standard as the Georgia accessibility code because, in his view, it appears "to correct some glitches" in ADA Accessibility Guidelines. Mr. Cherry should be aware that compliance with the ADA Accessibility Guidelines is required by Federal law. The ANSI A117.1 committee is free to comment on, or request amendments to, the ADA Accessibility Guidelines; but no action by the ANSI committee, or by any State adopting the ANSI technical requirements, can relieve any individual of the obligation to comply fully with the requirements of the ADA. Any State Government that plans to seek certification of its accessibility code must ensure that its code requirements meet or exceed the requirements of the ADA established in the title III regulation.

I have enclosed a copy of the title III regulation and the Department's Technical Assistance Manual. The new construction and alteration requirements are addressed at pages 35599-35602 and 35574-35589 of the regulation, and pages 43-64 of the Manual. Certification is discussed at pages 35603-04 and 35590-35592 of the regulation, and pages 68-73 of the Manual.

I hope that this information is helpful to you in responding to your constituent.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

Enclosures (2)

01-01884

AMERICANS WITH
DISABILITIES
ASSOCIATION INC. James L. Cherry, J.D., Ph.D.
Founder - National Chairman
November 10, 1992

Honorable San Nunn
United States Senator
United States Senate
Washington, D. C.

RE: Department of Justice
Office of Americans With Disabilities Act

Dear Senator Nunn:

I am working with the Georgia Safety Fire Commissioner, State Fire Marshal and Department of Vocation Rehabilitation to craft some state legislation that would bring the state accessibility code for people with disabilities into conformity with the federal Americans With Disabilities Act of 1990 (ADA).

The existing Georgia access code incorporates by reference the 1986 version of the American National Standards Institution (ANSI - A117.1-1986) specifications for making buildings accessible to and usable by people with disabilities. Georgia's code for disability access does not conform with the federal law, and state or local officials are only authorized by law to approve construction plans based upon state law that is not in conformity with the ADA.

Since we had ANSI A-117.1-1986 standards placed in state law in 1987, the Americans with Disabilities Act was enacted in 1990 and the Americans with Disabilities Act Accessibility Guidelines (ADAAG) were promulgated by the DOJ and became effective on July 26, 1991. The ADAAG was an improvement over the 1986 accessibility standards developed by ANSI.

ANSI is a national consensus standard that is preferred by many construction officials, and now ANSI has revised its standards on accessibility to reflect and improve upon the ADAAG. Coincidentally, ANSI has a policy of reviewing ANSI accessibility standards every six years. Therefore, the 1992 ANSI revisions are in line with their review policy.

The revised ANSI A117.1-1992 version of the standards will be published in December, 1992. I reviewed an advance copy of the new ANSI A117.1-1992 and have determined that those standards

ADA-PAC
America's First Political Action Committee For People With Disabilities
625 Reds Circle Lilburn, Georgia 30247 (404) 921-5822
01-01885

may be superior to the ADAAG, since the ANSI accessibility standards appear to correct some glitches identified within the ADAAG that have now been in effect since 1991.

I am inclined to craft Georgia state legislation to incorporate the 1992 version of ANSI-A117.1 into state law, provided the U.S. Department of Justice determines that ANSI-A117.1-1992 standards are substantially equivalent to ADAAG, thereby establishing that compliance with ANSI-A117.1-1992 would constitute compliance with the accessibility requirements of the Americans with Disabilities Act of 1990.

The Department of Justice, Office of the Americans With Disabilities Act, has been reviewing this question since the advance copy of the 1992 ANSI A117.1 standards were made available in July 1992, but no findings have been reported.

To expedite our decision on which standard to use in a proposed new state law, we need a decision from the DOJ on two questions:

1. In the opinion of DOJ, does the ANSI A117.1-1992 accessibility standards meet or exceed the ADAAG standards?

2. Will the DOJ Certify that ANSI A117.1-1992 is substantially equivalent to the ADAAG for purposes of complying with the ADA? If so, when?

These decisions are needed soon in Georgia, because we are preparing legislation to be presented to the 1993 Georgia General Assembly. Specifically, I am asking for your timely help with an inquiry to the DOJ, Office of ADA to determine an answer to the above questions.

Thank you in advance for your assistance in this matter. Please call me at any time if you need further explanation of this situation.

Very truly,

James L. Cherry, J.D., Ph.D.
Chairman

JLC/rsc

01-01886

FEB 1

The Honorable Leon E. Panetta
Member, U. S. House of Representatives
380 Alvarado Street
Monterey, California 93940

Dear Congressman Panetta:

This is in response to your letter requesting information on behalf of (b)(6) concerning the applicability of the Americans with Disabilities Act (ADA) to restaurants.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist your constituent in understanding the ADA's requirements. It does not, however, constitute a legal interpretation and it is not binding on the Department.

As a place of public accommodation, restaurants are required to have nondiscriminatory policies and procedures, to make reasonable modifications in their policies, practices, and procedures to avoid discrimination against persons with disabilities, to provide effective communication with persons with disabilities, and to remove architectural barriers in existing facilities where it is readily achievable to do so. These requirements are set forth in Subparts B and C of the enclosed title III regulations, at pages 35595 to 35599.

The ADA imposes further accessibility requirements for new construction or alterations to existing facilities. For this purpose, the title III regulations adopt the ADA Accessibility Guidelines (Guidelines) promulgated by the Architectural and Transportation Compliance Board (Access Board). While the Guidelines apply to all new construction and alterations affected by the ADA, section 5.1 through 5.9 of the Guidelines also include specific provisions for restaurants and cafeterias.

cc: Records; Chrono; Wodatch; McDowney; Nakata; Magagna; FOIA;

MAF. :udd:nakata:congress.letters:panetta.3

01-01887

Subpart D of the title III regulations includes requirements for new construction and alterations of places of public accommodations at pages 35599 to 35602. The Accessibility Guidelines begin on page 35605. Section 5 dealing with the special design and building requirements for restaurants and cafeterias begins at page 35665 and section 2.2 dealing with equivalent facilitation is at page 35607.

Also enclosed is the Department's Title III Technical Assistance Manual, which may provide further assistance to your constituent.

I hope this information will be useful to you in responding to your constituent.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

Enclosures (2)

01-01888

LEON E. PANETTA
16TH DISTRICT, CALIFORNIA

CHAIRMAN:
HOUSE BUDGET COMMITTEE

Congress of the United States

COMMITTEES:
AGRICULTURE
HOUSE ADMINISTRATION
SELECT COMMITTEE ON HUNGER
STEERING AND POLICY
MAJORITY WHIP
FOR THE BUDGET

WASHINGTON OFFICE:
339 CANNON HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-0516
(202) 225-2861

DISTRICT OFFICES:
380 ALVARADO STREET
MONTEREY, CA 93940
(408) 649-3555

HOLLISTER, CA
House of Representatives
(408) 637-0500

SALINAS, CA
Washington, DC 20515-0516
(408) 424-2229

SAN LUIS OBISPO, CA
(805) 541-0143

December 11, 1992
SANTA CRUZ, CA
(408) 429-1976

TO: Assistant Attorney General
Office of Legislative Affairs
U.S. Department of Justice
Washington, D.C. 20530

ENCLOSURE FROM: No enclosures.

RE: XX (b)(6)
XX would like information about the ADA regulations about access to restaurants for handicapped customers. She would like to know if all restaurants are required to make themselves accessible to all handicapped customers, including people in wheelchairs.

Would you please provide me with information on this subject for (b)(6) .

Thank you for your assistance.
Thank you very much for your attention to this matter.

Sincerely,

LEON E. PANETTA
Member of Congress

PLEASE RESPOND TO ME AT:
380 Alvarado Street

Monterey, California 93940
Ken Christopher; (408) 429-1976
ATTENTION:
01-01889
T. 1/25/93
SBO:SK:ca
DJ 202-80-0

FEB 1 1993

The Honorable Charles S. Robb
United States Senator
1001 East Broad Street
Richmond, Virginia 23219

Dear Senator Robb:

This responds to your inquiry on behalf of your constituent, (b)(6) , concerning a Virginia statute that authorizes issuance of a special hunting permit that allows individuals with disabilities to shoot game animals from a stationary vehicle. Eligibility for the special permit is limited to individuals who are permanently unable to walk. XX asked whether, under the Americans with Disabilities Act (ADA), eligibility for the special permit would be extended to all individuals with mobility impairments.

The ADA authorizes the Department to provide technical assistance to entities that are subject to the Act. This letter provides informal guidance to assist you in understanding how the ADA may apply to the question raised by your constituent. This technical assistance, however, does not constitute a determination by the Department of Justice of your constituent's rights or responsibilities under the ADA and does not constitute a binding determination by the Department of Justice.

The Department's regulation implementing title II of the ADA, which applies to all programs, services, and activities of State and local governments, prohibits a public entity from discriminating against qualified individuals with disabilities in the benefits and services that it provides. 28 C.F.R. pt. 35. Section 35.130(c) of the regulation, however, permits a public entity to offer benefits to individuals with disabilities, or a particular class of individuals with disabilities, that it does not offer to individuals without disabilities. The purpose of this provision is to allow State and local governments to provide special benefits, beyond those required by the ADA, that are limited to individuals with disabilities or a particular class of individuals with disabilities, without thereby incurring

additional obligations to persons without disabilities or to other classes of individuals with disabilities.

cc: Records, CRs Friedlander, Kaltenborn.robb, FOIA, Breen, McDowney

01-01890

Where a benefit is limited to individuals with disabilities or a particular class of individuals with disabilities, discrimination is determined by comparing the treatment of an individual with a disability to the treatment provided to similarly situated individuals without disabilities. Because individuals without disabilities are not eligible for the special permit, denial of that permit to individuals with disabilities who are not permanently unable to walk does not constitute discrimination prohibited by title II. The State is free to limit eligibility for the special permit to the particular class of individuals with disabilities who are permanently unable to walk, because the limitation does not deny a benefit to individuals with disabilities that is provided to similarly situated individuals without disabilities.

I hope this information is helpful to you in responding to (b)(6).

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

01-01891

Dear Senator Robb,

This is in reference to
a disabile permit. The virginia game commision
has such a permit, but it states that
you must be unable to walk. Under the
new Americans with disabilty Act
wouldn't this intitle people that are
disabled due to a mobility impartment.
Under the new law could some one
get this permit if they were disabled.

Thank you

14. Shooting wild birds and wild animals from stationary vehicle by disabled person.

Any person, upon application to a game warden and the presentation of a medical doctor's written statement that such person is permanently unable to walk, may, in the discretion of such game warden, be issued a permit to shoot wild birds and wild animals from a stationary vehicle during established open hunting seasons and in accordance with other existing laws and regulations. Such permit will be issued on a form provided by the commission, which may authorize shooting from a stationary vehicle not less than 300 feet from nor across any public road or highway, and only when the bearer is properly licensed to hunt. Such permit shall be nontransferable, and any permit found in the possession of any person not entitled to such permit shall be subject to immediate confiscation by a game warden. Deer of either sex may be taken under the provisions of this permit in those counties where deer hunting is permitted. (Added 5-3-74: amended 5-7-76: 5-3-85, effective 7-1-85.)
01-01892

FEB 1 ILLEGIBLE

The Honorable Robert F. Smith
U.S. House of Representatives
118 Cannon House Office Building
Washington, D.C. 20515

Dear Congressman Smith:

This letter is in response to your inquiry on behalf of your constituent, (b)(6) concerning the effects of the Americans with Disabilities Act ("ADA") on small businesses.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist your constituent in understanding the provisions of the ADA. It does not, however, constitute a legal interpretation, and it is not binding on the Department of Justice.

The ADA carefully balances the rights of persons with disabilities with the costs to businesses of providing access. The regulations formulated by the Department of Justice maintain the law's careful balance and recognize the legitimate needs of the business community for efficiency and profitability.

The smallest employers are exempt from title I of the ADA. Therefore, as long as XX continues to employ fewer than 15 employees, he has no obligations with respect to his employment practices under the Act. Although XX letter doesn't

specifically describe the nature of his business, it does not appear to be a public accommodation. Accordingly, his business would be considered a commercial facility and would have obligations under title III of the ADA only insofar as the business chooses to make alterations to its existing buildings and facilities or to undertake new construction of buildings or facilities.

cc: Records; Chrono; Wodatch; McDowney; Perley; Magagna; FOIA;
MAF. :udd:perley:congress:smith.ada

01-01893

Restriping a parking lot would be considered an alteration and therefore must conform to the ADA Accessibility Guidelines which set the number of accessible parking spaces required according to the total number of spaces in the lot. See page 35612 of the enclosed Federal Register publication. In a lot with 25 or fewer spaces, one accessible space is required. The Guidelines permit the accessible space to be provided in a different location if equivalent or greater accessibility, in terms of distance from an accessible entrance, cost and convenience is ensured. If a lot is limited to the exclusive use of employees, and none of the employees are individuals with disabilities requiring accessible parking, accessible spaces may be assigned to employees without disabilities.

I have enclosed copies of the Department's implementing regulation for Title III of the ADA and the Title III Technical Assistance Manual. You may wish to pass these on to (b)(6) for his further reference. I hope this information is helpful to you in responding to your constituent.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

Enclosures (2)

01-01894

Congress of the United States
House of Representatives
Washington, DC 20515

December 11, 1992

TOLL FREE: 1-800-533-3303

ENERGY RESOURCES
NATIONAL PARKS AND
PUBLIC LANDS

SELECT COMMITTEE ON HUNGER

Mr. John L. Wodatch
Chief
Office of Public Access
Department of Justice
PO Box 66738
Washington, D.C. 20035-6738

Dear Mr. Wodatch:

I am forwarding to you a letter from my constituent, (b)(6)
As a small businessman, XX has made every effort to comply with the Americans with Disabilities Act and still provide benefits for his employees. I would appreciate any assistance you could provide in solving his apparent conflict.

Thank you for your help in this matter.

Sincerely,

ROBERT F. (BOB) SMITH
Member of Congress

THIS STATIONERY PRINTED ON PAPER MADE OF RECYCLED FIBERS

01-01895

Congressman Robert Smith
259 Barnett, Suite E
Medford, Oregon 97504

Dear Congressman Smith;

During a recent telephone call, my opening question to Mr. Mike Durman of your staff in Medford was: How did Congressman Smith vote on the Americans with Disabilities Act? His answer was that you, along with an overwhelming majority of all congressmen and senators voted in favor of it.

My response to his answer was that I would therefore be voting for and financially supporting your opponent, even though I know nothing about your opponent.

He reacted, professionally, but with great disbelief that I would make such a decision based on one vote, and encouraged me to "see the bigger picture". What ensued was a lively discussion in which I gained an admiration for your staff member, but nonetheless persist in my course.

As we concluded our conversation, Mr. Durman suggested that I write this letter expressing my views.

Mr. Congressman, the fact is that we are losing jobs in this country. I don't think anyone disputes that. What I think most people don't fully understand is the reason for the loss.

The loss of jobs is not being caused by the Federal Deficit. Most of us in business are only intellectually affected by the deficit and in fact most of us could not point to a single factor which adversely affects us because of it. There may be disaster awaiting around the door, but that's not causing us to ship jobs overseas.

The loss of jobs overseas is also not being caused by taxes. The fact is that many of the alternative locations for most American businesses have taxes which rival ours in actual impact and some which approach being confiscatory. As long as the playing field is level, and we feel like our tax dollars are being well spent, we have no complaint with paying our fair share.

Instead, the loss of jobs overseas comes from the burden imposed by our treacherous tangle of laws and regulations.

You, better than I, know the number of laws on the books and the number of new laws, bills, rules, and regulations proposed each year in congress. Since virtually all of these, by their nature, impose some sort of restricted or prescribed behavior, and since restricting or modifying ones' own behavior is not possible unless you know what the law prescribes as proper behavior, it

doesn't take a Lewis Carroll to project a day when

01-01896

it will not be possible for us to do anything because of either the certain knowledge that we will violate a specific law or the fear that we will unknowingly violate some law.

This sounds like some wild-eyed doom-sayer, right?

Well, Mr. Smith, I'm not. I'm a small businessman in Bend, Oregon. (b)(6) XX I have been in business since 1975 and XX small Bend office. I own my own home, XX,
XX

I'm not a wild-eyed fanatic.

But I'm scared to death of the strangle-hold which government ... at all levels ... has on business. And worse, I'm scared because nobody seems to realize that if you kill business, you kill the country.

Mr. Smith, with the ADA, government has crossed the line where businesses all over are quietly deciding that the USA is not a good place to do business.

The three presidential candidates stand and wonder about the loss of jobs overseas. Clinton thinks its because of tax advantages. Bush doesn't think about it and Perot is hung up on the deficit.

Somebody's got to pay attention. It is not any coincidence that the major outflow of jobs began in this country with the passage of ADA. By the time the bill went into effect, the outflow was a steady flow.

Now the ADA, alone probably wouldn't have caused the dike to break, but that's just the most recent in a thirty-year attack on business.

There are laws everywhere and about everything. ADA was just the one that pushed us over the top.

What prompted my call to your office would have been funny if it wasn't so tragic. XX that small building XX. If you've been to our city you know that parking downtown is at a premium, so I looked for quite a while until I found a building which would XX and also have room for parking. I found one. It was built in 1911 and was originally the XX I'm told.

Our business has been growing, and we are about to add our XX. This will fill up our little parking lot, so to make life easier for everyone, I decided we should have (b)(6) like the big-boy parking lots at super markets.

I called a painter and was told that there might be some sort of a law which said that I had to make one of the parking slots bigger to allow for disabled persons. Well, that

01-01897

I asked him if I could just disinvite visitors and he said that "as long as there is a possibility that someone MIGHT visit [me]...even uninvited ...provision has to be made...".

I tried to point out to him that if I disinvite someone and they visited me anyway that that would be trespassing and that making special provisions to make a trespasser more comfortable seemed a bit stupid, but he protested that he was just telling me what the law said. Somehow it seems patently absurd that you can have a person arrested for trespassing but you have to make sure they have adequate access before you do it.

In fairness to (b)(6) , he did an excellent job and I gave him an inordinately hard time. The problem is, it wasn't his fault.

It's yours Mr. Smith.

The ADA was horrible legislation. A law proposed by special interests, promoted by a liberal press, and passed by congressmen eager to do something which would read well in the newspapers and hopefully gain them votes, but who didn't have time to read the bill.

I stated to Mr. Durman that I was upset because the ADA is having such a devastating effect on small businesses and that was a major reason for my deciding to support your opponent.

He said something to the effect that there are thousands of bills and each one has thousands of pages and that I couldn't reasonably expect you to read every one. My response is: yes I can expect that. I do expect that. It's like a child telling me he doesn't have time to look both ways before crossing the street...and its just as dangerous.

How many laws have you voted for that you didn't read?

I suggested to Mr. Durman that perhaps you should make a rule that you just vote NO on a bill unless you have time to read it and understand it.

Because when you add this one more bad law to the affirmative action programs, the EEOC regulations, OSHA, unions laws, out-of-control liability lawsuits, environmentalists committing genocide on an entire sector of our society,

capricious judicial decisions with major different impact in different parts of the country, and now the threat of a sex discrimination suit fad ... the businessman can't move without being afraid he's going to step in something.

And the environment which the Federal Government endorses affects the attitudes of the states. Oregon currently has proposition 7 and the legislature will almost certainly

install some sort of sales tax in this next session, probably modeled after the disastrous California example.

When Mr. Durman asked me to "see the bigger picture", I responded that "for me this is the bigger picture".

When a small businessman in my community loses a job because I can't paint lines in a parking lot which I bought and paid for and which I pay taxes on...we've gotten awfully close to the Lewis Carroll scenario we thought was so idiotic. When I have to consult a lawyer before I paint lines in my parking lot its time to change how these laws come into being.

Now Mr. Smith, consider that the regulations which I face are the same regulations which the larger corporations face. I am on retainer to over 300 corporations. About sixty percent of my clients are manufacturing companies and the rest include radio stations, newspapers, food chains, advertising companies...just about every industry you can think of. We talk. We're not happy.

The only difference between my small business and theirs is that they feel it worse...one of my clients pays employees in 48 states and has 32 different OSHA 101 equivalents to file..... and they have no emotional ties to this country.

Adhering to the letter of the law is mandatory for businesses. You can't risk your business because you overlooked something. The result is that we spend an enormous amount of resources just making sure that the government doesn't take our businesses away from us because of oversight. We have tons of computers, buildings full of administrators, and herds of lawyers.

This makes us less competitive. When our resources are directed away from production and toward protecting our backsides, the competition eats us alive. So, I guess its not surprising that so many of the larger companies are shifting jobs overseas. After my introduction to your ADA, I'm going to send for some Mexico Chamber of Commerce literature myself.

I asked Mr. Durman why I shouldn't fire my employees and take my small business to Mexico and his only response was that he thought I might sleep with a shotgun under my pillow.

Mr. Smith, that might be a good trade. At least I'd be a free man in Mexico with a shotgun under my pillow rather than a puppet in a state-run society having to adhere to every idiotic rule coming out of Washington.

So my message to you is that you really screwed up.

01-01899

We need... desperately ...fewer, more well thought out laws. We particularly need fewer laws which help one sector of society at the cost of another sector.

It is claimed that there are 43 million handicapped people in the United States. That must mean that everyone with an ear-ache qualifies as being handicapped. If you subtract the blind, deaf, and mentally handicapped, and count only those who require wheel-chairs... those who could use the extra-wide parking space I am supposed to provide... you come up with a figure substantially less than 10 million. Now that's a lot of people, but it is still only 1/25 th of our population. And for that, every business in every corner of our country suffers, becomes less competitive, and has more reason to send jobs overseas.

More fundamentally, Mr. Smith, is the question of whether it is right to take a small group who "should" have access to anywhere they want to go and turn it into a "right" to access which then forces everyone else to give up some of their rights. Mr. Smith, that's simply not fair. My building is a private place of business. I do not invite the public. You have placed the perceived benefits of one small segment of society above mine. More importantly, you have placed their interests above the interests of business, and, ultimately above all other Americans.

Mr. Durman sounded incredulous that I would vote for a Democrat. Mr. Smith, the way I see it, my choice is between two Democrats.

So, while every bone in my body says your opponent shouldn't be in office, I have only a few tools to use to register my protest. One is this letter...and another is my vote.

You have my letter. If you want my vote, and the vote of businessmen like me, you've somehow got to convince us that you are on our side. And right now,

Mr. Smith you are not my friend.

Very truly yours,

(b)(6)
Bend, Oregon 97701

01-01900

T. 2/5/93
SBO:SHK:ca

FEB 5 1993

(b)(6)

Re: Complaint Number XX

Dear Ms. XX

This letter constitutes the Department of Justice's Letter of Findings in response to your complaint filed with our office on August 3, 1992, against the State of Colorado under title II of the Americans with Disabilities Act (ADA).

Your complaint alleges that the State of Colorado requires that all individuals, including individuals with disabilities, who wish to vote absentee, must apply for an absentee ballot before each election. You state that you are unable to go to the polling place because of your disability and must use an absentee ballot. (You did not allege that your polling place is inaccessible, and the El Paso County Clerk and Recorder alleges that all polling places are accessible and that the Election Judges can bring the voting unit outside to the voter's car to assist an individual with a disability.) You allege that it is unfair that you must apply for an absentee ballot before each election.

The Civil Rights Division has completed its investigation of your complaint. Our investigation revealed that Colorado recently amended its absentee ballot law. The revised law permits an individual to file one application at the beginning of the year for absentee ballots for all of the elections to be held during the year.(1-8-103 (1) and (4), Colorado Revised Statutes, 1980 Repl. Vol., as amended)

Section 35.149 of the Department of Justice's regulation implementing title II (28 C.F.R. pt. 35) states that no qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity because the public entity's facilities are inaccessible to or unusable by individuals with disabilities. Your complaint, however, alleges that you are unable to vote at the poll because you are unable to

cc: Records CRS Friedlander Kaltenborn.(b)(6)

go to the poll, rather than because your polling place is inaccessible. The procedures utilized by the State of Colorado provide an equal opportunity to participate in elections for all individuals who are unable to get to the polling places. Accordingly, the Colorado staute does not discriminate against individuals with disabilities and does not violate title II of the Americans with Disabilities Act.

This letter constitutes our letter of findings with respect to your allegations of discrimination in your administrative complaint. If you are dissatisfied with our determination, you may file a private complaint in the United States District Court under title II of the ADA.

Under the Freedom of Information Act, 5 U.S.C. 522, we may be required to release this letter and other correspondence and records related to your complaint in response to a request from a third party. Should we receive such a request, we will safeguard, to the extent permitted by the Freedom of Information Act and the Privacy Act, the release of information which could constitute an unwarranted invasion of your or other's privacy.

Sincerely,

Stewart B. Oneglia
Chief
Coordination and Review Section
Civil Rights Division

cc: Donetta Davidson, Elections Officer

01-01902

T. 2-1-93

DJ 202-PL-00055

FEB 9 1993

Ms. Melanie Brown, AIA
Burt Hill Kosar Rittelmann Associates
1056 Thomas Jefferson Street, N.W.
Washington, D.C. 20007

Dear Ms. Brown:

This letter is in response to your inquiry regarding the requirements for detectable warnings applicable under title III of the Americans with Disabilities Act (ADA).

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities that are subject to the Act. This letter provides informal guidance to assist you in understanding the ADA accessibility standards. However, this

technical assistance does not constitute a legal interpretation of the application of the statute, and it is not binding on the Department.

In developing the ADA Accessibility Guidelines for Buildings and Facilities (ADA Guidelines), the Architectural and Transportation Barriers Compliance Board (Access Board) considered extensive public comment (14 public hearings and more than 10,000 pages of written comments submitted to the docket). It also considered research studies and documented field experience with detectable warnings materials. Comments submitted to the docket, available research, and the rationale for requiring the type of detectable warning surfaces specified in the guidelines are detailed on pages 35,437-38 of the preamble to the Access Board's ADA Guidelines. Copies of these pages are enclosed.

Your letter states there should "be some provision for an alternative means of providing a detectable warning surface." Section 2.2 of the ADA Guidelines contains a general equivalent facilitation provision that allows departures from particular technical and scoping requirements by the use of other designs and technologies that provide substantially equivalent or greater

cc: Records, Chrono, Wodatch, Breen, Lusher, FOIA, Library
udd:mercado:policy.letters.certif:lusher.wodatch.brown

01-01903

accessibility. This provision is discussed at pages 54-55 of the enclosed Title III Technical Assistance Manual. However, it is important to point out that the detectable warning surface required by the ADA Guidelines has unique characteristics that make it readily identifiable as a warning surface.

For projects undertaken by State or local government, title II of the ADA allows a public entity to use either the Uniform Federal Accessibility Standards (UFAS) or the ADA Guidelines without the elevator exemption. Both UFAS and the ADA Guidelines are enforceable standards under title II of the ADA.

Furthermore, since many cities and towns also receive Federal funds in one form or another, it is possible that section 504 of the Rehabilitation Act of 1973 may also be applicable.

Regulations issued by most agencies under section 504 identify UFAS as the operative standard to signify compliance with new construction and alteration provisions.

There are specific differences between the two standards with regard to detectable warnings. UFAS does not require any type of detectable warnings on curb ramps or other walking surfaces, whereas the ADA Guidelines, as you discussed in your letter, require a very specific pattern of raised truncated domes on curb ramps and at hazardous vehicular areas. However, when a public entity chooses to use either standard for a building, facility or project, it must follow that standard completely. Please refer to the Department's Title II Technical Assistance Manual (enclosed) to review other major differences between UFAS and ADAAG.

The Access Board issued proposed accessibility guidelines for newly constructed or altered facilities covered by title II of the ADA on December 21, 1992 (57 FR 60612). Final adoption of these guidelines by the Department of Justice will eliminate the current choice under title II between UFAS and the ADA Guidelines. In this notice, the Access Board briefly discusses the issue of detectable warnings (57 FR 60645) and announces the Access Board's intention to issue a separate notice proposing to suspend certain ADAAG provisions for detectable warnings. The public comment period for this proposed change to the guidelines will provide an excellent opportunity to address your concerns about detectable warnings and we encourage you to participate. For further information about the Access Board's efforts, please contact Mr. James J. Raggio, General Counsel, Access Board, 1331 F Street, N.W., Suite 1000, Washington, D.C. 20004-1111, (202) 272-5434.

I hope that you find the above information helpful. If you have further questions about the application of the Department's ADA regulations, please call our ADA Information Line on (202) 514-0301.

Sincerely,

John L. Wodatch
Chief

Public Access Section

Enclosures

Selected preamble pages to ADA Guidelines (pp. 35,437-38)
Title II and Title III Technical Assistance Manuals

01-01905

1056 Thomas Jefferson St., NW
Washington, DC 20007
202-333-2711
Burt Hill Kosar Rittelmann Associates FAX: 202-333-3159
Architecture
Engineering
Interior Design
Research

March 19, 1992

John Wodatch, Director
Office on the Americans with Disabilities Act
Civil Rights Division
U.S. Department of Justice
Washington, D.C. 20530

Dear Mr. Wodatch;

I am an architect at the firm of Burt Hill Kosar Rittelmann Associates in Washington, D.C. Our firm designs large mixed-use commercial projects as well as institutional, health-care and residential projects. Our expertise also includes commercial renovation and historic preservation. Much of our work is subject to Title III of the Americans with Disabilities Act and the associated Accessibility Guidelines (ADAAG).

The ADAAG contain a requirement for detectable warnings (Ref. 4.29) which I wish to discuss. The specifications require raised truncated domes, about 1" in diameter, with a height of about 1/4", spaced approximately 2 1/2" on center. This detectable warning surface is to be installed at areas which generally occur within pedestrian walkways and sidewalks. I have received samples of materials which meet the specified criteria. Based upon these samples it is my belief that these materials pose a hazard to able-bodied pedestrians, especially those who wear heeled shoes, due to tripping or stumbling over the irregular relief surface.

As an architect who practices in a litigious society, I am concerned about the ADAAG specifications for detectable warnings. It is common experience within my profession that individuals have filed lawsuits against architects claiming injury resulting from tripping on sidewalks with less textural relief than specified in the ADAAG. For this reason, I would not have recommended such a paving material to my clients. However, it is now required by the ADAAG.

We find ourselves in a compromising situation: advise our clients to comply to the letter of the ADAAG and risk an injury lawsuit or not to comply and risk civil suit? For the time-being, we have been advising our clients to pose the question to their counsel and advise us accordingly in an effort to address the issue as best as possible. I have discussed these issues with various people at both the ADA Information Line and the Architectural and Transportation Barrier Compliance Board. All agree that the detectable warnings are a potential hazard. It was their advice that you be consulted on this matter.

There must be a more direct way to handle this issue. There should also be some provision for an alternate means of providing a detectable warning surface. Your response to this issue and any advice, interpretation or direction you can offer would be most appreciated.

Very truly yours,

BURT HILL KOSAR RITTELMANN ASSOCIATES

Melanie Brown, AIA
Associate

01-01907

T. 2/2/93
SBO:AMP:ca
DJ 204-11E-0

FEB 16 1993

The Honorable Wally Herger
Member, United States House of
Representatives
2400 Washington Avenue, Suite 104
Redding, California 96001

Dear Congressman Herger:

This letter is in response to your inquiry on behalf of your constituent, Diane Garcia, regarding her request for a waiver under the Americans with Disabilities Act (ADA).

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities that are subject to the Act. This letter provides informal guidance to assist you in responding to your constituent. However, this technical assistance does not constitute a determination by the Department of Justice of your constituent's rights or responsibilities under the ADA and does not constitute a binding determination by the Department of Justice.

The ADA does not provide for the waiver of any of its requirements whether by Federal, State or local authorities. All covered entities are expected to fully comply with all applicable provisions. We are unaware of any waiver granted to San Francisco, but, as stated above, any such waiver would not be valid.

In response to Ms. Garcia's concern regarding the requirement for accessible restrooms in State offices, please note that, with respect to existing facilities, title II of the ADA (which covers State and local governments) does not contain any specific requirements for the number of restrooms that must be made accessible. Under title II, a State or local governmental entity must operate its programs and activities so that, when viewed in their entirety, such programs and activities are readily accessible to and usable by individuals with disabilities.

The concept of "program access" is discussed in sections 35.149 and 35.150 of this Department's title II regulation, 28 C.F.R. Part 35, and on pages 19-22 of the title II Technical Assistance Manual (copies enclosed). As stated in section

cc: Records CRS Friedlander Pecht.herger.ltr McDowney, FOIA, Breen

01-01908

35.150(a)(3) of the title II regulation, a title II entity is not required to take any actions that it can demonstrate would result in a fundamental alteration of its services, programs, or activities, or in undue financial and administrative burdens. In this instance, the public entity should ensure that accessible restroom facilities are available when restrooms are available to other members of the public.

In determining how to meet its responsibility to provide "program access", a public entity may look to the requirements of either the Uniform Federal Accessibility Standards (UFAS) (copy enclosed) or the ADA Accessibility Guidelines (Guidelines) for guidance. The Guidelines are attached as Appendix A to the title III regulation (copy enclosed). We would direct your attention to section 4.1.6(3)(e) of the Guidelines, which permits the installation of at least one unisex toilet/bathroom per floor in the same areas as existing toilet facilities where it is technically infeasible to comply with the new construction requirements in an existing facility. It is important, however, to keep in mind that, under title II, program access is the goal and that full compliance with UFAS or the Guidelines is only mandated in the case of new construction or where alterations are being undertaken independently from the requirement for achieving program access.

I hope this information is helpful to you in responding to your constituent's inquiry.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

Enclosures (4)

01-01909
October 28, 1992

Wally Herger, Congressman
2400 Washington Avenue Suite 410
Redding, CA 96001

Dear Congressman Herger:

Re: American Disability Act.
State Board of Equalization Lease.

I represent the owner of the building located at 2400 Washington Avenue and I am currently negotiating an extension of a lease for the State Board of Equalization at 2400 Washington Avenue.

The State Board of Equalization has been in this building since January 1977 and wishes to remain. The problem with the negotiations is complying with the American Disability Act. According to the State the ADA requires that we create Handicap restrooms.

On the floor in which the State Board of Equalization's offices are located, we have Men's and a Women's restrooms with two non-Handicap stalls in each. The owner is prepared to remove one stall in each of the existing restrooms and create Handicap restrooms; one for Men and one for Women. However, we are told by the State that in order to comply with the ADA and local codes, we need 2 stalls in each restroom and one has to be handicap. We do not have the space in the building to do this because tenants occupy the spaces on either side of the restrooms.

We understand that in San Francisco an exception to the ADA Regulations was given in order to keep the State in a building where stairs were unacceptable, so it appears that exceptions can be made.

We need your help in this matter urgently. It is our desire to cooperate and comply with the ADA Regulations to allow equal access to this private building, in which a public entity is located, but the requirement has to be realistic in view of the fact that this is an existing building.

01-01910

October 28, 1992
Page 2 Re: American Disability Act.

To create a Men's and Women's one stall Handicap accessible restroom the costs are prohibitive, approximately $6,000.00. However, the owner has indicated a willingness to cooperate. We need an exception to ADA Regulations from the State and Federal Government to allow the building to have one Men's and one Women's handicap stall only in each restroom with a side transfer in the space available in the building.

To reiterate, the State does not have the monies to relocate the State Board of Equalization. They have occupied this space for Sixteen (16) years and wish to continue their occupancy in this building.

We request that you give this matter your prompt attention.

Respectfully,

Diane Garcia, Broker
Property Manager
for Washington Plaza
200 Ridgetop Drive #18
Redding, CA 96003

CC: Stan Stathem; Assemblyman 1st District
Gerald Moore; Department of General Services
Frank Wilson; Contractor
William Lisac;Shasta Associate, Ltd.

REF:ADA1092

01-01911

FEB 16 1993

The Honorable Craig Thomas
Member, U.S. House of Representatives
2632 Foothill Boulevard, Suite 101
Rock Springs, Wyoming 82901

Dear Congressman Thomas:

This letter responds to your inquiry on behalf of your constituent, XX regarding the enforcement of titles II and III of the Americans with Disabilities Act (ADA).

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist you in understanding the ADA's requirements. However, it does not constitute a legal interpretation or legal advice and it is not binding on the Department of Justice.

Please be advised that our staff has already contacted (b)(6) and spoken with XX directly on several occasions. XX has been advised that the provisions of both title II and title III of the ADA may be enforced by either private litigation or through action by the Department of Justice. XX has stated that XX does not intend to file a complaint with the Department at this time.

As (b)(6) was informed, title II of the ADA forbids discrimination against people with disabilities in the operations

of State and local governments. Although the provisions are similar to those of section 504 of the Rehabilitation Act of 1973, the ADA extends to all agencies or entities run by State and local governments regardless of whether they receive Federal financial assistance. Generally, the Act requires that programs, services, and activities operated by a public entity be accessible to persons with disabilities. This requirement includes the maintenance of accessible parking spaces as well as

cc: Records; Chrono; Wodatch; McDowney; Foran; FOIA; MAF.
:udd:pinckney\thomas2.cgl

other accessibility features. The Department of Justice is currently handling over 800 complaints against State and local governments alleged to be in non-compliance with the ADA.

A State or local government found violating the ADA may lose all Federal financial assistance. In addition, the Department of Justice may file suit in Federal district court. Private plaintiffs may also bring court action and, in addition to all of the remedies available to the Department, may receive an award of attorney's fees including litigation costs and expenses. For further discussion of the compliance procedures for title II see Subpart F of the enclosed title II regulation at pages 35721-35722 and 35713-35715.

We also explained to (b)(6) the provisions of title III of the ADA which prohibits discrimination against people with disabilities by private entities, including places of public accommodation and commercial facilities. The Department of Justice is currently handling over 850 title III complaints. Each complaint is assigned to an attorney to head an investigation of the matter, which may include document requests as well as on-site visits to establish whether a violation has occurred. In cases where a violation has been found, the Department of Justice is authorized to bring suite in Federal court. For further discussion of the remedies available under title III see section 36.504 of the enclosed title III regulation

at pages 35603 and 35589-35590.

Enclosed for your reference are copies of the titles II and III regulations and technical assistance manuals. In addition, you may refer your constituent to the ADA Information Line for more guidance on the provisions of the ADA. That number is (202) 514-0301.

I hope this information is useful to you in responding to your constituent.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

Enclosures (4)

01-01913

January 12, 1993

XX
Rock Springs, Wyoming 82901
(b)(6)

Sheila Foran
Public Access Section
Civil Rights Division
Department of Justice
P.O. Box 66738
Washington, D.C. 20035-9998

Dear Miss Foran:

I promised a FAX concerning the specific inadequacies I see in Sweetwater County pertaining to the adherence to the ADA law as passed by the United States Congress.

I have been requested by Wyoming State Senator Mark Harris to ask for a delay of any pending action

until our Sweetwater delegation has had a chance to introduce a law or laws to the Wyoming Legislature to clarify the State's position and provide a means of enforcing the law(s). He informed me he had contacted you with this proposal and I have agreed to request that delay.

I will keep you informed of the progress that is made and attempt to keep you informed of any violations I become aware of in the meantime, should action be needed by you.

Thanks for your help and rest assured I will remain vigilant to deliberate infractions of the law and will keep you updated on any future actions taken by the legislature.

Sincerely,

(b)(6)

01-01914

JAN 04 1992

December 29, 1992
(b)(6)
Rock Springs, WY 82901

The Honorable Richard Stacey
U.S. Department of Justice
United States Attorney District of Wyoming
P. O. Box 668
Cheyenne, WY 82003

Dear Sir:

I am writing this letter to clarify partial misinterpretation of my letter of December 2, 1992, to you concerning Rock Springs, Wyoming's apparent violations of sections of the ADA law.

Copies of news articles contain copies of the emergency ordinance that allowed enforcement of handicapped parking violations in all legally posted areas in Rock Springs. The city's parking control

officer is doing a very effective job. However, after such a long period had gone by when handicapped parking violations were not enforced due to a ruling by the Rock Springs City Attorney and adherence to his interpretation by the city council, conditions deteriorated severely.

The main problem that now exists concerning handicapped parking is that many of the businesses have let their restricted parking spaces deteriorate or never set them aside in the first place. The Plaza Mall, mentioned in my previous letter had four inches of snow pack and ice covering the markings on the tarmac. The manager had a streak of good luck and two days later the upright handicapped "vandalized" signs were back in place.

My statement concerning lack of knowledge, information or copies of the new emergency handicapped ordinance to key personnel in the Rock Springs Police Department could be attributable to administration or communication problems.

The problem I wish addressed is that no one wishes to accept the responsibility of enforcement set forth in Section III of the ADA law. The Rocket Miner, reporting on the last meeting of the mayor's ADA committee stated the committee was told to go back to basics and assume their ADA responsibilities as concerns only the city property. No one acknowledges the awareness of the existence, and few are aware of the definitions set forth in Public Law No. 101-336, Section 301, Paragraphs 6 and 7 regarding Private Entity and Public Accommodations. The many facets set forth in this same public law, according to my understanding, covering the needs of the handicapped, are not being fully enforced in the Southwest Wyoming area.

WHO IS RESPONSIBLE FOR ENFORCEMENT OF THESE LAWS?
01-01915

Penny Harvey, Rock Springs ADA Coordinator, in a Rocket Miner news release said, "We need to get back on track on what we are here for." She also said Mayor Oblock wants the committee to review and advise the city only on city buildings and city projects where ADA is involved. Mrs. Harvey said the committee should not be reviewing others people's buildings and applications. (Meaning, I presume, anything other than city or city related projects.)

No one has been willing to assume responsibility for meeting the requirements of enforcement of ADA Public Law No. 101-336 July 26, 1990, enacted by the Senate and House of Representatives of the United States of America.

Handicapped parking is but a small part of the ADA law and many more problems need to addressed.

I have made numerous attempts to contact the ADA Representative to whom you forwarded my information in the Department of Justice, to advise them of this information. No one has returned my telephone messages. Please see what the bottleneck is and advise me.

Sincerely,

(b)(6)

c: 5

01-01916

DJ 202-PL-400

FEB 23 1993

Mr. Arthur Lavenhar
Mayfair House
3589 So. Ocean Boulevard
Palm Beach, Florida 33480

Dear Mr. Lavenhar:

In accordance with our telephone conversation of February 12, 1993, I enclose the regulation promulgated pursuant to title III of the Americans with Disabilities Act of 1990 (ADA), and a Title III Technical Assistance Manual and Supplement, which help explain the regulation.

I call your attention to page 3 of the main volume of the Technical Assistance Manual and pages 1-2 of the Supplement, which discuss some of the provisions concerning ADA coverage of your condominiums that we discussed.

I hope this information is helpful to you.

Sincerely,

Bebe Novich
Attorney
Public Access Section

Enclosures (3)
Title III regulation
Title III Technical Assistance Manual
Title III Technical Assistance Manual Supplement

cc: Records, Chrono, Wodatch, Magagna, Novich, MAF, FOIA
Udd:Novich:policy.400

01-01917

mayfair House
3589 So. Ocean Boulevard
Palm Beach, Florida 33480

November 23, 1992

American Disabilities Agency
Civil Rights Division
U.S. Department of Justice
#66118
Washington, D.C.
20035

Dear Sirs:

I shall appreciate your informing me whether any rules or laws have been enacted regarding the construction of physical improvements or facilities to assist handicapped or disabled persons.

Are these rules applicable to buildings owned by condominium associations ? And do they apply to all buildings regardless as to when they were constructed ?

Thank you for your assistance.

Yours truly,

Arthur Lavenhar

President, Mayfair House Condominium Asso. ,Inc.

01-01918

T. 2/18/93
SBO:WRW:rjc
XX

FEB 26 1993

(b)(6)

Dear Mr. XX

This is in response to your letter to the Department of Justice concerning accessibility of hotels under the Americans with Disabilities Act (ADA). We apologize for the delay in responding.

The ADA authorizes the Department to provide technical assistance to entities that are subject to the Act. This letter provides informal guidance to assist you in understanding how the ADA may apply. However, this technical assistance does not constitute a determination by the Department of Justice of your rights or responsibilities under the ADA and does not constitute a binding determination by the Department of Justice.

Your letter describes a situation in which the only accessible rooms of a hotel are located in the more expensive new wing. You asked whether this violates the ADA because a disabled individual is not given the same choice of rates as is given to able-bodied individuals.

Title III of the ADA requires places of public accommodation such as hotels to remove barriers that are "readily achievable". Readily achievable means easily accomplishable and able to be carried out without much difficulty or expense. A hotel would not have to make every room accessible under the readily achievable standard. The duty to make readily achievable changes never extends to more rooms than the number of rooms that would be required to made accessible under the new construction standards contained in the ADA Accessibility Guidelines ("Guidelines"). Under the Guidelines, the number of accessible rooms that are required depends on the number of rooms in the hotel. See section 9.1.2 of the Guidelines, which is an appendix to the enclosed Department of Justice title III regulation.

Records, CRS, Worthen, Friedlander, Breen, FOIA
:UDD:Worthen:Letters.Gen.HotelADA

01-01919

Section 9.1.4(1) is particularly important in determining what the Guidelines require in new construction of hotels. That section requires that accessible hotel rooms be dispersed among the various types of available accommodations. Cost is specifically identified as one of the factors. Section 9.1.4(2) provides, however, that it will be deemed equivalent facilitation if all of the accessible rooms are multiple occupancy rooms, provided that such rooms are available at the cost of a single-occupancy room to an individual with disabilities who requests a single-occupancy room.

Based on the above, the hotel should make an adequate number of accessible rooms available at both the lower and higher prices, if it is readily achievable to do so. If it is not readily achievable to remove barriers in the lower priced rooms, then the hotel must permit a disabled patron to stay in the higher priced room at the less expensive rate, if the patron has requested the less expensive room. Such a system would constitute an alternative to barrier removal and would be required by 28 C.F.R. 336.305, if readily achievable.

I hope this information is helpful to you.

Sincerely,

Stewart B. Oneglia
Chief
Coordination and Review Section
Civil Rights Division

Enclosure

01-01920

(b)(6)
January 8, 1992

U.S. Department of Justice
Civil Rights Division
Coordination & Review Section
P.O. Box 66118
Washington, D.C. 20035-6118
ATTN: Stewart B. Oneglia

Dear Mr. Oneglia:

I have a question for you on the ADA!

A hotel in Las Vegas will advertise their room rates as follows:

A room in the new section is $55. for Friday/Saturday night.
That same room in the new section Sunday/Thursday is $45. per night.

A room in the old section Friday/Saturday is $35. per night.
That same room in the old section Sunday/Thursday is $20. per night.

The problem is: only the new section has the handicap wheelchair accessible room. The Las Vegas bound person thats a wheelchair user and must have a wheelchair accessible room doesn't have the choice as the ablebodied person has.

Is this a violation of the ADA? Seems like it is to me. Section 36.202(b) states: "prohibits services or accommodations that are not equal to those provided others."

The wheelchair user has no choice. Pay the higher rate or don't stay at that hotel. The ablebodied person has the choice, the high rate or the low rate.

It seems this is a case of 100% discrimination.

Your comments on this issue would greatly be appreciated.

Sincerely yours

(b)(6)

01-01921

MAR 2 1993

The Honorable Robert Dole
United States Senator
636 Minnesota Avenue
Kansas City, Kansas 66101

Dear Senator Dole:

This letter is in response to your inquiry on behalf of your constituent, Laurence M. Silver, who seeks information about the Americans with Disabilities Act (ADA).

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist your constituent in understanding the ADA's requirements. However, it does not constitute a legal interpretation and it is not binding on the Department.

Mr. Silver's letter states that his company markets a restaurant table that can be adjusted to different heights to accommodate persons who use wheelchairs. It appears, from the diagram of the table Mr. Silver enclosed with his letter, that the table is free-standing. Mr. Silver asks whether the ADA requires or permits his company's table to be used. He states that one potential buyer claimed that using such tables would violate the ADA, because the table's height adjustment controls would be inaccessible to persons with disabilities.

The ADA regulation issued by this Department (enclosed) contains height requirements for fixed tables in newly constructed restaurants, if fixed tables are provided. Sections 5.1 and 4.32.4 of the enclosed ADA Accessibility Guidelines (ADAAG), at pages 35517 and 35514, require at least 5% of fixed tables to be between 28 and 34 inches from the finish floor. A table like Mr. Silver's may meet these height requirements, but the Department of Justice cannot certify or endorse any specific

products.

cc: Records; Chrono; Wodatch; McDowney; Bowen; Novich; FOIA;
MAF. \udd\novich\congress\dole

01-01922

The ADA regulation also includes requirements for controls and operating mechanisms. Section 4.27 of ADAAG requires operating controls to be accessible to persons with disabilities. Mr. Silver's tables appear to have height adjustment controls under the table, in a location that would be inaccessible to many persons with mobility impairments. However, as long as Mr. Silver's tables are free-standing, their installation should not violate the ADA, because the requirements for controls do not apply to free-standing tables. Section 5.1 of ADAAG, at page 35517 of the enclosed volume, states only that "fixed tables .. . shall be accessible." The ADAAG preamble (page 35415) further states that only equipment "fixed or built into the structure of the building" must comply with ADAAG standards. Therefore, the ADA's control standards should not bar use of Mr. Silver's tables.

I hope this information is helpful to you in responding to your constituent.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

Enclosure

01-01923

NATIONAL RESTAURANT ASSOCIATION
1200 17th Street N.W.
Washington D.C. 20036-=3097

11/17/92

Dear N.R.A.

I am the National Marketing Agent for a company dedicated to help alleviate some of the problems that a handicapped person faces on a daily basis.

The manufacturer, T.F.S. Inc. of Neodesha, Ks., has made available to the Food Service Industry, a very well built, pneumatically adjustable base capable of elevating the top from the standard 29" to a clearance of 33". The unit is designed in a fashion to prevent tipping if leaning occurs. The "A-Just-Rite" unit is a simple, relatively inexpensive, and cost effective solution to one of many changes made in the new laws. This unit is now available on a national basis via independent Representatives throughout the nation.

Here's the problem. While in contact with the Marriott Corp. in Baltimore, they claimed that they were in compliance with the new ADA regulations according to the information they received from you. They, in fact, were kind enough to send us the information. According to the diagrams enclosed, authorized by the N.R.A. and very directly indicated by your drawing, a table with a clearance height of 27" is acceptable. Obviously, this

was a guess, without any in depth research on your part.

After speaking with several manufactures of wheel chairs, the average height of an adult wheel chair to the armrest is 30" to 30-1/2". This is without padding or motors. According to manufacturers, the only wheel chair that will fit under 27" is a child size unit.

To put it bluntly, your misinformation has created havoc with many, many organizations that we have been in contact with. I am upset to know that an organization, with your great impact upon our industry, could print this useless and misrepresented information. It is very obvious, the people related to this article do not have the physical problems I relate to.

01-01924

In conclusion, as you are aware, the initiation of a new product line into the industry is very difficult and very expensive. Now, along with the information you have released, have created a new dimension in sales. One of discounting the so-called reliable information already in the Market Place.

Sincerely,

Laurence M. Silver CFSP

01-01925

A-JUST-RITE ADJUSTABLE COLUMNS

(ILLUSTRATIONS OMITTED)

TFS
Quality Products - Quality Service
The model 2020 "A-JUST-RITE" columns with the turn of a knob, allows you to adjust the table height from 28" to 33", giving you the freedom to accommodate a number of seating requirements.

Strength by design features a 34" die cast aluminum base, 3" diameter aluminum column and 14" cast aluminum table base.

The spring tension column easily adjusts downward by simply loosening the knob on the side of the column and lightly pushing down in the center of the table. When knob is loosened in down position the top will automatically raise.

ONE YEAR WARRANTY:
T.F.S. warrants its products to be free from

defects in materials and workmanship for ONE YEAR from the date of delivery. During this period, at its option, T.F.S. will repair or replace, free of charge, products that prove to be defective.

The Model #2020 table column may be used with custom round tops up to 52" and square tops up to 48". By purchasing only the base, you can economically convert all of your existing tops to a "A-JUST-RITE" table. When ordering the #2020 for your custom tops or to convert your existing standard tables, all you need to give us is the weight and dimensions of your tops and we will adjust our column to your specifications accordingly.

T.F.S. Inc.
417 Main * P.O. Box 187 * Neodesha, KS 66757 * Ph. 316-325-5166 * FAX 316-325-3769

01-01926

T. 2/17/93
SBO:SHK:ca
XX

MAR 2, 1993

The Honorable Bob Graham
United States Senator
Post Office Box 3050
Tallahassee, Florida 32315

Dear Senator Graham:

This responds to your inquiry on behalf of your constituent, Mrs. (b)(6) concerning persons with disabilities and their use of rest area facilities on highways. Her specific concern has to do with the Americans with Disabilities Act (ADA) as it relates to the use of toilet facilities by individuals who need assistance when their only companion is a person of the opposite sex.

The ADA authorizes the Department to provide technical assistance to individuals and entities that have rights and

responsibilities under the Act. This letter provides informal guidance to assist you in responding to your constituent. However, this technical assistance does not constitute a determination by the Department of Justice of specific rights or responsibilities under the ADA and is not a binding determination by the Department of Justice.

Federal law establishes strict architectural accessibility requirements for new construction and alterations, including specifications for accessible toilet rooms. The Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (ADAAG) is the standard for private buildings that was issued by the Architectural and Transportation Barriers Compliance Board (the Access Board) under title III of the ADA and has been adopted by the Department of Justice as the standard for places of public accommodation and commercial facilities covered by the Department of Justice's regulation implementing title III of the ADA. The ADAAG is published as Appendix A to the Department's title III regulation, 28 CFR Part 36.

Another federal provision, Section 504 of the Rehabilitation Act of 1973, as amended, requires that newly constructed or altered buildings and facilities of federal executive agencies comply with the Uniform Federal Accessibility Standards (UFAS), and the Department's regulation under title II of the ADA provides that State and local governments can follow either ADAAG or UFAS in new construction and alterations.

cc: Records CRS Friedlander Kaltenborn.grahm.con, FOIA, Breen McDowney
01-01927

However, neither ADAAG nor UFAS requires "unisex" restrooms. In issuing ADAAG, the Access Board considered recommendations that such facilities should be required in newly constructed buildings for individuals with disabilities who need assistance from another person. Although it did not adopt that recommendation, the Board included specifications for accessible unisex toilet rooms in the Appendix to ADAAG at A4.22.3, and suggested that they be provided in certain facilities, in addition to the accessible stalls required in multi-stall toilet rooms.

As explained in the enclosed Technical Assistance Manuals for titles II (II-3.6000) and III (III-4.2000), however, the ADA does require that covered entities make reasonable

modifications to policies, practices, and procedures where necessary to enable individuals with disabilities to participate, and this requirement would require a covered entity (a State or local government under title II or a public accommodation under title III) to permit a person of the opposite sex to assist an individual with a disability in a toilet room designated for one sex. Federal agencies are subject to the same requirement under section 504.

I hope this information is helpful to you in responding to (b)(6)

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

01-01928

(Handwritten)

Dec. 30, 1992

Dear Senator,

I am not aware of the new laws for the handicapped so perhaps this situation is addressed - if it is not. I want to make you aware so you can help eliminate the situation. We do

traveling on the Parkway Turnpikes
and Interstate Highways
of the state and the
U.S. When we stop
at the rest areas facilities
are available for the
physically handicapped,
however, there are no

01-01930

facilities for the
mentally impaired
who need help or
assistance from
a spouse or family
member of the
opposite sex. I

would appreciate any
help you can give
to those of us who
find this a real
problem while
traveling where rest areas
are crowded.

Sincerely,
(b)(6)

MAR 2 1993

The Honorable Tony P. Hall

U.S. House of Representatives
2264 Rayburn House Office Building
Washington, D.C. 20515-3503

Dear Congressman Hall:

This letter responds to your inquiry on behalf of your constituent, Ronald D. Martin, who asks whether the Americans with Disabilities Act of 1990 (ADA) requires his fitness center to provide membership to an individual who has HIV disease.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist your constituent in understanding the ADA's requirements. However, it does not constitute a legal interpretation or legal advice, and it is not binding on the Department.

Gymnasiums, health spas, and other places of recreation are places of public accommodation covered by the ADA. For further discussion of the definition of a public accommodation, see section 36.104 of the enclosed title III regulation at pages 35594 and 35551.

As a place of public accommodation, a fitness center may not deny an individual, on the basis of a disability, such as HIV disease, the opportunity to participate in or benefit from its goods, services, or facilities. For further discussion of the definition of a disability, see section 36.104 of the enclosed regulation at pages 35593 and 35548-35550. For more information on the denial of participation from a public accommodation, see section 36.202 of the title III regulation at pages 35595 and 35556-35558.

Although a public accommodation is generally barred from excluding people with disabilities, a person may be excluded from the activities of a public accommodation if that person poses a direct threat, or significant risk, to the health and safety of others that cannot be eliminated by a reasonable modification of

cc: Records, Chrono, Wodatch, McDowney, Bowen, Novich, FOIA
Udd:Novich:congress:hall

01-01931

policies, practices, or procedures. However, the determination that an individual poses a direct threat to others may not be based on generalizations or stereotypes about the effects of a particular disability. Such a determination must rely on current medical evidence or the best available objective criteria. For further discussion, see section 36.202 of the title III regulation at pages 35595-35596 and 35560-35561.

The current medical evidence does not suggest that HIV can be contracted through casual contact, perspiration, or urine in an exercise room, sauna room, or pool. For this reason, a person with HIV disease should not pose a direct threat to others in a health club, and therefore cannot be denied membership on the basis of that disability. For more information about HIV transmission and prevention, you may call the U.S. Public Health Service Hotline, open 24 hours daily, at (800) 342-AIDS.

Mr. Martin expressed concern for the "disastrous effect" he believes admitting a person with HIV would have on his business. He claims that fitness center members and employees will be fearful of sharing facilities with such a person, although he presents no medical foundation for such fears. We suggest that Mr. Martin inform the center's employees and members, through training or dissemination of information, that a person with HIV or AIDS does not pose a serious risk to them in a fitness center setting. In any event, the ADA prohibits the use of unfounded fears as an excuse to exclude people with disabilities.
I hope this information is useful to your constituent in understanding the requirements of the ADA.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

Enclosures (2)
Title III Regulation
Title III Technical Assistance Manual

01-01932

NEW FITNESS CENTERS, INCORPORATED
LIFE EXECUTIVE OFFICES: 7805 N. DIXIE DRIVE DAYTON, OH 45414
(513)890-9800

The Honorable Tony P. Hall
Rayburn House Office Building
Room 2264
Washington, D.C. 20515

December 23, 1992

Dear Congressman Hall,
We are faced with a tremendous problem that at present seems impossible to overcome. I am, and have been, in the fitness business for the past 25 years. The recent passing of the Americans With Disabilities Act (ADA) has resulted in our being placed in a very difficult position. We have been approached by a young man who has advised us that he has tested HIV Positive. He wants to purchase a membership in our facility and I am afraid his use and contact with other members will result in the total loss of our business.

Please understand that I am not without sympathy for this young man. Fourteen months ago I lost my 31 year old son to cancer, and I watched him suffer for almost seven years. His passing was the most horrible experience our family will ever face.

I tell you this because his weight loss, color, and general appearance was very close to those that have AIDS, and I am very familiar with the reception he received when we would be in public together. People would avoid sitting next to us in restaurants, stare at him as we would walk through stores, etc. The public is simply not ready to accept people who have even a vague look of the AIDS disease.

I talked to your office today and asked for any help or advise that could help in this situation. I realize that fitness centers (health spas) are covered under the ADA, but I do not believe that those that considered the bill were aware of the disastrous effects it will have on our business and industry. No member is going to swim in a pool or sit in a whirlpool with a person who is HIV positive. No member is going to sit in a steam room or sauna, or even exercise with a person who looks like he is very ill, or who advises those that ask that he/she is HIV

positive.

The result, if we are required to sell a membership to this man, will undoubtedly be a boycott of our business, by the public. Staff, who were told of his condition when he came into the facility to submit an application took a shower immediately

01-01933

after he left. I'm told they may all quit. Members, who will have to share the facilities, will quit coming and cancel their memberships. After 25 years of service to the communities, we will undoubtedly lose our business because the public is simply not going to accept this without reacting.

I do not know what, if anything, can be done but I find it very difficult to believe that my government has passed a law that is about to make me lose a lifetime of work. That my future, my livelihood, my life investment, and the employment of our employees, is dependent on a person or persons who we never even heard of a week ago. Where is the fairness and common sense?

Your office has agreed to send me additional information on the ADA. Lawyers we have talked to have indicated that there is probably nothing we can do because the law has been written. Your office did not disagree, so it appears my choice is to allow the purchase, and go out of business, or deny the membership and defend myself with the only guarantee that it will probably cost more than we can afford, and we will go out of business. Some choice. (b)(6)
XX

I realize, Congressman Hall, that you are very busy and certainly other matters are equally important. I am asking for you consideration in this matter, and possibly a ruling by whatever agency that oversees the administration of the ADA. While I know and understand the chances of infection are limited, that is NOT the perception the general public has and the reality is that they will not support my facility by buying memberships, they will not renew their memberships, and we (my Company and employees) will suffer the consequences. The public hysteria is real and alive across the Country, and I believe our entire industry will eventually be lost if common sense does not prevail, and prevail quickly.

Sincerely,

Ronald D. Martin
President

01-01934

T. 2-23-93

MAR 3, 1993

DOJ 202-PL-419

Douglas K. Smith, CPCA
City of Virginia Beach
Department of Permits and Inspections
Municipal Center
Virginia Beach, Virginia 23456-9039

Dear Mr. Smith:

This letter responds to your correspondence regarding the application of the Americans with Disabilities Act (ADA) regarding accessibility requirements for new construction of a self-storage facility.

The ADA authorizes the Department of Justice to provide technical assistance and information to individuals and entities who have questions about the Act or the Americans with Disabilities Act Accessibility Guidelines (ADAAG). This letter provides informal guidance to assist you in understanding and complying with the ADA accessibility standards. However, this technical assistance should not be viewed as legal advice or a legal opinion about your rights or responsibilities under the ADA.

All self-storage units in a newly constructed single story storage facility are required to be accessible in compliance with ADAAG minimum standards. Section 4.1.1 establishes the application of the minimum standards and also lists limited specific instances where full compliance is not required. Design and construction of all spaces and elements of public accommodations and commercial facilities must comply with all

applicable standards unless specifically allowed as exceptions.

Please feel free to contact the Public Access Section any time you have questions or need information. The Department maintains a telephone information line to provide technical assistance regarding the rights and obligations of individuals, businesses, agencies, and others covered or protected by the ADA.

cc: Records, Chrono, Wodatch, Breen, Harland, FOIA, Library
n:\udd\mercado\plcrtltr\smith.ewh

01-01935

This technical assistance is available by calling 202-514-0301 (voice) or 202-514-0383 (TDD) between 1:00 p.m. and 5:00 p.m., Monday through Friday.

Sincerely,

John L. Wodatch
Chief
Public Access Section

01-01936

City of Virginia Beach

DEPARTMENT OF PERMITS AND INSPECTIONS MUNICIPAL CENTER
ADMINISTRATION (804) 427-4211 VIRGINIA BEACH, VIRGINIA 23456-9039
ZONING (804) 427-8074
FAX (804) 426-5777

December 4, 1992

Shawn Flynn
U. S. Department of Justice
Public Access Sections
Post Office Box 66738
Washington, DC 20035-6738

Re: American Disabilities Act Interpretation

Dear Mr. Flynn:

QUESTIONS: What percentage of units in a self storage facility containing 447 units for rent must be accessible to the disabled.

COMMENT?

A proposed floor plan is enclosed.

Thank you for your help with the above referenced. If you have any questions, please feel free to call.

Very truly yours,

Douglas K. Smith, CPCA
Plans Review Specialist

DKS:rsm
Enclosure

01-01937

(FLOOR PLAN) Roadway (Flat)

(FLOOR PLAN DIAGRAM OMITTED)

01-01938

MAR 10 1992

Ms. Mary C. Becker
Administrator
17th Congressional District Office
380 Alvarado Street
Monterey, California 93940

Dear Ms. Becker:

This is in response to your inquiry on behalf of your constituent, (b)(6)

XX has requested a copy of the implementing regulations for the Americans with Disabilities Act (ADA) that pertain to medical care services. Please find enclosed a copy of the regulations for title II of the ADA, which apply to medical services provided by public clinics, public hospitals, and other public agencies and for title III of the ADA, which apply to

private health care providers. I have also enclosed a copy of this Department's Title II and Title III Technical Assistance Manuals, documents that provide further information about the requirements of the ADA.

(b)(6) has specifically inquired whether anything in the ADA regulations guarantees to people with disabilities the right to stay at home and receive medical care there rather than enter a long-term care facility. Neither the ADA nor the Department's regulations specifically address this issue.

If XX has further questions after reviewing the enclosed materials, she may call the Department's ADA Information Line at 202/514-0301 (Voice) or 202/514-0383 (TDD).

cc: Records; Chrono; Wodatch; McDowney; Magagna; Willis; FOIA.
\udd\willis\cgpanett

01-01939

We hope that this information will be helpful to you in responding to (b)(6)

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

Enclosures

01-01940

T. 3-9-93

DJ 202-PL-476

MAR 1 0 1993

(b)(6)
Salem, Virginia 24153

Dear XX

Thank you for your recent letter in which you requested information regarding fire alarm system requirements under the Americans With Disabilities Act (ADA).

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities that are subject to the Act. This letter provides informal guidance to assist you in understanding the ADA accessibility standards. However, this technical assistance does not constitute a legal interpretation of the application of the statute and it is not binding on the Department.

The ADA's requirements for public accommodations and commercial facilities generally became effective on January 26, 1992. Further discussion of the ADA's effective dates may be found in sections III-5.1000, III-6.1000, and III-8.8000 of the enclosed ADA Title III Technical Assistance Manual at pages 43, 48, and 67, respectively.

The ADA requires that visual alarms be provided in existing places of public accommodation that have alarm systems if it is readily achievable. For further discussion of this requirement, please consult section III-4.4000 of the enclosed Manual at pages 28-35.

In newly constructed or altered places of public accommodation and commercial facilities, alarm systems must meet the standards specified in section 4.28 of the ADA Accessibility Guidelines, which may be found on page 35,658 of the enclosed Department of Justice ADA Title III Regulation.

While the ADA does not require installation of fire alarms, if your local jurisdiction requires fire alarms in a specific

cc: Records, Chrono, Wodatch, Breen, Johansen, FOIA, Library
n:\udd\mercado\plcrtltr\(b)(6) .lkj

01-01941

building, you must install them in accordance with the enclosed regulation.

Title III of the ADA is enforced by the Department of Justice. State and local officials are responsible for enforcing local building codes, but are not authorized to enforce the ADA

on behalf of the Federal Government. For further information on enforcement and the relationship of the ADA to local codes, please consult sections III-8.0000 and III-9.2000 of the enclosed Manual at pages 64-67 and 68-69, respectively.

We hope this information is helpful to you.

Sincerely,

Philip L. Breen
Special Legal Counsel
Public Access Section

Enclosures
Title III Regulations
Title III Technical Assistance Manual

01-01942

January 4, 1993

A.D.A.
U.S. Dept. of Justice
P.O. Box 66118
Washington, D.C. 20035-6118

(b)(6)
Salem, VA 24153

To Whom It May Concern,

I presently install fire alarm systems in various types of buildings including nursing homes under construction and existing. It has come to my attention that in 1994 the American Disabilities Act will go into effect with new guidelines for existing and new construction or alterations of nursing homes pertaining to fire alarm systems.

I need to find out how to obtain proper information on the new laws as well as to the dates that they will go into effect. I also need to know what structures will be effected or will "grandfather" into conformance and not have to upgrade. It would also be helpful to know exactly what jurisdiction that the inspections of life saftey programs (fire alarm system) fall under, as in Local, State or Federal Governments.

I am in urgent need of your response and it will be greatly appreciated.

Sincerely,
(b)(6)

01-01943

MAR 10 1993

The Honorable Charles S. Robb
United States Senate
493 Russell Senate Office Building
Washington, D.C. 20510-4603

Dear Senator Robb:

This letter is in response to your inquiry on behalf of your constituent, XX who seeks information about the Americans with Disabilities Act (ADA).

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist your constituent in understanding the ADA's requirements. However, it does not constitute a legal interpretation and it is not binding on the Department.

(b)(6) expresses concern about the failure of his condominium board to install accessibility features, such as Brailled elevator buttons, accessible restroom stalls, and ramp handrails, at the condominium in which he lives. (b)(6) states that, in addition to its residential spaces, his condominium building houses at least five businesses that are open to the public.

Title III of the ADA, which covers places of public accommodation and commercial facilities, does not apply to strictly residential facilities. However, within residential buildings, areas that function as one of the ADA's twelve categories of places of public accommodation, and that are not intended for the exclusive use of tenants and their guests, constitute "places of public accommodation" within the meaning of title III, and must comply with the ADA. For instance, all of the establishments XX cites as being located in his condominium building, a retail store, beauty salon, dry cleaner, attorney's office, and real estate office, are covered by title III. The twelve categories of places of public accommodation are discussed in section 36.104 of the enclosed title III regulation, at page 35594, with corresponding preamble discussion at pages 35551-35552.

cc: Records, Chrono, Wodatch, Breen, McDowney, Novich, FOIA
Udd:Novich:congress.Robb

The parking, entrances, access routes, and restrooms serving those places of public accommodation would also be subject to ADA jurisdiction. However, areas and routes that serve only the residential areas of the facility are not covered by title III.

Title III of the ADA can be enforced by private litigation or by filing a complaint with the Department of Justice. If (b)(6) XX would like to file a complaint against any places of public accommodation in his condominium building, he should send any relevant information, including the names and addresses of the businesses he alleges to be in violation of the ADA, to:

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

All complaints should be in writing and should set forth, in as complete a manner as possible, the factual circumstances surrounding the complaint.

In addition, the Fair Housing Act, which contains nondiscrimination and accessibility requirements relating to persons with disabilities, may apply to both the residential and the common-use areas in XX condominium. For more information on the Fair Housing Act, (b)(6) may contact:

U.S. Department of Housing and
Urban Development
Office of Fair Housing
451 Seventh St., S.W.
Washington, D.C. 20410-2000
(202) 708-8041

I hope this information is useful to your constituent in understanding the requirements of the ADA.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

Enclosures (2)
Title III Regulation
Title III Technical Assistance Manual

01-01945

(HANDWRITTEN) (b)(6)
McLean Virginia XX
Senator Charles S. Robb 19 January 1993
State Office
Old City Hall
1001 East Broad Street
Richmond Virginia 22102-1815

Sir:

I am writing to you on matters different than the past. They affect me and others on a daily basis. Specifically, that have to do with the handicap adaptability of the Condominium in which I live. Theoretically, the Condominium Board claims this is a private building. I claim no since there is a commercial member on the Board and at least five businesses interior to the building which are used by the public (store, beauty, salon, dry cleaners, attorney, real estate agents). There are no braille buttons on the elevators; interior and exterior doors are difficult to open regardless of age or disability; there are no handicap stalls in the bathrooms; and their are no handrails up ramps leading to the parking garages. I would have hoped that the Board and the people who live here would want to make these repairs because its the right thing to do not because they have to do it. During a recent condo election I was appalled to find people insensitive to the fact that the only exterior ramps are exposed to bad weather. A recent effort on my part to raise money for handicap improvements raised zero. Many of the condo board members are past and current state and federal government employees. I have refused to pay condo fees since this situation exists and asked for a rebate of moneys paid since the law was passed. I ask you and the other government officials below to assist me in finding those cognizant agencies relevant to enforcement

of the law. XX

cc: Secretary of Labor Reich, Commonwealth of Va
Secretary of HHS M.M. Cullum
ILLEGIBLE Condo Board Members: E. MacLaughlin,
Carolyn Moss, Scott Segal

01-01946

DJ 202-PL-409

MAR 11 1993

Mr. W. E. Olson
Engineering Supervisor
CR/PL, Inc.
P.O. Box 389
Nevada, Missouri 64772

Dear Mr. Olson:

At the Access Board hearings in Washington on March 9, your representative stated in her testimony that I had said at the American Society of Plumbing Engineers (ASPE) conference last year that a toilet seat height of 19 1/4" was acceptable under the Americans with Disabilities Act (ADA). I spoke to her afterwards to clarify, as I had explained to you at our two-hour meeting in December 1992, what I had actually said: an owner of a recently-constructed building that is not subject to the new construction requirements is not necessarily required to replace all 19 1/4" toilet seats for purposes of complying with the ADA's barrier removal requirement.

This issue had been raised at the ASPE conference by a member of the audience. He mentioned that the owner of a building constructed in 1990 or 1991 had just replaced all the toilets in the building, because they had seats at 19 1/4", rather than 19", and he was bringing the building up to new construction standards. In response, I said that existing buildings are subject to the requirement that barriers be removed if it is readily achievable to do so; and that, most likely, it would have been a wiser use of funds to make other types of changes to the building than to remove all the toilets when they

were only 1/4" off the new construction standard. This statement does not relate to requirements or tolerances for new construction.

Your representative seemed to understand my explanation after her testimony at the hearings. (An Access Board staff member who had also been at the ASPE meeting was present and

cc: Records; Chrono; Wodatch; Blizard; Bowen.
\udd\bowen\olson.ltr

confirmed my statements.) I would appreciate it if you would clarify this issue with other representatives of your company or your industry, if they are under the impression that this Department has stated that 19 1/4" height toilet seats are acceptable in new construction.

At our meeting with you and others in December, we had also answered several of the same questions your company raised in your two letters and at the Access Board hearings. As our staff has explained to you recently, we will answer the remaining questions that you have posed, to the extent we are authorized to do so, as soon as our resources and workload allow.

Sincerely,

L. Irene Bowen
Deputy Chief

cc: Kathy Parker, Access Board
Larry Roffee, Access Board

01-01948

MAR 22 1993

Ms. Mary C. Becker
Administrator
17th Congressional District of California
380 Alvarado Street
Monterey, California 93940

Dear Ms. Becker:

This letter is in response to your inquiry on behalf of your constituent, Merlyn McAlister.

Ms. McAlister asked two questions about the Americans with Disabilities Act. She wanted to know the number and exact title of the law. The public law number is P.L. 101-336, and the title is the "Americans with Disabilities Act of 1990" (ADA). It appears in the United State Code at 42 U.S.C. 12101. She also wanted to know which government offices and private businesses must provide information or signs in braille.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist your constituent in understanding the ADA's

requirements. However, it does not constitute a legal interpretation and it is not binding on the Department.

Title II of the ADA sets forth the obligations for state and local governments. Title II prohibits discrimination against persons with disabilities in all services, programs, and activities provided or made available by public entities. A public entity includes any department, agency, special purpose district, or other instrumentality of a state or local government.

cc: Records; Chrono; Wodatch; McDowney; Magagna; Burch; FOIA.
\udd\bethea\burch.pan

01-01949

Any newly constructed facility of a state or local government must be designed and constructed so that it is readily accessible to and usable by people with disabilities. In new construction, public entities have the choice of two accessibility standards to follow in constructing or altering a facility: the Uniform Federal Accessibility Standards (UFAS) or the ADA Accessibility Standards for Buildings and Facilities (ADAAG).

UFAS requires that: (1) signs designating permanent rooms and spaces be raised (Braille is not required) and must be mounted at a certain height and location; (2) all other signs (including temporary signs) must comply with requirements for letter proportion and color contrast, but not with requirements for raised letters or mounting height. See 4.30 of enclosed copy of UFAS at p. 47

ADAAG requires that: (1) signs designating permanent rooms and spaces (men's and women's rooms; room numbers; exit signs) have raised and Brailled letters; comply with finish and contrast standards; and be mounted at a certain height and location; (2) signs that provide direction to or information about functional spaces of a building (e.g. "cafeteria this way;" "copy room")

need not comply with requirements for raised and Brailled letters, but they must comply with requirements for character proportion, finish, and contrast. If suspended or projected overhead, they must also comply with character height requirements; (3) building directories and other signs providing temporary information (such as current occupant's name) do not have to comply with any ADAAG requirements. See section S 4.30 in enclosed copy of ADAAG, which can be found on p. 53.

State and local governments are required to operate each program so that, when viewed in its entirely, the program is readily accessible. While new buildings must be built in accordance with UFAS or ADAAG as explained above, existing buildings need not be modified (and braille signage need not be added) if a program as a whole can be made accessible by some method other than providing architectural access -- moving it to an accessible location, for example. Program access is required unless the state or local government can show that it would result in a fundamental alteration of the program or undue financial or administrative burden.

Title III of the ADA prohibits discrimination against persons with disabilities by any public accommodation or commercial facility. A public accommodation is any private entity that owns, leases or leases to, or operates a place of public accommodation. The following twelve categories of entities are places of public accommodations:
01-01950

1. Places of lodging.
2. Establishments serving food or drink.
3. Places of exhibition or entertainment
4. Places of public gathering.
5. Sales or rental establishments.
6. Service establishments.
7. Stations used for specified public transportation.
8. Places of public display or collection.
9. Places of recreation.
10. Places of education.
11. Social service center establishments.
12. Places of exercise or recreation.

A commercial facility is a facility intended for nonresidential use by a private entity and whose operations affect commerce. Factories, warehouses, office buildings and other buildings in which employment may occur would be included in this category.

For new construction and alterations of places of public accommodations and commercial facilities, the ADAAG requires that signs of different types comply with specific characteristics to accommodate persons with visual impairments. Signs designating permanent rooms and spaces are required to have raised and Brailled numbers and characters, making them tactually readable. In addition, elevator car controls, floor markings on elevator hoistways, and elevator identification adjacent to emergency communication are required to be tactually readable.

In existing buildings, ADA requires that public accommodations remove structural communication barriers where such removal is readily achievable. Readily achievable means easily to accomplish without much difficulty or expense. Adding braille designations in an elevator is an example of a change that will usually be readily achievable.

I have also enclosed a copy of the Department's Title II and Title III Technical Assistance Manuals with the current supplements which may be of further assistance in understanding the signage requirements under the ADA.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

Enclosures (4)

01-01951

CONSTITUENT REQUEST

DATE: 1/25/93

STAFF MEMBER: kwc

CONSTITUENT NAME: Ms. Merlyn McAlister

ADDRESS: S & S Trophies
3112 Porter St.
Soquel, CA 95073

PHONE: 475-5512

Position/A Information/B B Bill Status/C Document/D

VIEWPOINT OR REQUEST

Issue/Subject The Americans with Disabilities Act.

Ms. McAlister has some questions about the Americans with Disabilities Act (ADA):

1. She would like to know the number of the ADA law, and the exact title of the law (is it still known as the Americans with Disabilities ACT now that it is a law, in other words?).

2. Ms. McAlister understands that certain businesses and public offices must, as a result of the ADA, begin posting signs in braille. She would like to know exactly what offices must provide information or signs in braille, please. This would include both the types of private businesses and public/government offices that would be required to do so.

01-01952

Mar 22, 1993

The Honorable Pete V. Domenici
United States Senate
427 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Domenici:

This letter is in response to your inquiry on behalf of (b)(6)

XX expressing her concerns about the potential dangers posed to persons with multiple chemical sensitivities by pesticides used by Terminix International.

The Americans with Disabilities Act of 1990 ("ADA") authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist your constituent in understanding the ADA's requirements. However, it does not constitute a legal interpretation and it is not binding on the Department.

(b)(6) suggests that when Terminix International applies pesticides to some area or facility, it place signs indicating what pesticides it has applied in order to warn persons with multiple chemical sensitivities. The obligations of title III of the ADA regarding existing facilities are imposed on private entities who own, operate, lease, or lease to places of public accommodation. One of those obligations is to make reasonable modifications in policies and practices when necessary to afford an individual with a disability an opportunity to participate in, or benefit from, the goods and services offered by a place of public accommodation.

The obligations of title III, however, do not apply to religious entities like the Paradise Hills United Methodist Church mentioned by XX While many churches and other religious organizations have voluntarily chosen to comply with the ADA, they are not required to do so.

cc: Records; Chrono; Wodatch; McDowney; Magagna; Contois; FOIA.
\udd\contois\cgl\domenici

01-01953

For your information, I am enclosing a copy of this Department's regulation implementing title III of the ADA and the Technical Assistance Manual that was developed to assist individuals and entities subject to the ADA to understand the requirements of title III. Section 36.102(e) of the regulation sets out the exemption for churches and religious organizations,

and this exemption is discussed at pages 4-5 of the Technical Assistance Manual. The requirement that public accommodations make reasonable modifications in their policies and practices to avoid discriminating against individuals with disabilities is set out in section 36.302 of the regulation, and is discussed at pages 22-24 of the Technical Assistance manual. In addition, there is some discussion of the issues related to persons with multiple chemical sensitivities in the preamble to the title III regulation, at page 35549.

I hope this information is useful to you in responding to (b)(6)

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

Enclosures

01-01954

October 23, 1992
XX
Albuquerque, New Mexico 87114

XX

The Honorable Pete V. Domenici
United States Senate
Washington, D.C. 20510

Dear Senator Domenici:

Enclosed is a copy of a letter sent to Terminix International. Is there any thing you can do to lead to the two changes needed so those of us who are disabled by chemicals can have safe access to public places?

I will be glad to answer any questions you may have or provide more information.

Sincerely,

(b)(6)

01-01955

October 23, 1992
(b)(6)
Albuquerque, New Mexico 87114
XX

Dick Fagerlund, Inspector
Terminix International
5308 Coal SE.
Albuquerque, New Mexico 87108

Dear Mr. Fagerlund:

On August 12, 1992, I contacted your office regarding pesticides applied by your company at Paradise Hills United Methodist Church before August 7, 1992. You informed me you had used Demon 40 WP inside the building and Gold Crest Dursban 2.5 G granules outside. I sincerely appreciate the kind and helpful attitude shown by you and your staff when I called. I received the data sheets the following day (Enc. 1 and 2). Thank you for your prompt attention.

I am disabled as a result of chemical exposures, (including pesticides) and have Environmental illness also known as Multiple Chemical Sensitivity (Enc. 3 and 4). I am involved in an 18 year struggle to regain my health and achieve my goal to once again be gainfully employed. According to the American Disabilities Act of 1990, all of us who are disabled have the right to "full and equal enjoyment" of the goods, facilities, and services in public places. For me to safely access public places, I need the following:

1. Both public buildings and grounds to be posted with easily visible signs with the date of spraying and the chemicals used.
2. Use of Integrated Pest Management (Enc. 5).

The severe reaction experienced as a result of the pesticide exposure I received at the church on August 7, 1992, has made me realize I need to ask for safe access to public buildings and grounds and those private buildings being used for public service. For five years I have assisted in unloading the PHUMC Buying Club food truck at the church. To my knowledge during that period of time the church grounds and buildings were never treated with any chemical applied by a commercial pest control company.

On August 7, I spent 60 to 75 minutes at the church working predominately on the grounds, making numerous trips to and from the church storage room. I was wearing a cotton mask as protection from airborne chemicals and pollutants. After leaving the church, I developed a severe headache, muscle aches, extreme fatigue and was forced to go to

bed. I took a detoxify sauna and showered to try to feel better. I didn't. On Saturday morning, August 8, I went to Buying Club food distribution, I learned at that time the building we were using had been sprayed with pesticide recently, so I used great caution and stayed out of the building. However, I did walk on the grounds.

By Wednesday, August 12, I had not improved. I needed more information about what I had possibly been exposed to. The church secretary informed me that Terminix had serviced the church. After several phone calls to the church and the Terminix office I learned pesticides, besides being used inside the building, were also applied on the grounds.

I called the office of Jacqueline A. Krohn, M.D. in Los Alamos, the specialist treating me. She informed me I was doing all that could be done and there was not a way to quickly recover from pesticide exposure.

Later in the day during a phone conversation with a friend I realized I was still wearing the same shoes that I had been wearing at the church. They were soaked with pesticide and continued to expose me every time I wore them. I then knew why I did not get a decrease in symptoms after I took my detoxify saunas and showers. This pair of shoes had to be removed from the house and I may never wear them again. Two days later, the severe headache was gone. The muscle aching and severe fatigue continued for two more weeks. The only way I got any relief was to stay in bed.

During that period of time, I could do no housework, work in the yard or my vegetable garden. Also, my oldest daughter had extensive oral surgery. I was unable to care for her.

My husband, daughters and I have made many difficult, expensive and time consuming changes in our home and life style in order to improve my health and to allow me to live within our community. To say the least, it is painful and demoralizing to spend so much time, money, and energy to regain my health, then unknowingly be exposed to pesticides for such a short time and be forced to bed as a result.

If the two measures I have listed at the beginning of this letter would have been in place on August 7, I would have not been exposed to pesticides. I have every confidence that Terminix will assist those of us with chemical disabilities by being on the cutting edge in leading the way to set chemically safe standards for all commercial pest control companies. I want to take one last opportunity to thank you for your interest and caring cooperation in this matter.

Sincerely,

(b)(6)

01-01957

Enclosures:
1. Material Safety Data Sheet--Demon 40 WP
2. Material Safety Data Sheet--Gold Crest Dursban 2.5 G
3. What is Environmental Medicine?
4. In What Ways Are People With E.I. Disabled?
5. Lawn Care Pesticides and Safety--What You Should Know

cc
Terminix Corporate Office
The Reverend Alfred Norris, United Methodist Bishop of the New Mexico Conference
The Reverend David Z. Ring III, D.D., Pastor, Paradise Hills United Methodist Church
Jim Huron, Chairman, Board of Trustees, Paradise Hills United Methodist Church
Rita Lindberg, Coordinator, PHUMC Buying Club, Paradise Hills United Methodist Church
Jacqueline A. Krohn, M.D., member American Academy of Environmental Medicine
The Honorable Pete V. Domenici
The Honorable Jeff Bingaman
The Honorable Bill Richardson
Office on the Americans with Disabilities Act, Civil Rights Division, U.S. Department of Justice
Alice King
The Honorable Martin Chavez
The Honorable Paul D. Barber
Judith M. Espinosa, Secretary, New Mexico Environment Department
Judy Myers, Director, Governor's Committee on Concerns of Handicapped
Rafaelita Bachicha, Coordinator of Advocacy Programs, Governor's Committee on Concerns of Handicapped
Lonnie Mathews, Bureau of Pesticide Management, New Mexico Department of Agriculture
Kate Gallegos, Director, Administrative Services Division, Attorney General's Office
Commissioner Pat Baca, Chairman Bernalillo County Board of Commissioners
National Coalition Against The Misuse of Pesticides, Pesticide--Incident Victim Record

Mary Lamielle, National Center for Environmental Health Strategies
President
Human Ecology Action League, Inc.
Madeline Rivera, Chapter Representative Human Ecology Action League, Inc.
Curtis Smith, County Extension Agent
Anne Thomas, Chair Bernalillo County Commission on Persons with
Disabilities
File

01-01958

T. 3-16-93
Control No. X93021001461

Mar 22 1993

The Honorable Richard E. Neal
Member, U.S. House of Representatives
1550 Main Street
Federal Building
Springfield, Massachusetts 01103

Dear Congressman Neal:

This letter responds to your inquiry on behalf of your constituent, Mr. Dave Canegallo, regarding the percentage of accessible portable toilets required under title III of the ADA.

The ADA authorizes the Department of Justice to provide technical assistance to individuals or entities having rights or obligations under the Act. This letter provides informal guidance to assist your constituent in understanding the ADA's requirements. However, it does not constitute a legal interpretation and it is not binding on the Department.

The standards for accessible design that apply to accessible portable toilets are contained in the ADA Accessibility Guidelines for Buildings and Facilities (ADAAG), published as Appendix A of the Department of Justice's ADA Regulation under title III. ADAAG section 4.1.2(6) specifically addresses this issue. It states: ". . . For single user portable toilet or bathing units clustered at a single location, at least 5% but no less than one . . . unit complying with 4.22 . . . shall be installed at each cluster whenever typical inaccessible units are provided. . . . " Section 4.22 contains design requirements for accessible toilet rooms. Portable toilet units at construction

sites used exclusively by construction personnel are not required to be accessible.

Two copies of the Department's title III regulation are enclosed for the use of your constituent and your staff. Tabs have been inserted on the pages containing ADAAG sections

cc: Records, Chrono, Wodatch, Lusher, McDowney, FOIA, MAF
n:\udd\mercado\congltrs\neal.rhl

01-01959

4.1.2(6) and 4.22, addressed above. I am also enclosing two copies of our Title III Technical Assistance Manual.

I hope that the information provided is helpful to you and your constituent.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

Enclosures

01-01960

RICHARD E NEAL
SECOND DISTRICT, MASSACHUSETTS

COMMITTEE ON WAYS AND ILLEGIBLE
SUBCOMMITTEE ON TRADE
SUBCOMMITTEE ON SELECT REVENUE

MEASURE
WHIP AT-LARGE

Congress of the United States
House of Representatives
Washington, DC 20515

February 3, 1993

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

Dear Mr. Wodatch,

I am writing on behalf of Mr. Dave Canegallo, who has recently contacted my office for assistance.

Mr. Canegallo is the owner of a portable restroom company (Sani Can) which services outside events such as fairs and festivals in the area. His concern is to meet the requirements in relation to Title III of the Americans With Disabilities Act regarding public

accommodations, specifically the ratio of portable handicapped toilets to regular portable toilets.

Please forward to Noreen Sexton in my Springfield District Office any information which would allow me to assist Mr. Canegallo. I would also request that you keep Ms. Sexton informed of any developments regarding this matter.

Thank you very much for your attention to this problem. I look forward to hearing from you at your earliest convenience.

Sincerely,

RICHARD E. NEAL
Member of Congress

REN/nrs

enclosure

01-01961

MAR 22 1993

The Honorable Fred Upton
U.S. House of Representatives
1713 Longworth Office Building
Washington, D.C. 20515-2204

Dear Congressman Upton:

This letter is in response to your inquiry on behalf of (b)(6) , concerning the possibility of providing unisex toilet rooms in places of public accommodation.

The Americans with Disabilities Act of 1990 ("ADA") authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist your constituent in understanding the ADA's requirements. However, it does not constitute a legal interpretation, and it is not binding on the Department.

Although the regulations issued by this Department under title III of the ADA (enclosed) do not require unisex toilet rooms, the regulations do allow provision of one accessible unisex room instead of accessible restrooms for each sex in some situations. For instance, under title III of the ADA, places of public accommodation are required to do whatever is readily achievable to make their facilities accessible to individuals with disabilities. If it is not readily achievable for some places of public accommodation to provide two accessible toilet rooms, then it may be sufficient to provide one accessible, unisex toilet room.

cc: Records, Chrono, Wodatch, McDowney, Bowen, Contois, FOIA.
Udd\Contois\cgl\upton

01-01962

Similarly, when places of public accommodation undertake alterations to their facilities, they are generally required to comply with the architectural standards set out in the appendix to the Department's title III regulation. These standards, known as the ADA Accessibility Guidelines ("ADAAG"), generally require that any room that is altered must be made accessible; however, at section 4.1.6(3)(e) they also provide that if it is technically infeasible to make a restroom that is being altered accessible, an accessible, unisex toilet room may be provided.

The Architectural and Transportation Barriers Compliance Board, also known as the Access Board, is the organization that is initially responsible for drafting and amending ADAAG. We have taken the liberty of forwarding (b)(6) letter to the Access Board, so that they may consider her comments and the possibility of proposing that ADAAG be altered or amended.

I have enclosed for your information a copy of the

Department of Justice's title III implementing regulation, which contains ADAAG, and a copy of the Department's Technical Assistance manual for title III, which contains a section discussing the requirements of ADAAG. I hope this information is useful to you in responding to your constituent.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

Enclosures (2)

01-01963

MAR 22, 1993

Mr. Lawrence W. Roffee
Executive Director
Access Board
1331 F Street, N.W.
Suite 1000
Washington, D.C. 20004-1111

Dear Mr. Roffee:

Congressman Fred Upton forwarded to this office a letter from his constituent, XX regarding the provision of accessible unisex toilet rooms in places of public accommodation.

While we have responded to Congressman Upton, we are taking the liberty of forwarding XX letter to you, so that you may consider her comments. Enclosed you will find copies of both (b)(6) letter and our response to Congressman Upton.

Thank you for your attention to this matter.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

Enclosures (2)

cc: Records; Chrono; Wodatch; McDowney; Bowen; Contois; FOIA.
\udd\contois\admin\accessbd.ltr

01-01964

XX

MAR 23 1993

(b)(6)
San Antonio, Texas 78212

Dear XX

I am writing in further response to your March 31, 1992, letter requesting information about the Americans with

Disabilities Act (ADA).

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist you in understanding the ADA's requirements; however, it does not constitute a legal interpretation and it is not binding on the Department.

Your letter requests guidance in determining whether your organization, the Eastern Star Chapters, is exempt as a "private club" under Section 307 of the ADA. Your letter also states that this organization intends to meet occasionally in a two-story brick building.

In general, the ADA requires places of public accommodations to remove access barriers, such as entrance steps or stairs, where such removal is "readily achievable." The ADA defines readily achievable to mean easily accomplishable without much difficulty or expense. A number of factors are considered in determining whether barrier removal is readily achievable, including the nature and cost of the action required and the size and resources of the business involved.

Section 307 of the ADA exempts "private clubs" from the ADA's requirements. The Department's implementing regulation, 28 C.F.R. pt. 36 (enclosed), defines a private club as a "private club or establishment exempted from coverage under title II of the Civil Rights Act of 1964." 28 C.F.R. 36.104. Courts have considered a number of factors in determining whether a private entity qualifies as a private club under title II, including the degree of member control of the club's operations, the selectivity of the membership selection process, whether substantial membership fees are charged, whether the entity is

cc: Records, Chrono, Wodatch, Bowen, Nakata, FOIA, XX
Udd:Nakata:202.PL.237. (b)(6)

01-01965

operated on a nonprofit basis, the extent to which the facilities are open to the public, the degree of public funding, and whether the club was created specifically to avoid compliance with the Civil Rights Act. Even if a private entity is exempt as a "private club" under the ADA, however, the entity's facilities are still subject to the requirements of the ADA to the extent

that such facilities are made available for use by nonmembers as places of public accommodation. 56 Fed. Reg. 35552-53 (1991).

I have enclosed a copy of the Department's Title III Technical Assistance Manual, which may further assist you in understanding your obligations under the ADA. Private clubs are discussed at pages 5-6 of the manual. I hope this information is useful to you.

Sincerely,

L. Irene Bowen
Deputy Director
Public Access Section

Enclosures (2)
Title III Technical Assistance Manual
Title III regulation

01-01966

United States
Architectural and Transportation Barriers Compliance Board

1331 F Street, NW Suite 1000 Washington, DC 20004-1111 202-272-5434 (V/TDD FAX

202-272-5447

JUN (ILLEGIBLE), 1992

Mr. John Wodatch
Director
Office on the American with Disabilities Act
Civil Rights Division
U.S. Department of Justice
Washington, DC 20530

Dear Mr. Wodatch:

Please find enclosed four letters addressed to the Access Board requesting assistance regarding the ADA. It is our opinion that they address issues more appropriately under the purview of the Department of Justice.

Please respond directly to the parties requesting assistance. We have notified them that we have forwarded their inquiries to your office.

Sincerely,

Marsha K. Mazz
Technical Assitance Coordinator

Enclosures

The Access Board
(b)(6)

01-01967

(HANDWRITTEN)

(b)(6)
SAN ANTONIO, TEXAS 78212
XX

March 31, 1992

Architectural Barriers and Compliance Board
Suite 501
111 18th St. N.W.
Washington, DC 20036-3894

Gentlemen:

Reference section 307 of the "Americans with Disabilities Act of 1990", please let me know if Eastern Star Chapters meeting in a two story brick building are exempt from provisions of said Act. Each Chapter meets on different days and times. Private "Clubs" I believe Eastern Star and Masonic organizations are exempt under 503(ILLEGIBLE) of this code

Do they not come under said section 307 and are exempt from the Act?

I certainly agree that anyone with a disability should be provided for to the extent of laws but was interested to see if the said law exempted disabilities.

May I hear from you?

Thank You

Sincerely,

(b)(6)

01-01968

T. 7-13-92

JUL 14 1992

(b)(6)
San Antonio, Texas 78212

Dear XX

The Civil Rights Division of the Department of Justice has received your request for an interpretation of the Americans with Disabilities Act (ADA). The ADA authorizes the Department of Justice to provide technical assistance to entities that have rights or responsibilities under the Act. The Civil Rights Division will treat your inquiry as a request for technical assistance and will provide informal guidance to you. However, because of the large volume of requests for interpretations of the ADA, we are unable to answer your letter at this time.

Please be assured that the Division will respond to your letter expeditiously. We regret any inconvenience caused by our delay in responding and have enclosed for your information two documents on the ADA: "Title II Highlights" and "Title III Highlights."

Sincerely,

L. Irene Bowen
Deputy Director
Office on the Americans with Disabilities Act
Civil Rights Division

Enclosures

: Records, Chrono, Wodatch, Bowen, Nakata
d:mercado:policy.letters.acknowl:bowen.plack.(b)(6)

01-01969

DJ 202-PL-81

MAR 30 1993

Mr. Lawrence P. Postol, Esq.
Seyfarth, Shaw, Fairweather & Geraldson
815 Connecticut Avenue, N.W.
Washington, D.C. 20006-4004

Dear Mr. Postol:

This letter is in response to your inquiry of February 3, 1992, regarding section 309 of the Americans with Disabilities Act ("ADA"), and its application to continuing legal education courses.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist you in understanding the ADA's requirements. However, it does not constitute a legal interpretation or legal advice, and it is not binding on the Department of Justice.

Among other things, section 309 of the ADA applies broadly to all examinations or courses related to applications, licensing, certification, or credentialing for professional or trade purposes. Because continuing legal education courses are courses related to licensing, certification, and credentialing of attorneys, they fall within the ambit of section 309 whether or not they are required by a State bar. In addition, and independently of the requirements of section 309, if a continuing legal education course is offered by a private entity that owns, operates, leases, or leases to a place of public accommodation, the entity offering that course would have to meet all of the requirements generally applicable to public accommodations.

The basic requirement of section 309 is that examinations and courses be offered in a place and manner that is accessible to persons with disabilities. The specific requirements that a

course covered by section 309 may have to meet are set out in section 36.309(c) of the Department of Justice's regulation implementing title III. Any private entity that offers a course covered by section 309 must 1) provide the course in a facility that is accessible to individuals with disabilities or make

cc: Records, Chrono, Wodatch, Breen, Contois, FOIA
Udd:Contois:PL:postol

01-01970

alternative accessible arrangements, 2) make such modifications as may be needed to ensure that the place and manner in which the course is given are accessible to persons with disabilities, and 3) provide appropriate auxiliary aids and services for persons with impaired sensory, manual, or speaking skills.

I have enclosed copies of the Department of Justice's regulation implementing title III and its Technical Assistance Manual for title III. Section 36.309 of the regulation is set out at pages 35598-35599, and the requirements applicable to private entities offering examinations and courses are discussed in the Technical Assistance Manual at pages 39-41.

I hope this information is useful to you in understanding the requirements of the ADA.

Sincerely,

John L. Wodatch
Chief
Public Access Section

Enclosure
Title III regulation
Title III Technical Assistance Manual

01-01971

SEYFARTH, SHAW, FAIRWEATHER & GERALDSON
ATTORNEYS AT LAW

February 3, 1992

Mr. John Wodatch
Director, Office of Americans with Disabilities Act
Civil Rights Division
U.S. Department of Justice
P.O. Box 66118
Washington, D.C. 20035-6118

Re: Section 309 of Title III

Dear Mr. Wodatch:

I would appreciate an informal opinion as to Section 309 of Title III of the Americans with Disabilities Act. My question is whether this provision covers continuing legal education ("CLE") courses? As you know, many professional groups and trade associations put on such courses to help keep their members, e.g. the District of Columbia bar. The question arises as to whether such courses are covered by Section 309 of the ADA.

In addition, does the answer change if the professional must have a certain number of CLE credits a year, although he need not take any particular CLE course? For example, the Virginia bar requires 12 hours of CLE credits. There are literally hundreds of approved courses. Does section 309 of the ADA cover such courses?

I would appreciate an informal opinion on this matter

as soon as possible.
01-01972

If you have any questions concerning my inquiry, please call me at (202) 828-5385.

Sincerely,
SEYFARTH, SHAW, FAIRWEATHER
& GERALDSON

By
Lawrence P. Postol

LPP/skv
5916n
01-01973

APR 9 1993

The Honorable Austin J. Murphy
Member, U.S. House of Representatives
96 North Main Street
Washington, Pennsylvania 15301

Dear Congressman Murphy:

This letter is in response to your inquiry on behalf of your constituent, XX regarding the difficulty he has had in locating a nursing facility which will accept his XX as a patient. He requests information about (b)(6) rights under the Americans with Disabilities Act.

The Americans with Disabilities Act of 1990 ("ADA") authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist your constituent in understanding the ADA's requirements. However, it does not constitute a legal interpretation and it is not binding on the Department.

The ADA defines "disability" to include any mental or

physical condition that substantially limits a major life activity like walking, seeing, hearing, working, or caring for oneself. Thus, from the description provided by XX , it appears that his XX is a person with a disability. As an individual with a disability, (b)(6) is entitled to the protections of the ADA.

Among other things, title II of the ADA requires that all of the facilities and services operated by a state or local government be accessible to persons with disabilities, forbids the use of any eligibility criteria that screen out or tend to screen out persons with disabilities, unless such criteria are necessary for the operation of the facility or service, and requires reasonable modification of policies, practices and procedures unless it would result in a fundamental alteration of its program. Thus, if a privately owned health care facility were to maintain a rule against accepting persons with disabilities, it would violate title II of the ADA.

cc: Records, Chrono, Wodatch, McDowney, Magagna, Contois, FOIA
Udd:Contois:CGL:Murphy
01-01978

Title III of the ADA, which applies to privately owned places of public accommodation, including health care facilities, contains similar provisions. For instance, title III also forbids the use of eligibility criteria that screen out individuals with disabilities from fully and equally enjoying the goods and services offered by a public accommodation, unless such criteria are necessary for the operation of the public accommodation. Title III also requires reasonable modification of policies, practices, and procedures unless it would result in a fundamental alteration of the program.

If Mr. (b)(6) believes that his XX rights under the ADA have been violated, he may either file a complaint in Federal court to enforce the Act, or may file a complaint with the Department of Justice, which is authorized to investigate allegations of violations of both titles II and III. If wishes to file a complaint under title II against a publicly owned health care facility, he may address it to the Coordination and Review Section, Civil Rights Division, Department of Justice, Post Office Box 66118, Washington, D.C. 20035-6118. If wishes to file a complaint against a privately owned health care facility under title III, he may address it to the Public Access Section, Civil Rights Division, Department of Justice, Post Office Box 66738, Washington, D.C. 20035-6738.

For your information, I am enclosing a copy of this Department's regulations implementing titles II and III of the ADA and the Technical Assistance Manuals that were developed to assist individuals and entities subject to the ADA to understand the requirements of titles II and III. The ADA's definition of disability can be found in section 35.104 of the Department's title II regulation (page 35717), and is discussed on pages 3-4 of the title II Technical Assistance Manual. Title II's proscription of discriminatory eligibility criteria is set out in section 35.130(b)(8) of the regulation (page 35719), and is discussed on page 12 of the title II Technical Assistance Manual. Title III's proscription of discriminatory eligibility criteria is set out in section 36.301 of the regulation (page 35596), and is discussed on pages 21-22 of the title III Technical Assistance Manual.

01-01979

I hope this information is useful to you in responding to

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

Enclosures (2)
01-01980

Congress of the United States
House of Representatives
2210 Rayburn Building
Washington, DC 20515
(202) 225-4665

February 23, 1993

REPLY TO: 96 North Main Street
Washington, PA 15301

Ms. Faith Burton
Acting Asst. Attorney General
Office of Legislative Affairs
Washington, D.C. 20530

RE: (b)(6)
Washington, PA 15301

Dear Ms. Burton:

I write to you today on behalf of the of the XX above named constituent who feel that XX is being discriminated against because of an overweight problem.

(b)(6) with one leg amputated. XX weighs approximately 350 pounds and XX is unable to take care of XX . Unsuccessful attempts have been made to place XX in a health care facility in this area. The XX claims that XX is being denied access because of XX weight. Enclosed is a copy of a letter from one health center, which documents that claim.

I would appreciate it if you could look into this matter and advise me what assistance the Justice Department (via ADA Act) can give to the XX in getting XX into a health care facility. Thanking you in advance, I remain

Very truly yours,

AUSTIN J. MURPHY
Member of Congress

AJM/dm
Enclosure
(b)(6)
01-01981

Feb 17, 1993
(b)(6)
WASHINGTON PA 15301

We, the XX and XX are writing this in regards to XX health problems. In the last three years we have been trying to get XX into numerous health care facilities. Canonsburg Home Care Agency has told us that they've called every health Center in a 25 mile radius, with no results.

I XX , came to my XX home this morning and (b)(6) told me that XX told XX that they would drop XX off at XX doorstep from Canonsburg Hospital, because my XX was told to refuse to bring XX home by Canonsburg Health Care Social worker.

My XX approximately 350 lbs with one leg amputated. My XX is unable to care for XX at home.

During the last three years that we've been trying to get (b)(6) in a home, we've been unable to

get anything accomplished we feel that all the facilities are discriminating against my (b)(6) because of XX weight.

We are not looking for a lawsuit, we are looking to get my XX in a home so that (b)(6) can be taken care of properly. Anything that you can do to help my XX , would be appreciated.

Thank You very much,

(b)(6)

01-01980

Washington County Health Center
R.D. #1, Box 94, Washington, PA 15301
Phone: (412) 228-5010
Barry W. Parks, D.Ed., NHA
Administrator

February 8, 1993 (b)(6)

Mr. Joseph A. Ford
Commissioner, County
of Washington
Commonwealth of Pennsylvania
Courthouse Square Building
Room 702
Washington, PA 15301

RE: (b)(6)

Dear Commissioner Ford:

I am in receipt of your letter of January 20, 1993, regarding XX . We did, in fact, review XX application for admission to the Health Center and had determined that we do not have the resource to adequately care for XX needs. In gathering pre-admission information in order to make the determination, it was learned that XX does have needs which require attention; however, we also determined that we do not have the resources to meet XX needs. At the time of referral, XX weight was such that we do not have beds which are able to accommodate XX . Additionally, other requirements on us, as a nursing home, would prevent us from meeting XX needs. We are required to, when people are alert, to get them up daily and out-of-bed for posturing purposes and also for participation in various activities and dining. This would require repeated transfer from bed to wheelchair and we, in fact, do not have beds, wheelchairs, or transfer equipment that would safely accommodate XX . I do realize that this individual has legitimate needs for care, but it was our determination that we could not adequately meet these needs. We would, in fact, have the same difficulties in attempting to deal with XX that the other nursing homes, who were asked to assess XX for admission, have determined that they are unable to meet XX needs.

We were informed that a recommendation had been made by Canonsburg Hospital that an aggressive weight reduction program be instituted for XX health and so that health care providers are able to better care for XX effectively. It is my understanding that XX was receiving in-home services through the Visiting Nurse Agency and I would trust that this resource would still be available. Hopefully, the recommendation from Canonsburg Hospital is being followed. We are certainly willing to reassess this individual for admission if there is a notable change in XX weight, which would allow us to adequately care for XX . At such point as this has been accomplished, we are more than willing to re-evaluate (b)(6) appropriateness for admission and would be willing to consult with the Visiting Nurse Agency and if indicated, to have

our staff do an in-home evaluation of this individual in order to assess our ability to care for (b)(6)

Should you have any additional questions, please feel free to contact me.

Sincerely yours,

Barry W. Parks, D.Ed., NHA
Administrator
BWP:cmb
01-01981

APR 9 1993

The Honorable Austin J. Murphy
Member, U.S. House of Representatives
96 North Main Street
Washington, Pennsylvania 15301

Dear Congressman Murphy:

This letter is in response to your inquiry on behalf of your constituent, XX regarding the difficulty he has had in locating a nursing facility which will accept his XX as a patient. He requests information about (b)(6) rights under the Americans with Disabilities Act.

The Americans with Disabilities Act of 1990 ("ADA") authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist your constituent in understanding the ADA's requirements. However, it does not constitute a legal interpretation and it is not binding on the Department.

The ADA defines "disability" to include any mental or physical condition that substantially limits a major life activity like walking, seeing, hearing, working, or caring for oneself. Thus, from the description provided by XX , it appears that his XX is a person with a disability. As an individual with a disability, (b)(6) is entitled to the protections of the ADA.

Among other things, title II of the ADA requires that all of the facilities and services operated by a state or local government be accessible to persons with disabilities, forbids the use of any eligibility criteria that screen out or tend to screen out persons with disabilities, unless such criteria are necessary for the operation of the facility or service, and requires reasonable modification of policies, practices and procedures unless it would result in a fundamental alteration of its program. Thus, if a privately owned health care facility

were to maintain a rule against accepting persons with disabilities, it would violate title II of the ADA.

cc: Records, Chrono, Wodatch, McDowney, Magagna, Contois, FOIA
Udd:Contois:CGL:Murphy
01-01978

Title III of the ADA, which applies to privately owned places of public accommodation, including health care facilities, contains similar provisions. For instance, title III also forbids the use of eligibility criteria that screen out individuals with disabilities from fully and equally enjoying the goods and services offered by a public accommodation, unless such criteria are necessary for the operation of the public accommodation. Title III also requires reasonable modification of policies, practices, and procedures unless it would result in a fundamental alteration of the program.

If Mr. (b)(6) believes that his XX rights under the ADA have been violated, he may either file a complaint in Federal court to enforce the Act, or may file a complaint with the Department of Justice, which is authorized to investigate allegations of violations of both titles II and III. If wishes to file a complaint under title II against a publicly owned health care facility, he may address it to the Coordination and Review Section, Civil Rights Division, Department of Justice, Post Office Box 66118, Washington, D.C. 20035-6118. If wishes to file a complaint against a privately owned health care facility under title III, he may address it to the Public Access Section, Civil Rights Division, Department of Justice, Post Office Box 66738, Washington, D.C. 20035-6738.

For your information, I am enclosing a copy of this Department's regulations implementing titles II and III of the ADA and the Technical Assistance Manuals that were developed to assist individuals and entities subject to the ADA to understand the requirements of titles II and III. The ADA's definition of disability can be found in section 35.104 of the Department's title II regulation (page 35717), and is discussed on pages 3-4 of the title II Technical Assistance Manual. Title II's proscription of discriminatory eligibility criteria is set out in section 35.130(b)(8) of the regulation (page 35719), and is discussed on page 12 of the title II Technical Assistance Manual. Title III's proscription of discriminatory eligibility criteria is set out in section 36.301 of the regulation (page 35596), and is discussed on pages 21-22 of the title III Technical Assistance Manual.

01-01979

I hope this information is useful to you in responding to

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

Enclosures (2)
01-01980

Congress of the United States
House of Representatives
2210 Rayburn Building
Washington, DC 20515
(202) 225-4665

February 23, 1993

REPLY TO: 96 North Main Street
Washington, PA 15301

Ms. Faith Burton
Acting Asst. Attorney General
Office of Legislative Affairs
Washington, D.C. 20530

RE: (b)(6)
Washington, PA 15301

Dear Ms. Burton:

I write to you today on behalf of the of the XX above named constituent who feel that XX is being discriminated against because of an overweight problem.

(b)(6) with one leg amputated. XX weighs approximately 350 pounds and XX is unable to take care of XX . Unsuccessful attempts have been made to place XX in a health care facility in this area. The XX claims that XX is being denied access because of XX weight. Enclosed is a copy of a letter from one health center, which documents that claim.

I would appreciate it if you could look into this matter and advise me what assistance the Justice Department (via ADA Act) can give to the XX in getting XX into a health care facility. Thanking you in advance, I remain

Very truly yours,

AUSTIN J. MURPHY
Member of Congress

AJM/dm
Enclosure
(b)(6)
01-01981

Feb 17, 1993
(b)(6)
WASHINGTON PA 15301

We, the XX and XX are writing this in regards to XX health problems. In the last three years we have been trying to get XX into numerous health care facilities. Canonsburg Home Care Agency has told us that they've called every health Center in a 25 mile radius, with no results.

I XX , came to my XX home this morning and (b)(6) told me that XX told XX that they would drop XX off at XX doorstep from Canonsburg Hospital, because my XX was told to refuse to bring XX home by Canonsburg Health Care Social worker.

My XX approximately 350 lbs with one leg amputated. My XX is unable to care for XX at home.

During the last three years that we've been trying to get (b)(6) in a home, we've been unable to

get anything accomplished we feel that all the facilities are discriminating against my (b)(6) because of XX weight.

We are not looking for a lawsuit, we are looking to get my XX in a home so that (b)(6) can be taken care of properly. Anything that you can do to help my XX , would be appreciated.

Thank You very much,

(b)(6)

01-01980

Washington County Health Center
R.D. #1, Box 94, Washington, PA 15301
Phone: (412) 228-5010
Barry W. Parks, D.Ed., NHA
Administrator

February 8, 1993 (b)(6)

Mr. Joseph A. Ford
Commissioner, County
of Washington
Commonwealth of Pennsylvania
Courthouse Square Building
Room 702
Washington, PA 15301

RE: (b)(6)

Dear Commissioner Ford:

I am in receipt of your letter of January 20, 1993, regarding XX . We did, in fact, review XX application for admission to the Health Center and had determined that we do not have the resource to adequately care for XX needs. In gathering pre-admission information in order to make the determination, it was learned that XX does have needs which require attention; however, we also determined that we do not have the resources to meet XX needs. At the time of referral, XX weight was such that we do not have beds which are able to accommodate XX . Additionally, other requirements on us, as a nursing home, would prevent us from meeting XX needs. We are required to, when people are alert, to get them up daily and out-of-bed for posturing purposes and also for participation in various activities and dining. This would require repeated transfer from bed to wheelchair and we, in fact, do not have beds, wheelchairs, or transfer equipment that would safely accommodate XX . I do realize that this individual has legitimate needs for care, but it was our determination that we could not adequately meet these needs. We would, in fact, have the same difficulties in attempting to deal with XX that the other nursing homes, who were asked to assess XX for admission, have determined that they are unable to meet XX needs.

We were informed that a recommendation had been made by Canonsburg Hospital that an aggressive weight reduction program be instituted for XX health and so that health care providers are able to better care for XX effectively. It is my understanding that XX was receiving in-home services through the Visiting Nurse Agency and I would trust that this resource would still be available. Hopefully, the recommendation from Canonsburg Hospital is being followed. We are certainly willing to reassess this individual for admission if there is a notable change in XX weight, which would allow us to adequately care for XX . At such point as this has been accomplished, we are more than willing to re-evaluate (b)(6) appropriateness for admission and would be willing to consult with the Visiting Nurse Agency and if indicated, to have

our staff do an in-home evaluation of this individual in order to assess our ability to care for (b)(6)

Should you have any additional questions, please feel free to contact me.

Sincerely yours,

Barry W. Parks, D.Ed., NHA
Administrator
BWP:cmb
01-01981

MAR 10 1993

The Honorable Charles S. Robb
United States Senate
493 Russell Senate Office Building
Washington, D.C. 20510-4603

Dear Senator Robb:

This letter is in response to your inquiry on behalf of your constituent, XX who seeks information about the Americans with Disabilities Act (ADA).

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist your constituent in understanding the ADA's requirements. However, it does not constitute a legal interpretation and it is not binding on the Department.

(b)(6) expresses concern about the failure of his condominium board to install accessibility features, such as Brailled elevator buttons, accessible restroom stalls, and ramp handrails, at the condominium in which he lives. (b)(6) states that, in addition to its residential spaces, his condominium building houses at least five businesses that are open to the public.

Title III of the ADA, which covers places of public accommodation and commercial facilities, does not apply to strictly residential facilities. However, within residential buildings, areas that function as one of the ADA's twelve categories of places of public accommodation, and that are not intended for the exclusive use of tenants and their guests, constitute "places of public accommodation" within the meaning of title III, and must comply with the ADA. For instance, all of the establishments XX cites as being located in his condominium building, a retail store, beauty salon, dry cleaner, attorney's office, and real estate office, are covered by title III. The twelve categories of places of public accommodation are

discussed in section 36.104 of the enclosed title III regulation, at page 35594, with corresponding preamble discussion at pages 35551-35552.

cc: Records, Chrono, Wodatch, Breen, McDowney, Novich, FOIA
Udd:Novich:congress.Robb

01-01944

The parking, entrances, access routes, and restrooms serving those places of public accommodation would also be subject to ADA jurisdiction. However, areas and routes that serve only the residential areas of the facility are not covered by title III.

Title III of the ADA can be enforced by private litigation or by filing a complaint with the Department of Justice. If (b)(6) XX would like to file a complaint against any places of public accommodation in his condominium building, he should send any relevant information, including the names and addresses of the businesses he alleges to be in violation of the ADA, to:

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

All complaints should be in writing and should set forth, in as complete a manner as possible, the factual circumstances surrounding the complaint.

In addition, the Fair Housing Act, which contains nondiscrimination and accessibility requirements relating to persons with disabilities, may apply to both the residential and the common-use areas in XX condominium. For more information on the Fair Housing Act, (b)(6) may contact:

U.S. Department of Housing and
Urban Development
Office of Fair Housing
451 Seventh St., S.W.
Washington, D.C. 20410-2000
(202) 708-8041

I hope this information is useful to your constituent in

understanding the requirements of the ADA.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

Enclosures (2)
Title III Regulation
Title III Technical Assistance Manual

01-01945

(HANDWRITTEN) (b)(6)
McLean Virginia XX
Senator Charles S. Robb 19 January 1993
State Office
Old City Hall
1001 East Broad Street
Richmond Virginia 22102-1815

Sir:

I am writing to you on matters different than the past. They affect me and others on a daily basis. Specifically, that have to do with the handicap adaptability of the Condominium in which I live. Theoretically, the Condominium Board claims this is a private building. I claim no since there is a commercial member on the Board and at least five businesses interior to the building which are used by the public (store, beauty, salon, dry cleaners, attorney, real estate agents). There are no braille buttons on the elevators; interior and exterior doors are difficult to open regardless of age or disability; there are no handicap stalls in the bathrooms; and their are no handrails up ramps leading to the parking garages. I would have hoped that the Board and the people who live here would want to make these repairs because its the right thing to do not because they have to do it. During a recent condo election I was appalled to find people insensitive to the fact that the only exterior ramps are exposed to bad weather. A recent effort on my part to

raise money for handicap improvements raised zero. Many of the condo board members are past and current state and federal government employees. I have refused to pay condo fees since this situation exists and asked for a rebate of moneys paid since the law was passed. I ask you and the other government officials below to assist me in finding those cognizant agencies relevant to enforcement of the law. XX

cc: Secretary of Labor Reich, Commonwealth of Va
Secretary of HHS M.M. Cullum
ILLEGIBLE Condo Board Members: E. MacLaughlin, Carolyn Moss, Scott Segal

01-01946

APR 9 1993

The Honorable Larry Pressler
United States Senate
133 Hart Senate Office Building
Washington, D.C. 20510-4101

Dear Senator Pressler:

This letter is in response to your inquiry on behalf of Ms. (b)(6) concerning the Americans with Disabilities Act (ADA). XX has asked about the nondiscrimination requirements applicable to transportation provided by hotels, motels, and airports.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities that have rights or responsibilities under the Act. This letter provides informal guidance to assist you in responding to Ms. XX However, this technical assistance does not constitute a determination by the Department of the rights or responsibilities of any individual under the ADA, and it is not binding on the Department.

Under the ADA, a transportation provider's obligations vary according to whether the service provider is a public or private entity, whether it offers fixed route or demand responsive

service, and whether it is primarily engaged in the business of providing transportation. A hotel or motel is a "place of public accommodation" subject to the requirements of title III of the ADA, the Department of Justice regulation implementing title III (28 C.F.R. Part 36), and the applicable sections of the Department of Transportation regulation implementing titles II and III (49 C.F.R. Part 37). Places of public accommodation that provide transportation to their clients or customers must remove transportation barriers in existing vehicles to the extent that it is readily achievable to do so, but they are not required to retrofit existing vehicles with hydraulic lifts.

cc: Records; Chrono; Wodatch; McDowney; Bowen; Blizard; FOIA.
n:\udd\blizard\control\pressler

01-01988

If a place of public accommodation that provides transportation for its customers or clients acquires new vehicles, it must comply with the requirements established by the Department of Transportation. These requirements vary depending on both the capacity of the vehicle and its intended use, as follows:

1) Fixed route system: Vehicle capacity over 16. Any vehicle with a capacity over 16 that is purchased or leased for a fixed route system must be "readily accessible to and usable by individuals with disabilities, including those who use wheelchairs."
2) Fixed route system: Vehicle capacity of 16 or less. Vehicles of this description must meet the same "readily accessible and usable" standard described in (1) above, unless they are part of a system that already meets the "equivalent service" standard.
3) Demand responsive system: Vehicle capacity over 16. These vehicles must meet the "readily accessible and usable" standard, unless they are part of a system that already meets the "equivalent service" standard.
4) Demand responsive system: Vehicle capacity of 16 or less. Vehicles of this description are not subject to any

requirements for purchase of accessible vehicles. However, "equivalent service" standard.

A system is deemed to provide equivalent service if, when the system is viewed in its entirety, the service provided to individuals with disabilities, including those who use wheelchairs, is provided in the most integrated setting appropriate to the needs of the individual and is equivalent to the service provided other individuals. The Department of Transportation regulation lists eight service characteristics that must be equivalent. These include schedules/response time, fares, and places and times of service availability.

An airport's obligations will vary according to whether it is publicly or privately operated. An airport operated by a public entity is subject to title II of the ADA, and this Department's regulation implementing title II (28 C.F.R. Part 35), which prohibit discrimination on the basis of disability in the programs, activities, and services of public entities. A privately operated airport is subject only to title III's requirement that new construction or alterations at the airport facility are accessible. A privately owned airport is not a "place of public accommodation"; therefore, it is not subject to the nondiscrimination requirements of title III.

Both public and private airports may also be recipients of Federal financial assistance, which would make them subject to the nondiscrimination requirements of section 504 of the Rehabilitation Act of 1973. In addition, airline operations at both public and private airports may be subject to the nondiscrimination requirements of the Air Carrier Access Act. The Department of Transportation has the primary responsibility for enforcing section 504 as it applies to airports, and has the sole Federal enforcement responsibility for the Air Carrier Access Act.

Title II of the ADA requires all public entities, including airports, to ensure that each program, activity, or service offered, when viewed in its entirety, is readily accessible to and usable by people with disabilities, unless the public entity can demonstrate that the changes required to provide accessibility will constitute a fundamental alteration of the entity's program or activity, or will result in undue financial or administrative burdens. Covered services offered at a public

airport may include services such as "off-airport" transportation provided through franchises or other contractual arrangements, as well as services provided directly by public employees at the airport.

For your information, I have enclosed copies of the Department's Technical Assistance Manuals for titles II and III of the ADA. These manuals contain additional information about the requirements of the ADA and the Act's enforcement procedures.

I hope that this information is helpful to you in responding to your constituent.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

Enclosures (2)

01-01990

APR 9, 1993

The Honorable Jim Saxton
Member, U.S. House of Representatives
7 Hadley Avenue
Toms River, New Jersey 08753

Dear Congressman Saxton:

This letter is in response to your inquiry on behalf of your constituent, XX who seeks information about the Americans with Disabilities Act ("ADA"), the provision of public housing, and the provision of job training.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist your constituent in understanding the ADA's provisions. It does not, however, constitute a legal interpretation, and it is not binding on the Department.

(b)(6) expresses concern that title II of the ADA is geared more towards protecting the rights of individuals who use wheelchairs than towards protecting the rights of individuals who have mental disabilities. This is not the case. Title II of the ADA prohibits discrimination on the basis of disability by any public entity. Section 35.103 of the enclosed title II regulation defines "disability" as any "physical or mental impairment that substantially limits one or more of the major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment." The rights of those with mobility impairments and those with mental impairments are, therefore, equally protected under title II of the ADA.

cc: Records, Chrono, Wodatch, McDowney, Perley, FOIA, Magagna.
udd\perley\congress\saxton

01-01991

If (b)(6) is aware of any person who the State of New Jersey may be discriminating against because of his or her mental disability, he may file a complaint with the Department of Justice. XX should send any relevant information, including the names and addresses of the agencies he alleges to be in violation of the ADA, to:

Coordination and Review Section
Civil Rights Division
U.S. Department of Justice

P.O. Box 66118
Washington, D.C. 20035-6118

In addition, the Fair Housing Act, which contains nondiscrimination and accessibility provisions relating to people with disabilities, may apply to XX housing situation. For more information on the Fair Housing Act, XX may contact:

U.S. Department of Housing and Urban Development
Office of Fair Housing
451 Seventh St., S.W.
Washington, D.C. 20410-2000
(202) 708-8041

Nevertheless, (b)(6) should be advised that there are no affirmative obligations under the ADA to provide services or housing to those with disabilities. The Act was drafted to prohibit discrimination; there are no requirements regarding the provision of additional or specialized programs. To the extent that the State of New Jersey provides public housing and public job training programs, it may not discriminate against an individual on the basis of his or her particular disability. However, the State of New Jersey has no ADA obligation to provide additional or specialized programs for individuals with disabilities.

I hope that this information will be useful to you in responding to your client.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

Enclosure

01-01992

Congress of the United States
House of Representatives
Washington, DC 20515
WRITTEN AUTHORIZATION UNDER THE PROVISIONS OF THE PRIVACY ACT OF 1974

DATE: FEB/12/93

DEAR CONGRESSMAN H. JAMES SAXTON:

I would like to request your assistance with the following problem I am having with the Agency listed below: US Dept of Justice
Agency Name: ADA TITAL II Civil Rights Division POB ILLEGIBLE
To comply with the provisions of the Privacy Act of 1974, I am authorizing you or the appropriate member of your Congressional staff to request pertinent information on me which would be required in your investigation of the matter I have outlined below. Please, give a detailed description of the problem you are experiencing with the above cited agency. If additional space is required, please use the reverse side.

(HANDWRITTEN)

Under The Americans with Disabilities Act.
Tital II. Talks about fair housing
jobs but its geared more toward the
wheelchair person then the emotional
mental health consumer. The Highland
Plaza, Asbury Towers and other
section 8 housing programs under
N.J. Mortgage and Fiance are 100%
seniors or 99% (What about the
(The wheel chair person younger disabled.) (over)
is covered 1 per 10 units) None in units
SIGNATURE (b)(6)
Please print or type:
Name: (b)(6)
(last) (first) (middle)
Address XX
(number & street)
City Toms River State NJ Zip 08755
Home Telephone XX Bus. Telephone -----
Social Security # XX Other I.D. XX

01-01993

(HANDWRITTEN)
Also under Job Training and Jobs.
The pic program refers the mental
Health consumer to ILLEGIBLE. And
from their to the Easter Seals
workshop . With Higher Function Disabled,
(the slower learner)
its tuff with the slow learner..
All Disabled should be covered to make
the ADA fair, which at this time
its not!
An amendment should be added to
included Housing, Job Training and Jobs
for the consumer, as well as all Disabled.

Thank you,
ILLEGIBLE ILLEGIBLE

01-01994

T. 3-31-93

APR 15, 1993

John C. Fannin III
President
Fire Protection Electronics, Inc.
2106 Silverside Road
Wilmington, Delaware 19810

Dear Mr. Fannin:

This letter responds to your request for information regarding the application of the Department of Justice's standards for accessible design under the Americans with Disabilities Act (ADA) to installation heights for visual alarm devices.

The ADA authorizes the Department of Justice to provide technical assistance and information to individuals and entities who have questions about the Act. This letter provides informal guidance to assist you in understanding and complying with the ADA's standards for accessible design. However, this technical assistance should not be viewed as legal advice or a legal opinion about your rights or responsibilities under the ADA.

You requested clarification of section 4.28.3 (6) of the standards for accessible design, found at Appendix A to the Department of Justice's regulation. This section provides technical requirements for the visual components of alarms and alarm systems. Specifically, this provision requires that the visual appliances of the alarm system be located 80 inches above the highest floor level within the space or 6 inches below the ceiling, whichever is lower. This requirement was based on data indicating that 80 inches was the most effective height for a 75-candela lamp. The additional requirement that the lamp of ceiling mounted devices be below the ceiling, rather than recessed into or flush with the ceiling, was included because the reflection of the flash on the ceiling surface is an important factor affecting the visibility of the visual alarm device. This data and reasoning is explained in the enclosed technical bulletin on visual alarms that was developed by the Architectural and Transportation Barriers Compliance Board.

cc: Records, Chrono, Wodatch, Magagna, Harland, FOIA, Library

The standards do not constitute a strict formula for design, nor are they intended to constrain design innovations that provide equal or greater access. Section 2.2 of the ADA accessibility standards, for example, expressly provides that "[d]epartures from particular technical and scoping requirements of this guideline by the use of other designs and technologies used will provide substantially equivalent or greater access to and usability of the facility." However, the ADA does not provide for a mechanism through which the Department of Justice, the Access Board, or any other entity may certify any specific variation from the standards as being "equivalent." Proposed alternate designs, when supported by available data, are not prohibited, but in any ADA enforcement action, the covered entity would bear the burden of proving that any alternative design provides equal or greater access.

We hope that the information above is of help to you. Please feel free to contact the Public Access Section any time you have other questions or need further information. The Department maintains a telephone information line to provide technical assistance regarding the rights and obligations of individuals, businesses, agencies, and others covered or protected by the ADA. This technical assistance is available by calling 202-514-0301 (voice) or 202-514-0383 (TDD) between 1:00 p.m. and 5:00 p.m., Monday through Friday.

Sincerely,

John L. Wodatch
Chief
Public Access Section

Enclosure

01-01996

The landmark Americans with Disabilities Act (ADA), enacted on July 26, 1990, provides comprehensive civil rights protections to individuals with disabilities in the areas of employment (title I), State and local government services (title II), public accommodation and commercial facilities (title III), and telecommunications (title IV). Both the Department of Justice and the Department of Transportation, in adopting standards for new construction and alterations of places of public accommodation and commercial facilities covered by title III and public transportation facilities covered by title II of the ADA, have issued implementing rules that incorporate the Americans with Disabilities Act Accessibility Guidelines (ADAAG), developed by the Access Board.

U.S. Architectural and Transportation Barriers Compliance Board

BULLETIN #2: VISUAL ALARMS

WHY are visual alarms required?
One American in a hundred has a severe hearing loss; nearly one in ten has a significant loss. Those who are deaf or hard-of-hearing--a growing percentage of our population, due largely to the growth in the numbers of older persons--depend upon visual cues to alert them to emergencies. A visual alarm provides them with the warning delivered to hearing persons by an audible alarm.

Audible fire alarms have been a standard feature of building construction since the life safety codes of the early 1900s. However, visible signals did not appear even in accessibility codes until 1980. Early standards required relatively dim flashing lights at exit signs--an alarm system that was effective only along an exit route.

As accessibility, life safety, and building codes were revised, however, they began to incorporate alarm technology that was developed for use in schools for persons who are deaf and in factories where ambient noise levels made audible alarms ineffective.

In passing the Americans with Disabilities Act in 1990, Congress specifically directed the Access Board to provide greater guidance regarding communications accessibility. Thus the ADA Accessibility Guidelines (ADAAG) require that where emergency warning systems are provided in new or altered construction, they must include both audible and visible alarms that meet certain technical specifications.

WHAT are visual alarms?
Visual alarms are flashing lights used as fire alarm signals. The terms visual alarm signal, visible signal device, and visible signaling appliance are used relatively interchangeably within the fire protection community; the National Fire Protection Association (NFPA) calls them visual notification appliances. There is no practical distinction between a visual signal and a visible signal. Although visual signals may be used for other purposes, the type described in this Bulletin is appropriate only for use as an emergency alarm signal.

(THE FOLLOWING APPEARS IN THE LEFT MARGIN OF PAGE ONE)

"The severity of hearing problems was strongly associated with age. Persons 65 and older constituted 69 percent of the population with the most severe hearing trouble...but only 8.7 percent of the population without hearing trouble."
Digest of Data on Persons with Disabilities (1984)

(A HAND DRAWN SKETCH OF A FIRE ALARM HAS BEEN OMITTED)

1

01-01997

There are two major categories of fire alarms:

* self-contained units, as exemplified by the single-station residential smoke detector unit-battery-operated or hard-wired to building electrical power--which produces an alarm signal at the fixture itself when activated by an integral sensing device, and

* building-wide systems, integrated--often zoned--alarms whose local signals are remotely initiated, either automatically from detectors or manually from pull-stations spread throughout a facility.

ADAAG requires that when either type is installed, it must have a visual alarm component.

WHERE are visual alarms required?
Facility design is subject to State and local ordinances that may both require and specify standards for emergency alarm systems. These regulations--building codes, life safety codes, accessibility codes, technical standards--are typically derived from national model codes and standards. The requirement for an emergency alarm system in new construction will be established by the applicable State or local building, life safety, or fire protection regulation. ADAAG does not mandate an emergency alarm system: its scoping provision at 4.1.3(14) simply requires that when emergency warning systems are provided, they shall include both audible and visual alarms that comply with 4.28.

Thus the requirement for an alarm system in a facility will trigger the

ADAAG technical specifications for alarms. ADAAG 4.1.3(14) Accessible Buildings: New Construction requires that visual alarms be installed if emergency warning systems are provided in a new facility. In existing buildings, the upgrading or replacement of a fire alarm system would also require compliance with ADAAG technical provisions for alarms.

Where the need for a visual alarm is not predictable, as in spaces used in common by building occupants or those generally available for use by the public, equivalent warning must be provided to every potential user. This is particularly important in those common use spaces where a persons may be alone. Because it is not always possible to fix the occupancy of a room or space or anticipate its use by a person with a hearing impairment, every common use room or space required to have an emergency alarm system must be served by both audible and visible signals.

ADAAG 4.28.1 General stipulates that alarm systems required to be accessible shall provide visible signals in restrooms, other general and common use areas, and hallways and lobbies. Common use areas include meeting and conference rooms, classrooms, cafeterias, photocopy rooms, employee break rooms, dressing, examination, and treatment rooms, and similar spaces that are not the assigned work areas of specific employees.
Where audible alarm signal appliances are installed in corridors and lobbies to serve adjacent public or common use rooms, individual visual alarm signal appliances must be installed in those rooms, since

(THE FOLLOWING APPEARS IN THE LEFT MARGIN OF PAGE TWO)

4.1.3 (14) New Construction.
If emergency warning systems are provided, then they shall include both audible and visual alarms complying with 4.28. Emergency warning systems in medical care facilities may be modified to suit standard health care alarm design practice.

4.28 Alarms.
4.28.1 General.
Alarm systems required to be accessible by 4.1 shall comply with 4.28. At a minimum, visual signal appliances shall be provided in buildings and facilities in each of the following areas: restrooms and any

other general usage areas (e.g., meeting rooms), hallways, lobbies, and any other area for common use.

3.5 Definitions.
Common Use.
Refers to those interior and exterior rooms, spaces, or elements that are made available for the use of a restricted group of people (for example, occupants of a homeless shelter, the occupants of an office building, or the guests of such occupants).

the warning provided by a visual signal, unlike that of a bell or other annunciation system, can only be observed within the space where it is installed. System designers and specifiers must therefore be especially sensitive to coverage issues. Dressing, fitting, and examination rooms for example, can be easily protected by an audible alarm outside the room or space. However, the customer or patient who has a hearing impairment will not be alerted unless the dressing room he/she is using is protected with a visual alarm in (or above, where partitions are not full height) the space. In general, it will not be sufficient to install visual signals only at audible alarm locations.

WHERE are visual alarms not required?
ADAAG does not require that areas used only by employees as work areas be constructed or equipped to be accessible. Thus, visual alarms are not required in individual employee offices and work stations. However, the provision of a visual alarm in the work area of an employee who is deaf or hard-of-hearing may be--like other elements of workplace accessibility--a reasonable accommodation under title |** of the ADA, which addresses employment issues. The potential for such future employee accommodations should be

considered when facility wiring is planned to facilitate a later connection to the building alarm system.

Mechanical, electrical and telephone closets, janitor's closets, and similar non-occupiable spaces that are used by employees but are not common use facilities nor assigned work areas are not required to have visual alarms.

WHAT technical provisions apply to visual alarms?
The technical provisions of ADAAG 4.28 Alarms include minimum standards for the design and installation of single-station and building-wide visual alarm systems. They are based upon research sponsored by the Access Board and other groups, principally Underwriters Laboratories (UL).

To be effective, a visual signal--or its reflection from adjacent walls and ceiling--must be of an intensity that will raise the overall light level sharply, but not so intense as to be unsafe to direct viewing at a specified mounting height. Technical criteria for visual alarm signal appliances are established in ADAAG 4.28.3 Visual Alarms (See sidebars).

In research sponsored by the Access Board, a high-intensity xenon strobe lamp was found to be the most effective in alerting persons with hearing impairments. White light was judged to be the most discernible; colored lamps (particularly red) were not effective even at extreme intensities. Lamp intensity is given in effective candela, measured at the source rather than at the receiving location.

Like a camera flash, the strobe produces a short burst of high-intensity light. The repetition of this pulse at a regular interval is the flash rate. Pulse duration--the interval between initial signal build-up and decay, measured across the lamp bell curve at a fixed intensity--is limited so that the signal flash is not temporarily blinding.

In the Access Board's research, ninety percent of the subjects in standard daylit rooms were alerted by a 75 candela signal mounted 50

(THE FOLLOWING APPEARS IN THE LEFT MARGIN OF PAGE THREE)

For information on employee accommodation under title I of the ADA, contact the Equal Employment Opportunity Commission (EEOC) ADA information line at
(800)669-3362 (Voice)
(800)800-3302 (TDD)

4.28.3 Visual Alarms.

Visual alarm signal appliances shall be integrated into the building or facility alarm system. If single station audible alarms are provided then single station visual alarm signals shall also be provided. Visual alarm signals shall have the following minimum photometric and location features:

(1)

The lamp shall be a xenon strobe type or equivalent.

(2)

The color shall be clear or nominal white (i.e., unfiltered or clear filtered white light). (see sidebars).

(3)

The maximum pulse duration shall be two-tenths of one second (0.2 sec) with a maximum duty cycle of 40 percent. The pulse duration is defined as the time between initial and final points of 10 percent of maximum signal.

(4)

The intensity shall be a minimum of 75 candela.

(5)

The flash rate shall be a minimum of 1 Hz and a maximum of 3 Hz.

3

01-01999

feet away. Thus a single visual signal meeting these ADAAG specifications could be expected to serve a large rectangular room or a 100-foot length of corridor if optimally located in the center of the space. Its lamp must be installed and oriented so that the signal or its reflection can spread throughout the space. To be effective, the signal must not be obstructed by furnishings, equipment, or room geometry.

Testing further indicated that flash rate cycles between one and three Hertz (flashes per second) successfully alerted subjects with hearing impairments; a 3 Hz signal appeared to be somewhat more effective. ADAAG thus requires flash rates within the 1 to 3 Hz range. Rates that exceed 5 Hz may be disturbing to persons with photosensitivity,

particularly those with certain forms of epilepsy. Information received during the development of the standards suggested that multiple unsynchronized visual signals within a single space may produce a composite flash rate that could trigger a photoconvulsive response in such persons. A rate in excess of 5 Hz should be avoided, either by raising the intensity and decreasing the number of fixtures or by synchronizing the flash rates of the fixtures. This is particularly important in schools, since children are more frequently affected by photosensitivity than are adults.

Mounting provisions were developed from NFPA signal criteria and UL smoke test findings. Strobes--whether projected from a wall or suspended from the ceiling--must be a minimum of 6 inches below the ceiling plane and at least 80 inches above the finished floor. To minimize the effect of smoke obscuration in the event of a fire, the lamp itself may not be mounted directly to the ceiling.

Provisions governing the spacing of visual alarms in hallways and corridors will generally require one fixture every 100 feet in linear corridors and hallways; somewhat closer spacing may result in enclosed rooms. In large-volume spaces, visual alarms may be suspended overhead or installed on perimeter walls if sightlines are unobstructed. In lengthy corridors, such as in shopping malls and large buildings, it is recommended that appliance spacing be maximized within the limits of the technical provision to minimize the effect of a composite flash rate on persons with photosensitivity. It is further recommended that the placement of visual signals along a corridor alternate between opposing walls to minimize the number of signals in a field of view.

In multipurpose facilities where bleacher seating, athletic equipment, backdrops, and other movable elements may at times be deployed or in warehouses and similar building types where devices would not be visible when installed at specified heights, optimal signal placement may require considerable study.

WHAT criteria affect the design of visual alarm systems?
Figures 1, 2, and 3 illustrate general fixture replacement and lamp coverage in schematic form. In general, it is recommended that visual alarm lamp intensity be maximized so as to require the minimum number of fixtures. Large, high-ceilinged spaces may best be served by suspended flash tubes of very high intensity (lamps up to 1000 candela are available). Smaller rooms--less than 75 feet in their maximum dimension--can be covered by a single, centrally located

(THE FOLLOWING APPEARS IN THE LEFT MARGIN OF PAGE FOUR)

The appliance shall be placed 80 in (2030 mm) above the highest floor level within the space or 6 in (152 mm) below the ceiling, whichever is lower.

(7)

In general, no place in any room or space required to have a visual signal appliance shall be more than 50 ft (15 m) from the signal (in the horizontal plane). In large rooms and spaces exceeding 100 ft (30 m) across, without obstructions 6 ft (2 m) above the floor, such as auditoriums, devices may be placed around the perimeter, spaced a maximum 100 ft (30 m) apart, in lieu of suspending appliances from the ceiling.

(8)

No place in common corridors or hallways in which visual alarm signalling appliances are required shall be more than 50 ft (15 m) from the signal.

Figure 1

Strobe lamp coverage

(FIGURE OMITTED)

Recommended

(FIGURE OMITTED)

Not recommended

visual alarm meeting ADAAG intensity specifications. For very small rooms, such as dressing rooms, a strobe of lesser intensity may well be sufficient as an equivalent facilitation.

Signal intensity and placement in very small and very large rooms and in spaces with high ceilings, irregular geometry, dark or non-reflective walls, or very high ambient lighting levels may best be determined by specialized consultants employing photometric calculation for system design rather than by a literal application of ADAAG specifications. For these reasons, ADAAG 2.2 Equivalent Facilitation permits alternative designs that achieve substantially equivalent or greater accessibility.

Lamp intensity (like sound) decreases in inverse relation to the square of its distance from the viewer. Thus, by varying lamp intensity and spacing, system designers can tailor an installation to the physical conditions of the space being served. It is impossible to provide specific guidance for the design of non-standard installations based upon the photometric calculations necessary to demonstrate equivalent facilitation. Such applications should generally be designed by experienced electrical engineers or fire alarm consultants under performance specifications for coverage and illumination levels derived from the technical provisions of ADAAG 4.28. As there is no process for certifying alternative methods (except in transportation facilities under DOT enforcement), the responsibility for demonstrating equivalent facilitation in the event of a challenge rests with the covered entity.

The American National Standard for Accessible and Usable Buildings and Facilities (CABO/ANSI A117.1-1992), reflecting current NFPA performance recommendations for visual alarms, stipulates lamp, installation, and spacing criteria at some variance with ADAAG technical specifications for visual alarms and with this advisory. ANSI Table 4.26.3.2(a), Room Spacing Allocation, suggests that an alarm installation of several low-intensity lamps within a room is the practical equivalent of a single high-intensity lamp serving that space. Given concerns for economy (lower-candela lamps are less expensive to purchase and connect) and lamp standardization within a building (lower-candela lamps are more available and simplify inventorying), specifiers may be motivated to standardize on a minimum-candela fixture, achieving coverage in large rooms by close spacing of low-intensity lamps. The Access Board strongly discourages this practice.
Where a single lamp can provide the necessary intensity and coverage, multiple lamps should not be installed because of their potential effect on persons with photosensitivity.

WHAT types of visual alarms are available?
All major suppliers to the fire protection industry manufacture visual signals, which are readily available to electrical contractors and others responsible for the installation of building alarm systems. Visual alarms incorporating smoke detectors and lamp-only signal appliances are supplied through standard sources, although some lamp intensities and visual alarm fixtures may not be commonly stocked.

Strobe lamps are commercially available in varying intensities up to 100 candela. Higher intensities can be provided by specialized manufacture.

(THE FOLLOWING APPEARS IN THE LEFT MARGIN OF PAGE FIVE)

2.2 Equivalent Facilitation. Departures from particular technical and scoping requirements of this guideline by the use of other designs and technologies are permitted where the alternative designs and technologies used will provide substantially equivalent or greater access to and usability of the facility.

Figure 2
Recommended spacing in corridors

(FIGURE OMITTED)

Figure 3
Recommended placement in irregular room configuration

(FIGURE OMITTED)

Although an integrated audible and visual signal is available at about the same cost as an audible or visual signal alone, more visual signals than audible signals will be necessary for most applications. Careful attention to reflection from surfaces can increase light dispersion and coverage in both new and renovated structures.

WHAT visual alarm requirements apply to sleeping rooms in transient lodging facilities?
ADAAG 9.3.1 requires the installation of a visual alarm--or power outlet for a portable device--connected to the building alarm system in the sleeping rooms of units requires to be accessible under Section 9 Accessible Transient Lodging. Because guest room sizes are not large in such occupancies, the technical specification of 4.28.4 Auxiliary Alarms requires only that the signal--intended to alert persons who are awake--be visible in all areas of the room or unit. Portable units with a standard 110 volt electrical cord can be acquired from retailers of products for persons who are deaf and hard-of-hearing.

Visual alarms are not the technology of choice for awakening sleeping persons, however. A UL study concluded that a flashing light more than seven times brighter than that needed to alert office workers (110 candela vs. 15 candela at 20 feet) would be required to arouse a person who was asleep. Alarm system designers are advised to consider the UL findings if visual alarms are to be employed to warn sleeping persons of emergencies.

ADAAG does not establish standards for portable items or auxiliary aids. However, devices that employ technologies other than visual signalling may offer equivalent or superior warning for sleeping guests who have hearing impairments. For example, a signal-activated vibrator was found to be much more effective in alerting sleepers than were the visual signals tested in the UL research. Such devices are commonly available and may be connected to or activated by a building alarm system. Care must be taken that notification devices intended to signal a door knock or bell are separately wired.

WHY is there an exception in the scoping requirements of 4.1.3(14) for "standard health care alarm design practice"?
In medical care settings where a supervised emergency evacuation plan is in place, it is usually not desirable to install alarms in patient rooms or wards. In such occupancies, personnel responsible for ensuring the safe egress of patients will respond to an intercom message or other signal that is not intended to alert or alarm patients incapable of independent evacuation. The requirements for visual and

audible alarms may be modified to suit industry-accepted practices for such facilities.

Bulletin #2 December 1992

U.S. Architectural and Transportation Barriers Compliance Board
The Access Board/1331 F St., NW #1000/Washington, DC 20004
TEL:(800)USA-ABLE (202)272-5434 TDD: (202) 272-5449

(THE FOLLOWING APPEARS IN THE LEFT MARGIN OF LAST PAGE)

4.28.4 Auxiliary Alarms.
Units and sleeping accommodations shall have a visual alarm connected to the building emergency alarm system or shall have a standard 110-volt electrical receptacle into which such an alarm can be connected and a means by which a signal from the building emergency alarm system can trigger such an auxiliary alarm. When visual alarms are in place the signal shall be visible in all areas of the unit or room. Instructions for use of the auxiliary alarm or receptacle shall be provided.

9.3 Visual Alarms, Notification Devices and Telephones.
9.3.1 General.
In sleeping rooms required to comply with this section, auxiliary visual alarms shall be provided and shall comply with 4.28.4. Visual notification devices shall also be provided in units, sleeping rooms and suites to alert room occupants of incoming telephone calls and a door knock or bell. Notification devices shall not be connected to auxiliary visual alarm signal appliances [...].

9.3.2 Equivalent Facilitation.
For purposes of this section, equivalent facilitation shall include the installation of electrical outlets (including outlets connected to a facility's central alarm system) and telephone wiring in

sleeping rooms and suites to enable persons with hearing impairments to utilize portable visual alarms and communication devices provided by the operator of the facility.

This technical assistance is intended solely as informal guidance; it is not a determination of the legal rights or responsibilities of entities subject to titles II and III of the ADA.

DJ 202-PL-320

APR 19 1993

Mr. Joseph A. DiCicco
Office of Building Inspector
1 Turner Lane
Randolph, Massachusetts 02368-3927

Dear Mr. DiCicco:

This letter is in response to your inquiry of August 31, 1992, about the application of the Americans with Disabilities Act to certain rooms and meeting halls owned or operated by the Town of Randolph.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist you in understanding the ADA's requirements. However, it does not constitute a legal interpretation or legal advice, and it is not binding on the Department of Justice.

In general, title II of the ADA requires all State and local governments to make all of the programs and services that they provide to their citizens accessible to persons with disabilities. This requirement, commonly referred to as "program access," means that a State or local government must operate each service, program, or activity so that when it is viewed in its entirety, it is accessible to persons with disabilities.

In addition, in order to ensure that State and local governments take the necessary steps to make their programs and services accessible to persons with disabilities, title II of the ADA and its implementing regulation (enclosed) require all State and local governments to complete, by January 26, 1993, a self-evaluation of all of their current services, policies and practices. Among other things, as part of this self-evaluation State and local governments must determine whether any physical

barriers to access bar individuals with disabilities from any of the programs or services it provides to its citizens.

cc: Records, Chrono, Wodatch, Magagna, Contois, FOIA
Udd: Contois:PL:Dicicco

The requirements relating to the basic requirement of program access are discussed on pages 35,708-35,709 of the enclosed title II regulation. This requirement is also discussed in the enclosed title II technical assistance manual on pages 19-20. The self-evaluation requirements are discussed on pages 35,701-35,702 of the enclosed title II regulation, and on pages 40-43 of the technical assistance manual.

In regard to your question about whether the ADAAG or UFAS requirements apply to your facilities, the title II regulation, section 35.151, allows public entities to choose which set of standards to follow. Moreover, you may choose to follow one set of standards in one building, and the other in another building. Section 35.151 is discussed in more detail on pages 35,710-35,711 of the title II regulation. The technical assistance manual also discusses the choice you may make, and the differences between ADAAG and UFAS, on pages 23 through 32.

I hope this information is useful to you in understanding the requirements of the ADA.

Sincerely,

Joan A. Magagna
Deputy Chief
Public Access Section

Enclosures (2)
Title II regulation
Title II Technical Assistance Manual

United States
Architectural and Transportation Barriers Compliance Board

Mr. John Wodatch
Office on the Americans with Disabilities Act
Civil Rights Division
U.S. Department of Justice
Washington, DC 20530

Dear Mr. Wodatch:

Please find enclosed one letter addressed to the Access Board requesting assistance regarding the ADA. It is our opinion that they address issues more appropriately under the purview of the Department of Justice.

Please respond directly to the parties requesting assistance. We have notified them that we have forwarded their inquiries to your office.

Sincerely,

Marsha K. Mazz
Technical Assistance Coordinator

Enclosure

The Access Board

Town of Randolph
Office of
BUILDING INSPECTOR

1 TURNER LANE
RANDOLPH, MASS. 02368-3927
(617) 963-4540

August 31, 1992

U.S. Architectural and Transportation Barriers Compliance Board
1111 18th Street, N.W.; Suite 501
Washington, D.C. 20036-3894

Gentlemen and Ladies:

In the Town of Randolph, Massachusetts, the writer has been appointed to act as the A.D.A. coordinator.

After discussion with individuals of the Boston Office of H.U.D. and the Commonwealth's office Communities and Development , many questions remain unanswered regarding facilities in the Town of Randolph.

The following facts are presented for review and historical purposes so that you may answer, or refer, the questions enumerated further along in this letter.

1. The Town of Randolph employs about 220 employees, plus the school department employs 400 persons, and the Randolph Housing Authority (which has three facilities at three different locations) employs an additional six persons. The housing authority buildings are 100% subsidized by the Commonwealth of Massachusetts, who also pay the salaries of the said six persons.

2. In the three different and separate complexes are four miscellaneous halls whose occupancy capacities vary. One room has a maximum capacity of 180 persons; another has 200 persons; another 60 persons; and the last has a capacity of 75 persons for the meeting rooms/halls. Two of these places of assembly are open to the public and two are not.

Question 1:

Under the ADA or any other federal law or laws, must the two miscellaneous halls, open to the public be surveyed for ADA or any other applicable accessible requirements?

Question 2:

Under the ADA or any other federal law or laws, must the two remaining miscellaneous hall not open to the public be surveyed for ADA or any other accessibility requirements?

Question 3:

Is Title II of the A.D.A. in force in these four meeting rooms?

Question 4:

If these four meeting rooms or any lesser amount must be inspected, which requirements are applicable - A.D.A.A.G. or U.F.A.S. - and under which authority, law, rule, etc.?

If you do not have jurisdiction over any of these questions, etc., please forward this letter to the proper authority having jurisdiction. An early reply would be greatly appreciated. If you wish any further information., please call the Randolph Building Department, at (617) 963-4540 between the hours of 8:00 AM to 9:30 AM or 3:00 PM to 4:30 PM, Monday thru Friday. These are the hours when you would be

able to speak directly with Mr. Joseph L. Pace, Building Commissioner, Ms. Mary C. McNeil, Local Inspector, or the writer, Local Inspector; at other times, we may not be in the office.

Thank you very much for your cooperation in this matter.

Very truly yours,

Joseph A.DiCicco,
Architectural Access and
American Disabilities Act Surveyor

JAD/mcm

cc: Board of Selectmen,
Office Manager/Clerk, B. of Selectmen,
Municipal Space Needs Committee,
Randolph Housing Authority and Director,
Building Department (4).

APR 26 1993

The Honorable J. James Exon
United States Senate
528 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Exon:

This letter is in response to your inquiry on behalf of your constituent, XX concerning the Americans with Disabilities Act ("ADA") that was sent to this office and to the Equal Employment Opportunity Commission. (b)(6) requested information about the ADA and expressed some concerns about the financial impact that the ADA may have on the resources

of the Ponca School Board in Ponca, Nebraska.

The ADA authorizes this Department to provide technical assistance to individuals and entities that have rights or responsibilities under the ADA. Therefore, this letter provides informal guidance to assist you in responding to XX . However, this technical assistance does not constitute a legal interpretation, and it is not binding on the Department of Justice.

Title II of the ADA, which became effective on January 26, 1992, prohibits discrimination on the basis of disability and governs the operations of local and State governments. Accordingly, the Ponca School Board is covered by title II and is required to comply with its provisions. If the Ponca School system receives Federal financial assistance from any Federal agency, then the school system also is subject to section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of handicap in federally assisted programs and activities.

cc: Records; Chrono; Wodatch; McDowney; Bowen; Delaney; FOIA.
\udd\delaney\congress\exon

01-02008

Title II requires that all programs, services, and activities of a public entity be made available without discrimination on the basis of disability. A public entity is not necessarily required to make each of its existing facilities accessible but it must ensure that its services, programs, or activities, when viewed in their entirety, are readily accessible to and usable by individuals with disabilities. See section 35.150(a) of the enclosed title II regulation. Accordingly, it may be possible for the Ponca School Board to comply with this obligation without necessarily making all of its existing buildings physically accessible. Services and programs may be made available in alternate locations, or special arrangements

can be made to afford services to persons with disabilities in accessible parts of a building. See also section 35.150(b).

The title II regulation requires all public entities, regardless of size, to conduct a self-evaluation or review of its services, policies, and practices by January 26, 1993, to identify inaccessible facilities and to develop solutions to make the programs, services, and activities accessible. See section 35.105. In the event that structural changes to existing facilities are necessary in order to make a program, service, or activity accessible to persons with disabilities, a public entity that employs fifty or more employees must develop a transition plan by July 26, 1992, setting forth the steps necessary to complete those changes. Any structural changes outlined in the transition plan must be completed as expeditiously as possible but no later than January 26, 1995. See section 35.150(d) of the title II regulation.

The title II regulation, like the section 504 rule, does not require a public entity to take action that it can demonstrate would result in a fundamental alteration in the nature of its programs or activities or in undue financial and administrative burdens. The decision that compliance would result in such burdens must be made by the head of a public entity after considering all resources available for use in the funding and operation of the service, program, or activity, and must be documented by a contemporaneous written statement of the reasons for reaching that conclusion. If making a program fully accessible would result in such burdens, a public entity is required to take any other action that would not result in such burdens but would nevertheless ensure that individuals with disabilities receive the benefits or services provided by the public entity.

The title II regulation makes it clear that all facilities designed, constructed, or altered by, on behalf of, or for the use of a public entity, must be readily accessible and usable by individuals with disabilities if the construction or alteration began after January 26, 1992. See section 35.151. Section 35.151(c) of the title II rule permits a public entity, when

altering or constructing a building or facility, to use either the Uniform Federal Accessibility Standards (UFAS) or the ADA Accessibility Guidelines (ADAAG), which are an appendix to the enclosed title III regulation.

I hope this information is helpful in responding to your constituent.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

Enclosures (2)

01-02010

APR 26, 1993

The Honorable Dan Glickman

Member, U.S. House of Representatives
401 N. Market St., Room 134
Wichita, Kansas 67202

Dear Congressman Glickman:

This letter responds to your inquiry on behalf of your constituent, Jim Lauterbach, regarding the Americans with Disabilities Act (ADA).

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist you in understanding the ADA's requirements. However, it does not constitute a legal interpretation or legal advice and it is not binding on the Department of Justice.

In your letter, you indicated that Mr. Lauterbach plans to renovate an existing building for purposes of turning it into a private club, and needs information regarding his responsibility to make the restroom accessible under the ADA. Title III of the ADA prohibits discrimination against people with disabilities by private entities, including places of public accommodation and commercial facilities. Private clubs are exempt from title III of the Act. 28 C.F.R. Sec. 36.102(e).

Before your constituent concludes that his planned renovations are exempt from ADA requirements, however, he should be certain that the anticipated occupant of the renovated site is a private club as that term is defined by the ADA. Under the title III regulation (28 C.F.R. Sec. 36.104), the term "private club" is defined as a private club or establishment exempted from coverage under title II of the Civil Rights Act of 1964 (42

cc: Records; Chrono; Wodatch; McDowney; Magagna; Foran; FOIA.
\udd\foran\glickman.con

01-02011

U.S.C. 2000a(e)). In determining whether a private entity qualifies as a private club under title II, courts have considered such facts as the degree of member control of club operations, the selectivity of the membership selection process, whether substantial membership fees are charged, whether the entity is operated on a nonprofit basis, the extent to which the facilities are open to the public, the degree of public funding, and whether the club was created specifically to avoid compliance with the Civil Rights Act. See Title III Technical Assistance Manual at pages 5-6; preamble to title III regulation at 35552-35553 (enclosed).

If your constituent concludes that the renovated site will not be operated as a private club, but instead as a public accommodation as that term is defined in the Act (see 28 C.F.R. Sec. 36.104; preamble to title III regulation at 35551-35552), alterations undertaken at the site must conform to the ADA standards for accessibility which appear as Appendix A to the title III regulation. Thus, if Mr. Lauterbach's club is actually a public accommodation, and he alters the restroom, such alterations must conform to these standards. Title III places an additional accessibility requirement when alterations are made to a "primary function" area. The law requires that 20% of the cost of all alterations made to a "primary function area" is to be applied to making an "accessible path of travel" to the altered area and to restrooms, water fountains, and telephones serving the altered area. Therefore, even if Mr. Lauterbach did not initially renovate the restroom area, it is possible that he would have to apply some of this 20% figure to making the restroom accessible. This requirement is discussed more fully in the enclosed materials. See Title III Technical Assistance Manual at 48-53; preamble to title III regulation at 35580-35584.

I hope this information is useful to you.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

Enclosures (2)

01-02012

CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES
WASHINGTON, DC 20515-1604

March 9, 1993

Office on the ADA
Civil Rights Division
U.S. Department of Justice
P.O. Box 66118
Washington, D.C. 20035

Dear To Whom It May Concern:

I am writing this letter in regard to a request for assistance from Jim Lauterbach, a constituent of mine.

Mr. Lauterbach has been unable to reach your office by phone, therefore he has contacted my office for assistance. Mr. Lauterbach would like to turn a preexisting building that houses a craft store into a private club. He needs information as to what the ADA accessibility guidelines are in terms of building accessible restrooms. According to Mr. Lauterbach, there is one restroom in the building and it is not handicapped accessible. He contends the cost to upgrade the restroom will be too great at the moment, and would like a waiver to open the club as soon as possible, with the intention of upgrading the restroom when he receives a cash flow from the use of the club.

I would greatly appreciate any information you could share with me regarding Mr. Lauterbach's concerns. Please feel free to contact Janet Anderson in my Wichita office if you have further questions as she is assiting me in this matter.

With best regards,

DAN GLICKMAN
Member of Congress

DG:joa
01-02013

APR 26, 1993

The Honorable John Tanner
U.S. House of Representatives
1427 Longworth House Office Building
Washington, D.C. 20515-4208

Dear Congressman Tanner:

This letter responds to your inquiry on behalf of your constituent, (b)(6) regarding the Americans with Disabilities Act (ADA).

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist you in understanding the ADA's requirements. However, it does not constitute a legal interpretation or legal advice and it is not binding on the Department of Justice.

In your letter, you indicated that (b)(6) is studying to be an emergency medical technician. According to your letter, due to XX disability, XX performs a specific skill (insertion of the Pharyngeo Tracheal Lumen Airway, or PTL) from a different position than is typical. The Tennessee EMS Board has ruled that this method is unacceptable for purposes of certifying XX as a licensed emergency medical technician.

Under title II of the ADA, public entities are prohibited from discriminating against qualified individuals with disabilities on the basis of disability in the granting of licenses or certification. A person is a "qualified individual with a disability" with respect to licensing or certification if he or she can meet the essential eligibility requirements for receiving the license or certification. See section 35.130(b)(6) of the enclosed title II regulation at pages 35704 and 35705. Whether a particular requirement is "essential" depends on the facts of the case. As discussed in the Justice Department's preamble, or interpretive commentary, to the title II regulation,

cc: Records, Chrono, Wodatch, Bowen, Foran, McDowney, FOIA
Udd:Foran:Tanner.Con

01-02014

the phrase "essential eligibility requirements" is taken from the definitions in the regulations implementing section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), so caselaw under section 504 is applicable to its interpretation. See preamble to title II regulation at 35704.

Generally, a public entity is prohibited from applying eligibility criteria that screen out or tend to screen out individuals with disabilities from fully and equally enjoying any service, program, or activity. A public entity may, however, impose neutral rules and criteria that screen out, or tend to screen out, individuals with disabilities if the criteria are necessary for the provision of the service, program, or activity being offered. See 28 C.F.R. 35.130(b)(8). With respect to XX particular inquiry, the Tennessee EMS Board is permitted to impose eligibility criteria (i.e., require a skill be performed in a certain way) that screen out, or tend to screen out, individuals with disabilities if the criteria are "necessary" to ensure that the Board is licensing persons who can safely perform the duties of emergency medical technicians. At the same time, however, public entities are obligated under section 35.130(b)(8) to make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program or activity.

The ADA establishes two avenues for enforcement of the requirements of title II: private suits by individuals and suits by the Department of Justice after investigation by one of eight designated agencies. If XX believes that XX rights under the ADA have been violated, XX may file a private suit pursuant to section 203 of the Act, or file a complaint with the Department of Health and Human Services. In addition to

contacting a private attorney, there are a number of avenues that XX could pursue in order to resolve privately the issues raised in his letter, including consulting State or local authorities, disability rights organizations, or organizations that provide alternative dispute resolution services (such as arbitration or negotiation). For your convenience, we have enclosed a list of organizations serving XX area. These listings come from various sources, and the Department cannot guarantee that the listings are current and accurate. These groups may be able to refer XX to national or regional groups with a focus on a particular type of disability. XX local or State bar associations may be able to give (b)(6) names of private attorneys or mediation services.

01-02015

I hope this information has been useful to you.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

Enclosures (2)

01-02016

Congress of the United States
House of Representatives

March 22, 1993

Honorable Janet Reno
Attorney General
Department of Justice
Main Justice Building
Washington, D.C. 20530

Dear Madam Attorney General:

I am enclosing copies of the information that has been shared with me by my constituent, XX . Please review this and respond with any information you feel may be helpful in responding to XX .

As you will note, (b)(6) XX is currently enrolled in a local community college studying to be an Emergency Medical Technician. Since XX than many of the students, XX also performs some of the skills differently. This had not proven to be a problem until a specific skill known as the insertion of the Pharyngeo Tracheal Lumen Airway (PLT).

Apparently, the accepted, but not mandated, position for doing this is for the technician to be at the top of the patient's head. XX

patient's head. The Tennessee EMS Board has XX . XX If they do not accept performance, he can not become a licensed EMT. The full details and descriptions of this case are included in the information that XX has provided.

Is there anything in the Americans With Disabilities Act or its regulations that would address this situation? Is Tennessee's EMS Board acting within its rights to exempt XX from service as an EMT based solely on his performance of this one skill, or has XX been the victim of discrimination based on (b)(6) needs to know how to proceed by XX , since that is when the current semester ends. It would be most helpful if you could respond to my inquiry on XX behalf so that I might get this information to XX well before that date.

Congratulations on your confirmation! I look forward to working with you and hope that you will feel free to call upon me whenever I may be of assistance. Additionally, I hope that you or 01-02017

your staff will not hesitate to contact me if I may provide additional information about (b)(6). Thank you for your time and attention to this matter.

Sincerely,

John Tanner, M. C.

JT/gw

(b)(6)

December 31, 1992

To Whom It May Concern:

I am currently enrolled at XX as an Emergency Medical Technician. Having been XX I have to perform some skills differently than other people. The Tennessee Emergency Medical Service, so far, has been unwilling to accept this difference on one skill. That skill is the insertion of the Pharyngeo Tracheal Lumen Airway (PTL).

A description of the PTL and technique for insertion is enclosed. One thing that is not mentioned in the description or technique for insertion is the position the EMT is to be in when inserting the PTL. The accepted position is for the EMT to be positioned at the top of the patient's head. XX

Tom Coley, EMT-P, and director of the EMT program at (b)(6) requested that he be allowed to video tape me doing this skill. He also asked that the Tennessee EMS board be allowed to see this tape in order to make a decision. I had no problem with this and on XX the Tennessee EMS Board reviewed the tape.

On XX I asked Tom Coley what conclusion the EMS Board had come to. Tom said that he did not have time to discuss it with me but for me not to worry about it. On XX , the XX of class for the XX semester, Tom discussed it with me. Tom said that the EMS Board would not accept the way that I perform this skill. He also said that he was in agreement with the state.

Within the next day or two I contacted Judy Gaffron of the State EMS Board to discuss it with her. She stated that their lawyers advised her not to tell me if they would accept the way that I do this skill. She did not come right out and tell me but she did lead me to believe that they would turn it down, I know that they will. Since time was up for the XX semester, the EMS Board and Tom Coley decided to let me wait until next semester to perform the PTL skill for a grade. They said it would give

me time to practice doing it their way. The next semester runs from (b)(6)

01-02019

On (b)(6) I contacted the Tennessee State Representative Roy Herron's office in Nashville. They said that they would look into it. As of this date I have not heard from his office.

The way that I perform this skill does not in any way compromise the patient. The only reason the EMS Board has given me is that it is not the accepted way.

Two other questions that I have been asked by Tom Coley and Judy Gaffron are: How will I be able XX and how will I be able at the same time? After hearing these two questions I am expecting more trouble in the future.

Below is a list of the names and phone numbers of the people that I have mentioned.

Tom Coley - (901)425-2612
Judy Gaffron - (615)367-6262
Roy Horron - (615)741-4576

Ann Hirsch at J.A.N. is the person who advised me to contact your office. Any help that you can provide will be appreciated.

Thank You,

(b)(6)

JV:po

01-02020

DJ 202-PL-260

APR 27 1993

(b)(6)
Boynton Beach, Florida 33435

Dear XX

This letter responds to your inquiry regarding the application of title III of the Americans with Disabilities Act (ADA) to the provision of biohazardous waste containment systems at hotels.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist you in understanding the ADA's requirements. However, it does not constitute a legal interpretation or legal advice, and it is not binding on the Department of Justice.

Your letter asks about the responsibility of hotels to provide Sharps Containment Systems for use by persons with diabetes. Your question raises a number of issues under the Department of Justice's regulation implementing title III of the ADA (enclosed).

Under section 36.202 of the title III regulation, public accommodations, including hotels or motels, are required to provide individuals with disabilities with an equal opportunity to enjoy the services that they offer. Housekeeping services, including garbage disposal, are among the services traditionally provided by places of lodging.

Places of lodging are not required by Occupational Health and Safety Administration regulations to utilize biohazardous

waste systems in garbage disposal, although use of such systems may be advisable. Because the use of biohazardous waste containment systems in the hotel setting is optional, the failure to provide such systems does not exclude individuals with disabilities from equal access to the enjoyment of lodging services. Thus, section 36.202 of the ADA title III regulation does not require hotels to provide such systems.

cc: Records, Chrono, Wodatch, Breen, Novich, FOIA
Udd:Flynnsm:policy:sharps.let

01-02021

Moreover, under section 36.302 of the title III regulation, places of lodging must make reasonable modifications in policies, practices, and procedures when such modifications are necessary to afford the goods or services of the place of lodging to an individual with a disability. As stated above, although the use of biohazardous waste disposal systems may be advisable in hotels, it is not required by law. Modifications of waste disposal policies to provide Sharps containment systems at places of lodging are not required by section 36.302, then, because such systems are not necessary to afford lodging services to persons with disabilities.

I hope this information is useful to you in understanding the requirements of the ADA.

Sincerely,

John L. Wodatch
Chief
Public Access Section

Enclosures (2)
Title III Technical Assistance Manual
Title III Regulation

01-02022

MAY 5, 1993

The Honorable Tom Harkin
Chairman, Subcommittee on Disability
Policy
Committee on Labor and Human Resources
United States Senate
531 Hart Senate Office Building
Washington, D.C. 20510-1502

Dear Mr. Chairman:

This letter is in response to your inquiry regarding the rights of persons with memory impairments under the Americans with Disabilities Act.

Titles II and III of the ADA and the Department of Justice's regulations implementing those titles define the term disability quite broadly. For purposes of the ADA, "disability" includes any mental or physical condition that substantially limits one or more major life activities, like walking, seeing, hearing, working, or learning. Thus, if a particular memory impairment substantially limits a major life activity, then a person with that impairment would be entitled to the protections of the ADA.

In regard to your specific inquiry about provision of audio tapes or written transcripts of proceedings, both titles II and

III of the ADA may require State or local governments and places of public accommodation to provide such aids in some cases. Title II of the ADA requires a State or local government to operate each of its programs, services, and activities so that its programs, services, and activities, when viewed in their entirety, are readily accessible to and usable by individuals with disabilities, unless doing so would either fundamentally alter the nature of program, service, or activity, or would constitute an undue financial or administrative burden on the public entity. In addition, title II requires State and local

cc: Records, Chrono, Wodatch, McDowney, Bowen, Contois, FOIA
Udd:Contois:CGL:Harkin

governments to furnish appropriate auxiliary aids and services when necessary to afford individuals with disabilities equal opportunities to participate in, and enjoy the benefits of, a program, service, or activity conducted by a public entity. Thus, if audio tapes or written transcripts of proceedings were necessary to allow an individual with a disability to participate equally in some program, service, or activity conducted by a state or local government, then the State or local government would have to provide such aids.

Similarly, title III of the ADA requires places of public accommodation to provide auxiliary aids and services when necessary to insure that no individual with a disability is excluded, denied services, segregated, or otherwise treated differently than other individuals. A place of public accommodation need not provide an auxiliary aid or service if providing that aid or service would fundamentally alter the nature of the goods or services provided by that place of public accommodation, or if providing that aid or service would constitute an undue burden, in terms of significant difficulty or expense, on the place of public accommodation.

For your information, I am enclosing a copy of this Department's regulations implementing titles II and III of the ADA and the Technical Assistance Manuals that were developed to assist individuals and entities subject to the ADA to understand the requirements of titles II and III. I hope this information is useful to you in understanding the requirements of the ADA.

Sincerely,

M. Faith Burton
Acting Assistant Attorney General

Enclosures (4)

01-02024

(202) 224-3254
TOM HARKIN TTY (202) 224-4633
IOWA

COMMITTEES
AGRICULTURE
APPROPRIATIONS
UNITED STATES SENATE SMALL BUSINESS
WASHINGTON, DC 20510-1502 LABOR AND HUMAN
RESOURCES

March 1, 1993

John Wodatch, Chief
Public Access Section
Civil Rights Division
Department of Justice
Tenth and Pennsylvania Avenue N.E.
Washington, D.C. 20530

Dear Mr. Wodatch:

The purpose of this letter is to clarify the rights of persons with memory impairments, such as individuals with traumatic brain injury, under the Americans with Disabilities Act of 1990.

Specifically, I would like to know whether the provision of audio tapes and written transcripts of proceedings can be required under title II and title III if necessary to provide meaningful access to state and local government and public accommodations for persons with memory impairments. I would also like to know under what circumstances cost can be used as a reason for not supplying such access.

Your prompt attention to this matter would be greatly appreciated. Thank you in advance for your assistance.

Sincerely,

Tom Harkin, Chair
Subcommittee on
Disability Policy

TH/lh

01-02025

MAY 6 1993

The Honorable Orrin G. Hatch
United States Senator
8402 Federal Building
125 South State Street
Salt Lake City, Utah 84138

Dear Senator Hatch:

This is in response to your inquiry on behalf of your constituent, (b)(6) inquiry concerns the need to obtain a "right to sue" letter under title III of the Americans with Disabilities Act and whether an impairment

affected by cigarette smoke is covered under the Americans with Disabilities Act.

The Americans with Disabilities Act authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. XX wrote to us requesting an advisory interpretation of the Act. I am enclosing a copy of our recent response to him. We apologize for the delay in responding to his inquiry.

I hope this information is helpful in responding to your constituent.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

Enclosure

cc: Records, Chrono, Wodatch, Magagna, Miller, McDowney, FOIA
udd\Millerc\policy\hatch.ltr

01-02026

U.S. Department of Justice
Civil Rights Division

Public Access Section

XX P.O. Box 66738
Washington, D.C. 20035-6738

APR 27 1993

(b)(6)

XX
West Jordan, Utah XX

Dear XX:

This is in response to your request for a "right to sue" letter under the Americans with Disabilities Act and your request for information as to the obligation of a public accommodation to modify its policies and practices in order to be accessible to you because of the effect of smoking on your ability to breathe.

The Americans with Disabilities Act authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist you in understanding the Act's requirements. However, it does not constitute a legal interpretation and it is not binding on the Department.

You do not need a "right to sue" letter in order to institute a civil action to redress your rights under title III of the Americans with Disabilities Act. The Americans with Disabilities Act contains a private right of action under title III. Any person who is being subjected to discrimination on the basis of disability in violation of the Act may institute a civil action for preventive relief, such as an injunction or other order. The Department of Justice does have the authority to investigate complaints under title III; however, it is not necessary to file a complaint with the Department prior to exercising your private right of action.

The Americans with Disabilities Act prohibits discrimination on the basis of a disability, which is defined as a physical or mental impairment that substantially limits one or more major life activities, including breathing. With respect to an impairment affected by cigarette smoke, the preamble to the Department's implementing regulation states,

> Sometimes respiratory or neurological functioning is so severely affected that an individual will satisfy the requirements to be considered disabled under the regulation. Such an individual would be entitled to all of the protections afforded by the Act and this part. In other cases, individuals may be sensitive to

> environmental elements or to smoke but their sensitivity will not rise to the level needed to constitute a disability. For example, their major life activity of breathing may be somewhat, but not substantially, impaired. In such circumstances, the individuals are not entitled to the protections of the statute despite their sensitivity to environmental agents.
>
> In sum, the determination as to whether allergies to cigarette smoke, or allergies or sensitivities characterized ... as environmental illness are disabilities must be made using the same case-by-case analysis that is applied to all other physical or mental impairments.

This discussion of environmental sensitivities can be found at page 35549 of the enclosed title III regulation. I also have enclosed a copy of the Department of Justice's Title III Technical Assistance Manual. There is an explanation of what is meant by the phrase "individuals with disabilities" on pages 8 - 12 of the manual.

After reviewing this material, if you wish to file a complaint under the Americans with Disabilities Act against a specific public accommodation, you may write to the Public Access Section, Civil Rights Division, U.S. Department of Justice, Post Office Box 66738, Washington, D.C. 20035-9998. Please bear in mind that the Department is not able to investigate all the complaints it receives and that it can take enforcement action where there is a pattern or practice of discrimination or discrimination involving an issue of general public importance.

I hope this information is helpful to you.

Sincerely,

John L. Wodatch
Chief
Public Access Section

Enclosures (2)

01-02028

U.S. Department of Justice
Civil Rights Division

MAY 6 1993

The Honorable Amo Houghton
Member, United States House of
Representatives
P.O. Box 908
Jamestown, New York 14702-0908

Dear Congressman Houghton:

This letter is in response to your inquiry on behalf of your constituent, XXXXXXXX requesting information on the requirements of the Americans with Disabilities Act (ADA) that relate to the needs of individuals who are deaf or have hearing impairments.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities that are subject to the Act. This letter provides informal guidance to assist you in responding to your constituent. However, this technical assistance does not constitute a determination by the Department of Justice of your constituent's rights or responsibilities under the ADA and does not constitute a binding determination by the Department of Justice.

Title II of the ADA prohibits discrimination against qualified individuals with disabilities by State and local governmental entities. Section 35.160 (a) of this Department regulation implementing title II (copy enclosed) specifically requires such entities to ensure that their communication with individuals with disabilities is as effective as communication with others.

To accomplish this goal, public entities are required to furnish appropriate auxiliary aids and services (such as sign language interpreters) , and to give primary consideration to the requests of individuals with disabilities in the selection of such aids and services. See section 35.160(b) of the title II

regulation, as discussed on pages 35 through 37 of the enclosed title II Technical Assistance Manual. The ADA does not, however, require a public entity to take any measures that would result in a fundamental alteration in the nature of its programs, services, or activities or in undue financial and administrative burdens. See section 35.164 of the title II regulation.

If effective communication can be accomplished through other methods, title II does not require, as your constituent seems to assume, that all existing public facilities be equipped with special sound systems. Newly constructed or altered facilities are, however, subject to requirements related to assistive listening systems. At present, public entities have a choice of following the requirements for such systems set forth in either the Uniform Federal Accessibility Standards (UFAS) or in the ADA Accessibility Guidelines (Guidelines), which are located at Appendix A to this Department's title III regulation (copies enclosed).

Please note, however, that the Architectural and Transportation Barriers Compliance Board has issued a proposed regulation that would amend the Guidelines to include standards applicable to a variety of title II facilities. It is anticipated that the Department of Justice will, after notice and comment, adopt the proposed amendment as the standard for title II entities. At such time, title II entities will be required to use the revised Guidelines for new construction and alterations, and will no longer have the option of following UFAS.

With respect to sign language interpreters, the ADA only requires the use of interpreters when necessary to ensure effective communication. Therefore, interpreters are not required to be present at all meetings of a governmental entity. If, for example, an individual with a hearing impairment prefers to use an assistive listening system, an interpreter would not be required. It is important, however, for each governmental entity to establish efficient procedures for obtaining interpreter services when needed, because, as your constituent points out, the supply of interpreters within a given geographic area may be limited.

The cost of all assistive listening systems, interpreters, and any other expenses required to meet ADA requirements are the responsibility of the State or local government and may not be passed along to any individual or group of individuals with disabilities. (The ADA does not, however, require such entities

to purchase personal aids and devices such as hearing aids.) See sections 35,130(f) and 35.135 of the title II regulation.

3

We appreciate your constituent's comments regarding the importance of good lighting and good speech-making practices. Although these issues are beyond the scope of our regulations, we will certainly keep them in mind in our future technical assistance efforts.

I hope this information will be useful to your constituent.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

Enclosures (3)

The Honorable John C. Danforth
United States Senator
8000 Maryland Avenue
Suite 440
Clayton, Missouri 63105

MAY 10 1993

Dear Senator Danforth:

This letter is in response to your inquiry on behalf of your constituent, Sarah Holbert, and her concern about the Americans with Disabilities Act (ADA) and service animals in hospitals.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist Ms. Holbert in understanding the ADA's requirements. This technical assistance, however, does not constitute a determination by the Department of Justice of rights or responsibilities under the ADA, and does not constitute a binding determination by the Department of Justice.

Unless it is a religious entity or under the control of a religious organization, a health care facility, such as a hospital, is covered by the provisions of title III of the ADA and the Department's title III regulation as a place of public accommodation (see section 36.104 of the enclosed regulation). According to section 36.302(c), a public accommodation is' required to modify policies, practices, or procedures to permit the use of a service animal by an individual with a disability. The intent of this regulation is to ensure that the broadest feasible access be provided to service animals in all public accommodations, including hospitals and nursing homes. This regulation also acknowledges that in rare circumstances, if the nature of the goods and services provided or accommodations offered would be fundamentally altered, or if the safe operation of a public accommodation would be jeopardized, a service animal need not be allowed to enter.

cc: Records; Chrono; Wodatch; McDowney; Bowen; Barrett; FOIA.
\udd\barrett\danfort.cg

A showing by appropriate medical personnel that the presence or use of a service animal would pose a significant health risk in certain areas of a hospital may serve as a basis for excluding service animals in those areas. In developing a list of areas from which service animals may be excluded, a hospital facility must designate only the exact areas where exclusion is appropriate. For example, if a hospital facility does not allow the presence of a service animal used by an individual receiving out-patient care, this decision must be based on a medical determination that the presence of the service animal would pose a significant health risk, or that the services provided by the hospital would be fundamentally altered. If a service animal must be separated from an individual with a disability, in order to avoid a fundamental alteration or a threat to safety, it is the responsibility of the individual with a disability to arrange for the care and supervision of the animal during the period of separation. See section 36.302(c)(2).

For your information, we have also enclosed a copy of a 1988 memorandum interpreting the application of section 504 of the Rehabilitation Act of 1973, as amended, to the presence of service animals in health care facilities. As you can see, the Federal government's policy on this issue has been consistently applied for a lengthy time period.

I hope this information is helpful in responding to Ms. Holbert's concerns.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

Enclosures (2)

DEPARTMENT OF HEALTH & HUMAN SERVICES
Memorandum

Date MAR 24 1988

From Audrey F. Morton
Director
Office for Civil Rights

Subject Clarification of OCR Policy on the Use of Dog Guides by Visually Impaired Persons in Federally Assisted Health and Human Services Facilities

To Senior Staff
Regional Managers, Regions I - X

The following is a clarification of OCR's policy concerning the use of Dog Guides by visually impaired persons in federally assisted health and human services facilities. While the policy refers mainly to hospitals, it is also applicable to any other recipient of Federal financial assistance from HHS.

ISSUE

Under Section 504, what are the rights of blind or visually impaired persons to use dog guides in hospitals, nursing homes and other health and human service facilities and what are acceptable circumstances for prohibiting their use?

DISCUSSION

A number of complaints have been made against hospitals and other health or human services agencies by blind or visually

impaired persons who have been denied admission to one or more parts of a recipient's facility because they wanted to be admitted with their dog guides. Some recipients have established total prohibitions against the admission of dogs in any part of their facilities, others have limited dogs to the lobby, cafeteria, gift shop and similar public areas, while yet others have imposed other restrictions.

In seeking regulatory authority for a finding of violation of Section 504, OCR staff at both the headquarters and regional offices have looked to Subpart C, Program Accessibility, of 45 CFR Part 84, for support. This Is incorrect. The program accessibility standard was developed for and intended to apply where problems exist in the design and physical structure of a facility. It was intended to insure that handicapped persons could physically get around in a facility and, where architectural barriers prevented this, to develop some administrative or programmatic modification which permitted the handicapped person to participate effectively in the recipient's program.

A dog guide is an auxiliary aid that many blind or visually impaired persons use to permit them independent mobility (45 CFR 84.41(b)(iv)). Any refusal to admit a visually impaired person to a facility because that person is using a dog guide is, in effect, prohibiting the use of an auxiliary aid. There is no question in this situation of the recipient having to provide the auxiliary aid, nor is the matter of whether the aid is or is not appropriate at issue. What is at issue is the establishment of criteria or procedures that limit blind or visually impaired persons from enjoying the same rights and privileges as others because they have chosen dog guides as auxiliary aids.

Hospitals, nursing homes or other health and human service agencies that employ the visually handicapped or that permit, invite and regularly encourage visitors to their programs may not establish a policy that, in general, prohibits the use of auxiliary aids by employees and visitors unless it can be shown that the use of the auxiliary aid would endanger others or prevent them from benefitting from the recipient's program.

DECISION

Unless there is evidence that the presence or use of a dog guide would pose a significant health risk or that the dog's behavior would be disruptive to the recipient's program, the

assumption should be made that a clean, well cared for and well-behaved dog guide should be permitted to accompany its owner wherever that person goes.

A medical justification showing that the presence or use of a dog guide would pose a significant health risk in certain parts of the hospital can serve as the basis for the exclusion of dog guides, but only from the hospital areas directly involved. Such areas might include operating room suites, burn units, coronary care units, intensive care units, oncology units, psychiatric units and isolation (infectious disease) areas. In developing the list designating those parts of a facility from which dog guides will be excluded, the recipient must specify the exact areas, and clearly identify them. Where the reason for exclusion of dog guides is not self-evident, the recipient must explain what hazards a dog would impose that a human will not. This applies to all areas of the hospital, not just those open to the public.

OCR should be aware of, and guard against, the occasional tendency of medically qualified personnel to take a super-cautious approach. In such instances, what is essentially a blanket prohibition is made on the theory that extending as far as possible the areas from which dogs may be barred will minimize difficulties. Cases in which there is doubt on this and other grounds should be referred to Headquarters which will consult the Hospital Infections Program at CDC for an expert opinion.

Only medically qualified personnel should participate in the development of the list, and decide, on a case-by-case basis in situations not clearly covered by the list, if dog guides may or may not enter areas where questions of risk to patients arise. Administrators, security personnel and admissions clerks should not make those decisions, but may assist in implementing them.

Dog guides may be restricted from rooms of patients suffering from strong allergic reactions to dogs, irrational fears and phobias about dogs, or psychotic or drug related distortions of reality where it is impossible to reassure the patients

that the dog is harmless. There may be situations in which a patient with a visitor using a dog guide shares a room with a person to which one of the above circumstances applies. In such instances either person may request and should be granted another room.

If a request for a room change is based simply on personal preference, a comparably priced room may be arranged for on a space available basis. If the room change is recommended by a physician for sound medical reasons, the patient changing the rooms may not be charged more if a comparably priced room is not available.

All of the foregoing applies to trained dog guides, which have been maintained as dog guides by their users and are clear, well-cared for and well-behaved. Individual dog guides which do not meet these criteria may be restricted or excluded by any reasonable staff member for good cause shown. When a dog is excluded for any of the above reasons, the facility should provide a suitable temporary location where the dog can be secured.

This policy applies primarily to visitors, out-patients, and employees. In the case of in-patients, those who are confined to their beds should ordinarily have no use for dog guides; the dogs in question should not be kept around just for company. Ambulatory patients whose movement within the hospital is sufficiently varied and distant that significant use of the services of dog guides may be made should have the benefit of this policy. The recipient, however, is under no obligation to feed, groom, exercise, or in other ways care for the animals in question.

The foregoing also applies to dogs used by the hearing impaired, when such dogs are being used as auxiliary aids.

In some areas, regulations promulgated under State or local authority may prohibit or appear to prohibit a health or human services facility from following this policy. We refer you to 45 CFR 84.10(a) which covers this situation and would require

corrective measures to be taken if the State or local agency which has issued the regulation is itself a recipient of Federal financial assistance.

If you have any questions, please contact Marcella Haynes on 245-6671 or Frank Weil on 245-6700.

Kansas
SPECIALTY
DOG
Service Inc.

2-2-93

Dear Sen. Danforth,

Last Nov. 10, 1992 you received a letter from Mr. B.J. Jones on the Missouri Attorney General's office regarding on of our students, XXXXXX and his service dog.

After visiting with Mr. Jones about the correction of his Nov. 10 letter informing you there was not a section in the Missouri law pertaining to access for service dogs, he assured us he would send both you and us a copy of the amendments. Since we have not heard from Mr. Jones, I felt I should follow-up and make sure you had the correct information. I have also enclosed a copy of the policy used in the hospital associated with Mayo Clinic.

I can also assure you that XXXXX is in fact XXXXXX service dog and they completed our training with outstanding results. XXXXX has returned to XXXXX for out-patient care without being able to take XXXXXX Not only is this a violation of the Missouri law, but the ADA as well.

We appreciate any and all help you can give us in this matter, since we have other graduates that are also going to XXXXX but not able to take their service dogs. If you would like any other information we have, I would be glad to share that with you.

Sincerely,

XXXXXXXXXX

T. 4-23-93
Control No. X93032203939

MAY 10 1993

The Honorable Jim Kolbe
Member, U.S. House of Representatives
1661 North Swan Road, Suite 112
Tucson, Arizona 85712

Dear Congressman Kolbe:

This letter responds to your inquiry on behalf of your constituent, Stewart R. Palmer, concerning the regulatory

requirements of the Americans with Disabilities Act (ADA) for urinals and for drinking fountains.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities with rights or obligations under the Act. This letter provides informal guidance to assist your constituent in understanding the ADA accessibility standards. However, this technical assistance does not constitute a legal interpretation of the statute and it is not binding on the Department.

The technical provisions for accessible urinals in section 4.19 of the Department's standards for accessible design do not specify a dimension for the required "elongated rim." Many commonly available urinals, including the one shown on the catalog sheet that Mr. Palmer enclosed with his inquiry, are acceptable if installed in compliance with all the applicable technical provisions.

Drinking fountains that allow a front approach by a person using a wheelchair must have a knee space at least 27 inches high (see section 4.15.5 of the standards). Section 4.4.1 says that an object mounted with the leading edge at or below 27 inches above the floor may protrude any amount. Therefore, if the bottom edge of the drinking fountain is 27 inches above the floor, both these height requirements are satisfied.

cc: Records, Chrono, Wodatch, Harland, McDowney, FOIA, MAF
n:\udd\mercado\congltrs\kolbe.ewh

If there are state or local accessibility requirements that are more stringent than those required by the ADA, these must also be addressed.

Your constituents may contact the Public Access Section when they have questions or need information. The Department

maintains a telephone information line to provide technical assistance regarding the rights and obligations of individuals, businesses, agencies, and others covered or protected by the ADA. This technical assistance is available by calling (202) 514-0301 (voice) or (202) 514-0383 (TDD) between 1:00 p.m. and 5:00 p.m., Monday through Friday.

I hope the information we have provided is helpful to you and your constituent.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

Stewart R. Palmer Consulting Engineers, Inc.

January 26, 1993

The Honorable Jim Kolbe

U.S. Congressman
1661 North Swan
Tucson, Arizona 85712

Dear Mr. Kolbe:

I am trying to get an official interpretation of the "American for Disability Act." Will you please help.

My paragraph numbers refer to the Federal Register/Vol. 56 No. 144/Friday, July 26, 1991/Rules and Regulations (copies of the pages a-re attached).

4.18.2 Height, Urinals shall be stall-type or wall hung with an elongated rim.... What is meant by elongated rim? The normal wall hung urinal has about a 12" rim. See attached catalog sheet.

4.15 Drinking Fountains. This paragraph details the clearances required for wheelchair access. Paragraph 4.4 Protruding objects: has requirement for items to project into the walking area. This is to assist the visually handicapped. . In accordance with Figure 8(2) it appears a drinking fountain can only project 4" into the walking area unless the bottom is 27" or lower. Drinking fountain bottoms may comply with the 27" but the rim projects further into the space. (See attached catalog sheet.)

My questions are:

1. Does the normal urinal meet the ADA requirement?
2. Do the normal drinking fountains meet the requirements or must they be recessed so only 4" project into the walking area?

Sincerely,

Stewart R. Palmer

MAY 10 1993

The Honorable Richard G. Lugar
United States Senate
306 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Lugar:

This letter is in response to your inquiry on behalf of your constituent, XXXXXX concerning the possibility of providing both ramps and stairs at the entrances to places of public accommodation.

The Americans with Disabilities Act of 1990 ("ADA") authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist your constituent in understanding the ADA's requirements. However, it does not constitute a legal interpretation, and it is not binding on the Department.

While current law does not require stairs at any entrance, XXXXXX should be pleased to know that the ADA's Standards for Accessible Design do include certain requirements regarding stairways. In promulgating a regulation to implement title III of the ADA, the Department of Justice included a set of architectural standards -- the Standards for Accessible Design -- with which all places of public accommodation must comply whenever they alter an existing facility or build a new facility. These Standards set precise limits for stair treads, risers, and nosings, and require continuous handrails at specified heights. Thus, whenever there are stairs in an altered or newly constructed facility, they will be as accessible to persons with disabilities as possible.

cc: Records; Chrono; Wodatch; Bowen; Contois; FOIA.
\udd\contois\cgl\lugar

The Architectural and Transportation Barriers Compliance Board, also known as the Access Board, is the organization that is initially responsible for drafting and amending the ADA Accessibility Guidelines, which are the guidelines on which title III's Standards for Accessible Design are based. We have taken the liberty of forwarding XXXXX letter to the Access Board, so that the Board may consider her comments and the possibility of proposing that the ADA Accessibility Guidelines be altered or amended.

I have enclosed for your information a copy of the Department of Justice's title III implementing regulation, which contains the Standards for Accessible Design as Appendix A, and a copy of the Department's Technical Assistance manual for title III, which contains a section discussing the requirements of the ADA Accessibility Guidelines. I hope this information is useful to you in responding to your constituent.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

Enclosures

Mr. Lawrence W. Roffee
Executive Director
Access Board
1331 F Street, N.W.
Suite 1000
Washington, D.C. 20004-1111

Dear Mr. Roffee:

Senator Richard Lugar forwarded to this office a letter from his constituent, XXXXX regarding the provision of both ramps and stairs at entrances to places of public accommodation.

While we have responded to Senator Lugar, we are taking the liberty of forwarding XXXXXXX letter to you, so that you may consider her comments. Enclosed you will find copies of both XXXXXX letter and our response to Senator Lugar.

Thank you for your attention to this matter.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

Enclosures

cc: Records; Chrono; Wodatch; McDowney; Bowen; Contois; FOIA.
\udd\contois\cgl\accessbd.ltr

XXXXXXX
Logansport, Indiana 46947

February 5, 1993

The Honorable Richard Lugar
United States Senate
Washington D.C. 20510

Dear Mr. Lugar,

I am writing to you about the issue of accommodating public buildings for the handicapped. I think that it is good that buildings were remodeled for those in wheelchairs.

Last year, when buildings were remodeled, ramps were out in so that they were accessible to those people who are in wheelchairs. But, there are also those who are handicapped but are not in wheelchairs to think about.

In 1989, my grandmother had hip replacement surgery. Unfortunately, there were complications so she now uses a walker to get around. Occasionally, she will use a wheelchair, so then she is able to use the ramps. However, when she uses her walker, which is most of the time, the ramps are difficult for her to use. Ramps are very hard for her to walk up with her walker. She cannot walk up them alone, but she can walk up stairs by herself.

A possibility to consider would be to have two doors into these buildings, such as restaurants, with a ramp at one door, and a set of steps at the other door.

Thank you for taking the time to read my letter. I hope you will consider my ideas and discuss them with your fellow representatives.

Sincerely

XXXXXXXX

The Honorable George J. Mitchell
United States Senate
Washington, D.C. 20510-1902

MAY 10 1993

Dear Senator Mitchell:

This letter is in response to your inquiry on behalf of your constituent, Dr. John W. Wickenden of Rockland, Maine, regarding the cost of providing auxiliary aids or services for persons with disabilities.

The Americans with Disabilities Act (ADA) authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist your constituent in understanding the ADA's requirements. It does not, however, constitute a legal interpretation, and it is not binding on the Department.

The ADA requires physicians to furnish appropriate auxiliary aids and services where necessary to ensure effective communication with individuals with disabilities. A physician may not impose a surcharge on any particular individual with a disability to cover the costs of measures, such as providing auxiliary aids, that are required by the ADA. These provisions appear in sections 36.301(c) and 36.303 of the enclosed ADA title III regulation, at pages 35596 and 35597, respectively. Also enclosed is the Department's Title III Technical Assistance Manual, which may provide further assistance to your constituent. Pertinent discussion may be found at pages 22 (surcharges) and 25-28 (auxiliary aids).

What constitutes an effective auxiliary aid or service will depend on the unique facts of each situation, including the length and complexity of the communication involved. A doctor may satisfy the auxiliary aid or service requirement by using a note pad and written materials where a deaf patient is making a routine office visit. By contrast, a discussion of whether to undergo major surgery may require the provision of a sign language interpreter. Further discussion of this point may be found on page 35567 of the enclosed regulation.

cc: Records, Chrono, Wodatch, McDowney, Magagna, Mobley, FOIA
udd\Mobley\Congress\Mitchell

Under section 36.301(c) of the regulation, the cost of an interpreter must be absorbed by the doctor in the limited circumstances when an interpreter is necessary. However, as provided in section 36.303(f), a doctor is not required to provide any auxiliary aid that would result in an undue burden. The flexibility of the auxiliary aids requirement, the undue burden limitation, and the ability to spread costs over all patients should minimize any burden on the medical profession.

Dr. Wickenden's letter raises a specific question involving the use of interpreters. On one occasion, the family of a deaf patient made its own arrangements for a sign language interpreter, without giving the doctor the opportunity to make his own contractual arrangements for a qualified interpreter. Dr. Wickenden reports that the Maine Department of Human Services told him that he had no alternative but to accept, and pay for, the interpreter for whom the family had arranged. Of course, if that is a requirement of state law, the constraints experienced by Dr. Wickenden would have emanated from state and not federal law and, thus, should be taken up with appropriate state officials.

However, if the Maine Department of Human Services was purporting to describe the requirements of federal law, it did so incorrectly. The title III regulation does not contemplate that patients who are deaf may unilaterally decide on the appropriate

type of auxiliary aid, make arrangements for a particular deaf services provider to furnish the aid, and then bill the public accommodation for the services. Instead, doctors may determine how best to provide effective communication to their patients, and may themselves arrange for the necessary auxiliary aids or services. Of course, the needs and wishes of the patients should be taken into account in determining what kind of auxiliary aid is necessary to provide effective communication. Please refer to the enclosed January 1993 Supplement to the Department's Title III Technical Assistance Manual at page 5 for further discussion.

I hope this information will be helpful to you in responding to your constituent. We will also provide the Maine Department of Human Services this information regarding the ADA.

Sincerely,
James P. Turner
Acting Assistant Attorney General
Civil Rights Division

Enclosures (2)

MAY 10 1993

Maine Department of Human Services
360 Old Country Road
Rockland, Maine 04102

Dear Sir or Madam:

We received an inquiry from The Honorable George J. Mitchell on behalf of his constituent, Dr. John W. Wickenden of Rockland, Maine, regarding the cost of providing auxiliary aids or services for persons with disabilities.

The Americans with Disabilities Act (ADA) authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist you in understanding the ADA's requirements. It does not, however,

constitute a legal interpretation, and it is not binding on the Department.

Dr. Wickenden had informed Senator Mitchell that your office had advised him that where the family of a deaf patient made its own arrangements for a sign language interpreter, without giving the doctor the opportunity to make his own contractual arrangements for a qualified interpreter, he had no alternative but to accept, and pay for, the interpreter for whom the family had arranged. Of course, that advice may comport with state law. However, it is an incorrect interpretation of the ADA.

The ADA requires physicians to furnish appropriate auxiliary aids and services where necessary to ensure effective communication with individuals with disabilities. A physician may not impose a surcharge on any particular individual with a disability to cover the costs of measures, such as providing auxiliary aids, that are required by the ADA. These provisions appear in sections 36.301(c) and 36.303 of the enclosed ADA title III regulation, at pages 35596 and 35597, respectively. Also enclosed is the Department's Title III Technical Assistance Manual, which may provide you with further assistance. Pertinent discussion may be found at pages 22 (surcharges) and 25-28 (auxiliary aids).

What constitutes an effective auxiliary aid or service will

cc: Records, Chrono, Wodatch, McDowney, Magagna, Mobley, FOIA
udd\Mobley\Congress\Mitchell

---

depend on the unique facts of each situation, including the length and complexity of the communication involved. A doctor may satisfy the auxiliary aid or service requirement by using a note pad and written materials where a deaf patient is making a routine office visit. By contrast, a discussion of whether to undergo major surgery may require the provision of a sign language interpreter. Further discussion of this point may be found on page 35567 of the enclosed regulation.

Under section 36.301(c) of the regulation, the cost of an interpreter must be absorbed by the doctor in the limited circumstances when an interpreter is necessary. However, as provided in section 36.303(f), a doctor is not required to provide any auxiliary aid that would result in an undue burden. The flexibility of the auxiliary aids requirement, the undue burden limitation, and the ability to spread costs over all patients should minimize any burden on the medical profession.

The title III regulation does not contemplate that patients who are deaf may unilaterally decide on the appropriate type of auxiliary aid, make arrangements for a particular deaf services provider to furnish the aid, and then bill the public accommodation for the services. Instead, doctors may determine how best to provide effective communication to their patients, and may themselves arrange for the necessary auxiliary aids or services. Of course, the needs and wishes of the patients should be taken into account in determining what kind of auxiliary aid is necessary to provide effective communication. Please refer to the enclosed January 1993 Supplement to the Department's Title III Technical Assistance Manual at page 5 for further discussion.

I hope this information has helped you to achieve a fuller understanding of the law.

Sincerely,

John L. Wodatch
Chief, Public Access Section
Civil Rights Division

Enclosures (2)

MAY 10 1993

The Honorable C. W. Bill Young
U.S. House of Representatives
2407 Rayburn Building
Washington, D.C. 20515-0910

Dear Congressman Young:

This letter is in response to your inquiry on behalf of your constituent, XXXXXX concerning his rights as a deer hunter with a mobility impairment, and his experience with the XXXXXXXX

The Americans with Disabilities Act of 1990 ("ADA") authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or

obligations under the Act. This letter provides informal guidance to assist your constituent in understanding the ADA's requirements. However, it does not constitute a legal interpretation, and it is not binding on the Department.

XXXXXX expresses his concern that the XXXXX has discriminated against him by refusing to allow him to cross their property on his ATV, although other hunters are allowed to do so. In general, title III of the ADA forbids discrimination against individuals with disabilities by places of public accommodation. However, in many circumstances title III does not apply to private clubs. It is not clear from XXXXXX letter whether the XXXXX qualifies as a private club under the prevailing Federal law. Over the years, the Federal courts have looked to several factors to determine whether a particular entity is a private club. Some of the more significant factors include the degree of member control of club operations, the selectivity of the membership process, whether substantial membership fees are charged, whether the entity is operated on a nonprofit basis, and the extent to which the facilities are open to the public.

cc: Records, Chrono, Wodatch, Breen, Contois, McDowney, FOIA
Udd:Contois:CGL:Young

The only exception to private clubs' exemption from title III arises when a private club opens its facilities to the public. In such a case, to the extent that the private club opens its facilities to the public, it must comply with all of the applicable requirements of title III. Thus, even if the XXXX XXXX does qualify as a private club, and therefore is not covered by the ADA, if the club is allowing members of the public to use its land or facilities, then it must do so in a nondiscriminatory manner.

Finally, it appears that XXXXX circumstances may raise questions of State property law relating to easements or other issues. The Department of Justice is not able to offer any guidance on issues of State law.

If XXXXX feel that the XXXXX is not a private club, or if he feels that it is a private club that has opened its facilities to the public such that it is covered by title III of the ADA, he may either file a lawsuit against the XXXXX or he may file a complaint against the club with the Department of Justice, or he may do both. If he wishes to file a complaint with the Department, he should write to the Public Access Section, Civil Rights Division, U.S. Department of Justice, Post Office Box 66738, Washington, D.C., 20035-6738.

I have enclosed for your information a copy of the Department of Justice's title III implementing regulation, and a copy of the Department's Technical Assistance manual for title III. The exemption for private clubs is contained in section 36.102(e) of the regulation, at page 35593, and the definition of a private club is discussed in the preamble to the regulation, at pages 35552-53. The rules regarding private clubs are further discussed in the Technical Assistance manual at pages 5-6.

I hope this information is useful to you in responding to your constituent.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

Enclosures (2)

January 22, 1993
XXXXXXXX
St. Petersburg, Florida 33702

The Honorable C. W. "Bill" Young
United States House of Representatives
Room 627, Federal Building
144 First Ave. South

St. Petersburg, Florida 33701

Dear Sir,
I contacted your St. Petersburg office on 10/28/92, to get some information on The Americans With Disabilities Act. Your office promptly mailed PL-101-336 to me, and I called your office again, at which time I spoke to Greg Lankler, who advised me to present my case to your office and that The Justice Department would look at my evidence in light of filing Discrimination charges against the party envolved, based on PL 101-336, July 26, 1990.

BACK GROUND
XXXXXXXXX in the middle 1920's, was a founding member of the than XXXXXXX, now known as XXXXXX. His best friend , XXXXXXX asked XXXX to sell his membership, and come as his guest. Being a coal miner in the twenties, $150.00 was a lot of money, and XXXXX had a nice cabin, so sold his share. XXXXXX died several years ago, and was an honorary member until his death In XXXXXX plus. Over the years, we ate at the club's cook cabin (paid $65.00 per person) , hunted on club land, but mostly in the Dickenson Ridges of The George Washington National Forest. Though I had been going to the camp since I was XXX years old, my first hunting experience there was in XXXX.

By 1958, XXXX and two XXXXXX (Both diseased) , purchased an acre plus of land, and built a cabin about one mile from XXXXX main cabin area. Our land joined the XXXXXX property, XXXXX of the Dickenson, so we were allowed to hunt on the portion (approx. 80 acres) of land off of the main club property, and we had PERPETUAL access to The National Forest, and Club property behind our cabin. That portion of the National Forest is LAND LOCKED Encl: (1) and (2) with no other access easement except through XXXXX XXXXX property. There had been a motorcycle trail, but in recent years, ATV'S have taken over, so there is a well established trail, used all year long, by XXXXXXX XXXXX and the family members of these men use this trail all year long to access The National Forest with ATVs. Consequently, from that stand point, the easement is used by the Public at large. The XXXXXXX properties join each other, and enclosed pictures of the property shows

---

(2)

the trail easement on the XXXXXX property actual being used by XXXXXX on the ATV trail 11/15/92, as

Encl; (3). My hand drawn map Encl (4), is an illustration of roughly how the easement runs, why the ATVs are necessary, and why as a disabled person, I cannot access the National Forest land on foot or without a mechanical means through the steep mountains. NONE of the members of the camps, XXXXX access the National Forest without ATVs, so why, as a Disabled Person should I be expected to WALK TO places that other people have to ride to.

MY MEDICAL HISTORY

XXXXXX to my stand by a Honda 250 TRX in The Dickenson Ridge area over the ATV easement. The party who provided my ride, has not hunted with us since 1986, so in 1987, I reluctantly purchased a Honda 250 TRX on XXXXX Encl, (5). It was quite some time before I became proficient at operating my machine since I had no previous experience in this area. I was placed on Social Security Disability as of XXXXXX of XXXXX The State of Florida retired me Disabled from the Teaching Profession. Proir to these decisions, as a result of injuries received in XXXXX The Veterans Administration granted me a waiver of premiums as of XXXXX shortly after the date of my accident on XXXXX and I have not worked a day since Encl; (6), (7), (8), (9) and (10). With my Disability, the only way I could continue to enjoy life (a nearly complete shut down) , was to try and continue in the sport of hunting which I dearly love, and it adds meaning to my life. The hunting also kept our family together, XXXXX and I. XXXXX XXXX a 250 at the same time that I did, and a special all steel trailer was constructed for easy on and off loading, plus hook-up. XXXXXXXXX the ATVs to the state of Virginia and XXXXX We in sharing expenses, have spent a considerable amount of money on equipment, and in time XXXXXXXXXXXXXXX, for the sole purpose of hunting deer in the Dickenson Ridges. No matter where I hunt, I have to have someone with me or close by to assist me should I shoot something.

PAST EVENTS

A few years back, in XXXXX Encl (11) the than West Virginia Hunt Club, had expanded their hunting crew, and could no longer accommodate us, sometimes as many as nine people, to eat in their cook cabin ($65.00) per person for one week, so they advised us by letter of the change. This was tradition XXXXXXX XX, however, we had kitchen facilities in our cabin, so this worked out for us. XXXXXXX had sold the cabin, so when it went back on the market, XXXXXXXX it for remodeling into a XXXXXXX The cabin was a one room 14 x 28 feet,

but it is now a XXXXXX.

We were subsequently advised that the increased number of hunters, necessitated that we could no longer hunt on the land directly behind the cabin, which XXXXXX had done for some sixty five years. This was an imposition on us, but we had good stands in the Dickenson Ridge of The National Forest, just at the end of XXXXXX property, and we understood their problems. This did however, start our letter

---

(3)

writing, which up to that time, was a Sportsman's agreement based on XXXXX being a long time, and sole surviving XXXX XXXXXX of their club. We at this time went through a Yes you can, No you cannot cross the property this year, in an inconsistent manner. The Encl;(12-17) for 1986-92, tell the story. 1988 and 1989, we were notified by WORD OF MOUTH, after their annual club meeting on Sunday evening at about 8 to 9 PM as whether we could access The National Forest, via ATV over their easement. With the deer season opening at day light the next morning, they literally wrecked our hunting season time and time again, causing us to scramble as to where to go for that all important first day of the Virginia deer season. The 1990 - 91 deer season came in Encl; (16), and they let us use our ATVs on the ATV easement, so when the 1991-92, muzzle loading season came in, the Club president, XXXXXX let us use our ATVs from Monday through Saturday, and on Sunday evening, the Club Board voted that we could not use ATVs on Monday morning the first day of the regular deer season, which was a 180 degree turn over night . The three times that they did this to me, I cut my hunting time short, and returned south in disgust, disappointmant, and depressed. Enclosure (18) is a report by XXXXXXX XXXXX that states, I suffer from XXXXXXXXXXXXX whuch I try to keep under control , however, when you get all built up to do one of your favorite activities, and the rug is pulled out from under you, your whole world gets blown apart. I suffer XXXXXX, tense up and my pain level increases, I become moody, loose sleep, have to take more medication, and it takes a good while before I get everything under control again. My trip has been ruined, my whole body suffers, and I do not function well under stress. Therefore, to try an get as an early answer this year of yes or no, from the club XXXXXXX in the club that had an XXXXXXX on or could get one for, in hopes of XXXXXXX in my favor. I will be XXXXXXX in XXXXX of this year, so it

is too late in life for me to start over. The XXXXXXX are some what personal, and little redundant, but there was information that I felt they needed to know in XXXXX XXXXXXXXXX at any meeting.

Some members of the club did XXXXXXXX but most did not. Enclosure (17) advised me of a SPECIAL MEETING CALLED for this purpose, at which time I was giving permission to WALK through the mountains, XXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXX to reach The National Forest) XXXXXXXXX use my ATV. No one in the XXXXXXXXX camp had any restrictions placed on them whatsoever. To me this is BLATANT DISCRIM-INATION XXXXXXXXXXXXX as a disabled Hunter, and in my XXXXXX which surely were XXXXXXXXXXXX XXXXX because XXXXXXXX got a copy of every letter that I sent out.

XXXXXXXXXXXXXX I walked to the XXXXXXX cabin, and tried to get pictures of the very well used ATV ease-ment behind his cabin even though the general deer season did not come in until Monday, XXXXXXXX. Than on XXXX XXXXXXXX I caught the XXXXXXXXXX coming down the ATV easement on their ATVs from a scouting trip Encl (3)

When XXXXX passed away, I sent a letter to XXXXX of Mt. Hope W. Va, our home town of record, Encl (19), and this could well have been their reason for allowing passage on the ATV easement in 1990. Enclosures (20 -37) show my attempt at literally begging to use my ATV on XXXXXXXXX ease-ment in the easiest way that knew how to do it, and they still singled me out, killing my chance of an enjoyable hunt. I would not have gone at all this year had it not been for a local land owner in the area, Encl (38), who gave us permis-sion in advance by phone, to hunt on their property. This al-lowed me to sit on the edge of their fields, thereby not re-quiring any Mechanical means to get there other than XXXX XXXXXXXX.

MISCELLANEOUS INFORMATION

Enclosures (39-43) are pictures taken at various times in, around, and on XXXXXXXXXXX property easement. Encl (44) letter to XXXXXXXX, who when I could not use XXXXXXXXXXX easement to access the National Forest

on my ATV, allowed me to hunt on their land.

PUNITIVE

Based on PL 101-336, July 26, 1990, XXXXXXXXXXX BLATANT Discrimination against me as a Disabled Person in preventing me from entering on Federal land, By ATV over an established public access easement by necessary mechanical means, the great expense in purchasing the XXXXXXX the specially modified trailer, the ruining of at least three two week deer hunting trips, the mental, emotional strain, and disruption of my personal life through Post Traumatic Stress, and the expense in marking those 2000 mile round trips, I feel that I should be awarded PUNITIVE DAMAGES from XXXXXXXXXXXXX.

I will deeply appreciate it if you could present my case to The Justice Department as it relates to this National Law to project the rights of Disabled People.

When this material has served it's purpose, please return it to me as the pictures have a lot of meaning to me personally.

Sincerely,

XXXXXXXXXXXXXX

ENCL: (1) Map of The George Washington National Forest
(2) Map (large) George Washington National Forest
(3) Pictures
(4) Hand drawn map
(5) XXXXXXXXXXX
(6) Social Security Decision (Disability)
(7) State of Florida Div. of Retirement (Disability)
(8) Veteran's Administration letter
(9) Disabled parking permit
(10)Florida Disabled hunting permit
(11) XXXXXXXXXXXXX

DJ 202-PL-521

MAY 14 1993

Mr. Garritt Toohey
Vice President
Tamar Inns, Inc.
9000 International Drive
Orlando, Florida 32819

Dear Mr. Toohey:

I am responding to your letter asking about the application of the requirements of title III of the Americans with Disabilities Act (ADA) to the construction of parking facilities at a convention hotel that will be built by Tamar Inns, Inc.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities that have rights or responsibilities under the Act. This letter provides informal guidance to assist you in understanding the ADA and the Department's regulation. However, this technical assistance does not constitute a determination by the Department of your rights or responsibilities under the ADA, and it is not binding on the Department.

You have asked the Department to comment on the petition to the State of Florida Board of Building Codes and Standards filed by Tamar Inns to seek a waiver from the State's requirement to provide reserved accessible parking spaces. This petition is based on your company's plan to provide parking for people with disabilities through the use of a valet parking service. The State has deferred action on your petition until the Department responds to your inquiry.

The first issue that we must address is the relationship between State and Federal law in this area. The ADA does not

preempt State authority in the area of accessible design. When the State and Federal requirements differ, an entity that is subject to both State and Federal requirements must comply with the more stringent requirement applicable to each element of the facility that is being constructed. The State is not authorized to enforce the ADA or to grant waivers from its requirements.

cc: Records, Chrono, Wodatch, Breen, Blizard, FOIA, Library
i:\udd\mercado\plcrtltr\toohey.jlb

With respect to your specific question, we note that a convention hotel is a place of lodging subject to the requirements of title III of the ADA, which requires, among other things, that all new construction must meet the requirements of the Standards for Accessible Design ("Standards") that were adopted by the Department of Justice regulation implementing title III, 28 C.F.R. Part 36. The Standards are reprinted as Appendix A to the regulation.

The requirements for accessible parking in a newly constructed facility are contained in section 4.1.2(5) of the Standards. If self-parking is provided for employees or guests of a facility, accessible parking spaces must be provided in compliance with the requirements of 4.1.2(5). If a facility provides only valet parking, then it is required to comply with sections 4.1.2(5)(c) and 4.1.2(5)(e) . The ADA does not permit a waiver of the requirements established by the Standards.

For your information, I am enclosing a copy of the Department's regulation implementing title III and the Title III Technical Assistance Manual. I hope that this information is helpful to you.

Sincerely,

John L. Wodatch
Chief
Public Access Section

Enclosures

TAMAR, INNS, INC.
AMERICA'S BEST LODGING VALUE

April 6, 1993

Chief John L. Wodatch
Public Access Section
Civil Rights Division
Department of Justice
P.O. Box 66738
Washington, D.C. 20035-6730

Dear Chief Wodatch:

I recently had several conversations with your technical hotline and finally ended up speaking with Tito Mercado in your office on April 5, 1993. Attached, please find a copy of our petition to the State of Florida Board of Building Codes and Standards requesting a waiver from the Handicapped Parking Requirement specifically, the number of spaces to be provided. We propose to provide zero spaces and replace that with a service that is intended to be superior. A summary of that service is as follows:

1. All guests of the hotel drive under the porte-cochere as their first order of business. At the porte-cochere, we have a 24 hour staff inclusive of doorman, bellman and valet parking attendants.

2. At that time, a person, or, persons requiring handicapped parking services would be identified and without charge and no gratuities allowed, our staff would assist this person in any manner they desired.

3. The valet parking service would be available at no gratuity and no charge, and all baggage services will be available at no gratuity and no charge.

4. Anyone wishing to operate their own automobile would be accommodated by an escort to our valet parking area where space will be cordoned off for their vehicle according to their needs, and any additional assistance provided according to their needs.

Chief Wodatch, it is our intention to provide this service in lieu of the traditional parking spaces for several reasons:

The property is quite large .... 20 acres inclusive of an eight story parking garage (enclosed, please find a proposed site plan.). Out of 2,000 spaces, approximately 1,300 will be in the garage and 700 surface parking.

We feel it is more convenient for those who require handicapped parking to utilize our services under the porte-cochere in lieu of having to find handicapped parking space either in the garage or on the surface. Neither of which will be convenient to the main entry point. Furthermore, from our experience, the need for handicapped parking spaces fluctuates quite considerably. There are times when we need very few and there are other times when we might not have enough.

The code penalizes the owner if he is trying to maximize parking and handicapped utilization is low, and the code penalizes the owner and user of handicapped parking when the demand is greater than the number of spaces available. Under our proposed scenario, every guest requiring handicapped parking services will be provided the same amenity in whatever quantity is required.

The issue for our company is relative to the level of service we wish to provide. We would. like our clients to be happy with the services and the facilities and most importantly, return to utilize them again and again. We are sensitive towards our guest's individual needs instead of the collective requirements of all.

The Omni Rosen will be a headquarters convention hotel dedicated towards a greater level of service than all of its competitors and providing the same for as much as half of what its competitors charge. Our policy towards those persons with disabilities is only one of many policies that set us apart from the industry standards.

Based upon the recommendation of the Florida Building Codes Standards Board, we respectfully request a determination by the Justice Department as to whether or not this would meet the intent of the Americans With Disabilities Act.

I would appreciate a quick response as we will be submitting our plans for building permit in the near future. If however, there is any further information you need at this time, please let me know and I will forward along posthaste.

Sincerely,

Garritt Toohey
Vice President
TAMAR INNS, INC.

GT*mw

cc: Mr. Al Bragg, Dept. of Community Affairs, Tallahassee
Ms. Mary Kathryn Smith, Dept. of Community Affairs,

Tallahassee

PLEASE NOTE THAT THE SITE PLAN
WILL FOLLOW UNDER SEPARATE
COVER.

DJ 202-PL-304

MAY 14 1993

XXXXXXXXXXXX
XXXXXXXXXXXXX
XXXXXXXXXX

Dear Mr. XXXX,

This letter responds to your inquiry regarding the applicability of the Americans with Disabilities Act (ADA) to amusement parks.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal

guidance to assist you in understanding the ADA's requirements. However, it does not constitute a legal interpretation or legal advice and it is not binding on the Department of Justice.

Your letter inquires into the intent of the ADA and its application to lines for attractions at amusement parks. You state that you witnessed individuals with disabilities being permitted to avoid attraction lines and inquire as to whether this policy is consistent with the ADA.

The intent of the Americans with Disabilities Act is to set a national mandate for the elimination of discrimination against individuals with disabilities. To further this goal, the Act contains specific provisions designed to assure that individuals with disabilities may enjoy the full range of goods, services, privileges and advantages offered by public accommodations.

Title III of the ADA imposes certain obligations on places of public accommodation to ensure that their services are provided to individuals with disabilities. The Act specifically includes amusement parks and other places of recreation in its definition of a public accommodation. See section 36.104 of the enclosed title III regulation at page 35594.

cc: Records, Chrono, Wodatch, Breen, Foran, FOIA
Udd:Foran:Disney.XXXX

The ADA does not require affirmative action or preferential treatment of individuals with disabilities. Public accommodations, however, are required in certain cases to make reasonable modifications to their policies, practices, or procedures when modifications are necessary to afford goods, services, facilities, privileges or advantages to individuals with disabilities. See section 36.302 of the title III regulation at page 35596-97, and preamble at 35564-65. In light of this requirement, an amusement park may be required to modify its policies to allow an individual with a disability to be

admitted to an attraction without waiting in line, if delay would prevent the individual from participating in the service because of the nature of the disability.

I hope this information is useful to you in understanding the requirements of the ADA.

Sincerely,

John L. Wodatch
Chief
Public Access Section

Enclosures (2)

Title III Technical Assistance Manual
Title III Regulation

August 21, 1992

John L. Wodatch, Director
Office of Americans With
Disabilities Act
Department of Justice
PO Box 66738

Washington, DC 20035

Dear Mr. Wodatch:

In my daily job with an occupational licensing board I have bumped into the Americans With Disabilities Act more than once. While it has many positive features, this measure may also have some unexpected consequences.

During a recent visit to a theme park in Orlando I observed several instances of one kind of conduct that is worthy of inquiry. we were standing in line for over 30 minutes at an attraction as a person in a wheelchair was pushed past several hundred pedestrians to the front of the line and admitted to the show, along with 6 fully able people in the party, without delay. Two such groups were seated within five minutes while hundreds watched. Among the comments from observers were several that I doubt were part of the legislative history of the Americans With Disabilities Act.

The reason for this letter is to inquire of you or your staff as to the intent of the statute in this situation. Apart from preferential parking places, did Congress really intend for citizen with disabilities, and their companions, to receive this kind of treatment? Or did Congress mean that the disabled should be free of artificial barriers and have the same access and opportunity as all other citizens to experience the August Orlando sun?

Very truly yours,

XXXXXXXXXXXX

copy: Michael Eisner, Walt Disney Company

202-PL-00057

MAY 17 1993

Ms. Nancy Husted-Jensen

Chairperson & State ADA Coordinator
Governor's Commission on the Handicapped
Building 51,3rd Floor
555 Valley Street
Providence, Rhode Island 02908-5686

Dear Ms. Husted-Jensen:

This letter responds to your inquiry regarding the Americans With Disabilities Act (ADA) . Specifically, you asked for guidance regarding the State of Rhode Island's proposed system for providing emergency and non-emergency telephone services. We regret the delay in responding.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist you in understanding the ADA's requirements. However, it does not constitute a legal interpretation and it is not binding on the Department.

In your letter, you asked several questions on behalf of the Governor's Commission on the Handicapped about the State of Rhode Island's duty to provide accessible emergency and non-emergency telephone services to persons with hearing and speech impairments. The responses below are based on information provided in your letters of March 4 and July 30, 1992, and on discussions with Mr. Bob Cooper, Executive Secretary of the Rhode Island Governor's Commission on the Handicapped.

Emergency Telephone Services: Question 1

> "Is it permissible under 28 C.F.R. 35.162 to have all TDD emergency calls be directed through the E 911 [Enhanced 911] system?"

cc: Records, Chrono, Wodatch, Magagna, Foran, FOIA
Udd:Foran:RI.911

Short Answer

The short answer is generally yes -- under the following conditions.

- The E 911 system must receive and process nonvoice calls as promptly and effectively as voice calls.

- Nonvoice callers whose calls are directed through E 911 must receive emergency attention as quickly as voice callers who dial local seven-digit numbers for emergency assistance instead of E 911.

- Any emergency services provided by the State or local government entity not connected to the E 911 system must provide direct access to nonvoice callers (i.e., have their own TDD's and be compatible with computer modems).

Discussion

The applicable regulation states:

> Telephone emergency services, including 911 services, shall provide direct access to individuals who use TDD's and computer modems.

28 C.F.R. 35.162. "Direct access" means that emergency telephone services can directly receive calls from TDD and computer modem users without relying on outside relay services or third party services. Where 911 service is available, direct access must be provided to individuals who use TDD's and computer modems. The requirement for direct access disallows the use of a separate seven-digit number for persons with hearing impairments where 911 service is available. See preamble to title II regulation at 35713.

According to your letter, 911 service is available in the State of Rhode Island, and -- consistent with the above-discussed requirement -- the State proposes using an Enhanced 911 (E 911) system that provides direct access to nonvoice callers. As we understand the facts, Rhode Island proposes to direct all nonvoice callers through this E 911 service. In contrast, voice callers in Rhode Island have the option of dialing 911 or a variety of other seven-digit numbers to reach emergency services. Your question is whether channeling all nonvoice emergency calls

through this E 911 system -- and not providing nonvoice callers with the additional option of dialing a local seven-digit emergency number -- is consistent with the ADA.

As noted above, this arrangement is permitted under the ADA, but only under certain conditions. First, any emergency service provided by the State or local government entity which is not tied into the E 911 system would have to provide direct access to nonvoice callers. If, for example, the State of Rhode Island offered emergency poison control information which could not be accessed through E 911, that telephone emergency service would have to be equipped with a TDD to provide direct access to nonvoice callers. The State could provide two separate lines to reach this service -- one for voice calls, and another for nonvoice calls -- but it would have to ensure that the service for nonvoice calls was as effective as that offered for voice calls in terms of response time and availability in hours. Also, the nonvoice number would have to be publicized as effectively as the voice number, and displayed as prominently as the voice number wherever such emergency numbers are listed. See Title II Technical Assistance Manual at pages 38 and 39.

Second, Rhode Island's proposed system would have to operate fairly. The system would be acceptable only if the State's emergency telephone services received and processed nonvoice calls promptly and effectively. The State would also have to ensure that nonvoice callers whose calls were directed through E 911 received emergency attention as quickly as voice callers who could dial local emergency seven-digit numbers for assistance. If the voice caller who dials a local seven-digit number for an emergency service receives more immediate attention than a person who is deaf or has a speech or hearing impairment dialing E 911, the system would be operating in violation of the ADA. See preamble to title II regulation at 35713.

Rhode Island also proposes to use the Rhode Island State Police as the backup system for emergency TDD calls if the E 911 system is ever disrupted. Although it is not clear how often or in what circumstances such a disruption would occur, we assume that you have proposed this backup system for nonvoice callers because voice callers would have the option of dialing a seven-digit local emergency number should the E 911 system fail. The same principles discussed above are applicable here: The State would have to ensure that nonvoice callers whose calls were directed through the State Police as the backup to E 911 received emergency attention as quickly as voice callers who could dial local emergency seven-digit numbers for assistance if E 911 service was disrupted.

Your letter indicates that part of the impetus for centralizing nonvoice emergency calls stems from practical difficulties in retaining trained, experienced personnel to handle TDD calls. Public entities are required to take steps that are necessary to promptly receive and respond to a call from users of TDD's and computer modems. No matter which system Rhode Island ultimately implements, and despite any difficulties the

---

State may encounter with high staff turnover, it is the State's responsibility to ensure that emergency desk or dispatch personnel are trained to receive and respond to TDD calls effectively.

Non-Emergency Telephone Services: Questions 2 and 3

"If it is permissible to centralize emergency calls, then for non-emergency calls would it be permissible under 28 CFR 35.162:

2. for several public safety agencies of the same municipality to 'share' a TDD even if they do not have a central dispatch?

3 . for small volunteer fire companies to 'share' a TDD even if they do not have a central dispatch?"

Short Answer

The answer is yes, so long as the "messenger-type" system proposed works at least as effectively for persons using the TDD-system as for those using seven-digit non-emergency calls.

Discussion

Where a public entity communicates with applicants and beneficiaries by telephone in non-emergency situations, the public entity does not have to provide "direct access." Instead, public entities have the option of using TDD's or "equally effective telecommunication systems" to communicate with individuals with impaired speech or hearing. See 28 C.F.R. 35.161. Under the regulation, relay services such as those required by title IV (involving a relay operator who uses both a standard telephone and a TDD to type the voice messages to the TDD user and read the TDD messages to the standard telephone user) constitute equally effective telecommunication systems.

Title IV of the ADA requires all common carriers (i.e., the

telephone companies) to provide telephone relay services by July 26, 1993. Thus, after that date, most State and local government entities in Rhode Island could choose to rely on relay services provided by the phone companies for non-emergency communications with individuals with impaired speech or hearing. Even after that date, however, the entities which have extensive telephone contact with the public such as city halls, public libraries and public aid offices, are strongly encouraged to have TDD's to ensure more immediate access. See preamble to title II

---

regulation at 35712 ("The Department encourages those entities that have extensive telephone contact with the public. . . to have TDD's to insure more immediate access. Where the provision of telephone service is a major function of the entity, TDD's should be available.")

As we understand it, your question is whether in the interim period before the relay system is operational (July 26, 1993), public service agencies providing non-emergency services in a given locality can meet their obligation under the ADA to provide equally effective telecommunication service by "sharing" a TDD. The system works as follows: the TDD operator transcribes a TDD user's request, contacts the relevant agency, and upon receiving an answer, returns the person's TDD call. Or, the individual agency official would go to where the TDD is housed and answer the deaf person's inquiry directly.

Rhode Island's interim system for most non-emergency communications provided by public entities would be satisfactory only if it provides "equally effective telecommunication service." TDD operators must be properly trained, and public employees must be instructed to accept and handle relayed calls in the normal course of business. See Title II Technical Assistance Manual at 38. Of course, once the relay system is operational in Rhode Island, you should use it instead of the shared TDD system described in your letter. Also, as stated above, we still strongly encourage those entities that have extensive telephone contact with the public to have their own TDD's to insure more immediate access.

Finally, you asked for information regarding computer modem/ E 911 compatibility. Under the title II regulation, at present, telephone emergency services must only be compatible with the Baudot format. Until it can be technically proven that

communications in another format can operate in a reliable and compatible manner in a given telephone emergency environment, a public entity would not be required to provide direct access to computer modems using formats other than Baudot. See Title II Technical Assistance Manual at 38. We do not have further information available regarding computer modem/ E 911 compatibility. However, your E 911 system should, at a minimum, be compatible with computer modems that use the Baudot format to be in compliance with the Department's title II regulation.

I hope that this information has been helpful to you. If you have any questions, please contact Sheila M. Foran at (202) 616-2314.

Sincerely,
John L. Wodatch
Chief
Public Access Section

Enclosures (2)
Title II regulation
Title II Technical Assistance Manual

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

Executive Department
GOVERNOR'S COMMISSION
ON THE HANDICAPPED
Building 51, 3rd fl, 555 Valley Street
Providence, R. I. 02908 - 5686
(401) 277-3731 (v/tdd)
(RI only) 1-800-752-8088 ext. 3731

March 4, 1992

John Wodatch, Director
Office of Americans With Disabilities Act
Civil Rights Division
US Department of Justice
Washington, DC 20530

Dear Mr. Wodatch:

I am seeking an opinion on behalf of the State of Rhode Island with regards to 28 CFR 35.162 Telephone emergency service provision of the ADA's Government Service Regulation. Rhode Island has a state wide Enhanced 911 system that all public safety, agencies (police, fire, and rescue) are tied into. The system is equipped with telecommunication devices for the deaf. E 911 operators undergo training on the use of TDDs annually. The local police, fire, and rescue units have their own phone lines in addition to the E 911 system, for non-emergency communications and as a backup in case the E 911 system should ever be disrupted.

At present the larger cities have their own TDDs, often shared by all municipal public safety agencies. Many of the smaller fire districts are relying on E 911 for emergency communications, including TDD calls.

1. Is it permissible under 28 CFR 35.162 to have all TDD emergency calls be directed through the E 911 system ?

If it is permissible to centralize emergency calls, then for non-emergency calls would it be permissible under 28 CFR 35.162:

2. for several public safety agencies of the same municipality to "share" a TDD even if they do not have a central dispatch ?

3. for small volunteer fire companies to "share" a TDD with a local municipal government, even if the TDD is not "housed" in the same building as the fire company, if the fire company has access to the TDD and the local government will act as a "relay service" ?

If it is not permissible to centralize emergency calls , then would it be permissible under 28 CFR 35.162:

4. for several public safety agencies of the same municipality to "share" a TDD even if they do not have a central dispatch ?

---

5. for several public safety agencies in the same geographic area to "share" a TDD even if they do not have a central dispatch ?

I raise these points for a couple of reasons. During the last several years a number of local and state public safety agencies have gained experience with TDDs. Their experiences have shown

that the frequency of TDD calls to a rural or suburban fire or police department is very low, averaging less than 1 call per year. Personnel in agencies with very few TDD calls, do not recognize TDD calls when they are finally made. Unlike the E 911 system, local calls are not being automatically traced so even when no communication takes place, a police officer can not be dispatched directly to the source of the phone call. The turnover in desk/dispatch personnel at the smaller public safety agencies makes it very difficult to ensure that the operators are experienced in "deaf language syntax and culture", an essential in any high stress situation. From a public safety standpoint the individual with a communication impairment has a much better chance of connecting with a highly trained "TDD friendly" operator at the statewide E 911 facility than they would have even at the larger urban public safety agencies.

As State ADA Coordinator I would like to propose that:

1. Rhode Island utilize its E 911 system as the Telephone Emergency Service for all TDD calls and the State Police be the backup system for emergency TDD calls if the E 911 system is ever disrupted (the state police have over 20 years experience with (TDDs,TTYs);

2. Urban & suburban public safety agencies establish a centralized TDD for non-emergency communications in each municipality; and
3. Rural public safety agencies establish a "shared" TDD system for non-emergency communications in each town.

I would appreciate your opinion on the legality of this proposed system so I can ensure that Rhode Island has an accessible telephone emergency system in place as soon as possible.

At present our E 911 system is compatible with TDDs but not with computer modems, we would be interested in any information your office has on computer modem/E 911 compatibility, so we can adjust our system to meet the new requirements.

Sincerely,

Nancy Husted-Jensen
Chairperson & State ADA Coordinator

(ORIGINAL OF LETTER SENT IN LARGE PRINT FORMAT)

MAY 18 1993

XXXXXXXXXXXX
XXXXXXXXXXXX
Boardman, Oregon 97818 {b)(6)

Dear XXXXXX,

This letter is in response to your letter to President Clinton requesting an official form to petition for a redress of grievances and a copy of the procedures for filing the form. Your letter indicates that you may have certain grievances concerning your physical and/or mental disabilities and other matters.

The Americans with Disabilities Act ("ADA") authorizes this Department to provide technical assistance to individuals and entities that have rights or responsibilities under the ADA.

Accordingly, this letter provides informal guidance to assist you in understanding the ADA requirements. However, this technical assistance does not constitute a legal interpretation and is not binding on the Department of Justice.

Generally speaking, the executive branch of the Federal government does not have a specific form for individuals who wish to file a grievance with a department or agency. Although there are some exceptions to that statement, it generally is sufficient to write a letter to the department or agency involved explaining the nature of your grievance and to explain your request for redress. If a particular department or agency does require a specific form, it will notify you about its particular requirements.

I am enclosing a brochure entitled "The Americans with Disabilities Act: Questions and Answers" and copies of the "Title II Highlights" and "Title III Highlights" that provide a brief explanation of the ADA. The ADA authorizes the Department of

cc: Records, Chrono, Wodatch, Magagna, McDowney, Delaney, FOIA
udd\Delaney\XXXXX

Justice to investigate alleged violations of titles II and III, which ban discrimination on the basis of disability by state and local governments and by public accommodations, respectively. If you wish to file a complaint about an alleged violation of title III of the ADA, you may send a letter to the following address:

Public Access Section
Civil Rights Division
P.O. Box 66738
Washington, D.C. 20035-6738

A complaint about an alleged violation of title II may be sent to the Coordination and Review Section which has the same address except that the Post Office Box is 66118 and the zip code is

20035-6118. Addresses for other Federal resources are listed on page 42 of the enclosed brochure. You should be aware that any actions taken pursuant to the ADA under titles II or III would be taken on behalf of the United States. We do not act as an attorney for, or representative of, any complainant.

With respect to the other grievances that you have, you may wish to contact the Oregon Bar Association to determine if there is a list of attorneys who may provide pro bono assistance in the State and whether the bar association has a lawyer referral service. You also may wish to contact one or more of the offices an the enclosed list that handle disability issues in Oregon.

I hope this information has been helpful to you.

Sincerely,

John L. Wodatch
Chief
Public Access Section

Enclosures (4)

PETITION FOR REDRESS OF GRIEVANCES: PURSUANT TO ARTICLE ONE (1) OF THE 1791 NATIONAL (US) BILL OF RIGHTS AMENDED IN WHOLE TEN (10) ARTICLES:

TO: FROM:
GOVERNMENT OF THE UNITED STATES XXXXXXXXXXXXXXX
OF AMERICA XXXXXXXXXXXXXXX
PRESIDENT OF THE U.S.: BILL CLINTON BOARDMAN OREGON 97818
THE WHITE HOUSE: 1600 PENNSYLVANIA
AVENUE USP SERVICE OF LEGAL
WASHINGTON, DISTRICT OF COLUMBIA PROCESS: USPS
20500 CERTIFIED MAIL # XXXXX
DATE: 20th. DAY OF JANUARY. 1993

PETITION RE DISCRIMINATION AGAINST DISABLED AND GENDER (SEX) DISCRIMINATION; & OBSTRUCTION OF THE FREE EXERCISE OF RELIGIOUS BELIEFS (RE USC 18: -247/Art. 1/BILL OF RIGHTS ABRIDGEMENTS); HARASSMENT & REPRISALS & UNLAWFUL PUNISHMENT FOR RE EXERCISE OF SAME: AND RE TAKING OF PART OF S.S. DISABILITY INSURANCE BENEFITS (UNLAWFULLY) VIA GARNISHMENT FOR DEBT - - HERE CLAIMING IT IS NOT VALID DEBT.

(1) REQUEST / PETITION FOR FORMAL LEGAL PAPER FORMS: AND, IF POSSIBLE A COPY OF PROCEDURE RE REDRESS / REMEDY RE GRIEVANCES
(2) BRIEF STATEMENT OF GRIEVANCE (IMPORTANT).

DEAR PRESIDENT: MR. BILL CLINTON,
PLEASE EXCUSE ME USING FORMALLY SUCH LARGE PRINT AS MY EYESIGHT HAS BEEN GETTING PROGRESSIVELY WORSE, IS A BIT EASIER FOR ME TO SEE & TRY TO CONCENTRATE. THIS REQUEST/PETITION IS TO FOLLOW UP ON MY PRIOR ONE TO THE OFFICE OF PRESIDENT DATED 4 DEC,1992 VIA USPS EXPRESS MAIL SERVICE XXXXXXXXXXX.

THIS (1) IS A FORMAL LEGAL REQUEST/PETITION ASKING FOR FORMAL LEGAL PAPER PETITION FOR REDRESS (REMEDY) OF GRIEVANCE FORMS: AND, IF POSSIBLE OR EXISTING, A COPY OF PROCEDURE, COVERING BOTH SUBSTANTIAL AND OTHER PROCEDURAL CONTENT, IE, AS RE TIME, EXECUTIVE PROCESS. ETC. THIS IS SO I CAN FOLLOW UP ON IN A STANDARD MODE PETITION FOR REDRESS/REMEDY OF GRIEVANCES. I AM A LEGALLY, PHYSICALLY DISABLED FROM BEING ABLE TO WORK [ACTUALLY, HAVING A DUAL /DOUBLE DISABILITY STATUS MEDICALLY (A. EMOTIONAL /AFFECTIVE DISORDER; UNABLE TO GET ALONG WITH PEOPLE IN A WORKING SITUATION; & HAVING DEPRESSION, ANXIETY, SLEEP DISORDER; B. SEVERAL HERNIATED SPINAL DISKS, SEVERE DEGENERATIVE SPINAL DISC DISEASE, PAIN, AGGRAVATED BY LONG TERM HARD WORKING CONDITIONS, & AGE; ALSO OTHER PHYSICAL IMPAIRMENTS & PAIN, IE: SEVERE ACUTE & CHRONIC BURSITIS IN BOTH SHOULDERS; RATHER SEVERE ULNAR NERVE INJURY TO RIGHT (WRITING) HAND HAD SINCE ABOUT AGE 12 WHILE WORKING ON A RANCH; &, NOT MUCH FORMAL EDUCATION; ALSO HAD ASTHMA SINCE CHILDHOOD & ALLERGIES.

THIS (2) IS HOPED TO BE A CLEARLY UNDERSTOOD, COHERENT & VERY BRIEF SUMMARY RE THE PETITION FOR REDRESS/REMEDY OF GRIEVANCES. I CAN NOT AFFORD AND/OR CAN NOT FIND LEGAL ASSIST THAT IS MEDICALLY AND WELL-ROUNDED, QUALIFIED, ABLE HELP.

I AM AND HAVE BEEN TRYING TO FIND ABLE LEGAL ASSISTANCE; AM ENCLOSING CC OF LETTER TO THE RUTHERFORD INSTITUTE {(JN. WHITEHEAD, ATTORNEY AT LAW) IN PERSERVERING, SEEKING TO GET COMPETENT & AFFORDABLE LEGAL HELP. ACTUALLY, I WOULD THINK THAT THE SEVERAL GOVERNMENTS WOULD GLADLY SUPPLY ASSIST DEFENDING A CITIZENS' CIVIL & CONSTITUTIONAL RIGHTS, SUCH AS VIA THE ATTORNEY GENERAL OFFICE/DEPT. OF JUSTICE, ETC: AS PER USC TITLE18: -247, AS WHEREIN YOU COULD GIVE

SUPPORT & BE EFFECTIVE, DO THE RIGHT THING BY ASKING OR ORDERING THE A-G TO PROSECUTE VIOLATIONS OF USC TITLE 18: -247, USC 42: -1983, ETC.

GREETINGS TO YOU! I WELCOME YOU TO OFFICE.

ATTEST:

SINCERELY,

XXXXXXXXXXXXXX

CC's: FILE: RUTHERFORD INSTITUTE

THE JUSTICE TIMES, BOX 562
CLINTON, ARK. 72031

TO:
RUTHERFORD INSTITUTE 20 JAN, 1993
IN CARE OF: DIRECTOR XXXXXXXXXX
JOHN RUTHERFORD, BOARDMAN, OREGON 97818

ATTORNEY AT LAW (UNLISTED PH. #XXXXXXX
PO BOX 7482
1445 EAST RIO ROAD
CHARLOTTESVILLE, VIRGINIA 22906-7482
1-804-978-3888

ENCLOSED: PROCESS FOR MEMBERSHIP a][b REQUEST FOR {LEGAL ASSISTANCE &/ OR FOR REFERRAL OF SAME.

DEAR MR. WHITEHEAD,

ENCLOSED IS CARD FOR MEMBERSHIP. I CAN BEST SUPPORT YOU--REALLY CAN ONLY SUPPORT YOU, YOUR NEVERENDING BATTLE FOR LIBERTY & JUSTICE FOR ALL, INCLUDING FOR MYSELF--AND OTHERS LIKE ME IN A SIMILAR STATUS--BY DOING HEREIN WHAT I'M DOING--AND TRYING TO SHOW OR EXPLAIN WHY! HEREIN IS PAYMENT (PRIMA FACIE UNREBUTTABLE EVIDENCE, TOO) FOR MEMBERSHIP.

YOU'D ASKED FOR 25.00$ IN PAYMENT FOR MEMBERSHIP. I HONESTLY DO NOT HAVE 25$ TO SEND YOU (THE SYMBOL "$" IS THOUGHT TO MEAN "DOLLAR" --BUT IT'S TRUE MEANING & ORIGIN IS THAT IT IS A DEROGATION OF THE ENGLISH ALPHABET (FIRST) LETTERS FROM THE LEGAL TERM "United States", of America--THIS "$" BEING A "fine print" DEROGATATION OF THIS "$" OF WHICH IS A FINE PRINT DEROGATION OF THIS (SYMBOL)-- THE ORIGINAL ABBREVIATION (COMMERCIAL TRADE) OF THE LETTERS "US"--WHICH IS: THUS SHOWN, TO WIT: ''$" (interwoven US)
AN HEBREW "SHE-KEL" (GOLD OR SILVER 20 unreadable).

NOW, A CONSTITUTIONAL, LAWFUL U.S. "Money" (GOLD OR SILVER COIN)--IN THE SUM OF TEN DOLLARS IN GOLD (MONEY) COIN IS CALLED AN Eagle--AND-- TWENTY DOLLARS IN GOLD COIN IS CALLED A DOUBLE - EAGLE -- HENCE, THE TERM, THE FIGURE OF SPEECH NO LONGER USED--"WHEN THE EAGLE FLYS"--"WHEN THE EAGLE FLYS--THAT MEANS IT IS PAY DAY"... ARTICLE I., -8, -9,& -10 OF THE U.S. CONSTITUTION "REQUIRES" THAT WE BE USING ONLY "GOLD & SILVER COIN AS TENDER IN PAYMENT OF DEBT"..... THE "SCALES OF JUSTICE" ORIGIN IS FOUND IN THE HEBREW SCRIPTURES --
"'JUST' 'WEIGHTS' & 'MEASURES'" WERE USED TO COUNT {WEIGH: MONEY) . . . "JUST" LIKE SPELLED OUT IN OUR US CONSTITUTION & PURSUANT LAWS, CALLED THE COINAGE ACT OF 1792 & MINT ACTS ...!

THIS IS WHAT SOME HAVE HAD TO SAY ABOUT THE TREASONOUS SUBVERSION OF OUR CONSTITUTIONAL MONEY . . .

> "By a continuing process of inflation, governments can confiscate, secretly and unobserved, an important part of the wealth of their citizens. There's no subtler, no surer means of over-turning the existing basis of society than to debauch the currency. The process engages all the hidden forces of economic-law on the side of destruction, and does it in a manner in which not one man in a million is able to diagnose."- 1920 statement by John Maynard Keynes.

"The high office of President has been used to foment a plot to destroy the Americans

freedom, and before I leave office I must inform the citizen of his plight."- said U.S. President JOHN F. KENNEDY, TEN (10) DAYS BEFORE HIS ASSASSINATION; QUOTE FROM SPEECH AT COLUMBIA UNIVERSITY.

ENCLOSED IS A TEN DOLLARS IN GOLD COIN (MONEY) "CERTIFICATE", AS MENTIONED ABOVE--FOR PAYMENT OF MEMBERSHIP AND LEGAL ASSISTANCE AND TO BE USED (SAVED) FOR EVIDENCE OF FRAUD AGAINEST ME, AGAINEST YOU, AGAINEST THE AMERICAN PEOPLE, CITIZENS OF THE UNITED STATES OF AMERICA! THIS "CERTIFICATE" IS REDEEMABLE" FOR AN "EAGLE" (GOLD COIN)--WHICH IS WORTH NOW IN TERMS OF INFLATION/DEVALUATION OF FEDERAL RESERVE NOTES PROBABLY ABOUT 400$? AT ONE TIME A OUNCE OF GOLD WAS INFLATED/DEVALUED TO ABOUT 800$ AN "EAGLE" IS ABOUT 1/2 OZ.

SINCERELY,
XXXXXXXXXXX

CC's: INC. PETITION TO PRES. CLINTON; VA/DAV/USA
CC OF THE MAILED: TEN DOLLARS IN GOLD COIN "CERTIFICATE"
TO: JUSTICE TIMES, BOX 562, CLINTON, ARK. 72031
PRES. CLINTON/RE PETITION FOR REDRESS OF GRIEVANCES
DADS/USA
OREGON LEGISLATIVE ASSEMBLY; & COURT CASES

[IMAGES OF TEN DOLLAR IN GOLD COIN CERTIFICATE]

DJ-202-PL-500

MAY 20 1993

Lee A. Barkan
General Counsel
American Vision Centers
90 John Street
New York, New York 10038

Dear Mr. Barkan:

This letter responds to your correspondence regarding the application of the Americans with Disabilities Act (ADA) to face lift modifications to an "American Vision Center" retail store in Stratford Square Mall, Bloomingdale, Illinois.

The ADA authorizes the Department of Justice to provide technical assistance and information to individuals and entities who have questions about the Act or the Department's Standards for Accessible Design. This letter provides informal guidance to assist you in understanding and complying with the ADA. However, this technical assistance should not be viewed as legal advice or a legal opinion about your rights or responsibilities under the ADA.

Section 36.304 of the title III regulations requires a public accommodation to remove architectural barriers in existing facilities where such removal is readily achievable. The preamble (page 35568 of the enclosed document) explains that the obligation to remove barriers under 36.304 does not extend to areas of a facility that are used exclusively as employee work areas.

When alterations to an area containing a primary function are undertaken, section 36.403 requires that, in addition to each altered element being accessible, the path of travel to the altered area, including the restrooms, telephones, and drinking fountains serving the altered area, must be readily accessible to and usable by individuals with disabilities, unless the cost and scope of the path of travel modifications are disproportionate to the cost of the alteration.

cc: Records, Chrono, Wodatch, Breen, Harland, FOIA, Library
n:\udd\mercado\plcrtltr\barkan.ewh

Alterations are defined as changes to a place of public accommodation or a commercial facility that affect or could affect the usability of the building or facility. Normal maintenance, such as repainting, or changes to electrical or mechanical systems, are not alterations (unless they affect the usability of the building or facility) and do not trigger the path of travel requirements.

Referring to your list of proposed face-lift modifications, the replacement of carpeting would be considered an alteration. The new carpeting would have to comply with section 4.5.3 of the Americans with Disabilities Act Accessibility Guidelines (ADAAG) and path of travel accessibility modifications within the limits of disproportionality also would be required.

We hope this information is helpful to you. Please contact the Public Access Section any time you have questions or need information. The Department maintains a telephone information line to provide technical assistance regarding the rights and obligations of individuals, businesses, agencies, and others covered or protected by the ADA. This technical assistance is available by calling 202-514-0301 (voice) or 202-514-0383 (TDD) between 1:00 p.m. and 5:00 p.m., Monday through Friday.

Sincerely,

John L. Wodatch
Chief
Public Access Section

Enclosures

AMERICAN VISION CENTERS

March 17, 1993

Via Certified Mail Return
Receipt Requested

John Wodatch, Esq.
Chief, Public Access Section
Civil Rights Division
P. 0. Box 66738
Washington, DC 20035-6738

Dear Mr. Wodatch:

On behalf of American Vision Centers, Inc. ("AVC"), and at the suggestion of Ms. Sheila Delaney of your office, I am writing to request a technical assistance opinion.

The Facts

There is presently an "American Vision Center" retail optical store in Stratford Square Mall, Bloomingdale, Illinois. AVC has been the tenant under the lease to the store since 1981, and has been subletting the premises to one of its franchisees since 1987.

In 1991, when the lease was renewed, the landlord required that the store receive a face-lift to make it look cleaner and new. In accordance with the lease, the franchisee retained a contractor to perform the following work:

(1) Replace the mirrors on the storefront;

(2) Replace the plastic letters in the exterior store sign;

(3) Relaminate counter-tops and replace fluorescent bulbs where needed;

(4) Replace lay-in ceiling tiles and repaint grid;

(5) Replace fluorescent ceiling fixtures, per code;

(6) Provide a new air balance report on the HVAC unit;

(7) Repaint all the walls;

(8) Replace carpeting;

(9) Drain the fire sprinkler system and recharge when work is done; and

(10) Install a drain pan under the existing hot water heater.

As you can see, the store is not going to be altered in any way.

When the plans for the face-lift were submitted to the Village of Bloomingdale for approval, the building commissioner refused to approve them. According to him, the ADA requires that the bathroom at the store be reconstructed to make it wheelchair accessible. Such reconstruction is cost prohibitive. It would require the moving of an entire wall.

I spoke with the building commissioner and explained that, based upon AVC's reading of the ADA, no such reconstruction is necessary.

The bathroom is not (nor has it ever been) available to the public. It is only used by employees of the franchisee.

The Bloomingdale building commissioner agreed to approve the plans, without a reconstruction of the bathroom, provided he received letters from AVC and the landlord absolving him from any possible claim. Although AVC is willing to provide such a letter, the landlord refuses to become involved -- except to the extent of threatening eviction if the face-lift work is not done.

The Opinion Sought

I believe the Bloomingdale building commission will agree to approve the tenant's plans and will not insist upon a reconstruction of the bathroom, if AVC can present him with a letter from your division stating that such reconstruction is not mandated by the ADA.

Accordingly, on behalf of AVC, I hereby request that you provide AVC with a technical assistance opinion as to whether the bathroom at the store needs to be reconstructed where the only work scheduled to be performed at the premises is the face-lift work set forth above.

Thank you very much for your assistance.

Very truly yours,

Lee A. Barkan
General Counsel

LAB:ca
cc: Seth R. Poppel
Mr. & Mrs. Joseph Farina

202-PL-00052

MAY 20 1993

Mark Berg, M.D.
Medical Director
NorthWorks Program
North Memorial Medical Center
3300 North Oakdale
Robbinsdale, Minnesota 55422

Dear Dr. Berg:

I am responding to your letter asking for clarification of the requirements of title III of the Americans with Disabilities Act (ADA) , 42 U. S. C. 12101 et seq. , and this Department 's regulation implementing title III, 28 C.F.R. pt. 36. You have asked whether the ADA requires the North Memorial Medical Center to make its mobile health care screening vans accessible to people with disabilities, and, if it does not, what alternative arrangements to provide equivalent services for people with disabilities would be acceptable.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities that have rights or responsibilities under the Act. This letter provides informal guidance to assist you in understanding the ADA and the Department's regulation. However, this technical assistance does not constitute a determination by the Department of Justice of your rights or responsibilities under the ADA, and it is not binding on the Department.

A medical center is a place of public accommodation subject to title III of the ADA. As such, it is required to make its services accessible to people with disabilities in accordance with the full range of title III requirements, such as nondiscriminatory eligibility criteria; reasonable modifications in policies, practices, and procedures; provision of auxiliary aids; and removal of barriers in existing facilities. In addition, it is required to comply with the new construction and alteration requirements for buildings and facilities established by this Department's regulation implementing title III.

cc: Records, Chrono, Wodatch, Bowen, Blizard, FOIA, Library
n:\udd\mercado\plcrtltr\berg.jlb

Although mobile health care screening vans are "facilities" subject to title III, the Department's current regulation does not establish standards for the design and construction of such facilities. Therefore, the medical center is not currently required to purchase health care screening vans that meet specific design criteria. The medical center, however, is required to remove architectural, communication, and transportation barriers in its vans to the extent that it is readily achievable to do so.

If it is not readily achievable to make the health screening vans accessible, then you must consider any alternative method of providing access to the health screening van's services that is readily achievable. Such services should be made available to individuals with disabilities at the same cost as the services provided at the van site.

While we cannot tell you which alternative methods of providing access would be readily achievable for you, options that you may wish to consider include:

providing comparable services at an accessible site at your

medical facility, "bundled" in a way that would enable an individual with a disability to obtain the same range of services with a comparable degree of convenience as the services that are provided by the van;

using the mobile health screening van to deliver the services to persons with disabilities in their own homes; or

transporting people with disabilities from their homes or the van site to an accessible facility where they can receive the services that are being provided by the van.

For your information, I am enclosing a copy of the regulation implementing title III of the ADA and the Department's Title III Technical Assistance Manual, which was developed to assist individuals and entities subject to the ADA to understand the requirements of title III. I hope that this information is helpful to you.

Sincerely,

John L. Wodatch
Chief
Public Access Section

Enclosures

NorthWorks

March 17, 1992

Office of ADA
Civil Rights Department
US Department of Justice
P.O. Box 66118
Washington DC 20035-6118

TO WHOM IT MAY CONCERN:

I am writing to request specific information regarding any recommendations you may have to assure our compliance with the ADA. I am writing as a representative of North Memorial Medical Center, a community hospital in Minneapolis, Minnesota. We are currently reviewing the possibility of purchasing a mobile van. The purpose of this van would be two-fold. One, to provide low cost or free public health or screening types of services to the community. Services which may be included would be health

history questionnaires, cholesterol screening, diabetes screening, pulmonary function testing, hearing screening and maternal child care information. We are currently questions whether or not this van would need to be accessible to those in wheelchairs or with significant ambulatory disabilities. Obviously the majority of the commercial vans available do not meet this need.

You should understand that we would have available similar services at the Medical Center. Obviously the exact character of the service might differ somewhat and would not be a neatly "bundled" as it would be on the health care screening van.

I would appreciate you response to the following specific questions.

1. Does ADA require that we make the health care screening van accessible to wheelchairs, walkers, or patients with significant disabilities?

2. Is it acceptable to offer similar services at an off site location, i.e. at the Medical Center? How similar do these services need to be and their availability, convenience, and cost?

Central Offices located at North Memorial Medical Center
(612) 520-5551 3300 North Oakdale Robbinsdale, MN 55422
---

3. Would the Medical Center be responsible for transferring the potential consumer to the Medical Center? We currently would not envision making transportation available to some off site location where the van would be located. However, the van might be more conveniently located relative to the patient's primary residence.

I have included a rough blueprint of the types of vans we are currently considering. As you may realize, the majority of these vans as currently configured are not easily reconfigured to something that is handicapped accessible.

I would appreciate your telephone or written response at your earliest possible convenience. We are well into the development process and would appreciate this input to assure our compliance with the ADA.

Thank you for your help in this matter. Feel free to contact me at any time on a digital pager XXXXXXXX or in my office during business hours at 1-612-520-5551.

Sincerely,

Mark Berg, M.D.
Medical Director
NorthWorks Program

T. 5-13-93

DJ 202-82-1

MAY 20 1993

Mr. Gene J. Colin
Chair
State Building Code Council
State of Washington
Ninth and Columbia Building, MS/GH-51
Olympia, Washington 98504-4151

Dear Mr. Colin:

This letter is an initial response to your request that the Department of Justice certify that the State Regulations for Barrier Free Design adopted by the Washington State Building Code Council ("Council") on November 8, 1991, meet or exceed the new construction and alterations requirements of title III of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. 12101 et seq., and this Department's regulation implementing title III, 28 C.F.R. Part 36 (1992).

I would like to thank the Council and its staff for the cooperation and patience shown over the past several months. The review process has been a lengthy one with considerable telephone conversations, meetings, and exchanges of information. The Council and its staff, especially Willy O'Neill, have responded to our questions quickly and professionally. This lengthy review process is attributable to your request's status as our first certification review and the likelihood that it will establish a precedent for all future reviews. Further, in an effort to carry out our responsibilities under the ADA and to provide helpful and responsive feedback to the Council, we have undertaken a comprehensive and detailed review of materials submitted.

After reviewing the material submitted to the Department of Justice, we have determined that the information the Council has provided to us is incomplete. We, therefore, request additional information as well as clarification of some provisions before we make a preliminary determination as to whether the materials submitted meet or exceed the requirements of the ADA.

To assist you in this process, we have prepared a side-by-side comparison of the Washington State Regulations (WSR)

cc: Records, Chrono, Wodatch, Blizard, Lusher, FOIA, Library
n:\udd\mercado\plcrtltr\colin.rhl

01-02087

submitted and the applicable sections of the 1991 Uniform Building Code (UBC) to the ADA title III regulations (including the ADA Accessibility Guidelines for Buildings and Facilities ("ADAAG")). A copy of the side-by-side analysis, which is enclosed, identifies those elements that do not appear to satisfy the requirements of the ADA. The side-by-side comparison identifies sections of the ADAAG for which we could find no

equivalent provision in the WSR. They are identified by the characters "NE." Other sections are designated "possibly not equivalent" (PNE). Some elements of the WSR that have been identified as "possibly not equivalent" appear to be typographical errors, e.g., references to the wrong section of the regulation. Other elements designated "possibly not equivalent" simply require further clarification by the Council regarding their intent and meaning.

While the side-by-side comparison should give the Council a comprehensive picture of the areas of concern, I would like to highlight some of the major differences between the submitted code and the ADA. These differences are as follows:

1) There are no technical requirements for accessible elevators or platform lifts. The WSR incorporates by reference the requirements of Chapter 296-81 of the Washington Administrative Code, which was not submitted for certification. (See 51-20-3105(c) 2 and 51-20-3105(c) 3.)

2) The WSR provides that where "full compliance is impractical due to unique characteristics of the terrain, the building official may grant modifications . . . provided that any portion of the building or structure that can be made accessible shall be made accessible to the greatest extent practical." This provision appears to apply a lower standard than the ADA, which requires new construction to comply with the requirements of ADAAG unless it is structurally impracticable to comply. (See 51-20-3101(e)

3) The WSR allows an exemption for "floors or portions of floors that are not customarily occupied (emphasis added) including but not limited to . . . machinery, mechanical and electrical equipment rooms." The use of the phrase "not customarily occupied" and the use of machinery, mechanical and electrical equipment rooms as examples applies this exemption to areas not generally exempt under ADA. Under ADA, unless machinery, mechanical, and electrical equipment rooms are non-occupiable spaces accessed only by ladders, catwalks, crawl spaces, very narrow passageways, or freight (non-passenger) elevators, they must comply Pith the requirements of 4.1.1(3) Areas Used Only by Employees as Work Areas. (See 51-20-3103(a) 1. EXCEPTIONS:1.)

4) The WSR includes a provision that permits construction of inaccessible elements and spaces on floors of less than 3000 square feet, which are located above or below the accessible

ground floor and where no elevator access is required by the WSR or the ADA, if the facility provides accessible services on an accessible floor. (See 51-20-3103(a) 2.) The title III regulations require elements and spaces on such floors to meet the same accessibility requirements as those applicable to the accessible ground floor or those floors connected by elevators.

5) The WSR provides that "the path of travel need not be made accessible if the cost of compliance with this part would exceed 20% of the total project cost, inclusive of the cost of eliminating barriers, within a 36 month period" (emphasis added). (See 51-20-3114(a) 2. EXCEPTION.) This provision appears to include all costs of removing barriers within a 36 month period in the 20% formula for disproportionality. (See 36.403(h)(2).) The ADA requires a covered entity to spend up to 20% of the cost of each alteration to an area containing a primary function on accessibility modifications to the path of travel. These funds must be spent at the time that the primary function alteration is done. The only situation in which the costs of alterations over a three-year period are considered is when a covered entity undertakes a series of small alterations to primary function areas served by the same path of travel without making the path of travel accessible. The cost of readily achievable barrier removal required by section 302 of the ADA may not be counted toward meeting the obligation to make the path of travel accessible.

6) It is difficult to determine what accessibility provisions would apply to hotels, motels, inns, resorts, or to homeless shelters due to the use in differing terminology. These differences are highlighted in the side-by-side comparison.

7) The WSR uses the ADAAG table to establish the number of accessible rooms required in hotels and the number or percentage of rooms that are required to have roll-in showers. However, the WSR do not clearly state that the number of accessible rooms with roll-in showers are in addition to the other required rooms as required by section 9.1.2 of ADAAG. We have been told by Council staff that the State code officials interpret the provision to require rooms with roll-in showers as included in the required 4% accessible rooms rather than being in addition to the 4%. (.See 51-20-3103(a) 8.C.)

8) Some of the definitions used in the submitted materials differ in some respects from the ADAAG definitions. These definitional differences are highlighted in the side-by-side analysis. The most problematic are the definitions of mezzanine, assembly building, and story.

01-02089

9) The WSR's technical specifications for visible alarms differ from ADAAG. Certain ADAAG specifications for visible alarms (including color, intensity, and flash rate) are contained in the appendix to the WSR. (See 51-20-3106(o).)

10) The WSR does not contain ATM requirements.

11) The WSR's procedures for determining when accessibility modifications would threaten or destroy the historic significance of a building or a facility do not conform to the ADA requirements. Specifically, under the WSR, the authority to make that determination is given to the building official, not the State Historic Preservation Officer (or certified local historic preservation program) as provided under the ADA Regulations (See 51-20-3113(a).)

We understand that after the Council submitted its request for certification, the Washington Department of Labor and Industries continued to work on requirements for elevators and platform lifts. We have also been informed that the Council entered into additional rulemaking in July 1992, to correct technical errors and to make editorial corrections in the 1992 State Regulations for Barrier Free Facilities. If those changes and any others that are directly related to the request for certification are now final, we invite you to supplement the submission with those regulations before we make a final determination on whether to certify the state's barrier-free regulations.

Please include the notice of public hearing, copies of transcripts from the hearings, and copies of any standards referenced by the revised sections if not previously submitted. Please note, pursuant to 36.603(b)(1)-(3) of this Department's regulation, the entire package submitted for certification, including copies of the proposed request and supporting materials, must have been made available for public examination and subject to comment at hearings. The elevator code and interpretations made by the Council should be included. We also request that you review the side-by-side comparison to identify any areas where we may have overlooked relevant comparable provisions.

We believe it would greatly facilitate completion of our review of this matter, if Council representatives would be willing to meet with our staff. Such a meeting would serve to address all of the areas of concern identified in the side-by-side comparison, to provide additional information about any provisions of the Washington State Regulations that we may have overlooked in our analysis, to clarify interpretations of the

regulations, and to otherwise discuss and resolve any questions that we or the Council may have regarding this matter. If you believe that such a conference would be a worthwhile endeavor, we

would be willing to schedule such a meeting at the Council's offices at the earliest, mutually acceptable time.

If you have any questions concerning this letter or if we can assist you in preparing the requested information, please call Janet Blizard or Ruth Lusher of our staff at (202) 307-0663. Please include a reference to DJ number 202-82-1, the number assigned to this matter, in any further correspondence with us.

Sincerely,

John L. Wodatch
Chief
Public Access Section

Enclosure

cc: Mr. Lawrence W. Roffee
Executive Director
U.S. Architectural & Transportation Barriers Compliance Board

GENE COLIN
Chair

STATE OF WASHINGTON
STATE BUILDING CODE COUNCIL
Ninth & Columbia Building, MS/GH-51 o Olympia, Washington 98504-4151 o
(206)586-3423 SCAN 321-3423

January 27, 1992

Ms. Barbara S. Drake, Deputy,
U.S. Assistant Attorney General
Office on the Americans With Disabilities Act,
Civil Rights Division
U.S. Department of Justice
P.O. Box 75087
Washington D.C. 20013

Re: Request for Certification

Dear Ms. Drake:

Enclosed is the State of Washington's Request for Certification of the State Regulations for Barrier-Free Facilities as adopted by the Washington State Building Code Council on November 8, 1991. The Council has revised the State Regulations for Barrier-Free Facilities in order to make them equivalent to the final Americans with Disabilities Act Accessibility Guidelines (ADAAG) as published by the Department of Justice on July 26, 1991.

Included in the request, in duplicate, are copies of the following documents:

1. A brief overview of the State Regulations for Barrier-Free Facilities; and,

2. Chapter 51-20 of the Washington State Administrative Code which includes the State Regulations for Barrier-Free Facilities; and,

3. Chapters 19.27, 19.27A, and 70.92 of the Revised Code of Washington which created the State Building Code Council and mandate adoption of the State Building Code and the State regulations for Barrier-Free Facilities as part of the code; and,

4. The State Administrative Procedures Act (APA) (RCW 34.05) and all relevant documentation required by the APA for adopting formal state agency rules including proposed rule adoption and public hearing notices; and,

Administered by the Department of Community Development
01-02091

5. The public hearings record and written testimony on adoption of the revised State Regulations for Barrier-Free Facilities; and,

6. State Building Code Council Public Hearings Notice Mailing List for the State Regulations for Barrier-Free Facilities; and,

7. 1991 Uniform Fire Code Standard No 14-1; and

8. State Building Code Council membership list and miscellaneous information.

It should be noted that the State Regulations for Barrier-Free Facilities are comprised in Chapter 51-20-3100 of the Washington Administrative Code as an amendatory section to Chapter 31 of the 1991 Uniform Building Code (UBC). In addition to Chapter 31, Sections 51-20-005; 51-20-3304 (b) and (h) and 51-20-3306 (g) and (i) of the Washington Administrative Code contain additional amendatory language to the corresponding sections in the UBC in order to ensure equivalency with ADAAG.

The UBC is developed and published by the International Conference of Building Officials (ICBC). A copy of the 1991 Uniform Building Code has already been provided to Department of Justice staff.

Finally, the State of Washington has submitted the revised Chapter 31 of the 1991 UBC to the ICBO as a formal code change

proposal.

If you have any questions or comments on our request for certification, please contact Barrier-Free Committee staff Willy O'Neil at (206) 586-0486. Thank you for your consideration.

Sincerely,

Gene J. Colin, Chair

GJC:mm
Enclosures

01-02092

ENCLOSURE

The Americans with Disabilities Act (ADA) authorizes the Department of Justice to provide technical assistance to individuals and entities that have rights or responsibilities under the Act. This code comparison was prepared by the staff of the Public Access Section to provide informal guidance to assist the Washington State Building Code Council to compare its code requirements to the requirements of the ADA. However, this technical assistance does not constitute a determination by the Department of the Council's rights or responsibilities under the ADA, and it is not binding on the Department.

(This document was originally in CHART format - however - due to ASCII formatting, it now appears as follows:)

ADA Requirements

1. Purpose. This document sets guidelines for accessibility to places of public accommodation and commercial facilities by individuals with disabilities. These guidelines are to be applied during the design, construction, and alteration of such buildings and facilities to the extent required by regulations issued by Federal agencies, including the Department of Justice, under the Americans with Disabilities Act of 1990.

The technical specifications 4.2 through 4.35 of these guidelines are the same as those of the American National Standard Institute's document A117.1-1980, except as noted in this text by italics. However, sections 4.1.1 through 4.1.7 and sections 5 through 10 are different from ANSI Al17.1 in their entirety and are printed in standard type.

The illustrations and text of ANSI Al17.1 are reproduced with permission from the American National Standards Institute. Copies of the standard may be purchased from the American National Standards Institute at 1430 Broadway, New York, New York 10018.

Washington State Regulations

51-20-002 Purpose. The purpose of these rules is to implement the provisions of chapter 19.27 RCW, which provides that the state building code council shall maintain the State Building Code in a status which is consistent with the purpose as set forth in RCW 19.27.020. In maintaining the codes the council shall regularly review updated versions of the codes adopted under the act, and other pertinent information, and shall amend the codes as deemed appropriate by the Council.

RCW 19-27-020 (5). To provide for standards and specifications for making buildings and facilities accessible to and usable by physically disabled persons.

51-20-003 Uniform Building Code. The 1991 edition of the Uniform Building Code as published by the International Conference of Building Officials and available from the International Conference of Building Officials, 5360 South Workman Mill Road, Whittier, California 90601 is hereby adopted by reference with the following additions, deletions, and exceptions.

41-20-005 Uniform Building Code Requirements for Barrier-Free Accessibility. Chapter 31 and other Uniform Build Code requirements for barrier-free access are adopted pursuant to chapters 70.92 and 19.27 RCW.

Commentary

NE ADA coverage is not limited to people with physical disabilities.

NE - Not equivalent to ADA provisions
PNE - Possibly/potentially not equivalent to ADA provisions

ADA Requirements

1. Purpose, continued.

2.1 Provisions for Adults. The specifications in these guidelines are based upon adult dimensions and anthropometrics.

2.2 Equivalent Facilitation Departures from particular technical

and scoping requirements of this guideline by the use of other designs and technologies are permitted where the alternative designs and technologies used will provide substantially equivalent or greater access to and usability of the facility.

Miscellaneous Instructions and Definitions.

3.1 Graphic Conventions. Graphic conventions are shown in Table 1. Dimensions that are not marked minimum or maximum are absolute, unless otherwise indicated in the text or captions.

Washington State Regulations

Pursuant to RCW 19.27.040, Chapter 31 and requirements affecting barrier-free access in Sections 3304 (b), 3304 (h), 3306 (g), and 3306 (i) shall not be amended by local governments.

In case of conflict with other provisions of this code, chapter 31 and requirements affecting barrier-free access in Sections 3304 (b), 3304 (h), 3306 (g), and 3305 (i) shall govern.

51-20-3101 Scope. (a) General. Buildings or portions of buildings shall be accessible to persons with disabilities as required by this chapter. Chapter 31 has been amended to comply with the Federal Fair Housing Act (FFHA) Guidelines as published by the U.S. Department of Housing and Urban Development (March 1991) and the Americans with Disabilities Act (ADA) Guidelines as published by the Architectural and Transportation Barriers Compliance Board and the Department of Justice (July 1991).

Reference is made to appendix Chapter 31 for FFHA and ADA requirements not regulated by this chapter.

(b) Design. The design and construction of accessible building elements shall be in accordance with this chapter. For a building, structure, or building element to be considered to be accessible, it shall be designed and constructed to the minimum provisions of this chapter.

51-20-3106 (d) Alternate Methods. The application of Section 105 to this chapter shall be limited to the extent that alternate methods of construction, designs, or technologies shall provide substantially equivalent or greater accessibility.

Commentary

ADA Requirements

3.2 Dimensional Tolerances. All dimensions are subject to conventional building industry tolerances for field conditions.

3.3 Notes. The text of these guidelines does not contain notes or footnotes. Additional information, explanations, and advisory materials are located in the Appendix. Paragraphs marked with an asterisk have related non-mandatory material in the Appendix. In the Appendix, the corresponding paragraph numbers are preceded by an A.

3.4 General Terminology.

comply with Meet one or more specifications of these guidelines.

if, if... then Denotes a specification that applies only when the conditions described are present.

may, Denotes an option or alternative.

shall, Denotes a mandatory specification or requirement.

should, Denotes an advisory specification or recommendation.

3.5 Definitions.

Access Aisle. An accessible pedestrian space between elements, such as parking spaces, seating, and desks, that provides clearances appropriate for use of elements.

Accessible. Describes a site, building, facility, or portion thereof
that complies with these guidelines.

Washington State Regulations

51-20-3101 (a) General. Reference is made to appendix Chapter 31 for FFHA and ADA requirements not regulated by this chapter. UBC Section 103 . . . Wherever in this code reference is made to the appendix, the provisions in the appendix shall not apply unless specifically adopted.

Chapter 4 Definitions and Abbreviations Section 401 (a) General. For the purpose of this code, certain terms,

phrases, words and their derivatives shall be construed as specified in this chapter. Words used in the singular include the plural and the plural the singular. Words used in the masculine gender include the feminine and the feminine the masculine.

Where terms are not defined, they shall have their ordinary accepted meanings within the context with which they are used. Webster's Third New International Dictionary of the English Language, Unabridged, copyright 1986, shall be considered as providing ordinarily accepted meanings.

Shall, as used in this code is mandatory.

WAC 51-20-3102 Definitions. Section 3102. For the purpose of the chapter certain terms are defined as follows (additional relevant definitions from UBC and WSR are included):

Access Aisle is an accessible pedestrian space between elements such as parking spaces, seating, and desks, that provides clearances appropriate for use of elements.

Accessible is approachable and usable by persons with disabilities.
51-3101 (b) Design. The design and construction of accessible building elements shall be in accordance with this chapter. For a building, structure or building element to be considered to be accessible, it shall be designed and constructed to the minimum provisions of this chapter.

Commentary

3 ADA/Washington State May 14, 1993

Technical Assistance Document

ADA Requirements

Accessible Element. An element specified by these guidelines (for
example, telephone, controls, and the like).

Accessible Route. A continuous unobstructed path connecting all accessible elements and spaces of a building or facility. Interior
accessible routes may include corridors, floors, ramps, elevators, lifts, and clear floor space at fixtures. Exterior accessible

routes may include parking access aisles, curb ramps, crosswalks at vehicular ways, walks, ramps and lifts.

Accessible Space. Space that complies with these guidelines.

Adaptability. The ability of certain building spaces and elements, such as kitchen counters, sinks, and grab bars, to be added or altered so as to accommodate the needs of individuals with or without disabilities or to accommodate the needs of persons with different types or degree of disability.

Addition. An expansion, extension, or increase in the gross floor area of a building or facility.

Administrative Authority. A governmental agency that adopts or enforces regulations and guidelines for the design construction, or alteration of buildings and facilities.

Washington State Regulations

See above.

Accessible Route of Travel is a continuous unobstructed path connecting all accessible elements and spaces in an accessible building or facility that can be negotiated by a person using a wheelchair and that is usable by persons with other disabilities.

See "accessible" above.

Chapter 4. Definitions and Abbreviations Sec. 402 Addition is an extension or increase in floor area or height of a building or structure.

700.92.130 (1) "Administrative authority" means the building department of each county, city, or town of this state.

70.92.130 (3) "Council" means the "state building code advisory council."

Chapter 4. Definitions and Abbreviations Sec. 403 Building Official is the officer or other designated authority charged with the administration and enforcement of this code, or the building official's duly authorized representative.

Commentary

ADA Requirements

Alteration. An alteration is a change to a building or facility made by, on behalf of, or for the use of a public accommodation or commercial facility, that affects or could affect the usability of the building or facility or part thereof. Alterations include, but are not limited to, remodeling, renovation, rehabilitation, reconstruction, historic restoration, changes or rearrangement of the structural parts or elements, and changes or rearrangement in the plan configuration of walls and full-height partitions. Normal maintenance, reroofing, painting or wallpapering, or changes to mechanical and electrical systems are not alterations unless they affect the usability of the building or facility.

Area of Rescue Assistance. An area, which has direct access to an exit, where people who are unable to use stairs may remain temporarily in safety to await further instructions or assistance during emergency evacuation.

Assembly Area. A room or space accommodating a group of individuals for recreational, educational, political, social, or amusement purposes, or for the consumption of food and drink.

Automatic Door. A door equipped with a power-operated mechanism and controls that open and close the door automatically ,upon receipt of a momentary actuating signal. The switch that begins the automatic cycle may be a photoelectric device, floor mat, or manual switch (see power-assisted door).

Washington State Regulations

51-20-3110 Alteration is any change, addition or modification in construction or occupancy.

Alteration, Substantial is any alteration where the total cost of all alterations (including but not limited to electrical, mechanical, plumbing and structural changes) for a building or facility within any 120 month period amounts to 60 percent or more of the assessed value.

70.92.120 (2) "Substantially remodeled or substantially rehabilitated" means any alteration or restoration of a building or structure within any twelve-month period, the cost of which exceeds sixty percent of the currently appraised value of the particular building or structure.

Area for Evacuation Assistance is an accessible space which is protected from fire and smoke and which facilitates egress.

Chapter 4 Definitions and Abbreviations Section 402. Assembly Building is a building or portion of a building used for the gathering together of 50 or more persons for such purposes as deliberation, education, instruction, worship, entertainment, amusement, drinking or dining or awaiting transportation.

Automatic Door is a door equipped with a power-operated mechanism and controls that open and close the door automatically, upon receipt of a momentary actuating signal. The switch that begins the automatic cycle may be a photoelectric device, floor mat or manual switch (see also, Power-assisted Door).

Commentary

NE ADAAG has no requirement regarding number of people.

5 ADA Washington State May 14, 1993 Technical Assistance Document

ADA Requirements

Building. Any structure used and intended for supporting or sheltering any use or occupancy

Circulation Path. An exterior or interior way of passage from one place to another for pedestrians, including, but not limited to, walks, hallways, courtyards, stairways, and stair landings.

Clear. Unobstructed.

Clear Floor Space. The minimum unobstructed floor or ground space required to accommodate a single, stationary wheelchair and occupant.

Closed Circuit Telephone. A telephone with dedicated line(s) such as a house phone, courtesy phone or phone that must be used to gain entrance to a facility.

Common Use. Refers to those interior and exterior rooms, spaces or elements that are made available for the use of a restricted, group of people (for example, occupants of a homeless shelter,

the occupants of an office building, or the guests of such occupants).

Cross Slope. The slope that is perpendicular to the direction of travel (see running slope).

Curb Ramp. A short ramp cutting through a curb or built up to it.

Detectable Warning. A standardized surface feature built in or applied to walking surfaces or other elements to warn visually impaired people of hazards on a circulation path.

Dwelling Unit. A single unit which provides a kitchen or food preparation area, in addition to rooms and spaces for living, bathing, sleeping, and the like. Dwelling units include a single family home or a townhouse used as a transient group home; an apartment building used as a shelter; guestrooms in a hotel that provide sleeping accommodations and food preparation areas; and other similar facilities used on a transient basis. For purposes of these guidelines, use of the term "Dwelling Unit" does not imply the unit is used as a residence.

Washington State Regulation

Chapter 4 Definitions and Abbreviations Section 403
Building is any structure used or intended for supporting or sheltering any use or occupancy.

Clear is unobstructed.

Clear Floor Space is unobstructed floor or ground space (See Section 3106(b)).

Common Use Areas are rooms, spaces or elements inside or outside a building that are made available for use by occupants of and visitors to the building.

Cross Slope is the slope that is perpendicular to the direction of travel.

Curb Ramp is a short ramp cutting through or built up to a curb.

Detectable Warning is a standardized surface feature built in or applied to walking surfaces or other elements to warn visually impaired persons of hazards on a circulation path.

Sec. 405 D. Dwelling Unit is any building or portion thereof

which contains living facilities, including provisions for sleeping, eating, cooking and sanitation, as required by this code, for not more than one family, or a congregate residence for 10 or less persons.

Commentary

PNE WSR seems to be defining residential dwelling units and sets an occupancy size of 10 or less persons. ADAAG defines a dwelling unit used on a transient basis and sets no occupancy limitations.

ADA Requirements

Egress, Means of. A continuous and unobstructed way of exit travel from any point in a building or facility to a public way. A means of egress comprises vertical and horizontal travel and may include intervening room spaces, doorways, hallways, corridors, passageways, balconies, ramps, stairs, enclosures, lobbies, horizontal exits, courts and yards. An accessible means of egress is one that complies with these guidelines and does not include stairs, steps, or escalators. Areas of rescue assistance or evacuation elevators may be included as part of accessible means of egress.

Element. An architectural or mechanical component of a building, facility, space, or site, e.g., telephone, curb ramp, door, drinking fountain, seating, or water closet.

Entrance. Any access point to a building or portion of a building or facility used for the purpose of entering. An entrance includes the approach walk, the vertical access leading to the entrance platform, the entrance platform itself, vestibules if provided, the entry door(s) or gate(s), and the hardware of the entry door(s) or gate(s).

Washington State Regulations

Dwelling Unit. Type A is an accessible dwelling unit that is designed and constructed to provide greater accessibility than a Type B dwelling unit. (Type A dwelling units constructed in accordance with this chapter also meet the design standards for Type B dwelling units.)

Dwelling Unit. Type B is an accessible dwelling unit that is designed and constructed to the U.S. Department of Housing and Urban Development Federal Fair Housing Act Accessibility Guidelines.

Single-Story Dwelling Unit is a dwelling unit with all finished living spaces located on one floor.

Multistory Dwelling Unit is a dwelling unit with finished living space located on one floor, and the floor or floors immediately above or below it.

Accessible Exit is an exit, as defined in Section 3301 (b), which complies with this chapter and does not contain stairs, steps, or escalators.

Chapter 33, Section 3310 (b) Exit is a continuous and unobstructed means of egress to a public way and shall include intervening aisles, doors, doorways, gates, corridors, exterior exit balconies, ramps, stairways, smoke-proof enclosures, horizontal exits, exit passageways, exit courts and yards.

Element is an architectural or mechanical component of a building, facility, space, or site, such as telephones, curb ramps, doors, drinking fountains, seating, or water closets.

Commentary

PNE No definition.

7 ADA/Washington State May 14, 1993
Technical Assistance Document

ADA Requirements

Facility. All or any portion of buildings, structures, site improvements, complexes, equipment, roads, walks, passageways, parking lots, or other real or personal property located on a site.

Ground Floor. Any occupiable floor less than one story above or below grade with direct access to grade. A building or facility always has at least one ground floor and may have more than one ground floor as where a split level entrance has been provided or where a building is built into a hillside.

Mezzanine or Mezzanine Floor. That portion of a story which is an intermediate (floor level placed within the story and having occupiable space above and below its floor.

Marked Crossing. A crosswalk or other identified path intended for pedestrian use in crossing a vehicular way.

Washington State Regulations

Primary Entry is a principal entrance through which most people enter the building. A building may have more than one primary entry.

Primary Entry Level is the floor or level of the building on which the primary entry is located.

51-20-0420 Section 420. Structure is that which is built or constructed, an edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner.

Chapter 4, Section 408 Grade (Adjacent Ground Elevation) is the lowest point of elevation of the finished surface of the ground, paving or sidewalk within the area between the building and the property line or, when the property line is more than 5 feet from the building, between the building and a line 5 feet from the building.

51-20-0407 Section 407 Floor Area is the area included within the surrounding exterior walls of a building or portion thereof, exclusive of vent shafts and courts. The floor area of a building, or portion thereof, not provided with surrounding exterior walls shall be the usable area under the horizontal projection of the roof or floor above

Ground Floor is any occupiable floor less than one story above or below grade with direct access to grade. A building may have more than one ground floor.

Landing is a level area (except as otherwise provided), within or at the terminus of a stair or ramp.

Chapter 4 Definitions and Abbreviations Section 414 Mezzanine or Mezzanine Floor is an intermediate floor placed within a room.

Marked Crossing is a crosswalk or other identified path intended for pedestrian use in crossing a vehicular way.

Commentary

PNE WSR's definition does not appear to differentiate between a mezzanine and a raised or lowered floor level. Clarification is needed here.

ADA Requirements

Multifamily Dwelling. Any building containing more than two dwelling units.

Occupiable. A room or enclosed space designed for human occupancy in which individuals congregate for amusement, educational or similar purposes, or in which occupants are engaged at labor, and which is equipped with means of egress, light, and ventilation.

Operable Part. A part of a piece of equipment or appliance used to insert or withdraw objects, or to activate, deactivate, or adjust the equipment or appliance (for example, coin slot, pushbutton, handle).

Path of Travel. DOJ 36.403(e). (1) A "path of travel" includes a continuous, continuous, unobstructed way of pedestrian passage by means of which the altered area may be approached, entered, and exited, and which connects the altered area with an exterior approach (including sidewalks, streets, and parking areas), an entrance to the facility, and other parts of the facility.

(2) An accessible path of travel may consist of walks and sidewalks, curb ramps and other interior or exterior pedestrian ramps; clear floor paths through lobbies, corridors, rooms, and other improved areas; parking access aisles; elevators and lifts; or a combination of these elements.

(3) For the purposes of this part, the term "path of travel" also includes the restrooms, telephones, and drinking fountains serving the altered area.

Person with a Disability. DOJ Rule 36.104. Disability means, with respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment.

Washington State Regulations

Chapter 4 Definitions and Abbreviations Section 416
Occupancy is the Purpose for which a building, or part thereof, is used or intended to be used.

Section 409 H Habitable Space (Room) is space in a structure for living, sleeping, eating or cooking. Bathrooms, toilet compartments, closets, halls, storage or utility space, and similar areas, are not considered habitable space.

51-20-3110 Path of Travel means a continuous, unobstructed way of pedestrian passage by means of which an altered area may be approached, entered, and exited, and which connects the altered area with an exterior approach (including sidewalks. streets, and parking areas), an entry to the facility, and other parts of the facility. For the purposes of this part, the term path of travel also includes restrooms, telephones, and water fountains serving the altered area.

Person With Disability is an individual who has an impairment, including a mobility, sensory or cognitive impairment, which results in a functional limitation in access to and using a building or facility.

Commentary

9 ADA/Washington State May 14, 1993
Technical Assistance Document

ADA Requirements

Power-Assisted Door is a door used for human passage with a mechanism that helps to open the door, or relieves the opening resistance of the door, upon the activation of a switch or a continued force applied to the door itself.

Public Use. Describes Interior or exterior roams or spaces that are made available to the general public. Public use may be provided at a building or facility that is privately at publicly owned.

Primary Function. DOJ Rule 36.403(b). A "primary function" is a major activity for which the facility is intended.

Ramp. A walking surface which has a running slope greater that 1:20.

Running Slope. The slope that is parallel to the direction of travel (see cross slope).

Service Entrance. An entrance intended primarily for delivery of goods or services.

Signage. Displayed verbal, symbolic, tactile, and pictorial information.

Site. A parcel of land bounded by a property line or a designated portion of a public right-of-way.

Site Improvement. Landscaping, paving for pedestrian and vehicular ways, outdoor lighting, recreational facilities, and the like, added to a site.

Sleeping Accommodations. Rooms in which people sleep; for example, dormitory and hotel or motel guest rooms or suites.

Space. A definable area, e.g., room, toilet room, hall, assembly area, entrance, storage room, alcove, courtyard, or lobby.

Washington State Regulation

Power-assisted Door. A door used for human passage with a mechanism that helps to open the door, or relieve the opening resistance of a door, upon the activation of a switch or a continued force applied to the door itself.

Public use Areas are interior or exterior rooms or spaces that are made available to the general public. Public use may be provided at a privately or publicly owned building or facility.

Primary Function is a major function for which the facility is intended.

Ramp is any walking surface having a running slope exceeding 1 inch vertical in 48 inches horizontal.

Service Entry is an entrance intended primarily for delivery of goods or services.

Site is a parcel of land bounded by a property line or a designated portion of a public right-of-way.

51-20-0420 Section 420 Structure

ADA Requirements

Story. That portion of a building included between the upper surface of a floor and upper surface of the floor or roof next above. If such portion of a building does not include occupiable space, it is not considered a story for purposes of these guidelines. There may be more than one floor level within a story as in the case of mezzanine or mezzanines.

Structural Frame. The structural frame shall be considered to be the columns and the girders beams, trusses and spandrels having direct connections to the columns and all other members which are essential to the stability of the building as a whole.

Tactile. Describes an object that can be perceived using the sense of touch.

Text Telephone. Machinery or equipment that employs interactive graphic (i.e., typed) communications through the transmission of coded signals across the standard telephone network. Text telephones can include, for example, devices known as TDDs (telecommunication display devices or telecommunication devices for deaf persons) or computers.

Washington State Regulations

51-20-0420 Section 420 Story is that portion of a building included between the upper surface of any floor and the upper surface of the floor next above, except that the topmost story shall be that portion of a building included between the upper surface of the topmost floor and the ceiling or roof above. If the finished floor level directly above a usable or unused under-floor space is more than 6 feet above grade as defined herein for more than 50 percent of the total perimeter or is more than 12 feet above grade as defined herein at any point, such usable or unused under-floor space shall be considered as a story.

51-20-0320 Section 420 Story, First is the lowest story in a building which qualifies as a story, as defined herein, except that a floor level in a building having only one floor level shall be classified as a first story, provided such floor level is not more than 4 feet below grade as defined herein, for more

than 50 percent of the total perimeter, or not more than 8 feet below grade, as defined herein, at any point.

51-20-1702 Structural Frame. The structural frame shall be considered to be the columns and the girders beams, trusses and spandrels having direct connections to the columns and all other members which are essential to the stability of the building as a whole. The members of floor or roof panels which have no connection to the columns shall be considered secondary members and not a part of the structural frame.

Tactile is an object that can be perceived using the sense of touch.

Text Telephone is machinery or equipment that employs interactive graphic (i.e., typed) communications through the transmission of coded signals across the standard telephone network. Text telephones include telecommunications display devices or telecommunication devices for the deaf (TDDs) or computers.

Commentary

NE When used with the definition of "ground floor", this definition could result in a ground floor, or first story, that is not occupiable or no ground floor or an occupied basement that is not considered a story. Clarification needed as to application of the definition.

ADA Requirements

Transient Lodging. A building, facility, or portion thereof, excluding inpatient medical care facilities, that contains one or more dwelling units or sleeping accommodations. Transient lodging may include, but is not limited to, resorts, group homes, hotels, motels, and dormitories.

DOJ 36.104(1). An inn, hotel, motel, or other place of lodging, except for an establishment located within a building that contains not more that five rooms for rent or hire and that is actually occupied by the proprietor of the establishment as the residence of the proprietor.

Vehicular Way. A route intended for vehicular traffic, such as a street, driveway, or parking lot.

Walk. An exterior pathway with a prepared surface intended for pedestrian use, including general pedestrian areas such as plazas and courts.

Washington State Regulations

51-20-0404 Section 404 Congregate Residence is any building or portion thereof which contains facilities for living, sleeping and sanitation, as required by this code, and may include facilities for eating and cooking, for occupancy by other than a family. A congregate residence may be a shelter, convent, monastery, dormitory, fraternity or sorority house but does not include jails, hospitals, nursing homes, hotels or lodging houses.

Chapter 4, Section 413 Lodging House is any building or portion thereof containing not more than five guest rooms where rent is paid in money, goods, labor or otherwise.

51-20-0409 Section 409 Hotel is any building containing six or more guest rooms intended or designed to be used, or which are used, rented or hired out to be occupied, or which are occupied for sleeping purposes by guests.

51-20-0409 Section 409 Motel Is any building containing six or more guest rooms intended or designed to be used, or which are used, rented or hired out to be occupied, or which are occupied for sleeping purposes by guests.

(See definition of Hotel) 51-20-1201 Group R. Occupancies Defined. Group R Occupancies shall be:
Division 1. Hotels and apartment houses. Congregate residence (each accommodating more than 10 persons
Division 2. Not used.
Division 3. Dwellings, family child day care homes and lodging houses. Congregate residences (each accommodating 10 persons or less).

Vehicular Way is a route intended for vehicular traffic, such as a roadway, driveway, or parking lot located on a site.

51-20-0417 Section 417 Pedestrian Walkway is a walkway used exclusively as a pedestrian trafficway.

Commentary

NE Definitions vary in several ways. WSR's are generally

more specific and narrow in scope. Coverage is based on different numbers of units or people served. Further clarification is needed as to where shelters and social service establishments fit.

ADA Requirements

ACCESSIBLE ELEMENTS AND SPACES: SCOPE AND TECHNICAL REQUIREMENTS.

4.1 Minimum Requirements

4.1.1* Application.

(1) General. All areas of newly designed or newly constructed buildings and facilities required to be accessible by 4.1.2 and 4.1.3 and altered portions of existing buildings and facilities required to be accessible by 4.1.6 shall comply with these guidelines, 4.1 through 4.35, unless otherwise provided in this section or as modified in a special application section.

Washington Sate Regulations

51-20-3101 Scope (a) General. Buildings or portions of buildings shall be accessible to persons with disabilities as required by this chapter.

Chapter 31 has been amended to comply with the Federal Fair Housing Act (FFHA) Guidelines as published by the U.S. Department of Housing and Urban Development (March 1991)and the Americans with Disabilities Act (ADA) Guidelines as published by the U. S. Architectural and Transportation Barriers Compliance Board and the Department of Justice (July, 1991).

Reference is made to Appendix Chapter 31 for FFHA and ADA requirements not regulated by this chapter.

51-20-3101 (b) Design. The design and construction of accessible building elements shall be in accordance with this chapter. For a building, structure or building element to be considered to be accessible, it shall be designed and constructed to the minimum provisions of this chapter.

51-20-3103 Building Accessibility (a) Where required. 1.

General. Accessibility to temporary or permanent buildings or portions thereof shall be provided for all occupancy classifications except as modified by this chapter. See also Appendix Chapter 31.

51-20-0104 Application to Existing Buildings and Structures. (a) General. Buildings and structures to which additions, alterations or repairs are made shall comply with all the requirements of this code for new facilities except as specifically provided In this section. See Section 1210 for provisions requiring installation of smoke detectors in existing Group R, Division 3 Occupancies.

Commentary

13 ADA/Washington State May 14, 1993

Technical Assistance Document

ADA Requirements

4.1.1 (2) Application Based on Building Use. Special application sections 5 through 10 provide additional requirements for restaurants and cafeterias, medical care facilities, business and mercantile, libraries, accessible transient lodging, and transportation facilities. When a building or facility contains more than one use covered by a special application section, each portion shall comply with the requirements for that use.

Washington State Regulations

51-20-3106 Accessible Design and Construction Standards. (a) General. Where accessibility is required by this chapter, it shall be designed and constructed in accordance with this section, unless otherwise specified in this chapter.

51-20-3103 Building Accessibility (a) Where required 1. General. Accessibility to temporary or permanent buildings or portions thereof shall be provided for all occupancy classifications except as modified by this chapter. See also Appendix Chapter 31.

UBC Section 503. (a) ... When a building houses more than one occupancy, each portion of the building shall conform to the requirements of the occupancy housed therein.

Commentary

ADA Requirements

4.1.1 (2) Continued.

Washington Sate Regulations

51-20-3103 Building Accessibility. (a) Where required. 1. General. Accessibility to temporary or permanent buildings or portions thereof shall be provided for all occupancy classifications except as modified by this chapter. See also Appendix Chapter 31.
(a) 2. Group A. Occupancies. A. General. All Group A Occupancies shall be accessible as provided in this chapter.
(a) 3. Group B. Occupancies. All Group B Occupancies shall be accessible as provided in this chapter. Assembly spaces in Group B Occupancies shall comply with Section 3103 (a)2 B.
4. Group E. Occupancies. All Group E. Occupancies shall be accessible as provided in this chapter. Assembly spaces in Group E Occupancies shall comply with Section 3103 (a) 2. B.
5. Group H Occupancies. All Group H Occupancies shall be accessible as provided in this chapter.
6. Group I Occupancies. All Group I Occupancies shall be accessible in all public use, common use and employee use areas, and shall have accessible patient rooms, cells and treatment or examination rooms as follows:
6. A. In Group I, Division 1.1 hospitals which do not specialize in treating conditions that affect mobility, all patient rooms in each nursing unit, including associated toilet rooms and bathrooms.
6. B. In Group I, Division 1.1 hospitals which do not specialize in treating conditions that affect mobility, all patient rooms in each nursing unit, including associated toilet rooms and bathrooms.
6. C. In Group I, Division 1.1 and Division 2 nursing homes and long-term care facilities, at least 1 in every 2 patient rooms, including associated toilet rooms and bathrooms.
6. D. In Group I, Division 3, mental health Occupancies, at least 1 in every 10 patient rooms, including associated toilet rooms and bathrooms.

Commentary

ADA Requirements

4.1.1 (2) Continued.

Washington State Regulation

6. E. In Group I, Division 3 jail, prison and similar Occupancies, at least 1 in every 100 rooms or cells, including associated toilet rooms and bathrooms.
In Group I, Division 1.1 and 2 Occupancies, at least one accessible entrance that complies with Section 3103 (b) shall be under shelter. Every such entrance shall include a passenger loading zone which complies with Section 3108 (b) 3.

51-20-3103 (a) 7. Group M. Occupancies. Group M, Division 1 Occupancies shall be accessible.
EXCEPTIONS: 1. Private garages, carports and sheds are not required to be accessible if they are accessory to dwelling units which are not required to be accessible.
2. In Group M., Division 1 agricultural buildings, access need only be provided to paved work areas and areas open to the general public.

51-20-3103 (a) 8. Group R. Occupancies. A. General. All Group R Occupancies shall be accessible as provided in this chapter, Public- and common-use areas and facilities such as recreational facilities, laundry facilities, garbage and recycling collection areas, mailbox locations, lobbies, foyers and management offices, shall be accessible.

Number of Dwelling Units, In all Group R, Division 1 apartment buildings the total number of Type A dwelling units shall be as required by Table No. 31-B. All other dwelling units shall be designed and constructed to the requirements for Type B units as defined in this chapter.

EXCEPTIONS: 1. Group R Occupancies containing three or fewer dwelling units.

Commentary

ADA Requirements

4.1.1 (2) Continued.

4.1.1 (3)* Areas Used Only by Employees as Work Areas. Areas that are used only as work areas shall be designed and constructed so that individuals with disabilities can approach, enter, and exit the areas. These guidelines do not require that any
areas used only as work areas be constructed to permit maneuvering within the work area or be constructed or equipped (i.e., with racks or shelves) to be accessible.

Washington State Regulations

51-20-3152

TABLE NO. 31-B
REQUIRED TYPE A DWELLING UNITS

Total Number of Dwelling Units on Site	Required Number of Type A Dwelling Units
0-10	None
11-20	1
21-40	2
41-60	3
61-80	4
81-100	5
For every 20 units or fractional part thereof, over 100	1 additional

51-20-3101 (c) Maintenance of Facilities. Any building, facility, dwelling unit or site which is constructed to be accessible or adaptable under this chapter shall be maintained accessible and/or adaptable during its occupancy.

See Occupancy Groups above.

Commentary

PNE The language above implies all areas are to be accessible in most occupancies, but in some occupancies it is specific (i.e., "paved work areas" in agricultural buildings). We need clarification regarding employee areas.

ADA Requirements

4.1.1 (4) Temporary Structures. These guidelines cover temporary buildings or facilities as well as permanent facilities.
Temporary buildings and facilities are not of permanent construction but are of extensively used or are essential for public use for a period of time. Examples of temporary buildings or facilities covered by these guidelines include, but are not limited to: reviewing stands, temporary classrooms, bleacher areas, exhibit areas, temporary banking facilities, temporary health screening services, or temporary safe pedestrian passageways around construction sites. Structures, sites and equipment directly associated with the actual processes of construction, such as
scaffolding, bridging, material hoists, or construction trailers are not included.

Washington State Regulations

51-20-3103 Building Accessibility (a) Where required. 1. General. Accessibility to temporary or permanent buildings or portions thereof shall be provided for all occupancy classifications except as modified by this chapter. See also Appendix Chapter 31.
51-20-3103 (a) 1. EXCEPTION 3. Temporary structures, sites and equipment directly associated with the construction process such as construction site trailers, scaffolding, bridging or material hoists are not required to be accessible.

51-20-0104 (e) Moved Buildings and Temporary Buildings. Buildings or structures moved into or within the jurisdiction shall comply with the provisions of this code for new buildings or structures.

Temporary structures such as reviewing stands and other miscellaneous structures, sheds, canopies or fences used for the protection of the public around and in conjunction with construction work may be erected by special permit from the building official for a limited period of time. Such buildings or structures need not comply with the type of construction or fire-resistive time periods required by this code. Temporary buildings or structures shall be completely removed upon the expiration of the time limit stated in the permit.

Commentary

PNE Two concerns exist. WSR appears to exempt reviewing stands and temporary safe pedestrian walkways around a building site. We need an interpretation as to whether 51-20-0104(e) applies here. If so, WSR does not appear to be equivalent.

ADA Requirements

4.1.1 (5) General Exceptions.

(a) In new construction, a person or entity is not required to meet fully the requirements of these guidelines where that person or entity can demonstrate that it is structurally impracticable to do so. Full compliance will be considered structurally impracticable only in those rare circumstances when the unique characteristics of terrain prevent the incorporation of accessibility features. If full compliance with the requirements of these guidelines is structurally impracticable, a person or entity shall comply with the requirements to the extent it is not structurally impracticable. Any portion of the building or facility which can be made accessible shall comply to the extent that it is not structurally impracticable.

4.1.1 (5) (b) Accessibility is not required to (i) observation galleries used primarily for security purposes; or (ii) in non-occupiable spaces accessed only by ladders, catwalks, crawl spaces, very narrow passageways, or freight (non-passenger) elevators, and frequented only by service personnel for repair purposes; such spaces include, but are not limited to, elevator pits, elevator penthouses, piping or equipment catwalks.

Washington State Regulations

51-20-3101 (e) Modifications. Where full compliance with this chapter is impractical due to unique characteristics of the terrain, the building official may grant modifications in accordance with Section 106, provided that any portion of the building or structure that can be made accessible shall be made accessible to the greatest extent practical.

51-20-3103 (a) 1. EXCEPTIONS: 2. In other than Group B.

Occupancies; Group B, Division 2 retail Occupancies; terminals, depots and other stations used for transportation; buildings owned or operated by a government agency; and the professional offices of health care providers, floors above and below fully accessible levels that have areas less than 3000 square feet per floor, need not be accessible provided that the primary entry level provides facilities as required by Section 3105 equivalent to those located on the nonaccessible levels.
51-20-3103 (b) 2. EXCEPTION: For sites where natural terrain or other unusual property characteristics do not allow the provision of an accessible route of travel from the public way to the building, the point of vehicular debarkation may be substituted for the accessible entrance to the site.

51-20-3105 (a) General. . . Where specific floors of a building are required to be accessible, the requirements shall apply only to the facilities located on accessible floors.

51-20-3103 (a) 1. EXCEPTIONS: 1. Floors or portions of floors not customarily occupied, including, but not limited to, elevator pits, observation galleries used primarily for security purposes, elevator penthouses, nonoccupiable spaces accessed only by ladders, catwalks, crawl spaces, very narrow passageways, or freight elevators, piping and equipment catwalks and machinery, mechanical and electrical equipment rooms.

Commentary

NE Standards under ADAAG and WSR are not the same. A general exception to all accessibility provisions is allowed for floors with less than 3,000 square feet per floor above and below the accessible level in most occupancies. The elevator exception was expanded. This provision is restated in 51-20-3105(a) General.

NE WSR uses the term "impractical" rather than the more restrictive term, "impracticable," used in the ADA regulations.

NE The use of "not customarily occupied" and use of other exceptions as examples appears to expand this exception. Example: A basement used for storage, if "occupiable," would be a story under ADAAG. Further, the use of machinery, mechanical and electrical equipment rooms as example expands the exception to include spaces not exempt under ADA. Clarification of this provision is needed.

ADA Requirements

4.1.2 (3) All objects that protrude from surfaces or posts into circulation paths shall comply with 4.4.

4.1.2 (4) Ground surfaces along accessible routes and in accessible spaces shall comply with 4.5.

4.1.2 (5) (a) If parking spaces are provided for self-parking by employees or visitors, or both, then accessible spaces complying with 4.6 shall be provided in each such parking area in conformance with the table below. Spaces required by the table need not be provided in the particular lot. They may be provided in a different location if equivalent or greater accessibility in terms of distance from an accessible entrance, cost and convenience is ensured.

TOTAL PARKING IN LOT	REQUIRED MINIMUM NUMBER OF ACCESSIBLE SPACES
1 to 25	1
26 to 50	2
51 to 75	3
76 to 100	4
101 to 150	5
151 to 200	6
201 to 300	7
301 to 400	8
401 to 500	9
501 to 1000	2 percent of total
1001 and over	20, plus 1 for each 100 over 1000

Except as provided in (b), access aisles adjacent to accessible spaces shall be 60 inches (1525 mm) wide minimum.

Washington State Regulations

51-20-3106 (e) Protruding Objects. Protruding objects shall not reduce the clear width of an accessible route of travel or maneuvering space. Any wall- or post-mounted object with its leading edge between 27 inches and 79 inches above the floor may project not more than 4 inches into the required

width within a corridor. Any wall-or post-mounted projection greater than 4 inches shall extend to the floor. Protruding objects shall not reduce the clear width of an accessible route of travel or maneuvering space.

51-20-3106 (d) 5. A. General. All floor and ground surfaces in an accessible route of travel shall comply with 3106 (q).

51-20-3103(a)9. Other Parking Facilities. Principal use parking facilities which are not accessory to the use of any building or structure shall provide accessible spaces in accordance with Table No. 31-F.

51-20-3107 Parking Facilities. Section 3107 (a) Accessible Parking Required. For other than Group R, Division 1 apartment buildings, when parking lots or garage facilities are provided, accessible parking spaces shall be provided in accordance with Table No. 31-F.

Table 31-F

TOTAL PARKING IN LOT	REQUIRED MINIMUM NUMBER OF ACCESSIBLE SPACES
1 to 25	1
26 to 50	2
51 to 75	3
76 to 100	4
101 to 150	5
151 to 200	6
201 to 300	7
301 to 400	8
401 to 500	9
501 to 999	2 percent of total
Over 1000	20, plus 1 space for every 100 spaces or fraction thereof, over 1000.

Commentary

21 ADA/Washington State May 14, 1993 Technical Assistance Document

ADA Requirements

4.1.2 (5) (b) One in every eight accessible spaces, but not less than one, shall be served by an access aisle 96 in (2440 mm)

wide minimum and shall be designated "van accessible" as required by 4,6.4. The vertical clearance at such spaces shall comply with 4.6.5. All such spaces may be grouped on one level of a parking structure.

EXCEPTION: Provision of all required parking spaces in conformance with 'Universal Parking Design' (see appendix A4.6.3) is permitted.

4.1.2 (5) (c) If passenger loading zones are provided, then at least
one passenger loading zone shall comply with 4.6.6.

4.1.2 (5) (d) At facilities providing medical care and other services for persons with mobility impairments, parking spaces complying with 4.6 shall be provided in accordance with 4.1,2(5)la) except as follows:

(i) Outpatient units and facilities: 10 percent of the total number of parking spaces provided serving each such unit outpatient
unit or facility.

(ii) Units and facilities that specialize in treatment or services
for persons with mobility impairments: 20 percent of the total number of parking spaces provided serving each such unit or facility.

4.1.2 (5) (e)* Valet parking: Valet parking facilities shall provide a
passenger loading zone complying with 4.6.6 located on an accessible route to the entrance of the facility. Paragraphs 5(a), 5(b), and 5(d) of this section do not apply to valet parking.

Washington State Regulations

51-20-3107 (a) ... In addition, one in every eight accessible parking spaces, but in no case less than one, shall comply with the van parking space requirements in Section 3107 (b).

51-20-3107 (b) 2. Van accessible parking spaces shall have an adjacent access aisle not less than 96 inches in width.

51-20-3108 (a) Passenger Drop-Off and Loading Zones. (a) Location. Where provided, passenger drop-off and loading zones shall be located on an accessible route of travel (and

comply with accessible design requirements).

51-20-3107 (a) accessible Parking Required .... For Group 1, Division 1.1, 1.2 and 2 medical care Occupancies specializing in the treatment of persons with mobility impairments, 20 percent of parking spaces provided accessory to such occupancies shall be accessible.

51-20-3103 (a) 9. Other Parking Facilities. Principal use parking facilities which are not accessory to the use of any building or structure shall provide accessible spaces in accordance with Table No. 31-F.

Commentary

NE WSR does not address 10% accessible parking required at outpatient facilities.

ADA Requirements

4.1.2 (6) If toilet facilities are provided on a site, then each such public or common use toilet facility shall comply with 4,22. If bathing facilities are provided on a site, then each such public or common use bathing facility shall comply with 4.23.

For single user portable toilet or bathing units clustered at a single location, at least 5% but no less than one toilet unit or bathing unit complying with 4.22 or 4.23 shall be installed at each cluster whenever typical inaccessible units are provided. Accessible units shall be identified by the International Symbol of Accessibility. EXCEPTION: Portable toilet units at construction sites used exclusively by construction personnel are not required to comply with 4.1.2(6).

Washington State Regulations

51-20-3106 (k) 1. General. Bathrooms, toilet rooms, bathing facilities and shower rooms shall be designed in accordance with this section. (3106).

Commentary

PNE It is not clear whether portable toilets are covered under temporary buildings, If not, they are not covered. An

interpretation is needed.

ADA Requirements

4.1.2 (7) Building Signage. Signs which designate permanent rooms and spaces shall comply with 4.30.1, 4.30.4, 4.30.5 and 4.30.6. Other signs which provide direction to, or information about, functional spaces of the building shall comply with 4.30.1, 4.30.2, 4.30.3, and 4.30.5.

Elements and spaces of accessible facilities which shall be identified by the International Symbol of Accessibility and which shall comply with 4.30.7 are:

4.1.2 (7) (a) Parking spaces designated as reserved for individuals
with disabilities;

4.1.2 (7) (b) Accessible passenger loading zones;

4.1.2 (7) (c) Accessible entrances when not all are accessible (inaccessible entrances shall have directional signage to indicate the route to the nearest accessible entrance);

4.1.2 (7) (d) Accessible toilet and bathing facilities when not all are accessible.

Washington State Regulations

51-20-3103 (b) 4. Signs. A. International Symbol of Access. The following elements and spaces of accessible facilities shall be identified by the International Symbol of Access:
1. Accessible parking spaces
2. Accessible entrances when not all entrances are accessible (inaccessible entrances shall have directional signage to indicate the route to the nearest accessible entrance)
EXCEPTION: Individual entries into dwelling units.
3. Accessible passenger loading zone(s)
4. Accessible toilet and bathing facilities when not all are accessible.
EXCEPTION: Toilet and bathing facilities within dwelling units, patient rooms and guest rooms.

At every major junction along or leading to an exterior accessible route of travel, there shall be a sign displaying the International Symbol of Accessibility. Signage shall indicate the direction to accessible entries and facilities.

B. Other Signs. Where provided, permanent signs which identify rooms and spaces shall comply with Sections 3106 (p) 2, 3, and 5. Where provided, other signs which provide direction to or information about the building or portion of a building shall comply with Section 3106 (p) 3 and 4. EXCEPTION: Building directories and all temporary signs.

In hotels and lodging houses, a list of accessible guest rooms shall be posted permanently in a location not visible to the general public, for staff use at each reception or check-in desk.

In assembly areas, a sign notifying the general public of the availability of accessible seating and assistive listening systems shall be provided at ticket offices or similar locations.

Commentary

ADA Requirements

4.1.3 Accessible Buildings New Construction. Accessible buildings and facilities shall meet the following minimum requirements:

(1) At least one accessible route complying with 4.3 shall connect accessible building or facility entrances with all accessible spaces and elements within the building facility.

4.1.3 (2) All objects that overhang or protrude into circulation paths shall comply with 4.4.

4.1.4 (3) Ground and floor surfaces along accessible routes and in accessible rooms and spaces shall comply with 4.5.

4.1.3 (4) Interior and exterior stairs connecting levels that are not connected by an elevator, ramp, or other accessible means of vertical access shall comply with 4.9.

51-20-3106 Accessible Design and Construction Standards. (a) General. Where accessibility is required by this chapter, it shall be designed and constructed in accordance with this section, unless otherwise specified in this chapter.

51-20-3103 (b) 2. Accessible Route of travel. When a building or portion of a building is required to be accessible, an accessible route of travel shall be provided to all portions of the building, to accessible building entrances an connecting the building and the public way. Except within and accessible dwelling unit, the accessible route of travel to areas of primary function may serve but shall not pass through kitchens, storage rooms, toilet rooms, bathrooms, closets or other similar spaces. Accessible routes of travel serving any accessible space element shall also serve as a means of egress for emergencies or connect to an area of evacuation assistance....

51-20-3106 (e) Protruding Objects. Protruding objects shall not reduce the clear width of an accessible route of travel or maneuvering space. Any wall- or post-mounted object with its leading edge between 27 inches and 79 inches above the floor may project not more than 4 inches into the required width within a corridor. Any wall-or post-mounted projection greater than 4 inches shall extend to the floor. Protruding objects shall not reduce the clear width of an accessible route of travel or maneuvering space.

51-20-3106 (d) 5. A. General. All floor and ground surfaces in an accessible route of travel shall comply with Section 3106 (q).

51-20-3306 Stairways. (a) General. Every stairway having two or more risers serving any building of portion thereof shall conform to the requirements of this section. When aisles in assembly rooms have steps, they shall conform with the provisions in Section 3315.

51-20-3106 (i) Stairways. 1. General. Stairways required to be accessible shall comply with section 3306 and provisions of this section.

Commentary

PNE Although WSR appears to apply some provisions to all steps allowed in building code (single risers are not allowed),

there is no specific scoping to trigger the requirements contained in 3106 (i).

ADA Requirements

4.1.3 (5)* One passenger elevator complying with 4.10 shall serve each level, including mezzanines, in all multi-story buildings and facilities unless exempted below. If more than one elevator is provided, each full passenger elevator shall comply with 4.10.

EXCEPTION 1. Elevators are not required in facilities that are less than three stories or that have less than 3000 square feet per story unless the building is a shopping center, a shopping mall, or the professional office of a health care provider, or another type of facility as determined by the Attorney General. The elevator exemption set forth in this paragraph does not obviate or limit in any way the obligation to comply with the other accessibility requirements established in section 4.1.3. For example, floors above or below the accessible ground floor must meet the requirements of this section except for elevator service. If toilet or bathing facilities are provided on a level not served by an elevator, then toilet or bathing facilities must be provided on the accessible ground floor. In new construction if a building or facility is eligible for this exemption but a full passenger elevator is nonetheless planned, that elevator shall meet the requirements of 4.10 and shall serve each level in the building. A full passenger elevator that provides service from a garage to only one level of a building or facility is not required to serve other levels.

EXCEPTION 2: Elevator pits, elevator penthouses, mechanical rooms, piping or equipment catwalks are exempted from this requirement.

EXCEPTION 3: Accessible ramps complying with 4.8 may be used in lieu of an elevator.

Washington State Regulations

51-20-3105 (c) Elevators. 1. Where Required. In multi-story buildings or portions thereof required to be accessible by Section 3103, at least one elevator shall serve each level, including mezzanines. Other than within an individual dwelling unit, when an elevator is provided but not required, it shall be accessible.

EXCEPTIONS: 1. In Group R. Division 1 apartment occupancies, an elevator is not required where accessible dwelling units and guest rooms are accessible by ramp or by grade level route of travel.
2. In a building of fewer than three stories an elevator is not required where ramps, grade-level entrances or accessible horizontal exits from an adjacent building, are provided to each floor.
3. In multistory parking garages, an elevator is not required where an accessible route of travel is provided from accessible parking spaces on levels with accessible horizontal connections to the primary building served.
4. In Group R, Division 1 hotels and lodging houses less than 3 stories in height, an elevator is not required provided that accessible guest rooms are provided on the ground floor.

51-20-3103 (a) 1. EXCEPTION 2. In other than Group R Occupancies; Group B, Division 2 retail Occupancies; terminals, depots and other stations used for transportation; buildings owned or operated by a government agency; and the professional offices of health care providers, floors above and below fully accessible levels that have areas of less than 3000 square feet per floor, need not be accessible provided that the primary entry level provides facilities as required by Section 3105 equivalent to those located on the nonaccessible levels.

Commentary

NE Problem #1 Scoping - Elevator exception is expanded to become a general exception to access provisions on floors with less than 3,000 square feet. However, except for this one problem, WSR's elevator exception is more restrictive because it does not apply to two story buildings with unlimited floor space as does ADAAG.

Problem #2 Design - Design requirements are not available for review.

ADA Requirements

4.1.3 (5)* Continued.

EXCEPTION 4: Platform lifts (wheelchair lifts) complying with 4.11 of this guideline and applicable state or local codes may be used in lieu of an elevator under the following conditions:

(a) To provide an accessible route to a performing area in an assembly occupancy.

(b) To comply with the wheelchair viewing position line-of-sight and dispersion requirements of 4.33.3.

(c) To provide access to incidental occupiable spaces and Rooms which are not open to the general public and which house No more than five person, including but not limited to equipment Control rooms and projection booths.

(d) To provide access where existing site constraints or other constraints make use of a ramp or an elevator infeasible.

4.1.3 (6) Windows (Reserved).

Washington State Regulations

51-20-3105 (c) 2. Design. All elevators shall be accessible.

EXCEPTIONS: 1. Private elevators serving only one dwelling unit.
2. Where more than one elevator is provided in the building, elevators used exclusively for movement of freight.

51-20-3105 (c) 2....Elevators required to be accessible shall be designed and constructed to comply with Chapter 296-81 of the Washington Administrative Code.

51-20-3105 (c) 3. Platform Lifts. Platform lifts may be used in lieu of an elevator under one of the following conditions subject to approval by the building official:
1. (sic) To provide an accessible route of travel to a performing area in a Group A. Occupancy; or,
2. (sic) To provide unobstructed sight lines and distribution for wheelchair viewing positions in Group A Occupancies; or,
3. (sic) To provide access to spaces with an occupant load of less than 5; or
4. (sic) To provide access where existing site constraints or other constraints make use of a ramp or elevator infeasible.

All platform lifts used in lieu of an elevator shall be capable of
independent operation and shall comply with Chapter 296-81

of the Washington Administrative Code.

Commentary

NE Design requirements are not available for review.

NE WSR does not restrict use of a lift to areas with an occupant load of less than 5 that are not open to the public.

NE Design requirements are not available for review.

ADA Requirements

4.1.3 (7) Doors:

(a) At each accessible entrance to a building or facility, at least one door shall comply with 4.13.

4.1.3 (7) (b) Within a building or facility, at least one door at each accessible space shall comply with 4.13.

4.1.3.(7) (c) Each door that is an element of an accessible route shall comply with 4.13.

4.1.3 (7) (d) Each door required by 4.3.10, Egress, shall comply with 4.13.

4.1.3 (8) In new construction, at a minimum, the requirements in (a) and (b) below shall be satisfied independently:

(a) (i) At least 50% of all public entrances (excluding those in (b) below) must be accessible. At least one must be a ground floor entrance. Public entrances are any entrances that are not loading or service entrances.

(ii) Accessible entrances must be provided in a number at least equivalent to the number of exits required by the applicable building/fire codes. (This paragraph does not require an increase in the total number of entrances planned for a facility.)

(iii) An accessible entrance must be provided to each tenancy in a facility (for example, individual

stores in a strip shopping center).

One entrance may be considered as meeting more than one of the requirements in (a). Where feasible, accessible entrances shall be the entrances used by the majority of people visiting or working in the building.

Washington State Regulations

51-20-3304 Doors. (a) General. This section shall apply to every exit door serving an area having an occupant load of 10 or more, or serving hazardous rooms or areas, except that Subsection (c), (i), (j) and (k) shall apply to all exit doors regardless of occupant load. Buildings or structures used for human occupancy shall have at least one exterior exit door that meets the requirements of Subsection (f). Doors and landings at doors which are located within an accessible route of travel shall also comply with Chapter 31.

51-20-3103 (b) 3. Primary Entry Access. At least 50% of all public entries, or a number equal to the number of exits, required by Section 3303 (a), whichever is greater, shall be accessible. One of the accessible public entries shall be the primary entry to the building. At least one accessible entry must be ground floor entrance. Public entries do not include loading or service entries.

EXCEPTION: In Group R. Division 1 apartment buildings only the primary entry need to accessible, provided that the primary entry provides an accessible route of travel to all dwelling units required to be accessible.

51-20-3103 (b) 3. Where a building is designed not to have common or primary entries, the primary entry to each individual dwelling unit required to be accessible, and each individual tenant space, shall be accessible.

51-20-3103 (b) 3... One of the accessible public entries shall be the primary entry to a building. At least one accessible entry must be a ground floor entrance. Public entries do not include loading or service entries.

Commentary

PNE ADAAG does not allow the exception for apartment buildings, some of which may be used as transient lodging (i.e., short term condominium rentals and certain timeshare units). It is recognized that the majority of condominiums and

timeshare units will not be used as transient lodging.

ADA Requirements

4,1.3 (8)(b) (i) In addition, if direct access is provided for pedestrians from an enclosed parking garage to the building, at least one direct entrance from the garage to the building must be accessible.

(ii) If access is provided for pedestrians from a pedestrian tunnel or elevated walkway, one entrance to the building from each tunnel or walkway must be accessible.

One entrance may be considered as meeting more than one of the requirements in (b).

Because entrances also serve as emergency exits whose proximity to all parts of buildings and facilities is essential, it is preferable that all entrances be accessible.

4.1.3 (8) (c) If the only entrance to a building, or, tenancy in a facility, is a service entrance, that entrance shall be accessible.

4.1.3 (8) (d) Entrances which are not accessible shall have directional signage complying with 4.30.1. 4.30.2, 4.30.3 and 4.30.5, which indicates the location of the nearest accessible entrance.

Washington State Regulations

51-30-3103 (b) 2. . . . The accessible route of travel shall be the most practical direct route connecting accessible building entrances, accessible site facilities and the accessible site entrances.

51-20-3103 (b) 3. Primary Entry Access. . . . One of the accessible public entries shall be the primary entry to a building. At least one accessible entry must be a ground floor entrance. Public entries do not include loading or service entries.

51-20-3103 (b) 4. A. ...At every junction along or leading to an exterior accessible route of travel, there shall be a sign

displaying the International Symbol of Accessibility. Signage shall indicate the direction to accessible entries and facilities.

Commentary

NE No specific provisions requiring accessible entrances from tunnels, elevated walkways, or direct access to parking garages.

ADA Requirements

4.1.3 (9)* In buildings or facilities, or portions of buildings or facilities, required to be accessible, accessible means of egress shall be provided in the same number as required for exits by local building/life safety regulations. Where a required exit from an occupiable level above or below a level of accessible exit discharge is not accessible, an area of rescue assistance shall be provided on each such level (in a number equal to that of inaccessible required exits). Areas of rescue assistance shall comply with 4.3.11. A horizontal exit, meeting the requirements of local building/life safety regulations, shall satisfy the requirement for an area of rescue assistance.

EXCEPTION: Areas of rescue assistance are not required in buildings or facilities having a supervised automatic sprinkler system.

(10)* Drinking Fountains:

(a)Where only one drinking fountain is provided on a floor there shall be a drinking fountain which is accessible to individuals who use wheelchairs in accordance with 4.15 and one accessible to those who have difficulty bending or stooping. (This can be accommodated by the use of a "hi-lo" fountain; by providing one fountain accessible to those who use wheelchairs and one fountain at a standard height convenient for those who have difficulty bending; by providing a fountain accessible under 4.15 and a water cooler; or by such other means as would achieve the require accessibility for each group on each floor.)
4.1.3 (10) (b) Where more than one drinking fountain or water cooler is provided on a floor, 50% of those provided shall comply with 4.15 and shall be on an accessible route.

Washington State Regulations

51-20-3104 Egress and Areas for Evacuation Assistance. (a) General, In buildings or portions of buildings required to be accessible, means of egress shall be provided In the same number as required for exits by Chapter 33. When an exit required by Chapter 33 is not accessible, an area for evacuation assistance shall be provided.

EXCEPTION: Areas of evacuation assistance are not required in buildings where an approved, automatic fire-extinguishing system is installed in accordance with U.B.C. Standard No. 38-1, provided that quick-response sprinkler heads are used where allowed by the standard; and that a written fire- and life-safety emergency plan which specifically addresses the evacuation of persons with disabilities is approved by the building official and the fire chief.

Every area for evacuation assistance shall comply with the requirements of this code and shall adjoin an accessible route of travel which shall comply with Section 3106.

51-20-3105 (d) Other Building Components. 1. Water Fountains. On any floor where water fountains are provided, at least 50 percent, but in no case less than one fountain shall be accessible complying with Section 3106 (m) and at least one fountain shall be mounted at a standard height.

Commentary

30 ADA/Washington State May 14, 1993

Technical Assistance Document

ADA Requirements

4.1.3 (11) Toilet Facilities: If toilet rooms are provided, then each public and common use toilet room shall comply with 4.22. Other toilet rooms provided for the use of occupants of specific spaces (i.e., a private toilet room for the occupant of a private office) shall be adaptable. If bathing rooms are provided, then each public and common use bathroom shall comply with 4.23. Accessible toilet rooms and bathing facilities shall be on an accessible route.

4.1.3 (12) Storage, Shelving and Display Units:

(a) if fixed or built-in storage facilities such as cabinets,

shelves,
closets, and drawers are provided in accessible spaces, at least one of each type provided shall contain storage space complying with 4.25. Additional storage may be provided outside of the dimensions required by 4.25.
(b) Shelves or display units allowing self-service by customers in
mercantile occupancies shall be located on an accessible route complying with 4.3. Requirements for accessible reach range do not apply.

Washington State Regulations

51-20-3105 (b) Bathing and Toilet Facilities. 1. Bathing Facilities. When bathing facilities are provided, at least 2 percent but not less than 1, bathtub or shower shall be accessible. In dwelling units where both a bathtub and shower are provided in the same room, only one need be accessible.
51-20-3105 (b) 2. Toilet Facilities. Toilet facilities located within accessible dwelling units, guest rooms and congregate residences shall comply with Sections 3106 (k) and 3106 (aa).
In each toilet facility in other occupancies, at least one wheelchair accessible toilet stall with an accessible water closet shall be provided. In addition, when there are 6 or more water closets within a toilet facility, at least one other accessible toilet stall complying with Section 3106 (k) 4, also shall be installed.
51-20-3105 (b) 3. Lavatories, Mirrors and Towel Fixtures. At least one accessible lavatory shall be provided within any toilet facility. Where mirrors, towel fixtures and other toilet and bathroom accessories are provided, at least one of each shall be accessible.

51-20-3106 (k) 1. General. Bathrooms, toilet rooms, bathing facilities and shower rooms shall be designed in accordance with this section. For dwelling units see also Section 3106 (aa).

51-20-3105 (d) 6. Storage, Shelving and Display Units. In other than Group R, Division 1 apartment buildings, where fixed or built-in storage facilities such as cabinets, shelves closets and drawers are provided in accessible spaces, at least one of each type provided shall contain storage space complying with Section 3106 (r).
Self-service shelves or display units in retail occupancies shall be located on an accessible route in accordance with Section

3103 (b) 2.

Commentary

PNE Several questions arise based on scoping language:
1. Do all "bathrooms" have to be accessible with 2% accessible tubs or showers?
2. What about toilets not in stalls and single user toilet rooms?

PNE The exception limits access in apartment buildings, some of which may be used as public accommodations/ transient lodging.

ADA Requirements

4.1.3 (13) Controls and operating mechanisms in accessible spaces, along accessible routes, or as parts of accessible elements (for example, light switches and dispenser controls) shall comply with 4.27.

4.1.3 (14) If emergency warning systems are provided, then they shall include both audible alarms and visual alarms complying with 4.28. Sleeping accommodations required to comply with 9.3 shall have an alarm system complying with 4.28. Emergency warning systems in medical care facilities may be modified to suit standard health care alarm design practice.

4.1.3 (15) Detectable warnings shall be provided at locations as specified in 4.29.

Washington State Regulations

51-20-3105 (d) 8. Controls, Operating Mechanisms and Hardware. Controls, operating mechanisms and hardware, including switches that control lighting and ventilation and electrical convenience outlets, in accessible spaces, along accessible routes, or as parts of accessible elements shall comply with Section 3106 (c).

51-20-3105 (d) 9. Alarms. Alarm systems where provided, shall include both audible and visible alarms. The alarm devices shall be located in all sleeping accommodations and common-use areas including toilet rooms and bathing facilities, hallways, and lobbies.

EXCEPTIONS: 1. Alarm systems in Group 1, Division 1.1 and 1.2 Occupancies may be modified to suit standard health care design practice.
2. Visible alarms are not required in Group R, Division 1 apartment buildings.

51-20-3106 (d) 5.B Detectable Warnings. Curb ramps shall have detectable warnings complying with Section 3106 (g) Detectable warnings halls extend the full width and depth of the curb ramp.

51-20-3106 (d) 9. Vehicular Areas. Where an accessible route of travel crosses of adjoins a vehicular way, and where there are no curbs, railings or other elements, detectable by a person who has a severe vision impairment, separating the pedestrian and vehicular areas, the boundary between the areas shall be defined by a continuous detectable warning not less than 36 inches wide, complying with Section 3106 (g).

Commentary

PNE The exception for apartment buildings would apply to some facilities that are used as transient lodging.

PNE Both of these sections appear to reference 3106 (g) which is floor coverings and surface treatments. Detectable warnings as "truncated domes" is 3106 (q).

ADA Requirements

4.1.3. (13) Building Signage:

(a) Signs which designate permanent rooms and spaces shall comply with 4.30.1, 4.30.4, 4.30.5 and 4.30.6.
(b) Other signs which provide direction to or information about functional spaces of the building shall comply with 4.30.1, 4.30.2, 4.30.3, and 4.30.5.

EXCEPTION: Building directories, menus, and all other signs which are temporary are not required to comply.

Washington State Regulations

51-20-3103 (b) 4. B. Other Signs. Where provided,

permanent signs which identify rooms and spaces shall comply with Section 3106 (p) 2, 3, and 5. Where provided, other signs which provide direction to or information about the building or portion of a building shall comply with Section 3106 (p) 3 and 4.

EXCEPTION: Building directories and all temporary signs. . . .

Commentary

ADA/Washington Sate May 14, 1993

33 Technical Assistance Document

ADA Requirements

4.1.3 (17) Public Telephones:

(a) If public pay telephones, public closed circuit telephones, or other public telephones are provided, then they shall comply with 4.31.2 through 3.31.8 to the extent required by the following table:

Number of each type of telephone provided on each floor	Number of telephones required to comply with 4.31.2 through 4.31.8 1
1 or more single unit	1 per floor
1 bank2	1 per floor
2 or more banks2	1 per bank. Accessible unit may be installed as a single unit in proximity (either visible or with signage) to the bank. At least one public telephone per floor shall meet the requirements for a forward reach telephone3.

1 Additional public telephones may be installed at any height. Unless otherwise specified, accessible telephones may be either forward or side reach telephones.

2 A bank consists of two or more adjacent public telephones, often installed as a unit.

3 EXCEPTION: For exterior installations only, if dial tone first service is available, then a side reach telephone may be installed I instead of the required forward reach telephone (i.e., one

telephone in proximity to each bank shall comply with 4.31).

4.1.3 (17) (b)* All telephones required to be accessible and complying with 4.31.2. through 4.31.8 shall be equipped with a volume control. In addition, 25 percent, but never less than one, of all other public telephones provided shall be equipped with a volume control and shall be dispersed among all types of public telephones, including closed circuit telephones, through out the building or facility. Signage complying with applicable provisions of 4.30.7 shall be provided.

Washington State Regulations

51-20-3105 (d) 2. Telephones. On any floor where public telephones are provided at least one telephone shall be accessible. On any floor where 2 or more banks of multiple telephones are provided, at least one telephone in each bank shall be accessible and at lease one telephone per floor shall be designed to allow forward reach complying with Section 3106 . . .

51-20-3105 (d) 2. . . . All accessible telephones and at least 25 percent of all other public telephones, but in no case less than one, shall be provided with volume controls in accordance with Section 3106 (n) and shall be dispersed among the public telephones provided in the building.

Commentary

PNE There is a question as to use of the term "public" by WSR. Does it include closed circuit phones?

ADA Requirements

4.1.3 (17)(C) The following shall be provided in accordance with 4.31.9:

(i) if a total number of four or more public pay telephones (including both interior and exterior phones) is provided at a site, and at least one is in an interior location, then at least one interior public text telephone shall be provided.

(ii) if an interior public pay telephone is provided in a stadium or

arena, in a convention center, in a hotel with a convention center, or in a covered mall, at least one interior public text telephone shall be provided in the facility.

(iii) if a public pay telephone is located in or adjacent to a hospital emergency room, hospital recovery room, or hospital waiting room, one public text telephone shall be provided at each such location.

4.1.3 (17)(d) Where a bank of telephones in the interior of a building consists of three or more public pay telephones, at least one public pay telephone in each such bank shall be equipped with a shelf and outlet in compliance with 4.31.9 (2).

4.1.3 (18) If fixed or built-in seating or tables (including, but not limited to, study carrels and student laboratory stations), are provided in accessible public or common use areas, at least five percent (5%) but not less than one, of the fixed or built-in seating areas or tables shall comply with 4.32. An accessible route shall lead to and through such fixed or built-in seating areas, or tables.

Washington State Regulations

51-20-3105 (d) 2. . . . Where four or more public pay telephones are provided at a building site, and at least one is in an interior location, at least one interior telephone shall be a text telephone in accordance with Section 3106 (n).

51-20-31-5 (d) 32. . . . Where interior public pay phones are provided in transportation facilities; assembly and similar areas including stadiums and arenas, convention centers, hotels with convention facilities or covered malls; or adjacent to hospital emergency, recovery, or waiting rooms; at least one interior text telephone shall be provided.

51-20-3105 (d) 2. . . . Where any bank of public telephones consists of 1 or more telephones, at lease one telephone in each bank shall be equipped with a shelf and an electrical outlet complying with 3106 (n) 7.

51-20-3105 (d) 5. Fixed or Built-in Seating or Tables. Where fixed or built-in seating or tables are provided at least 5 percent, but no fewer than two, shall be accessible. Accessible fixed or built-in seating or tables shall comply with Section 3106 (s). In eating and drinking establishments, such seating or tables shall be distributed throughout the facility.

Commentary

ADA/Washington State May 14, 1993

35 Technical Assistance Document

ADA Requirements

4.1.3 (19)* Assembly areas:

(a) In places of assembly with fixed seating accessible wheelchair
locations shall comply with 4.33.2, 4.33.3, and 4.33.4 and shall be provided consistent with the following table:

Capacity of Seating in Assembly Areas	Number of Required Wheel chair Locations
4 to 25	1
26 to 50	2
51 to 300	4
301 to 500	6
over 500	6, plus 1 additional space for each total seating capacity increase of 100

In addition, one percent, but not less than one, of all fixed seats shall be aisle seats with no armrests on the aisle side, or removable or folding armrests on the aisle side. Each such seat shall be identified by a sign or marker. Signage notifying patrons of the availability of such seats shall be posted at the ticket office. Aisle seats are not required to comply with 4.33.4.

Washington State Regulations

51-20-3103 (a) 2. A. . . . Stadiums, theaters, auditoriums and similar occupancies shall provide wheelchair spaces in accordance with Table No. 31-A. Removable seats shall be permitted in the wheelchair spaces.

In addition, one percent, but not less than one, of all fixed seats shall be aisle seats with no armrests, or removable or folding armrests on the aisle side. Each such seat shall be identified by a sign complying with Section 3106 (p) 1.A.

Table 31-A

Capacity of Seating In Assembly Areas	Number of Required Wheelchair Spaces

4 to 25	1
26 to 50	2
51 to 300	4
301 to 500	6
over 500	6, plus 1 for each 100 over 500

51-20-3103 (b) 4. B. . . . In assembly areas, a sign notifying the general public of the availability of accessible seating and assistive listening systems shall be provided at ticket offices or similar locations.

Commentary

ADA/Washington State May 14, 1993
36 Technical Assistance Document
ADA Requirements

4.1.3 (19) (b) This paragraph applies to assembly areas where audible communications are integral to the use of the space (e.g., concert and lecture halls, playhouses and movie theaters, meeting rooms, etc.). Such assembly areas, if (1) they accommodate at least 50 persons, or if they have audio-amplification systems, and (2) they have fixed seating, shall have a permanently installed assistive listening system complying with 4.33. For other assembly areas, a permanently installed assistive listening system, or an adequate number of electrical outlets or other supplementary wiring necessary to support a portable assistive listening system shall be provided. The minimum number of receivers to be provided shall be equal to 4 percent of the total number of seats, but in no case less than two. Signage complying with applicable provisions of 4.30 shall be installed to notify patrons of the availability of a listening system.

4.1.3 (20) Where automated teller machines (ATMs) are provided, each ATM shall comply with the requirements of 4.34 except where two or more are provided at a location, then only one must comply.

EXCEPTION: Drive-up-only automated teller machines are not required to comply with 4.27.2, 4.27.3 and 4.34.3.

4.1.3 (21) Where dressing and fitting rooms are provided for use by the general public, patients customers or employees, 5 percent, but never less than one, of dressing rooms for each type of use in each cluster of dressing rooms shall be accessible and shall comply with 4.35.

Examples of types of dressing rooms are those serving different genders or distinct and different functions as in different treatment or examination facilities.

4.1.4 (Reserved).

Washington State Regulations

51-20-3103 (a) 2.B. Assistive Listening Devices. Assistive listening systems complying with Section 3106 (u) 3 shall be installed in assembly areas where audible communications are integral to the use of the space including stadiums, theaters, auditoriums, lecture halls, and similar areas; where fixed seats are provided; as follows;

1. Areas with an occupant load of 50 or more.
2. Areas where an audio-amplification system is installed.
Receivers for assistive-listening devices shall be provided at a rate of 4 percent of the total number of seats, but in no case fewer than two devices. In other assembly areas, where permanently installed assistive-listening systems are not provided, electrical outlets shall be provided at a rate of not less than 4 percent of the total occupant load.
Signage complying with Section 3106 (p) shall be installed to notify patrons of the availability of the listening system.

51-20-3105 (d) 7. A. Customer Service Facilities. A. Dressing and Fitting Rooms. Where dressing or fitting rooms are provided for use by the general public, patients, customers or employees, 5 percent, but not less than one in each group of rooms serving distinct and different functions shall be accessible in accordance with Section 3106 (x).

Commentary

PNE The definition of assembly area applies to spaces of 50 or more capacity. Also, electrical outlets are needed for the transmitting device not he receiver.

NE

ADA Requirements

4.1.5 Accessible Buildings: Additions. Each addition to an existing

building or facility shall be regarded as an alteration. Each space or element added to the existing building or facility shall comply with the applicable provisions of 4.1.1 to 4.1.3, Minimum Requirements (for New Construction) and the applicable technical specifications of 4.2 through 4.35 and Section 5 through 10. Each addition that affects or could affect the usability of an area containing a primary function shall comply with 4.1.6(2).

Washington State Regulations

51-23105 (d) 4. Swimming Pools. Where common or public sue swimming pools, hot tubs, spas and similar facilities are provided, they shall be accessible. Swimming pools shall be accessible by transfer tier, hydraulic chair, ramp or other means. Hot tubs and spas shall be accessible only to the edge of the facility.

51-20-3111 Additions. New additions may be made to existing buildings without making the entire building comply, provided the new additions conform to the provisions of Part II of this chapter except as follows:
1. Entries. Where a new addition to a building or facility does not have an accessible entry, at least one entry in the existing building or facility shall be accessible.
2. Accessible Route. Where the only accessible entry to the addition is located in the existing building or facility, at least
one accessible route of travel shall be provided through the existing building or facility to all rooms, elements and spaces in the new addition which are required to be accessible.
3. Toilet and Bathing Facilities. Where there are no toilet rooms and bathing facilities in an addition and these facilities are provided in the existing building, then at least one toilet and bathing facility in the existing facility shall comply with Section 3106 or with Section 3112 (c) 5.
4. Group I Occupancies. Where patient rooms are added to an existing Group I Occupancy, a percentage of the additional rooms equal to the requirement of Section 3103 (a) 6., but in no case more than the total number of rooms required by Section 3103 (a) 6. Shall comply with Section 3106 (w). where toilet or bath facilities are part of the accessible rooms, they shall comply with Section 3106 (k).
5. Group R, Division 1 Apartment Buildings. Additions of 3 or fewer dwelling units in Group R, Division 1 apartment buildings need not comply with Part I of this chapter.
where an addition affects the access to or use of an area of primary function, to the maximum extent feasible, the path of travel to the area of primary function shall be made

accessible.

Commentary

PNE A problem exists with the exemption for apartment buildings.

ADA Requirements

4.1.6 Accessible Building: Alterations.
(1)General. Alterations to existing buildings and facilities shall comply with the following;

(1) (a) No alteration shall be undertaken which decreases or has the effect of decreasing accessibility or usability of a building or facility below the requirements for new construction at the time of alteration.

(1) (b) If existing elements, spaces, or common areas are altered, then each such altered element, space, feature, or area shall comply with the applicable provisions of 4.1.1 to 4.1.3 Minimum Requirements (for New Construction). If the applicable provision for new construction requires that an element, space, or common area be on an accessible route, the altered element, space, or common area is not required to be on an accessible route except as provided in 4.1.6(2) (Alterations to an Area Containing a Primary Function).

Washington State Regulations

51-20-3110 Alteration is any change, addition or modification in construction or occupancy.

51-20-3112 Alterations. (a) General. 1. Compliance alterations to existing buildings or facilities shall comply with this Section. NO alteration shall reduce or have the effect of reducing accessibility or usability of a building, portion of a building or facility. If compliance with this section is technically infeasible, the alteration shall provide accessibility
to the maximum extent feasible. 51-20-3112 (a) 1. EXCEPTION: Except when substantial as defined by Section 3110, alterations to Group R, Division 1 apartment buildings need not comply with this section.

51-20-0104 Application to Existing Buildings and Structures.
(a) General. Buildings and structures to which additions, alterations or repairs are made shall comply with all the requirements of this code for new facilities except as specifically provided in this section. See Section 1210 for provisions requiring installation of smoke detectors in existing Group R, Division 3 Occupancies.

(b) Additions, Alterations or Repairs. Additions, alterations or repairs may be made to any building or structure without requiring the existing building or structure to comply with all the requirements to this code, provided the addition, alteration or repair conforms to that required for a new building or structure. Additions or alterations shall not be made to an existing building or structure which will cause the existing building or structure to be in violation of any of the provisions of this code nor shall such additions or alterations cause the existing building or structure to become unsafe . . .

(c) Any change in the use or occupancy of any existing building or structure shall comply with the provisions of Section 308 and 502 of this code.
For existing buildings, see Appendix Chapter 1.

Commentary

PNE The exemption to alteration requirements for apartments may be used by entities which operate certain types of transient lodging (i.e., short term rental condominiums and certain timeshare units).

ADA Requirements

4.1.6, Continued.

(1) (c) If alterations of single elements, when considered together, amount to an alteration of a room or space in a building or facility, the entire space shall be made accessible.

(d) No alteration of an existing element, space, or area of a building or facility shall impose a requirement for greater accessibility than that which would be required for new construction. For example, if the elevators and stairs in a building are being altered and the elevators are in turn, being made accessible, then no accessibility modifications are required to

the stairs connecting levels connected by the elevator. If stair modifications to correct unsafe conditions are required by other codes, the modification shall be done in compliance with these guidelines unless technically infeasible.

Washington State Regulations

51-20-3112 (a) 2. Existing Elements. If existing elements, spaces, essential features or common areas are altered, each such altered element, space feature or area shall comply with the applicable provisions of Part II of this Chapter. Where an extent feasible, the path of travel to the altered area shall be made accessible. See also Appendix Chapter 31 Division II. EXCEPTION 1. Accessible route of travel need not be Provided to altered elements, spaces or common areas which Are not areas of primary functions.

51-20-3112 (a) 4. Other Requirements. A. Where alterations of single elements, when considered together, amount to an alteration of a room or space in a building or facility, the entire area or space shall be accessible.

51-20-3112 (b) Substantial Alterations. Where substantial alteration as defined in 3110 occurs to a building or facility, the entire building or facility shall comply with Part II of this code.

51-20-3112 (a) 4.B. No alteration of an existing element, space or area of a building shall impose a requirement for greater accessibility than that which would be required for new construction.

51-20-3112 (c) 3. . . . When an accessible elevator is provided, existing stairs need not be made accessible.

Commentary

ADA Requirements

4.1.6 (1) (e) At least one interior public text telephone complying
with 4.31.9 shall be provided if:

(i) alterations to existing buildings or facilities with less than four exterior or interior public pay telephones would increase the total

number to four or more telephones with at least one in an interior location; or

(ii) alterations to one or more exterior or interior public pay telephones occur in an existing building or facility with four or more public telephones with at least one in an interior location.

4.1.6 (1) (f) If an escalator or stair is planned or installed where none existed previously and major structural modifications are necessary for such installation, then a means of accessible vertical access hall be provided that complies with the applicable provisions of 4.7, 4.8, 4.10, or 4.11.

4.1.6 (1) (g) In alterations, the requirements of 4.1.3(9), 4.3.10 and 4.3.11 do not apply.

4.1.6 (1) (h)* Entrances: If a planned alteration entails alterations to an entrance, and the building ahs an accessible entrance, the entrance being altered is not required to comply with 4.1.3(8), except to the extent required by 4.1.6(2). If a particular entrance is not made accessible, appropriate accessible signage indicating the location of the nearest accessible entrance (s) shall be installed at or near the inaccessible entrance, such that a person with disabilities will not be required to retrace the approach route from the inaccessible entrance.

4.1.6 (1) (I) If the alteration work is limited solely to the electrical, mechanical, or plumbing system, or to hazardous material abatement, or automatic sprinkler retrofitting, and does not involve the alteration of any elements or spaces required to be accessible under these guidelines, then 4.1.6 (2) does not apply.

Washington State Regulations

51-20-3112 (a) 4. D. Where alterations would increase the number of public pay phones to four, with at least one on the interior; or where the existing facility ahs four or more public pay phones and one or more is altered; at least one interior text telephone shall be provided in accordance with Section 3106 (n).

51-20-3112 (a) 3. Installation of Stairs or Escalators. Where an escalator or new stairway is planned or installed requiring major structural changes, then a means of vertical transportation (e.g., elevator, platform lift) shall be provided in accordance with this chapter.

51-20-3112 (a) 4.E. Where a building ahs an accessible

entry, altered entries need not be made accessible unless they provide access to areas of primary function.

51-20-3112 (a) 4.C. Where the alteration work is limited solely to the electrical, mechanical or plumbing system or hazardous materials removal, and does not involve the alteration, structural or otherwise, of any elements and spaces required to be accessible under these standards, Chapter 31 does not apply.

Commentary

ADA Requirement

4.1.6 (1) (j) EXCEPTION: In alteration work, if compliance with 4.1.6 is technically infeasible, the alteration shall provide accessibility to the maximum extent feasible. Any elements or features of the building or facility that are being altered and can be made accessible shall be made accessible within the scope of the alteration.

Technically Infeasible. Means, with respect to an alteration of a building or a facility, that it ahs little likelihood of being accomplished because existing structural conditions would require removing or altering a load-bearing member which is an essential part of the structural frame; or because other existing physical or site constraints prohibit modification or addition of elements, spaces, or features which are in full and strict compliance with the minimum requirements for new construction and which are necessary to provide accessibility.

4.1.6 (1) (k) EXCEPTION"

(i) These guidelines do not require the installation of an elevator in an altered facility that is less than three stories or has less than 3,000 square feet per story unless the building is a shopping center, a shopping mall, the professional office of a health care provider, or another type of facility as determined by the Attorney General.

(ii) The exemption provided in paragraph (I) does not obviate or limit in any way the obligation to comply with the other accessibility requirements established in these guidelines. For example, alterations to floors above or below the ground floor must be accessible regardless of whether the altered facility has

an elevator. If a facility subject to the elevator exemption set forth in paragraph (I) nonetheless has a full passenger elevator, that elevator shall meet, to the maximum extent feasible, the accessibility requirements of these guidelines.

Washington State Regulations

51-20-3112 Alterations. (a) General. 1. Compliance. Alterations to existing buildings or facilities shall comply with this section. No alteration shall reduce or have the effect of reducing accessibility or usability of a building, portion of a building or facility. If compliance with this section is technically infeasible, the alteration shall provide accessibility to the maximum extent feasible.

51-20-3110 Technically Infeasible means that an alteration has little likelihood of being accomplished because existing structural conditions would require removing or altering a load-bearing member or because site constraints prohibit modification or addition of elements, spaces or features necessary to provide accessibility.

51-20-3112 (a) 4.B. No alteration of an existing element, space or area of a building shall impose a requirement for greater accessibility than that which would be required for new construction.

Commentary

NE No equivalent provision. Section 51-30-3103 (a) 1 allows floors of more than 3000 square feet above and below accessible floors to be constructed without access features.

ADA Requirements

4.1.6 (2) Alterations to an Area Containing a Primary Function: In addition to the requirements of 4.1.6(1), an alteration that affects or could affect the usability of or access to an area containing a primary function shall be made so as to ensure that, to the maximum extent feasible, the path of travel to the altered area and the restrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with

disabilities, unless such alterations are disproportionate to the overall alterations in terms of cost and scope (as determined under criteria established by the Attorney General). (See Section 36.403)

4.1.6 (3) Special Technical Provisions for Alterations to Existing Buildings and Facilities:

(a) Ramps: Curb ramps and interior or exterior ramps to be constructed on sites or in existing buildings or facilities where space limitations prohibit the use of a 1:12 slope or less may have slopes and rises as follows:

(i) A slope between 1:10 and 1:12 is allowed for a maximum rise of 6 inches.

(ii) A slope between 1:8 and 1:10 is allowed for a maximum rise of 3 inches. A slope steeper than 1:8 is not allowed.

4.1.6 (3) (b) Stairs: Full extension of handrails at stairs shall not be required in alterations where such extensions would be hazardous or impossible due to plan configuration.

Washington State Regulations

51-20-3112 (a) 2. Existing Elements. If existing elements, spaces, essential features or common areas are altered, each such altered element, space feature or area shall comply with the applicable provisions of Part II of this chapter. Where an alteration is to an area of primary function, to the maximum extent feasible, the path of travel to the altered area shall be made accessible. See Also Appendix Chapter 31, Division II.
EXCEPTIONS: 1. Accessible route of travel need not be provided to altered elements, spaces or common areas which are not areas of primary function.
2. Areas of evacuation assistance need not be added to an altered building.

51-20-3114 (a) 2.
EXCEPTION: The path of travel need not be made accessible if the cost of compliance with this part would exceed 20% of the total project cost, inclusive of the cost of eliminating barriers, within a 36 month period.

51-20-3112 (c) Modifications. 1. General. The following modifications set forth in this section may be used for compliance where the required standard is technically infeasible or when providing access to historic buildings.

51-20-3112 (c) 2. Ramps. Curb ramps and ramps constructed on existing sites, or in existing buildings or facilities, may have slopes and rises as specified for existing facilities in Chapter 31, where space limitations prohibit the use of 1 vertical in 12 horizontal slope or less provided that:
A. A slope of not greater than 1 vertical in 10 horizontal is allowed for a maximum rise of 6 inches.
B. A slope of not greater than 1 vertical in 8 horizontal is Allowed for a maximum rise of 3 inches.
C. Slopes greater than 1 vertical in 8 horizontal are prohibited.

51-20-3112 (c) 3. Stairs. Full extension for stair handrails is not required when such extension would be hazardous or impossible due to plan configuration. When an accessible elevator is provided, existing stairs need not be made accessible.

Commentary

NE Path of travel definition includes restrooms, telephones, and water fountains serving altered area (see ADAAG 3.5 Definitions). However, the disproportionality formula is not equivalent because it includes barrier removal costs for a 36 month period. Reference to appendix is to readily achievable barrier removal provisions which do not count as part of the path of travel expenditure under the ADA.

ADA Requirements

4.1.6 (3) (c) Elevators:

(i) If safety door edges are provided in existing automatic elevators, automatic door reopening devices may be omitted (see 4.10.6).
(ii) Where existing shaft configuration or technical infeasibility prohibits strict compliance with 4.10.9, the minimum car plan prohibits strict compliance with 4.10.9, the minimum car plan dimensions may be reduced by the minimum amount necessary, but in no case shall the inside care area be smaller than 48 in by 48 in.
(iii) Equivalent facilitation may be provided with an elevator car of different dimensions when usability can be demonstrated and when all other elements required to be accessible comply with the applicable provisions of 4.10. For example, an elevator of 47 in by 69 in (1195 mm by 1755 mm) with a door opening on the narrow dimension, could accommodate the standard

wheelchair clearances shown in Figure 4.

Fig. 4 Minimum clear Floor Space for Wheelchairs.

Fig. 4(d) Clear Floor Space in Alcoves. For a front approach, where the depth of the alcove is equal to or less than 24 inches (610 mm), the required clear floor space is 30 inches by 48 inches (760 mm by 1220 mm).

For a side approach where the depth of the alcove is equal to or less than 15 inches (380 mm), the required clear floor space is 30 inches by 48 inches (760 mm by 1220 mm).

Fig. 4(e) Additional Maneuvering Clearances for Alcoves.
For a front approach, if the depth of the alcove is greater than 24 inches (610 mm), then in addition to the 30 inch (760 mm) width, a maneuvering clearance of 6 inches (150 mm) in width is required.

For a side approach, where the depth of the alcove is greater than 15 inches (380 mm), then in addition to the 48 inch (1220 mm) length, an additional maneuvering clearance of 12 inches in length (305 mm) is required.

Washington Sate Regulations

51-20-3112 (c) 4. Elevators shall comply with
Chapter 296-81, Washington Administrative Code.

Commentary

NE Design requirements not available for review.
ADA/Washington State May 14, 1993
44 Technical Assistance Document

ADA Requirements

4.1.6 (3) (d) Doors:

(i) Where it is technically infeasible to comply with clear opening width requirements of 4.13.5, a projection of 5/8 in maximum will be permitted for the latch side stop.

4.1.6 (3) (d) (ii) If existing thresholds are _ in high or less, and have (or are modified to have) a beveled edge on each side, they may remain.

4.1.6 (3) (e) Toilet Rooms:

(i) Where it is technically infeasible to comply with 4.22 or 4.23, the installation of at least one unisex toilet/bathroom per floor, located in the same area as existing toile t facilities, will be permitted in lieu of

modifying existing toilet facilities to be accessible. Each unisex toilet room shall contain one water closet complying with 4.16 and one lavatory complying with 4.19, and the door shall have a privacy latch.

(ii) Where it is technically infeasible to install a required standard stall (Fig. 30(a))< or where other codes prohibit reduction of the fixture count (i.e., removal of a water closet in order to create a double-wide stall), either alternate stall (Fig.30(b)) may be provided in lieu of the standard stall.

Fig. 30(a) Standard Stall. The location of the door is illustrated to be in front of the clear space (next to the water closet), with 3 maximum stile width of 4 inches (100 mm). An alternate door location is illustrated to be on the side of the toilet stall with a maximum stile width of 4 inches (100 mm). The minimum width of the standard stall shall be 60 inches (1525 mm). The centerline of the water closet shall be 18 inches (455 mm) from the side wall.

Washington State Regulations

50-20-3112 (c) 6. Doors. A. Clearance. When existing elements prohibit strict compliance with the clearance requirements, a projection of 5/8 inch maximum is permitted for the latch side door stop.

51-20-3112 (c) 6. B. Thresholds. Existing thresholds measuring _ inch high or less which are modified to provide a beveled edge on each side, may be retained.

51-20-3112 (c) 7. Toilet Rooms. A. Shared Facilities. The addition of one unisex toilet facility accessible to all occupants on the floor may be provided in lieu of making existing toilet facilities accessible when it is technically infeasible to comply with either part of Chapter 31.
B. Number. The number of toilet facilities and water closets Required by the Uniform Plumbing Code may be reduced by One, in order to provide accessible features.

Commentary

ADA/Washington State May 14, 1993
45 Technical Assistance Document

ADA Requirements

Fig. 30(a-1). If a standard stall is provided at the end of a row of stalls, the door (if located on the side of the stall) may swing into to the stall, if the length of the stall is extended at least a minimum of 36 inches (915 mm)

beyond the required minimum length.

Fig. 30(b) Alternate Stalls. Two alternate stalls are illustrated; one alternate stall is required to be 36 inches (915 mm) in width. The other alternate stall is required to be a minimum of 48 inches (1220 mm) in width. If a wall mounted water closet is used, the depth of the stall is required to be a minimum of 66 inches (1675 mm). If a floor mounted water closet is used, the depth of the stall is required to be a minimum of 69 inches (1745 mm). The 36 inch wide stall shall have parallel grab bars on the side walls. The 48 inch minimum stall shall have a grab bar behind the water closet and one on the side wall next to the water closet. In each alternate, the centerline of the water closet is 18 inches (455 mm) from a side wall.

(iii) When existing toilet or bathing facilities are being altered and are not made accessible, signage complying with 4.30.1,4.30.2, 4.30.3,4.30.5, and 4.30.7 shall be provided indicating the location of the nearest accessible toilet or bathing facility within the facility.

4.16.6 (3) (f) Assembly Areas:

(i) Where it is technically infeasible to disperse accessible seating throughout an altered assembly area, accessible seating areas may be clustered. Each accessible seating area shall have provisions for companion seating and shall be located on an accessible route
that also serves as a means of emergency egress.

(ii) Where it is technically infeasible to alter all performing areas to
be on an accessible route, at least one of each type of performing
area shall be made accessible.

Washington State Regulations

See above.

51-20-3112 (c) 8. Assembly Areas. Seating shall adjoin an accessible route of travel that also serves as a means of emergency egress or route to an area for evacuation assistance.

Commentary

ADA Requirements
4.1.6 (3) (g) Platform Lifts (Wheelchair Lifts): In alterations, platform lifts

(wheelchair lifts) complying with 4.11 and applicable state or local codes may be used as part of an accessible route. The use of lifts is not limited to the four conditions in exception 4 of 4.1.3(5).

(h) Dressing Rooms: In alterations where technical infeasibility can be demonstrated, one dressing room for each sex on each level shall be made accessible. Where only unisex dressing rooms are provided, accessible unisex dressing rooms may be used to fulfil this requirement.

4.1.7 Accessible Buildings: Historic Preservation.

(1) Applicability:

(a) General Rule. Alterations to a qualified historic building or facility shall comply with 4.1.6 Accessible Buildings: Alterations, the applicable technical specifications of 4.2 through 4.35 and the applicable special application section 5 through 10 unless it is determined in accordance with the procedures in 4.1.7(2) that compliance with the requirements for accessible routes (exterior and interior), ramps, entrances, or toilets would threaten or destroy the historic significance of the building or facility in which case the alternative requirements in 4.1.7 (3) may be used for the feature.

4.1.8 (1) EXCEPTION: (Reserved).

Washington State Regulations

51-20-3112 (c) 5. Platform Lifts. Upon the approval of the building official, platform lifts may be used in lieu of elevators in alterations, in locations in addition to those permitted in Part II of this chapter, if installation of an elevator is technically infeasible. Platform lifts shall comply with chapter 296-81 WAC.

51-20-3112 (c) 9. Dressing Rooms. Where it is technically infeasible to meet the requirements of Part I of this chapter, one dressing room for each sex, or a unisex dressing room, on each level shall be accessible.

51-20-3113 Historic Preservation (a) General. Generally, the accessibility provisions of this part shall be applied to historic buildings and facilities as defined in Section 104 (f) of
this code. The building official, after consultation with the appropriate historic preservation officer, shall determine whether provisions required by this part for accessible routes of travel (interior or exterior), ramps, entrances, toilets, parking or signage would threaten or destroy the historic significance of the building or facility.

If it is determined that any of the accessibility requirements listed above would threaten or destroy the historic significance of a building or facility, the modifications of Section 3112 (c) for that feature may be utilized.

Commentary

PNE WSR's process differs from ADAAG. WSR does not address facilities subject to the National Historic Preservation act.

ADA Requirements

4.1.7 (1) (b) Definition. A qualified historic building or facility is a
building or facility that is:

(i) Listed in or eligible for listing in the National Register of Historic Places; or

(ii) Designated as historic under an appropriate State or local law.

4.1.7 (2) Procedures: (a) Alterations to Qualified Historic buildings and Facilities Subject to Section 106 of the National Historic Preservation Act:

4.1.7 (2) (a) (i) Section 106 Process. Section 106 of the National Historic Preservation Act (16 U.S.C. 470 f) requires that a Federal agency with jurisdiction over a Federal, federally assisted, or federally licensed undertaking consider the effects of the agency's undertaking on buildings an facilities listed in or eligible for listing in the National Register of Historic Places and give the Advisory Council on Historic Preservation a reasonable opportunity to comment on the undertaking prior to approval of the undertaking.

4.1.7 (2) (a) (ii) ADA Application. Where alterations are undertaken to a qualified historic building or facility that is subject to section 106 of the National Historic Preservation Act, the Federal agency with jurisdiction over the undertaking shall follow the section 106 process. If the State Historic Preservation Officer or Advisory Council on Historic Preservation agrees that compliance with the requirements for accessible routes (exterior and interior), ramps, entrances, or toilets would threaten or destroy the historic significance of the building or facility,

the alternative requirements in 4.1.7(3) may be used for the feature.

Washington State Regulations

51-20-0104 (f) Historic Buildings. Repairs, alterations and additions necessary for the preservation, restoration, rehabilitation or continued use of a building or structure may be made without conformance to all the requirements of this code when authorized by the building official, provided:
1. The building or structure ahs been designated by official Action of the legally constituted authority of this jurisdiction As having special historical or architectural significance.
2. Any unsafe conditions as described in this code are corrected.
3. The restored building or structure will be no more hazardous based on life safety, fire safety and sanitation than the existing building.

Commentary

ADA Requirements

4.1.7 (2) (b) Alterations to Qualified Historic Buildings and Facilities Not Subject to Section 106 of the National Historic Preservation Act. Where alterations are undertaken to a qualified historic building or facility that is not subject to section 106 of the National Historic Preservation Act, if the entity undertaking the alterations believes that compliance with the requirements for accessible routes (exterior and interior), ramps, entrances, or toilets would threaten or destroy the historic significance of the building or facility and that the alternative requirements in 4.1.7(3) should be used for the feature, the entity should consult with the Sate Historic Preservation Officer. If the State Historic Preservation Office agrees that compliance with the accessibility requirements for accessible routes (exterior and interior), ramps, entrances or toilets would threaten or destroy the historical significance of the building or facility, the alternative requirements in 4.1.7(3) may be used.

4.1.7 (2) (c) Consultation With Interested Persons. Interested persons should be invited to participate in the consultation process, including State or local accessibility officials, individuals with disabilities, and organizations representing individuals with disabilities.

4.1.7 (2) (d) Certified Local Government Historic Preservation Programs. Where the State Historic Preservation Officer has delegated the consultation responsibility for purposes of this section to a local government historic preservation program that

has been certified in accordance with section 101(c) of the National Historic Preservation Act of 1966 (16 U.S.C. 470A (c)) and implementing regulations (36 CFR 61.5), the responsibility may be carried out by the appropriate local government body or official.

Washington Sate Regulations

51-20-3113 (a) . . . The building official, after consultation with the appropriate historic preservation officer, shall determine whether provisions required by this part for accessible routes of travel (interior or exterior), ramps, entrances, toilets, parking or signage would threaten or destroy the historic significance of the building or facility.

If it is determined that any of the accessibility requirements listed above would threaten or destroy the historic significance of a building or facility, the modifications of Section 3112 (c) for that feature may be utilized.

Commentary

PNE Without the use of the process provided in ADAAG, the building official would have greater authority and discretion. ADAAG 4.1.7(2)(a)(ii) allows one of two designated entities (State historic Preservation Officer or Advisory Council), not the code official to make the determination. However, on the other had, the building official could be less sensitive to historical issues or historic fabric and require more access.

ADA Requirements

4.1.11 (3) Historic Preservation: Minimum Requirements:

(a) At least one accessible route complying with 4.3 from a site access point to an accessible entrance shall be provided.

EXCEPTION: A ramp with a slope no greater than 1:6 for a run not to exceed 2 ft (610 mm) may be used as part of an accessible route to an entrance.

4.1.7 (3) (b) At least one accessible entrance complying with 4.14
which is used by the public shall be provided.

EXCEPTION: If it is determined that no entrance used by the public
can comply with 4.14, then access at any entrance not used by the general public but open (unlocked) with directional signage at
the primary entrance may be used. The accessible entrance shall also have a notification system. Where security is a problem, remote monitoring may be used.

4.1.7 (3) (c) If toilets are provided, then at least one toilet facility
complying with 4.22 and 4.1.6 shall be provided along an accessible route that
complies with 4.3. Such toilet facility may
be unisex in design.

Washington Sate Regulations

51-20-3113 (b) Special Provisions. Where removing architectural barriers or providing accessibility would threaten or destroy the historic significance of a building or facility, the following special provisions may be used; 51-20-3113 (b) 1. At least one accessible route from a site access point to an accessible route shall be provided.

51-20-3112 (c) Modifications. 1. General. The following modifications set forth in this section may be used for compliance where the required standard is technically infeasible or when providing access to historic buildings

51-20-3112 (c) 2. Ramps. Curb ramps and ramps constructed on existing sites, or in existing buildings or facilities, may have slopes and rises as specified for existing facilities in Chapter 31, where space limitation prohibit the use of 1 vertical in 12 horizontal slope or less provided that:
A. A slope of not greater than 1 vertical in 10 horizontal is allowed for a maximum rise of 3 inches.
B. slope not greater than 1 vertical in 8 horizontal is Allowed for a maximum rise of 3 inches.
C. Slopes greater than 1 vertical in 8 horizontal are Prohibited.

51-20-3113 (b) 2. At least one accessible entry which is used by the public shall be provided.

51-20-3113 (b) 2. EXCEPTION: Where it is determined by the building official that no entrance used by the public can

comply, access at any accessible entry which is unlocked during business hours may be used provided directional signs are located at the main entry and the accessible entry ahs a notification system. The route of travel for the accessible entry shall not pass through hazardous areas, storage rooms, closets, kitchens or spaces used for similar purposes.

51-20-3113 (b) 3. Where toilet facilities are provided, at least one toilet facility complying with Section 3111 and 3112 shall be provided along an accessible route. Such toilet facility shall be a shared facility available to both sexes.
Commentary

ADA Requirements

4.1.7 (3) (d) Accessible routes from an accessible entrance to all
publicly used spaces on at least the level of the accessible entrance shall be provided. Access shall be provided to all levels
of a building or facility in compliance with 4.1 whenever practical.

4.1.7 (3) (e) Displays and written information, documents, etc., should be located where they can be seen by a seated person. Exhibits and signage displayed horizontally (e.g., open books), Should be no higher than 44 in (1120 mm) above the floor Surface.

Washington Sate Regulations

51-20-3113 (b) 4. Accessible routes from an accessible entry to all publicly used spaces, on at least the level of the accessible entry, shall be provided. Access should be provided to all levels of a building or facility when practical.

51-20-3113 (b) 4. . . . Displays and written information and documents shall be located where they can be seen by a seated person.

51-20-3114 Appeal (a) Request for Appeal. An appeal from the standards for accessibility for existing buildings may be filed with the building official in accordance with Section 204, when:
1. Existing structural elements or physical constraints of the

Site prevent full compliance or would threaten or destroy the Historical significance of a historic building, or
2. For the path of travel, the cost of compliance with this part would exceed 20% or the total project cost, inclusive of the cost of eliminating barriers, within a 36-month period.
51-20-3114 (b) Review. 1. Consideration of Alternative Methods. Review of appeal requests shall include Consideration of alternative methods which may provide Partial access.
51-20-3114 (b) 2. Waiver or Modification of Requirements. The appeals board may waive or modify the requirements of This section when it is determined that compliance with Accessibility requirements would threaten or destroy the Historic significance of a building or facility.

Commentary

ADA/Washington State May 14, 1993
51 Technical Assistance Document

ADA Requirements

4.2 Space Allowance and Reach Ranges.
4.2.1* Wheelchair Passage Width. The minimum clear width for single wheelchair passage shall be 32 in (815 mm) at a point and 36 in (915 mm) continuously (see Fig. 1 and 24 (e)).

Fig. 1 Minimum Clear Width for Single Wheelchair.

The minimum clear passage width for a single wheelchair passage shall be 32 inches (815 mm) at a point for a maximum depth of 24 inches (610 mm).

4.2.2 Width for Wheelchair Passing. The minimum width for two wheelchairs to pass is 60 in (1525 mm) (see Fig. 2).

4.2.3* Wheelchair Turning Space. The space required for a wheelchair to make a 180-degree turn is a clear space of 60 in (1525 mm) diameter (see Fig. 3(a) or T-shaped space (see Fig. 3(b)).
Fig. 3 \Wheelchair Turning Space.

Fig. 3(b) T-Shaped Space for 180 degree Turns. The T-shape space is 36 inches (915 mm) wide at the top and stem within a 60 inch by 60 inch (1525 mm by 1525 mm) square.

Washington State Regulations

51-20-3106 (b) Space Allowance and Reach Ranges. 1. Wheelchair Passage Width. The minimum clear width for single wheelchair passage shall be 36 inches. The minimum width for two wheelchairs to pass is 60 inches.
EXCEPTION: The minimum width for single wheelchair passage may be 32 inches for a maximum distance of 24 inches.

See Above.

51-20-3106 (b) 2. Wheelchair Turning Spaces. Wheelchair turning spaces shall be designed and constructed to satisfy one of the following requirements;

A. A turning space no less than 60 inches in diameter; or,

B. A turning space at T-shaped intersections or within a room, where the minimum width is not less than 36 inches. Each segment of the T shall be clear of obstruction snot less than 24 inches in each direction.

Commentary

ADA/Washington Sate May 14, 1993
52 Technical Assistance Document
ADA Requirement

4.2.4* Clear Floor or Ground Space for Wheelchairs.

4.2.4.1 Size and Approach. The minimum clear floor or ground space required to accommodate a single, stationary wheelchair and occupant is 30 in by 48 in (760 mm by 1220 mm) (see Fig. 4(a)). The minimum clear floor or ground space of wheelchairs may be positioned for forward or parallel approach to an object (see Fig.
4(b) and (c). Clear floor or ground space for wheelchairs may be part of the knee space required under some objects.

Washington State Regulations

51-20-3106 (b) 3. Unobstructed Floor Space. A floor space, including the vertical space above such floor space, which is free
of any physical obstruction including door swings, to a height of 29
inches. Where a pair of doors occurs, the swing of the inactive leaf may be considered to be unobstructed floor space. Unobstructed floor space may include toe spaces that are a minimum of 9 inches in height and not more than 6 inches in

depth.

51-20-3106 (b) 4.>. Knee and Toe Clearances. Spaces under obstructions, work surfaces or fixtures may be included in the clear floor or ground space provided that they are at least 30 inches in width, a minimum of 2 inches in height and not greater than 25 inches in depth. Toe spaces under obstructions, work surfaces or fixtures which comply with the requirements for unobstructed floor space may be included in the clear floor or ground space.

51-20-3106 (b) 4. Clear Floor or Ground spaces and Maneuvering Clearance Space for Wheelchairs.

A. Size. The minimum clear floor or ground space required to accommodate a single, stationary wheelchair occupant shall be not less than 30 inches by 48 inches.

B. Approach. Wheelchair spaces shall be designed to allow for forward or parallel approach to an accessible feature.

Commentary

ADA Requirements

4.2.4.2 Relationship of Maneuvering Clearance to Wheelchair Spaces. One full unobstructed side of the clear floor or ground space for a wheelchair shall adjoin or overlap an accessible route or adjoin another wheelchair clear floor space. If a clear floor space is located in an alcove or other wise confined on all or part of three sides, additional maneuvering clearances shall be provided as shown in Fig. 4(d) and (e).

Fig. 4 Minimum Clear Floor Space for Wheelchairs.

Fig. 4(d) Clear Floor Space in Alcoves. For a front approach, where the depth of the alcove is equal to or less than 24 inches (610 mm), the required clear floor space is 30 inches by 48

inches (760 mm by 1220 mm).

For a side approach, where the depth of the alcove is equal to or less than 15 inches (380 mm), the required clear floor space
Is 30 inches by 48 inches (760 mm by 1220 mm).

Fig. 4(e) Additional Maneuvering ?Clearances, f for Alcoves. For a front approach, if the depth of the alcove is greater than 24
inches (610mm)), then in addition to the 30 inch (760 mm) width, a maneuvering clearance of 6 inches (150 mm) in width is required.

For a side approach, where the depth of the alcove is greater than 15 inches (380 mm), then in addition to the 48 inch (1220 mm) length, an additional maneuvering clearance of 12 inches in length (305 mm) is required.

4.2.4.3 Surfaces for Wheelchair Spaces. Clear floor or ground spaces for wheelchairs shall comply with 4.5.

Washington Sate Regulations

451-20-3106 (b) 4 D. Approach to Wheelchair Spaces. One full unobstructed side of the clear floor or ground space for a wheelchair shall adjoin or overlap an accessible route of travel, or
shall adjoin another wheelchair clear space. Clear space located in
an alcove or otherwise confined on all or part of three sides shall
be not less than 36 inches in width where forward approach is provided, or 60 inches in width where parallel approach is provide.

See ADAAG 4.5.

Commentary

ADA Requirements

4.2.5* Forward Reach. If the clear floor space only allows forward
approach to an object, the maximum high forward reach allowed

shall be 48 in (1220 mm) (see Fig. 5(a).). the minimum low forward reach is 15 in (380 mm). If the high forward reach is over
an obstruction, reach and clearances shall be as shown in Fig. 5(b).

Fig. 5 Forward Reach.

Fig. 5(b) Maximum Forward Reach over an Obstruction. The maximum level forward reach over an obstruction with knee space below is 25 inches (635 mm). When the obstruction is less than 20 inches (1220 mm). When the obstruction projects 20 to 25 inches (510 mm to 635 mm), the maximum high forward reach is 44 inches (1120 mm). (4.2.5, 4.25.3)

4.2.6* Side Reach. If the clear floor space allows parallel approach
by a person in a wheelchair, the maximum high side reach allowed shall be 54 in (1370 mm) and the low side reach shall be no less than 9 in (230 mm) above the floor (Fig. 6(a) and (b)). If the side
reach is over an obstruction, the reach and clearances shall be as
shown in Fig 6(c).

Fig 6 Side Reach. (4.2.6, 4.25.3)

Fig. 6(a) Clear Floor Space Parallel Approach and Fig. 6(b) High and Low Side Reach Limits. The clear floor space is locate d a
maximum 10inches (255 mm) from the wall.

Fig. 6(c) Maximum Side Reach over Obstruction. If the depth of the obstruction is 24 inches (6510 mm) and the maximum height of the obstruction is 34 inches (865 mm), the maximum high side reach over the obstruction is 46 inches (1170).

4.3 Accessible Route.

4.3.1* General. All walks, halls, corridors, aisles, skywalks, tunnels, and other spaces that are part of an accessible route shall
comply with 4.3.

Washington Sate Regulations

51-20-3106 (b) 4. E. Forward Reach. Where the clear floor space only allows forward approach to an object, the maximum high

forward reach allowed shall be not higher than 48 inches. Reach obstructions 20 inches or less in depth may project into the clear
space provided that knee clearance is maintained in accordance with Section 3106 (b) 2. B. Reach obstructions greater than 20 inches in depth may project into the clear space provided that the
reach obstruction shall not exceed 25 inches in depth and the maximum high forward reach shall not exceed 44 inches in height. The minimum low forward reach shall be not lower than 15.

51-20-3106 (b) 4. F. Side Reach. Where the clear floor space allows parallel approach by a person in a wheelchair, the maximum high side reach allowed shall be not higher than 54 inches. Obstructions no greater than 34 inches in height and no more than 24 inches in depth may be located in the side reach area provided that when such obstructions are present the side reach shall be not
more than 46 inches. The minimum low side reach shall be no lower than 9 inches.

51-20-3103 (b) 2. Accessible Route of Travel

Commentary

ADA Requirements

4.3.2 Location.

(1) At least one accessible route within the boundary of the site shall be provided from public transportation stops, accessible parking, and accessible passenger loading zones, and public streets
or sidewalks to the accessible building entrance they serve. The accessible route shall, to the maximum extent feasible, coincide with the route for the general public.

(2) At least one accessible route shall connect accessible buildings, facilities, elements, and spaces that are on the same site.

(3) At least one accessible route shall connect accessible building
or facility entrances with all accessible spaces and elements and with all accessible dwelling units within the building or

facility.

(4) An accessible route shall connect at least one accessible entrance of each accessible dwelling unit with those exterior and interior spaces and facilities that serve the accessible dwelling unit.

4.3.3 Width. The minimum clear width of an accessible route shall be 36 in (915mm) except at doors (see 4.13.5 an d4.13.6). If a person in a wheelchair must make a turn around an obstruction, the minimum clear width of the accessible route shall be as shown in Fig. 7(a) and (b).

Fig. 7 Accessible Route.

Fig. 7(a) 90 degree turn. A 90 degree turn can be made From a 36 inch (915 mm) wide passage into another 36 inch (915 mm) passage if the depth of each leg is a minimum of 48 inches (1220 mm) on the inside dimensions of the turn.

Fig. 7(b) turns around an Obstruction. A U-turn around an obstruction less than 48 inches (1220 mm) wide may be made if the passage width is a minimum of 42 inches (1065 mm) and the base of the U-turn space is a minimum of 48 inches (1220 mm) wide.

Washington State Regulations

51-20-3103 (b) 2. Accessible Route of Travel. When a building, or portion of a building, is required to be accessible, an accessible route of travel shall be provided to all portions of the building, to accessible building entrances and connecting the building and the public way. Except within an accessible dwelling unit, the accessible route of travel to areas of primary function may serve but shall not pass through kitchens, storage rooms, toilet rooms, bathrooms, closets or other similar spaces.

When more than one building or facility is located on a site, accessible routes of travel shall be provided connecting accessible buildings and accessible site facilities. The accessible route of travel shall be the most practical direct route connecting

accessible
building entrances, accessible site facilities and the accessible site
entrances.

EXCEPTION: For sites where natural terrain or other unusual property characteristics do not allow the provision of an accessible
route of travel from the public way to the building, the point of vehicular debarkation may be substituted for the accessible entrance to the site.

51-20-3106 (d) Accessible Route of Travel. 1. Width. The minimum clear width of an accessible route of travel shall be 36 inches except at doors (see Section 3106 (j) 2.). Where an accessible route includes a 180 degree turn around an obstruction which is less than 48 inches in width, the clear width of the accessible route of travel around the obstruction shall be 42 inches
minimum. For exterior accessible routes of travel, the minimum clear width shall be 44 inches.

EXCEPTION: The minimum width for single wheelchair passage may be 32 inches for a maximum distance of 24 inches.

51-20-3115 (b) 1. In areas serving employees only, the minimum aisle width may be 24 inches but not less than the width required by the number of employees served.

Commentary

ADA/Washington State May 14, 1993
56 Technical Assistance Document

ADA Requirements

4.3.4 Passing Space. If an accessible route has less than 60 in (1525 mm) clear width, then passing spaces at least 60 in by 60 in
(1525 mm by 1525 mm) shall be located at reasonable intervals not to exceed 200 ft (61 m)./ A T-intersection of two corridors or
walks is an acceptable passing place.

4.3.5 Head Room. Accessible routes shall comply with 4.4.2.

4.3.6 Surface Textures. The surface of an accessible route shall comply with 4.5.

4.3.7 Slope. An accessible route with a running slope greater than
1:20 is a ramp and shall comply with 4.8. Nowhere shall the cross
slope of an accessible route exceed 1:50.

Washington State Regulations

51-20-3106 1. (d) Where an accessible route is less than 60 inches
in width, passing spaces at least 60 inches by 60 inches shall be located at intervals not to exceed 200 feet. A T-shaped intersection of two corridors or walks may be used as a passing space.

51-20-3106 (d) 2. Height. Accessible routes shall have a clear height of not less than 79 inches. Where the vertical clearance of
an area adjoining an accessible route of travel is less than 79 inches but more than 27 inches, a continuous permanent barrier shall be installed to prevent traffic onto such area of reduced clearance.

51-20-3106 (d) 5. Surfaces. A. General. All floor and ground surfaces in an accessible route of travel shall comply with Section
3106 (g).

51-20-3106 (g) Floor Coverings and Surface Treatments. 1. General. All surfaces shall be firm and stable.

51-20-3106 (g) 3. Slip-Resistant Surfaces. Showers, locker rooms, swimming pool, spa, and hot tub decks, toilet rooms and other areas subject to wet conditions shall have slip-resistant floors.

Exterior accessible routes of travel shall have slip-resistant surfaces.

51-20-3107 (d) 5. Surface. Parking spaces and access aisles shall
be firm, stable, smooth and slip-resistant.

51-20-3106 (d) 3. Slope. An accessible route of travel shall have
a running slope not greater than 1 vertical in 12 horizontal. An accessible route of travel with a running slope greater than 1

vertical in 20 horizontal shall comply with Section 3106 (h). Cross
slopes of an accessible route of travel shall not exceed 1 vertical in
48 horizontal.

Commentary

ADA Requirements

4.3.8 Changes in Levels. Changes in levels along an accessible route shall comply with 4.5.2. If an accessible route ahs changes
in level greater than1/2in (13 mm), then a curb ramp, ramp, elevator, or platform lift (as permitted in 4.1.3 and 4.1.6) shall be
provided that complies with 4.7, 4.8 4.10, or 4.11, respectively. An accessible route does not include stairs, steps, or escalators.
See definition of "egress, means of" in 3.5.

4.3.9 Doors. Doors along an accessible route shall comply with 4.13.

4.3.10* Egress. Accessible routes serving any accessible space or
element shall also serve as a means of egress for emergencies or connect to an accessible area of rescue assistance.

Washington State Regulations

51-20-3106 (d) 4. Changes in Level. Changes in level along an accessible route of travel shall comply with Section 3106 (f). Stairs shall not be part of an accessible route of travel. Any raised
area within an accessible route of travel shall be cut through to maintain a level route or shall have curb ramps at both sides and a
level area not less than 48 inches long connecting the ramps.

51-20-3106 (f) Changes in Level. Accessible routes of travel and accessible spaces within buildings shall have continuous common floor or ramp surfaces. Abrupt change in height greater than inch shall be beveled to 1 vertical in 2 horizontal. Changes in level

greater than1/2inch shall be accomplished by means of a ramp meeting the requirements of Section 3106 (h). For type B dwelling
units, see also Section 3106 (aa).

3106 (j) Doors. 1. General. Doors required to be accessible shall
comply with Section 3304 and provisions of this section. For the purposes of this section, gates shall be considered to be doors.

51-20-3103 (b) 2. . . . Accessible routes of travel serving any accessible space or element shall also serve as a means of egress for emergencies or connect to an area of evacuation assistance.

51-20-3104 Egress and Areas for Evacuation Assistance. (a) General. In buildings required to be
accessible, accessible means of egress shall be provided in the same number as required for exits in Chapter 33. When an exit required by Chapter 33 is not accessible, an area for evacuation assistance shall be provided.

Commentary

ADA Requirements

4.3.11 Areas of Rescue Assistance.

4.3.11.1 Location and Construction. An area of rescue assistance shall be one of the following:

(1) A portion of a stairway landing within a smokeproof enclosure (complying with local requirements).

(2) A portion of an exterior exit balcony located immediately adjacent to an exit stairway when the balcony complies with local requirements for exterior exit balconies. Openings to the interior of
the building located within 20 feet (6 m) of the area of rescue assistance shall be protected with fire assemblies having a three-
fourths hour fire protection rating.

(3) A portion of a one-hour fire-resistive corridor (complying with
local requirements for fire-resistive construction and for

openings)
located immediately adjacent to an exit enclosure.

(4) A vestibule located immediately adjacent to an exit enclosure and constructed to the same fire-resistive standards as required for
corridors and openings.

(5)A portion of a stairway landing within an exit enclosure which is vented to the exterior and is separated from the interior of the
building with not less than one-hour fire-resistive doors.

(6)When approved by the appropriate local authority, an area or a room which is separated from other portions of the building by a
smoke barrier. Smoke barriers shall have a fire-resistive rating of
not less than one hour and shall completely enclose the area or room. Doors in the smoke barrier shall be tight-fitting smoke- and
draft-control assemblies having a fire-protection rating of not less
than 20 minutes and shall be self-closing or automatic closing. The
area or room shall be provided with an exit directly to an exit enclosure where the room or area exits into an exit enclosure which is required to be of more than one-hour fire-resistive construction, the room or area shall have the same fire-resistive construction, including the same opening protection, as required for
the adjacent exit enclosure.

Washington Sate Regulations

51-20-3104 Egress and Areas for Evacuation Assistance.

(c) Areas for Evacuation Assistance. 1. Location and Construction. An area for evacuation assistance shall be one of the following:

(b) 1.A. A portion of a landing within a smokeproof enclosure, complying with Section 3310.

(b)1.B. A portion of an exterior exit balcony, located immediately
adjacent to an exit stairway, when the exterior exit balcony complies with Section 3305. Openings to the interior of the

building located within 20 feet of the area for evacuation assistance shall be protected with fire assemblies having a three-
fourths-hourfire-protection-rating.

(b)1.C. A portion of a one-hour fire-resistive corridor complying with Sections 3305 (g) and (h) located immediately adjacent to an exit enclosure.

(b)1.D. A vestibule located immediately adjacent to an exit enclosure and constructed to the same fire-resistive standards as required by Section 3305 (g) and (h).

(b)1.E. A portion of a stairway landing within an exit enclosure which is vented to the exterior and is separated from the interior of
the building by not less than one-hour fire-resistive door assemblies.

(b)1.F. When approved by the building official, an area or room which is separated from other portions of the building by a smoke barrier. Smoke barriers shall have a fire-resistive rating of not less
than one hour and shall completely enclose the area or room. Doors in the smoke barrier shall be tight-fitting smoke- and draft-
control assemblies having a fire-protection rating of not less than
20 minutes and shall be self-closing or automatic closing. The area
or room shall be provided with an exit directly to an exit enclosure.
When the room or area exits into an exit enclosure which is required to be of more than one-hour fire-resistive construction, the
room or area shall have the same -fire-resistive construction,

Commentary

ADA Requirements

(7) An elevator lobby when elevator shafts and adjacent lobbies are pressurized as required for smokeproof enclosures by local regulations and when complying with requirements herein for size, communication, and signage. Such pressurization system shall be

activated by smoke detectors on each floor located in a manner approved by the appropriate local authority. Pressurization equipment and its duct work within the building shall be separated
from other portions of the building by a minimum two-hour fire-resistive construction.

4.3.11.2 Size. Each area of rescue assistance shall provide at least
two accessible areas each being not less than 30 inches by 48 inches (760 mm by 12220 mm). The area of rescue assistance shall not encroach on any required exit width. The total number of such
30-inch by 48-inch (760 mm by 1220 mm) areas per story shall be not less than one for every 200 persons of calculated occupant load served by the area of rescue assistance.

EXCEPTION: The appropriate local authority may reduce the minimum number of 30-inch by 48-inch (760 mm by 1220 mm) areas to one for each area of rescue assistance on floors where the
occupant load is less than 200.

Washington State Regulations

51-20-3104 (b) 1.G. An elevator lobby complying with Section 3104(d).

51-20-3104 (d) Area for Evacuation Assistance, High-Rise Alternative. Within a building of any height or occupancy, constructed in accordance with the requirements of Section 1807 or 1907, an area for evacuation assistance may be located in the elevator lobby, or adjacent to the elevator where no lobby is required, when:

1. the area for evacuation assistance complies with the requirements for size, two-way communication and identification as
specified in Section 3104 (b); and,

2. Elevator shafts are pressurized as required for smokeproof enclosures in Section 3310. Such pressurization system shall be activated by smoke detectors on each floor located in a manner approved by the building official. Pressurization equipment and its
ductwork with the building shall be separated from other portions of the building by a minimum of two-hour fire-resistive construction.

3. The manager of the building shall establish and maintain a written fire- and life-safety emergency plan which, in addition to other provisions, shall specifically address the evacuation of persons with disabilities, and which ahs been approved by the building official and fire chief.

51-20-3104 (b) 2. Size. Each area for evacuation assistance shall provide at least two wheelchair spaces not smaller than 30 inches by 48 inches for each space. The area for evacuation assistance shall not encroach on any required exit width. The total number of such 30-inch by 48-inch wheelchair spaces per story shall not be less than 1 for every 200 persons of calculated occupant load served by the area for evacuation assistance.

EXCEPTION: The building official may reduce the minimum number of 30-inch by 48-inch areas to one for each area for evacuation assistance on floors where the occupant load is less than 200.

Commentary

ADA Requirements

4.3.11.3* Stairway Width. Each stairway adjacent to an area of rescue assistance shall have a minimum clear width of 48 inches between handrails.

4.3.11.4* Two-way Communication. A method of two-way communication, with both visible and audible signals, shall be provided between each area of rescue assistance and the primary entry. The fire department or appropriate local authority may approve a location other than the primary entry.

4.3.11.5 Identification. Each area of rescue assistance shall be identified by a sign which state "AREA OF RESCUE ASSISTANCE" and displays the international symbol of accessibility. The sign shall be illuminated when exit sign illumination is required. Signage shall also be installed at all inaccessible exits and where otherwise necessary to clearly indicate the direction to areas of rescue assistance. In each area of rescue assistance, instructions on

the
use of the area under emergency conditions shall be posted adjoining the two-way communication system.

Washington State Regulations
51-20-3104 (b) 3. Stairway Width. Each stairway adjacent to an area for evacuation assistance shall have a minimum clear width of
48 inches.

51-20-3104 (b) 4. Two-way Communication. A telephone with controlled access to a public telephone system or another method of two-way communication shall be provided between each area for evacuation assistance and the primary entry. The fire department may approve location other than the primary entrance.

51-20-3104 (b) 5. Identification. Each area for evacuation assistance shall be identified by a sign which states: AREA FOR EVACUATION ASSISTANCE and the International Symbol of access. The sign shall be illuminated when exit sign illumination is
required. The sign shall comply with sections 3314 (c) and (j). In
each area for evacuation assistance, instructions on the use of the
area under emergency condition shall be posted adjoining the two-way communication system.

51-20-3104 (c) Accessible Exits. All exterior exits which are located adjacent to accessible areas and within 6 inches of grade shall be accessible.

Commentary

PNE WSR does not require that the 48 inches be measured between the handrails. We need a clarification of where 48 inches is measured.

NE WSR does not require the two-way communication to be both audible and visible.

ADA Requirements

4.4 Protruding Objects.
4.4.1* General. Objects projecting from walls (for example, telephones) with their leading edges between 27 in and 80 in (685

mm and 2030 mm) above the finished floor shall protrude no more than 4 in (100 mm) into walks, halls, corridors, passageways, or aisles (see Fig. 8(a). Objects mounted with their leading edges at
or below 27 in (685 mm) above the finished floor may protrude any amount (see Fig. 8(a) and (b). Free-standing objects mounted on posts or pylons may overhang 12 in (305 mm) maximum from 27 in to 80 in (685 mm to 2030 mm) above the ground or finished floor (see Fig. 8(c) and (d)). Protruding objects shall not reduce the clear
width of an accessible route or maneuvering space (see Fig. 8(e)).

Fig. 8 Protruding Objects.

Fig. 8(c-1) Overhead Hazards. As an example, the diagram illustrates a stair whose underside descends across a pathway. Where the headroom is less than 80 inches, protection is offered by
a railing (2030 mm) which can be no higher than 27 inches (685 mm) to ensure detectability.

Fig. 8(d) Objects Mounted on Posts or Pylons. The diagram illustrates an area where an overhang can be greater than 12 inches (305 mm) because the object cannot be approached in the direction of the overhang.

Fig. 8(e) Example of Protection around Wall-Mounted Objects and Measurements of Clear Widths. The minimum clear width for continuous passage is 36 inches. Thirty two (32) inches
is the minimum clear width for a maximum distance of 24 inches (610 mm). The maximum distance an object can protrude beyond a wing wall is 4 inches (100 mm).

Washington State Regulations

51-20-3106 (e) Protruding Objects. Protruding objects shall not reduce the clear width of an accessible route of travel or maneuvering space. Any wall- or post-mounted object with its leading edge between 27 inches and 79 inches above the floor may project not more than 4 inches into the required width within a corridor. Any wall-or post-mounted projection greater than 4 inches shall extend to the floor. Protruding objects shall not reduce
the clear width of an accessible route of travel or maneuvering space.

Commentary

ADA/Washington State May 14, 1993
62 Technical Assistance Document

ADA Requirements

4.4.2 Head Room. Walks, halls, corridors, passage ways, aisles, or other circulation spaces shall have 80 in (2030 mm) minimum clear head room (see Fig. 8(a)). If vertical clearance of an area adjoining an accessible route is reduced to less than 80 in (nominal dimension), a barrier to warn blind or visually-impaired persons shall be provided (see Fig. 8(c-1))

Fig. 8(c-1) Overhead Hazards. As an example, the diagram Illustrates a stair whose underside descends across a pathway. Where the headroom is less than 80 inches, protection is offered by A railing (2030 mm) which can be no higher than 27 inches (685 mm) to ensure detectability.

4.5 Ground and Floor Surfaces.

4.5.1* General. Ground and floor surfaces along accessible routes and in accessible rooms and spaces including floors, walks, ramps, stairs, and curb ramps, shall be stable, firm, slip-resistant, and shall comply with 4.5.

4.5.2 Changes in Level. Changes in level up to in (6 mm) may be vertical and without edge treatment (see Fig. 7(c)). Changes in level between and1/2in (6 mm and 13 mm) shall be beveled with a slope no greater than 1:2 (see Fig. 7(d)). Changes in level greater than1/2in (13 mm) shall be accomplished by means of a ramp that complies with 4.7 or 4.8.

4.5.3* Carpet. If carpet or carpet tile is used on a ground or floor surface, then it shall be securely attached; have a firm cushion, pad, or backing, or no cushion or pad; and have a level loop, textured loop, level cut pile, or level cut/uncut pile texture. The

maximum pile thickness shall be1/2in (13 mm) (see Fig. 8(f)). Exposed edges of carpet shall be fastened to floor surfaces and Have trim along the entire length of the exposed edge. Carpet edge
Trim shall comply with 4.5.2.

Washington State Regulations

51-20-3106 (d) 2. Height. Accessible routes shall have a clear height of not less than 79 inches. Where the vertical clearance of
an area adjoining an accessible route of travel is less than 79 inches but more than 27 inches, a continuous permanent barrier shall be installed to prevent traffic into such areas of reduced clearance.

51-20-3106 (g) Floor Coverings and Surface Treatments. 1. General. All surfaces shall be firm and stable.

51-20-3106 (g) 3. Slip-Resistant Surfaces. Showers, locker rooms, swimming pool, spa and hot tub decks, toilet rooms and other areas subject to wet conditions shall have slip-resistant floors.
Exterior accessible routes of travel shall have slip-resistant surfaces.

51-20-3107 (b) 5. Surface. Parking spaces and access aisles shall
be firm, stable, smooth and slip-resistant.

51-20-3106 (f) Changes, in Level. Accessible routes of travel and
accessible spaces within buildings shall have continuous common floor or ramp surfaces. Abrupt change in height greater than inch shall be beveled to 1 vertical in 2 horizontal. Changes in level
greater than1/2inch shall be accomplished by means of a ramp meeting the requirements of Section 3106 (h). For Type B dwelling
units, see also Section 3106 (aa).

51-20-3106 (g) 2. Carpeting. Carpeting and floor mats in accessible areas shall be securely fastened to the underlying surface, and shall provide a firm, stable, continuous and relatively
smooth surface.

Commentary

PNE WSR's provision does not include the1/2inch maximum pile thickness.

ADA Requirements

4.5.4 Gratings. If gratings are located in walking surfaces, then they shall have spaces no greater than1/2in (13 mm) wide in one direction (see Fig. 8(g)). If gratings have elongated openings, then they shall be placed so that the long dimension is perpendicular to the dominant direction of travel (see Fig. 8(h)).

4.6 Parking and Passenger Loading Zones.

4.6.1 Minimum Number. Parking spaces required to be accessible by 4.1 shall comply with 4.6.2 through 4.6.5. Passenger loading zones required to be accessible by 4.1 shall comply with 4.6.5 and 4.6.6.

4.6.2 Location. Accessible parking spaces serving a particular building shall be located on the shortest accessible route of travel from adjacent parking to an accessible entrance. In parking facilities that do no serve a particular building, accessible parking shall be located on the shortest accessible route of travel to an accessible pedestrian entrance of the parking facility. In buildings with multiple accessible entrances with adjacent parking, accessible parking spaces shall be dispersed and located closest to the accessible entrances.

Washington State Regulations

51-20-3106 (g) 4. Grates. Within an accessible route of travel grates shall have openings no more than1/2inch in one direction. Where grates have elongated openings, they shall be placed so that The long dimension is perpendicular to the dominant direction of

Travel. The maximum vertical surface change shall be 1/8 inch.

51-20-3106 (g) 5. Expansion and Construction Joints. Expansion and construction joints in exterior routes of travel shall have a width of not more than1/2inch, shall be filed with a firm, compressible, elastic material, and shall be substantially level with
the surface of the accessible route of travel.

51-20-3107 Parking Facilities. (a) Accessible Parking Required.

51-20-3107 (b) Design and Construction. 1. General. When accessible parking spaces are required by this section they shall be
designed and constructed in accordance with this section.

51-20-3108 (b) Design and Construction. 1. General. Passenger drop-off and loading zones shall be designed and constructed in accordance with this section.

51-20-3107 (a) . . . Accessible parking spaces shall be located on
the shortest possible accessible route of travel to an accessible building entrance. In facilities with multiple accessible building
entrances with adjacent parking, accessible parking spaces shall be
dispersed and located near the accessible entrances. Wherever practical, the accessible route of travel shall not cross lanes of
vehicular traffic. Where crossing traffic lanes is necessary, the
route of travel shall be designated and marked as a crosswalk.

Commentary

ADA/Washington State May 14, 1993
64 Technical Assistance Document

ADA Requirements

4.6.3* Parking Spaces. Accessible parking spaces shall be at least
96 in (2440 mm) wide. Parking access aisles shall be part of an accessible route to the building or facility entrance and shall comply
with 4.3. Two accessible parking spaces may share a common access aisle (see Fig. 9). Parked vehicle overhangs shall not

reduce
the clear width of an accessible route. Parking spaces and
access
aisles shall be level with surface slopes not exceeding 1:50 (2%)
in
all directions.

Fig. 9 Dimensions of Parking Spaces.

The access aisle shall be a minimum of 60 inches (1525 mm) wide for cars or a minimum of 96 inches (2440 mm) wide for vans. The accessible route connected to the access aisle at the front of the parking spaces shall be a minimum of 36 inches (915 mm).

4.6.4* Signage. Accessible parking spaces shall be designated as reserved by a sign showing the symbol of accessibility (see 4.30.7). Spaces complying with 4.1.2(5)(b) shall have an additional sign "Van-Accessible" mounted below the symbol of accessibility. Such signs shall be located so they cannot be obscured by a vehicle parked in the space.

4.6.5* Vertical Clearance. Provide minimum vertical clearance of 114 in (2895 mm) at accessible passenger loading zones and along at least one vehicle access route to such areas from site entrance(s)
and exit(s). At parking spaces complying with 4.1.2(5)(b), provide
minimum vertical clearance of 98 in (2490 mm) at the parking space and along at least one vehicle access route to such spaces from site entrance(s) and exit(s).

Washington State Regulations

51-20-3107 (b) 2. Size. Parking spaces shall be not less than 96 inches in width and shall have an adjacent access aisle not less than 60 inches in width. Where two adjacent spaces are provided, the access aisle may be shared between the two spaces. Boundaries of access aisles shall be marked so that aisles will
not
be used as parking space.

Van accessible parking spaces shall have an adjacent access aisle not less than 96 inches in width.

51-20-3107 (b) 4. Slope. Accessible parking spaces and access aisles shall be located on a surface with a slope not to exceed 1 vertical in 48 horizontal.

51-20-3107 (b) 5. Surface. Parking spaces and access aisles shall
be firm, stable, smooth and slip-resistant.

51-20-3107 (c) Signs. Every parking space required by this section
shall be identified by a sign, centered between 3 and 5 feet above
the parking surface, at the head of the parking space. The sign shall include the International Symbol of Access and the phrase "State Disabled Parking Permit Required."

51-20-3107 (b) 3. Vertical Clearance. Where accessible parking spaces are provided for vans, the vertical clearance shall be not less than 114 inches.

Commentary

NE WSR requires no sign designating which spaces are "van-accessible."

PNE WSR's requirement for vertical clearance does not appear to apply to passenger loading zones or along vehicle access routes.

ADA Requirements

4.6.6 Passenger Loading Zones. Passenger loading zones shall provide an access aisle at least 60 in (1525 mm) wide and 20 ft (240 in)(6100 mm) long adjacent and parallel to the vehicle pull-up
space (see Fig. 10). If there are curbs between the access aisle and the vehicle pull-up space, then a curb ramp complying with 4.7
shall be provided. Vehicle standing spaces and access aisles shall
be level with surface slopes not exceeding 1:50 (2%) in all directions.

4.7 Curb Ramps.

4.7.1 Location. Curb ramps complying with 4.7 shall be provided wherever an accessible route crosses a curb.

4.7.2 Slope. Slopes of curb ramps shall comply with 4.8.2. The

slope shall be measured as shown in Fig. 11. Transitions from ramps to walks, gutters, or streets shall be flush and free of abrupt changes. Maximum slopes of adjoining gutters, road surface immediately adjacent to the curb ramp, or accessible route shall not exceed 1:20.

Fig. 11 Measurement of Curb Ramp Slopes.

The ramp slope is a ratio equal to the vertical rise divided by the horizontal run. The adjoining slope at walk or street shall not exceed 1:20.

Washington State Regulations

51-20-3108 Passenger Drop -off and Loading Zones. (a) Location. Where provided, passenger drop-off and loading zones shall be located on an accessible route of travel.

51-20-3108 (b) 2. Passenger Drop-off Zones. A. Size. Drop-off zones shall be not less than 12 feet in width by 25 feet in length with the long dimension abutting and parallel to an accessible route of travel.

51-20-3108 (b) 2 B. Slope. Such zones shall be located on a surface with a slope not exceeding 1 vertical in 48 horizontal.

51-20-3108 (b) 3. Passenger Loading Zones. A. Size. Passenger loading zones shall provide an access aisle not less than 5 feet in width by 20 feet in length with the long dimension abutting and parallel to: (1) the vehicle space on one side and (2) an accessible route of travel on the other.

51-20-3108 (b) 3. B. Slope. Such zones shall be located on a surface with a slope not exceeding 1 vertical in 48 horizontal.

51-20-3106 (d) 4. Changes in Level. Changes in level along an accessible route of travel shall comply with Section 3106 (f). Stairs shall not be part of an accessible route of travel. Any raised area within an accessible route of travel shall be cut through to

maintain a level route or shall have curb ramps at both sides and a
level area not less than 48 inches long connecting the ramps.

51-20-3106 (d) 8. Curb Ramps. A. Slope Slopes of curb ramps shall comply with Section 3106 (h). Transitions from ramps to walks, gutters or vehicular ways shall be flush and free of abrupt
changes in height. Maximum slopes of adjoining gutters and road surfaces immediately adjacent to the curb ramp or accessible route
of travel shall not exceed 1 vertical in 20 horizontal.

Commentary

ADA Requirements

4.7.3 Width. The minimum width of a curb ramp shall be 36 in (915 mm), exclusive of flared sides.

4.7.4 Surface. Surfaces of curb ramps shall comply with 4.5.

4.7.5 Sides of Curb Ramps. If a curb ramp is located where pedestrians must walk across the ramp, or where it is not protected
by handrails or guardrail, it shall have flared sides; the maximum
slope of the flare shall be 1:10 (see Fig. 12(a)). Curb ramps with
returned curbs may be sued where pedestrians would not normally walk across the ramp (see Fig. 12(b)).

Fig. 12 Sides of Curb Ramps.

Fig. 12(a) Flared Sides. If the landing depth at the top of a
curb ramp is less than 48 inches, then the slope of the flared side
shall not exceed 1:12.

4.7.6 Built-up Curb Ramps. Built-up curb ramps shall be located so
that they do not project into vehicular traffic lanes (see Fig. 13).

4.7.7 Detectable Warnings. A curb ramp shall have a detectable warning complying with 4.29.2. The detectable warning shall extend the full width and depth of the curb ramp.

4.7.8 Obstructions. Curb ramps shall be located or protected to prevent their obstruction by parked vehicles.

4.7.9 Location at marked Crossings. Curb ramps at marked crossings shall be wholly contained within the markings, excluding
any flared sides (see Fig. 15).

Washington State Regulations

51-20-3106 (d) 8. B. Width. Curb ramps shall be not less than 36 inches in width, exclusive of the required side slopes.

51-20-3106 (d) 5. Surfaces. A. General. All floor and ground surfaces in an accessible route of travel shall comply with Section
3106 (q).

51-20-3106 (d) 8. C. Side slopes of Curb Ramps. Curb ramps located where pedestrians must walk across the ramp, or where not protected by handrails or guardrails, shall have sloped sides.
The maximum side slope shall be 1 vertical in 10 horizontal. Curb
ramps with returned curbs may be used where pedestrians would not normally walk across the ramp.

51-20-3106 (d) 8. D. Location. Built-up curb ramps shall be located so as not to project into vehicular ways nor be located within accessible parking spaces.

51-20-3106 (d) 5.B. Detectable Warnings. Curb ramps shall have detectable warnings complying with Section 3106 (q). Detectable warnings shall extend the full width and depth of the curb ramp.

51-20-3106 (d) 9. Vehicular Areas. Where an accessible route of travel crosses or adjoins a vehicular way, and where there are no curbs, railings or other elements detectable by a person who has severe vision impairment separating the pedestrian and vehicular areas, the boundary between the areas shall be defined by a continuous detectable warning not less than 36 inches wide, complying with Section 3106 (g).

51-20-3106 (d) 8 E. Obstructions. Curb ramps shall be located or

protected to prevent their obstruction by parked vehicles.

51-20-3106 (d) 8. F. Location at Marked Cross Walks. Curb ramps at marked cross walks shall be wholly contained within the markings, excluding any sloped sides.

Commentary

NE WSR does not address requirement for 48 inch clear space at top of a curb ramp or use of 1:12 slope on side flare where 48 inches "not provided."

PNE This provision is generally equivalent if it refers to section 3106 (q). the print is not clear. Clarification is needed.

ADA/Washington State May 14, 1993
67 Technical Assistance Document

ADA Requirements

4.7.10 Diagonal Curb Ramps. If diagonal (or corner type) curb ramps have returned curbs or other well-defined edges, such edges shall be parallel to the direction of pedestrian flow. The bottom of diagonal curb ramps shall have 48 in (1220 mm) minimum clear space as shown in Fig. 15 (c) and (d). If diagonal curb ramps are provided at marked crossings, the 48 in (1220 mm) clear space shall be within the markings (see Fig. 15 (c) and (d)). If diagonal curb ramps have flared sides, they shall also have at least a 24 in (610 mm) long segment of straight curb located on each side of the curb ramp and within the marked crossing (see Fig. 15c).

4.7.10 Islands. Any raised islands in crossings shall be cut through level with the street or have curb ramps at both sides and a level area at least 48 in (1220 mm) long between the curb ramps in the part of the island intersected by the crossings (see Fig. 15(a) and (b)).

4.8 Ramps.

4.8.1* General. Any part of an accessible route with a slope greater than 1:20 shall be considered a ramp and shall comply with 4.8.

4.8.2* Slope and Rise. The lease possible slope shall be used for any ramp. The maximum slope of a ramp in new construction shall be 1:12. The maximum rise for any run shall be 30 in (760 mm) (see Fig. 16). Curb ramps and ramps to be constructed on existing sites or in existing buildings or facilities may have slopes and rises as shown as allowed in 4.1.6(3)(a) if space limitations prohibit the use of a 1:12 slope or less (see 4.1.6).

Fig. 16 Components of a Single Ramp Run and Sample Ramp Dimensions.

If the slope of a ramp is between 1:12 and 1:16, the maximum rise shall be 30 inches (760 mm) and the maximum horizontal run shall be 30 feet (9 m). If the slope of the ramp is between 1:16 and 1:20, the maximum rise shall be 30 inches (760 mm) and the maximum horizontal run shall be 40 feet (12 m).

Washington State Regulations

51-20-3106 (d) 4. Changes in Level. Changes in level along an accessible route of travel shall comply with Section 3106 (f). Stairs shall not be part of an accessible route of travel. Any raised area within an accessible route of travel shall be cut through to maintain a level route of shall have curb ramps at both sides and a level area not less than 48 inches long connecting the ramps.
51-20-3106 (h) Ramps. 1. General Ramps required to be accessible shall comply with Section 3307 and the provisions of this section. No ramp shall change direction between landings, except ramps with an inside radius of 30 feet or greater.

51-20-3106 (h) 2. Slope and Rise. The maximum slope of a ramp shall be 1 vertical in 12 horizontal. The maximum rise for any run shall be 30 inches.

51-20-3315 (e) Ramp Slope. The slope of ramped aisles shall not

be more than 1 vertical in 8 horizontal. Ramped aisles shall have
a slip-resistant surface.

EXCEPTION: When provided with fixed seating, theaters may have a slope not steeper than 1 vertical to 5 horizontal.

Commentary

NE No equivalent provisions.

PNE Clarification is needed to ascertain whether the "ramped aisles" of 51-20-3315 (e) are allowed as part of an accessible route. If allowed, this is not equivalent.

ADA Requirements

4.8.3 Clear Width. The minimum clear width of a ramp shall be 36 in (915 mm).

4.8.4* Landings. Ramps shall have level landings at bottom and top of each ramp and each ramp run. Landings shall have the following features:

(1) The landing shall be at least as wide as the ramp run leading to it.

(2) The landing length shall be a minimum of 60 in (1525 mm) Clear.

(3) If ramps change direction at landings, the minimum landing Size shall be 60 in by 60 in (1525 mm by 1525 mm).

(4) If a doorway is located at a landing, then the area in front of
The doorway shall comply with 4.13.6.

Washington State Regulations

51-20-3106 (h) 3. Width. The minimum width of a ramp shall be not less than 36 inches for interior ramps and 44 inches for exterior ramps.

51-20-3106 (h) 4. Landings. Ramps within the accessible route of

travel shall have landings at the top and bottom, and at least one intermediate landing shall be provided for each 30 inches of rise.
Landings shall have a minimum dimension measured in the direction of ramp run of not less than 60 inches. Where the ramp changes direction at a landing, the landing shall be not less than 60 inches by 60 inches. The width of any landing shall be not less the width of the ramp.

Commentary

ADA/Washington State May 14, 1993
69 Technical Assistance Document

ADA Requirements

4.8.5* Handrails. If a ramp run has a rise greater than 6 in (150 mm) or a horizontal projection greater than 72 in (1830 mm), then it shall have handrails on both sides. Handrails are not required on curb ramps or adjacent to seating in assembly areas. Handrails shall comply with 4.26 and shall have the following features:

(1) Handrails shall be provided along both sides of ramp segments. The inside handrail on switchback or dogleg ramps shall always be continuous.

Washington State Regulations

51-20-3106 (h) 5. Handrails. Ramps having slopes steeper than 1 vertical in 20 horizontal shall have handrails as required for stairways, except that intermediate handrails as required for stairways, except that intermediate handrails as required in Section 3306 (I) are not required. Handrails shall be continuous provided that they shall not be required at any point of access along the ramp, nor at any curb ramp. Handrails shall extend at least 12 inches beyond the top and bottom of any ramp segment.

EXCEPTION: Ramps having a rise less than or equal to 6 inches or a run less than or equal to 72 inches need not have handrails.

51-20-3306 (i) Handrails. Stairways shall have handrails on each side, and every stairway required to be more than 88 inches in width shall be provided with not less than one intermediate handrail
for each 88 inches of required width. Intermediate handrails shall
be spaced approximately equally across the entire width of the stairway.
EXCEPTION: 1. Stairways less than 44 inches in width or stairways serving one individual dwelling unit in Group R, Division 1
or 3 Occupancies, or a Group R, Division 3 Congregate residence may have one handrail.
2. Private stairways 20 inches or less in height may have handrails
on one side only.
3. Stairways having less than four risers and serving one individual
dwelling unit in Group, R, Division 1 or 3, or a Group R. Division 3
congregate residence or serving Group M. Occupancies need not have handrails.

Commentary

NE It appears that the reference to section 51-20-3306 (l) Would allow ramps to have only one handrail if they are less than 44 inches in width. Section 51-20-3106 sates "ramps . . . shall have handrails as required for stairways in section 3306 (I)* and 3306 (l) ahs an exception for stairways less than 44 inches or stairways serving certain occupancy types. Certain ramps may be less than 44 inches wide.

ADA Requirements

(2) If handrails are not continuous, they shall extend at least 12
in (305 mm) beyond the top and bottom of the ramp segment and shall be parallel with the floor or ground surface (see Fig. 17).

(3) The clear space between the handrail and the wall shall be 1 r in (38 mm).

(4) Gripping surfaces shall be continuous.

(5) Top of handrail gripping surfaces shall be mounted between 34 in and 38 in (865 mm and 965 mm) above ramp surfaces.

(6) Ends of handrails shall be either rounded or returned smoothly
to floor, wall, or post.

(7) Handrails shall not rotate within their fittings.

4.8.6 Cross Slope and Surfaces. The cross slope of ramp surfaces shall be no greater than 1:50. Ramp surfaces shall comply with 4.5.

Washington Sate Regulations

The top of handrails and handrail extensions shall be placed not less than 34 inches or more than 38 inches above the nosing of treads and landings. Handrails shall be continuous the full length
of the stairs and, except for private stairways, at least one handrail
shall extend in the direction of the stair run not less than 12 inches
beyond the top riser or less than 23 inches beyond the bottom riser. Ends shall be returned or shall terminate in newel posts or
safety terminals.

The handgrip portion of handrails shall be not less than 1 r inches or more than 2 inches in cross-sectional dimension or the shape shall provide an equivalent gripping surface. The handgrip portion of handrails shall have a smooth surface with no sharp corners.

Handrails projecting from a wall shall have a space of not less than
11/2inches between the all and the handrail. Any recess containing a handrail shall allow a clearance of not less than 18 inches above the top of the rail, and shall be not more than 3 inches in horizontal depth.

Handrails shall not rotate within their fittings.

51-20-3106 (d) 3. Slope. An accessible route of travel shall have
a running slope not greater than 1 vertical in 12 horizontal. An accessible route of travel with a running slope greater than 1

vertical in 20 horizontal shall comply with Section 3106 (h). Cross
slopes of an accessible route of travel shall not exceed 1 vertical in
48 horizontal.

Commentary

ADA Requirements

4.8.7 Edge Protection. Ramps and landings with drop-offs shall have curbs, walls, or projecting surfaces that prevent people from slipping off the ramp. Curbs shall be a minimum of 2 in (50 mm) high (see Fig. 17).

4.8.8 Outdoor Conditions. Outdoor ramps and their approaches shall be designed so that water will not accumulate on walking surfaces.

4.9 Stairs.

4.9.1* Minimum Number. Stairs required to be accessible by 4.1 shall comply with 4.9.

Washington State Regulations

51-20-3106 (d) 6. Edge Protection. Guardrails designed and constructed in accordance with Section 1712 shall be provided on any portion of an accessible route of travel which is more than 30
inches above the grade or floor below. Any portion of the edge of
an accessible route of travel which is more than1/2inch above adjacent grade of floor shall be provided with a protective railing
with the top of the rail at a height of 34 inches nominal and a mid-
rail at a height of 18 inches nominal.
EXCEPTION: 1. Where curbs, walls, or should slopes abut the accessible route of travel, a protective railing is not required. Where provided:
A. Curbs shall be not less than 2 inches in height above the surface of the accessible route of travel.
B. Shoulder slopes shall be at the same grade as the edge of the accessible route of travel; and shall have a slope, downward from

the edge, of not more than 1 vertical in 48 horizontal for a distance
of not less than 36 inches.
2. For routes of travel adjoining vehicular ways or parking areas,
protective railings are not required provided the difference in grade
is less than 3 inches.

51-20-3106 (h) 6. Exterior Ramps. Exposed ramps and their approaches shall be constructed to prevent the accumulation of water on walking surfaces.
51-20-3106 (I) Stairways.

1. General. Stairways required to be accessible shall comply with Section 3306 and provisions of this section.

Commentary

ADA/Washington State May 14, 1993
72 Technical Assistance Document

ADA Requirements

4.9.2 Treads and Risers. On any given flight of stairs, all steps
shall have uniform riser heights and uniform tread widths. Stair treads shall be no less than 11 in (280 mm) wide, measured from riser to riser (see Fig. 18(a)). Open risers are not permitted.

4.9.3 Nosing. The undersides of nosing shall not be abrupt. The radius of curvature at the leading edge of the tread shall be no greater than1/2in (13 mm). Risers shall be sloped or the underside of the nosing shall have an angle not less than 60 degrees from the horizontal. Nosing shall project no more than 1-1/2 in (38 mm) (see Fig. 18).

Washington State Regulations

51-20-3106 (i) 2. Open Risers. Open risers shall not be permitted

EXCEPTION: Stairways in Group H, Division 1 apartment buildings may have open risers.

51-20-3306 (c) Rise and Run. The rise of every step in a stairway
shall not be less than 4 inches or greater than 7 inches. Except

as
permitted in Subsections (d) and (f), the run shall not be less than
11 inches as measured horizontally between the vertical planes of
the furthermost projection of adjacent reads. Except as permitted
in Subsections (d), (e) and (f), the largest tread run within any flight of stairs shall not exceed the smallest by more than 3/8 inch.
The greatest riser height within any flight of stairs shall not exceed
the smallest by more than 3/8 inch.

EXCEPTIONS: 1. Private stairways serving an occupant load of less than 10 and stairways to unoccupied roofs may be constructed with an 8-inch maximum rise and a 9-inch minimum run.
2. Where the bottom or top riser adjoins a sloping public way, walk or driveway having an established grade and serving as a landing, the bottom or top riser may be reduced along the slope to
less than 4 inches in height with the variation in height of the bottom or top riser not to exceed 3 inches in every 3 feet of stairway width.

51-20-3106 (i) 3. Nosing. Stair nosing shall be flush, slip-resistant
and rounded to a radius of1/2inches maximum. Risers shall be sloped or the underside to the nosing shall have an angel of not less than 60 degrees from the horizontal. Nosing shall project no
more than 11/2inches.

Commentary

ADA Requirements

4.9.4 Handrails. Stairways shall have handrails at both sides of all
stairs. Handrails shall comply with 4.26 and shall have the following features:

(1) Handrails shall be continuous along both sides of stairs. The

inside handrail on switchback or dogleg stairs shall always be continuous (see Fig. 19(a) and (b)).

(2) If handrails are not continuous, they shall extend at least 12 in (305 mm) beyond the top riser and at least 12 in (305 mm) plus the width of one tread beyond the bottom riser. At the top, the extension shall be parallel with the floor or ground surface. At the bottom, the handrail shall continue to slope for a distance of the width of one tread from the bottom riser; the remainder of the extension shall be horizontal (see Fig. 19(c) and (d)). Handrail extensions shall comply with 4.4.

(3) The clear space between handrails and wall shall be 1-1/2 in (38 mm).

(4) Gripping surfaces shall be uninterrupted by newel posts, other construction elements, or obstructions.

(5) Top of handrail gripping surface shall be mounted between 34 in and 38 in (865 mm and 965 mm) above stair nosing.

(6) Ends of handrails shall be either rounded or returned smoothly to floor, wall or post.

(7) Handrails shall not rotate within their fittings.

Washington State Regulations

51-20-3306 (I) Handrails. Stairways shall have handrails on each side, and every stairway required to be more than 88 inches in width shall be provided with not less than one intermediate handrail for each 88 inches of required width. Intermediate handrails shall be spaced approximately equally across the entire width of the stairway.

EXCEPTION: 1. Stairways less than 44 inches in width or stairways serving one individual dwelling unit in Group R, Division 1 or 3 Occupancies, or a Group R, Division 3 congregate residence may have one handrail.
2. Private stairways 20 inches or less in height may have

handrails
on one side only.
3. Stairways having less than four risers and serving one individual
dwelling unit in Group R, Division 1 or 3, or a Group R. Division 3
congregate residence or serving Group M. Occupancies need not have handrails.

3306 (i) Handrails. . . . The top of handrails and handrail extension shall be placed not less than 34 inches or more than 38 inches above the nosing of treads and landings. Handrails shall be
continuous the full length of the stairs and, except for private stairways, at least one handrail shall extend in the direction of the
stair run not less than 12 inches beyond the top riser or less than
23 inches beyond the bottom riser. Ends shall be returned or shall
terminate in newel posts or safety terminals.

The handgrip portion of handrails shall be not less than 1 1/2 inches or more than 2 inches in cross-sectional dimension or the shape shall provide an equivalent gripping surface. The handgrip portion of handrails shall have a smooth surface with no sharp corners.

Handrails projecting from a wall shall have a space of not less than
1 1/2 inches between the wall and the handrail. Any recess containing a handrail shall allow a clearance of not less than 18 inches above the top of the rail, and shall be not more than 3 inches in horizontal depth.

Handrails shall not rotate within their fittings.

Commentary

NE The exception for stairways less than 44 inches to the requirement for two handrails would often apply to some of the facilities that are exempt from elevators under WSR. Small "Private" group homes used for transients could have four steps without handrails or stairways less than 44 inches wide with only one handrail. As a result, even people who walk with difficulty but could otherwise gain access by walking up stairs with handrails on both sides, would have no access.

ADA Requirements

4.9.5 Detectable Warnings at Stairs. (Reserved)

4.9.6 Outdoor Conditions. Outdoor stairs and their approaches shall be designed so that water will not accumulate on walking surfaces.

4.10 Elevators

4.10.1 General. Accessible elevators shall be on an accessible route and shall comply with 4.10 and with the ASME A17.1-1990, Safety Code for Elevators and Escalators. Freight elevators shall not be considered as meeting the requirements of this section unless the only elevators provided are used as combination passenger and freight elevators for the public and employees.

4.10.2 Automatic Operation, Elevator operation shall be automatic.

Each car shall be equipped with a self-leveling feature that will automatically bring the car to floor landings within a tolerance of
1/2 in (13 mm) under rated loading to zero loading conditions. This
self-leveling feature shall be automatic and independent of the operating device and shall correct the overtravel or undertravel.

4.10.3 Hall Call Buttons. Call buttons in elevator lobbies and halls
shall be centered at 42 in (1065 mm) above the floor. Such call buttons shall have visual signals to indicate when each call Is registered and when each call is answered. Call buttons shall be a
minimum of 3/4 In (19 mm) In the smallest dimension. The button designating the up direction shall be on top. (See Fig. 20.) Buttons
shall be raised or flush. Objects mounted beneath hall call buttons
shall not project Into the elevator lobby more than 4 in (100 mm).

Washington State Regulations

51-20-3106 (i) 4. Exterior Stairways. Exposed stairways and their
approaches shall be constructed to prevent the accumulation of water on walking surfaces.

51-20-3105(c) Elevators. 2. Design. All elevators shall be accessible

EXCEPTION: 1. Private elevators serving only one dwelling unit. 2. Where more than one elevator is provided in the building, elevators used exclusively for movement of freight.
Elevators required to be accessible shall be designed and Constructed to comply with Chapter 296-81 of the Washington Administrative Code.

Commentary

NE No technical provisions submitted for review.

NE

NE

75 ADA/Washington State may 14, 1993
Technical Assistance Document

ADA Requirements

4.10.4 Hall Lanterns. A visible and audible signal shall be provided
at each hoistway entrance to indicate which car is answering a call.
Audible signals shall sound once for the up direction and twice for
the down direction or shall have verbal annunciators that say "up"
or "down." Visible signals shall have the following features:

(1) Hall lantern fixtures shall be mounted so that their centerline
Is at least 72 in (1830 mm) above the lobby floor, (See Fig. 20.)

(2) Visual elements shall be at least 2-1/2 in (64 mm) in the smallest dimension.

(3) Signals shall be visible from the vicinity of the hall call button

(see Fig. 20). In-car lanterns located in cars, visible from the vicinity of hall call buttons, and conforming to the above requirements, shall be acceptable.

4.10.5 Raised and Braille Characters an Hoistway Entrances. All elevator hoistway entrances shall have raised and Braille floor designations provided on both jambs. The centerline of the characters shall be 60 in (1525 mm) above finish floor. Such characters shall be 2 in (50 mm) high and shall comply with 4.30.4.
Permanently applied plates are acceptable If they are permanently fixed to the jambs. (See Fig. 20).

4.10.6* Door Protective and Reopening Device. Elevator doors shall
open and close automatically. They shall be provided with a reopening device that will stop and reopen a car door and hoistway
door automatically if the door becomes obstructed by an object or person. The device shall be capable of completing these operations
without requiring contact for an obstruction passing through the opening at heights of 5 in and 29 In (125 mm and 735 mm) above finish floor (see Fig. 20). Door reopening devices shall remain effective for at least 20 seconds. After such an interval, doors may
close in accordance with the requirements of ASME A17.1-1990.

Washington State Regulations

Commentary

NE

NE

NE

ADA Requirements

4.10.7* Door and Signal Timing for Hall Calls. The minimum acceptable time from notification that a car is answering a call until the doors of that car start to close shall be calculated from

the following equation:

T = D/(1.5 ft/s) or T = D/(445 mm/s)

where T total time in seconds and D distance (in feet or millimeters) from a point in the lobby or corridor 60 In (1525 mm)
directly in front of the farthest call button controlling that car
to the centerline of its hoistway door (sea Fig. 21). For cars with
in-car lanterns, T begins when the lantern is visible from the vicinity of hall call buttons and an audible signal Is sounded. The
minimum acceptable notification time shall be 5 seconds.

4.10.8 Door Delay for Car Calls. The minimum time for elevator doors to remain fully open in response to a car call shall be 3 seconds.

Washington State Regulations

Commentary
NE

NE

ADA Requirements

4.10.9 Floor Plan of Elevator Cars, The floor area of elevator cars
shall provide space for Wheelchair users to enter the car, maneuver
within reach of controls, and exit from the car. Acceptable door opening and inside dimensions shall be as shown in Fig. 22. The clearance between the car platform sill and the edge of any hoistway landing shall be no greater than 1-1/4 In (32 mm).

Fig. 22 Minimum Dimensions of Elevator Cars.

Diagram (a) illustrates an elevator with a door providing a 36 inch (915 mm) minimum clear width, in the middle of the elevator. The width of the elevator car is a minimum of 80 inches (2030 mm). The depth of the elevator our measured from the back

wall to the elevator door is a minimum of 54 inches (1370 mm). The depth of the elevator car measured from the back wall to the control panel is a minimum of 51 inches (1291 mm).

Diagram (b] illustrates an elevator with door providing a minimum 36 inch (915 mm) clear width, located to one side of the elevator. The width of the elevator car is a minimum of 68 inches (1730 mm). The dept of the elevator car measured from the back wall to the elevator door is a minimum of 54 inches (1370 mm). The depth of the elevator car measured from the back well to the control panel is a minimum of 51 inches (1291).

4.10.10 Floor Surfaces. Floor surfaces shall comply with 4.5.

4.10.11 Illumination Levels. The level of illumination at the car controls, platform, 2nd car threshold and landing sill shall be at
least 5 footcandles (53.8 lux).

Washington State Regulations

Commentary
NE

NE

NE

ADA Requirements

4.10.12* Car Controls. Elevator control panels shall have the

following features:

(1) Buttons. All control buttons shall be at least 3/4 in (19 mm)
in their smallest dimension. They shall be raised or flush.
(2) Tactile, Braille, and Visual Control Indicators. All control buttons shall be designated by Braille and by raised standard alphabet characters for letters, arabic characters for numerals, or
standard symbols as shown In rig. 23(a), and as required In ASME A17.1-1 990. Raised and Braille characters and symbols shall comply with 4.30. The call button for the main entry floor shall be

designated by a raised star at the left of the floor designation (see Fig. 23(a)). All raised designations for control buttons shall be placed immediately to the left of the button to which they apply. Applied plates, permanently attached, are an acceptable means to provide raised control designations. Floor buttons shall be provided with visual indicators to show when each call is registered. The visual indicators shall be extinguished when each call is answered.

(3) Height. All floor buttons shall be no higher than 54 in (1370 mm) above the finish floor for side approach and 48 in (1220 mm) for front approach. Emergency controls, including the emergency alarm and emergency stop, shall be grouped at the bottom of the panel and shall have their centerlines no less than 35 in (890 mm) above the finish floor (see Fig. 23(a) and (b)).

Fig. 23 Car Controls.

Fig. 23(a) Panel Detail. The diagram Illustrates the symbols used for the following control buttons: main entry floor, door closed, door open, emergency alarm, and emergency stop. The diagram further states that the octagon symbol for the emergency stop shall be raised but the X (inside the octagon) Is not.

(4) Location. Controls shall be located on a front wall if cars have center opening doors, and at the side wall or at the front wall next to the door if cars have side opening doors (see Fig. 23(c) and (d)).

Washington State Regulations

Commentary
NE

NE

4.10.13* Car Position Indicators. In elevator cars, a visual car position indicator shall be provided above the car control panel or over the door to show the position of the elevator in the hoistway. As the car passes or stops at a floor served by the elevators, the corresponding numerals shall illuminate, and an audible signal shall sound. Numerals shall be a minimum of 1/2 In (13 mm) high. The audible signal shall be no less than 20 decibels with a frequency no higher than 1500 Hz. An automatic verbal announcement of the floor number at which a car stops or which a car passes may be substituted for the audible signal.

4.10.14* Emergency Communications. If provided, emergency two-way communication systems between the elevator and a point outside the hoistway shall comply with ASME A17.1-1990. The highest operable part of a two-way communication system shall be a maximum of 48 in (1220 mm) from the floor of the car. It shall be identified by a raised symbol and lettering complying with 4.30 and located adjacent to the device. If the system uses a handset then the length of the cord from the panel to the handset shall be at least 29 in (735 mm). If the system is located in a closed compartment the compartment door hardware shall conform to 4.27, Controls and Operating Mechanisms. The emergency intercommunication system shall not require voice communication.

4.1 1 Platform Lifts (Wheelchair Lifts).

4.11.1 Location. Platform lifts (wheelchair lifts) permitted by 4.1 shall comply with the requirements of 4.11.

4.11.2* Other Requirements. If platform lifts (wheelchair lifts) are used, they shall comply with 4.2.4, 4.5, 4.27, and ASME A17.1 Safety Code for Elevators and Escalators, Section XX, 1990.

4.11.3 Entrance If platform lift are used then they shall facilitate unassisted entry, operation. and exit from the lift in compliance with 4.11.2.

4.12 Windows.

4.12.1* General. (reserved).

4.12.2* Window Hardware. (Reserved),
Washington State Regulation

See below.

51-20-3105(c) 3.All platform lifts used in lieu of an elevator
shall
be capable of independent operation and shall comply with Chapter
296-81 of the Washington Administrative Code.

Commentary

NE

NE

NE See below.

NE No technical provisions submitted for review.

ADA Requirements

4.13 Doors.

4.13.1 General. Doors required to be accessible by 4.1 shall
comply with the requirements of 4.13,

4.13.2 Revolving Doors and Turnstiles. Revolving doors or
turnstiles shall not be the only means of passage at an
accessible
entrance or along an accessible route. An accessible gate or door
shall be provided adjacent to the turnstile or revolving door and
shall be so designed as to facilitate the same use pattern.

4.13.3 Gates. Gates, including ticket gates, shall meet all
applicable specifications of 4.13.

4.13.4 Double-Leaf Doorways. It doorways have two independently
operated door leaves, then at least one leaf shall meet the

specifications in 4.13.5 and 4.13.6. That leaf shall be an active leaf.

4.13.5 Clear Width. Doorways shall have a minimum clear opening of
32 in (815 mm) with the door open 90 degrees, measured between the
face of the door and the opposite stop (see Fig. 24(a),
(b). (c), and (d)). Openings more than 24 in (61 0 mm) in depth shall comply with 4.2.1 and 4.3.3 (see Fig. 24(e)l.

EXCEPTION: Doors not requiring full user passage, such as shallow closets, may have the clear opening reduced to 20 in (510 mm) minimum.

Washington State Regulations
51-20-3106 (j) Doors.

51-20-3106 (j) 1. General. Doors required to be accessible shall
comply with Section 3304 and provisions of this section. For the purpose of this section, gates shall be considered to be doors. An
accessible gate or door shall be provided adjacent to any turnstile
or revolving door. Where doorways have two independently operated door leaves, then at least one leaf shall comply with this
section.

51-20-3304 (l) Additional Doors. Additional Doors. When additional doors are provided for egress purposes, they shall conform to all provisions of this Chapter.

EXCEPTION: approved revolving doors having leaves which will collapse under opposing pressures may be used in exit situations, provided:
A. Such doors have a minimum width of 6 feet 6 inches.
B. At least one conforming exit door is located adjacent to each revolving door.
C. The revolving door shall not be considered to provide any exit width.

51-20-3304 (h) Special Doors. Revolving , sliding and overhead doors shall not be used as required exits. Where a turnstile is used, a gate or door to accommodate persons with disabilities shall
be installed.

51-20-3106 (j) 2. Clear Width. Doors shall be capable of opening
so that the clear width of the opening is not less than 32 inches.

EXCEPTION: Door not requiring full user passage, such as shallow closets, may have a clear opening not less than 20 inches.

51-20-3304 (f) Width and Height. Every required exit doorway shall be of a size as to permit the installation of a door not less
than 3 feet in width and not less than 6 feet 8 inches in height. When installed, exit doors shall be capable of opening so that the
Clear width of the exit is not less than 32 inches. In computing the Exit width required by Section 3303 (b), the net dimension of the exitway shall be used.

Commentary

81 ADA/Washington State May 14, 1993
Technical Assistance Document

ADA Requirements

4.13.6 Maneuvering Clearances at Door,. Minimum maneuvering clearances at doors that are not automatic or power-assisted shall
be as shown in Fig. 25. The floor or ground area within the required clearances shall be level and clear.

Fig. 25 Maneuvering Clearances at Doors. NOTE., All doors in alcoves shall comply with the clearances for front approaches

Diagram (a) Front Approaches -- Swinging Doors. Front approaches to pull side of swinging doors shall have maneuvering space that extends 18 in (455 mm) minimum beyond the latch side of the door and 60 in (1525 mm) minimum perpendicular to the doorway.

Front approaches to push side of swinging doors, equipped with
both closer and latch, shall have maneuvering space that extends 12
in (305 mm) minimum beyond the latch side of the door and 48 in

(1220 mm) minimum perpendicular to the doorway.

Front approaches to push side of swinging doors, not equipped with latch and closer, shall have maneuvering space that is the same width as door opening and extends 48 in (1220 mm) minimum perpendicular to the doorway.

Diagram (b) Hinge Side Approaches. Hinge-side approaches to pull side of swinging doors shall have maneuvering space that extends 36 in (915 mm) minimum beyond the latch side of the door if 60 in (1525 mm) minimum is provided perpendicular to the doorway or maneuvering space that extends 42 in (1065 mm) minimum beyond the latch side of the door shall be provided if 54 in (1370 mm) minimum is provided perpendicular to the doorway.

Hinge-side approaches to push side of swinging doors, not equipped with both latch and closer, shall have a maneuvering space of 54 in (1370 mm) minimum, parallel to the doorway and 42 in (1065 mm) minimum, perpendicular to the doorway.

Washington State Regulations

51-20-3106 (j) 3. Maneuvering Clearance at Doors. Except as provided in Section 3106 (aa) (3106 (aa) is dwelling unit), all doors shall have minimum maneuvering clearances as follows:

A. Where a door must be pulled to be opened, an unobstructed Floor space shall extend at least 18 inches beyond the strike jamb.

B. Where a door must be pushed to be opened and is equipped With a closer and a latch, an unobstructed floor space shall extend At least 12 inches beyond the strike jamb.

51-20-3304 (i) Floor Level at Doors. Regardless of the occupant load, there shall be a floor or landing on each side of a door. When access for persons with disabilities is required by Chapter 31, the floor or landing shall not be more than 1/2inch lower than the threshold of the doorway. When such access is not required, such dimension shall not exceed 1 inch. Landings shall be level except for exterior landings, which may have a slope not to exceed

inch per foot.

51-20-3304 (j) Landings at Door. Landings shall have a width not less than the width of the stairway or the width of the door, whichever is the greater. Doors in the fully open position shall not reduce a required dimension by more than 7 inches. When a landing serves an occupant load of 50 or more, doors in any position shall not reduce the landing dimension to less than one-half its required width. Landings shall have a length measured in
the direction of travel of not less than 44 inches.

Commentary

NE Provisions do not contain enough detail to ensure Access at doors. For example, ADAAG Fig. 25 requires Maneuvering clearances that range in size from 60 inches By 52 inches to 48 inches by 32 inches, depending on door Swing approach, etc. Although provisions in sections 51-20-33304 (i) and (j) compensate in some ways, the provisions are still inadequate.

ADA Requirements

Hinge side approaches to push side of swinging doors, equipped with both latch and closer, shall have maneuvering space of 54 in (1370 mm) minimum, parallel to the doorway, 48 in (1220 mm) minimum perpendicular to the doorway.

Diagram (c) Latch Side Approaches -- Swinging Doors.
latch-side approaches to pull side of swinging doors, with closers,
shall have maneuvering space that extends 24 in (610 mm) minimum beyond the latch side of the door and 54 In (1370 mm) minimum perpendicular to the doorway.

Latch-side approaches to pull side of swinging doors, not equipped with closers, shall have maneuvering space that extends 24 in (610 mm) minimum beyond the latch side of the door and 48 in (1220 mm) minimum perpendicular to

EXCEPTION: Entry doors to acute care hospital bedrooms for in-patients shall be exempted from the requirement for space at the

latch side of the door(see dimension "x" in Fig. 25) if the door is at
least 44 in (1120 mm) wide.

4.13.7 Two Doors in Series. The minimum space between two hinged or pivoted doors in series shall be 48 in (1220 mm) plus the
width of any door swinging into the space. Doors in series shall swing either in the same direction or away from the space between the doors (see Fig. 26),

4.13.8* Thresholds at Doorways. Thresholds at doorways shall not exceed 3/4 in 19 mm in height for exterior sliding doors or 1/2
in 13 mm) for other types of doors. Raised thresholds and floor level changes at accessible doorways shall be beveled with a slope
no greater than 1:2 (see 4.5.2).

Washington State Regulation

See above.

51-20-3106 (j) 3. C. Where two doors are in a series, the minimum distance between two hinged or pivoted doors shall be 48 inches in addition to any needed for door swing.

51-20-3106 (j) 4. Thresholds at Doors. Thresholds at doors shall
comply with Section 3106 (e). (sic)

51-20-3106 (f) Changes in Level. Accessible routes of travel and accessible spaces within buildings shall have continuous common floor or ramp surfaces. Abrupt change in height greater than inch shall be beveled to 1 vertical in 2 horizontal. Changes in level
greater than 1/2 inch shall be accomplished by means of a ramp meeting the requirements of 3106 (h). For Type b dwelling units, see also Section 3106 (aa).

Commentary

NE See above.

PNE Requirement for the direction of the door swing for Doors in series is not included.

PNE If the reference should be to 3106 (f) instead of

3106 (e), it is equivalent.

ADA Requirements

4.13.9* Door Hardware, Handles, pulls, latches, locks, and other operating devices on accessible doors shall have a shape that is easy to grasp with one hand and does not require tight grasping, tight pinching, or twisting of the wrist to operate. Lever-operated mechanisms, push-type mechanisms, and U-shaped handles are acceptable designs. When sliding doors are fully open, operating hardware shall be exposed and usable from both sides. Hardware required for accessible door passage shall be mounted no higher than 48 in(1220 mm) above finished floor.

4.13.10* Door Closers. If a door has a closer, then the sweep period of the closer shall be adjusted so that from an open position of 70 degrees, the door will take at least 3 seconds to move to a point 3 in (75 mm) from the latch, measured to the leading edge of the door.

4.13.11* Door Opening Force. The maximum force; for pushing or pulling open a door shall be as follows:

(1) Fire doors shall have the minimum opening force allowable by the appropriate administrative authority.

(2) Other doors.
(a) exterior hinged doors: (Reserved).
(b) interior hinged doors: 5 lbf (22.2N)
(c) sliding or folding doors: 5 lbf (22.2N)

These forces do not apply to the force required to retract latch bolts or disengage other devices that may hold the door in a closed position.

Washington State Regulations

51-203106 (c) Controls and Hardware. 1. Operation. Handles, pulls, latches, locks and other operating devices on doors, windows, cabinets, plumbing fixtures and storage facilities,

shall
have a lever or other shape which will permit operation by wrist or
arm pressure and does not require tight grasping, pinching or twisting to operate.

2. Mounting Heights. The highest operable part of environmental And other controls, dispensers, receptacles and other operable Equipment shall be within a least one of the reach ranges specified
In Section 3106 (b), and not less than 36 inches above the floor. Electrical and communications system receptacles on walls shall be
Mounted a minimum of 15 inches in height above the floor. Door Hardware shall be mounted at not less than 36 inches and not more Than 48 inches above the floor.

51-20-3106 (j) 6. Door Closers. Where provided, door closers shall be adjusted to close from an open position of 70 degrees in not less than 3 seconds, to a point 3 inches from the latch, when measured to the leading edge of the door.

51-20-3304 (b) Swing and Opening force. Exit doors shall be of the
pivoted or side-hinged swinging type. Exit doors shall swing in the direction of exit travel when serving any hazardous area or when serving an occupant load of 50 or more. The door latch shall
release when subjected to a 15-pound force, and the door shall be set in motion when subjected to a 30-pound force. The door shall swing to full-open position when subjected to 15-pound force. Forces shall be applied to the latch side. Except that at exit doors
Within the accessible route of travel such force shall not exceed 8.5 pounds, and at sliding and folding doors, and interior swinging
doors such force shall not exceed 5 pounds. At exterior doors where environmental conditions require greater closing pressure, power-operated doors shall be used within the accessible route of travel.

Commentary
NE
84 ADA/Washington State May 14, 1993
Technical Assistance Document

ADA Requirements

4.13,12* Automatic Doors and Power-Assisted Doors. If an automatic door is used, then it shall comply with ANSI/BHMA A.156.10-1985. Slowly opening, low-powered, automatic doors Shall comply with ANSI A156.19-1984. Such doors shall not open to back check faster than 3 seconds and shall require no more than
15 lbf (66.6N) to stop door movement. If a power-assisted door is used, its door-opening force shall comply with 4.13.11 and its closing shall conform to the requirements in ANSI A156.19-1984.

Washington State Regulations

51-20-3106 (j) 5. Automatic and Power-Assisted Doors. Door-closers or power-operators shall be operable as required by Section
3304 (h).

EXCEPTION: Floor pad or electric-eye-actuated power operators.

All power-operated doors shall remain in the fully open position for
not less than 6 seconds before closing. Touch switches shall be mounted 36 inches above the floor and not less than 18 inches nor more than 36 inches horizontally from the nearest point of travel of
the moving door. Other power-operated doors must be actuated from a location not less than 36 inches from the nearest point of travel of the moving door. Power-operated doors shall automatically reopen when they encounter an obstruction other than the strike jamb.

51-20-3106 (j) 7. Vision Panels. Where vision panels are provided
in a door, the bottom of the glass shall be not more than 40 inches
above the door.

Commentary
NE
85 ADA/Washington State May 14,
1993
Technical Assistance Document

ADA Requirements

4.14 Entrances.

4.14.1 Minimum Number. Entrances required to be accessible by 4.1 shall be part of an accessible route complying with 4.3. Such entrances shall be connected by an accessible route to public transportation stops, to accessible parking and passenger loading zones, to public streets or sidewalks if available(see 4.3.2(1)). They shall also be connected by an accessible route to all accessible spaces or elements within the building or facility.

Washington State Regulations

51-20-3103 (b) Design and Construction. 2. Accessible Route of Travel. When a building or portion of a building, is required to be
accessible, an accessible route of travel shall be provided to all
portions of the building, to accessible building entrances and connecting the building and the public way. Except within an accessible dwelling unit, the accessible route of travel to areas of
primary function may serve but shall not pass through kitchens, storage rooms, toilet rooms, bathrooms, closets or other similar spaces.

Accessible routes of travel serving any accessible space or element
Shall serve as a means of egress for emergencies or connect to an Area of evacuation assistance.

EXCEPTION: For sites where natural terrain or other unusual property characteristics do not allow the provision of an accessible
route of travel from the public way to the building, the point of
vehicular debarkation may be substituted for the accessible entrance to the site.

Commentary
NE
86 ADA/Washington State May 14, 1993
Technical Assistance Document

ADA Requirements

4.14.2 Service Entrances. A service entrance shall not be the sole
accessible entrance unless it is the only entrance to a building or

facility (For example, in a factory or garage).

4.15 Drinking Fountains and Water Coolers.

4.15.1 Minimum Number. Drinking fountains or water coolers required to be accessible by 4.1 shall comply with 4.15

4.15.21 Spout Height. Spouts shall be no higher than 36 in (915 mm), measured from the floor or ground surfaces to the spout outlet (see Fig. 27(a)).

Fig. 27 Drinking Fountains and Water Coolers.

Fig. 27(a) Spout Height and Knee Clearance. In addition to clearances discussed in the text, the following knee clearance is required underneath the fountain: 8 inches (205 mm) minimum measured from the front edge underneath the fountain back towards the wall, and a 9 inch (230 mm) minimum high toe space, measured a maximum 6 inches (150 mm) from the wall. (4.15.2, 4.15.5)

Washington State Regulation

51-20-3103 (b) 3. Primary Entry Access. At least 50% of all public entries, or a number equal to the number or exits required by
Section 3303 (a), whichever is greater, shall be accessible. One of
the accessible public entries shall be the primary entry to a building. At least one accessible entry must be a ground floor entrance. Public entries do not include loading or services entries.

EXCEPTION: In Group R, Division 1 apartment buildings only the primary entry need be accessible, provided that the primary entry provides an accessible route of travel to all dwelling unit required
to be accessible.

Where a building is designed not to have common or primary entries, the primary entry to each individual dwelling unit required
to be accessible, and each individual tenant space, shall be accessible.

51-20-3105 (d) Other Building Components. 1. Water Fountains. on any floor where water fountains are provided, at least 50 percent, but in no case less than one fountain shall be

accessible
complying with Section 3106 (m) and at least one fountain shall be
mounted at a standard height.

51-20-3106 (m) 3. Spout Location. Spouts shall be located not more than 36 inches above the floor or ground surface.

Commentary

NE

87 ADA/Washington State May 14, 1993
Technical Assistance Document

ADA Requirements

4.15.3 Spout Location. The spouts of drinking fountains and water coolers shall be at the front of the unit and shall direct the water
flow in a trajectory that is parallel or nearly parallel to the front
of the unit, The spout shall provide a flow of water at least 4 in (100
mm) high so as to allow the insertion of a cup or glass under the flow of water. On an accessible drinking fountain with a round or oval bowl, the spout must be positioned so the flow of water is within 3 in (75 mm) of the front edge of the fountain.

4.15.4 Controls. Controls shall comply with 4.27.4. Unit controls shall be front mounted or side mounted near the front edge.

4.15.5 Clearances.

(1) Wall- and post-mounted cantilevered units shall have a clear
knee space between the bottom of the apron and the floor or ground
at least 27 in (685 mm) high, 30 in (760 mm) wide, and 17 in to 19 in
(430 mm to 485 mm) deep (see Fig. 27(a) and (b)), Such units shall also have a minimum clear floor space 30 in by 48 in (760 mm
by 1220 mm) to allow a person in a wheelchair to Approach the unit facing forward.

(2) Free-standing or built-in units not having a clear space

under
them shall have a clear floor space at least 30 in by 48 in (760 mm
by 1220 mm) that allows a person in a Wheelchair to make a
parallel approach to the unit (see Fig. 27(c) and (d)). This clear
floor space shall comply with 4.2.4.

4.16 Water Closets.

4.16.1 General. Accessible water closets shall comply with 4.16.

Washington State Regulations

51-20-3106 (m) 3. . . Spouts shall b e located in the front of the
unit and shall direct a water flow not less than 4 inches in height,
in a trajectory parallel to the front of the unit.

51-20-3106 (m) 4. Controls. Controls shall be located not more than 6 inches from the front of the unit and shall comply with Section 3106 (c). The force required to activate the control shall
not exceed 5 pounds.

51-20-3106 (m) Water Fountains. 1. Clear Floor Space. Wall- and post-mounted cantilevered units shall have a minimum clear floor space in front of the units 30 inches in width by 48 inches in
depth to allow a forward approach.

Free-standing or built-in units not having a clear space under them
shall have a clear floor-space at least 30 inches in depth by 48 inches in width in order to allow a person in a wheelchair to make
a parallel approach to the unit.

2. Knee space. Wall- and post-mounted cantilevered units shall have knee space in accordance with Section 3106 (b) 2. B. the knee space shall be not less than 19 inches in depth.

51-20-3106 (m) 5. Water Fountains in Alcoves. Where a unit is installed in an alcove greater than 3 inches in depth, the alcove shall be not less than 48 inches in width. A minimum 24 inches of

clear space shall be provided from the spout to the nearest side wall of the alcove. Recessed units shall be installed such that the
spout is not recessed beyond the plane of the wall.

51-20-3106 (k) Bathrooms, Toilet Rooms, Bathing facilities and Shower Rooms. 1. General. Bathrooms, toilet rooms, bathing facilities and shower rooms shall be designed in accordance with this section. For dwelling units, see also Section 3106 (aa).

Commentary

PNE WSR requires the spout to be located in the "front" of the unit. It is not clear how this would apply to fountains with round or oval bowls.

PNE Generally equivalent only if section 3106 (b) 12. C., Knee and Toe Clearance is referenced by 51-20-3106 (b) 2. Section 3106 (b) 2. B. is the T-turn. We need clarification.

ADA Requirements

4.16.2 Clear Floor Space. Clear floor Space for water closets not in
stalls shall comply with Fig. 28. Clear floor space may be arranged
to allow either a left-handed or right-handed approach.

Fig, 28 Clear Floor Space at Water Closets.

For a front transfer to the water closet, the minimum clear floor space at the water closet is a minimum 48 inches (1220 mm) in width by a minimum of 66 inches (1675 mm) in length. For a diagonal transfer to the water closet, the minimum clear floor space
is a minimum of 48 Inches (1220 mm) In width by a minimum of 56 inches (1420 mm) in length. For a side transfer to the water closer, the minimum clear floor space is a minimum of 60 inches (1525 mm) in width by a minimum of 56 inches (1420 mm) in length. (4. 16.2, A4.22.3)

4.16.3* Height. The height of water closets shall be 17 in to 19 in
(430 mm to 485 mm), measured to the top of the toilet seat (see

Fig. 29(b)) Seats shall not be sprung to return to lifted position.

Fig. 29(b) Side Wall. A 42 inch [1065 mm) minimum length grab bar is required to the side of the water closet spaced
12 inches (305 mm) maximum from the back wall and extending a minimum of 54 inches (1370 mm) from the back wall at a height between 33 and 36 inches (840-915 mm). The toilet paper dispenser shall be mounted of a minimum height of 19 inches (485 mm). (4.16.3, 4,16.4, 4.16.6)

Washington State Regulations

51-20-3106 (k) 5. A. Clear Floor Space. The lateral distance from
the center line of the water closet to the nearest obstruction including grab bars, shall be not less than 18 inches on one side and 41 inches on the other side. In other than stalls, a clear floor
space not less than 32 inches measured perpendicular to the wall on which the water closet is mounted, shall be provided in front of
the water closet.

EXCEPTION: A lavatory may be located within the clear floor space required for a water closet provided that knee and toe clearances for the lavatory comply with subsection 7 below and:
A. In Type B dwelling units the edge of the lavatory shall be located not less than 15 inches from the centerline of the water closet; or
B. In all other occupancies the edge of the lavatory shall be located not less than 18 inches from the centerline of the water closet.

51-20-3106 (k) 5. B. Height. The height of water closets shall be
a minimum of 17 inches and a maximum of 19 inches measured to the top of the seat. Seats shall not be sprung to return to a lifted
position.

Commentary

PNE A clarification is needed as to where the lavatory is Allowed to be in clear floor area. ADAAG does not allow a Lavatory in the clear floor area in stalls.

ADA Requirements
4.16.4* Grab Bars. Grab Bars for water closets not located in stalls shall comply with 4.26 and Fig. 29. The grab bar behind the water closet shall be 36 in (915 mm) minimum.

Fig. 29(a) Back Wall. A 36 inch (915 mm) minimum length grab bar is required behind the water closet mounted at a height between 33 and 36 inches (840-915 mm). The grab bar must extend a minimum of 12 inches (305) beyond the center of the water closer toward the side wall and a minimum of 24 inches (610 mm) toward the open side for either a left or right side approach.

Fig. 29(b) Side Wall. A 42 inch (1065 mm) minimum length grab bar is required to the side of the water closet spaced 12 inches (305 mm) maximum from the back wall and extending a minimum of 54 inches (1370 mm) from the back wall of a height between 33 and 36 inches (840-915 mm). The toilet paper dispenser shall be mounted of a minimum height of 19 inches (485 mm). (4.16.3, 4.16.4, 4.16.6)

4.16.5* Flush Controls. Flush controls shall be hand operated or automatic and shall comply with 4.27.4. Controls for flush valves shall be mounted on the wide side of toilet areas no more than 44 in (1120 mm) above the floor.

4.16.6 Dispensers. Toilet paper dispensers shall be installed within reach, as shown in Fig. (29b). Dispensers that control delivery, or that do not permit continuous paper flow, shall not be used.

Fig. 29 (b) ... The toilet paper dispenser shall be mounted at a minimum height of 19 inches (485 mm). (4.16.3, 4.16.4, 4.16.6)

4.17 Toilet Stalls.

4.17.1 Location. Accessible toilet stalls shall be on an accessible route and shall meet the requirements of 4.17.

4.17.2 Water Closets. Water closets in accessible stalls shall

comply with 4.16.

Washington State Regulations

51-20-3106 (k) 5. C. Grab Bars. Grab bars shall be installed at one side and the back of the toilet stall. The top of grab bars shall be not less than 33 inches and not more than 36 inches above and parallel to the floor. Grab bars located at the side shall be a minimum of 42 inches in length with the front end positioned not less than 18 inches in front of the water closet, and located not more than 18 inches from the center line of the water closet. Grab bars located at the back shall be a minimum of 36 inches in length.
Grab bars shall be mounted not more than 9 inches behind the water closet seat.

51-20-3106 (k) 5. D. Flush Controls. Flush controls shall be mounted for use from the wide side of the water closet area and not more than 44 inches above the floor.

51-20-3106 (k) 5. E. Dispensers and Receptacles. Toilet paper and other dispensers or receptacles shall be installed within easy reach of the water closet, and shall not interfere with grab bar utilization.

51-20-3105 (b) 2 Toilet Facilities. Toilet facilities located within accessible dwelling units, guest rooms and congregate residences shall comply with Sections 3106 (k) and 3106 (aa).
In each toilet facility in other occupancies at least one wheelchair accessible toilet stall with an accessible water closet shall be provided. In addition, when there are 6 or more water closets within a toilet facility, at least one other accessible toilet stall complying with Section 3106 (k) 1. also shall be installed.

Commentary

PNE No provision that dispensers cannot control the flow of paper.

4.17.3* Size and Arrangement. The size and arrangement of the standard toilet stall shall comply with Fig 30(a), Standard Stall.
Standard toilet stalls with a minimum depth of 56 in (1420 mm) (see Fig. 30 (a) shall have wall-mounted water closets. If the depth of a standard toilet stall is increased at least 3 in (75 mm) then a floor-mounted water closet may be used. Arrangements shown for standard toilet stalls may be reversed to allow either a left- or right-hand approach. Additional stalls shall be provided in conformance with 4.22.4.

EXCEPTION: In instances of alteration work where provision of a standard stall (Fig 30a) is technically infeasible or where plumbing code requirements prevent combining existing stalls to provide space, either alternate stall(Fig. 30(b)) may be provided in lieu of the standard stall.

Fig. 30 Toilet Stalls.

Fig. 30(a) Standard Stall. The location of the door is illustrated to be in front of the clear space (next to, the water closet), with a maximum stile width of 4 inches (100 mm). An alternate door location is illustrated to be on the side of the toilet stall with a maximum stile width of 4 inches (100 mm). The minimum width of the standard stall shall be 60 inches (1525 mm). The centerline of the water closet shall be 18 inches (455 mm) from the side wall.

Fig. 30 (a- 1). If a standard stall is provided at the end of a row of stalls, the door (if located on the side of the stall may swing into to the stall if the length of the stall is extended at least a minimum of 36 inches (915 mm) beyond the required minimum length.

Fig. 30(b) Alternate Stalls. Two alternate stalls are illustrated; one alternate stall is required to be 36 inches 1915 mm) in width. The other alternate stall is required to be a minimum of

48 inches (1220 mm) in width. If a wall mounted water closet is used, the depth of the stall required to be a minimum of 66 inches (1675 mm). If a floor mounted water closet is used, the depth of the stall is required to be a minimum of 69 inches (1745 mm). The 36 inch wide stall shall have parallel grab bars an the

Washington State Regulations

51-20-3106 (k) 3. Wheelchair Accessible Toilet Stalls. A. Dimensions. Wheelchair accessible toilet stalls shall be a least 60 inches in width. Where wall-hung water closets are installed, the depth of the stall shall be not less than 56 inches. Where floor-mounted water closets are installed, the depth of the stall shall be not less than 59 inches. Entry to the compartment shall have a clear width of 32 inch. Toilet stall doors shall not swing into the clear floor space required for any fixture. Except for door swing, a clear unobstructed access not less than 48 inches in width shall be provided to toilet stalls.

EXCEPTION: Toe clearance is not required in a stall with a depth greater than 60 inches.

Commentary
NE

ADA Requirements

4.17.4 Toe Clearances. In standard stalls, the front partition and at least one side partition shall provide a toe clearance of at least 9 in (230 mm) above the floor. If the depth of the stall is greater than 60 in (1526 mm), then the toe clearance is not required. (See description, figure 30, above.)

4.17.5* Doors. Toilet stall doors, including door hardware, shall comply with 4.13. if toilet stall approach is from the latch side of

the stall door, clearance between the door side of the stall and any
obstruction may be reduced to a minimum of 42 in (1065 mm) (Fig. 30). (See description, figure 30, above.)

4.17.6 Grab Bars. Grab bars complying with the length and positioning shown in Fig. 30(a) (b), (c), and (d) shall be provided.
Grab bars may be mounted with any desired method as long as they have a gripping surface at the locations shown and do not obstruct the required clear floor area. Grab bars shall comply with
4.26.

4.18 Urinals.

4.18.1 General. Accessible urinals shall comply with 4.18.

4.18.2 Height. Urinals shall be stall-type or wall-hung with an elongated rim at a maximum of 17 in (430 mm) above the finish floor.

4.18.3 Clear Floor Space. A clear floor space 30 in by 48 in (760 mm by 1220 mm) shall be provided in front of urinals to allow forward approach. This clear space shall adjoin or overlap an accessible route and shall comply with 4.2.4. Urinal shields that do
not extend beyond the front edge of the urinal rim may be provided
with 29 in (735 mm) clearance between them.

Washington State Regulations

51-20-3106 (k) 3. B. toe Clearances. In toilet stalls, the front
partition and at least one side partition shall provide a toe clearance
of a least 9 inches above the floor.

EXCEPTION: Toe clearance is not required in a stall with a depth Greater than 60 inches.

51-20-3106 (k) 3. C. Door Hardware. Doors of accessible toilet stall shall comply with Section 3106 (c).

51-20-3106 (k) 5. C. Grab Bars. Grab bars shall be installed at one side and the back of the toilet stall. The top of grab bars shall

be not less than 33 inches and not more than 36 inches above and parallel to the floor. Grab bars located at the side shall be a minimum of 42 inches in length with the front end positioned not less than 18 inches in front of the water closet, and located not more than 18 inches from the centerline of the water closet. Grab bars located at the back shall be a minimum of 36 inches in length. Grab bars shall be mounted not more than 9 inches behind the water closet seat.

51-20-3106 (k) Bathrooms, Toilet Rooms, Bathing Facilities and Shower Rooms. 1. General. Bathrooms, toilet rooms, bathing facilities and shower rooms shall be designed in accordance with this Section. For dwelling units see also Section 3106 (aa).

51-20-3106 (k) 6... Urinals shall be stall-type or wall-hung with an elongated rim at a maximum of 17 inches above the floor.

51-20-3106 (k) 6. Urinals. A clear floor space measuring 30 inches by 48 inches shall be provided in front of urinals. Urinal
shields shall have a clear space between them of not less than 29 inches and shall not extend farther than the front edge of the urinal
rim.

Commentary
NE

92 ADA/Washington State May 14, 1993
Technical Assistance Document

ADA Requirements

4.18.4 Flush Controls. Flush controls shall be hand operated or automatic, and shall comply with 4.27.4, and shall be mounted no more than 44 in (1120 mm) above the finish floor.
4.19 Lavatories and Mirrors.

4.19.1 General. The requirements of 4.19 shall apply to lavatory fixtures, vanities, and built-in lavatories.

4.19.2 Height and Clearances. Lavatories shall be mounted with the
rim or counter surface no higher than 34 in (865 mm) above the finish floor, Provide a clearance of at least 29 in (735 mm) above
the finish floor to the bottom of the apron. Knee and too clearance
shall comply with Fig. 31.

Fig. 31 Lavatory Clearances.

The following knee and toe clearances are required underneath a lavatory., 8 inches (205 mm)l minimum measured from the front edge underneath the lavatory back towards the wall,
and a toe clearance 9 inches (230 mm) minimum high, measured a maximum 6 inches (150 mm) from the wall. A minimum of 27 inches (685 mm) clear space is required underneath the lavatory bowl. (4.19.2, 4.19.6). The depth of the knee spaces shall be a minimum of 17 inches. The required clear floor space shall extend a maximum depth of 19 inches under the lavatory.

4.19.3 Clear Floor Space. A clear floor space 30 in by 48 in (760mm
by 1220 mm) complying with 4.2.4 shall be provided in front of a lavatory to allow forward approach. Such clear floor space shall adjoin or overlap an accessible route and shall extend a maximum of 19 in (485 mm) underneath the lavatory (see Fig. 32).

Fig. 32 Clear Floor Space at Lavatories,

The minimum depth of the lavatory is 17 inches (430 mm). (4.19.3, 4.24.5)

4.19.4 Exposed Pipes and Surfaces. Hot water and drain pipes under lavatories shall be insulated or otherwise configured to project against contact. There shall be no sharp or abrasive, surfaces under lavatories.

Washington State Regulations

51-20-3106 (k) 6. . . .Flush controls shall be mounted not more than 44 inches above the finish floor.

51-20-3106 (k) 7. Lavatories and Sinks. A. Clear Floor Space.

51-20-3106 (k) 7. B. Height. Lavatories and sinks shall be mounted with the rim or counter surface not higher than 34 inches above the finish floor.

51-203106 (k) 7. C. Knee and Toe Clearances. (i) Lavatories. The total depth of clear space beneath a lavatory shall be not less
than 17 inches of which toe clearance shall be not more than 6 inches of the total depth. Knee clearance shall be not less than 29

inches in height and 30 inches in width.

51-20-3106 (k) 7. A. Clear Floor Space. A clear floor space not less than 30 inches by 48 inches shall be provided in front of lavatories and sinks.

51-20-3106 (k) 7. D. Exposed Pipes and Surfaces. Hot water and drain pipes exposed under lavatories and sinks shall be insulated or
otherwise covered. There shall be no sharp or abrasive surfaces under lavatories or sinks.

Commentary

NE

93 ADA/Washington State May 14, 1993
Technical Assistance Document

ADA Requirements

4.19.5 Faucets. Faucets shall comply with 4.27.4. Lever-operated, push-type, and electronically controlled mechanisms are examples of acceptable designs. If self-closing valves are used the faucet shall remain open for at least 10 seconds.

4.19.6* Mirrors. Mirrors shall be mounted with the bottom edge of the reflecting surface no higher than 40 in (1015 mm) above the finish floor (see Fig. 31).

4.20 Bathtubs.

4.20.1 General. Accessible bathtubs shall comply with 4.20.

Washington State Regulations

51-20-3106 (k) 7. E. Faucets. Faucet control handles shall be located not more than 17 inches from the front edge of the lavatory, sink or counter, and shall comply with Section 3105 (c).
Self-closing valves shall remain open for at least 10 seconds per Operation.

51-20-3106 (c) Controls and hardware 1. Operation. Handles, pulls, latches, locks and other operation devices on doors, windows, cabinets, plumbing fixtures and storage facilities shall have a lever or other shapes which will permit operation by wrist or

arm pressure and does not require tight grasping, pinching or twisting to operate.

51-20-3106 (k) 8. Mirrors, Dispensers and Other Fixtures. Mirrors
or shelve shall be installed so that the bottom of the mirror or the
top of the shelf is within 40 inches of the floor.

Drying equipment, towel or other dispensers, and disposal fixtures
Shall be mounted so as not to exceed 40 inches above the finish
Floor to any rack, operating controls, receptacle or dispenser.

51-20-3106 (k) 9. Bathtubs.

Commentary

PNE See below.

ADA Requirements

4.20.2 Floor Space. Clear floor space in front of bathtubs shall be
as shown in Fig. 33.

Fig. 33 Clear Floor Space at Bathtubs. (4.20 2, 4.20.3, 4.20.4)

Fig. 33(a) With Seat in Tub, If the approach is parallel to the
bathtub, a 30 inch (760 mm) minimum width by 60 inch (1525 mm) minimum length clear space is required alongside the bathtub. If the approach is perpendicular to the bathtub, a 48 inch (1220 mm) minimum width by 60 inch (1525 mm) minimum length clear space is required.

Fig. 33(b) With Seat at Head of Tub. If the approach is parallel to the bathtub, a 30 inch (760 mm) minimum width by 75 inch (1905 mm) minimum length clear space is required alongside the bathtub. The seat width must be 15 inches (380 mm) and must extend the full width of the bathtub.

4.20.3 Seat. An in-tub seat or a seat at the head end of the tub shall be provided as shown in Fig. 33 and 34. The structural strength of seats and their attachments shall comply with 4.26.3.

Seats shall be mounted securely and shall not slip during use.

Washington State Regulations

51-20-3106 (k) 9. A. Clear Floor Space. A clear floor space not less than 60 inches in length shall be provided along the tub. Where the required seat is located at the end of the tub, the clear floor space shall be not less than 75 inches in length. The clear floor space shall be not less than 30 inches in width where access to the space is parallel to the tub and not less than 48 inches in width where access to the space is a right angles to the tub. A lavatory which complies with subsection 5, above, may be located in the clear floor space of the tub.

51-20-3106 (k) 9.B Seats. An in-tub seat or a seat at the end of the tub shall be provided. In-tub seats shall be portable and removable, not less than 12 inches in width and extend the full width of the tub. Seats at the end of the tub shall be constructed flush with the top of the tub and shall extend not less than 15 inches from the end of the tub. Seats shall be mounted securely and shall not slip during use.

Commentary

PNE. This appears to be generally equivalent in intent but language must be more precise. As written, the lavatory could be located anywhere within the clear floor area, where as ADAAG only allows a complying lavatory at the end of the tub where the controls are located.

ADA Requirements

4.20,4 Grab Bars. Grab bars complying with 4.26 shall be provided as shown in Fig. 33 and 34.

Fig. 34 Grab Bars at Bathtubs. (4.20.3, 4.20.4, 4.20.5)

Fig. 34(a) With Seat in Tub. At the foot of the tub, the grab bar shall be 24 inches (610 mm) minimum in length measured

from the outer edge of the tub. On the back wall, two grab bars are required. The grab bars mounted on the back (long) wall shall be a minimum 24 inches (610 mm) in length located 12 inches (305 mm) maximum from the foot of the tub and 24 Inches (610 mm) maximum from the head of the tub. One grab bar shall be located 9 inches (230 mm) above the rim of the tub. The others shall be 33 to 36 inches (840 mm to 910 mm) above the bathroom floor. At the head of the tub, the grab bar shall be a minimum of 12 inches (305 mm) in length measured from the outer edge of the tub.

Fig. 34(b) With Seat at Head of Tub. At the foot of the tub, the grab bar shall be a minimum of 24 Inches (6l0 mm) in length measured from the outer edge 'of the tub. On the back wall,
two grab bars are required. The grab bars mounted on the back wall shall be a minimum of 48 inches (1220 mm) in length located a maximum of 12 inches (305 mm) from the foot of the tub and a maximum of 15 inches (380 mm) from the head of the tub. Heights of grab bars are as described above.

Washington State Regulations

51-20-3106 (k) 9. C. Grab Bars. All required grab bars shall be installed parallel to the floor. Lower grab bars shall be installed
centered 9 inches above the tub rim. Upper or single grab bars shall be installed centered not less than 33 inches and not more than 36 inches above the floor of the clear space.
Where a tub has a seat at the end, two grab bars not less than 48 inches in length shall be installed on the wall opposite the clear
floor space, one end of each shall terminate where the tub abuts the seat.

Where a tub has an in-tub seat, two grab bars not less than 24 inches in length shall be installed on the wall opposite the clear
floor space. The grab bars shall extend to not less than 24 inches
from one end of the tub and not less than 12 inches from the other
end. One grab bar shall be installed on the wall at the end of the
tub opposite the drain, extending at least 12 inches from the clear
floor space.

ADA Requirements

4.20.5 Controls. Faucets and other controls complying with 4.27.4 shall be located as shown in Fig. 34.

Fig. 34 Grab Bars at Bathtubs. (4.20.3, 4.20.4, 4.20.5)

Fig. 34(a) With Seat in Tub. At the foot of the tub, the grab bar shall be 24 inches (610 mm) minimum in length measured from the outer edge of the rub. On the back wall, two grab bars are required. The grab bars mounted on the back (long) wall shall be a minimum 24 inches (610 mm) in length located 12 inches (305 mm) maximum from the foot of the rub and 24 inches (610 mm) maximum from the head of the tub. One grab bar, shall be located 9 inches (230 mm) above the rim of the tub. The others shall be 33 to 36 inches (840 mm to 910 mm) above the bathroom floor. At the head of the tub, the grab bar shall be a minimum of 12 Inches (305 mm) in length measured from the outer edge
of the tub.

Fig. 34(b) With Seat at Head of Tub. At the foot of the tub, the grab bar shall be a minimum of 24 inches (610 mm) In length measured from the outer edge of the tub. On the back wall, two grab bars are required. The grab bars mounted on the back wall shall be a minimum of 48 inches (1220 mm) in length located a maximum of 12 inches (305 mm) from the foot of the tub and a maximum of 15 inches (380 mm) from the head of the tub. Heights of grab bars are as described above.

Figure 34 Grab Bars at Bathtubs. (a) and (b)require controls to be
"offset," located in an area between the open edge and the midpoint of the tub.

4.20.6 Shower Unit. A shower spray unit with a hose at least 60 in
(1525 mm) long that can be used both as a fixed shower head and as a hand-held shower shall be provided.

4.20.7 Bathtub Enclosures. If provided, enclosures for bathtubs shall not obstruct controls or transfer from Wheelchairs onto bathtub seats or into tubs. Enclosures on bathtubs shall not have

tracks mounted on their rims.

Washington State Regulations

51-20-3106 (c) Controls and Hardware 1. Operation. Handles, pulls, latches, locks and other operating devices on doors, windows, cabinets, plumbing fixtures and storage facilities shall have a lever or other shape which will permit operation by wrist or
twisting to operate..

51-20-3106 (k) 9. D. Controls and Fixtures. Faucets and other controls shall be located above the tub rim and below the grab bars, shall be not more than 24 inches laterally from the clear floor
space and shall comply with Section 3105 (c).

51-20-3106 (k) 9. D. . . . A shower spray unit with a hose at least
60 inches long that can be used as a fixed shower head or as a hand-held shower shall be provided.

51-20-3106 (k) 9. E. Bathtub Enclosures. Where provided, enclosures for bathtubs shall not obstruct controls or transfer from
wheelchairs onto bathtub seats or into tubs. Enclosures on bathtubs shall not have tracks mounted on their rims.

Commentary

NE ADAAG drawing requires controls to be offset
Between the open edge of the tub and the centerline.

97 ADA/Washington State May 14, 1993
Technical Assistance Document

ADA Requirements

4.21 Shower Stalls.

4.21.1* General. Accessible shower stalls shall comply with 4.21.

4.21.2 Size and Clearances. Except as specified in 9.1.2, shower stall size and clear floor space shall comply with Fig. 35(a) or (b)
The shower stall in Fig. 35(a) shall be 36 in by 36 in (915 mm by 915 mm). Shower stalls required by 9.1.2 shall comply with Fig.

57(a) or (b). The shower stall in Fig. 35(b) will fit into the space
required for a bathtub.

Fig. 35 Shower Size and Clearances.

Fig. 35(a) 36 inches by 36 inches (915 mm by 915 mm) Stall (Transfer Shower). The clear floor space shall be a minimum of
48 inches (1220 mm)in length by a minimum of 36 inches (9.15 mm in width and allow for a parallel approach. The clear floor space shall extend 1 foot beyond the shower wall on which the seat
is mounted.

Fig. 35(b) 30 inches by 60 inches (760 mm by 1525 mm) Stall(Roll-In Shower). The clear floor space alongside the shower shall be a minimum of 60 inches (1220 mm) In length by a minimum of 36 inches (915 mm) in width.

Washington State Regulations

51-20-3106 (k) 10. Showers Stalls.

51-20-3106 (k)10. A. Configurations. Shower stalls shall have one of the following configurations.

(i) Transfer shower stalls shall be 36 inches by 36 inches, nominal, and shall have a seat; or,

(ii) Roll-in shower stalls shall be not less than 30 inches in depth by 60 inches in length.

51-20-106 (k) 10 B. Clear Floor Space. A clear floor space not less than 48 inches in length shall be provided adjacent to shower stalls. For roll-in shower stalls, the clear floor space shall be not less than 36 inches in width. A lavatory which which complies with Subsection 5 above, may be located in the clear
floor space of a roll-in shower.

Commentary

NE. Clear floor space along roll-in shower must be 60 inches in length; otherwise, it will be obstructed by a lavatory. Further, location of the lavatory must be specified to preclude obstruction of the shower.

ADA Requirements

4.21.3 Seat. A seat shall be provided in shower stalls 36 in by 36 in (915 mm by 915 mm) and shall be as shown in Fig. 36. The seat shall be mounted 17 in to 19 in (430 mm to 485 mm) from the bathroom floor and shall extend the full depth of the stall. In a 36 in by 36 in (915 mm by 915 mm) shower stall, the seat shall be on the wall opposite the controls. Where a fixed seat is provided in a 30 in by 60 in minimum (760 mm by 1525 mm) shower stall, it shall be a folding type and shall be mounted on the wall adjacent to the controls as shown in Fig. 57. The structural strength of seats and their attachments shall comply with 4.26.3

Fig. 36 Shower Seat Design.

The diagram illustrates an L-shaped shower seat extending the full depth of the stall. The seat shall be located 1 1/2 inches (38 mm) maximum from the wall. The front of the seat (nearest to opening) shall extend a maximum 16 inches (330 mm) from the wall. The back of the seat (against the back wall) shall extend a maximum of 23 inches (582 mm) from the side wall and shall be a maximum of 15 inches (305 mm) deep.

Washington State Regulations

51-20-3106 (k) 10 C. Seats. In transfer shower stalls, a seat shall be mounted not less than 17 inches and not more than 19 inches above the floor, and shall extend the full depth of the stall. The seat shall be located on the wall opposite the controls and shall be mounted not more than 1 1/2 inches from the shower walls. The seat shall be not more than 16 inches in width.

EXCEPTION: A section of the seat not more than 15 inches in length and adjacent to the wall opposite the clear space, may be not more than 23 inches in width.

In roll-in shower stalls, a fold down seat complying with the

Dimensional requirements of this subsection, may be installed.

Commentary

NE Location of seat adjacent to controls is essential.

ADA Requirements

4.21.4 Grab Bars. Grab bars complying with 4.26 shall be provided as shown in Fig. 37.

Fig. 37 Grab Bars at Shower Stalls. (4.21.4, 4.21.5)

Fig. 37(a) 36 inches by 36 inches (915 mm by 915 mm) Stall. The diagram illustrates an L-shaped grab bar that is located along the full depth of the control wall (opposite the seat) and halfway along the back wall. The grab bar shall be mounted between 33 to 36 inches (840-915 mm) above the shower floor. The bottom of the control area shall be a maximum of 38 inches (965 mm) high and the top of the control area shall be a maximum of 48 inches (1220 mm) high. The controls and spray unit shall be within 18 inches (455 mm) of the front of the shower.

Fig. 37 (b) 30 inches by 60 inches (760 mm) by 1525 mm) Stall. The diagram illustrates a U-shaped grab bar that wraps around the stall. The grab bar shall be between 33 to 36 inches (840-915 mm) high. The controls are placed in an area between 38 inches and 48 inches (965 mm and 1220 mm) above the floor. If the controls are located on the back long wall they shall be located 27 inches (685 mm) from the side wall. The shower head and and control area may be located on either side wall.

4.21.5 Controls. Faucets and other controls complying with 4.27.4 shall be located as shown in Fig. 37. In shower stalls 36 in by 36 in (915 mm by 915 mm), all controls, faucets, and the shower unit shall be mounted on the side wall opposite the seat.

(See text above).

4.21.6 Shower Unit. A shower spray unit with a hose at least 60 in
(1525 mm) long that can be used both as a fixed shower head and as a hand-held shower shall be provided.

EXCEPTION: In unmonitored facilities where vandalism is a Consideration, a fixed shower head mounted at 48 in (1220 mm) Above the shower floor may be used in lieu of a hand-held shower Head.

Washington State Regulations

51-20-3106 (k) 10 D. Grab Bars. All required grab bars shall be installed parallel the floor. All grab bars shall be installed
not less than 33 inches and not more than 36 inches above the floor
of the clear space.

For transfer shower stalls, a grab bar not less than 18 inches in length shall be installed on the wall opposite the clear floor space, one end of which shall terminate at the wall opposite the seat. A grab bar not less than 27 inches in length shall also be installed on the wall opposite the seat.

For roll-in shower stalls, grab bars shall be provided on all Permanent stall walls. Grab bars located on either end of the Stall shall be not less than 27 inches in length. The grab bar Located opposite the clear spaces shall be not less than 48 Inches in length.

51-20-3106 (k) 10 E. Controls and Fixtures. Faucets and other controls shall be located on the same wall as the shower spray unit, and shall be installed not less than 38 inches or more than 48 inches above the shower floor and shall comply with Section 3106 (c). . .

51-20-3106 (k) 10 E. . . .A shower spray unit with a hose at least 60 inches long that can be used as a fixed shower head or as a hand-held shower shall be provided.

EXCEPTION: In unmonitored facilities where vandalism is a Consideration, a fixed shower head may be installed not more than 48 inches above the stall floor.

Commentary

NE Language should be more precise here to ensure that Controls are useable. ADAAG is very specific about location of Controls when placed on back wall and location of controls Adjacent to a fold down seat in a roll-in/transfer shower.

ADA Requirements

4.21.7 Curbs. If provided, curbs in shower stalls 36 in by 36 in (915 mm by 915 mm) shall be no higher than 1/2 in (13 mm). Shower stalls that are 30 in by 60 in (760 mm by 1525 mm) minimum shall not have curbs.

4.21.8 Shower Enclosures. If provided, enclosures for shower stalls
shall not obstruct controls or obstruct transfer from wheelchairs onto shower seats.

4.22 Toilet Rooms.

4.22.1 Minimum Number. Toilet facilities required to be accessible
4.1 shall comply with 4.22. Accessible toilet rooms shall be on an accessible route.

4.22.2 Doors. All doors to accessible toilet rooms shall comply with
4.13. Doors shall not swing into the clear floor space required for
any fixture.

Washington State Regulations

51-20-3106 (k) F. Thresholds. In transfer shower stalls, thresholds shall be flush or beveled with a maximum edge height of 1/2 inch, and a maximum slope not more than 1 vertical in 2 horizontal.

Thresholds in roll-in shower stalls shall be level with the Adjacent clear space.

51-20-3106 (k) 10 G. Shower Enclosures. Where provided, enclosures for shower stalls shall not obstruct controls or transfer from wheelchairs onto shower seats.

51-20-3106 (k) Bathrooms, Toilet Rooms and Reach ranges. 3.

Unobstructed floor Space. A floor space, including the vertical space above such floor space, which is free of any physical obstruction including door swings, to a height of 29 inches. Where a pair of doors occurs, the swing of the inactive leaf may be considered to be unobstructed floor space. Unobstructed floor space may include toe space that are a minimum of 9 inches in height and not more than 6 inches in depth.

51-20-3106 (j) 1. General. Doors required to be accessible shall comply with Section 3304 (Note: which applies to all exit doors) and provisions of this section.

Commentary
NE

101 ADA/Washington State May 14, 1993

Technical Assistance Document

ADA Requirements

4.22.3* Clear Floor Space. The accessible fixtures and controls required in 4.22.4, 4.22.5, 4.22.6, and 4.22.7 shall be on an accessible route. An unobstructed turning space complying with 4.2.3 shall be provided within an accessible toilet room. The clear
floor space at fixtures and controls, the accessible route, and the
turning space may overlap.

Washington State Regulations

51-20-3106 (k) 2. Unobstructed Floor Space. An unobstructed floor space shall be provided within bathrooms, toilet rooms, bathing facilities and shower rooms of sufficient size to inscribe a circle with a diameter not less than 60 inches. Doors in any position may encroach into this space by no more than 12 inches. The clear floor spaces at fixtures, the accessible route of travel and the unobstructed floor space may overlap.

51-20-3106 (b) 4 D. Approach to Wheelchair Spaces. One full unobstructed side of the clear floor or ground space for a wheelchair shall adjoin or overlap an accessible route of travel, or shall adjoin another Wheelchair clear space. Clear space located in an alcove or otherwise confined on all or part of three sides shall be not less than 36 inches in width where

forward approach is provided, or 60 inches in width where parallel approach is provided.

Commentary
NE

102 ADA/Washington State May 14, 1993

Technical Assistance Document

ADA Requirements

4.22.4 Water Closets. If toilet stalls are provided, then at least one shall be a standard toilet stall complying with 4.17; where 6 or more stalls are provided, in addition to the stall complying with 4.17.3, at least one stall 36 in (915 mm) wide with an outward swinging, self-closing door and parallel grab bars complying with Fig. 30(d) and 4.26 shall be provided. Water closets in such stalls shall comply with 4.16. If water closets are not in stalls, then at least one shall comply with 4.16.

4.22.5 Urinals. If urinals are provided, then at least one shall comply with 4.18.

Washington State Regulations

51-20-3106 (k) 3. Wheelchair Accessible Toilet Stalls. A. Dimensions. Wheelchair accessible toilet stall shall be at least 60 inches in width. Where wall-hung water closets are installed, the depth of the stall shall be not less than 67 inches. Where floor-mounted water closets are installed, the depth of the stall shall be not less than 59 inches. Entry to the compartment shall have a clear width of 32 inches. Toilet stall door shall not swing into the clear floor space required for any fixture. Except for door swing, a clear unobstructed access not less than 48 inches in width shall be provided to toilet stalls.

EXCEPTION: Toe clearance is not required in a stall with a depth greater than 60 inches.

51 -20-3106 (k) 4. Ambulatory Accessible Toilet Stalls. Ambulatory accessible toilet stalls shall be at least 36 inches

in
width, with an outward swinging, self-closing door. Grab bars shall be installed on each side of the toilet stall and shall comply with Sections 3106 (k) 4. C. and 3106 (k) 9.

51-20-3106 (k) 5. Water Closets. A. Clear Floor Space. The lateral distance from the center line of the water closet to the nearest obstruction, including grab bars, shall be not less than 18 inches on one side and 42 inches on the other side. In other than stalls, a clear floor space not less than 32 inches measured perpendicular to the wall on which the water closet is mounted, shall be provided in front of the water closest.

51-20-3106 (k) 6. Urinals. A clear floor space measuring 30 inches by 48 inches shall be provided in front of urinals. Urinal shields shall have a clear space between them of not less than 29 inches and shall not extend farther than the front edge of the urinal rim. Urinals shall be stall-type or wall-hung with an-elongated rim at a maximum of 17 inches above the floor.

Commentary
NE
103 ADA/Washington State May 14, 1993
Technical Assistance Document

ADA Requirements

4.22.6 Lavatories and Mirrors. If lavatories and mirrors are provided, then at least one of each shall comply with 4.19.

4.22.6 Controls and Dispensers. If controls, dispensers, Receptacles, or other equipment are provided, then at least one of
Each shall be on an accessible route and shall comply with 4.27.

4.23 Bathrooms, Bathing Facilities, and Shower Rooms.

4.23.1 Minimum Number. Bathrooms, bathing facilities, or shower Rooms required to be accessible by 4.1 shall comply with 4.23 and Shall be on an accessible route.

Washington State Regulations

51-20-3105 (b) 3. Lavatories, Mirrors, and Towel Fixtures. At least one accessible lavatory shall be provided within any toilet facility. Where mirrors, towel fixtures and other toilet and bathroom accessories are provided, at least one of each shall

be accessible.

51-20-3106 (k) 7. Lavatories and Sinks. A. Clear Floor Space. A clear floor space not less than 30 inches by 48 inches shall be provided in front of lavatories and sinks.

51-20-3106 (k) 8. Mirrors, Dispensers and Other Fixtures. Mirrors or shelves shall be installed so that the bottom of the Mirror or the top of the shelf is within 40 inches of the floor.

51-20-3106 (k) 8. ...Drying equipment, towel or other dispensers, and disposal fixtures shall be mounted so as not to exceed 40 inches above the finished floor to any rack, operating controls, receptacle or dispenser.

51-20-3106 (c) Controls and Hardware. 1. Operation. Handles, pulls, latches, locks and other operating devices on Doors, windows, cabinets, plumbing fixtures and storage Facilities, shall have a level or other shape which will permit Operation by wrist or arm pressure and does not require tight Grasping, pinching or twisting to operate.

51-20-3105 (b) Bathing and toilet Facilities. 1. Bathing Facilities. When bathing facilities are provided, at least 2 Percent, but not less than 1, bathtub or shower shall be Accessible. IN swelling units where both a bathtub and shower Are provided in the same room, only one need be accessible.

Commentary
NE

ADA Requirements

4.23.2 Doors. Doors to accessible bathrooms shall comply with 4.13. Doors shall not swing into the floor space required for any fixture.

4.23.3 Clear Floor Space. The accessible fixtures and controls required in 4.23.4, 4.23.5, 4.23.6, 4.23.7, 4.23.8, and 4.23.9 shall
be on an accessible route. An unobstructed turning space complying with 4.2.3 shall be provided within an accessible bathroom. The clear floor spaces at fixtures and controls, the accessible route, and the turning space may overlap.

Washington State Regulations

51-20-3106 (b) Space Allowance and Reach Ranges. 3. Unobstructed Floor Space. A floor space, including the vertical space above such floor space, which is free of any physical obstruction including door swings, to a height of 29 inches. Where a pair of doors occurs, the swing of the inactive leaf may be considered to be unobstructed floor space. unobstructed floor space may include toe spaces that are a minimum of 9 inches in height and not more than 6 inches in depth.

51-20-3106 (j) 1. General. Doors required to be accessible shall comply with Section 3304 (Note: which applies to all exit doors) and provisions of this section.

51-20-3106 (k) 2. Unobstructed Floor Space. An unobstructed floor space shall be provided within bathrooms, toilet rooms, bathing facilities and shower rooms of sufficient size to inscribe a circle with a diameter not less than 60 inches. Doors in any position may encroach into this space by no more than 12 inches. The clear floor spaces at fixtures, the accessible route of travel and the unobstructed floor space may overlap.

51-20-3106(b) 4. D. Approach to Wheelchair Spaces. One full unobstructed side of the clear floor or ground space for a wheelchair shall adjoin or overlap an accessible route of travel, or shall adjoin another wheelchair clear space. Clear space located in an alcove or otherwise confined on all or part of three sides shall be not less than 36 inches in width where forward approach is provided, or 60 inches in width where parallel approach is provided.

Commentary
NE

105 ADA/Washington State 14, 1993
Technical Assistance Document

ADA Requirements

4.23.4. Water Closets. If toilet stalls are provided, then at least one
shall be a standard toilet stall complying with 4.17; where 6 or more
stalls are provided, in addition to the stall complying with 4.17.3, at
least one stall 36 in (915 mm) wide with an outward swinging, self-

closing door and parallel grab bars complying with Fig. 30(d) and 4.26 shall be provided. Water closets in such stalls shall comply with 4.16. If water closet are not in stall, then at least one shall comply with 4.16.

4.23.5 Urinals. If urinals are provided, then at least one shall comply with 4.18.

Washington State Regulations

51-20-3105 (b) 2. Toilet Facilities. . . . In each toilet facility in other occupancies, at least one wheelchair accessible toilet stall with an accessible water closet shall be provided. In addition, when there are 6 or more water closets within a toilet facility, at least one other accessible toilet stall complying with Section 3106 (k) 4. Also shall be installed.

51-20-3106 (k) 3. Wheelchair Accessible Toilet Stalls. A. Dimensions. Wheelchair accessible toilet stalls shall be at least 60 inches in width. Where wall-hung water closets are installed, the depth of the stall shall be not less than 56 inches. Where floor-mounted water closets are installed, the depth of the stall shall be not less than 59 inches. Toilet stall doors shall not swing into the clear floor space required for any fixture. Except for door swing, a clear unobstructed access not less than 48 inches in width shall be provided to toilet stalls.

EXCEPTION: Toe clearance is not required in a stall with a Depth greater than 60 inches.

51-20-3106 (k) 4. Ambulatory Accessible Toilet Stalls. Ambulatory accessible toilet stalls shall be at least 36 inches in Width, with an outward swinging, self-closing door. Grab bars Shall be installed on each side of the toilet stall and shall Comply with Sections 3106(k) 4. C and 3106 (k) 9.

51-20-3106 (k) 6. Urinals. 4.22.5 Urinals. If urinals are provided, then at least one shall comply with 4.18.

Commentary

ADA Requirements

4.23.6 Lavatories and Mirrors. If lavatories and mirrors are provided, then at least one of each shall comply with 4.19.

4.23.7 Controls and Dispensers. If controls, dispensers, receptacles, or other equipment are provided, then at least one of each shall be o an accessible route and shall comply with 4.27.

4.23.8 Bathing and Shower Facilities. If tubs or showers are provided, then at least one accessible tub that complies with 4.20 or at least one accessible shower that complies with 4.21 shall be provided.

Washington State Regulations

51-20-3105 (b) 3. Lavatories, Mirrors and Towel Fixtures. At least one accessible lavatory shall be provided within any toilet facility. Where mirrors, towel fixtures and other toilet and bathroom accessories are provided, at least one of each shall be accessible.

51-20-3106 (k) 7. Lavatories and Sinks. A. Clear Floor Space. A clear floor space not less than 30 inches by 48 inches shall be provided in front of lavatories and sinks.

51-20-3106 (k) 8. Mirrors, Dispensers and Other Fixtures. Mirrors or shelves shall be installed so that the bottom of the mirror or the top of the shelf is within 40 inches of the floor.

51-20-3106 (k) 8. . . .Drying equipment, towel or other dispensers, and disposal fixtures shall be mounted so as not to exceed 40 inches above the finished floor to any rack operating controls, receptacle or dispenser.

51-20-3106 (c) Controls and Hardware. 1. Operation. Handles, pulls, latches, locks and other operating devices on Doors, windows, cabinets, plumbing fixtures and storage Facilities, shall have a level or other shape which will permit Operation by wrist or arm pressures and does not require tight

Grasping, pinching or twisting to operate.

51-20-3105 (b) Bathing and Toilet Facilities. 1. Bathing Facilities. When bathing facilities are provided, at least 2 percent, but not less than 1, bathtub or shower shall be accessible. In dwelling units where both a bathtub and shower are provided in the same room, only one need be accessible.

Commentary
NE

107 ADA/Washington State May 14, 1993

Technical Assistance Document

ADA Requirements

4.23.9* Medicine Cabinets. If medicine cabinets are provided, at least one shall be located with a usable shelf no higher than 44 in (1120 mm) above the floor space. The floor space shall comply with 4.2.4.

4.24 Sinks

4.24.1 General. Sinks required to be accessible by 4.1 shall comply with 4.24.

4.24.2 Height. Sinks shall be mounted with the counter or rim no higher than 34 in (865 mm) above the finish floor.

4.24.3 Knee Clearance. Knee clearance that is a least 27 in (685 mm) high, 30 in (760 mm) wide, and 19 in (485 mm) deep shall be provided underneath sinks.

4.24.4 Depth. Each sink shall be a maximum of 6 1/2in (165 mm) deep.

4.24.5 Clear Floor Space. A clear floor space at least 30 in by 48 in (760 mm by 1220 mm) complying with 4.2.4 shall be provided in front of a sink to allow forward approach. The clear floor space shall be on an accessible route and shall extend a maximum of 19 in (485 mm) underneath the sink (see Fig. 32)

4.24.6 Exposed Pipes and Surfaces. Hot water and drain pipes

exposed under sink shall be insulated or otherwise configured so as
to protect against contact. There shall be no sharp or abrasive surfaces under sinks.

Washington State Regulations

51-20-3105 (b) 3. Lavatories, Mirrors and Towel fixtures. At least one accessible lavatory shall be provided within any toilet facility. Where mirrors, towel fixtures and other toilet and bathroom accessories are provided, at least one of each shall be accessible.

51-20-3106 (k) 8. Mirrors, Dispensers, and Other Fixtures. Mirrors or shelves shall be installed so that the bottom of the mirror or the top of the shelf is within 40 inches of the floor. Drying equipment, towel or other dispensers, and disposal fixtures shall be mounted so as not to exceed 40 inches above the finished floor to any rack, operating controls, receptacle or dispenser.

51-20-3106 (k) 7. Lavatories and Sinks

51-20-3106 (k) 7. B. Height. Lavatories and sinks shall be mounted with the rim or counter surface not higher than 34 inches above the finish floor.

51-20-3106 (k) 7. C (ii) Sinks. Knee clearance not less than 27 inches in height, 30 inches in width and 19 inches in depth shall be provided underneath sinks.

51-20-3106 (k) 7. F. Sink Depth. Sinks shall be not less than 6 1/2 inches in depth.

51-20-3106 (k) 7. Lavatories and Sinks. A. Clear Floor Space. A clear floor space not less than 30 inches by 48 inches shall be provided in front of lavatories and sinks.

51-20-3106 (k) 7. D. Exposed Pipes and Surfaces. Hot water and drain pipes exposed under lavatories and sinks shall be insulated or otherwise covered. There shall be no sharp or abrasive surfaces under lavatories or sinks.

Commentary
NE

ADA Requirements

4.24.7. Faucets. Faucets shall comply with 4.27.4. Lever-operated, push-type, touch-type. Or electronically controlled mechanisms are acceptable designs.

4.25 Storage.

4.25.1 General. Fixed storage facilities such as cabinets, shelves, Closets, and drawers required to be accessible by 4.1 shall comply With 4.25.

4.25.2 Clear Floor Space. Clear floor space at least 30 in by 40 in (760 mm by 1220 mm) complying with 4.2.4 that allows either a forward or parallel approach by a person using a wheelchair shall be provided at accessible storage facilities.

Washington State Regulation

51-20-3106 (k) 7. E. Faucets. Faucet control handles shall be located not more than 17 inches from the front edge of the lavatory, sink or counter, and shall comply with Section 3106 (c). Self-closing valves shall remain open for at least 10 seconds per operation.

51-20-3106 (c) Controls and Hardware. 1. Operation. Handles, pulls, latches, locks and other operating devices on Doors, windows, cabinets, plumbing fixtures and storage Facilities, shall have a level or other shape which will permit Operation by wrist or arm pressure and does not require tight Grasping, pinching or twisting to operate.

51-20-3106 (r) Storage. Shelving and Display Units.

51-20-3106 (r) Storage. Shelving and Display Units. 1. Clear Floor Space. Storage, shelving and display units shall have a Clear floor space not less than 30 inches by 48 inches that allows either a forward or parallel approach.

Commentary

ADA Requirements

4.25.3 Height. Accessible storage spaces shall be within at least one of the reach ranges specified in 4.2.5 and 4.2.6 (see Fig, 5 and Fig 6). Clothes rods or Shelves shall be a maximum of 54 in (1370 mm) above the finish floor for a side approach. Where the distance from the Wheelchair to the clothes rod or shelf exceeds I0 in (255 mm) (as in closets without accessible doors) the height and depth to the rod or shelf shall comply with Fig. 38(a) and Fig. 38(b).

Fig. 38 Storage Shelves and Closets.

Fig. 38(a) Shelves. If the clear floor space allows a parallel approach by a person in a Wheelchair and the distance between the Wheelchair and the shelf exceeds 10 inches, the maximum high side reach shall be 48 inches (1220 mm) above the floor and the low side reach shall be a minimum of 9 inches (230 mm) above the floor. The shelves can be adjustable. The maximum distance from the user to the shelf shall be 21 inches (535 mm).

Fig. 38(b) Closets, If the clear floor space allows a parallel approach by a person in a Wheelchair and the distance between the Wheelchair and the clothes rod exceeds 10 inches the maximum high side reach shall be 48 inches (1220 mm). The maximum distance from the user to the clothes rod shall be 21 inches (535 mm).

4.26.4 Hardware. Hardware for accessible storage facilities shall comply with 4.27.4. Touch latches and U-shaped pulls are acceptable.4.26 Handrails, Grab Bars, and Tub and Shower Seats.

4.26.1* General. All handrails, grab bars, and tub and shower seats required to be accessible by 4.1, 4.8, 4.9, 4,16, 4.17, 4.20 or 4.21 shall comply with 4.26.

Washington State Regulation

51-20-3106 (r) 2. Height. Accessible storage, shelving and display units shall be within the reach ranges specified in Sections 3106 (b) 2. D. or 3106 (b) 2. E. Clothes rods shall Be not more than 54 inches above the floor.

51-20-3106 (c) Controls and hardware. 1. Operation. Handles, pulls, latches, locks and other operating devises on Doors, windows, cabinets, plumbing fixtures and storage Facilities, shall have a level or other shape which will permit operation by wrist or arm pressure and does not require tight Grasping, pinching or twisting to operate.

51-20-3106 (k) 11. Structural Requirements for Grab Bars and Tub and Shower Seats. A. General. All grab bars, and tub and shower seats required to be accessible shall comply with this section.

Commentary

ADA Requirements

4.26.2* Size and Spacing of Grab Bars and Handrails. The diameter
or width of the gripping surfaces of a handrail or grab bar shall be
1-1/4 in to 1-1/2 in (32 mm to 38 mm), or the shape shall provide an equivalent gripping surface. If handrails or grab bars are mounted adjacent to a wall, the space between the wall and the grab bar shall be 1-1/2 in (38 mm) (see Fig. 39(a), (b), (c), and (e)).
Handrails may be located in a recess if the recess is a maximum of 3
in (75 mm) deep and extends at least 18 in (455 mm) above the top of the rail (see Fig. 39(d)).

Washington State Regulation

51-20-3106 (k) 11. B. Size and Spacing for Grab Bars. Grab bars shall have an outside diameter of not less than 1-1/4 inch nor more than 1 1/2 inches and shall provide a clearance of 1-1/2 inches between the grab bar and the wall.

51-20-3306 (i) Handrails. Stairways shall have handrails on each side, and every stairway require to be more than 88 inches in width shall be provided with not less than one intermediate handrail for each 88 inches of required width.

Intermediate handrails shall be spaced approximately equally across the entire width of the stairway.
EXCEPTION: 1. Stairways less than 44 inches in width or stairways serving one individual dwelling unit in Group R, Division 1 or 3 occupancies, or a Group R, Division 3. congregate residence may have one handrail.
2. Private stairways 20 inches or less in height may have handrails on one side only.
3. Stairways having less than four risers and serving one individual dwelling unit in Group R, Division 1 or 3, or a Group R. Division 3 congregate residence or serving Group M. Occupancies need not have handrails.

The top of handrails and handrail extensions shall be placed not less than 34 inches or more than 38 inches above the nosing of treads and landings. Handrails shall be continuous the full length of the stairs and, except for private stairways, at least one handrail shall extend in the direction of the stair run not less than 12 inches beyond the top riser or less than 23 inches beyond the bottom riser. Ends shall be returned or shall terminate in newel posts or safety terminals.

Commentary

111 ADA/Washington State May 14, 1993

Technical Assistance Document

ADA Requirements

4.26.3 Structural Strength. The structural strength of grab bars,
tub and shower seats, fasteners, and mounting devices shall meet the following specification:

(1) Bending stress in a grab bar or seat induced by the maximum Bending moment from the application of 250 lbf (1112N) shall be Less than the allowable stress for the material of the grab bar or
Seat.

(2) Shear stress induced in a grab bar or seat by the application of
250 lbf (1112N) shall be less than the allowable shear stress for the
material of the grab bar or seat. If the connection between the grab
bar or seat and its mounting bracket or other support is considered

to be fully restrained, then direct and torsional shear stresses shall
be totaled for the combined shear stress, which shall not exceed the
allowable shear stress.

(3) Shear force induced in a fastener or mounting device from the
Application of 250 lbf (1112N) shall be less than the allowable
Lateral load of either the fastener or mounting device or the
Supporting structure, whichever is the smaller allowable load.

(4) Tensile force induced in a fastener by a direct tension force of
250 lbf (1112N) plus the maximum moment from the application of
250 lbf (1112N) shall be less than the allowable withdrawal load
between the fastener and the supporting structure.

The handgrip portion of handrails shall be not less than 1 1/2 inches or more than 2 inches in cross-sectional dimension or the shape shall provide an equivalent gripping surface. The handgrip portion of handrails shall have a smooth surface with no sharp corners.

Handrails projecting from a wall shall have a space of not less than 1 1/2 inches between the wall and the handrail. Any recess containing a handrail shall allow a clearance of not less than 18 inches above the top of the rail, and be not more than 3 inches in horizontal depth.

Handrails shall not rotate within their fittings.

Washington State Regulation

51-20-3106 (k) 11. C. Structural Strength. The structural strength of grab bars, tub and shower seats, fasteners and mounting devices shall meet the following specifications:

(1) Bending stress in a grab bar or seat induced by the Maximum bending moment from the application of 300 lbs.
Shall be less than the; the allowable stress for the material of the
Grab bar or seat.

(2) Shear stress in a grab bar or seat by the application of 300 lbs. Shall be less than the allowable shear stress for the material of the grab bar or seat. If the connection between the grab bar or seat and its mounting brackets or other support is

considered to be fully restrained, then direct and torsional shear stresses shall be totaled for the combined shear stress, which shall not exceed the allowable shear stress.

(3) Shear force induced in a fastener or mounting device from The application of 300 lbs. shall be less than the allowable lateral load of either the fastener or mounting device or the supporting structure, whichever is the smaller allowable load.

(4) Tensile force induced in a fastener by a direct tension force of 300 lbs. plus the maximum moment from the application of 300 lbs. shall be less than the allowable withdrawal load between the fastener and the supporting structure.

Commentary

ADA Requirements

(5) Grab bars shall not rotate within their fittings.

4.26.4 Eliminating Hazards. A handrail or grab bar and any wall or other surface adjacent to its shall be free of any sharp or abrasive elements. Edges shall have a minimum radius of 1/8 in (3.2 mm).

4.27 Controls and Operating Mechanisms.

4.27.1 General. Controls and operating mechanisms required to be accessible by 4.1 shall comply with 4.27

4.27.2 Clear Floor Space. Clear floor spaces complying with 4.2.4 that allows a forward or a parallel approach by a person using a wheelchair shall be provided at controls, dispensers, receptacles, and other operable equipment.

4.27.3* Height. The highest operable part of controls, dispenser, receptacles, and other operable equipment shall be placed within at at least one of the reach range specified in 4.2.5 and 4.2.6. Electrical

and communications system receptacles on walls shall be mounted no less than 15 in (380 mm) above the floor.

EXCEPTION: these requirements do not apply where the use of special equipment dictates otherwise or where electrical and communications systems receptacles are not normally intended for use by building occupants.

4.27.4 Operation. Controls and operating mechanisms shall be operable with one hand and shall not require tight grasping, pinching, or twisting of the wrist. The force required to activate
controls shall be no greater than 5 lbf (22.2N).

4.28 Alarms

4.28.1 General. Alarm systems required to be accessible by 4.1 shall comply with 4.28. At a minimum, visual signal appliances shall be provided in building and facilities in each of the following
areas: restrooms and any other general usage areas (e.g., meeting
rooms), hallways, lobbies, and any other area for common use.

Washington State Regulation

51-20-3106 (k) 11 D. Special Hazards. A grab bar and any wall or other surface adjacent to it shall be free of any sharp or
abrasive elements. Edges shall have a minimum radius of 1/8 inch.

51-20-3106 (c) Controls and Hardware

51-20-3106 (c) 3. Clear Floor Space. Clear floor space that allows a forward or a side approach shall be provided at all controls or hardware.

51-20-3106 (c) 2. Mounting Heights. The highest operable part of environmental and other controls, dispensers, receptacles and other operable equipment shall be within at least one of the reach ranges specified in Section 3106 (b), and not less than 36 inches above the floor. Electrical and communications system receptacles on walls shall be mounted a minimum of 15 inches in height above the floor. Door hardware shall be mounted at not less than 36 inches and not more than 48 inches above the floor.

51-20-3106 (c) 1. Operation. Handles, pulls, latches, locks and other operating devices on doors, windows, cabinets, plumbing fixtures and storage facilities, shall have a lever or other shape which will permit operation by wrist or arm pressure and does not require tight grasping, pinching or twisting to operate.

51-20-3105 (d) 9. Alarms. Alarms systems where provided, shall include both audible and visible alarms. The alarm devices shall be located in all sleeping accommodations and common-use areas including toilet rooms and bathing facilities, hallways, and lobbies.

Commentary

NE Equivalent provision found for handrails but not grab bars.

113 ADA/Washington State May 14, 1993
Technical Assistance Document

ADA Requirements

4.28.2* Audible Alarms. If provided, audible emergency alarms shall produce a sound that exceeds the prevailing equivalent sound
level in the room or space by at least 15 dbA or exceeds any, maximum sound level with a duration of 60 seconds by 5 dbA, whichever is louder. Sound levels for alarm signals shall not exceed
120 dbA.

4.28.3* Visual Alarms. Visual alarm signal appliances shall be integrated into the building or facility alarm system. If single station
audible alarms are provided then single station visual alarm signals
shall be provided. Visual alarm signals shall have the following minimum photometric and location features:

(1) The lamp shall be a xenon strobe type or equivalent.
(2) The color shall be clear or nominal white(i.e., unfiltered or
clear filtered white light).
(3) The maximum pulse duration shall be tow-tenths of one second (0.2 sec) with a maximum duty cycle of 40 percent. The points of 10 percent of maximum signal.
(4) The intensity shall e a minimum of 75 candela.
(5) The flash rate shall be a minimum of 1 Hz and a maximum of 3 Hz.

(6) The appliance shall be placed 80 inches (2030 mm) above the highest floor level within the space or 6 in (152 mm) below the ceiling, whichever is lower.
(7)In general, no place in any room or space required to have a visual signal appliance shall be more than 50 ft (15 M) from the signal (in the horizontal plane). In large rooms and spaces exceeding
100 Ft (30 m) across, without obstruction 6 ft. (2 m) above the finish floor, such as auditoriums, devices may be placed around the
perimeter, spaced a maximum 100 ft. (30 m) apart, in lieu of suspending appliances from the ceiling.
(8) No place in common corridors or hallways in which visual alarm signaling appliance are required shall be more than 50 ft (15
m) from the signal.

Washington State Regulation

51-20-3106 (o) Alarms. 1. Audible Alarms. Audible alarms shall produce a sound in accordance with UBC Standard No. 14-1.

Appendix, Chapter 31 Division IV. 51-20-92118 (b) Audible Alarms. Audible alarms shall exceed the prevailing equivalent sound level in the room or space by at least 15 decibels, or shall exceed any maximum sound level with a duration of 30 seconds by 5 decibels, whichever is louder. Sound levels for alarm signals shall not exceed 120 decibels.

51-20-3106 (o) 2. Visible Alarms. Visible alarms shall be located not less than 80 inches above floor level, or 6 inches below the ceiling, whichever is lower, and at an interval of not less than 50 feet horizontal, in rooms, corridors and hallways.

In rooms or spaces exceeding 100 feet in horizontal dimension, with no obstructions exceeding 6 feet in height above the finished floor, visible alarms may be placed around the perimeter at intervals not to exceed 100 feet horizontally.

Guidelines for visible alarm type, color, intensity and flash rate
are found in Appendix Chapter 31, Division V.

Appendix Chapter 431 Division V.
51-20-93119 (b) Visible Alarms. Visible alarm signals shall have the following minimum photometric and location features:
1. The lamp shall be a xenon strobe type.

2. The color shall be clear (i.e., unfiltered or clear filtered white light).
3. The intensity shall be a minimum of 75 candela seconds And a maximum of 120 candela seconds.
4. The flash rate shall be a minimum of 1 Hz and a maximum of 3 Hz.
5. the appliance shall be placed a minimum of 80 inches above the highest floor level within the space.
6. No place in any room shall be more than 50 feet form the signal(in the horizontal plane).
7. No place in corridors or hallways shall be more than 50 feet from the signal.

Commentary

PNE Sound level requirement is contained only in appendix of UBC Standard No. 14-1 and Appendix, Chapter 31. Therefore, it is not enforceable.

NE Performance criteria are found in the appendix, Appendix language is not enforceable.

ADA Requirements

4.28.4* Auxiliary Alarms. Units and sleeping accommodations shall
have a visual alarm connected to the building emergency alarm system or shall have a standard 110-volt electrical receptacle into
which such an alarm can be connected and a means by which a signal from the building emergency alarm system can trigger such an
auxiliary alarm. When visual alarms are in place the signal shall be
alarm or receptacle shall be provided.

4.29 Detectable Warnings.

4.29.1 General. Detectable warnings required by 4.1 and 4.7 shall
comply with 4.29.

4.29.2* Detectable Warnings on Walking Surfaces. Detectable warnings shall consist of raised truncated domes with a diameter of

nominal 0.9 in (23 mm), a height of nominal 0.2 in (5 mm) and a center-to-center spacing of nominal 2.35 in (60 mm) and shall contrast visually with adjoining surfaces, either light-on-dark, or
dark-on-light.

The material used to provide contrast shall be an integral part of the
walking surface. Detectable warnings used on interior surfaces shall
differ from adjoining walking surfaces in resiliency or sound-on-cane
contact.

4.29.3 Detectable Warnings on Doors To Hazardous Areas. (Reserved).

4.29.3. Detectable Warnings at Stairs. (Reserved).

Washington State Regulation

51.20-3105 (d) Alarms. Alarm systems where provided, shall include both audible and visible alarms. The alarm devices shall be located in all sleeping accommodations and common-use areas including toilet rooms and bathing Facilities, hallways, and lobbies.

51-20-3106 (o) 3. Access to Manual Fire Alarm Systems. Manual fire alarm devices shall be mounted not more than 54 inches above the floor provided that parallel approach is provided.

51-20-3106 (q) Detectable Warnings.

51-20-3106 (q) Detectable Warnings. 1. Walking surfaces. Detectable warnings on walking surfaces shall consist of raised truncated domes having a diameter of 0.9 inches nominal, a height of 0.2 inches nominal and a center-to-center spacing of 2.35 inches nominal, and shall contrast visually with adjoining surfaces.

See also Appendix Chapter 31, Divisions III and VI same as ADAAG Appendix A4.29.2.

51-20-3106 (q) Door to Hazardous Areas. Knobs or handles or other operating hardware on doors leading to loading platforms, stages, mechanical equipment rooms or other areas hazardous to the blind shall be knurled or otherwise rough to

the touch. Such surfaces shall not be provided for emergency exit doors or any doors other than those to hazardous areas. Textured surfaces for detectable door warnings shall be consistent within a building, facility, site or complex of buildings.

Commentary

ADA Requirements

4.29.4 Detectable Warnings at Hazardous Vehicular Areas. If a walk crosses or adjoins a vehicular way, and the walking surfaces are not separated by curbs, railings, or other elements between the
pedestrian areas and vehicular areas, the boundary between the areas shall be defined by a continuous detectable warning which is
36 in (915 mm) wide, complying with 4.29.2.

4.29.5 Detectable Warnings at Reflecting Pools. The edges of reflecting pools shall be protected by railings, walls, curbs. Or detectable warnings complying with 4.29.2.

4.29.6 Standardization (Reserved).

4.30 Signage

4.30.1* General. Signage required to be accessible by 4.1 shall comply with the applicable provisions of 4.30

4.30.2* Character Proportion. Letters and numbers on signs shall have a width-to-height ratio between 3:5 and 1:1 and a stroke-width-to-height ratio between 1:5 and 1:10.

4.30.3 Character Height. Character and numbers on signs shall be sized according to the viewing distance from which they are to be read. The minimum height is measured using an upper case X. Lower case characters are permitted.

Height Above Finished Floor	Minimum Character Height
Suspended or Projected Overhead in compliance with 4.4.2	3 in (75 mm) minimum

51-20-3106 (d) 9. Vehicular Areas. Where an accessible

route of travel crosses or adjoins a vehicular way, and where there are no curbs, railings or other elements detectable by a person who has severe vision impairment separating the pedestrian and vehicular areas, the boundary between the areas shall be defined by a continuous detectable warning not less than 36 inches wide, complying with Section 3106 (g).

51-20-3106 (d) 6. Edge Protection. Guardrails designed and constructed in accordance with Section 1712 shall be provided on any portion of an accessible route of travel which is more than 30 inches above the grade or floor below. Any portion of the edge of an accessible route of travel which is more than 1/2 inch above adjacent grade or floor shall be provided with a protective railing with the top of the rail at a height of 34 inches nominal and a mid-rail at a height of 18 inches nominal.

51-20-3106 (p) Signage.

51-20-3106 (p) 4. Character Proportion and Height. Letters and numbers on signs shall have a width-to-height ratio between 3:5 and 1:1 and a stroke-width-to-height ratio between 1:5 and 1:10.

51-20-3106 (p) 4. Characters and numbers on signs shall be sized according to the viewing distance from which they are to be read. The minimum character height for signs that are suspended or projected overhead is 3 inches for upper case letters. Lower case letters are permitted.

Commentary

PNE Equivalent if reference is to 3106(q).

116 ADA/Washington State May 14, 1993

Technical Assistance Document

ADA Requirements

4.30.4* Raised and Brailled Characters and Pictorial Symbol Signs (Pictograms). Letters and numerals shall be raised 1/32 in, upper case, sans serif or simple serif type and shall be accompanied with
Grade 2 Braille. Raised characters shall be at least 5/8 in (16 mm)
high, but no higher than 2 in (50 mm). Pictograms shall be accompanied by the equivalent verbal description placed directly below the pictogram. The border dimension of the pictogram shall be 6 in (152 mm) minimum in height .

4.30.5* Finish and Contrast. The characters and background of signs shall be eggshell, matte, or other non-glare finish. Characters
and symbols shall contrast with their background -- either light characters on a dark background or dark characters on a light background.

4.30.6 Mounting Location and Height. Where permanent identification is provided for rooms and spaces, signs shall be installed on the wall adjacent to the latch side of the door. Where
there is no wall space to the latch side of the door, including at
double leaf doors, signs shall be placed on the nearest adjacent wall.
Mounting height shall be 60 in (1525 mm) above the finish floor to
the centerline of the sign. Mounting location for such signage shall
be so that a person may approach within 3 in (76 mm) of signage without encountering protruding objects or standing within the swing of a door.

Washington State Regulation

51-20-3106 (p) S. Raised and Brailled Characters and Pictorial Symbol Signs (Pictograms). Letters and numerals shall be raised not less than 1/32 inch; shall be upper case, simple typeface; and shall be accompanied with Grade 2 Braille. Raised characters shall be not less than 5/8 inch or more than 2 inches in height. Where provided, pictograms shall be placed accompanied by the equivalent verbal description
directly below the pictogram. The border dimension of the pictogram shall be not less than 6 inches in height.

51.20.3106 (p) 3. Finish and Color. Characters and symbols shall have a high contrast with their background. The character and background of interior signs shall be eggshell, matte, or other nonglare finish.

See also Appendix Chapter 31 Division VI, same as ADAAG, Appendix A3.30.5.

All interior and exterior signs depicting the International Symbol of Access shall be white on a blue background.

51-20-3106 (p) 2. Mounting Location and Height. Signs shall

be installed on the wall adjacent to the latch side of the door. Signs shall be centered at 60 inches above the finished floor. Mounting location for signange shall be such be such that a person
may approach within 3 inches of signage without encountering protruding objects or standing within the swing of a door.

Commentary

ADA Requirements

4.30.7* Symbols of Accessibility.

(1) Facilities and elements required to be identified as accessible
by 4.1 shall use the international symbol of accessibility. The symbol shall be displayed as shown in Fig. 43(a) and (b).

Fig. 43 International Symbols.

Fig. 43(a) Proportions, International Symbol of Accessibility.
The diagram illustrates the International Symbol of Accessibility on a
grid background.

Fig. 43(b) Display Conditions, International Symbol of Accessibility. The symbol contrast shall be light on dark, or dark on
light.

(2) Volume Control Telephones. Telephones required to have a volume control by 4.1.3(17)(b) shall be identified by a sign containing a depiction of a telephone handset with radiating sound
waves.

(3) Text Telephones. Text telephones required by 4.1.3(l7)(c) shall be identified by the international TDD symbol, (Fig 43(c)). In
addition, if a facility has a public text telephone, directional signage
indicating the location of the nearest text telephone shall be placed

adjacent to all banks of telephones which do not contain a text telephone, Such directional signage shall include the international
TDD symbol. If a facility has no banks of telephones, the directional
signage shall be provided at the entrance (e.g., in a building directory).

(4) Assistive Listening Systems. In assembly areas where permanently installed assistive listening systems are required by 4.1.3(19)(b) the availability of such systems shall be identified with
signage that includes the international symbol of access for hearing
loss (Fig 43(d)).

4.30.8* Illumination Levels, (Reserved).

Washington State Regulation

51-20-3103 (b) 4. Signs. A. International Symbol of Access. 1. International Symbol of Access. A. General, The International Symbol of Access shall be as shown below. (Note: picture of International Access Symbol.)

51-20-3106 (p) 1. B. Text Telephones. Text Telephones required by Section 3105 (d) 2. shall be identified by the International Text Telephone symbol as shown below: (Note International TDD Symbol pictured.)

51-20-3106 (p) 1. C. Assistive Listening Systems. Permanently installed assistive listening systems that are required by Section 3103 (a) 2. B. shall be identified by the International Symbol of Access for Hearing Loss as shown below: (Note: International Symbol of Access for Hearing Loss pictured.)

51-20-3106 (p) 1. D. Volume Control Telephones. Telephones required by Section 3105 (d) 2. to have volume controls shall be identified by a handset with radiating sound waves.

Commentary

NE Section does not require directional signage at banks of phones which do not contain TDDS.

ADA Requirements

4.31 Telephones.

4.31.1 General. Public telephones required to be accessible by 4.1
shall comply with 4.31.

4.31.2 Clear Floor or Ground Space. A clear floor or ground space at least 30 in by 48 in (760 mm by 1220 mm) that allows either a forward or parallel approach by a person using a Wheelchair shall be
provided at telephones (see Fig. 44). The clear floor or ground space shall comply with 4.2.4. Bases, enclosures, and fixed seats Wheelchairs.

Fig. 44 Mounting Heights and Clearances for Telephones.

Fig. 44(a) Side Reach Possible. If a parallel approach is provided at a telephone in an enclosure, the wing walls and shelf may extend beyond the face of the telephone a maximum of 10 inches (255 mm).

Fig. 44(b) Forward Reach Required. If a front approach is provided at a telephone with an enclosure, the shelf can extend beyond the face of the telephone a maximum of 20 inches (510 mm). A wing wall may extend beyond the face of the telephone a maximum of 24 inches (610 mm). If the wing wall extends more than 24 inches (610 mm) beyond the face of the telephone, an additional 6 inches (150 mm) in width of clear floor space shall be
provided.

4.31.3* Mounting Height. The highest operable part of the telephone shall be within the reach ranges specified in 4.2.5 or 4.2.6.

4.31.4 Protruding Objects. Telephones shall comply with 4.4.

Washington State Regulation

51-20-3106 (n) Telephones.

51-20-3106 (n) 1. Clear Floor or Ground Space. A clear floor or ground space not less than 30 inches by 48 inches that allowed either a forward or parallel approach shall be provided in front of telephones. Bases, enclosures and fixed seats shall

not project into the clear floor space.
Where parallel approach is provided, any shelf or enclosure shall not project further than 10 inches beyond the face of the telephone.

Where a forward approach is provided, any shelf shall not project further than 20 inches beyond the face of the telephone; any enclosure panels shall be a minimum 30 inches apart, and where less than 36 inches apart, shall project no more than 24 inches beyond the face of the phone.

51-20-3 1 06 (Sn) 2. Height. The highest operable part of a telephone shall be within the reach ranges specified in Sections 3106 (b) 2.D. or 3106 (b) 2. E.

Commentary

PNE This section is equivalent only if the numbers referenced are changed to 3106 (b) 4. D. and 3106 (b) 4. E.

ADA Requirements

4.31.5 Hearing Aid Compatible and Volume Control Telephones Required by 4.1

(1)Telephones shall be hearing aid compatible.

(2) Volume controls, capable of a minimum of 12 dbA and a maximum of 18 dbA above normal, shall be provided in accordance with 4.1.3. If an automatic reset is provided then 18 dbA may be exceeded.

4.31.6 Controls. Telephones shall have pushbutton controls where

service for such equipment is available.

4.31.7 Telephone Books. Telephone books, if provided, shall be located in a position that complies with the reach ranges specified in
4.2.5 and 4.2.6.

4.31.8 Cord Length. The cord from the telephone to the handset shall be at least 29 in (735 mm) long.

Washington State Regulation

51-20-3106 (n) 3. Equipment for Persons with Hearing Impairments. Telephones shall be equipped with volume controls and shall be hearing aid compatible. Volume controls shall be capable of increasing volume not less than 12 dbA or more than 18 dbA above normal.

51-20-3106 (n) 4. Controls. Telephones shall have pushbutton controls where service for such equipment is available.

51-20-3106 (n) 5. Cord Length. The card from the telephone to the handset shall be not less than 29 inches in length.

Commentary

PNE
120 ADA/Washington State May 14, 1993
Technical Assistance Document

ADA Requirements

4.31.9* Text Telephones Required by 4.1,

(1) Text telephones used with a pay telephone shall be permanently affixed within, or adjacent to, the telephone enclosure.
If an acoustic coupler is used, the telephone cord shall be sufficiently long to allow connection of the text telephone and the
telephone receiver

(2) Pay telephones designed to accommodate a portable text telephone shall be equipped with a shelf and an electrical outlet within or adjacent to the telephone enclosure. The telephone handset shall be capable of being placed flush on the surface of the
shelf. The shelf shall be capable of accommodating a text telephone
and shall have 6 in (I52 mm) minimum vertical clearance in the area
where the text telephone is to be placed.

(3) Equivalent facilitation may be provided, For example, a portable text telephone may be made available in a hotel at the registration desk if it is available an a 24-hour basis for use

with
nearby public pay telephones. In this instance, at least one pay telephone shall comply with paragraphs of this section. In addition,
if an acoustic coupler is used, the telephone handset cord shall be
sufficiently long so as to allow connection of the text telephone and
the telephone receiver. Directional signage shall be provided and shall comply with 4.30.7.

4.32 Fixed or Built-in Seating and Tables.

4.32.1 Minimum Number. Fixed or built-in seating or tables required
to be accessible by 4.1 shall comply with 4.32.

4.32.2 Seating. If seating spaces for people in wheelchairs are provided at fixed tables or counters, clear floor space complying with 4.2.4 shall be provided. Such clear floor space shall not overlap knee space by more than 19 in (485 mm) (see Fig. 45).

4.32 3 Knee Clearances. If seating for people in wheelchairs are provided at tables or counters, knee spaces at least 27 in (685 mm)
high, 30 in (760 mm) wide, and 19 in (485 mm) deep shall be provided (see Fig. 45).

Washington State Regulation

51-20-3106 (n) 6. Text Telephones. Text telephones shall be permanently affixed within, or adjacent to the telephone enclosure. Where an acoustic coupler is used, the telephone cord shall be sufficiently long to allow connection of the text telephone and the telephone receiver.

51-20-3106 (n) 7. Shelf and Electrical Outlet. Shelves and an electrical outlet shall be located within or adjacent to the telephone enclosure. The shelf shall be not less than 10 inches by 10 inches in dimension, with a vertical clearance above the shelf of not less than 6 inches. The telephone handset shall be capable of being placed flush on the surface of the shelf.

51-20-3106 (s) Seating, Tables, and Sinks.

51-20-31 06 (a) 1. Clear Floor Space. Seating spaces at tables, and sinks shall have a clear floor space of not less than

30 inches by 48 inches that allows forward approach. The - clear floor space shall not overlap knee space by more than 19 inches.

51-20-3106 (s) 2. Knee Clearances. Knee space at tables, counters, and sinks shall be provided in accordance with Section 3106 (b) 2. B. No projection which might obstruct the arm of a Wheelchair may intrude into this clearance height, within 24 inches horizontally from the table edge.
Commentary

PNE Clarification needed. This section should reference 3106 (b) 4. B. to be equivalent.

ADA Requirements

4.32.4* Height of Tables or Counters. The tops of accessible tables
and counters shall be from 28 in to 34 in (710 mm to 865 mm) above the finish floor or ground.

4.33 Assembly Areas.

4.33.1 Minimum Number. Assembly and associated areas required to be accessible by 4.1 shall comply with 4.33.

4.33.2* Size of Wheelchair Locations. Each Wheelchair location shall provide minimum clear ground or floor spaces as shown in Fig.
46.

Fig. 46 Space Requirements for Wheelchair, Seating Spaces in Series

Fig. 46(a) Forward or Rear Access. If seating space for two wheelchair users is accessed from the front or rear, the minimum space required Is 48 inches (1220 mm) deep by 66 inches (1675 mm) wide.

Fig. 46(b) Side Access. If seating space for two wheelchair users is accessed from the side, the minimum space required is 60 inches (1525 mm) deep by 66 inches (1675 mm) wide.

4.33.3* Placement of Wheelchair Locations. Wheelchair areas shall be an integral part of any fixed seating plan and shall be

provided so
as to provide people with physical disabilities a choice of admission
prices and lines of sight comparable to those for members of the general public. They shall adjoin an accessible route that also serves as a means of egress in case of emergency. At least one companion fixed seat shall be provided next to each wheelchair seating area. When the seating capacity exceeds 300, wheelchair spaces shall be provided in more than one location. Readily removable seats may be installed in Wheelchair spaces when the spaces are not required to accommodate Wheelchair users.
EXCEPTION: Accessible viewing positions may be clustered for bleachers, balconies, and other areas having sight lines that require
slopes of greater than 5 percent. Equivalent accessible viewing positions may be located on levels having accessible egress.

Washington State Regulation

51-20-3106 (s) 3. Height. The tops of tables, and sinks shall be not less than 28 inches nor more than 34 inches in height above the floor or ground.

51-20-3106 (u) Assembly Areas. 1. Wheelchair Spaces

51-20-3106 (u) 1. B. Size. Wheelchair spaces shall be not less than 33 inches in width. Where forward or rear approach is provided, Wheelchair spaces shall be not less than 48 inches in depth. Where side approach is provided, Wheelchair spaces shall be not less than 60 inches in depth.

51-20-3106 (u) 1. A. Location. Wheelchair spaces shall be an integral part of any fixed seating plan and shall be dispersed throughout the seating area. Spaces shall adjoin an accessible route of travel that also serves as a means of egress and shall be located to provide lines of sight comparable to those for all viewing areas.

EXCEPTION: Accessible viewing positions may be clustered for bleachers, balconies, and other areas having sight lines that require slopes of greater than 5 percent. Equivalent accessible viewing positions may be located on levels having accessible egress.

Commentary

PNE No specific provision for companion seating adjacent to accessible Wheelchair locations.

ADA Requirements

4.33.4 Surfaces. The ground or floor at Wheelchair locations shall be level and shall comply with 4.5.

4.33.5 Access to Performing Areas. An accessible route shall connect Wheelchair seating locations with performing areas, including stages, arena floors, dressing rooms, locker rooms, and other spaces used by performers.

4.33.6* Placement of Listening Systems. If the listening system provided serves individual fixed seats, then such seats shall be located within a 50 ft (15 m) viewing distance of the stage or playing area and shall have a complete view of the stage or playing area.

4.33.7* Types of Listening Systems. Assistive listening systems (ALS) are intended to augment standard public address and audio systems by providing signals which can be received directly by persons with special receivers or their own hearing aids and which eliminate or filter background noise. The type of assistive listening system appropriate for a particular application depends on the characteristics of the setting, the nature of the program, and the intended audience. Magnetic induction loops, infrared and radio frequency systems are types of listening systems which are appropriate for various applications.

4.34 Automated Teller Machines.

4.34.1 General. Each machine required to be accessible by 4.1.3 shall be on an accessible route and shall comply with 4.34.

4.34.2 Controls. Controls for user activation shall comply with the requirements of 4.27.

4,34.3 Clearances and Reach Range. Free standing or built-in units not having a clear space under them shall comply with

4.27.2 and
4.27.3 and provide for a parallel approach and both a forward and side reach to the unit allowing a person in a Wheelchair to access
the controls and dispensers.

Washington State Regulation

51-20-3106 (u) 1. C. Surfaces. The ground or floor surfaces at wheelchair locations shall be level and shall comply with Section 3106 (g)

51-20-3106 (u) 2. Access to Performance Areas. An accessible route of travel shall connect Wheelchair seating locations with performance areas, including stages, arena floors, dressing rooms, locker rooms and other spaces used by performers.

51-20-3106 (u) 3. Placement of Assistive Listening Systems. Where an assistive-listening system serves individual fixed seats, such seats shall have a clear line of sight and shall be located not more than 50 feet from the stage or performance area.

Commentary

NE No accessibility requirements for ATMS.

NE

NE

ADA Requirements

4.34.4 Equipment for Persons with Vision Impairments. Instructions
and all information for use shall be made accessible to and independently usable by persons with vision impairments.

4.35 Dressing and Fitting Rooms.

4.35.1 General. Dressing and fitting rooms required to be accessible by 4.1 shall comply with 4.35 and shall be on an accessible route.

4.35.2 Clear Floor Space. A clear floor space allowing a person using a Wheelchair to make a 180-degree turn shall be provided in every accessible dressing room entered through a swinging or sliding door. No door shall swing into any part of the turning space. Turning space shall not be required in a private dressing room entered through a curtained opening at least 32 in (815 mm) wide if clear floor space complying with section 4.2 tenders the dressing room usable by a person using a Wheelchair.

4.35.3 Doors. All doors to accessible dressing rooms shall be in compliance with section 4.13.

4.35.4 Bench. Every accessible dressing room shall have a 24 in by 48 in (610 mm by 1220 mm) bench fixed to the wall along the longer dimension (of the bench). The bench shall be mounted 17 in to 19 in (430 mm to 485 mm) above the finish floor. Clear floor space shall be provided alongside the bench to allow a person using a Wheelchair to make a parallel transfer onto the bench. The structural strength of the bench and attachments shall comply with 4.26.3. Where installed in conjunction with showers, swimming pools, or other wet locations, water shall not accumulate upon the surface of the bench and the bench shall have a slip-resistant surface.

Washington State Regulation

51-20-3106 (x) Customer Service Facilities. 1. Dressing and Fitting Rooms.

51-20-3106 (x) 1. A. Clear Floor Space. Dressing and fitting rooms shall have a clear floor space complying with Section 3106 (b).

EXCEPTION: Dressing and fitting rooms that are entered through a curtained opening need not comply with Section 3106 (b) 2.

51-20-3106 (x) 1. B. Doors. All doors to accessible dressing and fitting rooms shall comply with Section 3106 (i).

51-20-3106 (x) 1. C. Benches. Every accessible dressing or fitting room shall have a bench installed adjacent to the longest

wall in the room. The bench shall be not less than 24 inches in width and 48 inches in length, and shall be mounted not less than 17 inches nor more than 19 inches above the finished floor.

Clear floor space shall be provided adjacent to the bench to allow for parallel transfer, and the structural strength of the bench shall comply with Section 3106 (k) S. C.

Where benches are installed in dressing and fitting rooms adjacent to showers, swimming pools, or other wet locations, - water shall not accumulate upon the surface of the bench and the bench shall have a slip-resistant surface.

Commentary

NE

ADA Requirements

4.35.5 Mirror. Where mirrors provided in dressing rooms of the same use, then in an accessible dressing room, a full-length mirror,
measuring at least 18 in wide by 54 in high (460 mm by 1370 mm), shall be mounted in a position affording a view to a person on the
bench as well as to a person in a standing position

5. RESTAURANTS AND CAFETERIAS.

5.1* General. Except as specified or modified in this section, restaurants and cafeterias shall comply with the requirements of 4.1
to 4.35. Where fixed tables (or dining counters where food is consumed but there is no service) are provided, at least 5 percent,
but not less than one, of the fixed tables (or a portion of the dining
counter) shall be accessible and shall comply with 4.32 as required
in 4.1.3(18). In establishments where separate areas are designated
for smoking and non-smoking patrons, the required number of accessible fixed tables (or counters) shall be proportionally

distributed between the smoking and non-smoking areas. In new construction, and where practicable in alterations, accessible fixed
tables (or counters) shall be distributed throughout the space or facility.

5.2 Counters and Bars. Where food or drink is served at counters exceeding 34 in (865 mm) in height for consumption by customers seated on stools or standing at the counter, a portion of the main
counter which is 60 in (1525 mm) in length minimum shall be provided in compliance with 4.32 or services shall be available at
accessible tables within the same area.

5.3 Access Aisles. All accessible fixed tables shall be accessible by
means of an access aisle at least 36 in *915 mm) clear between parallel edges of tables or between a wall and the table edges.

Washington State Regulation

51-20-3106 (x) 1.D. Mirrors. Where provided, mirrors in accessible dressing and fitting rooms shall be not less than 18 inches in width by 54 inches in height and shall be mounted opposite the bench.

51-20-3106 (a) 2.A. General. All Group A Occupancies shall be accessible as provided in this chapter.

51-20-3106 (d) 5. Fixed or Built-in Seating or Tables. Where fixed or built-in seating or tables are provided at least 5 percent, but no fewer than two, shall be accessible. Accessible fixed or built-in seating or tables shall comply with Section 3105 (s). In eating and drinking establishments, such seating or tables shall be distributed throughout the facility.

51-20-3106 (v) 2.C. Counters and Bars. Where service of food or drink is provided, at counters more than 34 inches in height, to customers seated on stools or standing, a portion of the main counter shall be provided in compliance with Section 3106 (s), or service shall be available at accessible tables within the same area.

51-20-3106 (v) 1. Restaurants and Cafeterias. !. Aisles. Aisles to fixed tables required to be accessible shall comply with 3106 (s).

51-20-3106 (t) Aisles. All aisles, including check out aisles, food service lines and aisles between fixed tables, shall be not less than 36 inches in width.

Commentary

PNE Clarification needed. 3106 (s) is not the correct section.

125 ADA/Washington State May 14, 1993
Technical Assistance Document

ADA Requirements

5.4 Dining Areas. In now construction, all dining areas, including raised or sunken dining areas, loggias, and outdoor seating areas, shall be accessible. In non-elevator buildings, an accessible means of vertical access to the mezzanine is not required under the following conditions: 1) the area of mezzanine seating measures no more than 33 percent of the area of the total accessible seating area; 21 the same services and decor are provided in an accessible space usable by the general public; and, 3) the accessible areas are not restricted to use by people with disabilities. In alterations, accessibility to raised or sunken dining areas, or to all parts of outdoor seating areas is not required provided that the same services and decor are provided in an accessible space usable by the general public and are not restricted to use by people with disabilities.

5.6 Food Service Lines. Food service lines shall have a minimum clear width of 36 in (915 mm), with a preferred close width of 42 in (1065 mm) to allow passage around a person using a wheelchair. Tray slides shall be mounted no higher than 34 in (065 mm) above the floor (see Fig. 53). If self-service shelves are provided, at least 50 percent of each type must be within reach ranges specified in 4.2.5 and 4.2.6.

Washington State Regulation

51-20-3103 (a) 2. A. General. All Group A Occupancies shall be accessible as provided in this chapter.

EXCEPTION: In the assembly area of dining and drinking establishments or religious facilities which are located in non-elevator buildings; where the area of mezzanine seating is not more than 25 percent of the total seating. an accessible means of vertical access to the mezzanine is not required; provided that the same services are provided in an accessible space which is not restricted to use only by persons with disabilities. Comparable facilities shall be available in all seating areas.

51-20-31 12 (e) 8. Assembly Areas.. In alterations, accessibility to raised or sunken dining areas, or to all parts of
outdoor seating areas is not required provided that the same services and amenities are provided in an accessible space. - usable by the general public and not restricted to use by people with disabilities.

51-20-3106 (v) 2. Food Service Lines A. Clear Floor Space. Food service lines shall comply with Section 3106 (t) (3106 (t) requires 36 inch aisle width).

51-20-3106 (v) S. B. Height. Tray slides shall be mounted not more than 34 inches in height above the floor.

51-20-3105 (d) 6. Storage, Shelving and Display Units. In other than Group R, Division 1 apartment buildings, where fixed or built-in storage facilities such as cabinets, Shelves, closets and drawers are provided in accessible spaces, at least one of each type provided shall contain storage space complying with Section 3106 (r).

Self-service shelves or display units in retail occupancies shall-,
be located on an accessible route in accordance with Section 3103 (b) 2.

Commentary

NE ADAAG requires 50% of self service shelves in food service lines to be accessible. WSR has no specific; provision, only a general provision (see 3105 (d) 6).

ADA Requirements

5.6 Tableware and Condiment Areas. Self-service shelves and dispensing devices for tableware, dishware, condiments, food and beverages shall be installed to comply with 4.2 (see Fig. 54).

Fig. 54 Tableware Areas.

The maximum height is 54 inches (1370 mm).

5.7 Raised Platforms. In banquet rooms or spaces where a head table or speaker's lectern is located on a raised platform, the platform shall be accessible in compliance with 4.8 or 4.11. Open edges of a raised platform shall be protected by placement of tables
or by a curb.

5.8 Vending Machines and Other Equipment. Spaces for vending machines and other equipment shall comply with 4.2 and shall be located on an accessible route.

5.9 Quiet Areas. (Reserved).

Washington State Regulation

51-20-3106 (v) 2. D. Tableware and Condiment Areas. Self-service Shelves and dispensing devices for tableware, dishware, condiments, food and beverages shall be installed to comply with Section 3106 (s).

51-20-3103 (a) 2. A. General. All Group A Occupancies shall be accessible as provided in this chapter....

. . . In banquet rooms or spaces where the head table or speaker's lectern is located on a permanent raised platform, the platform shall be accessible in compliance with Section 3106. Open edges an a raised platform shall be protected by a curb with a height of not less than 2 inches.

Commentary

PNE Clarification needed. 3106 (s) is not correct section.

NE

ADA Requirements

6. MEDICAL CARE FACILITIES.

6.1 General. Medical care facilities included in this section are those in which people receive physical or medical treatment or care and where persons may need assistance in responding to an emergency and where the period of stay may exceed twenty-four hours. In addition to the requirements of 4.1 through 4.35, medical care facilities and buildings shall comply with 6.

(1) Hospitals - general purpose hospitals, psychiatric facilities, detoxification facilities - At least 10 percent of patient bedrooms and toilets, and all public use and common use areas are required to be designed and constructed to be accessible.

(2) Hospitals and rehabilitation facilities that specialize in treating conditions that affect mobility, or units within either that specialize in treating conditions that affect mobility - All patient bedrooms and toilets, and all public use and common use areas are required to be designed and constructed to be accessible.

(3) Long term care facilities, nursing homes - At least 50 percent of patient bedrooms and toilets, and all public use and common use areas are required to be designed and constructed to be accessible.

51-20-3103 (a) 6. Group 1 Occupancies. All Group I Occupancies shall be accessible in all public use, common use and employee use areas, and shall have accessible patient rooms, cells and treatment or examination rooms as follows:
51-20-3103 (a) 6. A. In Group I. Division 1.1 hospitals which specialize in treating conditions that affect mobility, all

patient
rooms in each nursing unit, including associated toilet rooms and bathrooms.
51-20-3103 (a) 6. B. In Group I, Division 1.1 hospitals which do not specialize in treating conditions that affect mobility, at least 1 in every 10 patient rooms in each nursing unit, including associated toilet rooms and bathrooms.
51-20-3103 (a) 6. C. In Group I, Division 1.1 and Division 2 nursing homes and long-term care facilities, at least 1 in every 2 patient rooms, Including associated toilet rooms and bathrooms.
51-20-3103 (a) 6. D. In Group I, Division 3, mental health Occupancies, at least 1 in every 10 patient rooms, including associated toilet roams and bathrooms.

Commentary

NE Under ADA, the percentages do not apply to treatment and exam rooms. All treatment and exam rooms are "common use" areas. All must be accessible. WSR's percentages for patient rooms are equivalent.

ADA Requirements

(4) Alterations to patient bedrooms.

(a) When patient bedrooms are being added or altered as part of a planned renovation of an entire wing, a department, or other

discrete area of an existing medical facility, a percentage of the
patient bedrooms that are being added or altered shall comply with
6.3. The percentage of accessible rooms provided shall be consistent with the percentage of rooms required to be accessible by the applicable requirements of 6.1(1), 6,1(2), or 6.1(3), until the
number of accessible patient bedrooms in the facility equals the overall number that would be required if the facility were newly constructed. For example, if 20 patient bedrooms are being altered
in the obstetrics department of a hospital, 2 of the altered rooms
must be made accessible. If, within the same hospital, 20 patient

bedrooms are being altered in a unit that specializes in treating mobility impairments, all of the altered rooms must be made accessible.) Where toilet/bathrooms are part of patient bedrooms which are added or altered and required to be accessible, each such
patient toilet/bathroom shall comply with 6.4.

(b) When patient bedrooms are being added or altered individually, and not as part of an alteration of the entire area, the
altered patient bedrooms shall comply with 6.3, unless either: a) the
number of accessible rooms provided in the department or area containing the altered patient bedroom equals the number of accessible patient bedroom that would be required if the percentage requirements of 6,1(1), 6.1(2), or 6.1(3) were applied to
that department or area; or b) the number of accessible patient bedrooms in the facility equals the overall number that would be required if the facility were newly constructed. Where toilet/bathrooms are part of patient bedrooms which are added or altered and required to be accessible, each such toilet/bathroom shall comply with 6.4.

6.2 Entrances. At least one accessible entrance that complies with
4.14 shall be protected from the weather by canopy or roof overhang. Such entrances shall incorporate a passenger loading zone that complies with 4.6.6.

Washington State Regulation

51-20-3112 (a) 4. G. where patient rooms are altered in an existing Group I Occupancy, a percentage of the altered rooms equal to the requirement of Section 3103 (a) 6., but in no case more than the total number of rooms required by Section 3103 (a) 6. shall comply with Section 3106 (w). Where toilet or bath facilities are part of the accessible rooms, they shall comply with Section 3106 (k).

51-20-3103 (a) 6. . . .In Group I, Division 1.1 and 2 Occupancies, at least one accessible entrance that complies with Section 3103 (b) shall be under shelter. Every such entrance shall include a passenger loading zone which complies with Section 3108 (b) 3.

Commentary

ADA Requirement

6.3 Patient Bedrooms. Provide accessible patient bedrooms in compliance with 4.1 through 4.35. Accessible patient bedrooms shall comply with the following:

(1) Each bedroom shall have a door that complies with 4.13.

EXCEPTION: Entry doors to acute care hospital bedrooms for in-patients shall be exempted from the requirement in 4.13.6 for maneuvering space at the latch side of the door if the door is at least 44 in (1120 mm) wide.

(2) Each bedroom shall have adequate space to provide a maneuvering space that complies with 4.2.3. In rooms with 2 beds, it is preferable that this space be located between beds.

(3) Each bedroom shall have adequate space to provide a minimum clear floor space of 36 in (915 mm) along each side of the bed and to provide an accessible route complying with 4.3.3 to each side of each bed.

6.4 Patient Toilet Rooms. Where toilet/bath rooms, are provided as a part of a patient bedroom, each patient bedroom that is required to be accessible shall have an accessible toilet/bath room that complies with 4.22 or 4.23 and shall be on an accessible route.

Washington State Regulation

51-20-3106 (w) Patient Bedrooms. Each patient room shall be designed and constructed to provide a 180-degree turn that complies with Section 3106 (b) 1. Each patient room shall have a minimum clear floor space not less than 36 inches on each side of the bed.

3106 (i) Doors. 1. General. Doors required to be accessible shall comply with Section 3304 and provisions of this section. For the purposes of this section, gates shall be considered to be doors.

6. Group I Occupancies. All Group I Occupancies shall be accessible in all public use, common use and employee use areas, and shall have accessible patient rooms, cells and treatment or examination rooms as follows:

6. A. In Group I, Division 1.1 hospitals which specialize in treating conditions that affect mobility, all patient rooms in each nursing unit, including associated toilet rooms and bathrooms.
6. B. In Group I, Division 1.1 hospitals which do not specialize in treating conditions that affect mobility, all patient rooms in each nursing unit, including associated toilet rooms and bathrooms.
6. C. In Group I, Division 1.1 and Division 2 nursing homes and long-term care facilities, at least 1 in every 2 patient rooms. including associated toilet rooms and bathrooms.
6. D. In Group I, Division 3, mental health occupancies, at least 1 in every 10 patient rooms, including associated toilet rooms and bathrooms.

ADA Requirements

7. BUSINESS AND MERCANTILE.

7.1 General. In addition to the requirements of 4.1 to 4.35, the design of all areas used for business transactions with the public shall comply with 7.

Washington State Regulation

51-20-3103 (a) 3. Group B. Occupancies. All Group B Occupancies shall be accessible as provided in this chapter. Assembly spaces in Group B Occupancies shall comply with Section 3103 (a) 2. B.
51-20-3103 (a) 7. Group M Occupancies. Group M, Division 1 Occupancies shall be accessible.

ADA Requirements

7.2 Sales and Service Counters, Teller Windows, Information Counters.

(1) In department stores and miscellaneous retail stores where counters have cash registers and are provided for sales or distribution of goods or services to the public, at least one of

each type shall have a portion of the counter which is at least 36 in (915 mm) in length with a maximum height of 36 in (915 mm) above the finish floor. It shall be on an accessible route complying with 4.3.
The accessible counters must be dispersed throughout the building or facility. In alterations where it is technically infeasible to provide requirements may be provided.

(2) At ticketing counters, teller stations in a bank, registration
counters in hotels and motels, box office ticket counters, and other counters that may have a cash register but at which goods or services are sold or distributed, either:

(i) a portion of the main counter which is a minimum of 36 in (915 mm) in length shall be provided with a maximum height of 36 in (915 mm); or

(ii) an auxiliary counter with a maximum height of 36 in (915 mm) in close proximity to the main counter shall be provided; or

(iii) equivalent facilitation shall be provided (e.g., at a hotel registration counter, equivalent facilitation might consist of: (1) provision of a folding shelf attached to the main counter on which an individual with disabilities can write, and (2) use of the space on the side of the counter or a the concierge desk, for handling materials back and forth)

All accessible sales and service counters shall be on an accessible route complying with 4.3.

(3)* Assistive Listening Devices. (Reserved).

Washington State Regulation

51-20-3103 (a) 7. Group M. Occupancies. Group M, Division 1 occupancies shall be accessible.

EXCEPTIONS: 1. Private garages, carports and sheds are not required to be accessible if they are accessory to dwelling units which are not required to be accessible.

51-20-3105 (d) 7. B. Counters and Windows. Where customer safes and service counters or windows are provided a portion of the counter or at least one window, shall be accessible in accordance with Section 3106 (x).

51-20-3106 (x) 2. Counters and Windows. Where counters

are required to be accessible, the accessible portion shall be not less than 36 inches in length and not move than 36 inches in height above the finished floor.

Where accessible windows are required, they shall be no more than 36 inches in height above the finished floor.

EXCEPTION: An auxiliary counter with a maximum height of in (915 mm); or
36 inches is installed in close proximity to the main counter.

Commentary

ADA Requirements

7.30 Check-out Aisles.
(1) In new construction, accessible check-out aisles shall be provided in conformance with the table below:

Total Check-out Aisles of Each Design	Minimum Number of Accessible Check-out Aisles Of Each Design
1 - 4	1
5 - 8	2
8 - 15	3
over 15	3, plus 20% of additional aisles

EXCEPTION: In now construction, where the selling space is under 5000 square feet, only one check-out aisle is required to be accessible.

EXCEPTION: In alterations, at least one check-out aisle shall be accessible in facilities under 5000 square feet of selling space. In facilities of 5000 or more square feet of selling spice, at least one of each design of check-out aisle shall be made accessible when altered until the number of accessible check-out allies of each design equals the number required in now construction.

Examples of check-out aisles of different "design" include those which are specifically designed to serve different functions. Different "design" includes but is not limited to the following features length of belt or no bolt; or permanent signage designating the aisle as an express lane.

(2) Clear aisle width for accessible check-out aisles shall comply with 4.2.1 and maximum adjoining counter height shall not exceed 38 in (965 mm) above the finish floor. The top of the lip shall not exceed 40 in (1015 mm) above the finish floor.

(3) Signage identifying accessible check-out aisles shall comply with 4.30.7 and shall be mounted above the check-out aisle in the same location where the check-out number or type of check- out is displayed.

Washington State Regulation

51 -31 06 Id) 7. D. Check-out Aisles. Accessible checkout aisles shall be installed in accordance with Table 31-E and Section 3106 (x).

Table No. 31-E
Required Check-out Aisles

Total Check-out Aisles Units on Site	Minimum Number of Accessible Check-out Aisles
1 - 4	1
5 - 8	2
8 - 15	3
Over 15	3 plus 20% of additional aisles

51-20-3106 (x) 3. Check-out Aisles. The width of accessible check-out aisles shall comply with Section 3106 (t), Counters in accessible check-out aisles shall be not more than 33 inches in height, and the top of the raised edge of the counter shall not exceed 40 inches in height above the finished floor.

Accessible check-out aisles shall be Identified by the International Symbol of Access in accordance with Section 3106 (p) 1.

Commentary

ADA Requirements

7.4 Security Bollards. Any device used to prevent the removal of

shopping carts from store promises shall not prevent access or egress to people in Wheelchairs. An alternate entry that is

equally convenient to that provided for the ambulatory population is acceptable.

8. LIBRARIES.

8.1 General. In addition to the requirements of 4.1 to 4.35, the design of all public areas of a library shall comply with 8, including reading and study areas, stacks, reference rooms, reserve areas, and special facilities or collections.

8.2 Reading and Study Areas. At least 5 percent or a minimum of one of each element of fixed seating, tables, or study carrels shall comply with 4.2 and 4.32. Clearances between fixed accessible tables and between study carrels shall comply with 4.3.

8.3 Check-out Areas. At least one lane at each check-out area shall comply with 7.2(1). Any traffic control or book security gates or turnstiles shall comply with 4.13:

8.4 Card Catalogs and Magazine Displays. Minimum clear aisle space at card catalogs and magazine displays shall comply with Fig.55. Maximum reach height shall comply with 4.2, with a height of 48 in (1220 mm) preferred Irrespective of approach allowed.

Fig, 55 Card Catalog.

The lowest shelf of a card catalog share be 18 inches (455 mm).

8.5 Stacks. Minimum clear aisle width between stacks shall comply with 4.3. with a minimum clear aisle width of 42 in (1065 mm) preferred where possible. Shelf height in stack area is unrestricted
(see Fig. 56).

Washington State Regulation

51-20-3106 (y) Libraries.

51-20-3106 (y) Libraries. 1. Reading and Study Areas. At least 5 percent or a minimum of one of each element of fixed seating, tables or study carrels shall comply with Section 3106 (s). Clearances between fixed accessible tables and study, carrels shall comply with Section 3106 (s).

51-20-3106 (x) 2. Check-out Areas. At least one lane at each check-out area shall comply with Section 3106 (t). Any traffic control or book security gates or turnstiles shall comply

with Section 3106 (j).

51-20-3106 (x) 3. Card Catalogs, Magazine Displays and Reference Stacks. A. Aisles. Aisles between card catalogs, magazine displays or reference stocks shall comply with Section 3106 (t)

51-20-3106 (x) 3. B. Height. Card catalogs, magazine displays or reference stacks shall have a reach height of not more than 54 inches for side approach and not more than 48 inches for forward approach.

See 51-20-3106 (x) 3. Above.

Commentary

PNE No specific provision found, Interpretation needed as to whether security bollards are allowed to obstruct the accessible route or means of egress.

NE All "stacks" must have an accessible route unless they are areas used solely as work areas. WSR's language appears to apply only to "reference stacks."

ADA Requirements

9. ACCESSIBLE TRANSIENT LODGING.

(1) Except as specified in the special technical provisions of this section, accessible transient lodging comply with the applicable requirements of 4.1 through 4.35. Transient lodging includes facilities or portions thereof used for sleeping accommodations, when not classed as a medical care facility.

Washington State Regulation

51-20-1201 Group R Occupancies Defined.
Group R Occupancies shall be:
Division 1. Hotels and apartment houses.
Congregate residences (each accommodating more than 10 persons).
Division 2. Not used.
Division 3. Dwellings, family child day care homes and lodging houses.

Congregate residences (each accommodating 10 persons or less).

51-20-3103 (a) B. Group R. Occupancies. A. General. All Group R Occupancies shall be accessible as provided in this chapter. Public- and common use areas and facilities such as recreational facilities, laundry facilities, garbage and recycling collection areas, mailbox locations, lobbies, foyers and management offices, shall be accessible,

Number of Dwelling Units. In all Group R, Division 1 apartment buildings the total number of Type A dwelling units shall be as required by Table No. 31-B. All other dwelling units shall be designed and constructed to the requirements for Type B units as defined in this chapter.

EXCEPTIONS: 1. Group R Occupancies containing three or fewer dwelling units.

Commentary

ADA Requirements

Washington State Regulations

51-20-3152

TABLE NO. 31 -B
REQUIRED TYPE A DWELLING UNITS

Total Number of Dwelling Units on Site	Required Number of Type A Dwelling Units
0-10	None
11-20	1
21-40	2
41-60	3
61-80	4
81-100	5
For every 20 units or fractional part thereof, over 100	1 additional

Commentary

Technical Assistance Document

ADA Requirements

9.1 Hotels, Motels, Inns, Boarding Houses, Dormitories, Resorts and Other Similar Places of Transient Lodging.

9.1.1 General. All public use and common use areas are required to be designed and constructed to comply with section 4 (Accessible Elements and Spaces: Scope and Technical Requirements).

EXCEPTION: Sections 9.1 through 9.4 do not apply to an establishment located within a building that contains not more than five rooms for rent or hire and that is actually occupied by the proprietor of such establishment as the residence of such proprietor.

Washington State Regulation

51-20-3103 (a) 8. Group R. Occupancies. A. General. All Group R Occupancies shall be accessible as provided in this chapter. Public- and common use areas and facilities such as recreational facilities, laundry facilities, garbage and recycling collection areas, mailbox locations, lobbies, foyers and management offices, shall be accessible.

Number of Dwelling Units. In all Group R, Division 1 apartment buildings the total number of Type A dwelling units shall be as required by Table No. 31-B. All other dwelling units shall be designed and constructed to the requirements for Type B units as defined in this chapter.

EXCEPTIONS: 1. Group R Occupancies containing three or fewer dwelling units.

51-20-3103 (a) B. C. Hotels and Lodging Houses. In all hotels and lodging houses, accessible guest rooms. Including associated bathing, shower and toilet facilities, shall be provided in accordance with Table No. 31-C....

. . . In addition public-use and common-use areas of all hotels and lodging houses shall be accessible.

EXCEPTION: Group R, Division 3 lodging houses that are occupied by the owner or proprietor of the lodging house.

51-20-3103 (a)) 8. E. Congregate Residences. In congregate

residences with multi-bedrooms or spaces, a percentage equal to the minimum number of accessible rooms required by Table No. 31-C shall be accessible in accordance with Section 3106 (z).

EXCEPTION: Congregate residences with 10 or fewer occupants need not be accessible.

Commentary

NE Congregate residences are exempt if they serve less than 10 persons. It this is the case, it would exempt facilities covered by ADA.

137 ADA/Washington State May 14, 1993
Technical Assistance Document

ADA Requirement

9.1.2 Accessible Units, Sleeping Rooms, and Suites. Accessible sleeping rooms or suites that comply with the requirements of 9.2

(Requirements for Accessible Units, Sleeping Rooms, and Suites) shall be provided in conformance with the table below. In addition,
in hotels, of 50 or more sleeping rooms or suites, additional accessible sleeping rooms or suites that include a roll- in shower stall
also be provided in conformance with the table below, Such and accommodations shall comply with the requirements of 9.2, 4.21, Figure 57(a) or (b)
Fig. 57 Roll-in Shower with Folding Seat.
Diagram (a): Where a fixed seat is provided in a 30 inch minimum by 60 inch (716 mm by 1220 mm) minimum shower stall, the controls and spray unit on the back (long) wall shall be located a
maximum of 27 inches (685 mm) from the side wall where the seat is attached. (4.21.2, 9.1.2)
Diagram (b): An alternate 36 inch minimum by 60 inch (915 mm by 1220 mm) minimum shower stall is illustrated. The width of the stall opening stall shall be a minimum of 36 inches (9l5 mm) clear located on a long wall at the opposite end of the shower from the controls. The shower seat shall be 24 inches (610 mm). minimum in length by 16 inches (330 mm) minimum in width and may be rectangular in shape. The seat shall be related next to the opening to (be shower and adjacent to the end will containing the

shower head and controls. (4.21.2, 9.1.2, A4.23.3)

Number of Rooms	Accessible Rooms	Rooms with Roll-in Showers
1 to 25	1	
26 to 60	2	
51 to 75	3	1
76 to 100	4	1
101 to 150	5	2
151 to 200	6	2
201 to 300	7	3
301 to 400	8	4
401 to 500	9	4, plus one for each additional 100 over 400
501 to 1000	2% of total	
1001 and over	20 plus 1 for each 100 over 1000	

Washington State Regulation

51-20-3103 (a) 8. C. Hotels and Lodging Houses. In all hotels and lodging houses, accessible guest rooms, including associated bathing, shower and toilet facilities, shall be provided in accordance with Table No. 31-C

... In addition public-use and common-use areas of all hotels and lodging houses shall be accessible.

EXCEPTION: Group R, Division 3 lodging houses that are occupied by the owner or proprietor of the lodging house.

Table No. 31 -C-Number of Accessible Rooms and Roll-in Showers

Total Number of Rooms 1	Minimum Required Accessible Rooms 1	Rooms With with Roll-in Showers
1 to 25	1	
26 to 50	2	
51 to 75	3	1
76 to 100	4	1
101 to 150	5	2
151 to 200	6	2
201 to 300	7	3
301 to 400	8	4
401 to 500	9	4, plus 1 far every 100 rooms or fraction

thereof, over 400.

501 to 1000 2% of total
Over 1000 20 plus 1 for every 100
rooms or fraction
thereof, over 1000

1 For congregate residences the numbers in these columns shall apply to beds rather than rooms.

Commentary

NE ADAAG language is specific that the accessible rooms with roll-in shower are in addition to other accessible rooms. The table here appears to indicate the roll-in shower rooms are part of the minimum number required. Interpretation or clarification Is needed here.

ADA Requirements

(7) Kitchens, Kitchenettes, or Wet Bars. When Provided as accessory to a sleeping room or suite, kitchens, kitchenettes, wet bars or similar amenities shall be accessible. Clear floor space for a front or parallel approach to cabinets, counters, sinks, and

9.1.3 Sleeping Accommodations for Persons with Hearing Impairments. In addition to those accessible sleeping rooms and suites required by 9.1.2, sleeping rooms and suites that comply with
9.3 (Visual Alarms, Notification Devices. and Telephones) shall be
provided in conformance with the following table.

Number of Elements	Accessible Elements.
1 to 25	1
26 to 50	2
51 to 75	3
76 to 100	4
101 to 150	5
151 to 200	6
201 to 300	7
301 is 400	8
401 to 500	9

501 to 1000	2% of total
1001 and over	20 plus 1 for each 100 over 1000

9.1.4 Classes of Sleeping Accommodations.

(1) In order to provide persons with disabilities a range of options equivalent to those available to other persons served by the facility sleeping rooms and suites required to be accessible by 9.1.2 shall be dispersed among the various classes of sleeping accommodations available to patrons of the place of transient lodging, Factors to be considered include room size, cost, amenities provided, and the number of beds provided.

(2) Equivalent Facilitation. For purposes of this section, it shall be deemed equivalent facilitation it the operator of a facility elects to limit construction of accessible rooms to those intended for multiple occupancy, provided that such rooms are made available at the cost of a single occupancy room to an individual with disabilities who requests a single-occupancy room.

Washington State Regulations

51-20-3105 (d) 3. Kitchens. Kitchens within accessing dwelling units shall be designed in accordance with Section 3106. Kitchens, kitchenettes, or wet bars in other than dwelling units which are provided accessory to a sleeping

3103 (a) 8. C. Hotels and Lodging Houses.... In addition, sleeping rooms or suites for persons with hearing impairments shall be provided in accordance with Table 31-D.

Table No. 31-D-Number of Accessible Rooms for Persons With Hearing Impairments

Total number of Rooms	Minimum Required Number
1 to 25	1
26 to 50	2
51 to 75	3
76 to 100	4
101 to 150	5
151 to 200	6
201 to 300	7
301 to 400	8
401 to 500	9
501 to 1000	2% of total
Over 1000	20 plus 1 for every 100 rooms, or fraction thereof, over 1000

3103 (a) 8. D. Proportional Distribution. Accessible dwelling units shall be apportioned among efficiency dwelling units, single-bedroom units and multiple-bedroom units in proportion to the numbers of such units in the building, Accessible hotel and motel units shall be apportioned among the various classes of sleeping accommodations.

51-20-3103 (b) 4. B. ..In hotels and lodging houses, a list of accessible guest rooms shall be posted permanently in a location not visible to the general public, for staff use at each reception or check-in desk.

139 ADA/Washington State May 14,1993

Technical Assistance Document

ADA Requirements

9.5.2 Alterations. See comments above.

(1) Social service establishments which are not homeless shelters:

(a) The provisions of 9.5.3 and 9.1.5 shall apply to sleeping rooms and beds.

(b) Alteration of other areas shall be consistent with the new construction provisions of 9.5.1.

(2) Homeless shelters. If the following elements are altered, the following requirements apply:

(a) at least one public entrance shall allow a person with mobility impairments to approach, enter and exit including a minimum clear door width of 32 in (815 mm).

(b) sleeping space for homeless persons as provided in the scoping provisions of 9.1.2 shall include doors to the sleeping area with a minimum clear width of 32 in (815 mm) and, maneuvering space around the beds for persons with mobility impairments complying with 9.2.2(1).

(c) at least one toilet room for each gender or one unisex toilet room shall have a minimum clear door width of 32 in (815 mm), minimum turning space complying with 4.2.3 one water closet complying with 4.16, one lavatory complying with 4.19 and the door shall have a privacy latch; and, if provided, at least one

tub or shower shall comply with 4.20 or 4.21, respectively.

(d) at least one common area which a person with mobility impairments can approach, enter and exit including a minimum clear door width of 32 in (815 mm).

(e) at least one route connecting elements (a), (b), (c) and (d) which a person with mobility impairments can use including minimum clear width of 36 in (915 mm), passing space complying with 4.3.4, turning space complying with 4.2.3 and changes in levels complying with 4.3.8.

Commentary

See comments above.

145 ADA/Washington state May 14, 1993
Technical Assistance Document

ADA Requirements

9.5.3 Accessible Sleeping Accommodations in New Construction. Accessible sleeping rooms shall be provided in conformance with the
table in 9.1.2 and shall comply with 9.2 Accessible Units, Sleeping
Rooms and Suites (where the items are provided). Additional sleeping rooms that comply with 9.3 Sleeping Accommodations for Persons with Hearing Impairments shall be provided in conformance with the table provided in 9.1.3.

In facilities with multi-bed rooms or spaces, a percentage of the beds equal to the table provided in 9.1.2 shall comply with 9.2.2(1).

51-20-3103 (a) 8 C. Hotels and Lodging Houses. In all hotels and lodging houses, accessible guest rooms, including associated bathing, showers and toilet facilities, shall be provided in accordance with Table No. 31-C. In addition, sleeping rooms or suites for persons with hearing impairments shall be provided in accordance with Table No. 31-D.

In addition, public-use and common-use areas of all hotels and lodging houses shall be accessible.

51-20-3103 (a) 8. E. Congregate Residences. In congregate

residences with multi-bed rooms or spaces, a percentage equal to the minimum number of accessible rooms required by Table No. 31-C shall be accessible in accordance with Section 3106 (z).

EXCEPTION: Congregate residences with 10 or fewer occupants need not be accessible

PNE A question exists as to whether the provisions for hotels and motels apply here. Clarification is needed.

DJ 202-PL-121
DJ 202-PL-273

MAY 20

Kent W. Colton
National Association of Home Builders
15th and M Streets, N.W.
Washington, D.C. 20005

Dear Mr. Colton:

This letter is in response to your letter requesting information about the Americans with Disabilities Act (ADA).

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist you in understanding the ADA's requirements. However, it does not constitute a legal interpretation or legal advice, and it is not binding on the Department.

You have asked for a clarification of the guidance in the Department's Technical Assistance Manual for title III concerning model homes. Specifically, you ask whether sales offices within model homes are subject to the ADA's barrier removal requirements. As you correctly stated in your letter, although model homes are not covered as places of public accommodation under the ADA, any places of public accommodation that are located within model homes, such as sales offices, are covered. This means that all areas of the model home used for the purposes of the sales office, including parking, building entrances, and internal areas, must comply with title III of the ADA, including its requirements for the removal of barriers.

Title III requires that all barriers to access be removed from existing places of public accommodation if removal is readily achievable. Readily achievable means easily accomplishable without much difficulty or expense. The readily achievable standard applies individually to each barrier, so that the expense of making a building entrance accessible does not a public accommodation of the obligation to remove barriers inside the facility, as long as removal of those internal barriers is readily achievable. If the removal of a barrier to access is not readily achievable, the public

cc: Records, Chrono, Wodatch, Magagna, Novich, FOIA
Udd:Novich:Policy:273

01-02235

accommodation must provide any readily achievable alternatives to barrier removal. Thus, using your example of the entrance to a model home/sales office that cannot be made accessible, if there is an accessible location to which the sales office could be moved without much difficulty or expense, an accessible alternative sales office location must be provided.

I hope this information is useful to you in understanding the requirements of the ADA.

Sincerely,

John L. Wodatch
Chief
Public Access Section

01-02236

National Association of Home Builders

15th and M Streets, N.W., Washington, D.C. 20005
(202) 822-0401 Fax No: (202) 822-0374

Kent W. Colton, Ph.D.
Executive Vice President &
Chief Executive Officer

August 3, 1992

Mr. John Wodatch
Office on Americans with Disabilities
U.S. Department of Justice
10th St. and Constitution Ave.
Washington, D.C. 20530

Dear Mr. Wodatch:

Last October, we wrote your office requesting the Department to clarify that model homes are not covered under the Americans with Disabilities Act (ADA). We are pleased that the Department addressed this issue in its Technical Assistance Manual issued earlier this year. While this document provides necessary clarification, it appears that there is still some confusion on how the regulations apply to model homes used as sales offices. Based on our reading of the ADA and the Department's regulations, as well as on conversations we have had with attorneys in your office, it appears that the obligation to provide accessibility to a sales office in a model is subject to the barrier removal regulations found at 28 C.F.R. Sections 36.304 and 36.305. We would appreciate it if your office could formally confirm our understanding an this issue.

On page four of the January 24, 1992, Technical Assistance Manual, a copy of which is attached, the Department stated that model homes are not places of public accommodation, and therefore are not covered under ADA. In the same paragraph, the Department stated "(i)f, however, the sales office for a residential housing development were located in a model home, the area used for the sales office would be considered a place of public accommodation."

What is missing from this paragraph, however, is a reference to the barrier removal requirements of ADA. The manual does not explain that while the area would be considered a place of public accommodation, accessibility to the area in question would be subject to the barrier removal rules. Thus, an individual reading the Technical Assistance Manual with little understanding of the ADA regulations could interpret this paragraph to mean that a builder would have to reconstruct the sales area to provide accessibility in all cases regardless of cost or difficulty. This result is inconsistent with the ADA.

01-02237

Mr. John Wodatch
July 30, 1992
Page two

We believe that the builder's obligation to provide accessibility to the sales area should be analyzed in light of the Department's barrier removal regulations, specifically, 28 C.F. R. Sections 36.304 and 36.305. While accessibility to the area used as a sales office should be provided, builders are only required to provide accessibility if it is reasonable to do so given the particular circumstances. If it is not reasonable to provide accessibility because of the cost or because it is structurally not practicable, the regulations provide that it is acceptable to relocate sales activities to an accessible location. The following examples illustrate these principles.

An accessible route to the front door should be provided, if it can be done easily and without much cost. If it is not reasonable to provide accessibility to the model, then an alternative solution should be used. This could mean relocating the sales activity to another location. For example, if there are one or two steps to the front door, a ramp could be provided without much cost. If, however, there is a flight of stairs to the front door, then it may not be reasonable or practical to provide an accessible entrance. In that case, it would be acceptable to relocate the sales activity to an accessible location. An accessible location could be the customer's residence, another office of the builder, or any mutually agreeable location.

Within the model, an accessible route to the sales area should be provided if this can be easily accomplished. If a desk is provided for sales purposes, then the furniture should be usable by someone with a disability. If an accessible route or accessible furniture is not readily achievable, then a builder can meet his obligations under ADA by relocating sales activities to an accessible location.

With respect to restrooms, there is no requirement that a public restroom be provided. However, if a restroom is open to the public, then it should be accessible subject to the barrier removal requirements. This means that if the restroom is not accessible, it should be made accessible if accessibility can be achieved without much difficulty or expense. For example, a ramp can easily be installed if there are a few steps up to the restroom. If, however, the measures necessary to provide accessibility would be too costly or too difficult, a builder is not required to construct an accessible restroom. In that situation, a builder can meet his obligation to provide an accessible restroom by directing persons to the closest accessible facility. Such a restroom might be in another model on the site, or could be the closest public restroom in the area.
01-02238

We believe this interpretation is consistent with the Department' s regulations. Because of the importance of this issue to the building industry, we would appreciate it if you would formally confirm our understanding on this issue as soon as possible. We would also like to request the Department to clarify this issue in the Technical Guidance Document by inserting a statement indicating that the obligation to provide accessibility to the sales office area of a model home is subject to the barrier removal rules set forth in 28 C.F.R. Sections 36.304 and 36.305. We believe these actions will greatly assist our members as well as other interested parties in complying with ADA.

Sincerely

Kent W. Colton
Executive Vice President and
Chief Executive Officer

Attachment

01-02239

National Association of Home Builders
15th and M Streets, N.W., Washington, D.C. 20005
(202) 822-0401 Fax No:(202) 822-0374
Kent W. Colton, Ph.D.
Executive Vice President &
Chief Executive Officer

October 23, 1991

Mr. John Wodatch
Office on the
Americans with Disabilities Act
Civil Rights Division
U.S. Department of Justice
Washington, DC 20530

Dear Mr. Wodatch:

On behalf of the 153,000 members of the National Association of Home Builders, I would like to commend your office on the regulations issued recently implementing the Americans with Disabilities Act. As we stated in our April 23, 1991, comment letter on the proposed regulations, we support the ADA objective of making public accommodations and commercial facilities accessible to, and usable by, persons with disabilities. While we believe the final regulations meet this objective without imposing undue burdens on owners of such structures, we would like to call to your attention an issue that the Department apparently overlooked in the final regulations.

Our review of the regulations indicates that accessibility

requirements for model homes are not clear. We are therefore requesting that the Department clarify that model homes are not covered under the ADA. We believe that such clarification is necessary in order to assure that compliance with ADA will proceed in an orderly manner in the building industry.

Typically, when a builder develops a subdivision, the first few homes to be completed are set aside as "models." These homes are fully furnished to give the potential buyer an opportunity to compare different designs. The models may have a small area furnished with a desk and a phone for sales purposes.

As stated in our comment letter on the proposed rules, a model home is not a "commercial facility" or a "public accommodation" under the ADA. A model home is a building designed or intended for occupancy as a residence. As such, under Section 301(2) of ADA,

it is expressly excluded from the definition of "commercial facility." Furthermore, a model home does not qualify as a "public accommodation" since it is neither a "sales and rental establishment" or a "place of lodging."

The question arises as to whether a model home is transformed into a "public accommodation" merely because it is open to the public for a limited time for sales purposes. We do not believe that it is. A model home is, by definition, a residential structure, temporarily used for sales purposes. To require accessibility to these homes would force builders to change the essential character of the home. For example, widening doorways or changing room dimensions might be necessary. It would be deceptive to the potential purchaser to require accessibility since the actual home for sale might not incorporate accessibility features. In addition, it would pose an undue hardship on a builder to make a model home meet accessibility requirements since once the model is no longer required, the home would have to be changed back to it original design at the time of sale. This is not a reasonable approach to accommodating persons with disabilities.

The Department has recognized that a private home used exclusively as a residence is not covered by ADA because it is neither a "commercial facility" nor a "place of public accommodation." 56 Fed. Reg. 35559 (July 26, 1991). However, Section 36.207 of the regulations requires that where a private home is not used exclusively as a residence, but operates as a place of public accommodation in all or part of the home, that portion used exclusively in the operation of a place of public accommodation is covered by ADA. Section 36.207 also states that the portion of a private residence used both for the place of public accommodation and for residential purposes is covered by ADA. This section contemplates a long-term use of a portion of the residence as a public accommodation.

A model home does not meet the criteria set forth in Section 36.207. It is in fact a residence and no portion of the home is used exclusively as a place of public accommodation. Furthermore, since a model home is only temporarily used for sales purposes, there is no point in time at which any portion of the home is used both as a private residence and as a place of public accommodation. Therefore, no accessibility should be required in the home itself.

In our view, only a sales office that is separate from the actual residence, such as a sales trailer, should be required to be accessible. This type of structure is exclusively used for sales purposes and therefore qualifies as a "public accommodation". Such an interpretation will not only insure that public has access to sales facilities, but will also insure that residential

structures are maintained as such. We believe this interpretation is consistent with the ADA as well as the Department's regulations.

Because of the building industry's need for immediate guidance, we would appreciate it if your office would issue an interpretative opinion clarifying this issue. We would be pleased to provide you with additional information should you so desire.

Thank you for your immediate attention.

Sincerely

Kent W. Colton
Executive Vice President and
Chief Executive Officer

01-02243

Are model homes places of public accommodation? Generally, no. A model home does not fall under one of the 12 categories of places of public accommodation. If however, the sales office for a residential housing development were located in a model home, the are used for the sales office would be considered a place of public accommodation. Although model homes are not covered, the Department encourages developers to voluntarily provide at least a minimal level of access to model homes for potential homebuyers with disabilities. For example, a developer could provide physical access (via ramp or lift) to the primary level of one of several model homes and make photographs of other levels within the home as well as of other models available to the customer.

III-1.3000 Commercial facilities. The requirements of title III for new construction and alterations cover commercial facilities, which include nonresidential facilities, such as office buildings, factories, and warehouses, whose operations affect commerce. This category sweeps under ADA

coverage a large number of potential places of employment that are not covered as place of public accommodation. A building may contain both commercial facilities and places of public accommodation.

III-1.3100 Exceptions. Commercial facilities do not include rail vehicles or any facility covered by the fair Housing Act. Residential dwelling units, therefore, are not commercial facilities. In addition, facilities that are expressly exempted from coverage under the Fair Housing Act are also not considered to be commercial facilities. For example, owner-occupied rooming house providing living quarters for four or fewer families, which are exempt from the Fair Housing Act, would not be commercial facilities.

Even though private air terminals are not considered to be places of public accommodation, are airports covered as commercial facilities? Yes, private air terminals are commercial facilities and, therefore, would be subject to the new construction and alterations requirements of title III. Moreover, while a private air terminal, itself , may not be a place of public accommodation (because the ADA statutory language exempts air transportation), the retail stores and service establishments located within a private airport would be places of public accommodation. (In addition, private airports that receive Federal financial assistance are subject to the requirements of section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of disability in programs and activities of recipients of Federal funds. Airline operations at private airports may also be subject to the nondiscrimination requirements of the Air Carrier Access Act.) Air terminals operated by public entities would be covered by title II of the ADA, not title III; but any private any private retail stores operated within the terminal would be places of public accommodation covered by title III.

III-1.4000 Examinations and courses. Private entities offering examinations or courses covered by title III are subject to the requirements discussed in III-4.6000 of this manual. If the private entity is also a public accommodation or has responsibility for a commercial facility, it would be subject to other applicable title III requirements as well.

III-1.5000 Religious entities. Religious entities are exempt from the requirements of the title III of the ADA. A religious entity, however, would be subject to the employment obligations of title I if it has enough employees to meet the requirements for coverage.

01-02240

DJ 202-PL-135

MAY 20 1993

Thomas Hirsch

Bureau of Long Term Support
State of Wisconsin
Department of Health & Human Services
1 West Wilson Street
P.O. Box 7851
Madison, Wisconsin 53707

Dear Mr. Hirsch:

This is in response to your letter requesting information about the Americans with Disabilities Act (ADA). I apologize for the delay in responding to your inquiry.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist you in understanding the ADA's requirements. However, it does not constitute a legal interpretation or legal advice, and it is not binding on the Department.

You ask whether and to what extent the ADA covers, as social service center establishments, transitional housing where some non-residential services are provided. You also ask what type of services are included in the definition of "social services," especially whether medical care, personal assistance with daily living activities and activities such as counseling, meals, recreation, and transportation would be included, and whether some of those services per se trigger ADA coverage. You also request clarification of whether the optional or mandatory nature of services provided affects ADA coverage.

Title III of the ADA applies to privately owned or operated facilities that are either commercial facilities or that fall within one of the twelve categories of "places of public accommodation" listed in that title. Strictly residential facilities are not included in the twelve public accommodation categories and are expressly exempted from the definition of commercial facilities. Thus, strictly residential facilities are not covered by the ADA. Of course, residential facilities may

cc: Records, Chrono, Wodatch, Bowen, Novich, FOIA
Udd:Novich:Policy:135

01-02244

have to meet the Fair Housing Act's nondiscrimination and accessibility requirements relating to people with disabilities.

A facility that provides both housing and social services is covered by the ADA as a place of public accommodation where a significant enough level of social services is provided that the facility itself can be considered a social service center establishment. In this situation those portions of the facility that are used in the provision of social services are covered by the ADA. If the social services are provided throughout the facility, including in the individual housing units, then the entire facility is a place of public accommodation.

Neither the ADA nor the Department's regulation defines the term "social services." We believe that a textual analysis of the list of terms in the definition of public accommodation and the legislative history of the ADA calls for an expansive reading of the term "social service center establishment." Social services in the context of the ADA would include medical care, assistance with daily living activities, which you have termed "personal care services," and those activities you have termed "social services," such as the provision of meals, transportation, counseling, and some recreational activities. No one of these services will automatically trigger ADA coverage. Rather, the determination of whether a private entity provides a significant level of social services will depend on the quantity, quality, and combination of these services. Please note that whether services are optional or mandatory is irrelevant to the determination of ADA coverage.

You should also be aware that strictly residential and mixed use facilities may be subject to requirements under title II of the ADA, if they are owned or operated by a state or local government, or by an instrumentality of the state. Title II coverage is not dependent upon the level of services provided or upon whom the facility serves. Please consult the enclosed regulations under titles II and III, and Technical Assistance Manuals for those titles, for further discussion of these and other ADA issues.

I hope this information is useful to you.

Sincerely,

John L. Wodatch
Chief
Public Access Section

Enclosures (4)
01-02245

State of Wisconsin \ DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF COMMUNITY SERVICES
1 WEST WILSON STREET
P.O. BOX 7851
MADISON, WISCONSIN 53707

April 8, 1992

John Wodatch, Director
Office on the Americans with Disabilities Act
U.S. Department of Justice
Washington, DC 20530

Dear Mr. Wodatch:

I have just concluded a telephone conversation with Operator #1 via the ADA Hotline on the subject of treatment of "social service establishments" under the Americans with Disabilities Act and the implementing regulation, 28 CFR Part 36. In particular we tried to determine the extent of ADA coverage in places where both housing and services are offered. I would like written confirmation of my understandings and, in addition, clarification of some other issues.

The simple cases defining "social service establishments" are 1) those places where services are not optional, e.g., group homes and other supported living arrangements, which unquestionably are covered by ADA, and 2) housing owned by a social services provider but where services are provided off-site, which are not subject to ADA. The not well defined situations include transitional housing where services are provided on-site. In such case DOJ's interpretations are that ADA applies to the area where social services are provided, and, at least until a court determines otherwise, separate living units are not covered by ADA. I would appreciate confirmation of these interpretations.

The implication of services being optional was not conclusively addressed, and I would also appreciate clarification on this. In addition, I note that in neither the Act nor 28 CFR Part 36 is "social services" defined, nor any distinction among medical services (e.g., those performed by a nurse or home health aide), personal care services (including assistance with activities of daily living), and social services, which include counseling, meals, recreation, and transportation, some of which would commonly be found in retirement housing for persons who are elderly. How would each type of service be treated under the Act? What services, per se, trigger ADA coverage and

which ones, if any, do not? What level of services triggers the Act?

01-02246

I may be reached at 608-266-7797, if you wish to discuss these matters with me.

Sincerely yours,

Thomas Hirsch
Bureau of Long Term Support

01-02247

XX

MAY 20 1993

(b)(6)
XX
XX
XX
Miami, Florida 33137

Dear XX

This letter responds to your inquiry of March 4, 1993, requesting information about the protections offered by the Americans with Disabilities Act of 1990 ("ADA") for individuals with disabilities who use service animals.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist you in understanding the ADA's requirements. However, it does not constitute a legal interpretation or legal advice, and it is not binding on the Department of Justice.

In general, title III of the ADA makes it illegal for any place of public accommodation to discriminate on the basis of disability. In particular, the title III regulation enforced by the Department of Justice requires public accommodations to make reasonable modifications in its policies and practices to permit the use of a service animal by an individual with a disability. Under title III, a service animal is any animal that has been individually trained to provide assistance to a person with a disability.

Title III of the ADA, however, does not apply to strictly residential facilities, and therefore would not appear to address the situation you describe with respect to your landlord and neighbors. The situation you describe may be covered by the federal Fair Housing Act, and you may want to contact the Department of Housing and Urban Development ("HUD"), which is the

federal agency that investigates alleged violations of that Act. You may telephone HUD's Fair Housing Office at (800) 795-7915.

cc: Records, Chrono, Wodatch, Breen, Contois, FOIA
Udd:Contois:PL: XX
(b)(6)

01-02248

Enclosed for your information is a copy of the Department of Justice's Technical Assistance Manual for title III. It discusses the rules applying to service animals on page 23. The Manual also discusses the application of title III to commercial facilities and public accommodations (pages 1 to 4), and the fact that title III does not apply to strictly residential facilities (page 1 of 1993 supplement). I hope this information is useful to you in understanding the requirements of the ADA.

Sincerely,

Philip L. Breen
Special Legal Counsel
Public Access Section

Enclosure
Title III Technical Assistance manual

01-02249

UNITED STATES POSTAL SERVICE
CERTIFICATE OF MAILING

(b)(6)
XX
XX
XX

Miami, Fl 33137
March 4, 1993

Philip L. Breen, Esquire
Special Legal Counsel
Public Access Section
Civil Rights Division
P.O. Box 66738
Washington, D.C. 20035-6738

Re: The Americans with Disabilities Act("AWDA") and assistance animals

Dear Mr. Breen:

Respectfully, I request technical assistance regarding the Americans with Disabilities Act("AWDA") of 1990, regarding physically handicapped people, especially the elderly and pets(i.e. cats) and landlords, and their to ban assistance animals of any kind, so long as they do not violate the rights of neighbors by noise, smells and other problems.

The technical assistance that I respectfully request, are:

1. What determines noise, smells and other problems levels?

2. What constitutes other problems and determines at what point neighbors rights may be violated?

3. What technical assistance can I actually receive from the Justice Department or other federal agency(ies) and State of Florida agency(ies)--please specify name, address, and telephone number(if possible, their toll free telephone number) if the landlord violates the Americans With Disabilities Act?

4. What other laws, statutes, etc. for the physically disabled and/or elderly applying to abuse of the elderly and/or the physically disabled handicapped apply to restraining landlords threatening the elderly and/or physically handicapped over assistance animals(i.e. cats) as an example?

01-02250

5. Please send literature or copies of the Americans With Disabilities Act of 1990; title and Register regarding assistance animals and the landlord/tenant situation.

6. In general, how does the Americans with Disabilities Act protect the elderly and/or physically handicapped(who may or may not be elderly) from evictions by landlords?

I know that I have asked a lot from you, but the need is real and I hope you will do what you can to assist me in this matter.

Thank you for your cooperation and early reply.

Sincerely,
XX
(b)(6)

01-02251

T. 5-14-93

DJ 202-PL-210

MAY 20 1996

Mr. Gary P. Langlais, AIA
Project Manager
The Mehlburger Firm, Inc.
P.O. Box 3837
Little Rock, Arkansas 72203-3837

Dear Mr. Langlais:

I am responding to your letter requesting a determination about the application of title III of the Americans with Disabilities Act of 1990 (ADA) to a project that you are designing. I apologize for the delay in responding to your inquiry. If you have already proceeded with the alteration that was the subject of this inquiry, I hope that this information will be helpful to you in future alterations.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities that have rights or responsibilities under the Act. This letter provides informal guidance to assist you in understanding the ADA. However, this technical assistance does not constitute a determination by the Department of your rights or responsibilities under the ADA, and it is not binding on the Department.

You have asked for a determination that a ramp with a slope of 1:9.5 complies with the ADA requirement to provide access to an addition to a manufacturing plant. The Department of Justice regulation implementing title III requires ramps that are part of an accessible route to have a slope that does not exceed 1:12; to have a level landing at the top and bottom of each ramp; and to have handrails mounted between 34" and 38" above the ramp on each side. In alterations and additions where existing site constraints make it technically infeasible to provide a ramp with a 1:12 slope, a ramp with a slope between 1:8 and 1:10 is permitted for a maximum rise of 3 inches. The Department of Justice cannot waive these requirements.

If the addition that you are designing is an area that will be used only by employees as a work area, it may be subject to

cc: Records, Chrono, Wodatch, Bowen, Blizard, FOIA, Library
n:\udd\mercado\plcrtltr\langlais.jlb

one of the limited exemptions to providing full access. This Department's title III regulation provides that all public and common use areas in a covered facility must be fully accessible; but it permits areas used only by employees as work areas to be designed so that employees can approach, enter, and exit the area. A covered entity is not required to provide maneuvering room in a work area or an accessible route through the area. If the addition you are designing will be used exclusively as a work area, you must ensure, at a minimum, that people with disabilities may approach, enter, and exit the area. Thus, if the ramp in question is part of the entrance to the work area or is part of the accessible route to the work area, the ramp must comply with the standards of the ADA Accessibility Guidelines. If, however, the ramp in question is within a larger work area, the ramp need not comply with the ADA accessibility requirements.

Your letter states that the addition will not include toilet facilities or parking. The ADA does not require you to provide parking or restroom facilities for the addition, and the absence

of such elements does not affect the application of the ADA to other elements of the addition that you are designing. You should be aware, however, that if there are restrooms or parking spaces at the existing facility that will serve the addition that you are designing, the ADA may require you to alter those facilities to provide access.

Under the ADA, an addition is regarded as an alteration to the existing facility. When a covered entity alters an area of an existing facility that contains a primary function of the facility, it must make the path of travel to the altered area, and the restrooms, drinking fountains, and telephones serving the altered area, accessible unless the cost of these additional measures would exceed 20 per cent of the cost of the overall alteration. Therefore, your planned addition should include plans to spend up to 20 per cent of the cost of the addition to make the path of travel (including accessible parking, if parking is provided) to the addition and the restrooms, drinking fountains, and telephones that serve the addition accessible.

For your information, I am enclosing a copy of the Department's regulation implementing title III, which was published in the Federal Register on July 26, 1991, and our title III technical assistance manual. The requirements that apply to new construction and alterations are contained in subpart D (pp. 35599-35602); the standards for accessible design are contained in the appendix (pp. 35605-35691). These requirements are also addressed in the preamble to the rule (pp. 35574-35589), and in sections III-5.000 to III-7.000 of the technical assistance manual.

01-02253

I hope that this information is helpful to you.

Sincerely,

John L. Wodatch
Chief
Public Access Section

Enclosures

The
Mehlburger
Firm
Architects Engineers Surveyors

June 11, 1992

Office on the Americans with Disabilities Act
Civil Rights Division
U.S. Department of Justice
P.O. Box 66118

Washington, D.C. 20035-6118

Request for a Legal Determination

Gentlemen:

I am an architect in Little Rock, Arkansas and have a project in design that I need a legal determination on.

The project is an adhesive mixing room (1200 S.F.) and warehouse storage (2400 S.F., total 3600 S.F.) addition to a manufacturing plant in north Arkansas. The addition is a Hazardous Occupancy. The addition has been designed to resist explosive forces and to contain sprinkler water run off and adhesive spills. The containment function requires that the slab level of the addition be two feet lower than the main manufacturing floor level. Ramps have been included for operation of fork lift trucks and these ramps are at the slope of 1" in 9.5", with safety railings. There is insufficient dimension in the layout of these spaces to provide ramps at 1" in 12". There are no toilet facilities or additional parking facilities provided with this addition.

This addition has only one employee that uses the adhesive mixing room and there is no one in residence in the warehouse.

It is highly unlikely that this manufacturing company would employ a person, with an ambulatory disability, to work in this space due to the nature and hazard of the area.

I request the determination that this addition be allowed to use the ramps at their designed slope of 1" in 9.5" for entrance to this limited access facility.

Sincerely,

THE MEHLBURGER FIRM, INC.

Gary P. Langlais, AIA
Project Manager

01-02255
DJ 202-PL-348

MAY 20 1993

Mr. Robert H. Linn
1140 North Providence Road

Media, Pennsylvania 19603

Dear Mr. Linn:

This letter is in response to your inquiry of September 30, 1992, about the definition of a place of public accommodation and the requirements for toilet rooms under the Americans with Disabilities Act ("ADA") and the ADA's architectural Standards for Accessible Design. We apologize for the delay in responding.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist you in understanding the ADA's requirements. However, it does not constitute a legal interpretation or legal advice, and it is not binding on the Department of Justice.

Your letter inquires about ''manufacturing type facilities" and whether certain kinds of public contact would bring them within the definition of public accommodation in title III of the ADA. We begin by assuming that the types of facilities you are describing do not fall within any one of the twelve categories of places of public accommodation listed in the statute. 42 U.S.C. S 12181(7). Accordingly, they are "commercial facilities" having obligations under the statute for alterations and new construction, but not for barrier removal in existing facilities.

You ask first whether visits to this type of facility by vendors or outside salespersons are activities that would change the statutory categorization for the facility and bring it into the category of a place of public accommodation. Second, you ask whether the portion of a manufacturing facility where job applications are accepted and interviews take place qualifies as a place of public accommodation.

cc: Records, Chrono, Wodatch, Magagna, Contois, FOIA
Udd:Contois:PL:Linn.JAM

01-02256

If an entity does not fall within one or more of the twelve categories of public accommodations designated in the statute, then it is not a place of public accommodation within the meaning of title III. The fact that such facilities may be frequented by salespersons or job applicants does not alter that conclusion. However, as your letter acknowledges, a commercial facility may have an independent obligation under title I of the statute to make some accommodations for job applicants with disabilities.

Your letter also inquires about the requirements of the Standards for Accessible Design with respect to toilet rooms. The Department of Justice cannot certify or approve particular designs for toilet rooms or any other architectural features. However, the drawing you have provided appears to comply with the requirements of the Standards. Other configurations might also comply with the Standards, including, for instance, a room of slightly smaller dimensions, with the toilet and sink on the long wall across from the door. Using such a design, the room could be approximately 6'-8" by 5'-0", and would allow for both a front and side transfer from a wheelchair to the toilet. The design you have provided does not appear to allow for a side transfer.

I hope this information is useful to you in understanding the requirements of the ADA and the Standards for Accessible Design.

Sincerely,

John L. Wodatch
Chief
Public Access Section

Enclosure
Title III regulation

01-02257

September 30, 1992

The Office of the Americans
with Disabilities Act
Civil Rights Division
U.S. Department of Justice
Post Office 66118
Washington, D.C. 20035-6118

RE: Interpretations
Title III ADA Legislation

Dear Sir or Madam:

As an architectural firm, we have performed ADA Title III facility surveys for numerous clients over the past year. During the course of our facility evaluations, several issues and questions seem to consistently recur. Although we have researched various sources and attempted to interpret the legislation, we feel that we need some additional guidance from the Department of Justice.

We would appreciate your interpretation of the following issues, in order that we can guide our clients in complying with both the letter and spirit of the legislation.

1. Many manufacturing type facilities clearly match the definition of "commercial", with the possible exception of two types of public contact.

   a. The first type of "visitor" would be a vendor or outside salesperson. In our interpretation, since the salesperson is providing a good or service to the facility, instead of the facility providing a good or service to the salesperson, then this type of individual would not trigger the definition of public accommodation". Are we correct in this interpretation?

   b. The second issue centers around a facility that accepts employment applications at their facility. Does the portion of the facility where the application and interview take place fall under the Title III definition of "public accommodation", and therefore require review for "readily achievable", barrier removal, or is it more of a Title I issue relative to employment practice?

01-02258

2. We recognize that the illustrations in the ADAAG are for individual plumbing fixtures and not the toilet room as a whole. Based upon the clearances illustrated for a lavatory Figure 32, a toilet in Figure 28, and the requirement for a five (5) foot diameter unobstructed turning radius per Section 4.22.3, we feel that a single user floor mounted toilet room must be a minimum of 51-2" x 7'-6". Does this appear to be consistent with the requirements? (See attached sketch.)

We appreciate any assistance you can provide in helping us to correctly interpret these issues. Thank you.

Respectfully submitted,

Robert H. Linn
Registered Architect

RHL/jb

Enclosure: Sketch

01-02259

[Sketch of Floor Plan]

5'-O" DIAMETER
TURNING SPACE

5'-2" x 7' -6"
SINGLE USER
FLOOR MOUNTED
FRONT TRANSFER
NO SIGHT PRIVACY

FLOOR PLAN

SCALE:1/4"-1'0"

01-02260

12/10/92 (HANDWRITTEN)

Rob't Linn response (HANDWRITTEN)

Ellen --

Here's a copy of the letter and sketch I e-mailed you about I'd be happy to have whatever comments you care to make.

When I looked at ADAAG Figure 28, it looked to me like it was possible to have a configuration which was 4'-8" by 7'-6" Am I missing something?

Thanks again.

[HANDWRITTEN]

no because you
can't fit a 60" turning
space into a 56" wide room

Tom

(HANDWRITTEN)

What he shows is okay, but
I usually recommend the arrange-
ment below. Not only does it take
up fewer square feet but it allows
for a sides transfer!

APPROX. 6'-8"

[Sketch Inserted at Bottom]

01-02261

T. 5-14-93

DJ 202-PL-00065

MAY 20 1996

Ms. Susan K. McFadden
Account Executive
The Prouty Company
309 Court Avenue, Suite 510
Des Moines, Iowa 50309

Dear Ms. McFadden:

I am responding to your letter concerning the implementation of title III of the Americans with Disabilities Act of 1990 (ADA). I apologize for the delay in responding to your inquiry.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities that have rights or responsibilities under the Act. This letter provides informal guidance to assist you in understanding the ADA. However, this technical assistance does not constitute a determination by the Department of Justice of your rights or responsibilities under the ADA, and it is not binding on the Department.

You have asked if the ADA applies to non-profit organizations. Title III of the ADA applies to any non-profit entity whose business operation falls within the categories of coverage defined under the Act. Title III prohibits discrimination by private entities that own, operate, lease, or

lease to a private entity whose operations fall within one of the twelve categories identified in section 36.104 of the Department of Justice's regulation implementing title III. Entities that fall within these categories are "places of public accommodation" that are subject to the nondiscrimination requirements of section 302 of the ADA and the requirements for new construction and alterations contained in section 303 of the statute.

Section 303 of the ADA also requires that commercial facilities, which are nonresidential facilities whose operations affect commerce, comply with the new construction and alterations requirements of the Act. In addition, section 309 of the ADA

cc: Records, Chrono, Wodatch, Bowen, Blizard, FOIA, Library
n:\udd\mercado\plcrtltr\mcfadden.jlb

01-02262

prohibits discrimination by private entities that offer courses or examinations related to professional or occupational licensing or certification. If a business entity falls within one of these categories, its operations are subject to the requirements of the ADA.

You have also asked if an organization that holds a convention or other event at a facility that does not comply with the ADA may be held liable for failure to comply with the Act. When a private entity leases a place of public gathering, it becomes a "public accommodation" that is obliged to comply with the nondiscrimination requirements of the ADA. The owner/lessor of the property is also a public accommodation subject to the Act. In such a situation, both the lessor and the lessee are responsible for ensuring that the requirements of the ADA are met. The lessor and lessee may, by contract, allocate the responsibility for ADA compliance between them, but such a contract would be binding only between the parties. In the event of an ADA enforcement action, both parties may be held liable for compliance.

For your information, I am enclosing a copy of the Department's regulation implementing title III, which was published in the Federal Register on July 26, 1991, and our title III technical assistance manual. I hope that this information is

helpful to you.

Sincerely,

John L. Wodatch
Chief
Public Access Section

Enclosures

01-02263

THE PROUTY COMPANY 309 Court Avenue, Suite 510
INSURANCE ADMINISTRATORS AND COUNSELORS Des Moines, Iowa 50309
515-246-1712
In Iowa 1-800-532-1105
FAX 515-246-1476

March 12, 1992

Coordination and Review Section
Civil Rights Division
U.S. Department of Justice
P.O. Box 66118
Washington, D.C. 20035-6118

To Whom It May Concern:

As I have been unable to contact you by telephone, I am writing this letter requesting a response either by fax, telephone, or written correspondence. Please address the following issues:

* Do non-profit organizations fall under the requirements of The American Disabilities Act?

* Is it true that if an organization holds a convention or function at a location that does not meet the requirements of The American Disabilities Act, that the responsibility will fall upon the organization?

  What if the organization is a non-profit association?

  If someone takes action, can the organization be enjoined on this issue?

I have attempted at least five times to contact you - at times being put back on hold ten to fifteen times - and still could not get through. Therefore, would you please respond to my above questions.

Sincerely,

Susan K. McFadden
Account Executive

SKMC/sk
01-02264

XX

MAY 25

(b)(6)
XX
XX
XX

Dear XX

This letter is in response to your letter regarding the design of parking spaces. We apologize for the delay in responding.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities that are subject to the Act. This letter provides informal guidance to assist you in understanding the ADA accessibility standards. However, this technical assistance does not constitute a legal interpretation

of the statute and it is not binding on the Department.

You stated that you would appreciate a statement from this office that parking access aisles are to be diagonally striped with a 36" access aisle, as illustrated in A4.6.3. Please note that the information in the appendix is advisory. The applicable portions of the regulation are sections 4.1.2(5)(a) and 4.6. Section 4.1.2(5)(a) states, in part, " . . . access aisles adjacent to accessible spaces shall be 60 in (1525 mm) wide minimum." Section 4.6 states, in part, that " . . . Parking access aisles shall be part of an accessible route to the building or facility entrance and shall comply with 4.3. Two accessible parking space s may share a common access aisle (see Fig. 9)." Please note that Figure 9 shows a parking space with a minimum width of 96" and an access aisle of 60" minimum. The accessible route must be 3611 minimum as explained in section 4.3 and shown in Figure 9. Please also note, that there is no striping in the access aisle, but it must be demarcated. Therefore, it is not necessary to diagonally stripe the access aisle.

cc: Records, Chrono, Wodatch, Bowen, Johansen, F0IA
Udd:Johansen: XX

(b)(6)

01-02265

The "60" min" dimension in Figure A5 refers to the access aisle. This is not a typographical error. (See Table 1, Graphic Conventions, on page 35607 of the regulations).

We hope this answers your concerns. We are also enclosing our Technical Assistance Manual, as requested.

Sincerely,

L. Irene Bowen
Deputy Chief
Public Access Section

Enclosure
Title III Technical Assistance Manual

01-02266

(b)(6)
XX
XX

April 10, 1992

Office on the Americans with Disabilities Act
Civil Rights Division
U. S. Department of Justice
P. 0. Box 66118
Washington, D.C. 20035-6118

Dear Sirs:

On Des Moines, Iowa we are getting very good cooperation with the merchants in setting up their parking lots as per ADA of 1990. We have one large parking lot contractor, that refuses to include the 36" accessible route at the head of the handicapped & van accessible aisle, nor will he stripe the access aisles diagonally, even though these items are illustrated on page 35531 - 36 CFR 1191 - A4.6.3 Parking spaces. He claims it isn't written in the law, that the stripes are to be diagonally, so he can stripe them straight across, nor does it mention the 36" access aisle.

I have discussed this matter with Sanda Ellis and Harlan Cauthron of Phoenix, Arizona (copy of note enclosed) who I understand were very active in writing the parking portion of the ADA.

I would appreciate a statement from your office that the access aisle are to be diagonally striped and a 36" aisle as illustrated in Section A 4.6.3 Parking Space.

For your information, there is a typographical error in the measurements of the HC parking space and the aisle. I'm enclosed a highlighted copy.

Please send me a copy, of the technical assistance manual, January 26, 1992.

Sincerely,
XX
XX

(b)(6)

01-02267

(Copy of Page 35531 in Federal Register/ Vol 56 No 144/ Friday, July 26, 1991/ Rules and Regulations with illegible comments)
Federal Register / Vol. 56. No. 144 / Friday, July 28, 1991 / Rules and Regulations 35531

A4.6 Parking and Passenger Loading Zones

A4.5.3 Carpet. Much more needs to be done in developing both quantitative and qualitative Criteria for carpeting (i.e., problems associated with texture and weave need to be studied) are well established. When both carpet and However, certain functional characteristics are well established. When both carpet and padding are used, it is desirable to have minimum movement (preferably none) between the floor and the pad and the pad and the carpet which would allow the carpet to hump or warp. In heavily trafficked areas, a thick soft (plush) pad or cushion, particularly in combination with long carpet pile makes it difficult for individuals in wheelchairs and those with other ambulatory disabilities to get about. Firm carpeting can be achieved through proper selections and combination of pad and carpet. Sometimes with the elimination of the pad or cushion and with proper installation. Carpeting designed with a weave that causes a zig-zag effect when wheeled across is strongly discouraged.

A4.6 Parking and Passenger Loading Zones.

A4.6.3 Parking Spaces. The increasing use of vans with side-mounted lifts or ramps by persons with disabilities has necessitated some revisions in specifications for parking spaces and adjacent access aisles. The typical accessible, parking space is 96 in (2440 mm) wide with an adjacent 60 in (1525 mm) access aisle. However, this aisle does not permit lifts or Ramps to be deployed and still leave room for a person using a wheelchair or other mobility aid to exit the lift platform or ramp. In test conducted with actual lift/van/wheelchair combinations, (under a Board-sponsored Accessible Parking and Loading Zones Project) researchers found that a space and aisle totaling almost 204 in (5180 mm) wide was needed to deploy a lift and exit conveniently. The "van accessible" parking space required by these guidelines provides a 96 in (2440 mm) wide space with a 96 in (2440 mm) adjacent access aisle which is just wide enough to maneuver

and exit from a side mounted lift. If a 96 in (2440 mm) access aisle is placed between two spaces, two "van accessible" spaces are created. Alternatively, if the wide access aisle is provided at the end of a row (an area often unused),it may be possible to provide the wide access aisle without additional space (see Fig. A5(a)).

A sign is needed to alert van users to the presence of the wider aisle, but the space is not intended to be restricted only to vans.

Universal Parking Space Design. An alternative to the provision of a percentage of spaces with a wide aisle, and the associated need to include additional signage, is the use of what has been called the universal parking space design. Under this design all accessible spaces are 132 in (3350 mm) wide with a 60 in (1525 mm) access aisle (see Fig. A5(b)). One

A6 3-13-92 Fred as you well know Fig A5 was developed by the Fire Dept, Sandra Ellis & myself. Diagonal lines are a requirement as it is designed to place driver "on notice" Court Terminology. ILLEGIBLE

01-02268

DJ 202-PL 215

MAY 2 5 1993

John M. Barnett
Executive Director
Nebraska Polio Survivors Association
P.O. Box 37139
Omaha, Nebraska 68137

Dear Mr. Barnett:

This letter is in response to your letter requesting information about the Americans with Disabilities Act (ADA). I apologize for the delay in our response.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist you in understanding the ADA's requirements. However, it does not constitute a legal interpretation or legal advice, and it is not binding on the Department.

You ask several questions about the conditions under which a retail store owner must rearrange display racks to provide accessible aisles. You request a policy statement on when rearrangement of racks is not readily achievable. You also ask whether retail store owners need not rearrange racks if to do so would result in a significant loss of revenue, and whether the store owner has the option of either rearranging racks or providing a clerk to retrieve inaccessible items.

"Readily achievable" means easily accomplishable and able to be carried out without much difficulty or expense. The definition of "readily achievable" in section 36.104 of the regulation states that the determination of whether an action is readily achievable should include consideration of several factors, including the overall financial and other resources of the covered entity. Section 36.304(f) of the regulation specifies that rearrangement of display racks is not readily achievable "to the extent that it results in a significant loss of selling or serving space." (As you point out, the reference to loss of revenue was not included in the final rule.) Aside from this regulation, the Department cannot issue a categorical

cc: Records, Chrono, Wodatch, Bowen, Novich, FOIA
Udd:Novich:Policy:215

statement on when rearrangement is or is not readily achievable. As stated in the preamble to the title III regulation, "[w]hether or not any of these measures is readily achievable is to be determined on a case-by-case basis in light of the particular circumstances presented and the factors listed in the definition of readily achievable (S 36.104)." You can find this discussion on page 35568 of the enclosed title III regulation and a list of the factors to be considered in whether removal is readily achievable an page 35594.

You are also correct in your understanding that a retail store cannot satisfy ADA requirements by providing a clerk to retrieve inaccessible items if accessible rearrangement of display racks is readily achievable. Section 36.305 of the title III regulation specifies that alternatives to barrier removal may satisfy the statute only "[w]here a public accommodation can demonstrate that barrier removal is not readily achievable."

I hope this information is useful to you.

Sincerely,

L. Irene Bowen
Deputy Chief
Public Access Section

Enclosure
Title III regulation

NEBRASKA POLIO SURVIVORS ASSOCIATION

P.O. Box 37139
Omaha, Nebraska 68137
402/341-0710

June 12, 1992

U. S. Department of Justice
Civil Rights Division--ADA
P. 0. Box 66118
Washington, D.C. 20035-6118

Re: ADA Regulations

1. NPSA requests that the Department of Justice render a policy statement to clarify when it would NOT be readily achievable for retail store to rearrange display racks to provide accessible aisles.

2. When I called the Department of Justice yesterday with this question, I was told that stores do not have to move display racks if to do so would result in significant loss of revenue. It is my understanding that this (Section 36.304 (f)(1)) was deleted from the final rule. Please verify.

3. As I read the regulations, a retail store is not given a choice between moving its racks to provide access OR providing a clerk to retrieve inaccessible merchandise; the racks must be moved unless merchants can prove that it is not readily achievable to do so. Please verify.

Sincerely,

John M. Barnett
Executive Director

JMB:nbc

01-02271

DJ 202-PL-082

MAY 25 1993

Dave McDowell
Fusch-Serold & Partners AIA
5950 Berkshire Lane
Suite 1000
Dallas, Texas 75225

Dear Mr. McDowell:

This letter is in response to your inquiry about the application of the Americans With Disabilities Act (ADA) to senior living communities. We apologize for the delay in responding.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist you in understanding the ADA's requirements. However, it does not constitute a legal interpretation or legal advice, and it is not binding on the Department.

You are concerned with facilities you describe as senior living communities, which provide residents with some assistance with daily living activities, but which generally do not provide daily skilled nursing care. The community consists of dwelling units, which you refer to as Catered Living areas, some common areas which are open to the public, and a nursing center for skilled care. You believe that the ADA applies to the public common areas and the nursing care center, but you ask if and how the ADA applies to the Catered Living areas.

As you correctly stated in your letter, any areas in your communities that are not reserved for the exclusive use of

residents and their guests are covered by the ADA, if they function as one of the twelve categories of places of public accommodation listed in title III. Therefore, any admission or rental office is covered by title III, and your nursing care facility and any recreational facilities in your communities are required to comply with title III if they are open for the use of persons other than tenants and their guests.

cc: Records, Chrono, Wodatch, Bowen, Novich, FOIA
Udd:Novich:Policy:82

01-02272

Furthermore, all areas of the facility are covered by the ADA if the facility provides a significant enough level of social services that it can be considered a social service center establishment. Social services in the context of the ADA include medical care, assistance with daily living activities, provision of meals, transportation, counseling, and some recreational activities. Not one of these services will automatically trigger ADA coverage. Rather, the determination of whether a private entity provides a significant level of social services will depend on the nature, level, and quantity of services.

If a community provides a significant enough level of social services such that it can be considered a social service center establishment, all of those portions of the community that are used in the provision of social services are covered by the ADA, including the nursing center and the living areas, if social services are provided in those areas.

Your letter also asked whether, if the living areas are subject to the ADA, section 6 of the Americans With Disabilities Act Accessibility Guidelines (ADAAG), which applies to medical care facilities, contains the applicable architectural standards. Section 6 does not apply to your Catered Living areas, because section 6's coverage is limited to facilities in which people receive physical or medical treatment. If, as your letter implies, medical or physical care in your communities is provided in the nursing care facility and not in the living units, section 6 does not apply to them. Nonetheless, you might find it beneficial to apply the section 6.1(3) standards for nursing homes to your living facilities if your communities cater to a population with a high percentage of persons with mobility

impairments and other disabilities. Application of the accessibility standards in section 6.1(3) may result in your communities being more attractive to a growing population of elderly persons with accessibility needs.

If you choose not to apply the standards of ADAAG section 6, you should follow the general ADAAG standards, meeting the applicable standards from sections 4.1 to 4.35.

I hope this information is helpful to you.

Sincerely,

John L. Wodatch
Chief
Public Access Section

01-02273

FUSCH-SEROLD & PARTNERS AIA
5950 Berkshire Ln. Suite 10000*Dallas, Texas 75225*(214)696-0152

December 23, 1991

Ms. Marsha Mazz
Access Board
111 18th Street N.W.
Suite 501
Washington, D.C. 20036

Re: Brighton Gardens by Marriott

Dear Ms. Mazz:

As we discussed recently, Marriott Corporation has been actively developing a series of senior living communities named Brighton Gardens. These communities, known as Catered Living facilities, serve the senior resident who may require assistance with daily living activities, but who does not require skilled nursing care. Designed as residential living environments, these projects have been carefully tailored to promote independence among its residents, while still providing the support structure required to assist the residents with their daily living needs should this be necessary. Also contained in each of these projects is a small on-site nursing care center. This center provides skilled nursing services to those residents requiring short-term or long-term care. It also serves as a rehabilitation center with the goal of returning a resident to a more independent status as soon as possible.

Marriott is currently operating four Brighton Gardens communities

located in three states - Arizona, Texas and Virginia. Several additional projects are proposed in Florida and Illinois. As Architect for the Brighton Gardens projects I have been involved in the design of all of these facilities.

My telephone call to you last month concerned the application of the ADA regulations to these projects. I indicated to you that I understand and agree with the regulation's application to the public, employee and skilled nursing portions of these projects. I am uncertain, however, if Chapter 6 - Medical Care Facilities applies to the Catered Living areas.

As we discussed, I have received many different occupancy classification interpretations from local authorities with respect to the Catered Living areas. These interpretations have ranged from I-2 Institutional per UBC and I-1 Institutional per BOCA to R Residential per SBCCI. The State Health Department interpretations have varied with respect to licensing criteria, but these areas have generally been classified as Residential Board and Care occupancies as described in Chapter 21 of the NFPA 101 Life Safety Code. The definition of Residential Board and Care is "a building or part thereof used to provide lodging, boarding, and personal care services for four or more residents unrelated by blood or marriage to its owners or operators.

01-02274

Personal Care means "protective care of a resident who does not require chronic or convalescent medical or nursing care". This describes the Catered Living part of our facility and is consistent with Marriott's concept of care. These definitions are also consistent with the I-1 classification group listed in BOCA (which references board and care facilities), the R classification group listed in SBCCI, and reflects the residential nature of the living environment.

Prior to the passage of the ADA Regulations, I had been applying the Fair Housing Amendment criteria to the Catered Living part of our facility. This was acceptable to local and state authorities and reflects the residential nature of the facility and the care administered. Since the ADA was passed, I have been trying to determine its impact, if any, on these Catered Living areas.

Chapter 6 of the ADA describes Medical Care Facilities as "those in which people receive physical or medical treatment or care and where persons may need assistance in responding to an emergency and where the period of stay may exceed twenty-four hours". It also lists "long-term care facilities" as needing to comply with these regulations. These are broad definitions. While the Catered Living portion of our facility may assist the residents with daily activities; may assist the residents in responding to an emergency; and has people who stay for more than twenty-four hours, I don't think it is viewed upon as a Medical Facility. With respect to this, I am asking for your assistance in clarifying this with the ADA Regulators. This will provide me with a better understanding of the intent of the ADA Regulations as I continue with the design of these and similar facilities.

Should you require any additional information, or would like to discuss this further, please contact me at (214)696-0152.

Respectfully,

Dave McDowell, AIA
Partner

DM:nw

c. Burt Derr
Robert Whittaker

Enclosure - Brighton Gardens brochures

01-02275

Catered Living
at
Brighton Gardens

Brighton
Gardens

Marriott

01-02276

(Picture)

The Marriott Family

Meet Mrs. Alice S. Marriott Co founder and Vice President,
Marriott Corporation, and her sons, JW Marriott, Jr.,
Chairman and President, and Richard F. Marriott,
Vice Chairman and Executive Vice President

Here at Marriott, we have always placed a great deal of
emphasis on the importance of family. We believe it is
the true source of strength and stability in American
life--the tie that binds us all. And it is this commit
ment to basic family values, such as respect and service to others,
that we strive for in all Marriott senior living communities.

Throughout our corporation, service to others is more than
our business philosophy--it is a family tradition. We were
founded as a family business and we've been serving the needs
of America's families for over 60 years. This is why we strive to
create a true sense of family at each of our communities.

We have bold and exciting plans to build 150 senior living
communities across the nation in this decade. This corporate and
financial commitment to America's seniors is strengthened by
our own personal resolve to improve the quality of life for all those
we hope to serve.

As we introduce Catered Living at Brighton Gardens, we
invite you to experience this new concept in senior living.

Mrs. Alice S. Marriott J.W. Marriott, Jr. Richard F. Marriott

Answering the Need for a Little More
Help, a Little More Independence.

It's a fact that today's seniors are healthier, more active and more productive than ever before. Still, there are times when a little help with such everyday activities as bathing, grooming and dressing can make a big difference in how much you enjoy life. Times when compassionate care and old-fashioned neighborliness can fill your days with sunshine and laughter.

We've heard from you.

As the needs of seniors have changed, the range of options available in senior living communities has changed, too. In order to create the ideal community, Marriott went straight to the experts--people like you. We did a lot of listening and we learned that many of you desire some assistance with daily living.

You asked that help be close by whenever you need it. And you want more personalized care than the average retirement community can provide...but not the institutional environment of a nursing home. You want a community with sound financial backing...the simple pleasures of delicious and nutritious food, comfortable surroundings, good friends and a caring, competent staff.

Based on the concerns you expressed, we set out to develop a place that offers the care you need, when you need it.

Introducing Catered Living at Brighton Gardens.

Marriott's Catered Living at Brighton Gardens offers the assisted living, personal care and licensed nursing services* needed to bring peace of mind to seniors and their loved ones...

all in one delightful rental community. We invite you to discover how Catered Living can make a difference in your life or the life of someone you love.

*Depending on state regulations, some communities may not offer licensed nursing care.

1

01-02278

A Community for Common Interests and Private Reflections.

Brighton Gardens has the cheerful atmosphere you find when you combine well-planned services and amenities with caring people. You'll feel it as soon as you enter our welcoming reception area. Experience the warmth of our cozy library and comfortable living room. Then step outside to the courtyard and relax on the covered back porch.

Visit our country store, where you may purchase necessities, snacks, ice cream and more. Or stop in at the beauty and barber shop for a shampoo, haircut or maybe even a manicure.

A delightful dining room.

For good food and good conversation, discover our warmly decorated dining room, where three delicious meals are served daily in the finest Marriott tradition. Marriott has always been known for hearty entrees, imaginatively prepared salads, fresh fruits and vegetables and delectable baked goods. The chefs, waiters and waitresses at Brighton Gardens have been carefully selected to meet our exacting standards. There is also a comfortable dining room in the Health Care Center.*

Community gathering places.

A residents' community kitchen is ready and waiting for those who like to cook. The kitchen is adjacent to a private family dining room where you can enjoy your own dinner

parties and celebrations, either prepared by you or catered by the Brighton Gardens staff.

For those who prefer to do their own personal laundry, Brighton Gardens provides a laundry room with washers, dryers and a convenient area for socializing.

The Brighton Gardens community center offers residents a variety of places to mingle and pursue various interests. You'll enjoy a creative arts room and an entertainment room with a large-screen TV, piano, stereo and VCR.

(Picture)
An architectural rendering of Brighton Gardens Southwest--one of several architectural styles designed to adapt to the architecture of each local community.

The private suites.

You may furnish your suite with favorite family treasures or we can provide furniture. Our custom draperies and wall-to-wall carpeting have been carefully chosen to enhance your decor.

Each suite is spacious and bright. The large windows are perfect for enjoying the warmth of the sunshine or the beauty of a sunset. Regular housekeeping, as well as weekly towel and linen service, is included in your monthly fee and helps to keep things neat and comfortable.

Complete safety features.

At Brighton Gardens, extraordinary measures have been taken to ensure fire safety-including the installation of sprinklers and smoke detectors in all areas of the community. Our round-the-clock emergency call response system, located in the bedroom and bathroom of all suites, enables residents to summon help or talk directly with the staff in the event of an emergency

Assistance With Daily Living:
As Unique As You Are.

The principle goal of Catered Living is to provide each and every resident with the care they need, when they need it. At Brighton Gardens, we'll tailor a program of assistance with daily living activities to meet your own special requirements.

Brighton Gardens has been designed to provide a package of Catered Living services at an affordable monthly fee. Should you require additional services, a program can be adapted to your needs at a modest additional charge.

Helping you enjoy each day to the fullest.

Our competent and compassionate staff will assist you and your loved ones with the utmost sensitivity. Grooming is an area where an expert's touch is often welcome. Bathing, dressing, cheerful reminders to take daily medication and mealtimes are other areas where our staff can be of help.

The staff can even schedule appointments for you with your physician or other professional service providers.

The Health Care Center:
A Place To Start Feeling Better.

If a resident's health care needs change and nursing care is required, it's convenient to move to our on site Health Care Center. The Center has been designed to provide residents, as well as seniors in the local community, with varying levels of care...from round-the-clock skilled nursing to intermediate nursing to assistance with walking and other daily living activities. After a period of restorative or recuperative care, many seniors then move back to their residences.

Care among friends...close to home.

Our team of licensed nurses will assess and reassess each resident's health...even subtle changes will be monitored. From the friendly nurse's aide who keeps you comfortable to the encouraging therapist-every member of our team is dedicated to helping you get well and stay well. And while you're on the road to recovery, you can still keep in touch with spouses, friends and neighbors ...they're all close by.

Regulations do vary from state to state with regard to the extent of care, staff licensure and requirements for admission to the Health Care Center. Be assured that the Health Care Center at Brighton Gardens will comply with all regulations and set the highest standards in the delivery of care to our residents.

01-02280

A Calendar Filled With
Pleasures and Pastimes.

Everyone has their own
idea of a good time.
For some it's the op-
portunity to learn a
new skill...polish up an old
one. Others love a battle of wits
over chess, bridge or other dis-
plays of gamesmanship. Some
people want to get out to the
theatre or spend time in the
fresh air and sunshine. Others

enjoy spending an afternoon relaxing, chatting, competing in spelling bees or attending an ice cream social.

Something for everyone.

At Brighton Gardens, we can truly say there is something for everyone...health and wellness seminars, needlework and hobby sessions, cooking classes, croquet, trivia games, dart tournaments, current events discussions, birthday parties, shopping trips, theatre outings, worship services, exercise classes, holiday events and Bingo!

And, of course, we provide scheduled transportation to any outings planned by the recreation director. At Brighton Gardens, there are plenty of ways to express the fine art of being yourself.

Friendship, Family and Someone to Lean On.

Companionship, emotional security and the reassurance and support that is needed to live free from fear, anxiety and depression-these are all integral parts of Marriott's Catered Living concept. We are deeply committed to the happiness of all members of the Brighton Gardens extended family-residents, their loved ones and staff.

Lasting Friendships.

The friendships made here between residents are ones that

last...because they are born of shared experiences, interests and neighborly concern. And the Brighton Gardens staff is here whenever you need them. To share a laugh...a smile...a helping hand...and the simple joys of everyday living. These friendships-between residents and staff-are the foundation of this community's unique emotional support network.

When you choose Brighton Gardens, you're home. You're family.

The Time is Right.

We invite you to be a part of this special community. When you become a resident at Brighton

Gardens, the Catered Living concept adapts and changes to fit your needs-not the other way around. It works for you because it's designed for you.

Changes for the better.

Catered Living does-and doesn't-change lives. You can still do the things you enjoy in a familiar neighborhood with interesting new friends. You can still entertain friends and family, as well as tell stories to your grandchildren. But, you and your loved ones don't have to worry so much about your daily living activities. You have the perfect balance-the independence you want and the care you need. And this leaves you more time to concentrate on life's special people and pleasures. That's a change for the better. When every day brings a new sense of well-being, a new amusement, a new friend, well...

There is no greater feeling.

01-02282

(Picture of Floor Plans)

The Cornwall

Furniture shown for demonstration purposes only. You may furnish your

suite with your own family treasures or we can provide furniture.

Brighton Gardens by Marriott

(Picture of Floor Plans)

The Nottingham

Furniture shown for demonstration purposes only. You may furnish your suite with your own family treasures or we can provide furniture. Some suites will feature a kitchenette with two-burner cook-top, sink and refrigerator. See the listing of monthly fees for additional cost.

01-02283

(Picture of Floor Plans)

The Kent

Furniture shown for demonstration purposes only. You may furnish your suite with your own family treasures or we can provide furniture. Some suites will feature a kitchenette with two-burner cook-top, sink and refrigerator. See the listing of monthly fees for additional cost.

(Picture of Floor Plans)

The York

Furniture shown for demonstration purposes only. You may furnish your suite with your own family treasures or we can provide furniture. Some suites will feature a kitchenette with two-burner cook-top, sink and refrigerator. See the listing of monthly fees for additional cost.

01-02284

In the future, look for Brighton Gardens locations in the following metropolitan areas.

Arizona
Phoenix/Scottsdale
Sun City
California
Fresno Orange County
Sacramento San Francisco
Florida
Ft. Lauderdale Jacksonville
North Miami Orlando
Palm Beach County
Sarasota County Tampa Bay

Illinois
Chicago

Maryland
Bethesda

New Jersey
Central Northern

Pennsylvania
Philadelphia

Texas
Austin Dallas
Houston

Virginia
Arlington
Norfolk/Virginia Beach

Additional locations are currently under consideration.

Brighton
Gardens

Marriott

"We are pledged to the letter and spirit of U.S. policy for the

achievement of Equal Housing Opportunity throughout the Nation. We encourage and support an affirmative advertising and marketing program in which there are no barriers to obtaining housing because of race, color, religion, sex, handicap, familial status, or national origin."

01-02285

DJ 202-PL-00035

MAY 25 1993

Mr. Rod W. Simmons, AIA
HKS, Inc.
1111 Plaza of the Americas North, LB 307
Dallas, Texas 75201

Dear Mr. Simmons:

I am responding to your letter asking for clarification of the requirements of title III of the Americans with Disabilities Act of 1990 (ADA), Pub. L. 101-336, 104 Stat. 327 (July 26, 1990), 42 U.S.C. 12101 et seq., and this Department's regulation implementing title III, 56 Fed. Reg. 35544, to be codified at 28 C.F.R. pt. 36.

The ADA authorizes the Department to provide technical assistance to individuals and entities that have rights or responsibilities under the Act. This letter provides informal guidance to assist you in understanding the ADA and the Department's regulation. However, this technical assistance does not constitute a determination by the Department of Justice of your rights or responsibilities under the ADA, and it is not binding on the Department of Justice.

Your letter notes that the ADA and this Department's regulation provide that the ADA does not invalidate any Federal, State, or local law that provides greater or equal protection to people with disabilities, and asks us to clarify how we would expect this provision to apply in specific fact situations.

In your first question, you ask which law to apply when there is a Federal, State, or local law that is broader in scope than the ADA, i.e., that law covers entities not covered by the ADA, but it establishes technical requirements that are not as stringent as the ADA'S. If a particular facility is subject to a Federal, State, or local law, but is not within the scope of the

ADA (for example, it is a private club) then only the requirements of the other statute would apply. If a particular building is covered by the ADA and another statute, then both

cc: Records, Chrono, Wodatch, Bowen, Blizard, FOIA, Library
n:\Udd\mercado\plcrtltr\simmons.jlb

01-02286

laws apply. To meet the requirements of both laws, you should with the technical requirements of each law that provide the greatest degree of access.

Your second question addresses remedies. You ask whether, if a Federal, State, or local law provides greater access than the ADA, but has less significant remedies, the ADA will be applied to enforce the substantive requirements of the other statute. The ADA enforcement process may be used only to enforce the requirements of the ADA. However, it is possible that in a situation where the failure to provide access may violate more than one statute, an aggrieved party may file a single lawsuit alleging violations of the ADA, and each of the other applicable statutes, and seek the remedies available under each statute. In this situation, the appropriate remedy will be determined by the court.

Finally, you ask if the failure of a governmental entity to enforce laws that provide for greater access than the ADA violates the ADA. Title II of the ADA prohibits discrimination on the basis of disability against individuals with disabilities in the programs, services, and activities of State and local governments. States are required to comply with title II, and may be held liable for noncompliance. It is possible that, in some circumstances, a failure to enforce an existing State law could be found to violate title 11. In addition, the operation of State statutes or case law may affect the State's liability for failure to enforce State laws or regulations.

I hope that this information is helpful to you.

Sincerely,

John L. Wodatch
Chief
Public Access Section

01-02287

Rod W Simmons AIA
04 March 1992

Mr. John Wodatch, Director
Office on the Americans with Disabilities Act
Civil Rights Division
U. S. Department of Justice
Washington, D.C. 20530

RE: Americans with Disabilities Act of I 990 (ADA)
Dear Mr. Wodatch:
The following issues are being submitted for clarification of the intent of the referenced rules.

Section 36.103, Relationship to Other Laws, includes paragraph (c) Other laws, which states: "This part does not invalidate or limit the remedies, rights, and procedures of any other Federal laws, or State or local laws (including State common law) that provide greater or equal protection for the rights of individuals with disabilities or individuals associated with them."

The Department of justice preamble (Federal Register page number 35547) to this section states in part: "Paragraph(c) makes clear that Congress did not intend to displace any of the rights or remedies provided by other Federal laws or other State or local laws(including State common law)that provide greater or equal protection to individuals with disabilities. A plaintiff may choose to pursue claims under a State law that does not confer greater substantive rights, or even confers fewer substantive rights, if the alleged violation is protected under the alternative law and the remedies are greater. A plaintiff may join a State tort claim to a case brought under the ADA."

The ATBCB preamble (Federal Register page 35412) relative to this same section states in part: "An entity that is covered by both the ADA and another Federal law or regulation which requires compliance with accessibility standards must comply with the specific provisions that provide for greater accessibility."

The concept of complying with the standard that provides for greater protection is generally clear; however, it is not clear what remedies maybe applied to enforce compliance with either applicable standard, nor how the two standards should be integrated.

If another Federal, State or local law requires accessibility in a greater scope (for example, in facilities not covered by the ADA or in a greater percentage of accessible elements), but greater accessibility would be provided in the same facilities if the ADA technical standards were applied to the facility covered by the other Federal, State, or local law (but not covered by the ADA scoping provisions), which technical standards and which scoping provisions must be followed?

01-02288

If another Federal, State, or local law requires compliance with a specific provision that provides for greater accessibility, but has a relatively insignificant remedy (or none at all), and the corresponding ADA standard provides for the same or less accessibility, but has a greater remedy, is the greater remedy (ADA) applied to enforce the other standard that provides for greater accessibility?

If another Federal, State, or local administrative authority does not enforce their own standard which provides for greater accessibility than the ADA, is this other Federal, State, or local administrative authority in violation of the ADA or other Civil Rights law?

Please respond to the above questions as soon as possible.

Sincerely,

Rod Simmons

9999lm04.jw

01-02289

DJ 202-PL-146

MAY 25 1993

Ms. Nancy R. Snow
State of Colorado
Department of Regulatory Agencies
Civil Rights Division
1560 Broadway, Suite 1050
Denver, Colorado 80202-5143

Dear Ms. Snow:

This letter is in response to your request for information about the provisions of title III of the Americans with Disabilities Act (ADA).

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist you in understanding the ADA's requirements. However, it does not constitute a legal interpretation or legal advice, and it is not binding on the Department.

You have asked whether title III of the ADA covers certain areas within existing multi-family dwellings: (1) an office where people make inquiries and applications; (2) common areas, such as meeting rooms or club houses, used only by residents and their non-paying guests; (3) common areas available to be rented to the public; and (4) parking areas and exterior access routes in buildings that contain offices or common areas that must comply with the ADA. You have also asked for a definition for "short-term" rentals such that a residential hotel offering them would be a place of lodging covered by the ADA, and whether congregate care facilities other than homeless shelters, such as nursing homes, which offer medical or social services, are covered by the ADA.

Title III of the ADA, which applies to certain privately owned and operated facilities, does not apply to strictly residential dwellings. However, common areas in residential buildings, such as rental offices and meeting rooms, that fall in one of the twelve categories of places of public accommodation

cc: Records, Chrono, Wodatch, Magagna, Novich, FOIA
Udd:Novich:Policy:146

01-02290

under title III and that are not intended for the exclusive use of tenants and their guests are subject to the ADA. For example, rental offices that are open to the public would be considered rental establishments or service establishments under title III. Meeting rooms, if not restricted to tenants and their guests, would be a place of public gathering covered by the ADA. Parking, entrances, access routes, and restrooms serving the areas covered by the ADA would also be covered. In determining whether the ADA applies to a particular part of a residential facility, it makes no difference whether the facility has, or is required to have, accessible living units.

The Department has not established a definition of "short-term" rentals in the context of ADA applicability to places of lodging. Such determinations can only be made on a case by case basis. We have concluded in one specific situation that a facility intended or used for stays of one week or less is a "public accommodation" offering "short-term" rentals, and thus

subject to ADA coverage. However, that finding does not preclude ADA coverage of facilities where longer stays are permitted.

Congregate care facilities offering medical or social services are covered by the ADA, regardless of the transience of their occupants, if they are determined to be "social service center establishments," one of the ADA's twelve categories of places of public accommodation. The preamble to the title III regulation specifically states that nursing homes and homeless shelters providing social services to their occupants are covered as social service center establishments, independent of their coverage as places of lodging. Further discussion of this issue is included on pages 35551-52 of the title III Federal Register publication.

I hope this information is responsive to your inquiry. To provide additional information, I have enclosed copies of the regulations and technical assistance manuals for both titles II and III of the ADA.

Sincerely,

John L. Wodatch
Chief
Public Access Section

Enclosures (4)

01-02291

STATE OF COLORADO
CIVIL RIGHTS DIVISION Department of Regulatory Agencies
JACK LANG y MARQUEZ, Director Steven V. Berson
Executive Director

April 16, 1992

U.S. Department of Justice
Civil Rights Division
Coordination and Review Section
P.O. Box 66118
Washington, D.C. 20035-6118

Sirs:

We would like to ask your interpretation of the Public Accommodations section of the ADA, more specifically, when and how it overlaps the Fair Housing Act in its application to services or

facilities within residential buildings. The only clarification we find of this is in the ADA preamble of when residential facilities can also be either "places of lodging" or social service center establishment.

The Colorado Civil Rights Division is a substantially equivalent agency under the Fair Housing Act and, as such, accepts and investigates both federal and state charges of housing discrimination on the basis of race, religion etc. The Division expects approval soon to also process charges of handicap discrimination. Meanwhile, we are receiving many questions about the interplay and overlapping of the FHA and the ADA, and we would like answers to the following questions, so that we can give out proper information to the public. It is important for us to understand the distinction because of the very significant difference between the FHA and the ADA, namely, that the tenant is responsible for making structural changes in existing buildings under the FHA, but the responsibility falls to the owner under the ADA.

1. If an existing multifamily dwelling contains an office where the public comes to make inquiries or applications, does this office come under the ADA? Does it make any difference to this question if there are no handicapped units (which were not required prior to passage of the ADA)?

2. If an apartment complex/subdivision has common areas, such as a meeting room or club house, which are used only by residents and their non-paying guests, is there any ADA requirement?

3. If these same facilities are sometimes rented to the public, do these facilities then come under the ADA?

4. If the answer to #1, #2 or #3 is yes, does parking, exterior access etc. then also have to meet ADA handicap requirements?

01-02292

5. The preamble states that residential hotels which offer short term rentals come under the ADA requirements because they are considered "places of lodging". Has the Department established a standard for what length of time is "short term"?

6. There are many kinds of residential facilities other than the homeless shelters referred to in the preamble which offer congregate care, for example nursing homes and adult foster care homes. By their very nature they are offering certain types of medical or social services. Do these come under the ADA, even though they also come under the FNA, or are they only

subject to the ADA if they offer transient or short term care? (The architectural standards, section 9.5, refers to "transient lodging" in this kind of facility, but there is no mention in the main body of the regulations.)

Sincerely,

Nancy R. Snow
Housing Compliance Specialist

01-02293

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General Washington, D.C. 20530

MAY 26 1993

The Honorable Don Young
U. S. House of Representatives
2331 Rayburn Building
Washington, D.C. 20515

Dear Congressman Young:

This is in response to your recent letter on behalf of your constituent, (b)(6) XX , who suggests that the Americans with Disabilities Act of 1990 (ADA) should be amended to consider the needs of each business in determining what demands businesses, especially small businesses, should be required to meet in order to comply with the law.

The ADA provides civil rights protections to individuals with disabilities, and includes requirements applicable to both State and local governmental entities under title II of the ADA, and to private businesses under title III of the ADA. The ADA also authorizes the Department of Justice to provide technical assistance to individuals and entities with rights or obligations under the Act. This letter provides informal guidance to assist your constituent in understanding the ADA's requirements. However, it does not constitute a legal interpretation and is not binding on the Department.

Title II of the ADA prohibits discrimination against qualified individuals with disabilities in all programs, activities, and services conducted by or on behalf of State and local governments, as explained in section 35.149 of the title II regulation (copy enclosed). The concept of program accessibility is discussed in section II-5.000 of the enclosed title II Technical Assistance Manual.

Title III of the ADA prohibits discrimination on the basis of disability by private entities that own, lease, lease to, or operate places of public accommodation (such as restaurants,

hotels, retail stores, or private schools) and establishes requirements for the new construction and alteration of places of public accommodation and commercial facilities (such as factories

and warehouses). Copies of the title III regulation and Technical Assistance Manual are also enclosed.

As your constituent urges, it is important that a law such as the ADA recognize that the ability of a business to make changes is affected by a number of factors, and, in particular, by the resources available to that business. The ADA was drafted with that point in mind and reflects throughout a careful balance between the rights of individuals with disabilities and the legitimate concerns of affected businesses. For example, in existing facilities that are not otherwise being altered, the ADA only requires businesses to remove architectural barriers when such barrier removal is "readily achievable", that is, "easily accomplishable and able to be carried out without much difficulty or expense." In determining whether something is readily achievable, the regulation explicitly permits a business to consider a number of factors, including the cost of the proposed action and the resources available to the business, either directly, or through a parent corporation. See section 36.104 of the title III regulation.

Similarly, section 35.150(a)(3) of the title II regulation provides that a State or local government is not required to take any action that it can demonstrate would result in undue financial and administrative burdens. Other limitations on the obligations of covered entities occur throughout the ADA. The two enclosed Technical Assistance Manuals should assist (b)(6) in determining more accurately the extent of his obligations under the ADA.

Although the Department of Justice is not able to issue determinations regarding the obligations of specific parties under the ADA, you may wish to suggest to your constituent that he further explore with his tenant, the Alaska Department of Fish and Game, the exact nature of the changes that should be made in the Galena facility. The ADA does not require that existing facilities be brought up to the standards for new construction. As pointed out above, State and local governments are required to ensure "program access", that is, to make certain that the programs and activities of the entity, when viewed in their entirety, are available to citizens with disabilities. As discussed in the title II Technical Assistance Manual, it may be possible to achieve program access by methods other than physical alterations. For example, a government service that is provided in an inaccessible second floor location could be moved to the first floor when service is required by an individual who is unable to climb steps.

01-02295

Also, while a precise determination of the responsibilities of the parties in this particular situation would require an analysis of the lease, in general, a title III (private) landlord does not take on the obligations of a title II (government) tenant merely by leasing space to that tenant. For example, if a private landlord is leasing an existing office building that does not contain any places of public accommodation (that is, a building that is purely a commercial facility) to a governmental entity, the landlord's only ADA obligations with respect to that building arise when the landlord makes alterations to the building. When such alterations are made, the ADA requires that the landlord follow the accessibility standards that are included as Appendix A to the title III regulation. The government tenants obligations arise independently under title II. Again, the lease itself may impose additional obligations on the landlord, but these obligations are not affected by the ADA.

I hope this information will be useful to you in responding to your constituent.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

Enclosures (4)

01-02296

GANA-A' YOO LTD.
P.O. BOX 38 GALENA, ALASKA 99741 PHONE (907) 656-1606 FAX 656-1609

Honorable Donald Young
House of Representatives
Washington, D.C. 20515-0201

February 18, 1993

Dear Representative Young,

Attached is a letter sent in response to requirements we may have to follow in order to continue renting office space to the state. It is self explanatory. The costs to meet these demands will exceed twenty-five thousand dollars! Although we own and rent out many small buildings within our four villages, we are a small company. If we have to do this to each of our buildings we will have to shut them down. These expenses will be prohibitive and could break us financially.

Most small native corporations are in similar situations. Please reconsider having the ADA law amended to consider each business, its location, and who its customers are.

Sincerely
XX
XX
(b)(6)

01-02297

ANA-A' YOO LTD.
P.O. BOX 38 GALENA, ALASKA 99741 PHONE (907) 656-1606 FAX 656-1609

Mr. Elmer Sorensen February 18,1993
Facility Manager
Alaska Dept, of Fish & Game
P.O. Box 25526
Juneau, AK 99802-5526

Dear Mr. Sorensen,

I am writing in response to the Transition Plan for the State of Alaska pertaining to your local office currently being rented from our company. I received a copy of this plan late last week from Mr. Timothy Osborne and so was unable to meet your January 26, 1993 deadline.

I really am at a loss for words on your plans to meet the needs required by ADA. Rather than berate you, the state government and the federal government for your incessant encroachments on business with ridiculous regulations, I will go through your list of required repairs and show the ludicrousness of it all.

#'s 1 & 2 --- Parking and parking spaces. We have over an acre of "accessible" parking right in front of Tim's office. It may be covered by dirt but is solid. If you mean by `solid surface' an area paved with asphalt or concrete then you are asking for a lot more than the $2500 in the checked column. The only paved area in Galena besides the runway is on the airbase. We have over ten miles of dirt road that have been sufficient for the areas residents for over thirty years. Is there some special, overriding reason why a disabled persons vehicle needs a `solid surface'? As for signage, we can put up a sign that disabled people can park wherever they please. The area in front of the ramp is never blocked and always available.

#4 --- Exterior accessible route.? Again, there is a very large area available with hard packed dirt that makes access to the ramp very easy. I have seen disabled people on crutches, in wheel chairs, etc. get around in dirt very well. And why a cedar walkway? Local treated lumber would be just as adequate and cost far less.

#6 --- Ramps. I do not understand this one. Your report says there are no

handrails. I went out to look and I saw handrails! The ramp is there! There is a slope that looks no more challenging than any other handicap ramp I have seen. I asked around, since I have only been here one year, and no one else has ever seen that ramp used. As far as I know Tim has not had any disabled people coming in asking for hunting or fishing information.

#7 --- Entrance and Egress doors. You're very unclear about what is wrong here. Do you want us to construct another ramp and landing?

01-02298

#10 - Exterior signage. Fish & Game is more than welcome to put up a sign on the exterior of the building showing where their office is. Access sign? Unless you're blind it is quite obvious where the ramp and access is. Perhaps you meant a Braille sign so the blind could figure it out themselves?

#11 - Interior sign. Do you want us to put up a sign that says `Private Office'? Why cant you if you are so concerned about it? By the way, how does this benefit a disabled person?

#13 - Stairs. Again, I had to go out and look, but yes, there were handrails there! Lower landing? Why? Anybody using the stairs, disabled or not can easily make the first step.

#14 - Toiletroom. The public will have access to bathrooms in our corporate offices as will any disabled people. Tim can keep his toilet private. He can place a `Private Toilet' sign there also.

#16 -- Accessories. Thermostat. What business does a disabled person have adjusting the thermostat? We will post a sign that the public is not to touch the thermostat. Also, we will put a locking cover on the thermostat so only my property manager can adjust the temperature. Tim has many kids visit his office. I would not want them playing with it.

#17 - Interior doors. Since the bathroom is private there will be no need to change the door. Why reverse a door? Presumably a disabled person has to go both ways through a door so what difference does it make which way it opens?

I do not want to sound insensitive to the needs of disabled people. I have a disabled daughter. But there needs to be reasonable adjustments made based on each location. We are a remote site. Very few disabled persons come through this town If they do there are all kinds of people willing to help them out. If they feel that puts them in an unnecessary hardship situation, then welcome to the Bush. We all put up with considerable hardship and do without a lot of the luxuries of civilization. If at some time in the future, in the unlikely event you hire a disabled person to take Tim's place, then we will do whatever is necessary to make it a comfortable and easy office.

Putting out that kind of money for occasional use will put our small business out of business. You need to be reasonable and consider what effect these added costs will have on business. You are welcome to look around town for another office that meets your requirements. I doubt you will find one in this village. We are willing to work with you within reason.

Sincerely,
XX
XX (b)(6)
cc: Tim Osborne
Sen Ted Stevens
Sen Frank Murkowski
Rep Donald Young

01-02299

MAY 26 1993

The Honorable Phil Gramm
United States Senator
2323 Bryan Street, #1500
Dallas, Texas 75201

Dear Senator Gramm:
(b)(6)

This is in response to your inquiry on behalf of your constituent, XX inquiry concerns the application of the Americans with Disabilities Act to a meeting room used for a monthly immunization clinic.

The Americans with Disabilities Act authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist your constituent in understanding the Act's requirements. However, it does not constitute a legal interpretation and it is not binding on the Department.

Title III of the Americans with Disabilities Act requires that public accommodations, which would include private entities that own, operate, or lease clinics or meeting rooms, in existing facilities remove barriers to access by persons with disabilities, to the extent that such barrier removal is readily achievable. The preamble to the Department's implementing regulation under title III of the Act explains that "readily achievable" means easily accomplishable and able to be carried out without much difficulty or expense. Therefore, in the

situation described by your constituent, the chamber of Commerce would be obliged to remove barriers to access to the meeting room used as an immunization clinic only if it is readily achievable to do so.

cc: Records; Chrono; Wodatch; McDowney; Bowen; Miller; FOIA.
\udd\millerc\policy\gramm.ltr

01-02300

Factors that would be taken into account in determining if a particular action is readily achievable include the nature of the suggested renovations, the total resources available to the Chamber of Commerce, and other factors described in the regulation. See 28 C.F.R. S 36.104, "readily achievable." Without more information about the particular situation, however, we are unable to offer any further guidance as to whether the full renovations described by your constituent would be required under the Act.

Please note, also, that title II of the Americans with Disabilities Act requires State and local governments to make their programs and services accessible to persons with disabilities unless doing so would pose a fundamental alteration of the program or service or would amount to an undue financial or administrative burden. 42 U.S.C. S 12132; 28 C.F.R. S 35.150(3). Thus, the Act would require that the Texas Department of Health offer its immunization clinic in an accessible setting or offer an alternative means of access to its service, such as providing an alternate location which is accessible or taking the immunization directly to persons with disabilities.

I hope this information is helpful in responding to your constituent.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

Enclosure

01-02301

XX
XX
(b)(6)

February 3, 1993

The Honorable Senator Phil Gramm
241 SDOB
Washington, D.C. 20510

Dear Senator Phil Gramm,

Free innoculations for all children is a wonderful objective for the health and welfare of our nation. Prevention is one of the best ways to offset the increasing expense of our health care system.

However, there is something that I think that you should be aware of. Our Chamber of Commerce has been allowing the Department of Health to use our meeting room, free of charge, once a month for immunization clinics where free or reduced fee innoculations are given. Approximately 1,200 children are immunized a year. About the first of the year we received a notice that our facility (one room) has been checked for compliance with the American Disabilities Act. They

recommended that approximately $5,000 worth of renovations were needed to comply with the ADA and for the Texas Department of Health to be able to continue to utilize our meeting room. Mabank is a small town with limited funds. We have no choice but to notify them that our facility is no longer available for free or reduced fee innoculations.

What happened is in their effort to help a few, they have hurt many. Until government begins to live in the real world, among real people, I do not see much hope of things improving for the masses.

A concerned citizen,
XX
XX
(b)(6)

Pat President Mabank Chamber of Commerce
Democratic Prec. Chairman
Prec-# 2GBN Henderson County Texas

ns

01-02302

MAY 26 1993

The Honorable John F. Kerry
United States Senator
One Bowdoin Square
Tenth Floor
Boston, Massachusetts 02114

Dear Senator Kerry:

This letter is in response to your inquiry on behalf of your constituent, XX (b)(6) , concerning the applicability of the Americans with Disabilities Act (ADA), 42 U.S.C. S 12181 - 12189, to individuals with gender identity disorder.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal

guidance to assist your constituent in understanding the ADA's requirements. However, it does not constitute a legal interpretation or legal advice and it is not binding on the Department of Justice.

Section 511 (b) of the ADA lists conditions, including gender identity disorders not resulting from physical impairments, that are not considered disabilities under the ADA. Section 511 was added to the ADA during Senate consideration of the bill and was adopted in the final passage of the Act.

Because of the addition of section 511, individuals with gender identity disorder are not covered by the ADA unless the gender identity disorder results from a physical impairment or unless they are discriminated against because of another covered "disability" as defined in Section 3 (2) of the Act.

cc: Records; Chrono; Wodatch; McDowney; Magagna; Nakata; FOIA.
\udd\nakata\congress.let\kerry.1

01-02303

I hope this information is useful to you in responding to your constituent. You may wish to inform your constituent that further information is available through our Americans with Disabilities Act Information Line at (202) 514-0301.

Sincerely,

James P. Turner

Acting Assistant Attorney General
Civil Rights Division

Enclosures

01-02304

Senator John Kerry
Russel Senate Office Building
Room 421
Washington D.C., 20510

Dear Senator John Kerry,
I am writting you to ask you to give me just a few minutes to read my essay I wrote on behalf of the sufferers of a psychological disorder called Gender Identity Disorder. After, if you wish to see some evidence about my position, please refer to the table of contents on the back of the last page of this package.

I am a sufferer of Gender Identity Disorder and I find myself with no legal protection from discrimination with work, housing or health care. Due to my disorder I now survive on Social Security Disability. I am actively trying to remedy this situation by preparing myself to attain self sufficiency. I am in college to become an occupational therapist In order to achieve my goal of self sufficiency, I need some legal recognition of my civil rights. I need help with getting the representation within the government of United States for citizens whose needs have clearly been neglected by the United States Government.

Once after you've read my essay and you have further questions about the subject I would be happy to answer any questions you have. If you'd like to refer to deal with a psychiatric professional you should make contact with Dr. David Seil, 196 W. Springfield Rd. Boston, Mass., 02118 at Phone number (617) 536-2665.

I would also appreciate any legal resources or assistance you know that can assist me with pursuing federal court action on elimination of the exclusion of Gender Identity Disorder in the Americans with Disabilities Act clauses 508 and 511.

Also, I wish to participate in the National Gay, Lesbian, Bisexual, and Transgendered political march on the weekend of April 23rd, 24th, and 25th. If you can offer assistance with transportation, board, or monetary assistance it would be appreciated.

I want you to know, if you wish not assist in any way, thats fine. I am not going to be a parasite or begger. My only wish is that you work with me on revising the ADA so I may be a productive U.S. citizen with recognition that people like me have been oppressed. I really appreciate your time. I want you to know this package is being distributed to many of your colleagues, several news agencies, and talk shows so I can bring attention to the problem. Again thanks for your patience and attention, I really appreciate it.

Sincerly,
XX
XX
(b)(6)

01-02305
"The New Gender Gap" by XX (b)(6)

I know most people are familiar with the subject of Transsexuals. Many talk shows use the topic to develop controversy and interest. Now for the rest of the story. Transsexualism is an emotional and mental disability. It is a component of a larger problem defined by the psychiatric community as Gender Identity Disorder, GID for short.

This is a diagnosis defined by the American Psychiatry Association. Pages 71-79 in the manual of Psychological Disorders called the Diagnostic and Statistical Manual - III-R, or DSM-III-R for short. GID has also covered Transvestism, Transvestic Fetishism, or Transgenderism.

Before I continue, I want to introduce you to a new term "gender-orientation." No, this has no connection with "sexual-orientation". The Kinsey Institute For Research in Sex, Gender, and Reproduction of Indiana University has determined in its research 2 scales of human behavior in this environment. The Kinsey scale of Hetero-Homosexual range scale 0 to 6 and the Gender Dysphoria Scale with a range of 0 to 6. This is proof that gender orientation and sexual orientation are indeed independent entities.

The people that live with GID are called the Gender Community or GC for short. I believe that the non-recognition of the GC is a great misjustice. In fact the GC hasn't been, since 30 years after Christine Jorgenson, is beyond me. The dismissal or the gender community by U.S. legal and governmental agencies has self destructive effects on all citizens of the U.S.

One reason why the U.S. government hasn't addressed the issue is the way the media has approached the subject. Most stories in the media have portrayed the GID victim as sick, exhibitionistic, psychotic, or just plain stupid. The result is the general public hasn't been accurately educated.

You look at the tabloid, talk and news programming that people see. You can get the idea that the subject of GID is just there to entertain people. Tabloid and talk TV sensationalizes the GID problem. Most people interviewed have had greater financial resources to get proper treatment medically and mentally giving a false image of how most are well off. Most or the GID victims end up substance abusers, homeless, and/or prostitutes. The interviewed subjects are a tiny few of the GC that use their position to just get attention and not to really assist the other men and women who really are hurting. Such interviews also don't educate the general public about the extreme depression, extreme anxiety, and dissociative disorders that accompany GID.

When the GID issue reaches the news media, it usually is because that persons who suffer act out in antisocial behaviors: Exhibition, Assault Rape, Murder. Violence or violent activity has never been associated with GID suffers. These are psychotic classed behaviors and not neurotic classed like GID. This terrifies the GC because the general public believe that GID sufferers are hideous monsters and should be incarcerated.

GID sufferers fear discovery by the public as a result. Often, they become paranoid. Most GID victims just want to be free to actively participate in becoming constructive citizens of the U.S. The news media doesn't mention the discrimination those people with GID bear. Work is almost impossible. They're

turned down jobs only because of GID. This makes the GC hide in a closet. Proof of this is the Tiffany Club of Wayland Massachusetts, where people pay money to hide themselves in a house on Alpine St.

This leads me to another problem. Insurance carriers refuse to accept the psychiatric and medical professionals understanding that medical care for GID are a medical necessity. The processes you have to undertake to accomplish gender re-orientation are not paid for by insurers. The insurance firms use many methods to discriminate the use of their funds for gender-reorientation treatments.

01-02306

An MMPI Subscale (Gd): To Identify Males with Gender Identity Conflicts

Stanley E. Althof, Leslie M. Lothstein
Department of Psychiatry
Case Western Reserve University School of Medicine
PAUL JONES and JOHN SHEIN
Department of Biometry Department of Psychiatry

Case Western Reserve University School of Medicine

Abstract: This study reported on the development and cross-validation of a 31-item MMPI Gender Dysphoria subscale (Gd) which accurately discriminates between gender identity patients and matched controls, and identifies males with gender dysphoria syndrome. Both the validity and reliability of the Gd scale has been demonstrated and there is every expectation that the scale has excellent potential for clinical usage. In the construction of the Gd scale, we have addressed the major methodological problems of previous studies which have used psychological tests to assess gender role and identity disturbances: small criterion groups, a lack of an appropriate control group, and prediction of too many false positives.

The clinical disorder of transsexualism has historical roots in ancient civilizations (Green, 1969) and was first medically documented at the beginning of the 19th century (Friedreich, 1830).It wasn't until the publication of Psychopathia Sexualis (Kraft-Ebing,1894), however, that the condition was considered worthy of medical investigation. Initially, transsexualism was seen as a rare disorder characterized by a compulsive belief or wish to become a member of the opposite sex (I am a man/woman trapped in a woman's/man's body) and an insistent request for sex reassignment surgery (SRS). Fisk (Note 2) introduced the term "gender dysphoria syndrome" in 1973, as an alternative to the now accepted diagnosis of Transsexualism (DSM-III-302.5x). The concept of gender dysphoria syndrome is broader than that of transsexualism in that it includes all individuals who are distressed about their gender roles and identities, but may not desire SRS. Thus, the term gender dysphoria more accurately described the clinical variants who present with gender role and identity disturbances. It is estimated that there are currently 30,000 patients with gender role and identity disturbances who have labeled themselves transsexuals; a sizeable minority of these patients have received Sex Reassignment Surgery (Berger, Green, Laub, Reynolds, & Walker, & Wollman, Note 1). Early estimates of the prevalence of gender identity disorders involving requests for SRS in the United States were: 1/100,000 for males and 1/130,000 for females (Pauly, 1969). It is now apparent that these are conservative figures (Berger et al., Note 1), as increasing numbers of gender dysphoria patients requesting SRS are being seen in outpatient psychiatric clinics (Volkin, 1979).

An objective diagnostic instrument, used in conjunction with a clinical interview, would be of great assistance to mental health professionals in assessing gender dysphoria. Moreover, there are many patients whose initial clinical presentation of atypical depression and mixed psychotic

symptoms are confusing-and it is only much later that their gender identity disturbances are recognized. Because gender dysphoria patients may be willing to talk about their wishes to be of the opposite sex (related to their fears of being stigmatized), it is often difficult to appropriately diagnose them. A diagnostic test which could bypass their defensive proc-

esses and identify their possible gender dysphoria, would provide clinicians with the basis for making appropriate clinical interventions.

Psychological Testing

No single measure, or standardized battery of tests, has ever been consistently employed to compare groups of gender dysphoric patients from different geographical, racial, and socio-economic backgrounds. The published studies have reported on either group or individual data from diverse measures as: Thematic Apperception Test (Doorbar, 1969;Hill,1980); Rorschach Inkblot Test (Nachbahr,1977); Draw-A-Person (Doorbar, 1969); Fleming, Koocher & Nathans,1979; Hill,1980; Money & Wang,1966); Body Image Scale (Pauly & Lindgren,1976); Feminine Gender Identity Scale (Freund, Langevin, Satterberg & Steiner,1977); Wechsler Adult Intelligence Scale (Doorbar,1969; Hill,1980); Tennessee Self-Concept Scale (Roback, Staesberg, McKee, & Cunningham,1977; Sadoughi, Jayaram & Bush,1978); Sexual Functioning Inventory (Derogatis, Meyer, & Vazquez,1978; Nachbahr,1977); and the Bender Gestalt (Hill,1980).

The MMPI, however, has shown the most promise as a clinical instrument for identifying and predicting gender dysphoria. The published studies have used the MMPI to: (a)determine psychiatric diagnosis (Finney, Brandsma, Tondow, & LeMaestre,1975); (b)describe a mean MMPI patient profile (Lothstein,1980; Lothstein, Althof, Jones, & Shen, Note 3; Paitich, Note 4);(c)contrast gender dysphoria patients with other patient groups, using mean profiles (Lothstein et al., Note 3); and (d)contrast the patient's pre- and post treatment scores on a single measure (Fleming, Cohen, Salt, Jones, & Jenkins,1981; Hill,1980). The results of these studies respectively indicate: (a)a preponderance of hysterical diagnoses; (b)elevations on Scale 5, with the most prevalent two-point clinical codes being 5-4/4-5 and 5-8/8-5; (c)the mean profiles of gender patients suggest less psychopathology than those of outpatients in control groups; (d)treatment significantly lowers patients' scores on MMPI clinical scales. A diagnosis of "gender dysphoria syndrome," based on elevated Scale 5 and/or clinical profiles 5-4/4-5 or 5-8/8-5, would yield large numbers of false positives. In addition, methodological problems in the development of Scale 5 preclude its being used as the sole basis for the diagnosis of gender dysphoria. In this study we set out to expand the above findings to determine if an MMPI gender dysphoria scale for males could be constructed. It was hoped that such a scale would not only be of theoretical interest but also of practical clinical importance. It was recognized that such a study would have to meet the major methodological objections to the published studies (that is, employing small criterion groups, and yielding too many false positive diagnoses of gender dysphoria using mean profile scores). With these considerations in mind, the following study was designed with the aim of

developing a clinically usable MMPI gender dysphoria subscale for males.

Subjects

The item selection phase of this study included criterion and control groups. Group I, the criterion group, included 52 males (35 whites; 17 blacks) who applied to the Case Western Reserve University Gender Identity Clinic for SRS between 1975 and 1978. White patients had a mean age of 30 and 12 years of education; Blacks had a mean age of 25 and 11 years of education. The Whites were predominantly from working class backgrounds as opposed to the lower class backgrounds of Blacks.

Group II, the control group, included 52 male psychiatric outpatients. They were matched with the criterion group for age, sex, and race. These patients were chosen from lists of patients with completed MMPIs on file at two psychiatric outpatient facilities in Cleveland.

01-02308

2. Fetishistic TV. This is the transvestite usually ranging from exclusively to mostly heterosexual (Kinsey Scale 0-2). This individual dresses periodically in clothing of the opposite sex, usually wearing garments under male clothing. Transvestites, as described by Benjamin, are almost entirely male.
3. True transvestite (ranging from 0-2 on the Kinsey Scale) often dresses in women's clothing and may actually live as a female. This individual is heterosexual except when cross dressed.
4. Nonsurgical transsexual. This person ranges from 1-4 on the Kinsey Scale and cross-dresses, often with insufficient relief of the gender dysphoria from the cross-dressing. The sense of gender discomfort in this individuals because of their ambivalence.
5. True transsexual, moderate. This person ranges between 4 and 6 on the Kinsey Scale(usual to exclusive homosexuality). He or she lives and works as a member of the opposite sex, if possible, but may have tried to adapt to the normal sex roles of the biological gender and may have married and had children. Usually surgery is indicated in this individual.
6. True transsexual, intense. this person tends to be exclusively homosexual, as defined by the biological gender, although they see themselves as heterosexual. Their gender discomfort is intense, and they get very little relief from cross-dressing. These individuals are usually clinically evident at an early age and truly believe themselves to be trapped in the wrong body.

The "true transsexual" will likely give an early childhood history of wishing to be a member of the opposite sex, often from earliest memory. Cross-dressing usually begins quite early in life and is usually accompanied by stereotypical cross-gender play and the choice of playmates of the opposite gender. For the biological male, this often involves playing with dolls or playing house, and for the biological female, this usually involves a reluctance to wear dresses or to play with dolls or other sedentary play. Girls typically will seek out rough and tumble play, whereas gender dysphoric

boys will avoid it. Usually at some point, the gender dysphoric male is labeled a "sissy" and is often socially ostracized because of this. the gender dysphoric female is likely to be labeled a "tomboy" but is less likely to suffer negative social consequences and may actually be rewarded for this behavior.

The transvestite typically has a later onset of cross-dressing, often at puberty. Cross-dressing is usually fetishistic in nature and is accompanied by sexual arousal to the cross-dressing itself. The transsexual, on the other hand, tends to be more asexual and is so aversive to the genitals that there is often a reluctance to masturbate by touching them. Although they are usually attracted to members of the same biological gender, they see themselves as heterosexual since they themselves are in the wrong body. They may also be homosexual or bisexual but are most likely to be heterosexual. It should be noted that in the mid-thirties, a transvestite is frequently observed to become ore gender dysphoric and may actually lose the fetishistic nature of masturbation. It is not uncommon that individuals previously diagnosed as transvestite later in life request sex reassignment surgery and may be appropriate for it.

EGODYSTONIC HOMOSEXUAL

It should be pointed out that individuals suffering from genetic or hormonal abnormalities demonstrated by an ambiguous genitalia should first be treated by procedures commonly accepted for those medical conditions. It is likely that patients with Klinefelter's Syndrome will have a higher incidence of gender dysphoria than the normal population, and may be candidates for a gender treatment program, after appropriate medical treatment. Psychological conditions which are commonly confused with transsexualism include schizophrenia, multiple personality disorder, and dissociative conditions. Occasionally, a patient who has been sexually abused will consciously decide to be a member of the opposite gender in an attempt to avoid sexual abuse in the future (Satterfield, 1984). This usually occurs in females. Males with a very poor self-image have been misdiagnosed as transsexual because they feel that their passivity and lack of stereotyped male behavior is inconsistent with

other staff there is a right of return to their old jobs. Two cases are known to have been dealt with by British Gas.

At British Airways there is an agreed policy that transexuals may remain in employment. British Airways employs such people as female (or male) prior to the operation. After the operation they are reclassified under their new gender. They are however, usually moved from their existing posts. Following the operation the employee is kept on his or her existing salary until a new post is found for which they must complete in the normal way. Until a new post is found, no increments are paid.

It is understood that these policies date back to a meeting of the nationalized industries chairmen and personnel directors groups in the early 1980's.

In local authorities, the policy is usually to keep the transexual in employment in the existing post. There are at least four known cases in London boroughs. A case in the court service led to a justices clerk taking early retirement instead of remaining in employment. The Civil Services treats each case on its merits but clearly security considerations are taken into account.

The agreed Civil Services policy is to keep the transexual in employment but to redeploy after surgery has been performed. There are believed to have been at least 20 cases in the Civil Services in the last decade.

In the National Health Services administrative staff and annual workers are kept in post after gender changes there are three known examples. In the case of nursing staff, the transexual is taken off duty before the operation, but may be reemployed after surgery. There are two known cases of nurses changing gender.

In the education field, transexuals are normally not employed in the period before the operation but are reemployed afterwards. Six cases are known. In the universities, two academics are known to have changed gender without any major problems.

In the private sector there are wide variations in practice. The approach is often sympathetic when it involves staff at lower levels though this is less common in smaller companies. At the more senior level, it is usual for the employee to leave but some organizations have given help to individuals in setting up their own business.

Employment law as it relates to transvestites and transexuals is largely an uncharted are. This is probably because the individuals concerned usually wish to avoid the publicity and trauma which legal action entails. Many do not feel able to face the reaction of their employer and their workmates, preferring to resign quietly and take the risk of looking for another job.

Unfair dismissal

An employee with at least two years of continuous services who is dismissed because he is a transvestite may be able to claim unfair dismissal on the basis that his off-duty behavior is of no concern to the employer. In many cases this would be a powerful argument. However, in some situation, the employer might be able show substantial reason for dismissal under section 57 (1b) of the Employment Protection (Consolidation) Act and persuade the tribunal that dismissal was a reasonable response to the circumstances. For example, dismissal of a senior employee in a position of trust, on discovery that he is a transvestite might be found

largely a manager's ability to control his subordinates might be undermined if they found out about his transvestism.

Another possible substantial reason for dismissal might be pressure to dismiss from the transvestite's fellow employees, or from an important customer. In such a case the tribunal would probably expect a reasonable employer to seek to protect the employee from irrational bigotry, and to consider whether it is possible to transfer him to an alternative post among unprejudiced colleagues. However, a tribunal would probably find that as a last resort, dismissal was a genuine attempt to protect business interests and consequently within the range of the responses available to a reasonable employer.

Similar considerations would apply to unfair dismissal claims by transexuals. in Calvin Standard Telephones and Cables Inc., a sex discrimination case brought by a pre-operative transexual, the company argued that there would be "organizational" problems in employing such an individual. For example, it would be embarrassing for employees or visitors to the factory to see an individual entering the male toilets wearing female clothes and it was impracticable to provide separate toilet facilities. In an unfair dismissal case, such matters would probably be found to amount to a substantial reason for dismissal.

Unfair dismissal law therefore provides limited protection to transvestites and transexuals. But what about sex discrimination law? The problem here is that under the Sex Discrimination Act 1975 an applicant has to show that he or she has suffered discrimination "on the ground of his (or her) sex." The case of White v British Sugar Corporation concerned a woman who had for many years treated herself as if she were a man. BSC employed here assuming that she was a man and she used the men's toilet rooms and changing facilities. Rumors began to circulate and she was soon dismissed. Her sex discrimination claim failed. The tribunal found that the company had not treated here less favorably than they would have treated a man who held himself out to be a woman, who had been employed as such and who used the women's toilets. in Calvin v STC (see above) a male job applicant did not hide the fact that he was preparing to change sex. but the tribunal similarly found that it was not unlawful sex discrimination for the company to refuse to interview him because a pre-operative female transexual would not have been interviewed either.

By contrast a male employee (or prospective employee) who suffers inferior treatment because he is a transvestite may stand a greater chance of succeeding in a sex discrimination claim, on the basis that a female cross-dresser would have been treated better (it is generally thought that it is easier for a woman to pass dressed as a man than vice verse).

Where a transexual continues in employment after undergoing a change of gender, there may be problems of reclassification as the opposite sex. This may be relevant for certain contractual purposes. In Corbett v Corbett a court decided that a person who was born a male but had undergone a sex change operation was not a woman who could validly marry a man. However, an employer and employee can get around this by expressly agreeing on which sex the latter is to be for contractual purposes. But if the employee was subsequently to bring a sex

01-02312

Eric Matusewitch, New York City Health and Hospitals Corp. New York, NY

LABOR RELATIONS

THE LEGAL STATUS OF TRANSSEXUALS IN THE WORKPLACE

Hundreds of Americans undergo sex reassignment each year. it is well documented that these individuals referred to as transsexuals are misunderstood and scorned by society. As a matter of fact, "questions of sexual deviation and sexual abnormalities probably provoke more emotional responses to society generally than almost any other subject." many employers, influenced by harmful stereotypes, perceive transsexuals as unstable or incapable of performing their jobs. The result of this attitude is that transsexuals are refused employment or terminated from jobs upon discovery of their status. Because of this treatment, the courts have been grappling with the employment difficulties of transsexuals.

In simplest terms, transsexualism (or gender identity disorder) is the enduring, pervasive, compelling desire to be a person of the opposite sex. The American Psychiatric Association (PA), which has classified transsexualism as a mental disorder since 1980's, states that transsexuals suffer from moderated to severe personality disturbances and frequently experience considerable anxiety and depression, attributable to their inability to live in the role of the desired sex. In these instances, "depression is common, and can lead to suicide attempts."

Although transsexuals are often confused with homosexuals and transvestites, the three types of individuals are considered distinct by most legal and medical authorities. Transsexuals are individuals who suffer from gender identity disorders; homosexuals are individuals who are attracted sexually to members of their own sex; and transvestites are primarily heterosexual men who experience psychological relief and sexual arousal by dressing in women's clothes. Both homosexuals and transvestites are content with the sex into which they were born.

The treatment programs for transsexual patients typically require cross dressing as long as two years while undergoing hormonal treatments,

psychotherapy and psychosocial adjustment training. If the attending psychiatrist concludes that the patient is psychologically and physically ready, the sex-reassignment surgery is performed. Postoperative follow-up is aimed at the total assimilation of the individual not society in the new sex role. Estimates on the number of male-to-female transsexuals outnumber female-to-male transsexuals by a ratio of as high as eight to one, and as low as two to one.

Preoperative and postoperative transsexuals have unsuccessfully challenged employment discrimination under Title VII of the Civil Rights Act of 1964. That statue prohibits discrimination on the basis of race, color, religion, sex and national origin. With the exception of one trial court, no federal court has held that Title VII's ban on sex discrimination protects transsexuals. The most recent case, Ulane vs. Eastern Airlines, Inc., is representative of how these courts have resolved transsexual claims.

For a decade, Karen Ulane had been a male pilot with an excellent employment record at Eastern Airlines. An increasing desire to become a woman led Ulane to undergo female hormone treatment. Ulane continued to fly until finally taking a leave of absence to undergo gender-reassignment surgery. After surgery, she was given permission to resume flying by the Federal Aviation Administration. Eastern, however, refused to reemploy Ulane as a pilot. The airline contended that Ulane was too much of a psychiatric risk to vest with the responsibility of piloting a commercial aircraft. Ms. ulane filed suit in the US District Court for the Northern District of Illinois. In a bench trial, the district court held that Eastern had violated Title VII of the Civil Rights Act of 1964 by discriminating against Ms. Ulane as a transsexual and as a female.

The US Court of Appeals for the Seventh Circuit reversed the district court's ruling and relied on reasons to support its holding that Title VII did not protect transsexuals.

First, the appeals court held that the word sex in Title VII meant a man or woman, not an individual suffering from a sexual-identity disorder. Second, the court found that the legislative his-

01-02313

60 Bozman and Beck

Apfelbaum, B., and Apfelbaum, C. (1985). The egoanalytic approach to sexual apathy. In Goldberg, D.C. (ed.). Contemporary Marriage: Special Issues in Couples Therapy, Dorsey, Homewood, IL.

Bancroft, J. (1983). Human Sexuality and Its Problems, Churchill, Livingstone, London.

Barfield, R. and Sachs, B. (1968). Sexual behavior: Stimulation by painful electric shock to skin in male rats. Science 161: 392-395.

Barlow, D. H. (1977). Assessment of sexual behavior. In Ciminero, A., Calhoun, K., and Adams, H. (eds). Handbook of Behavioral Assessment, Wiley, New York.

Barlow, D. H., Becker, R., Leitenberg, H., and Agras, W. S. (1970). A mechanical strain gauge for recording penile circumference change. J. Appl. Behav. Anal. 3: 73-76.

Barlow, D. H., Sakheim, D. K., and Beck, J. G. (1983). Anxiety increases sexual arousal. J. Abn. Psychol. 92: 49-54.

Beck, J. G. and Barlow, D. H. (1984). Current conceptualizations of sexual dysfunction. A review and an alternative perspective. Clin. Psychol. Rev. 4: 363-378.

Beck, J. G., Barlow, D. H., Sakheim, D. K., and Abrahamson, D. J. (1987). Shock threat and sexual arousal: The role of attention, thought content, and affective states. Psychophysiology 24: 165-172.

Fisher, W. A., Byrne, D., and White, L. A. (1983). Adolescent

contraception. In Byrne, D., and Fisher, W. A. (eds). Adolescents, Sex and Contraception, Erlbaum, Hillsdale, NJ.
Hoon, E. F., and Chambless, D. (1988). Sexual Arousability Inventory (SAI) and Sexual Arousability Inventory-Expanded (SAI-E). In Davis, C. M., Yarber, W. L., and Davis, S. L. (eds). Sexuality-Related Measures. Lake Mills: Graphic Publishing.
Hoon, E., Hoon, P., and Wincze, J. (1976). An Inventory for the measurement of female sexual arousability: the SAI. Arch. Sex. Behav. 5: 291-300.
Hoon, P., Wincze, J., and Hoon, E. (1977). A test of reciprocal inhibition: Are anxiety and sexual arousal in women mutually inhibitory? J. Abn. Psychol. 86: 65-74.
Kaplan, H. S. (1977). Hypoactive Sexual Desire. J. Sex Marital Ther. 3: 3-10.
Kaplan, H. S. (1979). Disorders of Sexual Desire. Brunner/Mazel, New York.
Kaplan, H. S. (1984). The Evaluation of Sexual Disorders. Brunner/Mazel, New York.
Leiblum, S. R., and Rosen, R. C. (1988). Sexual Desire Disorders. Guilford, New York.
Levine, S. B. (1984). An essay on the nature of sexual desire. J. Sex Marital Ther. 10: 83-96.
Lief, H. L. (1977). Inhibited sexual desire. Med. Aspects Hum. Sex. 7: 94-95.
Masters, W. H., and Johnson, V. E. (1970). Human Sexual Inadequacy. Little Brown, Boston.
McNair, D. M., Lorr, M., and Droppleman, L. F. (1971). Profile of Mood States, Educational and Industrial Testing Service, San Diego, CA.
Norusis, M. J. (1986). SPSS/PC+: SPSS for the IBM PC/XT/AT, SPSS Inc., Chicago.
Schwartz, G. E., and Weinberger, D. A. (1980). Patterns of emotional responses to affective situations: Relations among happiness, sadness, anger, fear, depression, and anxiety. Motiv. Emot. 4: 175-191.
Singer, B., and Toates, F. M. (1987). Sexual motivation. J. Sex. Res. 23: 481-501.
Vasey, M. W., and Thayer, J. F. (1987). The continuing problem of false positives in repeated measures ANOVA in psychophysiology: A multivariate solution. Psychophysiology 24: 479-486.
Wincze, J., Hoon, P., and Hoon, E. (1976). Sexual arousal in women: A comparison of cognitive and physiological responses by continuous measurement. Arch. Sex. Behav. 5: 121-133.
Wincze, J. P., Venditti, E., Barlow, D., and Mavissakalian, M. (1980). The effects of a subjective monitoring task on the physiological measure of genital response to erotic stimulation. Arch. Sex. Behav. 9: 533-547.
Wolchik, S. A., Beggs, V., Wincze, J. P., Sakheim, D. K., Barlow, D. H., and Mavissakalian, M. (1980). The effects of emotional arousal on subsequent sexual arousal in men. J. Abn. Psychol. 89: 595-598.
Zilbergeld, B. (1978). Maale Sexuality. Little Brown, Boston.

01-02314

Archives of Sexual Behavior, Vol. 20, No. 1, 1991

Transsexual Healing: Medicaid Funding of Sex Reassignment Surgery

Eric B. Gordon, MD., J.D.

Federal requirements for state Medicaid programs are surveyed, and case law regarding Medicaid funding of sex reassignment surgery is reviewed. State have attempted to exclude sex reassignment surgery (SRS) from Medicaid coverage on various bases, concluding for example, that the procedure constituted "cosmetic surgery." Judicial scrutiny of such exclusions has usually resulted in the state action being found violative of the federal Medicaid statute and accompanying regulations. In those cases upholding the state exclusion, the primary judicial obstacle to funding has been a

determination that SRS is "not medically necessary" or is "experimental." The author explores the recent scientific literature concerning long-term outcomes following SRS and concludes that the procedure, for purposes of Medicaid funding, is neither "unnecessary" nor "experimental," and that the categorical exclusion of SRS from Medicaid determinations of eligibility for Medicaid Funding, utilizing the standards of care promulgated by the Harry Benjamin International Gender Dysphoria Association.

KEY WORDS: gender dysphoria; Medicaid, sex reassignment surgery; Social Security; transsexualism.

THE MEDICAID SCHEME

Medicaid, Title XIX of the Social Security Act, was enacted in 1965. Reflecting the concept of "cooperative federalism," Medicaid gives each state broad discretion in devising a program to best suit the needs and

To whom all correspondence should be addressed at McDermott, Will and Emery, 2029 Century Park East, Los Angeles, California 90067.

it substituted its own medical judgement based upon its own notion of the significance of a treating physician's mental status examination. While the court's holding was limited, by its terms to the facts of the case, the decision in reality permitted a categorical denial of funding by the Department of Social Services. This conclusion is reflected in the reasoning of the lower court dissent in Denise R. v. Lavine (1975): "the Legislature certainly never intended to authorize the payment of substantial public funds for the dubious sex change operation here in question... Such claims were never within the contemplation of the lawmakers."

Several subsequent cases have held a state regulation precluding funding for SRS void as violative of 42 C.F.R. section 440.230(c). In Doe v. Department of Public Welfare (1977), the Minnesota Supreme Court held void an absolute

exclusion of SRS from Medicaid reimbursement. The plaintiff in Doe had applied for Medicaid funding for SRS and was denied. She appealed to Phe county welfare department, which found the surgery medically necessary and granted the benefits. The state welfare department reversed, holding that (I) funding of SRS was absolutely prohibited under agency provisions, and (ii) the petitioner had not proved that "if she has the surgery, her psychological problems will be alleviated to the point that she will no longer be disabled and will become self-supporting." The trial court affirmed the state welfare department's
decision.

On appeal, the Minnesota Supreme Court found, first, that the absolute exclusion violated 45 C.F.R. section 249.10 [now 42 C.F.R. section 440.230(c)]. noting that "[I] there was no explicit provision appearing in the Federal statues that would prohibit the payment of medical benefits for impatient hospital care for transsexual surgery." Second, the court held invalid the state welfare department's requirement that treatment found it unreasonable to require the applicant to prove that an operation would be successful; it noted that the "self-supporting" requirement, uniformly applied, would serve to deny palliative treatment to terminally ill patients.

The court ruled that future applications for SRS would need to be decided by the state agency on a case by case basis involving a "thorough, complete and unbiased medical evaluation" to determine the medical necessity of the requested operation. Because the record before it disclosed an uncontroverted finding of medical necessity by the county hearing officer, the court ordered the state welfare department to fund Doe's surgery.

In Pinnek v. Preisser (1980), the Eighth Circuit held Iowa's absolute exclusion of Medicaid coverage for SRS void. The court found that "from this record, it appears that radical sex conversion surgery is the only medical

treatment available to relieve or solve problems of a true transsexual." Thus, it ruled that a state plan absolutely excluding the only available treatment known at this stage of the art for a particular condition must be considered an arbitrary denial of benefits based solely on the "diagnosis, type of illness, or condition" and therefore contrary to 42 C.F.R. section 440.230(c).

The court further held that Iowa's policy, which established an irrebuttable presumption of non-necessity without any formal rule making proceedings or

hearings, was contrary to the objectives of the Medicaid statue and that the decision as to medical necessity should rest with the recipient's physician "and not with clerical personnel or government officials." This latter holding has been criticized on the ground that it invests too much power it the treating physician, an interested party in the decision as to funding. However, Pinneke may be reasonably interpreted as holding only that the initial determination of medical necessity must be made by the treating physician; this determination would then be subject to medical review by the state agency and the courts. The Pinneke court's concern was that the Iowa policy created an absolute preclusion on an administrative, and not a medical basis. "This approach reflects inadequate solitude for the applicant's diagnosed condition, the treatment prescribed by the applicant's physicians, and the accumulated knowledge of the medical community. The Supreme Court has emphasized the importance of a professional medical judgement in this contest."

A similar result was reached by the district court in Rush v. Parham (1980). The court held that an express exclusion of SRS from the Georgia State Plan was void; "Judgements of medical necessity must be made for individual patients and what may be cosmetic, experimental, palliative, or unnecessary for some, may be deemed essential for another. It follows that the state may not administer a State Plan which irrebuttably denies coverage of any services or procedures within the five required categories (ILLEGIBLE). Similarly, the state may not deny any medical services solely because (ILLEGIBLE) diagnosis, type of illness or condition." The court ruled that states (ILLEGIBLE) provide all medically necessary services; the power to determine (ILLEGIBLE) was vested solely in the treating physician. The Fifth Circuit (ILLEGIBLE) and remanded, finding the case "unripe for summary disposition." (ILLEGIBLE) held that the state should have been permitted to show at trial (ILLEGIBLE) Georgia's Medicaid program had a ban against reimbursing ex-(ILLEGIBLE) treatment because such treatment is unnecessary and (ii) that (ILLEGIBLE) surgery is experimental or (iii) that the Medicaid plan provided (ILLEGIBLE) reimbursement but denied payment to plaintiff on an individual-

Rowan, R. L., and Gillett, P. J. (1978). The Gay Health Guide. Little, Brown. Boston.

Scott, D. H. (1976). Walter C. Alvarez - American Man of Medicine. Van Nostrand Reinhold, New York.
Simodynes, E. (1981). Preoperative shock secondary to severe hypokalemia and hypocalcemia from recreational enemas. Anesth. Analg. 60: 762.
Smith, D. W., and Gips, C. D. (1963). Care of the Adult Patient. J. B. Lippincott, Philadelphia.
Sohn, N., and Robilotti, J. G. Jr. (1977). The gay bowel syndrome. Am. J. Gastroenterol. 67: 478.
Sohn, N., Weinstein, M. A., and Gonchar, J. (1977). Social injuries of the rectum. Am. J. Surg. 134: 611.
Sonnabend, J., Witkin, S. S., and Purtilo, D. T. (1983). Acquired immunodeficiency syndrome, opportunistic infections, and malignancies in male homosexuals. J. Am. Med. Assoc. 249: 2370.
Steinbach, H. L., Rousseau, R., McCormack, K. R., and Jawetz, E. (1960). Transmission of enteric pathhogens by barium enemas. J. Am. Med. Assoc. 174: 1207.
Sullivan, E. E., and Garnjobst, W. M. (1978). Pruritus anl: A practical approach. Surg. Clin. N. Am. 58: 505.
Szunyogh, B. (1958). Enema injuries. Am. J. Proctol. 9: 303.
Tillery, B., and Bates, B. (1966). Enemas. Am. J. Nursing 66: 534
Ziskind, A., and Gellis, S. S. (1958). Water intoxication following tap-water enemas. Am. J. Dis. Child. 96: 699.

Archives of Sexual Behavior, Vol. 15, No. 4, 1986

The Gender Identity Movement: A Growing Surgical-Psychiatric Liaison

Ira B. Pauly, M.D. and Milton T. Edgerton, M.D.

The evaluation and treatment of individuals with gender identity problems has resulted in an interesting and productive collaboration between several specialties of medicine. In particular, the psychiatrist and surgeon have joined hands in the management of these fascinating patients who feel they are trapped in the wrong body and insist upon correcting this cruel mistake of nature by undergoing sex reassignment surgery. Over the last two decades, some 40 centers have emerged in which interdisciplinary teams cooperate in the evaluation and treatment of these gender dysphoric patients. The model for this collaboration began at The John Hopkins Hospital, where the Gender Identity Clinic began its operation in 1965 (Edgerton, 1983; Pauly, 1983). This "gender identity movement" has brought together such unlikely collaborators as surgeons, endocrinologists, psychologists, psychiatrists, gynecologists, and research specialists into a mutually rewarding arena. This paper deals with the background and modern era of research into gender identity disorders and their evaluation and treatment. Finally, some data are presented on the outcome of sex reassignment surgery. This interdisciplinary collaboration has resulted in the birth of a new medical subspecialty, which deals with the study of gender identification and its disorders.

KEY WORDS: transsexualism; interdisciplinary; gender identity; genital surgery; sex change.

This paper was presented at the Eighth International Gender Dysphoria Association Meeting, in Bordeaux, France, on September 16, 1983.
Department of Psychiatry and Behavioral Science, University of Nevada School of Medicine, Reno, Nevada 89557.
Department of Plastic and Maxillofacial Surgey, University of Virginia Medical Center, Charlottesville, Virginia 22908.

MAY 28 1993

The Honorable Butler Derrick
Member, U.S. House of Representatives
Post Office Box 4126
Anderson, South Carolina 29622

Dear Congressman Derrick:

This letter is in response to your inquiry on behalf of your constituent, (b)(6) , who suffers from heart disease. (b)(6) has suggested that the Americans with Disabilities Act ("ADA") may impose an obligation on food service establishments to modify their practices so as to provide certain nutritional information regarding the foods and condiments they offer and to provide reasonable food substitutes for the benefit of persons with special dietary needs.

The ADA authorizes this Department to provide technical assistance to individuals and entities that have rights or responsibilities under the ADA. Therefore, this letter provides informal guidance to assist you in responding to (b)(6) However, this technical assistance does not constitute a legal interpretation, and it is not binding on the Department of Justice.

Under title III of the ADA, a public accommodation, including a food establishment, is obligated to make reasonable modifications in its policies, practices, or procedures when the modifications are necessary to ensure that individuals with disabilities have access to the same goods and services that are offered to persons without disabilities, unless the modifications would fundamentally alter the nature of those goods and services. Accordingly, a food service establishment may need to reasonably modify its policies, practices, or procedures to ensure that persons with disabilities who have special dietary needs are provided with nutritional information regarding the food that is customarily served, unless the modifications would fundamentally alter the nature of its goods and services. For a fuller discussion of this issue, please refer to section 36.302 of the

cc: Records, Chrono, Wodatch, Breen, Delaney, McDowney, FOIA

enclosed title III regulation, pages 22-24 of the enclosed Title III Technical Assistance Manual, and page 4 of the January 1993 Supplement to the Manual.

However, title III of the ADA does not require a food service establishment to alter its inventory to provide special food products for those persons who may have special dietary needs, unless, in the normal course of its operation, it makes special orders an request for unstocked goods, and if the accessible or special goods can be obtained from a supplier with whom the public accommodation customarily does business. For a fuller discussion of this issue, please refer to section 36.307 of the enclosed title III regulation and pages 23-24 of the Technical Assistance Manual.

(b)(6) also may wish to contact the Food and Drug Administration ("FDA") of the Department of Health and Human Services concerning the FDA's authority to require nutrition labeling on foods. See, e.g., 21 U.S.C. SS 343(q) and 343(r).

I hope this information is helpful in responding to your constituent.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

Enclosures

01-02321

February 23, 1993
(b)(6)
XX
XX

XX XX
XX XX

Congressman Butler Derrick
315 South McDuffie Street
Anderson, SC 29621

Dear Butler:

I have heart disease which was discovered in onset of a heart attack. I have experienced a gre through medical and lifestyle treatment. To continue the recovery I must continue with prescribed exercise, stress control, and a healthy, balanced diet.

My dietary habits must exclude caffeine, cholesterol, fats; must reduce sodium; and must increase certain nutrients. I am able to do this and have done so without exception with home prepared foods, but I must have some assistance in being able to accomplish it as a patron of food service establishments.

I need for nutritional information to be supplied for all foods and condiments offered so that I may regulate my treatment regarding my disabling condition, and I need for some reasonable substitutes to be offered in certain areas.

XX

These two needs regarding my disability, (1) being the nutritional information and (2) certain reasonable substitutes, are the same as the needs of a large percentage of our population, including those with allergies, asthma, certain types

of arthritis, many types of cancer, diabetes, obesity, and many others, as well as a growing segment of the population seeking to avoid and prevent these and other conditions. Thus, it has been hoped, since it would be "good" for all patrons as well as being needed by so many, and therefore obviously good for business in general, that these needs would have been met by food service establishments. However they have not been met except to the extent of some labeling by some fast food chains.

01-02322

The Americans With Disabilities Act has been in effect since January of 1992 as to places of public accommodation and it requires that these needs be met.

The Americans With Disabilities Act provides in some of the general, pertinent parts:

> "No individual should be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages or accommodations of any place of public accommodation by any private entity who owns, leases (or leases to), or operates a place of public accommodation."
>
> ***
>
> "A public accommodation shall make reasonable modifications in policies, practices or procedures when the modifications are necessary to afford goods, services, facilities, privileges, advantages or accommodations to individuals with disabilities, unless the public accommodation can demonstrate that making the modifications would fundamentally alter the nature of the goods, services, facilities, privileges, advantages or accommodations."

I have addressed the subject of the application of the ADA to food service establishments with labor attorneys who specialize in the ADA and it has been confirmed that these

provisions do apply to impose upon food service entities the duty of assisting all of us with disabilities in the full and equal enjoyment of their offerings.

These two reasonable modifications are essential to millions of Americans with disabilities and are desired by millions more who seek to prevent the onset of adverse health conditions. Yet the food service industry is ignoring the problem and I cannot find an appropriate agency to begin communicating this and enforcing the ADA. I will appreciate it if you can locate the proper, interested agency - and hopefully a named individual - with whom I could address the problem and seek the enforcement of the ADA in this area.

I believe that this approach will have a long term, favorable effect on the difficult health care issue and I suggest that wellness, healthy lifestyles, and nutritious offerings in all food service establishments be incorporated into the national health care reform package.
01-02323

Thank you for your attention to these remarks and thank you for whatever assistance you can provide. Let me know if you need additional information or more specific data.

Sincerely,

XX
XX (b)(6)

WHM/skc

01-02324

MAY 28 1993

The Honorable John Glenn
United States Senator
200 North High Street
Suite 600
Columbus, Ohio 43215

Dear Senator Glenn:

In response to your inquiry on behalf of (b)(6) , I am enclosing a copy of our response to (b)(6) concerning filing a complaint under the Americans with Disabilities Act.

I hope this information is helpful to you and your constituent.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

Enclosure

cc: Records; Chrono; Wodatch; McDowney; Bowen; Yang; FOIA.
\udd\yanq\congress\glenn

01-02325

MAY 28 1993

XX
XX
(b)(6)

Dear XX

This letter is in response to your inquiry to Senator Glenn seeking information on filing a complaint under the Americans with Disabilities Act of 1990 ("ADA").

ADA enforcement is divided primarily among four Federal agencies: the Equal Employment Opportunity Commission, the Department of Transportation, the Department of Justice, and the Federal Communications Commission. Each enforcement agency has issued regulations to implement the provisions of the ADA that are within the agency's area of responsibility, and each agency has established a mechanism through which alleged violations of

the Act may be investigated. Complaints alleging violations of the ADA should be sent to the appropriate enforcement agency, as follows:

1) Title I (Employment)

U.S. Equal Employment Opportunity Commission (EEOC)

To find the nearest EEOC office, call
(800) 669-4000 (voice) or (800) 800-3302 (TDD).

2) Title II (Public transportation)

U.S. Department of Transportation
400 Seventh Street, S.W.
Washington, D.C. 20590

3) Title II (Public services)

Eight Federal agencies designated in section 35.190 of the Department of Justice title II regulation (copy enclosed). For the convenience of complainants, complaints may be sent to the following address at the

Department of Justice, which will ensure that they reach the appropriate Federal agency.

Coordination and Review Section
Civil Rights Division
U.S. Department of Justice
P.O. Box 66118
Washington, D.C. 20035-6118

4) Title III (Public accommodations/commercial facilities/entities that provide professional certification/private transportation providers)

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

5) Title IV (Telecommunications)

The Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554.

All complaints should be in writing and should set forth, in as complete a manner as possible, the factual circumstances surrounding the complaint.

The Americans with Disabilities Act authorizes the Department of Justice to investigate alleged violations of title III, which prohibits discrimination against persons with disabilities by public accommodations and commercial facilities. However, the Department of Justice may seek judicial relief only in instances where there appears to be a pattern or practice of discrimination or where an issue of general public importance is involved. Any such action is taken an behalf of the United States. We do not act as an attorney for, or representative of, an individual. Please be aware that because of the large volume of complaints we have received, and our limited resources, we are not able to investigate each complaint.

For your reference, I have enclosed copies of the Department of Justice regulations implementing titles II and III of the ADA and the Department's technical assistance manuals.

I hope that this information is helpful to you in understanding the provisions of the ADA.

Sincerely,

John L. Wodatch

Chief
Public Access Section
Civil Rights Division

Enclosures

01-02328

March 12, 1993

Dear Senator Glenn:

The March 11 issue of the Columbus Dispatch carried an AP article that highlighted the "Americans with Disabilities Act". Emphasis on on the fact that only 10 lawyers were assigned to handle all cases that now total 900. On the surface, this appears to be gross understaffing.

However, the purpose of my letter is that I may have a valid complaint as well. Can you provide the address of the agency to which I should send my correspondence.

Yours truly,
XX
XX

(b)(6)

01-02329

T. 4/8/93

JUN 2 1993 (stamp)

(b)(6)

XX
XX

Re: Old Complaint Number XX
New Complaint Number XX

Dear Mr. XX (b)(6)

This letter constitutes the Department of Justice's Letter of Findings with respect to the complaint filed with our office on July 13, 1992, against the City of East Lansing, Michigan, under title II of the Americans with Disabilities Act (ADA). (Please note the new complaint number.)

Your complaint alleges that the City of East Lansing, and, more specifically, East Lansing's paramedics, fire department, and police department, do not adequately address the needs of individuals with seizure disorders. You point to a specific incident which occurred on April 25, 1992, when you had a seizure and were restrained and taken to the hospital against your will. This letter does not address the other incidents you mentioned in your letter (the deaths of two boys at the University Center Boys Home and the incident at Sparrow Hospital in which you were allegedly given too much valium), as these incidents occurred well before the effective date of the ADA.

The Civil Rights Division has completed its investigation of your complaint. Our investigation revealed that East Lansing trains its police and paramedics in the handling of individuals who are experiencing seizures. The City of East Lansing requires that paramedics be certified by the State of Michigan. In order to gain this certification, and in order to be recertified every three years, Michigan requires extensive training, which includes lectures, demonstrations, and practice on the handling of individuals with seizure disorders. Additionally, police officers are provided training in first aid, which includes training on the management of individuals experiencing seizures.

cc: Records CRS Chrono Friedlander Milton.complnts.38-8.lof

01-02330

East Lansing also has adopted by ordinance a policy that prohibits discrimination against people with disabilities in public accommodations or public services. The ordinance provides at section 1.127(3)(b)(i) that a person shall not "Deny an individual the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of a place of public accommodation or public service because of . . . handicap . . . ." This policy applies to all services provided by the city, including police, fire, and paramedic services. This policy provides for a dispute resolution process which is in addition to the dispute resolution process provided for in the City's ADA grievance process.

Furthermore, the City of East Lansing has worked directly with you in the past to provide training to businesses and City departments on the needs of persons with seizure disorders. A chart used in the training was mailed to businesses in the City so that, in the event business operators could not get the training directly, they would at least have a copy of the instructional chart.

With regards to the incident of April 25, the evidence indicates that the actions of the police and the paramedics were not discriminatory. You had apparently had many seizures in the past which had not been treated with restraint and hospitalization. In this instance, you had hit your head fairly hard, and the police and paramedics were concerned by your combativeness upon coming out of the seizure, which is something you had not exhibited in the past. Additionally, you informed the paramedics that you had had twenty-two seizures in the past month, and they were concerned that your medication was no longer appropriate and that you might be suffering from low blood sugar. There is no evidence, and you make no allegation, that the restraint of the police or the paramedics was excessive.

Finally, Gary Eisenberg, a Human Relations Specialist with the City of East Lansing, has had a working relationship with you for six years. During this time he has mediated many disputes for you and helped you make East Lansing law enforcement and public service employees aware of your needs. In May of 1992, after experiencing many intense seizures and almost falling down a flight of stairs, you called Mr. Eisenberg to get his help. He suggested that you get definitive written instructions from your doctor concerning the proper treatment of your seizures that could be communicated to police, paramedics, and public service employees. This letter, dated June 12, 1992, written by Drs. XX and XX , who regularly treat you, confirms that, in some instances, appropriate treatment may require acute medical

management. Based on this letter, the City could not be expected to preclude the possibility of hospital treatment in certain circumstances.

Based on the foregoing information, we have concluded that East Lansing has adequately addressed the needs of individuals with seizure disorders.

This letter constitutes our Letter of Findings with respect to your allegations of discrimination in your administrative complaint. If you are dissatisfied with our determination, you may file a private complaint in the United States District Court under title II of the ADA.

This letter does not address other potential claims of discrimination on the basis of disability that may arise from the activities of East Lansing's paramedics, fire department, and police department. Rather, this letter is limited to the allegations presented in your complaint.

Under the Freedom of Information Act, 5 U.S.C. 522, we may be required to release this letter and other correspondence and records related to your complaint in response to a request from a third party. Should we receive such a request, we will safe-guard, to the extent permitted by the Freedom of Information Act and the Privacy Act, the release of information that could constitute an unwarranted invasion of your or other's privacy.

Sincerely,

Stewart B. Oneglia
Chief
Coordination and Review Section
Civil Rights Division

cc: Michael Benedict
Director of Personnel and
Human Relations
City of East Lansing

01-02332

T. 5-25-93

XX

Jun 07 1993(stamp)

XX
XX
Monessen, Pennsylvania XX (b)(6)

Dear XX

This letter responds to your correspondence regarding the application of the Americans with Disabilities Act (ADA) to the location of accessible parking spaces relative to an accessible entrance.

The ADA authorizes the Department of Justice to provide technical assistance and information to individuals and entities who have questions about the Act, including the Department's regulations and its standards for accessible design. This letter provides informal guidance to assist you in understanding and complying with the ADA accessibility standards. However, this technical assistance should not be viewed as legal advice or a legal opinion about your rights or responsibilities under the ADA and it is not binding on the Department of Justice.

The Department's accessibility standards at section 4.6.2 (page 35631 of the enclosed Federal Register document) do require that accessible parking spaces serving a particular building must be located on the shortest accessible route of travel to an accessible entrance. In some instances, local fire engine access requirements prohibit parking immediately adjacent to a building; if such is the case, a marked crossing may be used as part of the accessible route to the entrance.

Please feel free to contact the Public Access Section when you have questions or need information. The Department maintains a telephone information line to provide technical assistance regarding the rights and obligations of individuals, businesses, agencies, and others covered or protected by the ADA. This

technical assistance is Available by calling 202-514-0301 (voice)

cc: Records, Chrono, Wodatch, Magagna, Harland, FOIA, Friedlander
n:\udd\mercado\plcrtltr\ XX (b)(6)

01-02333

or 202-514-0383 (TDD) between 1:00 p.m. and 5:00 p.m., Monday through Friday.

Sincerely,

John L. Wodatch
Chief
Public Access Section

Enclosure

01-02334

(Handwritten)

OCT 6 1992(stamp)

9-22-92

XX (b)(6)

Dear Sir,

I am inquiring about the recent American Disability Act passed.
I need information as to the rules and regulations or requirements of handicapp parking. My question refers to the location of this parking - such as it should be a requirement to be as close to the entrance of any public building -not to need to cross over the traffic area. Is there any such ruling. Handicapp parking should be closest to an entrance so as not to require a person trying to walk across traffic is it not? Please send me any information refering to this particular problem. Thank you.

XX XX
XX (b)(6) XX

(Handwritten)

01-02335

T. 5-25-93

DJ 202-PL-232

JUN 7 1993(stamp)

Mr. Richard Buchanan, AIA
Vice President
Building Analytics
528 State Street
Glendale, California 91203

Dear Mr. Buchanan:

This letter responds to your correspondence regarding the application of the Americans with Disabilities Act (ADA) to existing buildings and facilities of the California State University system.

The ADA authorizes the Department of Justice to provide technical assistance and information to individuals and entities who have questions about the Act or the Americans with Disabilities Act Accessibility Guidelines (ADAAG). This letter provides informal guidance to assist you in understanding and complying with the ADA accessibility standards. However, this technical assistance should not be viewed as legal advice or a legal opinion about your rights or responsibilities under the ADA.

Section 35.150 of the Department of Justice's Final Rule for Title II states that a public entity, such as a State University, is required to provide "program accessibility," i.e., each service, program, or activity conducted by a public entity, when viewed in its entirety, must be readily accessible to and usable by individuals with disabilities. This requirement is not a mandate to make all buildings accessible but rather to assure that, in the most integrated setting appropriate, individuals with disabilities can participate in the services, programs, or activities that are provided by the university. Structural changes (physical changes) in existing facilities are required only when there is no other feasible way to provide program accessibility.

In existing buildings, when program accessibility can be provided only through architectural modifications of the physical

cc: Records, Chrono, Wodatch, Magagna, Harland, FOIA, Friedlander
n:\udd\mercado\plcrtltr\buchanan.ewh

01-02336

plant, those alterations must be done in compliance with ADA standards. Section 35.151 establishes that either the Uniform Federal Accessibility Standards (UFAS) or the Americans with Disabilities Act Accessibility Guidelines (ADAAG) may be used, except that the ADAAG elevator exemption does not apply. The ADA establishes minimum standards for accessibility but does not preempt other accessibility regulations in force in the locality. If a particular provision of a State or local accessibility code, such as California's Title 24, is more stringent than a similar ADA provision, conformance with the local provision is still required.

When a public entity has already complied with self-evaluation requirements of a regulation implementing section 504 of the Rehabilitation Act of 1973, the self-evaluation required by 35.105 applies only to policies and practices not included in the earlier self-evaluation. However, because programs and functions may have changed in the years since the 504 evaluation was done, a public entity may choose to evaluate all its programs and practices in light of the ADA requirements.

We hope that this information is helpful to you in understanding the requirements of the ADA regulations.

Sincerely,

John L. Wodatch
Chief
Public Access Section

1-02337

Los Angeles . Washington D.C.
BUILDING ANALYTICS
Building/Environmental Evaluations
528 STATE STREET
GLENDALE, CALIFORNIA 91203
(818) 500-1898
(818) 246-8195 FAX

June 23, 1992

Office of Americans with Disabilities Act
Civil Rights Division
U.S. Department of Justice
Post Office Box 66118
Washington, D.C. 20035-6118

File No.: 92115

Reference: Request for clarification on specific requirements of the Americans with Disabilities Act

Dear Sirs:

The Los Angeles office of Building Analytics has contracted with the California State University system to prepare a Transition Plan for all campus facilities in accordance with the Americans with Disabilities Act. It

is our understanding of the ADA regulations that under Title II, public entities such as the state university system should utilize the UFAS regulations to identify the existence of architectural barriers. Corrective work to undertaken to remove barriers should follow either the UFAS regulations or Title 24, the California State Building Code whichever is most stringent. Please advise if our understanding of the regulations is correct.
In addition, our understanding of the subparagraph section 4.1.6 Accessible Buildings: Alterations, is that if the building was constructed before 1984, and meets the requirements of ANSI 1961/1971, than no corrective action would be required to make the building accessible. However, if the building did not comply with the requirements of the ANSI Standard, then corrective action should be undertaken to comply with the requirements of UFAS. If the building was constructed after 1984, and meets the requirements of UFAS, than no corrective action would be required. However, if the building did not comply with the requirements of UFAS corrective would be required at the current time to comply.
Again,
any corrective action would have to comply with Title 24 of the California Administrative Code in addition to UFAS, whichever is more stringent.

Please advise if our understanding of the intent of the regulations is correct.
Sincerely,
BUILDING ANALYTICS
(Signature)
Richard Buchanan, AIA
Vice President

cc: Legal Department, California State University System (Stamp)Jul 8, 1992
Long Beach, California (handwritten)202-PL-232
102338
DJ 202-PL-58

Jun 9 1993 (stamp)

Mr. Francis Masson
Accessible Services Coordinator
Alameda-Contra Costa Transit District
1600 Franklin Street
Oakland, California 94612

Dear Mr. Masson:

This letter responds to your inquiry regarding the applicability of Department of Justice regulations to signage at

your transit district's bus stops and to printed materials produced by your transit district.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist you in understanding the ADA's requirements. However, it does not constitute a legal interpretation or legal advice and it is not binding on the Department of Justice.

Your letter asks about requirements for signs at bus stops which provide route and schedule information, timetables, maps, etc. You also inquire into which, if any, of the published materials you offer must be printed in accessible formats for persons with vision impairments.

The applicable federal regulation in this area was issued by the Department of Transportation. Under DOT's regulation, both public and private entities must make available to individuals with disabilities adequate information concerning transportation services. This obligation includes making communications and information available by accessible formats and technology (e.g., Braille, large print, TDDs, etc.), to enable users to obtain information and schedule service. For more detail, see the enclosed DOT regulation at 49 C.F.R. 37.167(f) at page 45640 and page 45755 ("Construction and Interpretation" Appendix).

cc: Records, Chrono, Wodatch, Magagna, Foran, FOIA
Udd:Foran:Masson.POL

1-102339

For more information, please contact the Department of Transportation at (202) 366-9306.

I hope this information is useful to you in understanding the requirements of the ADA.

Sincerely,

John L. Wodatch
Chief
Public Access Section

Enclosure
DOT Regulation for Individuals with Disabilities

01-02340

AC Transit 1600 Franklin Street, Oakland, California 94612 (510)891-4777
Alameda-Contra Costa Transit District

March 20, 1992

John Wodatch
Department of Justice, Civil Rights Division
Office of ADA

P.O. Box 66118
Washington, DC 20035-6118

Dear Mr. Wodatch:

This letter is to confirm my understanding of the Department of Justice's ADA requirements for two specific issues. I spoke with one of your ADA specialists over the phone who was very helpful, and who answered the two questions outlined below. Could you please respond in writing as to whether my understanding is correct?

ISSUE 1: Does the DOJ have any regulations for specific type-face requirements for signs at bus stops which provide route/schedule information, timetables, maps, etc.?

ANSWER: No, there are no DOJ regulations on this. I should contact the Architectural and Transportation Barrier Compliance Board at 202-272-5434.

ISSUE 2: Does the DOJ have any regulations regarding requirements for type-face size for printed materials, in-house or public? Under what circumstances are we required to produce Braille, tape, large print information? Are these supplementary formats necessary for:

a) all published materials?
b) only information published to the public?
c) only public notices for hearings?
d) only information requested by individuals?

ANSWER: There is some mention of this issue in the DOJ analysis of ADA in the Federal Register, July 1991. Also, DOJ published a Technical Assistance Manual on ADA two weeks ago which deals with this (a copy is being mailed to AC Transit).

Thank you very much.

Sincerely,

(Signature)
Francis Masson
Accessible Services Coordinator Received Mar 27,1992 (stamp)

01-02341 (Handwritten) 202-PL-0005
T. 6-9-93

JUN 10 1993 (stamp)
202-PL-00102

Mr. Len Krick
Lambert Land Company, Inc.
700 Felicity
Bay Saint Louis, Mississippi 39520

Dear Mr. Krick:

I am responding to your letter about the application of The Americans with Disabilities Act (ADA), 42 U.S.C. 12101 et seq., to the alteration of existing ships. I apologize for the delay in our response.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities that have rights or responsibilities under the Act. This letter provides informal guidance to assist you in understanding the ADA and the Department's regulation. However, this technical assistance does not constitute a determination by the Department of Justice of your rights or responsibilities under the ADA, and it is not binding on the Department.

Your letter did not specify the nature of the ship that is being altered. The requirements applicable to ships vary depending on whether they are owned by public or private entities, and whether they are used primarily to provide transportation or they are "places of public accommodation."

Privately owned ships are subject to the requirements of The Department of Justice regulation implementing title III if they are "places of public accommodation" as that term is defined by the ADA. Publicly owned ships that are used for purposes other than providing transportation are subject to this Department's regulation implementing title II of the ADA.

Ships operated by a private entity that is primarily engaged in the business of providing transportation and ships operated by public entities as part of a public transportation system (e.g., ferries) are subject to the ADA requirements established by the U.S. Department of Transportation's regulation implementing titles II and III of the ADA, 49 C.F.R. Part 37. Depending on the specific use of a vessel, it is possible for a ship to be

cc: Records, Chrono, Wodatch, Bowen, Blizard, FOIA, Friedlander
n:\udd\mercado\plcrtltr\krick.jlb

01-02342

subject to the requirements of both the Department of Justice and the Department of Transportation regulations.

The Department of Justice regulation implementing title III of the ADA applies to private entities that own, operate, lease, or lease to a private entity whose operations fall within one or more of twelve specified categories. Among those categories are places of lodging, places that serve food or drink, places of public gathering, and places of recreation or entertainment. If a ship is used for a purpose described in these categories, the ship is a place of public accommodation that is subject to the Department of Justice title III regulation to the extent that the operators are subject to the laws of the United States.

If a ship is operated as a place of public accommodation, it must comply with the title III requirements applicable to the provision of goods and services, which include nondiscriminatory eligibility criteria; reasonable modifications in policies, practices, and procedures; provision of auxiliary aids; and the removal of barriers in existing facilities. However, at this time, a ship is not required to comply with specific accessibility standards for new construction or alterations because no Federal standard for the construction of accessible ships has been developed.

A ship that is owned and operated by a public entity is subject to the nondiscrimination requirements of this Department's title II regulation, 28 C.F.R. Part 35. The Title II regulation requires that programs, services, and activities conducted by public entities' in existing facilities must be made accessible to people with disabilities unless the public entity can demonstrate that providing access will result in undue financial and administrative burdens. The title II regulation does not establish any specific design or construction requirements for ships.

Under the regulation issued by the Department of Transportation, privately owned ships may be subject to that Department's regulation if they are operated by a private entity that is primarily engaged in the business of providing transportation. Publicly owned ships that are used as part of a system of public transportation system are also subject to the requirements of the Department of Transportation's rule.

The Department of Transportation has not yet established specific requirements applicable to ships; however, that Department has stated that ships registered under foreign flags that operate in United States ports may be subject to United States regulations (which would include the title III regulation

discussed above) unless there are specific treaty prohibitions that preclude enforcement. Additional information about the regulation issued by the Department of Transportation may be
01-02343

obtained from the Office of the General Counsel, U.S. Department of Transportation, 400 7th Street, S.W., Washington, D.C. 20590.

Copies of the Department of Justice regulations implementing title II and title III, the Title II Technical Assistance Manual, and the Title III Technical Assistance Manual are enclosed for your information. I hope that this information is helpful to you.

Sincerely,

L. Irene Bowen
Deputy Chief
Public Access Section

Enclosures

01-02344

LAMBERT LAN CO.,INC. 700 FELICITY, BAY SAINT LOUIS, MS 39520 (601)467-9257
FAX (601)467-7998 (800)729-9257
BAY COVE

November 14, 1991

Mr. John Wodatch
Office of Americans with Disabilities Act
Civil Rights Division
U. S. Department of Justice VIA FAX: 202-307-0595
P. 0. Box 66118
Washington, DC 20035-6118

Dear Mr. Wodatch:

Please send us the applicable regulations and requirements of the Act which apply to U. S. registered ships operating in the United States. We are currently in a very crucial phase of a project to refit an old ship.

Also could you please answers the following specific questions:

1. Are the-standards/requirements different for ships built before January 26, 1992 and after that date?

2. Our ship was built in the late 1970's. Would it have to meet the newer standards if the refit is completed before January 26, 1992? What if it is completed after the effective date?

3. This ship does not have an elevator. It is cost-prohibitive to Install an elevator (over $250,000) Is there any other way that is feasible to enable access to all areas?

4. U. S. Coast Guard requires raised-thresholds for external doorways. We understand that U. S. C. G. believes that ramping on either side defeats the intended reasoning for raised thresholds: water-tight compartmentalization and flood control. How can this be handled?

5. Is access to all decks and spaces by the disabled required by the Act?

6. Do foreign-flagged vessels trading in the U. S., such as the ships in Florida, also come under the Act?

BAY COVE HARBOUR
DOCKSIDE CASINO

01-02345 (handwritten) 202-PL-00102

7. If a vessel is used in a semi-permanently moored mode(operated at a pier) does that make a difference in application of the Act with regard to U. S. registered vessels.

8. If a ship is operated at a pier (i.e. does not cruise), can the access requirements of the Act be satisfied by building multiple ramped gangways on land by which the disabled can access each deck? If so, would this relieve the business from the responsibility to provide internal access to each deck?

We would appreciate an expeditious reply to these questions, as we were currently suspending the completion of the refit work until we know what the Act requires in the various ship related situations.

Sincerely,

Len Krick
General Manager

LK:sl

01-02346

T. 6/2/93

JUN 11 1993 (stamp)

(b)(6)

XX
XX

Re: Old Complaint Number XX
New Complaint Number XX

Dear Ms. XX (b)(6)

This letter constitutes the Department of Justice's Letter of Findings with respect to your complaint against New Hanover County, North Carolina, under title II of the Americans with Disabilities Act (ADA). Your complaint alleges that the County failed to post notices required by title II, that County supervisors discriminatorily released your medical files, and that then-County Commissioner Barfield made discriminatory statements at a County Board meeting that was addressing your grievance against the County.

The Civil Rights Division has completed its investigation of your complaint. Our investigation revealed the following information.

New Hanover County purchased posters that inform employees and other interested persons of the protection afforded by title II. These posters have been circulated to all County departments with the instructions that they be placed in a conspicuous location within the department. Furthermore, you informed us in

a phone call on November 17, 1992, that the notices had been posted. The matter you raised about the County's failure to post such notices has thus been resolved.

We received from the County a copy of your personnel file. It does not appear that any medical records were placed in those files as you claimed. The County informed us, furthermore, that your medical files are kept in the locked desk drawer of your supervisor and that the letter addressed to you at Psychiatry-2 South, N.C.M.H., about which you specifically complained, will be moved into that file or destroyed. We therefore find no cause to

cc: Records CRS Chrono Friedlander Milton.complnts.54.5.loft
FOIA Breen

01-02347

determine that a violation of the ADA has occurred because of the handling of your medical records.

We also received from you and from the County information regarding the statement made by then-commissioner Barfield at your grievance hearing during the County Board meeting. Mr. Barfield apparently asserted that an employee who has consulted a psychiatrist is unable to supervise other employees. While this may have been an inappropriate assertion that theoretically could contribute to a hostile environment, you make no allegation of a nexus between this statement and the Commissioners, finding against you in the hearing, and a single statement, without more, does not rise to the level of discrimination under existing civil rights laws. We therefore find no cause to determine that a violation of the ADA has occurred because of Mr. Barfield's statement during your grievance hearing.

Finally, in May of 1992, the County amended its personnel policy to include a provision stating that "[a]ll personnel responsible for recruitment and employment will . . . assure that equal employment opportunity is being actively observed, to the end that no employee or applicant for employment, will suffer discrimination because of . . . physical or mental handicap."

Based on the foregoing information, we have concluded that

all of your allegations of discrimination by New Hanover County have either been resolved or do not constitute violations of the ADA. However, if you are dissatisfied with our determination, you may file a private complaint in the United States District Court under title II of the ADA.

This letter does not address other potential claims of discrimination on the basis of disability that may arise from the activities of New Hanover County. Rather, this letter is limited to the allegations presented in your complaint.

Under the Freedom of Information Act, 5 U.S.C. 522, we may be required to release this letter and other correspondence and records related to your complaint in response to a request from a third party. Should we receive such a request, we will safe-guard, to the extent permitted by the Freedom of Information Act and the Privacy Act, the release of information that could constitute an unwarranted invasion of your or other's privacy.

01-02348

If you have any questions concerning this letter, please feel free to call Naomi Milton at (202) 514-9807. Please note the new complaint number assigned to this case.

Sincerely,

(Signature)
Stewart B. Oneglia
Chief
Coordination and Review section
Civil Rights Division

cc: Wanda M. Copley
County Attorney
New Hanover County Legal Department

01-02349

T. 6-11-93

DJ 202-PL-341 June 14, 1993
DJ 202-PL-409

Mr. W.E. Olson
Engineering Supervisor
CR/PL, Inc.
P.O. Box 389
Nevada, Missouri 64772

Dear Mr. Olson:

This letter responds to your letters to Irene Bowen, dated September 29, 1992, and December 1, 1992, asking a series of questions about the implementation of the Americans with Disabilities Act (ADA). It also confirms the information provided to you by the Public Access Section staff members who met with you and other industry representatives on December 15, 1992, about the issues raised in your letters. Please note that

our responses to your inquiry will only address the application of the Department's regulation to private entities subject to title III of the ADA. You should be aware, however, that the ADA Standards for Accessible Design (Standards) may also be applied to the new construction of, or alterations to, public facilities subject to title II of the Act.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities that have rights or responsibilities under the Act. This letter provides informal guidance to assist you to understand the ADA. However, this technical assistance does not constitute a determination by the Department of your rights or responsibilities under the ADA, and it is not binding on the Department.

You have asked if the Department intends to adopt, as the standard for new construction and alterations under the ADA, the American National Standards Institute accessibility standard (CABO/ANSI A117.1-1992), which was published by the Council of American Building Officials in January 1993 as a private-sector "voluntary standard."

The ADA Standards are published in Appendix A to the Department of Justice regulation implementing title III, 28 C.F.R. pt. 36. These Standards were originally published as the

cc: Records, Chrono, Wodatch, Bowen, Blizard, FOIA, Friedlander
n:\udd\blizard\adaltrs\olson

ADA Accessibility Guidelines by the Architectural and Transportation Barriers Compliance Board (Access Board) Pursuant to section 504 of the ADA. The ADA requires the Department to issue accessibility standards that are consistent with the guidelines developed by the Access Board. Thus, the Department adopted the Board's Guidelines as the title III standards. The Department would on its own initiative only make changes to the Standards that are consistent with the Access Board's Guidelines and would, of course, only do so after allowing public comment. We would also only follow such a course of action in close coordination with the Access Board. If the Access Board itself changed its Guidelines, the Department would seek to amend the Standards to make them consistent with the Guidelines.

At this time, the Access Board has not announced any plans to adopt the ANSI Standard. As a member of the ANSI A117.1

Committee, the Access Board is committed to working cooperatively with ANSI. The Board relied extensively on the 1980 and 1986 ANSI standards and early drafts of the new ANSI standard in developing the ADA Accessibility Guidelines. However, it is the Access Board, not the ANSI Committee, that is authorized to develop the Federal accessibility guidelines. In developing these guidelines, the Access Board must comply with the requirements of the Administrative Procedure Act, which establishes the formal requirements for the issuance of Federal regulations. The ANSI committee, like any other person or group, may petition the Access Board to consider changes in its Guidelines that could result in the adoption of new language based on ANSI recommendations; however, amendments to the ADA Accessibility Guidelines may only be made after the Access Board engages in a rulemaking proceeding that includes public notice, the opportunity for public comment, and the completion of any revisions to the proposal that are deemed to be required after public comment.

The title III regulation provides that the Department may provide technical assistance to private sector organizations that develop model accessibility standards or codes, in order to assist them to determine if their models are consistent with the requirements of the ADA. At the request of CABO, which serves as the secretariat for the ANSI A117.1 Committee, the Department is now reviewing the ANSI standard to determine if it is consistent with the ADA requirements. It is premature for us to speculate as to whether the revised ANSI A117.1 standard will be determined to be consistent with the ADA requirements.

Your letter indicates that you are having some difficulty applying the ADA Standards. To apply the Standards properly, you must understand that the ADA is Federal civil rights legislation, not a building code. To eliminate discrimination in the built environment, the ADA required this Department to establish minimum standards for the design and construction of new

buildings and for alterations to existing buildings. The Standards provide guidance to those in the building industry as to how to provide minimum levels of accessibility; the Standards do not constitute a strict formula for design, nor are they intended to constrain design innovations that provide equal or greater access. (See, e.g., ADA Standards 2.2, discussed below.)

Title III of the ADA is enforced through compliance reviews, complaint investigations, and litigation initiated by the Department of Justice, and through litigation initiated by private parties. The ADA is not enforced by State or local

building officials, and there is no Federal equivalent to the State code enforcement process. Neither the Department of Justice, nor any other Federal agency, functions as a "building department" to review plans, to issue building permits or occupancy certificates, or to provide "interpretations" of the Standards in that context. The ADA, like all other Federal civil rights laws, requires each covered entity to use its best professional judgment to comply with the statute and the implementing regulations.

For example, section 2.2 of the ADA Standards expressly provides that "[d]epartures from particular technical and scopinq requirements of this guideline by the use of other designs and technologies are permitted where the alternative designs and technologies used will provide substantially equivalent or greater access to and usability of the facility." However, the ADA does not provide for a mechanism through which the Department of Justice, the Access Board, or any other entity may certify any specific variation from the standards as being "equivalent."1 Proposed alternate designs, when supported by available data, are not prohibited, but in any ADA investigation or lawsuit, the covered entity would bear the burden of proving that any alternative design provides equal or greater access.

Sections 3.1, Graphic Conventions, and 3.2, Dimensional Tolerances, which you have questioned, are drawn directly from ANSI A117.1-1980 and ANSI A117.1-1986. They are not further defined in the regulation. Read together, they establish the principle that all of the technical requirements of the regulation must be followed in the design and construction of the

1 The ADA permits the Department, upon the request of a State or local government, to certify that a State or local accessibility code meets or exceeds the requirements of the ADA. Compliance with a certified code is considered evidence of compliance with the ADA. If the certified code's technical requirements differ in some respect from the ADA standard, compliance with those code requirements may be considered "equivalent facilitation."

elements of a facility that are required to be accessible, while recognizing that the idiosyncrasies of specific sites may result in minor variations from these technical specifications when the element is built or installed.

You have also asked whether the appendix to the ADA Standards is enforceable. The appendix, like the appendix to the ANSI standard, is not enforceable; it simply provides

supplementary information to assist people in applying the Standards (see ADA Standards 3.3).

Please note that the requirements of the ADA Standards apply only to new construction and alterations (as defined in the title III regulation). Facilities built or altered prior to the effective date of the ADA are considered to be existing facilities and they are not required to comply with the new construction requirements. Places of public accommodation in existing facilities are required to remove barriers in these existing facilities to the extent that it is readily achievable to do so; however, there is no requirement to retrofit existing facilities to new construction standards.

Your letter correctly notes that section 4.16.3 of the ADA Standards requires that the height of an accessible toilet shall be between 17 and 19 inches, measured to the top of the toilet seat. In new construction, or when a toilet is being altered, this requirement must be followed strictly. The ADA regulation defines "new construction" as a building or facility that is designed and constructed for first occupancy after January 26, 1993.

You have asked specifically if you may follow section 4.20.3.1 of the CABO/ANSI A117.1-1992 accessibility standard as the standard for leg clearances at accessible sinks and lavatories rather than requirements of the ADA regulation (4.19.2 and Fig. 31). Both the ADA Standards and the ANSI Standard require a knee clearance of at least 27 inches beneath sinks. The ADA requirement is absolute, but the ANSI standard would permit an entity to ignore the dip of the overflow valve on a lavatory when determining the knee and leg clearances on lavatories. We would not advise ignoring the dip because an obstruction into the knee space, even one of a small magnitude, could prevent clearance by some individuals. For example, an obstruction in the center of a lavatory could prevent its use by a person who uses a wheelchair and whose legs are held together by a brace.

You have also asked for an explanation of the dimensions in Section 4.21.2, Shower Stalls. As we discussed in December, the dimension measurements for the 36 inch by 36 inch shower, the 36 inch by 60 inch (min) shower, and the 30 inch (min) by 60 inch (min) shower are interior dimensions. Section 9.1.2, applying to

transient lodging, permits the use of either of the roll-in showers with folding seats shown in figure 57.

The stall sizes are consistent with other requirements

contained in the ADA Standards. For example, the shower dimension of 30 inches (min) by 60 inches (min) (4.21.2 and Fig. 35 (b)) is consistent with the requirement for a 60 inch maneuvering clearance in an alcove deeper than 15 inches (4.2.4.2 and Fig. 4(e)). In the 36 inch by 60 inch shower (9.1.2 and Fig. 57 (b)), the 36 inch width is necessary to ensure that a wheelchair can make a turn into the shower from the 36 inch wide opening into the 36 inch wide space in front of the shower head. These dimensions are consistent with those required under the accessible route provisions (4.3.3 and Fig. 7(a)).

As shown in Figure 35, the measurements of the 36 inch by 36 inch stall are absolute. The 36 inch width dimension is essential to allow the person seated on the seat to use grab bars and shower controls. The measurements of the 30 inch by 60 inch stall are minimum dimensions. As shown in Figure 57(b), the 36 inch dimension for the stall width is absolute. As in the 36 inch by 36 inch stall above, this width is necessary to allow a person seated on the folding seat to use the opposite grab bar for support. All other dimensions are minimums.

As discussed above with respect to sections 3.1. and 3.2, all dimensions are subject to conventional building industry tolerances for field conditions, as provided in section 3.2. Similarly, as provided in section 4.26.2, the clearance between the grab bars and the wall is required to be 1 1/2 inches, an absolute dimension subject to dimensional tolerances allowed under section 3.2. It is important to note that these dimensional tolerances apply to the construction, manufacture, or operation of a system, not to the design. However, even close tolerances during construction or manufacture cannot ensure continued conformance to a given standard. Entities covered by the ADA cannot rely on dimensional tolerances as a justification for problems caused by inadequacies in maintenance, design, or construction.

In response to your question related to section 4.21.7, which prohibits curbs on roll-in showers, several approaches have been used to keep water in the shower area. Two examples that were discussed at your meeting with Department staff are: (1) having the floor of the room slope gently toward the drain in the shower, or (2) having a 1/2 inch beveled edge at the shower (as allowed under section 4.3.8) with the shower area sloping gently to the drain.

You are correct that the issue of shower "curtains" and their location is not addressed in the Standards; therefore, there are no technical specifications that a shower curtain must

meet. However, the ADA Standards do require that if bathtub enclosures are provided, they shall not obstruct the controls or transfer from wheelchairs (4.20.7).

The provisions that apply to in-tub seats are contained in section 4.20.3. Figure 33(a) illustrates the placement of such seats in tubs and the required clear floor area. The illustration is simply representational. The figure contains no no additional dimensions or requirements for in-tub seats. In contrast, figure 33(b) contains additional requirements for a built-in seat at the head of the tub showing not only where the the seat should be located but also its required depth, 15 inches.

We have discussed your questions on where measurements are to be taken with the Access Board and have been informed that the Board is currently investigating several issues related to the measurement of showers and shower seats. If you wish, we will arrange a meeting for you, or other representatives of your industry, with the Access Board staff, at which you may discuss your concerns.

I hope that this information is helpful to you.

Sincerely,

John L. Wodatch
Chief
Public Access Section

01-02355

December 1, 1992

CRANE
PLUMBING
FIAT
PRODUCTS

Office on the Americans with Disabilities Act
Civil Rights Division
U. S. Department of Justice
P. O. Box 66738
Washington, D. C. 20035-9998

Attention: Ms. L. Irene Bowen, Deputy Chief
Public Access Section, Civil Rights Division
Reference: Americans with Disabilities Act (ADA) - Clarifications

Dear Ms. Bowen:
Due to pending jobs in progress and in light of your comments made at the ASPE Technical Session, listed below are areas that need immediate interpretation and clarification.

1. Section 4.19.2 ADA Acceptance of 6-15-92 Draft of A117.1 on Knee and Toe Clearances. My letter to Mr. John Wodatch on Sept. 29, 1992. (Your acknowledgement DJ 202-PL-341 dated 11-3-92.)

2. Section 4.16.3 Closet Seat Height - ADA is min. 17" - Max. 19" - At ASPE Meeting you stated 19 1/4"-19 1/2" was alright. Please clarify.

3. Section 4.21.2 Shower Stalls - Size and Clearance
   A. 36" x 36" Size
   (1.) Where is measurement taken - inside or outside?
   (2.) If this is inside is the measurement taken on centerline, front, back, etc.?
   (3.) What is the tolerances on the 36 inch dimension? It is being interpreted as 36 inch without any tolerances per Section 3.1 as dimensions being absolute.

   B. 60" x 30"
   (1.) Where is measurement taken - inside or outside?
   (a.) If it is inside, the shower will not fit into the pace required for a bathtub. A standard bathtub is 60" x 30" on the outside.
   (b.) If it is outsider what is the minimum inside dimension? In Figure 57(b) the minimum opening as I interpret is 36" minimum. Is this correct?
   (2.) What is the tolerances on the 60" x 30" dimensions? It is being interpreted as 6O" without any tolerances and 30"

minimum. The 60" being absolute per Section 3.1.

(3.) In Figure 57(b) the front to back dimension is shown as 36". Is this to mean that you have to have (2) two sizes: 60" x 30" min. and 60" x 36"?

CR/PL,INC. P.O. Box 389 Nevada, Mo. 64772 417-667-6048

C. Section 4.21.3 Seats - If the seat extends the full depth of the stall this will force the shower curtain to hang outside the unit allowing water to fall on the floor outside of the unit causing a wet slippery unsafe condition to exist.

D. Section 4.26.2 Grab Bars - Clearance between grab bar and wall is called out as 1 1/2 inches. What is the tolerance on this dimension. It is being interpreted as absolute per Section 3.1- it must be 1 1/2 inches no more no less.

E. Section 4.21.7 Curbs - 60" x 30" - Calls cut no curb - What keeps water from running out across floor?

4. Section 4.18.2 Urinals - What constitutes an elongated urinal? There is no definition that I can find.

5. Section 2.2 Equivalent Facilitation - Where do we go to receive an interpretation of this Section?

6. Section 3.2 Dimensional Tolerances - Can you define "all dimensions are subject to conventional building industry tolerances for field conditions"?

7. Section I PURPOSE - The purpose states that "This document sets guidelines for accessibility to places The ADA is being interpreted as absolute law with no variations. If it is not just like the illustrations or verbage it is wrong. Different interpretations whether it is inside or outside dimensions etc.

8. Section 3.1 Graphic Conventions - "Dimensions that are not marked minimum or maximum are absolute, unless otherwise indicated in the text or captions."

This is the section that people are referring when they say that there is no tolerances or variations. This section needs to be deleted or changed.

9. Section 4.20.3 Seat - "In the tub seats" shown in Fig. 33 are not available due to liability concerns.

10.There is no mention of a shower curtain on bathtubs and/or showers. Is it not to be used? Where is it to be located if it is to be used?

11.Is the Appendix part of the enacted law? Are the explanations in the Appendix mandatory?

12.Since the ADA Accessibility Board is a member of the ANSI A117.1 Standards Committee, will the ADA adopt the new language and changes made to the ANSI A117.1 Standard Final Draft dated 6-15-92? If they do, when will it go into affect?

It was a pleasure talking with Ms. Janet Blizard on the above concerns. As Ms. Blizard and I discussed, we, CR/PL, L. P. and the Plumbing Fixture Manufacturers, would be interested in attending a Meeting with the ADA Accessibility Board and the Department of Justice to discuss the above areas of concern. I feel that with some clarifications and explanations that the intent of the Americans with Disabilities Act (ADA) could be made more understandable and useful.

If further information is needed or questions arise on the above, please let me know.

Thank you.

Sincerely,

CR/PL, L.P.

(Signature)

_____

W. E. Olson, Sr.
Engineering Supervisor

WEO/nc

cc: R. L. Klaess - Evanston
M. Klimboff - Cinn.
M. Nagley - Dallas
B. Peck - Dallas
K. Phelan - Evanston
P. L. Thompson - Somerset

U.S. Department of Justice

Civil Rights Division

Coordination and Review Section
P.O. Box 66118
Washington, D.C. 20035-6118

Jun 14, 1993 (stamp)

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Ms. Dana Pulis
Assistant County Counselor
St. Louis County
41 South Central Avenue
Clayton, Missouri 63105

Re: Old Complaint Number XX (b)(6)
New Complaint Number XX

Dear Ms. Pulis:

The Coordination and Review Section of the Civil Rights Division (CRS) has completed its investigation of the above-referenced complaint filed against St. Louis County, Missouri (County), under title II of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. 12131-12134, and the Department of Justice's implementing regulation, 28 C.F.R. pt. 35, Because we have been unable to resolve this complaint informally, this is a noncompliance Letter of Findings as required under 28 C.F.R.

35.172. We will, however, continue our settlement efforts by endeavoring to negotiate a voluntary compliance agreement as required under 28 C.F.R. 35.173.

The Coordination and Review Section is responsible for investigation and resolution of administrative complaints alleging violations of title II by certain components of State and local governments, including courts. Title II protects qualified individuals with disabilities from discrimination in the programs, services, and activities of public entities. The complainant, XX alleges that the St. Louis County Court does not ensure effective communications for individuals who are hard of hearing. Specifically, he alleges that the County does not provide assistive listening systems (ALS's) for individuals who request such assistance in order to observe courtroom proceedings.

01-02359

Through letters dated October 19, 1992, and February 4, 1993, and a series of telephone conversations made on October 29, October 30, and December 1, 1992, and March 8, 11, and 16, 1993, we advised you of our receipt of the complaint and sought information about the policies and procedures of the County relating to providing ALS's for courthouse spectators. Based upon our review of the information provided by the complainant and the documents and information the County provided, we have determined that the County is in violation of title II. The basis for our determination is discussed below.

Under the Department of Justice's title II regulation, "no qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity." 28 C.F.R. 35.130(a) (see also 42 U.S.C. 12132). The title II regulation further requires that public entities "shall take appropriate steps to ensure that communications with applicants, participants, and members of the public with disabilities are as effective as communications with others." 28 C.F.R. 35.160(a). Moreover, a public entity "shall furnish appropriate auxiliary aids and services where necessary to afford an individual with a disability an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity conducted by a public entity" (28 C.F.R. 35.160(b)) unless the public entity can demonstrate that provision of auxiliary aids "would result in a fundamental alteration in the nature of a service, program, or

activity or in undue financial and administrative burdens." 28 C.F.R. 35.164.

(b)(6)

Before filing his complaint, XX spoke with a representative from the county courthouse and was told that no auxiliary aids were available for individuals who were hearing. impaired. At a later date, on March 17, 1993, XX again visited the County Courthouse to ask if auxiliary aids were available to those who needed them. Again he was informed that the Courthouse did not have any assistive listening devices. The County claims that no request for auxiliary aids at the Courthouse has been denied since the effective date of the ADA. However, the evidence indicates that XX made two requests and that both requests were denied. In denying XX XX requests, the County did not refute or question his need for an auxiliary aid.

The County has submitted a policy statement providing that "any person with business before this court or interested in employment with this court, regardless of disability, whether physical or mental, shall be reasonably accommodated to insure their participation in and/or benefit of all employment opportunities, services and programs conducted by the court." To that end, the County has written an outline of steps to be

followed in securing a sign language interpreter for hearing impaired individuals who have business before the Court or are interested in employment opportunities. This policy, however, does not make provisions for members of the public who do not have specific business before the Court and who are not interested in employment with the Court. Nor does it provide for hearing impaired individuals who cannot understand sign language.

When the County was contacted by CRS staff to determine its willingness to provide assistive listening devices in the County Courthouse, the County stated that its policy was to "accommodate individual situations on a case by case basis." The County disagreed with the Department of Justice's interpretation of its regulations, stating that existing courtroom facilities need not "accommodate any and all spectators of judicial proceedings." In fact, the County stated several times that, while it might be willing to provide ALS's in certain circumstances, such as when the hearing impaired relative of one of the parties to a proceeding was a spectator to the proceeding, it would almost certainly not provide an ALS for a spectator who had no other connection to the proceeding.

As an instrumentality of the St. Louis County government, the St. Louis County Court is a public entity as defined in

section 35.104 of the title II regulations. The court proceedings are part of the "service, program, or activity" offered by the public entity (see 28 C.F.R. 35.130(a)). Complainant XX has a hearing impairment and needs auxiliary aids for effective communication. He is a qualified individual with a disability, as defined in section 35.104.

Section 35.160(a) requires effective communication with "members of the public." The complainant is a member of the public who wishes to benefit from the program provided by the Court. As such, he is entitled to auxiliary-aids-necessary for effective communication, unless the County can demonstrate that provision of the aids would result in a fundamental alteration in the nature of the program or undue financial and administrative burdens (see 28 C.F.R. 35.164).

The County has not demonstrated that the provision of auxiliary aids would fundamentally alter the nature of the program or activity. The County's stated reasons for maintaining its policy regarding auxiliary aids, as provided in its March 16, 1993, letter to the undersigned, are that "[j]udicial proceedings are not a means of governmental entities communicating with members of the public as contemplated by ADA," and "[w]e can find no basis for any requirement that individuals with or without disabilities be accommodated in any manner when their participation in an activity, program or service of any public entity is prohibited and/or the benefit to them is nonexistent as is the case with spectators at judicial proceedings in which they

are not personally or directly involved." While the County does cite expense as one reason for its reluctance to comply with the Department of Justice's regulations, it has not demonstrated that complying with the regulations would result in undue financial and administrative burdens, and, of course, the burden of proving that compliance would result in undue financial and administrative burdens rests with the County. It is clear that the County's failure to comply is based on a legal disagreement about whether compliance is mandated by the ADA, rather than on either the defense of fundamental alteration or that of undue financial and administrative burdens.

The County has indicated that it hired a consultant to determine, among other things, whether the ADA will require that the County's "broadcast systems" be altered by July of 1995, the statutory deadline for making structural changes to government buildings. However, this three year period applies only to structural changes, not to the provision of auxiliary aids. Moreover, no structural changes are required in order to provide

portable assistive listening devices.

The County's stated policy of not providing assistive listening devices to courtroom spectators, without regard to the needs of the individual with a disability, violates the statutory requirement that it provide an equal opportunity for qualified individuals with disabilities to participate in and benefit from its program or activity (see 28 C.F.R. 35.130(a)) and its obligation to provide effective communications (see 28 C.F.R. 35.160). In particular, the policy violates title II of the ADA with regard to complainant XX who requested and was denied the needed auxiliary aid. In order to remedy this violation, the County must change its policy and agree to ensure effective communications, including provision of appropriate auxiliary aids such as assistive listening devices, for participants in and observers of courtroom proceedings.

The Department remains open to discussing these issues and exploring any remedies that could lead to a satisfactory resolution. In that regard, Naomi Milton, the attorney assigned to the case, (202) 514-9807, will be in contact with you in the near future to ascertain whether the County is interested in entering into voluntary compliance negotiations. If the County does not wish to negotiate, or if negotiations are unsuccessful, we are required by 28 C.F.R. 35.174 to refer this matter to the litigating unit, the Public Access Section, for appropriate action.

Of course, this Letter of Findings only addresses the County's policy of not providing ALS's to spectators at the County Courthouse as set forth in the County's letter of March 16, 1993, referenced above. Failure to discuss other policies

and practices in this letter does not constitute a finding with respect to those policies and practices.

Under the Freedom of Information Act, it may be necessary to release this document and related records on request. In the event that we receive such a request, we will seek to protect, to the extent provided by law, personal information which, if released, could constitute an unwarranted invasion of privacy.

Sincerely,

(Signature)
Stewart B. Oneglia
Chief
Coordination and Review Section
Civil Rights Division

cc: XX
(b)(6)

01-02363

U.S. Department of Justice

Civil Rights Division

(handwritten) 204-35-3

Coordination and Review Section
P.O. Box 66118
Washington, D.C. 20035-6118

Mr. Garry Stotts JUN 14 1993
Secretary
Kansas Department of Corrections
900 S.W. Jackson - Suite 404N

Topeka, Kansas 66612

Re: Program Accessibility at Lansing State Prison,
Complaint No. XX

Dear Mr. Stotts:

The Coordination and Review Section of the Civil Rights Division has completed its investigation of the complaints filed against the Kansas Department of Corrections (KDOC) under section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. S 794, and the Department of Justice's implementing section 504 regulation, 28 C.F.R. Part 42, subpart G. Since the complainants' allegations of discrimination, if true, are on-going in nature, we also reviewed the allegations under title II of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. 12131-12134, and the Department of Justice's implementing regulation, 28 C.F.R. Part 35, which became effective on January 26, 1992. In his letter constitutes the Department of Justice's Letter of Findings and contains our factual findings and legal conclusions with respect to the allegations raised in the complaint.

The Coordination and Review Section investigates administrative complaints alleging violations of section 504 by recipients of Federal financial assistance provided by the National Institute of Corrections, Department of Justice. In addition, this office investigates allegations of discrimination under title II by components of State and local governments in the area of the administration of justice, including correctional institutions, under 28 C.F.R. 35.190(b)(6).

Section 504 prohibits discrimination against qualified individuals with disabilities in the programs, services, and activities of a recipient of Federal financial assistance. KDOC is a recipient of Federal financial assistance from the National Institute of Corrections, Department of Justice and, therefore, it is subject to section 504's requirements.

Title II protects qualified individuals with disabilities from discrimination in a public entity's programs, services, and activities. As an instrumentality of State government, KDOC is a "public entity" subject to the requirements of title II of the ADA. 28 C.F.R. 35.104.

The complainants allege that the programs and activities

provided at the Lansing Correctional Facility (LCF) operated by KDOC are inaccessible to and unusable by individuals with mobility impairments and those individuals whose health would be placed in serious jeopardy should they be required to climb stairs.

One complainant alleged that the following LCF programs, services, and activities are inaccessible to and unusable by individuals who use wheelchairs for -mobility and those individuals whose health would be placed in serious jeopardy should they be required to climb stairs: (1) the library; (2) religious services; (3) legal aid services; (4) the canteen; (5) innate activities; (6) movies shown in the auditorium; (7) special programs; and, (8) a mailbox. This complainant further claimed that these programs, services and activities "... are all (located in] different buildings, the only ones which have a ramp is the dormitory and [it is] in [the] back of the dining room. The disrepair of the ramp in the dormitory has, and is a safety hazard to those confined to wheelchairs."

Another complainant asserted that "[t]he Kansas Department of Corrections ... does not make available to handicapped persons any form of 'athletic', or related equipment, for handicapped participation ...." The complainant further asserted that the "KDOC does not make available any form of Area Vocational Training although the KDOC operates an Area Vocational Training School (AVTS) program ... Such programs are denied to the handicapped."

With respect to the complainants' allegations, we have determined that the Kansas Department of Corrections (KDOC) has not violated title II and section 504 or the pertinent implementing regulations. This conclusion is based on a review of KDOC's policies, procedures, records and documents, photographs, and interviews.

Applicable Regulatory Standards

As a recipient of Federal financial assistance from the National Institute of Corrections, the Department of Justice section 504 regulation requires that KDOC "... shall insure that no qualified handicapped person is denied the benefits of, excluded from participation in, or otherwise subjected to the

discrimination under any program ... because [KDOC's] facilities are inaccessible to or unusable by handicapped persons." 28

C.F.R. 42.520.

In existing facilities, KDOC 11 ... shall operate each program ... so that the program, when viewed in its entirety, is readily accessible to and usable by handicapped persons." 28 C.F.R. 42.521(a). The comments to the Department's section 504 regulation state:

> Facilities available to all inmates ... such as classrooms, infirmary, laundry, dining areas, recreational areas, work areas, and chapels, must be readily accessible to any handicapped person who is confined to the facility.

45 FR 37,629, 36,630 (1980). "This section does not require [KDOC] to make each of its ... facilities (that existed on July 3, 1980] accessible to and usable by handicapped persons." 28 C.F.R. 42.521(a). KDOC may achieve program accessibility by the "... acquisition or redesign of equipment, reassignment of services to accessible buildings, assignment of aids to [inmates], delivery of services at alternative accessible sites, alteration of existing facilities, or any other method that results in making its program accessible to handicapped persons. [KDOC] is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with [the requirements for program accessibility]. In choosing among methods for meeting (program accessibility, KDOC] shall give priority to those methods that offer programs to handicapped persons in the most integrated setting appropriate to obtain the full benefits of the program." 28 C.F.R. 42.521(b).

In addition to the access to the physical space where the program, service, or activity is located, related amenities, such as restroom facilities and water fountains, that are provided to participants must also be accessible.

Section 504's requirement that a recipient provide access to its programs, activities, and services in its existing facilities is the same standard that is contained in the Department's title II regulation. 28 C.F.R. 35.150. Therefore, we have used the same standard for determining KDOC's compliance with section 504 and title II with respect to the accessibility of LCF's programs, services, and activities.

1-02366

Analysis of Facts and Compliance Status

The issues examined during this investigation were the following:

(1) Whether KDOC assigns individuals with mobility impairments to LCF.

(2) Whether any or all of the following LCF programs, activities, or services are located in facilities inaccessible to or unusable by individuals with mobility impairments: (1) the library; (2) religious services; (3) legal aid services; (4) the canteen; (5) inmate activities; (6) movies; (7) special programs; (8) educational programs; and, (9) postal privileges.

(3) With respect to any or all of the LCF programs, activities, or services listed in issue number 2 that are located in inaccessible facilities, whether KDOC has met its program accessibility requirements through alternative means such as (a) acquisition or redesign of equipment; (b) reassignment of inmates; (c) delivery of services at alternative accessible sites; (d) alteration of existing facilities; or, (e) any other method that results in making these programs accessible to individuals with mobility impairments that require the use of wheelchairs and to those who cannot climb stairs without seriously jeopardizing their health.

Our analysis of each issue is presented below.

Issue Number 1

Whether KDOC assigns individuals with mobility impairments to LCF.

Analysis of Issue Number 1

KDOC assigns numerous inmates to LCF who have mobility impairments. In addition to other factors, KDOC assigns prisoners to LCF due to its proximity to medical care that is available to prisoners at nearby locations. In response to our request for information, LCF's warden stated:

The availability of medical services has often been an important consideration for inmates assigned to LCF. Due to its proximity to the Kansas City metropolitan area, LCF has access to more medical specialists and

hospitals then [sic] KDOC facilities in the more rural areas.

As a result of the special medical care that may be obtained, many inmates who have mobility impairments have been assigned to LCF.

In a February 6, 1992, report, KDOC identified 58 persons assigned to LCF who are mobility impaired and use wheelchairs for mobility or cannot climb stairs without seriously jeopardizing their health. Of the 58, 30 were assigned to maximum security, 23 to medium security and five were assigned to the infirmary.

Conclusion

KDOC assigns prisoners to LCF who are mobility impaired.

Issue Number 2

Whether any or all of the following LCF programs, activities, or services are located in facilities inaccessible to or unusable by individuals with mobility impairments: (1) the library; (2) religious services; (3) legal aid services; (4) the canteen; (5) inmate activities; (6) movies; (7) special programs; (8) educational programs; and, (9) postal privileges.

Analysis of Issue Number 2

LCF is divided into four physically separate areas. These include: (1) the central unit with 588 beds in the maximum security compound and 699 beds in the medium security compound; (2) an infirmary located in both the maximum and medium security compounds; (3) the east unit with 40 beds in maximum security and 216 beds under minimum security; and, (4) the minimum security north and south compound with 10 beds and 80 beds respectively.

LCF's maximum and medium security areas are physically separated. The allegedly inaccessible programs are located in both areas. The facilities in the maximum security area contain many architectural barriers to accessibility because they are older. The newer facilities in the medium security area are accessible. KDOC submitted several photographs which show the entrances, path of travel, and architectural barriers for the buildings that house the allegedly inaccessible programs.

Maximum Security

In addition to postal services and movie privileges, we reviewed information concerning nine maximum security programs

and/or services. The athletic and recreational program, vocational education program, and canteen services are located in accessible areas. Six other programs were located in areas of facilities that were inaccessible to individuals with mobility impairments. A brief description of the facilities and programs located in them is as follows:

Building Number 26

Athletic and recreational program: One program, which includes the game and weight rooms, is offered in this one-story building. The entrance to the building is at street level and is accessible to individuals who use wheelchairs. Entrance and interior doors are wider than 35".

Restroom facilities serving this program are accessible but the water fountains are not. Prisoners who cannot access a water fountain due to physical impairments, however, either carry a cup or are provided a cup upon request which permits them to access the water fountains.

Building Number 27

Vocational Education: The vocational education program is offered in this one-story facility. The entrance to the building is at street level and is accessible to individuals who use wheelchairs. All entrance and interior doors are greater than 35" wide.

The restrooms serving this program are accessible but the water fountains are not. Prisoners who cannot access a water fountain due to physical impairments, however, either carry a cup or are provided a cup upon request which permits them to access the water fountains.

Building Number 28

Sex Offender Program: Building Number 28 is a two-story building housing a special program for the treatment of sex offenders on the second floor. The original building was constructed in 1927 and the area that serves the program was renovated in 1987. Since the building is not served by an elevator, an inmate must climb a flight of stairs to reach the program. All entrance and interior doors to the program are greater than 35".

The restrooms and water fountains serving the program are accessible.

Building Number 29

Six programs or services, the canteen, inmate activities, the library, religious services, legal aid services, and academic educational programs are located in Building Number 29. Building Number 29 is a three-story building with a basement that is not served by an elevator. The building was originally constructed in 1936. In 1985, many areas of the building were renovated. It is necessary to use stairs to reach the basement and the upper

levels of this building. The entrance, served by a concrete ramp, is accessible.

All restrooms on all floors in the service and program areas are accessible.

Canteen: Renovated in 1990, the canteen is located on the first floor in a 72' by 60' room. The entrance door to the canteen is over 35" wide and is approximately 36" above street level and is served by an exterior concrete ramp.

Inmate Activities: Inmate activities, which include such endeavors as crafts classes and self-help groups, are located in the basement in several rooms occupying an area 124' by 90' that was renovated in 1985. Entrance and interior doors to all rooms are greater than 35" wide. Inmates must descend a flight of partially-covered, exterior stairs to participate in the programs offered here.

Library Services: Library services, which include a law library and a regular library, are located on the second floor. This area was renovated in 1985. The entrance doors serving all the rooms are more than 35" wide. An inmate must climb stairs to reach the library.

Academic Educational Services: Academic educational services are offered on the third floor. The entrance and interior doors to the various rooms on this floor are over 35" wide. An inmate must climb stairs to reach this program.

Religious Services: Religious services are offered in a chapel on the third floor in an area 901 by 641 that was renovated in 1983. The entrance and interior doors are wider than 35". An inmate must climb stairs to reach the area where religious services are offered.

Legal Aid: Legal aid is located in the basement in a 28' by 19' room. The entrance door to the room is wider than 35". An inmate must descend an exterior, partially covered flight of stairs to reach this room.

Other Services

Postal Services: One complainant alleged that a mailbox serving maximum security prisoners was not accessible because it was located on the second floor requiring one to climb stairs. As with other services, the-focus of our review was whether mailing services when viewed in their entirety are accessible to individuals with mobility impairments.

KDOC reported that inmates receive incoming mail in their living units and indicated that mailboxes are located throughout

the prison site. KDOC also reported that inmates send out packages through the business office and central property room. A mailbox is located in the maximum and medium security yards. Based on photographs provided by KDOC it appears that these mailboxes are accessible to inmates with mobility impairments. In any event, the fact that an inmate has numerous alternatives for mailing materials in addition to the use of one mailbox supports the conclusion that, when viewed in their entirety, LCF's mailing services are accessible.

Movies: one complainant alleged that the movies were inaccessible to maximum security inmates. LCF stated that movies are shown by closed circuit television in an inmate's living quarters. Therefore, LCF provides access to its movies to all inmates on equal terms without regard to their disability status.1

Medium Security

The seven programs serving the medium security inmate population are all located in accessible buildings. The programs include: (1) religious services; (2) inmate activities; (3) athletics programs; (4) legal aid and library services; (5) vocational education services; (6) academic education services; and, (7) the canteen.

Academic educational services, inmate activities, the library, legal aid and the canteen are located in Building Number 44 which was constructed in 1987. All restrooms and water fountains serving these programs are accessible. Vocational

education services are offered in Building Number 38 which was Constructed in 1985. Religious and athletic programs are located in Building Number 40 which was constructed in 1986. All these programs are located in areas that are accessible to and usable by individuals with mobility impairments.

Conclusion

Six programs or activities located in the maximum security area of the prison are inaccessible because they are located in areas of buildings that require the use of stairs to access them. The programs, activities, and services provided in the medium security section are accessible to and usable by individuals with mobility impairments.

1 The only movie facilities identified by KDOC were located in Building 40 in the medium security section of the prison, which is accessible.

Issue Number 3

With respect to any or all of the LCF programs, activities, or services listed in issue number 2 that are located in inaccessible facilities, whether KDOC has met its program accessibility requirements through alternative means such as: (a) acquisition or redesign of equipment; (b) reassignment of inmates; (c) delivery of services at alternative accessible sites; (d) alteration of existing facilities; or, (e) any other method that results in making these programs accessible to programs with mobility impairments that require the use of wheelchairs or to those who cannot climb stairs without seriously jeopardizing their health.

Analysis of issue Number 3

In the maximum security section of LCF, a prisoners freedom to move about the prison area is limited due to security concerns. According to the KDOC Inmate Handbook, "[m]aximum security inmates may move throughout the facility without escort, but only when they are in possession of a properly signed pass. Use of the appointment pass is governed by [LCF's] general orders." All doors to individual buildings are access points which have guards. Under the pass system, no inmate is permitted entry into a building without showing an appropriate pass.

To achieve program accessibility in inaccessible areas of the maximum security facilities, KDOC has acquired three portable

wheelchair lifts. The wheelchair lifts are operated by prison guards assigned to the access points to each building. When an inmate with a mobility impairment presents his pass to a guard at the entrance to a building, the guard admits the inmate and operates the portable lift for the inmate. When the inmate is ready to leave the building, a prison employee contacts the guard who operates the portable lift to bring the employee back to the entrance to the building.

One portable lift is used to access the sex offender program in Building Number 28. Another portable lift is used to access the educational programs, chapel, and library located in Building Number 29. The third portable wheelchair lift is used to access the special education program in Building Number 24.

Conclusion

All the inmates in the maximum security facilities have limitations on their independence of travel. Therefore the use of a lift system that requires assistance is an acceptable method of providing access to maximum security programs, services, and activities that are located in areas where stairs must be climbed to gain access.

Compliance Determination

This case is closed as of the date of this Letter of Findings. This letter does not address other potential claims of disability discrimination that may arise with respect to KDOC or any of its facilities. Rather, this letter is limited to the allegations of discrimination presented in these complaints.

Under the Freedom of Information Act, 5 U.S.C. 552, we may be required to release this letter and other correspondence and records related to this complaint in response to a request from a third party. Should we receive such a request, we will safeguard, to the extent permitted by the Freedom of Information Act and the Privacy Act, the release of information which could constitute an unwarranted invasion of an individuals privacy.

We appreciate the cooperation and assistance that you and Mr. Charles Simmons, Chief Legal Counsel, extended to Ms. Brenda Sheppard, our investigator, and Louis M. Stewart, our attorney, during the course of the investigation.

If you have any questions about this matter, please contact

Louis M. Stewart at (202) 616-7779.

Sincerely,

(Signature)
Stuart B. Oneglia
Chief
Coordination and Review Section
Civil Rights Division

01-02373

T. 6/7/93

JUN 14 1993 (stamp)

Mr. Robert R. Wolting, City Manager
Fairbanks City Hall
Fairbanks, Alaska 99707

Re: Department of Justice Complaint Number XX

Dear Mr. Wolting:

This letter constitutes the Department of Justice's Letter of Findings with respect to the complaint filed with our office under title II of the Americans with Disabilities Act (ADA). The complainant alleged that (1) a ramp designed to provide access to the Municipal Utilities System Building (MUSB) located at 645 5th 5th Avenue does not comply with the requirements of title II; and and (2) the slope of the curb ramp to the sidewalk next to the MUSB

is too steep.

With reference to the first allegation, the complainant stated that "(t]he railing attached to the side of the [MUSB] does not run the full length of the ramp. The handrail on the building begins six inches after the start of the ramp. The handrail (attached to the building) ends five feet and five inches prior to reaching the doorway." Additionally, the complainant states that 11[t]he city apparently wanted to beautify the ramp, so they have placed three flower boxes at the top of the ramp. This has seriously diminished the five foot turning circle proscribed [sic]-for patrons using wheelchairs." With reference to the second allegation, the complainant asserted that "[t]he ramp incorporated into the sidewalk leading from the driveway to the building rises 5 3/4" in 13"."

Title II of the ADA prohibits discrimination against qualified individuals with disabilities on the basis of their disability in the services, programs, or activities of a local government such as the city of Fairbanks. Our office enforces the requirements of title II of the ADA, as applied to the issues raised by the complainant, through investigation, negotiation, and, if necessary, referral for possible litigation.

cc: Records CRS Chrono Friedlander Stewart.wolting3.lof

1 Formerly Department of Justice Complaint Number XX XX

By a letter dated November 4, 1992, this office requested information necessary to review the complainant's allegations. In addition, we provided the city with a copy of our title II regulation, 28 C.F.R. Part 35, our title II Technical Assistance Manual, and the ADA Handbook. In a letter dated December 10, 1992, Mr. W.R. Scouten, a Project Engineer with the city's Engineering Department, responded to our request for information.

The Facts

The MUSB was constructed in 1959 and contains no programs, services, or activities that receive Federal financial assistance. The contract for the construction of the ramp to the side of the MUSB was executed on September 20, 1991, and the construction was paid for exclusively by State funds. Construction began soon after the contract was signed. The city

relied upon the 1980 American National Standards Institute Standards as a basis for the design of the ramp. The installation of the ramp was part of an overall project to make the services provided in the MUSB building accessible to individuals with disabilities.

The city admitted that the handrail attached to the building's side did not extend the whole length of the slope of the ramp. Subsequently, on March 4, 1993, the city extended the handrail for the whole length of the ramp's slope. In addition, the city has removed the flower boxes located on the landing at the top of the ramp.

With respect to the curb ramp to the sidewalk from the driveway next to the MUSB, the city generally admits that at the time of the filing of the complaint on July 11, 1992, the rise was around 5 3/4 inches for a curb ramp that was only thirteen inches in length. Since both the curb ramp and the sidewalk were in existence prior to the commencement of the building ramp project, the city states that the curb ramp was not part of the project to make the entrance to the MUSB accessible. Before our November 5, 1992, notification to the city of this investigation, the curb ramp was altered in August, 1992, so that it now has a slope of 1:12 inches with a maximum of 1:10.

Legal Standards

With respect to facilities such as the ramp to the MUSB, which was constructed prior to January 26, 1992, the effective date of title II, the city's obligation is to "... operate each service, program, or activity so that the service, program, or activity, when viewed in it's entirety, is readily accessible to and usable by individuals with disabilities." 28 C.F.R. 35.150(a). This requirement for existing facilities is known as "the program accessibility" standard. No particular design standard such as the Uniform Federal Accessibility Standards

(UFAS) or the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (ADAAG) is required, as long as the city provides program accessibility to the programs services, or activities in its facilities.

With respect to new construction of or alterations to facilities that are begun after January 26, 1992, the effective date of title II, a public entity is required to follow the design standards of UFAS or ADAAG. See 28 C.F.R. 35.151. Therefore, alterations such as the one to the curb ramp in August 1992, must be done in a manner that complies with UFAS or ADAAG.

Issues and Analysis

Issue #1: Whether access to the programs, services, and activities located in the MUSB (i.e., program access) is provided by the ramp to the side of MUSB.

The requirements for program access in existing facilities apply to the ramp at the side of MUSB because the ramp was installed prior to the effective date of the title II regulation. After initiation of our investigation, the city extended the handrail and removed the flower pots from the landing of the ramp. Therefore, it is our determination that the city is in compliance with the program access requirements of title II with respect to this ramp.

Issue #2: Whether the August 1992 alteration to the curb ramp complies with either UFAS or ADAAG.

The August 1992 alteration that the city made to the curb ramp has an acceptable slope between 1:10 and 1:12 for a maximum rise of 6 inches. This meets the requirements of ADAAG or UFAS for slope during alterations. See ADAAG at 4.1.6(a)(6)(i) or UFAS at 4.1.6(4)(a). Therefore, the city is in compliance with the new construction and alteration requirements of title II with respect to the curb ramp.

Conclusion

The City of Fairbanks is in compliance with title II of the ADA with respect to the allegations investigated. This letter does not address any other issues concerning the city's compliance with title II.

Under the Freedom of Information Act, 5 U.S.C. 552, we may be required to release this letter and other correspondence and records related to this complaint in response to a request from a third party. Should we receive such a request, we will safeguard, to the extent permitted by the Freedom of Information

Act and the Privacy Act, the release of information that could constitute an unwarranted invasion of the complainant's or other's privacy.

We wish to thank Mr. Scouten for his valuable assistance in resolving this matter. Should you have any questions concerning this letter, please call Louis M. Stewart, the attorney assigned to this case, at (202) 616-7779.

Sincerely,

Stewart B. Oneglia
Chief
Coordination and Review Section
Civil Rights Division

01-02377

T. 6/7/93

JUN 14,1993

(b) (6)
Re: Department of Justice Complaint Number 204-6-2
Dear Mr. (b) (6)

This letter responds to your complaint filed with our office under title II of the Americans with Disabilities Act (ADA) alleging that (1) a ramp designed to provide access to the City of Fairbanks' Municipal Utilities System Building (MUSB) located at 645 5th Avenue does not comply with title II of the ADA; and (2) the slope of the curb ramp to the sidewalk next to the MUSB is too steep. As the attached letter to Mr. Wolting, Fairbanks City Manager, reflects, we conclude that the city is in compliance with title II of the ADA with respect to the allegations you raised.

This letter and enclosure constitute our Letter of Findings with respect to your allegations of discrimination in your administrative complaint. If you are dissatisfied with our determination, you may file a complaint presenting your allegations of discrimination in an appropriate United States District Court under title II of the ADA.

Under the Freedom of Information Act, 5 U.S.C. 552, we may be required to release this letter and other correspondence and records related to this complaint in response to a request from a third party. Should we receive such a request, we will

cc: Records CRS Chrono Friedlander Stewart. slater2. ltr

1 Formerly Department of Justice Complaint Number 192-T2-00356.

01-02378

safeguard, to the extent permitted by the Freedom of Information Act and the Privacy Act, the release of information which could constitute an unwarranted invasion of your or other's privacy.

Sincerely,

Stewart B. Oneglia
Chief
Coordination and Review Section
Civil Rights Division

Enclosure

JUN 15 1993

Dear

(b) (6)

This letter is in response to your inquiry about the Americans With Disabilities Act (ADA).

Your letter states that you own a condominium in a complex that has no accessible resident parking spaces, although accessible spaces for visitors are provided. You ask whether the ADA requires the condominium association to make common areas accessible, and whether it requires that accessible parking spaces be installed for residents.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist you in understanding the ADA's requirements. However, it does not constitute a legal interpretation and it is not binding on the Department.

The ADA does not apply to privately owned facilities that are strictly residential. Title III of the ADA applies to places of public accommodation and commercial facilities. Residential buildings are not commercial facilities, according to the title III definition, which appears on pages 35593 and 35547-48 of the enclosed title III regulation. Furthermore, title III defines places of public accommodation as facilities that are privately owned, affect commerce, and function as one of twelve categories of facilities listed in that title. The twelve categories of places of public accommodation are listed and discussed on pages 35594 and 35551-35552 of the title III regulation. Assuming that your condominium complex does not provide enough social services to be considered a social service center establishment, and assuming that it does not offer such short term stays that it could be considered a place of lodging, your condominium complex does not fit into any of the twelve categories of places of public accommodation, and it is thus not subject to title III of the ADA.

cc: Records, Chrono, Wodatch, Breen, Magagna, Novich,
Friedlander, FOIA , Cager
Udd:Novich:Policy:263

01-02380

Title II does, however, apply to any areas within a residential complex that are open for the use of persons other than residents and their guests, if those areas function as one of the twelve categories of places of public accommodation. For instance, if your complex has a sales office, or if it has any recreational facilities that are open to persons other than residents and their guests, title II covers these facilities.

A parking garage serving any of the places of public accommodation within the facility would be covered by title III. Title II would not apply to parking areas used exclusively by residents and their guests. It would, however, apply to spaces designated for the sales office or any recreational facilities that are not restricted to use by residents and their guests.

The Federal Fair Housing Act, as amended, does cover residential facilities and prohibits discrimination on the basis of disability. That Act requires landlords to make reasonable accommodations in rules, policies and practices. For more information on the Fair Housing Act, you may contact:

U.S. Department of Housing and
Urban Development
Office of Fair Housing
451 Seventh St., S.W.
Washington, D.C. 20410-2000
(202) 708-8041

I hope this information has been helpful to you.

Sincerely,

Joan A. Magagna
Deputy chief

01-02381

(b) (6)

Office of the ADA
Civil Rights Division
U.S. Dep't of Justice
PO Box 66738
Washington,D.C. 20035-9998

Mr. or Ms.:

I currently reside in XX NY. on a full time basis.
I own, and spend some time in, a condominium I own in Florida. I am disabled and normally have an accessible handicapped parking space for my car in NY. This Florida condominium does not have any parking places for the disabled residents, only for the visitors to the place.

This is a high rise unit with assigned parking places. I can find no discussion of any specific or uniquely numbered parking places in the ownership papers of my unit. I don't think this should make any difference though. This would then mean that a cripple might have to park a quarter of a mile from the front door if that is where their assigned parking slot was.

I realize that the new "Americans with Disabilities Act" (ADA) does not pertain to the individual units. I question if this new law pertains to any common areas of the condominium. It appears that the visitor parking is, and should be, covered by the ADA law. It would appear only right for the parking for residents to be covered at least the same way. The question is, are they ?

Could you please reply, indicating if the condominium association has to observe the ADA laws in the common areas of the condominium? Are they required to have disabled parking for the residents, or can they have resident parking located so that some disabled people can be a quarter mile from the front door.

Thank you,

(b) (6)

01-02382

DJ 202-PL-184

JUN 15 1993

David L. Rollison
Texas Department of Mental Health
and Mental Retardation
San Antonio State School
P.O. Box 14700, Harlandale Station
San Antonio, Texas 78214-0700

Dear Mr. Rollison:

This letter is in response to your inquiry about the application of the Americans With Disabilities Act (ADA) to group homes provided for persons with mental retardation.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist you in understanding the ADA's requirements. However, it does not constitute a legal interpretation and it is not binding on the Department.

Your letter states that your organization, an agency of the State of Texas, contracts with private citizens for placement of persons with mental retardation into their homes. You ask if these homes are considered places of public accommodation under the ADA, and, if so, what are the State's and owners obligations to upgrade the accessibility of these homes.

The ADA is implicated in your group home program in several respects. Title II prohibits discrimination on the basis of disability by State and local governments. Because your program involves a State agency contracting with private entities for the provision of services, the State must ensure that the contract activities are carried out in a way consistent with the State's title II responsibilities. This principle is set out in sections 35.102(a) and 35.130(b) of the enclosed title II regulation and further explained in the preamble to the regulation at page 35696.

cc: Records, Chron, Wodatch, Breen, Magagna, Novich,
Friedlander, FOIA, Cager
Udd:Novich:Policy:184

01-02383

In existing facilities, title II requires the State to ensure "program access," which means that the program, when viewed as a whole, must be accessible to qualified persons with disabilities. Achieving program access does not necessarily entail making every facility used in the program accessible. Your agency, then, must ensure that its group homes program, but not necessarily each individual home, is accessible to persons with disabilities. One method of creating program access might be to determine the number of homes that should be made accessible based on past accessibility needs of applicants, residents, and their guests. Title II also requires the State to administer its services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.

The homes themselves are not covered by title II. They would fall under title III if they fit into one of twelve categories of places of public accommodation listed in the Act. Strictly residential facilities are not included in this list and are not covered by title III. The homes would only be covered by title III if they are social service center establishments, i.e., if they provide a significant enough level of such social services as medical care, meals, transportation, and counseling. The homes would not be subject to title III if they provide simply a family-like living arrangement, without significant social services.

Title III requires owners and operators to remove architectural barriers to access from existing places of public accommodation where their removal is readily achievable. "Readily achievable" means easily accomplishable and able to be done without significant difficulty or expense. If each group home is considered a social service center establishment, then, title III requires that each one be made accessible to the extent that it is readily achievable to do so. Discussion of these provisions, including the factors to be considered in whether a barrier is readily achievable to remove, can be found at pages 35553-35554 of the enclosed title III regulation, and at pages

28-32 of the enclosed title III Technical Assistance Manual.

I hope this information has been helpful to you.

Sincerely,

John L. Wodatch
Chief
Public Access Section

Enclosures (4)
01-02386

Texas Department of Mental Health and Mental Retardation
San Antonio State School
P.O. Box 14700, Harlandale Station
San Antonio, TX 78214-0700 (512)-532-9610
Tom Deliganis. Ph.D.
Superintendent

May 18, 1992

U.S. Department of Justice, Civil Rights Division
Office on the Americans with Disabilities Act
P.O. Box 66118
Washington, D.C. 20035-6118

Dear Sir/Madam:

In brief, this agency (the San Antonio State School), often seeks contracts with private citizens for the purpose of placing mentally retarded citizens in their home. This facilitates the assimilation of the mentally retarded citizen into the mainstream of the community, and; permits continued quality of care and support for that citizen. Homes selected as a "private provider home" are of typical (local) residential construction and are evaluated for occupancy based on the standards outlined in the National Fire Protection Association's, 1988 Edition, "Life Safety Code" 101 (LSC), Chapters 21 or 22.

The distinguishing feature between a chapter 21 and a chapter 22 occupancy (for our purpose) is the number of non-related (non-family member) occupants residing in the home.

Chapter 21, "Residential Board and Care Occupancy," is divided into two sections; Small and Large Facilities. A "small" Chapter 21 facility would have at least four non-family occupants, but not

more than 16.

Chapter 22, "One- and Two-Family Dwellings" are those homes with three or less non-family occupants.

Most of the "private provider homes" selected in our program are of a chapter 22 occupancy. All homes in our program which are of a chapter 21 occupancy have less than eight non-family residents and the home is of typical residential construction.

Is it the intent of the Americans with Disabilities Act (ADA) to identify these homes as a "public accommodation?" And, therefore require compliance for a "barrier free" environment?

01-02385
As a point of comment; bathrooms in most existing (local) private residential homes have not been designed to accommodate citizens with disabilities. To convert a bathroom in a private residence to meet ADA "barrier free" standards would require significant costs to the home owner for renovation. A difficulty, with bathrooms, is in the requirements for "clear floor space" as illustrated and stated in Appendix A of the ADA Standard. Normally, the swing of the door penetrates the "clear floor space" or the area is insufficient. Another concern is that most sinks in bathrooms are placed in a "vanity" style cabinet which does not permit a straight-in approach or the available floor place hampers a side approach.

If all other standards, grab bars, seats, mirrors, etc., are met, can exceptions be made for clear floor space requirements?

Lastly, homes that are currently under contract. Is it a requirement to renovate (upgrade) them to ADA standards? Even if there are no physically challenged persons (non-family) residing in the residence.

I realize it is difficult to develop a written standard that meets the needs of everyone, for all situations, and; that ours is a unique situational effort for citizens who are not just physically challenged but who have the added challenge associated with being mentally retarded as well.

Thank you in advance for any assistance or guidance you can provide me in this matter.

Sincerely,

David L. Rollison
Safety Director

01-02384

DJ 202-PL-280/300 JUN 15 1993

Robert L. Thompson
President
Wiston Management
7007 College Boulevard
Suite 420
Overland Park, Kansas 66211

Dear Mr. Thompson:

This letter is in response to your inquiries about the application of the Americans With Disabilities Act (ADA) to leasing offices in apartment complexes.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist you in understanding the ADA's requirements. However, it does not constitute a legal interpretation or legal advice, and it is not binding on the Department.

Your correspondence indicates that you understand that the ADA applies to leasing offices within apartment complexes. You state that you have completed a survey of leasing facilities, but you are unsure of how to comply with ADA requirements.

Your understanding that the ADA applies to leasing offices within apartment complexes is correct. Although title III of the ADA does not apply to strictly residential dwellings, it does cover areas within residential buildings, such as leasing offices, that function as one of the ADA's twelve categories of places of public accommodation and that are not intended for the exclusive use of tenants and their guests. In order for your leasing offices to comply with the ADA, the offices themselves, as well as the parking, building entrances, access routes, and restrooms and drinking fountains serving the offices must also comply.

The portions of Title III relevant to your leasing offices require that in existing places of public accommodation, all structural barriers to access be removed if their removal is readily achievable. Readily achievable means easily accomplishable without much difficulty or expense. If the

cc: Records, Chrono, Wodatch, Breen, Magagna, Novich, Friedlander, FOIA, Cager
Udd:Novich:Policy:280

01-02387

removal of a barrier to access is not readily achievable, the public accommodation must provide any readily achievable alternatives to barrier removal. For instance, if it is not readily achievable to make the entrance to one of your offices accessible, offering leasing services in a different, accessible location for persons with disabilities might be a readily achievable alternative.

Examples of potential structural barriers to access, in or on the route to the leasing office, that you should be evaluating for their accessibility are: entrances, doorways, passageways, telephones and restrooms that are available for public use; drinking fountains, door knobs and other controls; alarm systems; and signage to designate rooms, information, and parking. Section 36.304 of the enclosed title III regulation, at page 35597, lists 21 examples of barriers that are probably readily achievable to remove and also suggests priorities for removal of barriers. In addition, you may want to consult pages 28-35 of the enclosed title III Technical Assistance Manual, which further discusses removal of barriers.

The title III regulation includes as an appendix the

Americans With Disabilities Act Accessibility Guidelines (ADAAG), which sets forth the ADA's technical specifications for accessibility in new construction and building alterations. When removing barriers in existing facilities, strict compliance with these specifications is not necessarily required if not readily achievable. However, departures from the guidelines are permitted only if they do not compromise safety for persons with disabilities and others. You should consult the specifications of the ADA Standards for Accessible Design as you evaluate your leasing facilities, and determine the extent to which your leasing offices can remove barriers to meet those specifications.

Although this letter has addressed only your offices' obligations to remove barriers, your offices must also comply with title III's other requirements for existing facilities. These requirements include provision of auxiliary aids and services where necessary for effective communication with persons with disabilities, reasonable modification of policies, practices or procedures where necessary for the participation of persons with disabilities, and the elimination of eligibility criteria that tend to screen out persons with disabilities. These subjects are discussed further in the title III regulation and Technical Assistance Manual. Your offices may also have responsibilities to their employees under title I of the ADA.

For more information regarding employment responsibilities, you may contact the Equal Employment Opportunity Commission (EEOC), at:

1801 L Street, N.W.
Washington, D.C. 20507
(202) 669-3362 (voice)
(800) 800-3302 (TDD).

I hope this information is helpful to you.

Sincerely,

Joan A. Magagna

Deputy Chief
Public Access Section

Enclosures (3)
Title III regulation
Title III Technical Assistance Manual
Title III Technical Assistance Manual Supplement

01-02389

Wiston August 8 1992

Director
U.S. Department of Justice
Civil Rights Division
Office of the American with Disabilities Act
10th and Pennsylvania N.W.
Washington D.C. 20530

RE: Candletree Apartments, Omaha Nebraska

Dear Director:

Candletree Apartments is an apartment community built in 1973 in Omaha Nebraska. It is our understanding that the leasing office area of this community would be considered an area of "public accommodation" under the American with Disabilities Act.

Candletree Apartments was built prior to the new architectural Standards established for the accommodation of the handicapped. We have done a survey of the physical facilities in the leasing office area to try to determine what deficiencies there may be and what we can do to accommodate those with handicaps. We have designated handicap parking in front of the leasing office with the appropriate signage.

We have read the act and it is not clear to us exactly what we are supposed to do in order to comply. We are requesting guidance from you regarding what is necessary for us to do in order to be in compliance with the requirements of the Act.

Please let us know how we should proceed.

Sincerely,

Robert L. Thompson
President, Wiston Management Inc.

Rec'd- OADA
AUG 12 1992

01-02398

Wiston August 20, 1992

Director
U.S. Department of Justice
Civil Rights Division
Office of the American with Disabilities Act
10th and Pennsylvania N.W.
Washington D.C. 20530

RE: GLENDALE COMMON APARTMENTS

Dear Director:

Glendale Common is an apartment community built in 1970 in Independence, Missouri. It is our understanding that the leasing office area of this Community would be considered an area of "public accommodation" under the American with Disabilities Act.

Glendale Common was built prior to the new architectural standards established for the accommodation of the handicapped. We have done a survey of the physical facilities in the leasing office area to try to determine what deficiencies there may be and what we can do to accommodate those with handicaps. We have designated handicap parking in front of the leasing office with the appropriate signage.

We have read the act and it is not clear to us exactly what we are supposed to do in order to comply. We are requesting guidance from you regarding what is necessary for us to do in order to be in compliance with the requirements of "the Act.

Please let us know how we should proceed.

Sincerely,.

Robert L. Thompson
President, Wiston Management Inc.

202-PL-300 Rec'd oada
AUG 27 1992

01-02390

1957

August 8, 1992

Director
U.S. Department of Justice
Civil Rights Division
Office of the American with Disabilities Act
10th and Pennsylvania N.W.
Washington D.C. 20530

RE: Twin Creek Apartments, Killeen Texas

Dear Director:

Twin Creek Apartments is an apartment community built in 1984 in Killeen Texas. It is our understanding, that the leasing office area of this community would be considered an area of "public accommodation" under the American with Disabilities Act.

Twin Creek Apartments was built prior to the new architectural standards established for the accommodation of the handicapped. We have done a survey of the physical facilities in the leasing office area to try to determine what deficiencies there may be and what we can do to accommodate those with handicaps. We have designated handicap parking in front of the leasing office with the appropriate signage.

We have read the act and it is not clear to us exactly what we are supposed to do in order to comply. We are requesting guidance from you regarding what is necessary for us to do in order to be in compliance with the requirements of the Act.

Please let us know how we should proceed.

Sincerely,

Robert L. Thompson
President, Wiston Management Inc

AUG 11 1992
Received- OADA

01-02392

Wiston August 8, 1992

Director
U.S. Department of Justice
Civil Rights Division
Office of the American with Disabilities Act
10th and Pennsylvania N.W.
Washington D.C. 20530

RE: Sunrise at Atascosita, Humble Texas

Dear Director:

Sunrise at Atascosita is an apartment community built in 1984 in Humble Texas. It is our understanding, that the leasing office area of this community would be considered an area of "public accommodation" under the American with Disabilities Act.

Sunrise at Atascosita was built prior to the new architectural standards established for the accommodation of the handicapped. We have done a survey of the physical facilities in the leasing office area to try to determine what deficiencies there may be and what we can do to accommodate those with handicaps. We have designated handicap parking in front of the leasing office with the appropriate signage.

We have read the act and it is not clear to us exactly what we are supposed to do in order to comply. We are requesting guidance from you regarding what is necessary for us to do in order to be in compliance with the requirements of
the Act.

Please let us know how we should proceed.

Sincerely,

Robert L. Thompson
President, Wiston Management Inc.

AUG 11 1992
Received- OADA

Wiston August 8, 1992

Director
U.S. Department of Justice
Civil Rights Division
Office of the American with Disabilities Act
10th and Pennsylvania N.W.
Washington D.C. 20530

RE: Woodland Trace Apartments, Carmel Indiana

Dear Director:

Woodland Trace Apartments is an apartment community built in 1972 in Camel Indiana. It is our understanding, that the leasing office area of this community would be considered an area of "public accommodation" under the American with Disabilities Act.

Woodland Trace Apartments was built prior to the new architectural standards established for the accommodation of the handicapped. We have done a survey of the physical facilities in the leasing office area to try to determine what deficiencies there may be and what we can do to accommodate those with handicaps. We have designated handicap parking in front of the leasing office with the appropriate signage.

We have read the act and it is not clear to us exactly what we are supposed to do in order to comply. We are requesting guidance from you regarding what is necessary for us to do in order to be in compliance with the requirements of the Act.

Please let us know how we should proceed.

Sincerely,
Robert L. Thompson
President, Wiston Management Inc.

AUG 11 1992
Received- OADA

01-02393

August 8, 1992

Wiston

Director
U.S. Department of Justice
Civil Rights Division
Office of the American with Disabilities Act
10th and Pennsylvania N.W
Washington D.C. 20530

RE: Westbrook Manor Apartments, Omaha Nebraska

Dear Director:

Westbrook Manor Apartments is an apartment community built in 1973 in Omaha Nebraska. It is our understanding, that the leasing office area of this community would be considered an area of "public accommodation" under the American with Disabilities Act.

Westbrook Manor Apartments was built prior to the new architectural standards established for the accommodation of the handicapped. We have done a survey of the physical facilities in the leasing office area to try to determine what deficiencies there may be and what we can do to accommodate those with handicaps. We have designated handicap parking in front of the leasing office with the appropriate signage.

We have read the act and it is not clear to us exactly what we are supposed to do in order to comply. We are requesting guidance from you regarding what is necessary for us to do in order to be in compliance with the requirements of the Act.

Please let us know how we should proceed.

Sincerely,

Robert L. Thompson
President, Wiston Management

AUG 11, 1992
Received-OADA

Wiston August 8, 1992

Director
U.S. Department of Justice
Civil Rights Division
Office of the American with Disabilities
Act
10th and Pennsylvania N.W.
Washington D.C. 20530

RE: Villa Medici Apartments, Overland Park Kansas

Dear Director:

Villa Medici Apartments is an apartment community built in 1969 in Overland Park Kansas. It is our understanding, that the leasing office area of this community would be considered an area of "public accommodation" under the American with Disabilities Act.

Villa Medici Apartments was built prior to the new architectural standards established for the accommodation of the handicapped. We have done a survey of the physical facilities in the leasing office area to try to determine what deficiencies there may be and what we can do to accommodate those with handicaps. We have designated handicap parking in front of the leasing office with the appropriate signage.

We have read the act and it is not clear to us exactly what we are supposed to do in order to comply. We are requesting guidance from you regarding what is necessary for us to do in order to be in compliance with the requirements of
the Act.

Please let us know how we should proceed..

Sincerely,

Robert L. Thompson
President, Wiston Management Inc.

01-02395

Wiston August 8, 1992

Director
U.S. Department of Justice
Civil Rights Division
Office of the American with Disabilities Act
10th and Pennsylvania N.W.
Washington D.C. 20530

RE: Greenbriar Apartments, Overland Park Kansas

Dear Director:

Greenbriar Apartments is an apartment community built in 1967 in Overland Park Kansas. It is our understanding, that the leasing office area of this community would be considered an area of "public accommodation" under the American with Disabilities Act.

Greenbriar Apartments was built prior to the new architectural standards established for the accommodation of the handicapped. We have done a survey of the physical facilities in the leasing office area to try to determine what deficiencies there may be and what we can do to accommodate those with handicaps. We have designated handicap parking in front of the leasing office with the appropriate signage.

We have read the act and it is not clear to us exactly what we are supposed to do in order to comply. We are requesting guidance from you regarding what is necessary for us to do in order to be in compliance with the requirements of the Act.

Please let us know how we should proceed.

Sincerely,

Robert L. Thompson
President, Wiston Management Inc.

AUG 11 1992
Received-OADA

01-02396

1965

Wiston August 8, 1992

Director
U.S. Department of Justice
Civil Rights Division
Office of the American with Disabilities Act
10th and Pennsylvania N.W.
Washington D.C. 20530

RE: Fallwood Apartments, Indianapolis Indiana

Dear Director:

Fallwood Apartments is an apartment community built in 1972 in Indianapolis Indiana. It is our understanding, that the leasing office area of this community would be considered an area of "public accommodation" under the American with Disabilities Act.

Fallwood Apartments was built prior to the new architectural standards established for the accommodation of the handicapped. We have done a survey of the physical facilities in the leasing office area to try to determine what deficiencies there may be and what we can do to accommodate those with handicaps. We have designated handicap parking in front of the leasing office with the appropriate signage.

We have read the act and it is not clear to us exactly what we are supposed to do in order to comply. We are requesting guidance from you regarding what is necessary for us to do in order to be in compliance with the requirements of the Act.

Please let us know how we should proceed.

Sincerely,

Robert L. Thompson
President, Wiston Management Inc.

01-02397

JUN 16 1993

XXXXXX (b) (6)
Battle Creek, Michigan 49015

Dear XXXX

This letter is in response to your inquiries about whether a dentist's office is covered by title III of the Americans with Disabilities Act of 1990 (the "ADA"), what the obligations of a dentist's office are under title III, and the allocation of responsibility under title III as between a landlord and tenant.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist you in understanding the ADA's requirements. However, it does not constitute a legal interpretation or legal advice, and it is not binding on the Department of Justice.

Your letter inquires first about whether a dentist's office is covered by title III of the ADA. Title III applies to all privately owned places of accommodation, regardless of how many people they employ, or how large or small is their business. The title III regulation enforced by the Department of Justice specifically identifies a professional office of a health care provider as one type of service establishment which is considered to be a place of public accommodation, and therefore covered by title III.

Under title III, any private entity that owns, operates, leases, or leases to a place of public accommodation is required to take certain steps to avoid discriminating against individuals with disabilities. Among other things, title II requires public accommodations to remove architectural barriers to access in their existing facilities to the extent that it is readily achievable to do so. This means that public accommodations must remove barriers to access whenever the barriers can be removed without much difficulty or expense. Examples of readily

achievable barrier removal might include providing accessible parking, providing curb ramps, widening doors, providing entrance ramps, enlarging toilet stalls, providing grab bars,-making lavatories accessible, and the like.

cc: Records, Chrono, Wodatch, Bowen, McDowney, Contois, MAF,-FOIA
Udd:Contois:PL: (b) (6)

01-02399

The obligation to remove architectural barriers rests not only with the owner of the building which houses a place of public accommodation, but also with any private entity that operates the building, and any private entity that leases space in the building to house a place of public accommodation. Thus, the obligations of a public accommodation to remove barriers are the same whether it leases space or owns it, and if it-fails to do what is readily achievable to remove barriers to access, it can be held liable under title III regardless of whether it owns or leases the space.

The Department of Justice's technical Assistance Manual for title III discusses the application of the title III to places of public accommodation on pages 1 through 3. On page 3 there is a discussion of the responsibilities of both the landlord and tenant. The obligation to remove architectural barriers to access is discussed on pages 28 to 34. I hope this information is useful to you in understanding the requirements of the ADA.

Sincerely,

L. Irene Bowen
Deputy Chief
Public Access Section

01-02400

December 11, 1992

Department of Justice
Office of ADA

I hope that you can answer a few questions for me. I have a copy of the new ADA law but no one thinks that it applies to them. I will give you just one example I have run into.

My dentist is in a building with two other offices. I am(b) (6) and I cannot get in the bathroom. The people that own the building say that they do not have to make any changes and my dentist says that he does not have to make any changes.

I have read the law through many times and on paper it applies but when one question them they all seem to have a loophole.
Can you help?

Sincerely,

Battle Creek Mi 49015 (b) (6)

01-02401

T. 6/15/93

DJ 204-016-00013

Dear Mr.
(b) (6)

This is in response to your letter concerning requirements for playgrounds under the Americans with Disabilities Act (ADA).

The ADA authorizes the Department of Justice to provide technical assistance to entities that are subject to the Act. This letter provides informal guidance to assist you in understanding provisions applicable to playgrounds. However, this technical assistance does not constitute a determination by the Department of Justice of your rights or responsibilities under the ADA and does not constitute a binding determination by the Department of Justice.

Under section 35.151(c) of the ADA title II regulations, public entities, such as schools, can choose to design facilities either in accordance with the Americans, with Disabilities Act Accessibility Guidelines or in accordance with the Uniform Federal Accessibility Standards. (A copy of the title II regulations is enclosed.) Neither of those standards, however, contains specific sections on playgrounds. Guidelines for recreational facilities are currently in the process of being developed by the Architectural and Transportation Barriers Compliance Board. Until such time as those guidelines are finalized, playgrounds need not be built in compliance with any specific design standards.

However, playgrounds are not exempt from the ADA. Section 35.130 of the title II regulations requires that qualified individuals with disabilities be given an equal opportunity to participate in a public entity's programs. Providing an equal opportunity may entail provision of some accessible equipment and an accessible surface in a public playground.

cc: Records CRS Chrono Friedlander
Milton.letters.recreatn. FOIA

01-02402

For your further information, an interim draft recreation standard, which contains advisory guidance on playgrounds at page 756 is enclosed. The section on playgrounds indicates that level, firm paths and surfacing should be provided to allow playground facilities to be used by people with limited mobility. This interim draft standard has not been adopted and is not in effect and is provided for guidance only.

I hope this information has been helpful to you.

Sincerely,

Stewart B. Oneglia
Chief
Coordination and Review Section
Civil Rights Division

Enclosures (2)

01-02403

United States
Architectural and Transportation Barriers Compliance Board
1331 F Street, NW Washington, DC 20004-1111 202-272-
5434 (Voice) o 202-272-5449 (TDD) o 202-272-5447 (FAX)

NOV 23, 1992

Mr. Andy Yasenovsky
Safety/Loss Control Analyst
San Bernardino Country
Superintendent of Schools
601 North E Street
San Bernardino, California 92410-3093

Dear Mr. Yasenovsky:

I am writing in response to your letter regarding playground surface materials and the accessibility requirements of the Americans with Disabilities Act (ADA).

The ADA authorizes the Access Board to provide technical assistance with respect to accessibility requirements of the law. However, the Department of Justice, not the Access Board, is responsible for enforcement of certain titles of the ADA. This letter provides informal guidance only. It is not a determination of your legal rights or responsibilities under the ADA and is not binding on the Access Board or the Department of Justice.

Title II of the ADA prohibits discrimination on the basis of disability in State and local government programs. The Department of Justice has issued regulations implement title II of the ADA which require newly constructed and altered State and local government facilities to be readily accessible to and usable by individuals with disabilities. 28 C.F.R. 35.151 (a) and (b). The Department of Justice's title II regulations permit State and local government entities to comply with either the Uniform Federal Accessibility Standards (UFAS) or Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (ADAAG) which was developed by the Access Board, in new construction and alternations. 28 C.F.R. 35.151 (c). Neither UFAS nor ADAAG contain specific provisions for recreational facilities. The Access Board plans to begin developing specific provisions for recreational facilities, including playground equipment, for inclusion in ADAAG during 1993. The provisions will be published in the Federal Register and will be subject to public comment before they are finally adopted by the Access Board.

Even though a particular type or element of a newly constructed or altered State or local government facility may not be specifically addressed by the accessibility standards referenced in the Department of Justice's title II regulations, it is nonetheless required to be 'readily accessible to and

usable by individuals with disabilities.' This means that, with respect to a facility or a portion of a facility, that it can be approached, entered, and used by individuals with disabilities (including mobility, sensory, and cognitive impairments) easily and conveniently.

ADAAG provides the following additional guidance with respect to recreational facilities:

Although the final guidelines do not include accessibility guidelines for children's environments and recreational facilities at this time, newly constructed or altered children's facilities and recreational facilities subject to title II of the ADA must comply with these guidelines where applicable. For example, an accessible route must be provided to a swimming pool deck area even though the guidelines do not presently include specific requirements for providing access to the pool itself. Technical assistance is available from the Board in this area."
56 F.R. 35412 (July 26, 1991).

The same guidance would apply to State and local government facilities that use UFAS or ADAAG to comply with the new construction and alterations requirements of the Department of Justice's title II regulations.

We understand from the materials enclosed with your letter that California law requires at least a portion of any playground constructed after January 1, 1979 to be readily accessible to and useable by individuals with disabilities. The California Department of Parks and Recreation has advised its applicants that under current State standards new or redone playground areas must provide a firm, but resilient surface and that sand, shredded rubber, or loose wood chips are not acceptable surfaces. The California Department of Parks and Recreation has also provided its applicants with a list of manufacturers that produce suitable surface materials for accessible playground areas and has further stated that most manufacturers of play equipment offer one or more surfaces that meet the California standards.

Until final accessibility standards for playgrounds are issued under the ADA, a playground that meets current California standards, as advised by the California Department of Parks and Recreation, should also be considered readily accessible to and usable by individuals with disabilities for purposes of the ADA.

I hope that this information is helpful to you.

Sincerely,

James J. Raggio
General Counsel

Enclosure

cc: Philip L. Breen
Department of Justice
Civil Rights Division
Public Access Section

01-02405

JUN 17 1993

XXXXXXXXXXXx
Sherman, Texas 25090 (b) (6)

Dear XXXXXXXXXXXXX

This letter is in response to your inquiry about whether developmentally disabled children are protected by the Americans with Disabilities Act of 1990 (the "ADA"), and if so, whether it prevents discrimination by companies that provide health insurance. I apologize for the delay in our response.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist you in understanding the ADA's requirements. However, it does not constitute a legal interpretation or legal advice, and it is not binding on the Department of Justice.

Your letter inquires first about whether children with developmental disabilities are considered individuals with disabilities and are covered by the ADA. Under the ADA, the definition of "disability" includes any physical or mental condition that substantially limits one or more major life activities, such as caring for one's self, performing manual tasks, walking, learning, or working. Thus, it appears that the mental or physical condition of your XX would be considered a disability within the meaning of the ADA, and that they would be entitled to its protections against discrimination.

You correctly point out in your letter that in providing goods and services, public accommodations may not discriminate on the basis of disability. With respect to the purchase of insurance, the ADA allows insurance companies to charge more for insurance, or to refuse to insure someone with a disability, only if the higher charges or refusal to provide coverage is based on

sound actuarial data and principles, and not on speculation. Thus, while the ADA does provide some protection for individuals with disabilities in their dealings with insurance companies, it does not prohibit the use of legitimate actuarial considerations.

cc: Records, Chrono, Wodatch, Bowen, Breen, Contois, Friedlander, FOIA
Udd:Contois:PL:

01-02406

The laws of your State may provide different or additional protections for your children, and you may want to inquire with the appropriate State officials in Texas.

Enclosed for your information is a copy of the Department of Justice's Technical Assistance Manual for title II of the ADA. It discusses the definition of disability on pages 8-10, and the requirements applicable to insurance companies on pages 18- 19. I hope this information is useful to you in understanding the requirements of the ADA.

Sincerely,

John L. Wodatch
Chief
Public Access Section

Enclosure
Title III Technical Assistance Manual

01-02407

CIVIL RIGHTS DIVISION
PUBLIC ACCESS SECTION

Office of the American Disability Act
Civil Rights Division
U.S. Department of Justice

I received a Title III highlights outline and
it's somewhat vague and I could use some interpretation
assistance.

My situation is this.

I am xx employed and have been for xx. (b)(6)
Prior to that I was an employee for a company that was
sold. Upon my termination I selected xx coverage
for myself and my family. My family consists of XXX
boys xx who are developmentally delayed.
At we must still feed, dress, etc the boys. One is
only starting to walk and neither can talk. However
we have not been able to get a diagnosis on the
boys. No name for what they have. All the doctors
say we will just have to wait for them to progress.
Because of this I would assume they are considered
individuals with Disabilities. Now the problem
my xx coverage is about to expire and every
insurance company I have contacted refuses to write
health insurance coverage on the boys. Why? Because
they do not know what they have. Are they not being
discriminated against? Under eligibility
for Goods and Services as you outline it is stated: In providing
goods and services, a public accommodation may not use
eligibility requirements that exclude or segregate
individuals with disabilities under the requirements
are "necessary" for the operation of the public accommodation.
01-02408

If the boys are not covered under this act for the xx issuance of health Insurance, is there any other area that would help. If not - why not? I know we are not the only ones that have this problem. Your assistance would be greatly appreciated.

Respectively
xxxxxxx (b) (6)
Sherman Texas 25090

01-02409

DJ 202-PL-379

James A. Hackman
Parfitt/Ling Consulting Engineers
101 S. Fraser Street
State College, Pennsylvania 16801-3850

Dear Mr. Hackman:

This letter is in response to your inquiry about the Americans with Disabilities Act of 1990 (ADA). We regret the delay in responding.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist you in understanding the ADA's requirements. However, it does not constitute a legal interpretation or legal advice and it is not binding on the Department.

You ask whether the ADA applies to a privately owned apartment building for elderly persons. You describe the building as one of eleven units comprising a continuing care retirement community, designed to provide independent living for older people.

Title II of the ADA applies to privately owned or operated facilities that are either commercial facilities or that fall within one of the twelve categories of "places of public accommodation" listed in that title. Strictly residential facilities are not included in the twelve public accommodation categories and are expressly exempted from the definition of commercial facilities. Thus, strictly residential facilities are not covered by the ADA. As your letter noted, however, residential facilities may have to meet nondiscrimination and accessibility requirements under the Fair Housing Act.

Although the ADA does not apply to strictly residential facilities, it has two possible applications to your apartment building. First, common areas within residential buildings, such as rental offices and meeting rooms, that function as one of the

ADA's twelve categories of places of public accommodation and that are not intended for the exclusive use of tenants and their

cc: Records, Chrono, Wodatch, Magagna, Breen, Novich, Friedlander, FOIA
Udd:Novich:Policy:379

01-02410
guests constitute "places of public accommodation" within the meaning of title II, and must comply with the ADA. Rental offices, for example, are by their nature open to the public and would be considered rental establishments or service establishments within the meaning of the ADA. Meeting rooms, if not restricted to the exclusive use of tenants and their guests, would be a place of public gathering covered by the ADA.

Second, a facility that provides both housing and social services is covered by the ADA as a place of public accommodation where a significant enough level of social services is provided that the facility itself can be considered a social service center establishment. In this situation those portions of the facility that are used in the provision of social services are covered by the ADA. If the social services are provided throughout the facility, including in the individual housing units, then the entire facility is a place of public accommodation. Social services in the context of the ADA would include medical care, assistance with daily living activities, provision of meals, transportation, counseling, and some recreational activities. No one of these services will automatically trigger ADA coverage. Rather, the determination of whether a private entity provides a significant enough level of social services will depend on the quantity, quality, and combination of these services.

I have enclosed the regulations promulgated under title III, and the Technical Assistance Manual for that title. I hope this information is helpful to you.

Sincerely,

Joan A. Magagna
Deputy chief
Public Access Section

Enclosures

01-02411

Parfitt/Ling
Consulting Engineers 101 S. Fraser Street State College, PA 16801-3850
(814) 234-4350

October 26, 1992

Department of Justice
Public Access Section
P.O. Box 66738
Washington, DC 20035-9998

Re: Woodcrest Villa Apartments
Mennonite Home
Americans With Disabilities Act
P/L Project No. 9115

Dear Sir or Madam:

The referenced construction project is a 142 unit privately-owned apartment building for the elderly. The building is the first of eleven buildings comprising a Continuing Care Retirement Community. The Community is designed for independent living. The only requirement for admission is age.

On Friday, October 23, I telephoned the ADA Information Line((202 514-0301) and was told that the referenced project does not fall under the ADA Guidelines. I was told that the HUD Fair Housing Act applies.

Please send me a letter confirming my understanding of the conversation.
Please call if there are any questions.

Sincerely,

James A Hackman
Project Engineer

JAH/jaa

c: Mr. Eric McRoberts, Reese, Lower, Patrick & Scott
Mr. Anthony Diodato, Reese, Lower, Patrick & Scott
Mr. Moses Ling, Parfitt/Ling
Mr. David Hile, Parfitt/Ling

01-02412

T. 6-15-93

JUN 17 693

DJ 202-47-2

Mr. Michael D. Jenkins
Executive Director
Governor's Commission on Disability
State of New Hampshire
57 Regional Drive
Concord, New Hampshire 03301-8506

Dear Mr. Jenkins:

This letter is in response to your request that this Section review the proposed New Hampshire Barrier Free Design Code to determine if it meets or exceeds the requirements of title II of the Americans with Disabilities Act (ADA). The State of New Hampshire is proposing to adopt a modified version of the standards for accessible design established by the Department's title III regulation as the State accessibility requirements for places of public accommodation that are now subject to the State's prohibition on discrimination based on physical disability. The proposed code has yet to be adopted. As we have discussed with you, only codes that have been adopted under State law may be certified. It would, therefore, be premature for us to undertake a formal review of your proposed code.

Because the ADA does authorize the Department to provide technical assistance to individuals and entities that have rights or responsibilities under the Act, this letter provides technical assistance to assist you in understanding how New Hampshire's proposed code compares to the ADA requirements. This technical assistance does not constitute a determination by the Department of Justice of the State's rights or responsibilities under the ADA, and it is not binding on the Department. Please note that it is our policy generally to limit this type of technical assistance to comments on the scoping provisions of a proposed code. We have not considered the technical requirements of your code. In addition, we have not considered the application of the proposed code to government facilities because title II of the ADA applies only to private entities.

cc: Records, Chorono, Wodatch, Bowen, Blizard, FOIA, Friedlander
n:\udd\blizard\cert\newhamp.ltr

01-02413

We do not consider the proposed New Hampshire Architectural Barrier Free Design Code to be equivalent to the ADA for Several reasons, including:

1) Under New Hampshire law, places of public accommodation for purposes of the proposed code include only places of transient lodging, places where food and drink are served, and theaters, concert halls, and other places of public gathering or places of exhibition. The ADA applies to any private entity that owns, operates, leases (or leases to), a private entity whose operations fall within one of twelve categories identified in the statute. In addition, the new construction and alterations requirements of the ADA apply to all commercial facilities; the proposed State code does not.

The ADA permits the Department to certify a State's accessibility requirements if they meet or exceed the requirements of the ADA. If a State's accessibility requirements do not apply to all of the public accommodations and commercial facilities that are subject to title III, we cannot certify that the State's requirements are equivalent.

I have enclosed copies of the Department of Justice regulation implementing title III and our Title III Technical Assistance Manual for your information. The ADA coverage provisions are contained in section 36.104 of the Department's regulation. The requirement is further explained in the preamble to the regulation (pp. 35547-35555), and in sections III-1.1000 through III-1.3100 of the Technical Assistance Manual.

2) The proposed code will apply only to people with physical disabilities, while the ADA prohibits discrimination against any individual who has a physical or mental impairment that substantially limits one or more major life activities. The scope of this requirement is established in section 36.104 of the enclosed regulation. It is discussed in the preamble to the rule (pp. 35547-35555), and in sections III-2.1000 through III-2.7000 of the Technical Assistance Manual. In our view, the accessibility requirements of building codes should afford protection to all people with disabilities, to the extent that protection is provided by the ADA standards.

3) The proposed code will apply only to new construction of and substantial alterations to places of public accommodation. The ADA applies to all new construction of, and any additions or alterations to, places of public accommodation and commercial facilities, regardless of whether the addition or alteration is considered "substantial." These requirements are contained in

sections 36.401-36.404 of the enclosed regulation. They are discussed in the preamble to the rule (pp. 35574-35584), and in sections III-5.1000 through III-6.3000 of the Technical Assistance Manual.

4) The proposed code recognizes the possibility of waivers" due to economic reasons or historic considerations in both new construction and alterations. Title III of the ADA does not permit waivers based on economic considerations in any new construction or alterations. The Department's title III regulation recognizes that historic buildings and facilities present unique challenges that may require the use of alternative methods of providing access; however, there is no provision for a "waiver" of the requirements for historic properties. This requirement is contained in section 36.405 of the enclosed regulation and in section 4.1.7 of the ADA standards. It is discussed in the preamble to the rule (pp. 35584 and 35588), and in section III-6.4000 of the Technical Assistance Manual.

In addition, we note that the proposed code purports to "amend" the requirements of the ADA. Any action taken by the State of New Hampshire with respect to its State code is effective only as a matter of State law. The State does not have the authority to amend the ADA regulations, or to excuse any person or entity subject to the ADA from full compliance with these Federal requirements.

If you have any questions about this letter, please contact Janet Blizard, Supervisory Attorney, Public Access Section at (202) 307-0847.

Sincerely,

John L. Wodatch
Chief
Public Access Section

Enclosures

01-02415

US. Department of Justice
Civil Rights Division
Public Access Section
DJ P.O. Box 66738
Washington, D.C. 20035-6738

JUN 17 1993

(b)(6)
Washington, D.C.

Re: DJ
Holiday Inn
5th & C Sts., S.W.
Washington, D.C. 20002

Dear Mr.XX

This letter is in response to your correspondence in which you allege a violation of title III of the Americans with Disabilities Act of 1990, 42 U.S.C. SS 12181-12189, and the Department of Justice implementing regulation, 28 C.F.R. pt. 36, by the above-referenced Holiday Inn. In particular, you indicated that an AT&T Access 2000 unit, a card-operated telephone with TDD capability located in the hotel lobby, would not accept your credit card for a local call. In addition, the AT&T telephone unit would not accept coins and the adjacent coin-operated telephones were not accessible because no TDDs were present.

The Americans with Disabilities Act ("ADA") authorizes the Department of Justice to investigate alleged violations of title 111. 42 U.S.C. S 1218,8 (b) (1) (A). However, after considering the information you have provided to us, we have concluded that the facts presented do not constitute a violation of title II of the ADA.

As an existing place of public accommodation, the Holiday

Inn is, among other things, obligated to remove communication barriers that are structural in nature, where such removal is readily achievable; to provide auxiliary aids and services where necessary to ensure effective communication; and to ensure generally that individuals are not denied, an the basis of disability, an equal opportunity to participate in or benefit from the goods, services, and facilities of the hotel. See generally 28 C.F.R. SS 36.202, 36.303, 36.304.

Accordingly, if the hotel offers its clients or customers the opportunity to make outgoing telephone calls on "more than an incidental convenience basis," such as providing in-room telephone service for its guests, the hotel must make TDDs available on request in private guest rooms. A hotel also is required to have a TDD at the front desk on request so that guests with hearing or speech impairments can contact the front desk from their rooms. However, as an existing place of public accommodation, the hotel is not obliged to provide TDDs in common areas such as lobbies.

The ADA Standards for Accessible Design for new construction and alterations are more stringent. With regard to new construction, for example, if four or more public pay telephones are provided on a hotel site, including at least one that is located in the interior of the hotel, the hotel is required to provide at least one TDD. In addition, in new buildings with banks of three or more interior public pay telephones, at least one public pay telephone in each bank must be equipped with a shelf and a power outlet to accommodate a Portable TDD. See ADA Standards at sections 4.1.3 (17)(c) and 4.1.3 (17)(d) . A hotel would be obligated to provide a coin-operated TDD if the other pay telephones are coin-operated. If the hotel only provided a card-operated TDD unit, the hotel would deny individuals, on the basis of a disability, an equal opportunity to benefit from the goods, services, and facilities of the hotel in violation of 29 C.F.R. 202(b).

If you have any questions concerning our action on this complaint, please feel free to contact me at (202) 307-6309.

Sincerely,

Sheila K. Delaney
Attorney
Public Access Section

Enclosure
01-02417

T. 6-16-93

JUN 24 1993

(b)(6)
Sebastian, Florida 32976

Dear XX

I am responding to your letter asking about the requirements of the Americans with Disabilities Act (ADA).

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities that have rights and responsibilities under the Act. This letter provides informal guidance but does not constitute a determination by the Department of Justice of any State's rights or responsibilities under the ADA, and it is not binding on the Department.

You have asked if the ADA requires States to amend their building codes to incorporate the ADA Standards for Accessible Design. The ADA does not require States to amend their building codes that apply to the construction of private buildings to incorporate the requirements of the ADA. However, private entities subject to title II are required to comply with the ADA's accessibility requirements, rather than State code requirements, in circumstances where local code requirements are less stringent than the ADA. If the State code establishes accessibility requirements that are more stringent than the ADA requirements, then the State code provisions must be followed.

The illustration provided in your letter indicates that

you are concerned specifically with the construction of a dock
That will be used by the occupant of a private, residential
property. Your example does not specifically state whether the land on
which the dock is located is privately owned. If the land on
which the dock is located is privately owned, and the dock
is exclusively used by the occupant of the residence, then it
is not subject to title III of the ADA because a purely residential
facility is neither a "place of public accommodation" nor a
"commercial facility" as those terms are defined under the
ADA. If the land is publicly owned, then the state or local
government that owns the land would be required to comply with title
II of the ADA in permitting the use of this land. Title II

cc: Records, Chrono, Wodatch, Breen, Blizard FOIA, Friedlander
n:\udd\blizard\adaltrs\(b)(6)

01-02418

prohibits discrimination on the basis of disability in the operation of the programs, services, and activities of a public entity.

Please note that although docks and piers are "facilities" subject to the requirements of the ADA, neither the ADA Accessibility Guidelines issued by the Architectural and Transportation Barriers Compliance Board, nor the regulations issued by the Departments of Justice or Transportation, currently contain specifications for the construction or alteration of accessible docks and piers. Because the ADA has not preempted State regulation in the area of accessible design, the State of Florida is permitted by the ADA to issue regulations that establish accessibility requirements for facilities for which no Federal accessibility standard now exists.

For your information, I am enclosing copies of the Department's regulations implementing titles 11 and III, and our technical assistance manuals for titles II and III. I hope that this information is helpful to you.

Sincerely,

John L. Wodatch
Chief
Public Access Section

Enclosures

01-02419

CIVIL RIGHTS DIVISION
PUBLIC ACCESS SECTION
93 MAR 29 PM 2:54

24 March 1993

Sebastian, Florida 32976
(b)(6)

Mr. John Wodatch
Public Access Section
Civil Rights Division
U.S. Department of Justice
P.O. Box 66738
Washington D.C. 20035-6738

Dear Mr. Wodatch:

I recently contacted an operator at the Department of Justice regarding information on the American Disabilities Act of 1990 (ADA). The operator was helpful and provided an answer; however, I would like a written response, and the operator suggested that I write you. My question is as follows:

Is the State of Florida, or any agency thereof, required by the ADA to incorporate ADA requirements into the agencies' rules/requirements for permitting/authorizing private, single-family residential docks and piers?

Example: An owner of a single-family residential lot makes application to the state to construct a dock to serve his or her lot. The adjacent waterbody is sovereignty, submerged (public) land, and the dock is to be used only by the lot owner and his or her guests for recreational purposes (e.g., boating, fishing). It is not intended to serve the public at large. Does the ADA require the state to permit/authorize only structures that comply with ADA requirements?

Please respond in writing to the above address. If you have any questions, please contact me at the above phone number. Thank you for your prompt response and your attention in this matter.

Sincerely,

(b)(6)
01-02420

202-PL-386

Ms. Anna G. Trachtenberg
Sayler Inc.
60 East Third Avenue #302
San Mateo, California 94401

Dear Ms. Trachtenberg:

This letter is in response to your inquiry about the application of the Americans with Disabilities Act (ADA) to common areas within condominium and townhouse complexes. We regret the delay in responding.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist you in understanding the ADA's requirements. However, it does not constitute a legal interpretation or legal advice, and it is not binding on the Department.

Title III of the ADA does not apply to strictly residential dwellings. However, common areas within residential buildings or complexes, such as rental offices or club houses, that function as one of the ADA's twelve categories of places of public accommodation and that are not intended for the exclusive use of residents and their guests constitute "places of public accommodation" within the meaning of title III, and must comply with the ADA. Sales or rental offices, for example, are by their nature open to the public and would be considered service establishments within the meaning of title III. A club house, if not restricted to residents and guests, would be a place of public gathering covered by title III. The parking, entrances, access routes, and bathrooms serving the place of public accommodation would also be subject to title III requirements.

cc: Records, Chrono, Wodatch, Magagna, Breen, Novich, MAF, FOIA
Udd:Novich:Policy:386

01-02421

I have enclosed the regulation promulgated under title III of the ADA, which governs places of public accommodation, such as the common areas mentioned above, and commercial facilities. I hope this information is helpful to you.

Sincerely,

Joan A. Magagna
Deputy Chief
Public Access Section

Enclosure
Title III regulation

01-02422

SAYLER INCORPORATED
Marketing/Design Consultants

November 5, 1992

Office on the Americans with Disabilities Act
Civil Rights Division
U. S. Department of Justice
Washington, DC 20530

Dear Official:

This firm serves as design and marketing consultants to homeowner associations of condominiums and planned developments, and as such we are concerned about the applicability of the ADA.

Can you please give me an answer to this question:

Are condominium and townhouse developments covered by Title III of the ADA?

It is not clear to me whether the common areas, clubhouse and recreational facilities of such developments would be considered "commercial facilities" and/or "places of public accommodation." (I assume that the individual units would not be covered).
What is your agency's interpretation on this?

An early response would be much appreciated.

Sincerely,

SAYLER INCORPORATED

Anna G. Trachtenberg
01-02423

T. 6-15-93

DJ 202-PL-338

JUN 25 1993

Michael A. Cassavoy, P.E., R.A.
Principal
CID Associates, Inc.
108 Lincoln Street
Boston, Massachusetts 02111

Dear Mr. Cassavoy:

This letter responds to your correspondence regarding the application of the Americans with Disabilities Act (ADA) to the requirement for areas of rescue assistance in new construction.

The ADA authorizes the Department of Justice to provide technical assistance and information to individuals and entities who have questions about the Act or the Department's Standards for Design. This letter provides informal guidance to assist you in understanding and complying with the ADA Standards for Accessible Design. However, this technical assistance should not be viewed as legal advice or a legal opinion about your rights or responsibilities under the ADA.

The new construction scoping requirements for accessible means of egress in section 4.1.3(9) of the standards allow areas of rescue assistance to be included as part of an accessible means of egress from occupiable levels above or below a level of accessible exit discharge. In a multi-story building, it may be impossible to provide means of egress independently accessible by persons unable to use stairs. Areas of rescue assistance allow such individuals to remain in a protected area for a short time awaiting the assistance of trained emergency personnel. The standards allow an exemption to the requirement for areas of rescue assistance in buildings equipped with a supervised automatic sprinkler system. This exemption does not affect the requirement that accessible means of egress equal in number to exits required by local regulations be provided from an accessible exit discharge level.

We hope this information is helpful to you. Please contact

the Public Access Section any time you have questions or need information. The Department maintains a telephone information line to provide technical assistance regarding the rights and

cc: Records, Chrono, Wodatch, Breen, Harland, FOIA, Friedlander
n:\udd\mercado\plcrtltr\cassavoy-ewh

01-02424

obligations of individuals, businesses, agencies, and others covered or protected by the ADA. This technical assistance is available by calling 202-514-0301 (voice) or 202-514-0383 (TDD) between 1:00 p.m. and 5:00 p.m., Monday through Friday.

Sincerely,

John L. Wodatch
Chief
Public Access Section

01-02425

Michael A. Cassavoy
James G. Jacobs
John F. King, jr.
George J Manos

Principals
CID ASSOCIATES, INC

May 5, 1993

Ms. Ellen Harland
Office on ADA
U.S. Department of Justice
P.O. Box 66118
Washington, D.C. 20035-6118

Re: ADA Tech. Assistance
Section 4.1.3, Paragraph 9

Dear Ms. Harland:

I am writing to you on behalf of Mr. Michael Cassavoy. Through one form or another of miscommunication, a letter (See attached copy), which Mr. Cassavoy wrote to the Department of Justice on September 4, 1992, has not been responded to in writing. Evidently, you and Mr. Cassavoy spoke on October 27, 1992 and you provided an opinion on the subject in question. We would be very thankful if you would provide an answer or answers in writing at your earliest convenience as this matter is of great concern to us and our clients.

Respectfully,

CID ASSOCIATES, INC.

David F. Potenza
Manager Facilities Services

C2020081/krj

01-02426

Michael A. Cassavoy

James G. Jacobs
John F. King, jr.
George J Manos

Principals
CID ASSOCIATES, INC

September 4, 1992

Office on ADA
Civil Rights Division
U.S. Department of Justice
P.O. Box 66118
Washington, D.C. 20035-6118

Re: ADA Tech Assistance
Section 4.1.3 Paragraph (9)

To Whom It May Concern:

We are interested in receiving an interpretation relative to the exception statement of Section 4.1.3, Paragraph (9) ["EXCEPTION: Areas of rescue assistance are not required in buildings or facilities having a supervised automatic sprinkler system."].

Does the exception statement pertain to the egress requirement found in the first sentence of Paragraph (9)?

Are we to understand that the exception pertains to only the areas of rescue assistance requirement found in Paragraph (9)?

More specifically, concerning buildings that have sprinkler systems, do we need to make all required egress exits that are on accessible levels, accessible or does the exception eliminate the requirement?

Any clarification regarding this particular Section's exception statement would be very much appreciated.

Very truly yours,
CID Associates,

Michael A. Cassavoy, P.E.R.A.
Principal

01-02427

T. 6-23-93
(b)(6)

JUN 28 1993

Ms. Gail Barmoy
Safe Watch
301 Mariner Drive
Tarpon Springs, Florida 34689

Dear Ms. Barmoy:

Attorney General Reno has asked me to respond to your recent letter extending your congratulations on her appointment and recommending an amendment to the Department's regulation implementing the Americans with Disabilities Act (ADA). I am sure that you understand that it is not possible for the Attorney General to respond personally to all of the letters that she receives. However, Attorney General Reno wants you to know that she appreciates your taking the time to write to express your good wishes.

Your letter recommends that the Department of Justice amend its regulation implementing title III of the ADA to require the provision of devices (such as the "DoorScope" that you manufacture) that will enable people with disabilities to make a visual identification of visitors in places of transient lodging, such as hotels or motels.

Rulemaking authority under title III (public services) and title II (public accommodations) of the ADA is divided between the Architectural and Transportation Barriers Compliance Board (Access Board) and the Department of Justice. The ADA requires the Access Board to develop the minimum guidelines and requirements for accessible design that will apply to the new construction or alteration of buildings and facilities that are subject to the ADA. The Department of Justice is required to adopt enforceable standards that are consistent with the guidelines published by the Access Board.

Pursuant to these requirements, the Department has adopted the Standards for Accessible Design, which are published as Appendix A to the Department's regulation implementing title III. The Standards were originally published by the Access Board as the ADA Accessibility Guidelines. The Department would on its

own initiative only make changes to the Standards that are

cc: Records, Chrono, Wodatch, Blizard, McDowney FOIA, Friedlander
n:\udd\blizard\control\barmoy

01-02428

consistent with the Access Board's Guidelines. If the Access Board amends its Guidelines, the Department would then amend the Standards to make them consistent with the Guidelines.

We note, from your letter, that you have already been in contact with the Access Board. Any follow-up you may wish to pursue with regard to that agency's conduct of an additional rulemaking procedure on this issue should be addressed to:

The Honorable Kathleen K. Parker
Chairperson
U.S. Architectural and Transportation
Barriers Compliance Board
1331 F Street, N.W., Suite 1000
Washington, D.C. 20004-1111

I hope that this information is helpful to you.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

01-02429

MERLE & GAIL BARMOY
301 Mariner Drive, Tarpon Springs, FL 34689

SAFEWATCH

March 15, 1993

Janet Reno, Esq.
Attorney General of the United States
10th and Pennsylvania Avenue, N.W.
Washington, D. C. 20004

RE: ADA

Dear Attorney General Reno:

CONGRATULATIONS !!!!!!!

We wish to extend our very best to you as you begin another phase of public service. We applaud your integrity and have confidence that with the Lord's help, you will continue to have high standards and will be an outstanding Attorney General.

Because the Justice Department has jurisdiction over ADA compliance we are writing you to let you know of our concern and experience regarding the ADA's lack of provision.

We are wearing two (2) different hats as we write to you. The ADA law affects us, as well as many others.

First, XX . We travel often and as we stay in various motels and stay in rooms designated for the handicapped, we find most rooms ill-prepared for the wheelchair bound guest as far as providing viable visibility for the guest of visitors to the room. Sometimes there is the traditional "peephole" placed at eye level for the standing guest and sometimes there is the same type of "Peephole" placed at wheelchair eye level (the view from here is the abdominal area of the visitor!). Because they are typically only 1/2" in diameter and more times than not they give only a limited and distorted view, plus from a wheelchair, they are practically useless, we feel the ADA law should make provision for a device that will enable the disabled guest to see much more clearly who their visitor is. This could also be placed at eye level for those in a standing position in all the disabled rooms for the safety and convenience of all disabled guests.

Our second hat is related to our business. We have been selling and installing for over two years a product called "DoorScope". We are pleased to enclose a Product Information sheet and a color brochure for your review. When the ADA was made law, we were excited because we knew our product would bean answer for the disabled in a variety of applications. As we reviewed the law, however, we were extremely disappointed to find no provision made for visual identification in terms of specific law or guideline. In our experience calling on the hotel/motel industry, we continually hear that because there is no specific requirement, there is no impetus to spend dollars not required by law. Obviously, this is a short-term perspective and though it will save owners some current dollar outlay, the safety and well-being of the guests appears not to be a consideration for those hotel/motel owner.

We have written to the Architectural and Transportation Barriers Compliance Board. We appreciate their role of input to facilitate the ADA in its efforts to provide equal access and convenience as well as providing guidelines and recommendations for ensuring the safety of the disabled.

We understand a specific product can't be recommended. We are most interested in having provision made that will mandate providing visual identification guidelines which will result in the safety of the disabled.

We do not mean to limit the application of safe visual identification only to the hotel/motel industry.

We appreciate your consideration in this matter.

Sincerely,

SAFE WATCH

GEB:gb

Enclosures:

01-02431

MERLE & GAIL BARMOY
301 Mariner Drive, Tarpon Springs, FL 34689
(813) 934-8708

SAFE WATCH

P R 0 D U C T I N F 0 R M A T I 0 N

The DOORSCOPE is a newly patented safety and security device that renders the conventional door viewer obsolete. A person using the DOORSCOPE can actually stand at a distance of up to seven (7) feet from inside the door and acquire a true image of the visitor waiting outside. Children and the handicapped are able to benefit from the DOORSCOPE in that a person can be 12 to 15 inches below or on either side of the product and still see the outside. For added, security, the visitor is unable to look through the DOORSCOPE to see inside. Safe Watch is unaware of any product that might compete with the DOORSCOPE with the exception of a video surveillance camera at many times the price of the DOORSCOPE.

Safe Watch in Tarpon Springs has distribution rights making the product available to those states east of the Mississippi. GP Visions of Orange California has been awarded the distribution rights making the product available to those states west of the Mississippi.

The characteristic that differentiates the DOORSCOPE from other door viewing devices is that the DOORSCOPE utilizes a real "prism" image (less than 5% to 7% concave), thereby projecting a true image to the user. Due to the clarity provided by his method, even elderly and visually impaired can more accurately identify visitors by allowing the use of both eyes.

The DOORSCOPE has been fire rated by a Warnock Hersey International report. During the first quarter of 1991, Warnock Hersey conducted a 60 minute fire test. The DOORSCOPE successfully passed this test and is not the only door viewer on the market with this rating. The DOORSCOPE is WHI authorized for use in wood doors with the following ratings: 1/3 hr. 3/4 hr., and 1 hr. as tested to ASTM E-152, CAN 4-S104 (ULC-S104), NFP252, UBC 43-2 and UL-10(b) Fire Door Test Standards.

The DOORSCOPE is manufactured incorporating the latest technology in advanced optics. In a series of two prisms and two plano-convex lenses the DOORSCOPE provides a super-wide angle of view, producing 132 degrees of horizontal visibility. The product is available in ABS-Resin plastic silver aluminum or a bronze anodized unit.

The DOORSCOPE is easy to install. The tools necessary to install the DOORSCOPE are a standard power drill and a 2-3/8" hole saw and 1/8" drill bit. The average time required for first time installation is approximately ten (10) minutes. The product is sold with easy to follow

instructions for installation in either solid wood, hollow-core or metal doors.

01-02432

JUN 28 1993

The Honorable J. Bennett Johnston
United States Senate
136 Hart Senate Office Building
Washington, D.C. 20510-1802

Dear Senator Johnston:

This letter is in response to your inquiry an behalf of your constituents, the doctors at the Goodwood Woman's Center. The physicians have asked whether they are required by the Americans with Disabilities Act to provide interpreters to their patients with hearing impairments when the cost of doing so exceeds the fee charged for an office visit.

The Americans with Disabilities Act authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist your constituents in understanding the Act's requirements. It does not, however, constitute a legal interpretation, and it is not binding on the Department.

The Americans with Disabilities Act requires physicians to furnish appropriate auxiliary aids and services where necessary to ensure effective communication with individuals with disabilities. A physician may not impose a surcharge on any particular individual with a disability to cover the costs of measures, such as providing auxiliary aids, that are required by the Act. The applicable regulatory provisions appear in sections 36.301(c) and 36.303 of the enclosed title III regulation, at pages 35596 and 35597, respectively. Also enclosed are the Department's Title III Technical Assistance Manual and the January 1993 Supplement to the Manual, which may provide further assistance to your constituents. Pertinent discussion may be found in the Technical Assistance Manual at pages 22 (surcharges) and 25-28 (auxiliary aids)"

cc: Records; Chrono; Wodatch; McDowney; Bowen; Miller; FOIA, MAF
\udd\millerc\policy\johnson.cng

Under section 36.301(c) of the regulation, the cost of an interpreter must be absorbed by the doctor in circumstances when an interpreter is necessary. However, as provided in section 36.303(a), a doctor is not required to provide any auxiliary aid that would result in an undue burden, i.e., significant difficulty or expense. The flexibility of the auxiliary aids requirement, the undue burden limitation, and the ability to spread costs over all patients should minimize any burden on a medical provider.

What constitutes an effective auxiliary aid or service will depend upon the unique facts of each situation, including the length and complexity of the communication involved. For example, in some instances a doctor may satisfy the auxiliary aid or service requirement by using a note pad and written materials where a deaf patient is making a routine office visit. By contrast, a discussion of whether to undergo major surgery will generally require the provision of an interpreter. Other situations may also require the use of interpreters to ensure effective communication, depending on the facts of the particular case. Further discussion of this point may be found on page 35567 of the enclosed regulation.

I hope this information will be helpful to you in responding to your constituents.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

Enclosures

01-02434

GOODWOOD
WOMAN'S CENTER
OBSTETRICS AND GYNECOLOGY
7662 Goodwood Blvd., Suite B-201 o Baton Rouge, LA 70806
Office (504) 925-8261 o Ans. Service (504) 927-1300

February 19, 1993

Senator J. Bennett Johnson
United States Congress
Washington, D.C. 20510-1802

Dear Senator Johnson:

We are writing you over concerns regarding the recently passed Americans with Disabilities Act. More and more today it seems that laws and regulations are being passed by government with little regard to the actual affects of these laws when put into practice. The above stated Act requires that we provide a person fluent in sign language for all hearing impaired patients. As we have recently learned the cost of providing such an interpreter is a minimum of $60.00

When seeing an obstetrical patient covered by Medicaid we are reimbursed $27.00. For private pay patients the fee is $33.00. Thus for each hearing impaired obstetrical visit, we will lose from $27.00 to $33.00 not including overhead costs. Where we as physicians are often asked or required to provide our services free of charge, we are now being required to pay to care for patients.

Prior to the act we have always provided medical care for the hearing impaired with little difficulty, however, now this is becoming financially impossible. With the rising costs of medicine being a real concern today, regulations such as the Americans with Disabilities Act will only serve to make matters worse.

Sincerely,

Michael T. Perniciaro, M.D. Debra A. Baehr, M.D.

Renee S. Harris, M.D. Kathy H. Guidry, M.D.

Susan F. Puyau, M.D.

01-02435

T. 6-17-93

Control No. X93052009925

The Honorable Ike Skelton
Member, U.S. House of Representatives
4th District
514 B North 7 Highway
Blue Springs, Missouri 64014

Dear Congressman Skelton:

This letter is in response to your inquiry on behalf of your constituent, Mr. W.E. Olson, Sr., concerning the requirements of title III of the Americans with Disabilities Act (ADA), 42 U.S.C. 12101 et seq., and this Department's regulation implementing title III, 28 C.F.R. Part 35.

Mr. Olson wrote to the Department of Justice on September 29 and December 1, 1992, asking, among other things, for interpretations of the ADA requirements for the design and construction of accessible plumbing elements. Following Mr. Olson's second letter, the Civil Rights Division's Public Access Section convened a meeting at which Mr. Olson (and other plumbing industry representatives selected by Mr. Olson) met with senior staff members to discuss the issues raised in Mr. Olson's letters. Section staff promised to confirm the discussions at the meeting with a written response. This response was sent recently to Mr. Olson. A copy is enclosed for your information. We regret the delay in sending this response.

When Mr. Olson initially requested interpretations of the ADA requirements from this Department, we assumed that he was merely seeking clarification of the standards for accessible design. Because the ADA authorizes the Department of Justice to provide technical assistance to individuals and entities that have rights or responsibilities under the Act, we offered to meet with Mr. Olson and the other industry representatives to address plumbing manufacturers' concerns. The technical assistance that we provided at that meeting and in our subsequent response to Mr. Olson's letters is informal guidance, not a legal interpretation by the Department, and it is not binding on the Department

Over the course of time, it has become clear to us That

Mr. Olson is not seeking an explanation of the rule. His true concern is that some of the products he manufactures may not conform to the rule's specifications and therefore could not be

cc: Records, Chrono, Wodatch, Blizard, McDowney FOIA
Friedlander
n:\udd\mercado\congltrs\skelton.jlb
01-02436

installed in buildings subject to the Act. Therefore, he wants the Department of Justice to issue an "interpretation" of the ADA standards that will permit covered entities (e.g., building owners and contractors) to continue to install, as" accessible," products that do not comply with the ADA regulation. Neither the ADA nor the Administrative Procedure Act permit the Department to modify a regulation in this manner.

The ADA, like other Federal civil rights laws, is enforced through compliance reviews, complaint investigations, and litigation initiated by the Department of Justice. (It may also be enforced through litigation initiated by private parties.) The ADA does not authorize the Department of Justice, or any other Federal agency, to function as a "building department" to review plans, to issue permits, or to provide "interpretations" of the standards. The ADA, like all other Federal civil rights laws, requires each covered entity to use its best professional judgment to comply with the applicable regulations.

The Administrative Procedure Act, which establishes the formal requirements for issuing Federal regulations, requires amendments to regulations to comply with the same procedures as the initial publication. That is, proposed changes must be made through a rulemaking proceeding that includes public notice, the opportunity for public comment, and the completion of any revisions to the proposal that are deemed to be required after public comment.

We have informed Mr. Olson, and others in the plumbing industry, that the appropriate means of seeking changes in the ADA requirements is to address a petition for further rulemaking to the Architectural and Transportation Barriers Compliance Board (Access Board), which is the Federal agency designated by the ADA to develop the guidelines for the accessible design of buildings and facilities subject to the ADA. The Department of Justice is required by the ADA to adopt enforceable standards that are consistent with the Access Board's guidelines.

I hope that this information is helpful to you in responding to your constituent.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

Enclosure

01-02437

CRANE
PLUMBING

April 27, 1993
via facsimile to 1-816-228-4814

FIAT
PRODUCTS

Congressman Skelton
514 B N. 7 HWY.
Blue Springs, MO 64014

Reference: ADA/DOJ Interpretation Requests
Dear Congressman Skelton:

I would like to request your help in securing interpretations from the ADA Access Board and/or DOJ in regards to the ADA ("Americans with Disabilities Act").

The following pages cover my attempts to deal directly with the ADA-Access Board and the Dept. of Justice (DOJ) in trying to resolve these areas.

The areas of concern apply to plumbing fixtures which we manufacture at various locations all over the country.

The whole plumbing fixture industry is in a state of confusion because of the different interpretations that are being given by various agencies (i.e.: federal, state, regional, municipalities, etc.) on the same ADA Law verbage.

The way the ADA is currently being strictly interpreted there is not a premanufactured (acrylic/gel-coat) shower stall that meets the ADA.

Also the ADA-Access Board nor DOJ will answer the question of whether they will accept the revised CABO/ANST A117.1-1992 standard entitled "American National Standard for Accessible and Usable Buildings and Facilities." The ADA-Access Board was on the Committee that revised the

CABO/ANSI A117.1-1992 which was published in December 1992. Some of my questions would be answered by ADA/DOJ accepting the verbage contained in the new CABO/ANSI A117.1.

All of the pre-March 10, 1992 information was sent to or hand delivered or both to both the ADA-Access Board and the Dept. of Justice. The first letter written was acknowledged by the DOJ and they had promised to respond "expeditiously." I feel that answers to my letters should not take (7) seven months much less after seven months not even to know when you will receive an answer.

(Continued Page 2)

CR/PL, INC
P.O. Box 389
Nevada, MO. 64772
417-667-6048
01-02438

If further information is needed or questions arise on the above, please let me know.

Thank you.

Sincerely,

CR/PL, L.P.

W. E. Olson, Sr.
Engineering Supervisor

WEO/nc

cc: R. L. Beidler - Evanston
R. L. Klaess - Evanston
M. Klimboff - Cincinnati
P. L. Thompson - Somerset

(Attachmt. 16 pg.)
01-02439

3-10-93 - Called John Murdoch 1-202-272-5434 ext. 733- received answering machine - left message to return my call.

3-10-93 - Faxed Mr. Murdoch my 3-10-93 letter. - Received call from Mr. Murdoch and talked from 4:20 pm to 4:45 p.m. about areas of concern in my letters. Both to work for another ADA/DOJ and Plumbing Industry Meeting.

3-12-93 - Called Mr. Murdoch - received answering machine 2:15 PM and left message to return my call.

3-15-93 - 12:48 PM - Talked with Mr. Murdoch - he is still trying to set up meeting during first week of April.

3-18-93 - Received call from Mr. Murdoch - he is still trying to set up meeting.

3-26-93 - Received call from Mr. Murdoch - I was on vacation.

3-29-93 - Called Mr. Murdoch - received answering machine - left message for him to return my call.

3-30-93 - Received call from Mr. Murdoch - he stated that Ms. Irene Bowen of DOJ, according to his boss Mr. David Capozzi of ADA, was to respond to my 9-17 and 9-29-92 letters - no time table was given. No meeting date could be set until letter was sent to DOJ. Send Mr. Murdoch a copy of ANSI Z124.2.

4-19-93 - Called Mr. Murdoch - received answering machine - left message for him to return my call.

4-23-93 - Called DOJ - left messages for Ms. Irene Bowen and Mr. John Wodatch to return my call.

4-27-93 - Called Ms. Irene Bowen - left message to return my call.

4-27-93 - Received call from Ms. Janet Blizard - DOJ stating answer to my letters were in review - could not give any idea of when - I received impression that no letter was being written.

4-27-93 - Called Mr. Murdoch - received answering machine - left message to return my call.

4-27-93 - Called Mr. David M. Capozzi of ADA-Access Board 1-202-272-5434 ext. #722 - not there - left message to return my call.

01-02440

JUL 6, 1993

The Honorable Dave Camp
Member, U.S. House of Representatives
135 Ashman
Midland, Michigan 48640

Dear Congressman Camp:

This letter is in response to your inquiry on behalf of the Gordonville United Methodist Church of Midland, Michigan, Which seeks information on any available funding to assist the Church in installing an elevator to comply with the Americans with Disabilities Act (ADA).

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities that have rights or responsibilities under the Act. This letter provides informal guidance about the application of the ADA; however, this technical assistance does not constitute a determination by the Department of the rights or responsibilities of any individual under the ADA, and it is not binding on the Department.

No Federal funds have been appropriated to cover the cost Of ADA compliance by covered entities, even though the Internal Revenue Code, as amended in 1990, does allow a deduction of up to $15,000 per year for expenses associated with the removal of qualified architectural and transportation barriers and permits eligible small businesses to receive a tax credit for certain costs associated with ADA compliance. However, it well may be that this has no relevance to the Church because religious entities are exempt from the requirements of title III of the ADA.

The exemption covers all of the activities of a religious entity, whether religious or secular. In addition, a private, nonreligious entity operating a place of public accommodation in a religious entity's space. free of charge is also exempt from

cc: Records; Chrono; Wodatch; Blizard; McDowney; FOIA. MAF.
\udd\blizard\control\camp

title III's requirements. On the other hand, a private, nonreligious tenant operating a place of public accommodation in a religious entity's facility is subject to title II if a lease exists under which rent or other consideration is paid.

If the Church rents its facility to a private, nonreligious entity that operates a place of public accommodation (e.g., a day care center) in the Church's facility, the entity operating the place of public accommodation is required to comply with title III. The Church, however, remains exempt, even if its tenant is covered. That is, the title II obligations of a landlord for a place of public accommodation do not apply if the landlord is a religious entity.

For your information, I have-enclosed copies of the Department of Justice regulation implementing title III of the ADA and the Department's Title II Technical Assistance Manual. I hope that this information is helpful to you in responding to your constituent.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

Enclosures

01-02442

Congress of the United States
House of Representatives
Washington, DC 20515-2204

May 28, 1993

Mr. Christopher Rizzuto
Congressional Liaison
United States Department of Justice
633 Indiana Avenue NW
Washington, D.C. 20531

Dear Mr. Rizzuto:

I am writing on behalf of the Gordonville United Methodist Church in Midland, Michigan who have contacted my office for assistance.

The Church is interested in locating funding which would assist them in the installation of an elevator so that they are in compliance with the ADA. I would appreciate any information you can provide on programs offered through then Department of Justice to assist them. You may direct your reply to me at my Midland District Office.

Thank you for your time and attention in this matter.

Sincerely,

DAVE CAMP
Member of Congress

DLC/sih

cc: Ms. Ginger Kruger
01-02443

JUL 2 1 1993

The Honorable Charles E. Grassley
United States Senate
135 Hart Senate Office Building
Washington, D.C. 20510-1501

Dear Senator Grassley:

This letter is in response to your inquiry on behalf of your constituent, the Maytag Company, which inquired about the application of the Americans with Disabilities Act (ADA) to washing machines. We apologize for any inconvenience caused by the delay in answering your constituent's request for a policy interpretation.

Your constituent's letter asked several questions about the applicability of the ADA to washing machines. It asked whether washing machines must comply with reach range requirements found in the Standards for Accessible Design (the "Standards"), and, if so, how many washing machines must meet those requirements. It also asked whether requirements found in the Standards may be waived if assistive devices are provided on request. Third, it asked whether the Standards require Braille lettering on laundry and vending equipment. Finally, it asked which accessibility standards may be used by university dormitories. These questions raise complex issues under the ADA and necessitate this unusually long and detailed response.

I have enclosed five documents that are referred to in the discussion below: the Americans with Disabilities Act Accessibility Guidelines (ADAAG) and its preamble, issued by the Architectural and Transportation Barriers ompliance Board (ATBCB) (these guidelines were adopted by the Department of Justice as the Standards); the regulation promulgated by the Department of Justice under title III of the ADA, which includes the Standards; the regulation promulgated by the Department of Justice under title II of the ADA; the Uniform Federal

cc: Records, Chrono, Wodatch, McDowney, Bowen, Novich, FOIA,
MAF
Udd:Novich:Congress:Grassley

01-02444

2019

Accessibility Standards (UFAS); and proposed accessibility guidelines under title II of the ADA, issued by the ATBCB. After a period of notice and comment, final accessibility guidelines for title II facilities will be issued. Until the Department of Justice adopts final standards under title II, the current title II rule provides that either the Standards or the requirements found in UFAS may be used for title II facilities.

The extent to which the ADA requires washing machines to adhere to the Standards' reach range requirements depends on several factors: whether the facility in which they are located is covered by title III or title II of the ADA, whether such washing machines are necessary to the full and equal enjoyment of a facility's services by persons who use wheelchairs, whether a facility is being newly constructed or altered.

Title III of the ADA applies to places of public accommodation and commercial facilities. The Standards, which were developed as the accessibility requirements for new construction and alteration of title III facilities, contain requirements for the accessibility of washing machines, including the reach range requirements noted in your constituent's letter. Title II of the ADA applies to facilities owned or operated by state or local government entities. As noted above, entities covered by title II may apply either the Standards or UFAS to their facilities until final standards are adopted under title II.

For your convenience, Part I of this letter summarizes the way in which the ADA requirements apply to washing machines in covered facilities and programs. Parts II through V address in detail the requirements with respect to title III, title II, Braille controls, and university dormitories.

I. Summary

The ADA does not impose an obligation on manufacturers of washing machines to produce machines of a particular design. However, the law may require that facilities and programs covered by the ADA ensure accessibility of washing machines, depending on several factors. First, in facilities covered by title III, sections 36.201 and 36.202 of the title III regulation require a place of public accommodation to make its services accessible to persons with disabilities. To do this, the public accommodation must either provide a sufficient number of accessible washing machines, or it may provide assistive devices, so that persons with disabilities may fully and equally enjoy the services offered. Second, also in facilities covered by title III, places

of public accommodation and commercial facilities must follow the requirements of the Standards, including reach range requirements, when installing fixed or built-in machines in a newly constructed or an altered facility. In new construction and

alteration, the Standards must be followed, and assistive devices are not acceptable. In existing places of public accommodation that are not otherwise being altered, built-in or free- standing machines must be made accessible, using the Standards and its reach range requirements, if to do so would be readily achievable. If it would not be readily achievable, alternatives that are readily achievable, such as assistive devices, may be used.

In facilities covered by title II, the Standards, which prescribe maximum reach ranges, or UFAS, which requires front-loading machines, must be followed in new construction or alterations, and assistive devices are insufficient for ADA compliance. In existing facilities, covered entities must provide access to washing machines that are part of an offered program, but they may do this by using assistive devices.

Braille controls are not required for equipment under the new construction or alteration Standards. However, Braille controls are required in places of public accommodation covered by title III, if necessary to provide effective communication with persons with disabilities, unless it would be an undue burden to provide them. They may also be required under sections 36.201 or 36.202. Under title II, Braille controls are required if necessary to provide communication to those with disabilities that is equally as effective as the communication provided to others, unless to do so would pose an undue burden.

Finally, privately owned university dormitories are covered by title III, which uses the Standards; State or locally owned university dormitories are covered by title II, which currently uses the Standards as adopted by title II or UFAS; and universities that receive Federal funds, which can fall into either of the other two categories, are covered by the Rehabilitation Act, and must follow UFAS.

II. Entities Covered By Title III

Title III of the ADA covers laundry facilities in two ways. First, sections 36.201 and 36.202 of the title III regulation obligate places of public accommodation to make their services fully and equally enjoyable by persons with disabilities. Second, the title III provisions for new construction and alteration, which are applicable to fixed machines only, and for

barrier removal, which are applicable to washing machines regardless of whether they are fixed or free-standing, require machines to be accessible to persons who use wheelchairs. This requirement is not related to the inquiry concerning whether accessible washing machines are necessary to the full and equal enjoyment of services.

A. Coverage under sections 36.201 and 36.202

Sections 36.201 and 36.202 of the title III regulation prohibit public accommodations from denying persons with disabilities "the full and equal enjoyment" of the services and facilities offered. See title III regulation and preamble, 36.201 and 36.202, at pages 35595 and 35555-56. For example, a laundromat or hotel guest laundry room may need to provide some washing machines with lower controls in order to afford persons who use wheelchairs an equal opportunity to benefit from its services and facilities, if the lack of accessible washing machines effectively denies such persons a full and equal opportunity to benefit from the facility's services. See preamble to title III regulation, at page 35572. These sections do not require a specific number of accessible machines, only that enough machines be accessible for persons with disabilities to have a full and equal opportunity to enjoy a facility's services.

Sections 36.201 and 36.202 apply to all places of public accommodation, such as laundromats or homeless shelters, whether newly constructed, altered, or neither; but they do not apply to commercial facilities, such as corporate office buildings. Although these sections require that the service be made accessible, they do not require that washing machines meet the Standards. Therefore, a place of public accommodation may satisfy these sections' requirements through alternative means, such as assistance provided on request. Any alternative means, however, must afford persons with disabilities a full and equal opportunity to enjoy the service. Thus, if personal assistance is offered, it must be available at all times, and it must be as effective for persons with disabilities as the service is for other persons.

B. Coverage under new construction, alteration, and barrier removal provisions

In addition to any obligations under sections 36.201 and 36.202, all places of public accommodation and commercial facilities must comply with ADA requirements for new construction

of facilities and alterations to existing facilities. Places of public accommodation must also comply With ADA requirements for barrier removal from existing facilities not otherwise being altered. The Standards are the accessibility requirements applicable to this area of coverage, but they apply only to equipment that is built into the structure of a building -- attached to a wall or floor -- not equipment that is free-standing. See preamble to ADAAG, at page 35415.

The Standards include maximum allowable reach ranges in accessible areas and requirements for controls and operating mechanisms. Section 4.2 provides that an object over which a person must reach, such as a washing machine, may be no higher than 34" from the floor to be accessible. Section 4.27 addresses clear floor space, reach, and operation of controls. The Standards do not restrict the types of machines that can be used. However, ANSI A117.1-1980 and 1986, UFAS, and other accessibility standards require the use of front-loading machines; research has demonstrated that they can be used more readily by some people with disabilities, because the opening for loading and unloading clothes is visible and reachable from a wheelchair. Under the Standards, top-loading machines are permitted, as long as they can be operated within the requirements for reach and controls. This would include reach to load and unload clothes, as well as reach to the controls and/or coin mechanism.

The extent to which a covered entity may deviate from the Standards depends on whether the covered facility is being newly constructed, altered, or neither. In new construction of all facilities covered by title III, the Standards must be adhered to strictly, unless to do so would be structurally impracticable or equivalent facilitation is provided. See section 36.401(c) of the regulation (pages 35599 and 35600) and the preamble (pages 35557 and 35589); sections 2.2, A2.2, and 4.1.1(5)(a) of the Standards and title III regulation preamble, at pages 35607, 35611, 35674, and 35577. See also preamble to ADAAG at pages 35413 and 35415. The "structurally impracticable" exception is a narrow exception that would not apply to washing machines. When alterations are performed in covered facilities, the Standards must be followed, unless to do so would be technically infeasible. Compliance is technically infeasible only if it would require the removal of a load-bearing member of the essential structural frame of a building, or if other existing physical or site constraints prohibit compliance. See Standards 4.1.6(j) and title III regulation preamble, at pages 35617,

35600, and 35581; see also preamble to ADAAG at page 35428. Thus, in new construction and alteration of facilities, in most cases, the accessibility requirements must be followed for built-in washing machines. While assistive devices may also be offered, they do not relieve the covered entity from compliance with these requirements.

In existing places of public accommodation covered by title III that are not otherwise being altered, the ADA requires that architectural barriers to access be removed where the removal is readily achievable. See title III regulation and preamble, 36.304, at pages 35597 and 35568-70. This requirement does not apply to commercial facilities. Readily achievable means capable of being done without much difficulty or expense. See title III regulation and preamble, 36.104, at pages 35594 and 35553-54. Thus, under barrier removal, washing machines must be modified if

it is readily achievable to do so. Even free-standing machines may need to be made accessible to persons who use wheelchairs, because barrier removal obligations are not limited to built-in equipment.

If removing barriers from existing facilities is not readily achievable, the ADA requires that alternatives to removing barriers be undertaken, as long as those alternatives are readily achievable. See title III regulation and preamble, 36.305, at pages 35596 and 35570-71. In such existing facilities, then, controls on washing machines must be modified to be within an accessible reach range for persons who use wheelchairs, if such modification is readily achievable. Assistive devices that are provided on request may be sufficient for ADA compliance in this context only if modifying the machines is not readily achievable.

In new construction and alteration of facilities covered by title III, the number of fixed or built-in washing machines that must meet the reach range and other requirements of the Standards depends on the type of facility in which the machines are located. For transient lodging in hotels, motels, or dormitories, sections 9.1 and 9.2.2 of the Standards require all fixed or built-in facilities located in public and common use areas, and fixed or built-in facilities located within sleeping units that are required to be accessible, to comply with accessibility standards. In social service center establishments, such as shelters or group homes, section 9.5.1 requires at least one of each type of fixed or built-in machine in common areas to be accessible. As noted above, these standards apply strictly to new construction and alteration of covered facilities. In existing places of public accommodation not covered by sections 36.201 and 36.202, these standards must

be met if to do so would be readily achievable.

III. Entities covered by title II

Title II of the ADA applies to programs and facilities owned or operated by State or local government entities or instrumentalities. New construction and alteration of title II facilities must follow either the Standards or UFAS, until final standards are adopted under title II. In existing title II facilities, responsible entities must ensure that each program, when viewed as a whole, is accessible to persons with disabilities. Structural changes are not necessarily required under this standard, if programs can be made accessible in other ways. See title II regulation and preamble, 35.150, at pages 35719-20 and 35708-09. Therefore, under the "program access" standard, use of assistive devices may result in compliance with the ADA as long as the assistive devices function to make that aspect of the program accessible to persons with disabilities.

IV. Braille controls

Under title III, the extent to which washing machines are required to have Braille controls depends on whether the facility in which they are located is a place of public accommodation or a commercial facility. Public accommodations are required by section 36.303 of the title III regulation to furnish auxiliary aids and services where necessary to ensure effective communication with persons with disabilities, unless doing so would pose an undue burden or would fundamentally alter the service offered. See title III regulation and preamble, S 36.303, at pages 35597 and 35565-68. Therefore, a place of public accommodation that offers washing machines with words on them must provide an effective way of communicating any words on the machine to persons with vision impairments. Braille lettering is one such method of communication. However, the Braille lettering need not be built into the equipment controls; equipment controls can be Brailled by templates or adhesive labels. Braille lettering may also be required under sections 36.201 or 36.202 of the rule, as discussed above in part II.A. Commercial facilities are not required to modify washing machines to have Braille lettering, because commercial facilities are not covered by the auxiliary aids and services requirements or by sections 36.201 and 36.202.

In facilities covered by title II, auxiliary aids and services must be provided to ensure communication with persons with disabilities that is equally as effective as communication with others, unless to do so would pose an undue burden or a

fundamental alteration to the service. See title II regulation and preamble, 35.160, at pages 35721 and 35711-12.

V. University Dormitories

University dormitories, if privately owned, are covered by title III of the ADA. They therefore must comply with sections 36.201 and 36.202 of the title III regulation, if applicable, and they must apply the Standards in new construction and alterations, and, if readily achievable, in existing facilities not being altered. Universities owned and operated by State or local governments are covered by title II of the ADA, and currently may choose between the Standards, which do not necessarily require front-loading washing machines, and UFAS, which specifically requires front-loading machines. (Whichever standard is chosen must be used throughout the facility.)

In addition, the proposed ADA guidelines for residential units covered by title II specify that at least one washing machine in any laundry facility must be front-loading, and must meet other requirements from the Standards for controls. See proposed title II guidelines and preamble, 13.3.5, at pages 60663 and 60639. Moreover, any university, public or private,

that receives Federal funds is also covered by section 504 of the Rehabilitation Act of 1973; application of UFAS generally satisfies the new construction and alteration requirements of the section 504 regulations.

I hope this information is helpful to you in responding to your constituent. Please do not hesitate to contact me if we can provide additional assistance on this or any other matter.

Sincerely,

M. Faith Burton
Acting Assistant Attorney General

Enclosures

01-02451

April 21, 1993

The Honorable Janet Reno
Attorney General
Department of Justice
Constitution Avenue between 9th
and 10th Streets
Washington, D.C. 20530

Dear Madam Attorney General:

I wanted to bring to your attention a matter of considerable concern to a major employer in my home state of Iowa.

The Maytag Company is a major manufacturer of home appliances headquartered in Newton, Iowa. The company has been unable to obtain from the Department of Justice certain interpretations of final rules that the Department has issued under Title III of the Americans with Disabilities Act.

Since September, 1992 Maytag has made numerous requests for information and has sought meetings to clarify these rules which are essential to the production and sale of clothes washers and other manufactured products. Despite repeated requests for assistance to the Department's ADA office, none has been forthcoming.

I would request that you look into this matter personally with the hope that a decision could be forthcoming. I am not asking for a specific decision... only that a decision be made.

Thank you for your assistance.

Sincerely,

Charles E. Grassley
United States Senator

CEG/jb

01-02452

T. 7-13-93

DJ 202-PL-595 JUL 21 1993

Ms. Pat McPartland
Code Specialist
Office of the State Architect
Department of General Services
State of California
400 P Street, 5th Floor
Sacramento, California 95814

Dear Ms. McPartland:

I am responding to your letter concerning the application of title III of the Americans with Disabilities Act (ADA), 42 U.S.C. 12101 et seg., and the Department of Justice regulation implementing title III, 28 C.F.R. pt. 36 (1992), to the design and construction of facilities that are subject to title III and to the requirements of the California State Building Code.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities that have rights or responsibilities under the Act. This letter provides informal guidance to assist you to understand the ADA. However, this technical assistance does not constitute a determination by the Department of your rights or responsibilities under the ADA, and it is not binding on the Department.

Your letter states that the State of California recently amended its State Building Code and that the State plans to seek ADA certification of the amended code. You have asked if, in the interim period between the effective date of the amended State code and the date of this Department's determination on the request for certification, the Department will regard compliance with the California State Building Code as compliance with the ADA.

Title III of the ADA requires all places of public accommodation and commercial facilities that are designed and constructed for first occupancy after January 26, 1993, and those that are altered after January 26, 1992, to comply with the Standards for Accessible Design (28 C.F.R. pt. 36, Appendix A) contained in the Department of Justice regulation implementing

title III. Title II does not, however, preempt all State

cc: Records, Chrono, Wodatch, Bowen, Blizard FOIA Friedlander
n:\udd\blizard\cert\calif.ta

01-02453

regulation in the area of accessible design. States may enact and enforce code provisions that provide equal or greater access than the ADA Standards. However, if the State code provisions differ from the ADA requirements in a way that results in less accessibility, then an entity subject to title III is required to comply with the Federal standard.

Congress recognized that individuals involved in the design and construction of facilities subject to the Act may want to be able to rely on compliance with State or local codes as a "safe harbor." Therefore, title III permits the Department of Justice, in response to a request from a State or local government, to certify that the accessibility provisions of a State or local building code meet or exceed the requirements of the ADA. Certification of a code by the Department does not ensure that a facility constructed in compliance with the code will comply with the ADA, but it does enable a party in litigation that alleges a violation of title III to point to compliance with a certified code as rebuttable evidence of compliance with the ADA.

Compliance with a State code can be offered as evidence of compliance with the ADA only after the State code has been certified. Until the code has been certified, individuals responsible for the design, construction, or alteration of facilities subject to title III must ensure that those facilities meet or exceed the minimum requirements of the ADA standards.

You have also asked if the Department will undertake an informal review of the State code to identify any areas of conflict with the ADA, so that entities subject to the California code may rely on that code while the State's request for certification is pending. Although the Department does provide technical assistance to State governments that plan to seek certification, the Department does not have the resources available to undertake reviews of completed codes prior to a formal request for certification. This type of "informal" review cannot be substituted for the formal review process (including the opportunity for public comment) that must precede a preliminary determination of equivalency, and it could not support the use of the State code as a "safe harbor" until

certification is obtained.

Your letter did ask for technical assistance about one particular issue: the California specifications for a roll-in/transfer shower stall in hotel rooms (hereafter referred to as the "California shower"). You asked if the California shower design is equivalent to the accessible shower stalls required by the ADA. The California shower is 42 inches wide and 48 inches deep, with an entrance opening of 36 inches. A folding seat is located on the wall opposite the controls. There is a 36 inch by 48 inch clear space at the entrance to the shower.

The design of the California shower varies significantly from the shower designs allowed by the ADA Standards for Accessible Design (28 C.F.R. pt. 36, Appendix A, 4.21 and 9.2). The most significant differences in the designs are the 42 inch width of the shower and the lack of the required 30" by 48" clear floor area adjacent to and perpendicular to the shower seat.

The 36 inch width specified for the ADA transfer shower in section 4.21 is absolute; it is not a minimum dimension. The California shower width of 42 inches will make it difficult, if not impossible, for many people to reach and use the controls or the showerhead while seated on the bench. The appendix to the ADA Standards (Fig. A3(a)) illustrates that the maximum forward reach of a person seated in a wheelchair is 31 inches from the centerline of the individual's body and approximately 36 inches from the backrest of a wheelchair. This reach is possible when an individual is able to grasp the wheel rim of the chair and lean forward to extend his/her reach out over his/her feet, which are resting on footplates and support this reach. The required reach to use the California shower could be up to 42 inches from the wall at the back of the seat to the controls and showerhead on the opposite wall. This reach is 6 inches beyond the 36 inch reach allowed in the ADA Standards for a person seated in a wheelchair. The difficulty of achieving this reach would be further complicated by the fact that it occurs in a shower, a wet and generally less supportive environment than an individual's own wheelchair.

The clear floor area required in the California shower is not located adjacent to the transfer seat as required in the ADA Standards. Although the California shower requires a 36 inch by 48 inch clear floor area, the space is allowed to be 12 inches away from the transfer seat, not located immediately adjacent and perpendicular to the bench as required in the standards. These problems are further complicated by the provision in Section

3105.(b.1) 1 B.(1) that states "(c)ompartments shall be 42 inches in width... with an entrance opening width of 36 inches. Although it is unclear where this opening may be located, if it is located between the clear floor area and the shower seat, the 36 inch entrance opening would further obstruct an individual's ability to transfer from a wheelchair to the shower seat.

I hope that this information is responsive to your inquiry.

Sincerely,

John L. Wodatch
Chief
Public Access Section

DEPARTMENT OF GENERAL SERVICES SATE OF CALIFORNIA PETE WILSON GOVERNOR
OFFICE OF THE STATE ARCHITECT
400 P Street, 5th Floor, Sacramento 95814
(916) 323-0291

April 13, 1993

Mr. John Wodatch, Chief
Public Access Section
Department of Justice
P. 0. Box 66738
Washington, D. C. 20035-9998

Dear Mr. Wodatch:

The Office of the State Architect (OSA) has responsibility for building standards for accessibility in California. California has just completed the process of adopting new regulations for accessibility into the California State Building Code. The purpose of the new regulations is to bring California's accessibility requirements up to the standard in 'the American's with Disabilities Act Accessibility Guidelines (ADAAG). OSA will be submitting this new code to the Department of Justice (DOJ) for certification as ADAAG equivalent momentarily. However, it is our understanding that the certification process can be lengthy, and the building community in California has expressed some concern that they may place themselves in jeopardy if they use an uncertified code to conform to ADAAG in the interim.

Throughout this code adoption process in California, a process which has taken two years to complete, the staff of OSA has been in close touch with both DOJ and the Architectural and Transportation Barriers Compliance Board (ATBCB) and OSA is confident that our new code meets all

requirements for certification. OSA is concerned about the difficulty caused to builders and building officials in complying with and enforcing two separate building codes, and we would like to assure them both that use of California's code alone will suffice. We have two requests of DOJ to help us during this difficult interim period.

1. ADAAG "safe harbor" by use of California regulations.
We understand that DOJ is in an awkward position as far as guaranteeing a code without opportunity for adequate review. While you may not feel comfortable assuring California code users that using the code would provide a "safe harbor" against any objections. We would appreciate it if you could informally review the attached code and let us know of any conflicts that might jeopardize certification. In addition, any comments you could make on how compliance with California regulations might be viewed by DOJ or the courts in case of complaint would be appreciated.

01-02456

2. Design for accessible showers in hotel rooms. A particular issue which is of concern to the hotel industry, concerns the design of accessible showers in hotel rooms. There have been requirements for accessible showers in California since 1982. (Specifications are enclosed). This shower design has proven very satisfactory in use. It allows the user the option of either roll-in or transfer to a seat, and provides comfortable space for both.

The options for accessible showers shown in ADAAG have problems, in our opinion. There are several designs, and each of them has critical flaws. It is our opinion that the California shower is more stringent than the ADAAG showers, and we have thus retained it as our standard.

The hotel industry needs some assurance that compliance with the California shower fully meets the obligation of ADAAG, or they feel threatened. This is an architectural feature that would not be easy to change. We would appreciate it if DOJ would review the California design, and provide a written response that would increase the comfort level of the hotel industry on this issue. We could of course accept these showers as equivalent facilitation, but this is a cumbersome process which does not always lead to a satisfactory resolution of conflict. Our preference is your agreement that the California standard is equally valid.

Thank you for your help in both these matters. We would appreciate a response as quickly as possible, so that we can proceed with confidence in this important endeavor.

Sincerely,

Pat McPartland
Code Specialist
Access Compliance Section

PM:mlg

Enclosures (shower requirements and draft of final regulations)

cc: James 0. Abrams, California Hotel/Motel Association
Irene Bowen, DOJ, Washington, D. C.
Janet Blizard, DOJ, Washington, D. C.
Ellen Harland, DOJ, Washington, D. C.
Ruth Lusher, DOJ, Washington, D. C.

April 19, 1993

ACCESSIBLE ROLL-IN SHOWER
TITLE 24, PART 2, CALIFORNIA BUILDING CODE

SECTION 3105. (b.1) I B. Compartment Showers. Compartment showers shall conform to the following requirements:

(1) Compartments shall be 42 inches in width between wall surfaces and 48 inches in depth with an entrance opening width of 36 inches. Grab bars shall comply with Subsection 3105. (b.1) 2 H.

(2) When a threshold or recessed drop is used, it shall be a maximum of 1/2 inch in height and shall be beveled or sloped at an angle not exceeding 45 degrees (100 percent gradient) from the horizontal.

(3) The shower floor shall slope toward the rear to a drain located within 6 inches of the rear wall. Maximum slope of floor shall be 1/2 inch per foot in any direction. The floor surfaces shall be of Carborundum or grit-faced tile or of material providing equivalent slip-resistance.

(4) Shower accessories shall include:

a. A folding seat located on the wall opposite controls and mounted 18 inches above the bathroom floor.

NOTE: See Figure 31-2A.

b. Grab bars located on walls adjacent to and opposite the seat. Grab bars shall also comply with the diameter, loading and projection requirements of Subsection 3105. (b.1) 2 H. L-shaped shower grab bars, otherwise meeting the requirements of Subsection 3105. (b.1) 2 H, shall be not less than 24 inches x 36 inches in length positioned on the wall of the shower. The 36 inch side shall extend on the wall having the shower head and controls. Grab bars shall be mounted 33 inches to 36 inches above the shower floor.

NOTE: See Figure 31-2A.

c. Soap dish shall be located on the control wall at a maximum height of 40 inches above the shower floor.

01-02458

(5) Enclosures, when provided for shower stalls, shall not obstruct transfer from wheelchairs onto shower seats.

ACCESSIBLE SHOWERS
TITLE 24, PART 5, CALIFORNIA PLUMBING CODE

Sec. 1505

(a) Water controls of a single ever design shall be located on the side wall opposite the seat and operable with a maximum force of 5 pounds per foot. The controls shall be located 40 inches above the shower floor.

(b) A flexible hand held shower unit with a hose at least 60 inches long shall be provided with head mounting height of 48 inches above the shower floor.

(c) Where handicapped shower facilities are provided in areas subject to excessive vandalism, in lieu of providing the fixed flexible hose and hand-held shower head required above two wall mounted shower heads shall be installed. Each shower head shall be controlled so that it can be operated independently of the other and shall have swivel angle adjustments, both vertically and horizontally. One shower head shall be located at a height of 40 inches above the floor.

(d) Where, within the same functional area, two or more showers are provided for the physically handicapped, there shall be at least one shower constructed opposite hand from the other or others(i.e., one left hand controls vs. right hand controls).

01-02459

SHOWER STALL DIAGRAM
PLAN
SECTIONS A & B

This diagram illustrates the specific requirements of these regulations and is Intended only as an aid for building design and construction.

01-02460

US. Department of Justice

Civil Rights Division

Public Access Section

DJ P.O. Box 66738
Washington, D.C. 20035-6738

JUL 21 1993

III-4.2000
Pasadena, TX

Re:
Dollar Cinema, Clear Lake. TX

Dear XX :

Enclosed please find a copy of Dollar Cinema's policy, which includes a provision regarding outside food and beverages in the theaters. The policy notes that although outside food and beverages are not allowed in the theaters, exceptions are made for those patrons who require outside food for medical reasons. Dollar Cinema will enforce this policy as follows:

> If a customer says they need to bring in a certain item of food or drink because of medical reasons, we will ask how much of that food or drink they would need in a particular situation. We would then advise them to only bring in that stated amount; for example, a piece of candy rather than a whole box, or a small container of drink, rather than a litre bottle, etc.

We trust that this action taken by Dollar Cinema resolves the issue of your complaint. Therefore, we are closing our file on this matter.

Thank you for your patience and assistance.

Sincerely,

Pshon Barrett
Attorney

Enclosure
01-02461

$ DOLLAR CINEMA, INC.
20833 Gulf Freeway
Webster, Texas 77598

(713) 332-4118 FAX (713) 332-5826
June 15, 1993

Ms. Pshon Barrett
U.S. Department of Justice
Civil Rights Division
Public Access Section
Post Office Box 66738
Washington, D.C. 20035-6738

RE: DJ XX
Dollar Cinema Clear Lake
Julia Walters - July 25, 1992

Dear Ms. Barrett:

Enclosed is a photograph of the policy sign now posted in the box office at Dollar Cinema Clear Lake. The sign is approximately 28' x 44' with one inch letters and is easily and clearly visible to all customers.

The first statement listed, "no outside food or drink allowed unless medically necessary' will be enforced as follows:

> If a customer says they need to bring in a certain item of food or drink because of medical reasons, we will ask how much of that food or drink they would need in a particular situation. We would then advise them to only bring in that stated amount; for example, a piece of candy rather than a whole box, or a small container of drink, rather than a litre bottle, etc.

The staff at all locations are aware of this policy and are instructed to contact their manager if a problem should arise regarding compliance.

You stated in our last conversation that upon receipt of this letter the case would be closed. If possible, I would like to have written confirmation of the 'closed'' status for my files and to provide same to interested parties such as stockholders and our insurance company.

Thank you so much for your consideration, understanding and cooperation in this matter.

Yours truly,

Bob Lundry
Vice President &
General Manager

01-02462

JUL 23 1993

The Honorable Elton Gallegly
Member, U.S. House of Representatives
300 Esplanade Drive
Suite 1800
Oxnard, California 93030-1262

Dear Congressman Gallegly:

This letter is in response to your inquiry on behalf of your constituent, xx , concerning the problems he has encountered in meeting the requirements of the Americans with Disabilities Act ("ADA" or "the Act").

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist your constituent in understanding the ADA's requirements. However, it does not constitute a legal interpretation or legal advice and it is not binding on the Department of Justice.

Your constituent requested information concerning his obligations under the ADA and what exceptions, if any, apply to existing facilities, new businesses, and small businesses.

Title III of the ADA applies to places of public accommodation, including all sales and rental establishments. See the discussion of this issue at 36.104 of the enclosed title III regulation and p. 2 of the enclosed title III technical assistance manual. Both the landlord who owns the building that houses a place of public accommodation and the tenant who owns or operates the place of public accommodation are subject to the requirements of the Act. See the regulation at 36.201 (b)and the technical assistance manual at p. 3. There is no exception under the ADA for small businesses.

cc: Records, Chrono, Wodatch, Magagna, Perley, McDowney, FOIA, MAF

Under title II, an existing facility that is a public accommodation must remove architectural barriers to access where such removal is readily achievable. The removal of architectural barriers to access is readily achievable where such removal is easily accomplishable and able to be carried out without much difficulty or expense. The rearrangement of temporary or movable structures, such as furniture, equipment, and display racks, is not considered readily achievable, and therefore not required, to the extent that it results in a significant loss of selling or serving space. Further clarification of these issues can be found at 36.304 of the regulation and pp. 29-35 and 37-38 of the technical assistance manual.

If XX plans to alter the facility for a new tenant, such alterations that affect or could affect the usability of the facility or any part thereof must fully comply with the ADA Standards for Accessibility, which are appended to the title III regulation. The path of travel leading to the altered areas that contain a primary function, as well as the restrooms, telephones, and drinking fountains serving such areas, must also comply with the ADA Standards for Accessibility, unless the cost and scope of such alterations is disproportionate to the cost of the overall alteration. Discussion of the alteration provisions of the ADA can be found at 36.402 and 36.403 of the regulation and pp. 48-51 of the technical assistance manual.

Please be advised that many state and local building codes have additional accessibility requirements. Even though your constituent may be in compliance with the ADA, he must also comply with his state and local codes if they provide for greater accessibility.

I hope that this information is helpful. You may wish to inform your constituent that further information is available through the Americans with Disabilities Act Information Line at (202) 514-0301.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

Enclosures

01-02464
May 6th 1993

Congressman Elton Gallegly
300 E. Esplanade #1800
Oxnard, Ca. 930301202

Dear Congressman Gallegly:

It took seven months for my tenant and I to obtain a Planned Dev. Permit.

The tenant sells trash and treasures the building 900 sq. ft. has tables and shelves with some valuable antiques. The County has advised the tenant he must provide for wheelchair space and if this is done it will not only widen four doorways but tables and shelving would have to be eliminated and then chances for breakage would be great. So my tenant decided to move out.

I want to know what exceptions I can be given in this situation when I speak to a prospective tenant.

I know the County and Cities do not have the manpower to go after existing violations and there are hundreds not only restaurants but other business including Federal County and City buildings who are and will continue to be in violation.

What if the restroom is eliminated or if a Johnny if provided outside

This is without question a hardship on the small businessman and unfair to only target a new business. I would appreciate your checking into this and advising.

Sincerely

xx Oxnard 93030 485 9894

01-02465

T. 7-8-93
Control No. 3062413127
JUL 23 1993

The Honorable J. Bennett Johnston
United States Senate
Washington, D.C. 20510-1802

Dear Senator Johnston:

This letter responds to your inquiry on behalf of XX XX concerning the obligations of private hospitals and other health care providers under the American with Disabilities Act of 1990 ("ADA"). In particular, xx has inquired about the obligation of private hospitals to provide auxiliary aids and services for her son who is deaf and who has sought treatment for drug addiction.

The ADA authorizes this Department to provide technical assistance to individuals and entities that have rights or responsibilities under the ADA. Accordingly, this letter Provides informal guidance to assist you in responding to XX However, this technical assistance does not constitute a legal interpretation and is not binding on the Department of Justice.

Title III of the ADA, which became effective on January 26, 1992, prohibits discrimination on the basis of disability and governs the operations of any private entity that owns, operates, leases, or leases to a place of public accommodation, including a hospital or other service establishment. Under title III, a public accommodation is obligated to make available appropriate

auxiliary aids and services to ensure that communication with individuals with disabilities is as effective as that with nondisabled persons. The auxiliary aid requirement is a flexible one and the type of auxiliary aid or service necessary to ensure effective communication will vary in accordance with the length and complexity of the communication involved.

In many instances, the exchange of written notes with a person who is deaf will suffice to ensure effective communication. In other instances, however, such as in therapy sessions, group meetings or lectures described by XX the use of other auxiliary aids or services may be required. There are a wide variety of services and devices for ensuring effective communication with deaf persons, e.g., qualified interpreters, notetakers, computer-aided transcription services, written materials, TDDS, and closed caption devices for TVs. The

cc: Records, Chrono, Wodatch, Delaney, McDowney, FOIA, Friedlander
n:\udd\delaney\congress\johnston

use of the most advanced technology is not required as long as effective communication is achieved. For further discussion of this matter, see, e.g., section 36.303 of the enclosed title III regulation and pages 35,565-68; and sections 4.3000-4.3600 of the enclosed Title III Technical Assistance Manual at pages 25-28. Public accommodations must be given the opportunity to consult with the patient and make an independent assessment of what type of auxiliary aid, if any, is necessary to ensure effective communication.

Under the ADA, the term "individual with a disability" does not include an individual who is currently engaging in the illegal use of drugs. A public accommodation may not, however, discriminate against an individual who is not engaging in current illegal use of drugs and who "has successfully completed a supervised drug rehabilitation program or has otherwise been rehabilitated successfully; is participating in a supervised rehabilitation program; or is erroneously regarded as engaging in such use." See section 36.209(a)(2) of the title III regulation; for further discussion, see also section 36.104 of the title III regulation and pages 35,561-35,562.

The regulation also specifically provides that a public accommodation shall not deny health services, or services provided in connection with drug rehabilitation, to an individual on the basis of that individuals current illegal use of drugs, if the individual is otherwise entitled to such services.

However, it allows a drug rehabilitation or treatment program to deny participation to individuals who engage in illegal use of drugs while they are in the program. See section 36.209(b) of the title III regulation, page 35,596, and particularly the preamble discussion at page 35,561.

If a private entity receives Medicare or Medicaid assistance, then it also is subject to section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of disability in federally assisted programs and activities.

I hope this information is helpful in responding to your constituent.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

Enclosures (2)

01-02467

Many years ago, when my children were very young, a man gave some good advice, although it has not always been easy to follow. He told me if I were not willing to fight for the rights of my children, who would. You see, all three of my children were born deaf. Neither my husband nor I are deaf. It was good advice then, it is good advice now even if my children are grown.

My husband and I tried to teach our children to fight for their rights themselves, and in most instances they can and do. I have come to the conclusion that there are some things they don't have the courage or knowledge to be able to fight alone. Someone must help.

Our son is thirty-two, our daughters are twenty eight and twenty seven. Our children were fortunate, through many years of teaching and hard work on their part, they are able to lip read and communicate orally. Their speech is very good, sometimes too good. People tend to think because they talk so well they can hear. They can not. They are not hard of hearing, they are deaf! There is a difference. They all wear hearing aids, so what little residual hearing they have is amplified all it can be. To talk louder or yell will not make them hear anymore, they must lip read or have an interpreter.

It is a hearing world they live in. There have been many changes

in technology in the past twenty years. There are many devices available to help them in our hearing world. There are TDD's for their telephones so they can talk to each other. There are special alarm clocks to awaken them, flasher for fire alarms, door bells, and telephones. Close caption devices for their television so they can read the dialogue on close captioned programs and rental movies. Yet, when it comes to communication, little has changed. Laws have

been passed to guarantee that they are not discriminated against, that they have equal job opportunities, that they are granted the same rights and privileged that we in the hearing world enjoy and take for granted each and every day. Folks it don't happen! For most deaf and hard of hearing individuals these needs are not met adequately if at all.

For the past year and a half my son has been a crack cocaine addict. I won't go into the nightmare that in itself has been, and it has been a nightmare!

He has been through the drug addiction treatment three times at two different hospitals in the Shreveport-Bossier area. His father and I knew nothing about addiction or treatment, so on advice from someone in the treatment field, it was recommended that we put him in Riverside the first time. The only good thing I can say about his treatment at Riverside is that it kept him off the streets for about thirty days, he learned that there was treatment available somewhere, and he made one good friend. Since his release from Riverside in early March 1992, he has admitted himself to the drug

addiction unit at Doctor's Hospital three times. He spent about 34 days at Doctor's Hospital the first time there. The second time he spent only three days in detox, since he had no more hospital days allotted him for last year. January of this year he admitted himself for the third time to the addiction unit and spent twenty eight days before being discharged.

Doctor's Hospital has an excellent drug addiction program.... Their staff is excellent, the nurses are great, the doctors good, the therapists are knowledgeable .... if you are a hearing person you will have gone through a good drug addiction program. However, if you are

deaf, it is inadequate. My son did learn a lot about his addiction during this three stays there. Things we, in the hearing world, take for granted, was not available to him. Communication!

Drug and alcohol rehabilitation is about communication. From early morning until late at night, the addictive person is in meetings, therapy sessions, watching drug related films, attending AA meeting and NA meetings, group meetings and lectures. All of it involves talking and listening and being able to understand your problem and how to deal with it and stay in recovery. During all of my son's stays in these hospital only twice was there an interpreter present. That was for two Sunday afternoon meetings at Riverside at My insistence, because my daughters would not go to a family meeting unless an interpreter was present.

At both hospitals, staff knew he was deaf, they were amazed

that he had such good language and lip reading skills. Anyone who lip reads, no matter how good, misses a great deal of what is being said, even one on one. To be able to lip read the speaker must be at close range, they must speak distinctly, correctly, normally, and not mumble. The speaker cannot drop his head, turn his head, or turn his back on the person who is lip reading, if he does they are lost. Even if all of that has been done the person lip reading is still likely not to understand, they may read the word, but due to an inadequate vocabulary, not understand what you are talking about. Despite the fact that these professionals who have been providing treatment know that he cannot hear, they have expected him to get all the benefits without an interpreter. One on one it is hard at best, small group meetings it becomes confusing, large meetings are

are a total loss. If one wants to know how difficult it is, put ear plugs in your ears for one day, go to meetings of any kind, see how much you know of what is being said and going an around you.

See how frustrated you will become, and how frustrated and angry those around you will become if you have to ask what is being said repeatedly. You will find that pretty soon you will shut up and be quiet and not ask questions anymore.

My son was quite isolated even in the addictive unit, he could not telephone a friend or family member, as we who are hearing, can.

There was no TDD device for him to use, so he had to depend on other to call for him if he needed anything outside the unit. There was no close caption device for him to enjoy television in the lounge with the other patients. These devices are available and not very expensive, yet none were there. Each hospital stay, he called us to bring his close caption from home.

A week and a half ago he called a counselor- at the Deaf Action Center after yet another relapse. She recommended that he admit himself to Brentwood, which he did. To say I am upset is an under-statement, I am angry, confused and totally frustrated!

A doctor from Brentwood called and asked me to come and give some background information which I did. I expressed my concerns about my son being able to understand everything due to his deafness I was assured that this time he would get what he needs to kick his addiction. That his treatment would be different this time. After my meeting with the doctors I went upstairs to visit my son. We visited a while and he told me what had been happening up until then how great his counselor is. I asked if he had an interpreter, if the films he had watched were close captioned, if they had TDD so he could

use the telephone or a close caption for him to watch television. The answer was "no."

On Thursday his father and I went to hear an excellent lecture during family lecture with our son. The therapist was an excellent speaker, the content was informative, I just wish our son could have heard or understood everything that was presented, but he didn't.

There is no doubt in my mind that Brentwood has an excellent drug and alcohol addiction program. But if the individual who needs it, doesn't hear and understand, it isn't worth a damn.

I had always thought that if a person were hospitalized with an illness, or disease and I have been told repeatedly that drug and alcohol addiction is a disease, the hospital would and did provide what was necessary to insure good treatment or recovery. Each and every hospital has and does know that my son is deaf, yet no interpreter has been provided. The Deaf Action Center tells me that if he requests an interpreter, through staff at the hospital, one will be provided. If I am in the hospital and cannot breathe, am I going to have to ask before they bring me oxygen? No they are not, the same should apply for an interpreter.

When our son is discharged from the hospital in few weeks he will be advised to attend ninety AA or NA meetings in ninety days. As things are now if he goes he won't know what is being said or understand, but very little. He will be advised to find a sponsor, someone who has been clean and sober for over a year. Someone he can call when he needs help over the rough spots. Whom will he be advised to come back to the hospital for aftercare and the STEPS meetings, will an interpreter be provided?

He will be advised that he must stay away from old friends who use drugs and alcohol, stay away from old hangouts, that he must make new friends. As with all deaf people he has some friends in the hearing world, but is more comfortable in the deaf world with

his own kind.

According to my daughters, the majority of the deaf population under forty years of age, either use drugs or alcohol.

I asked at the Deaf Action Center how many deaf and hard of hearing person are in the Shreveport-Bossier area. They told me about 3,000, I asked how many had spent 30 days in a treatment facility for addiction. They said they thought many would go if helm were available for them at the hospitals, but why go, they won't know what is going on.

So where will our son go to make new friends? If we, in the hearing world, had to go into deaf community to make all new friends I think we would not fare too well.

These are a few of the obstacles our son has faced and is facing in his search for drug rehabilitation and some obstacles he will face when he is discharged, and comes back to the real world.

In each and every hospital stay regardless of what he got or did not get, his hospital bill was not adjusted as to what he understood and did not understand. He was charged full price and should receive all the benefits that you and I in the hearing world takes for granted each and every day.

I have written this to say if someone doesn't care enough to speak up, nothing will change. This segment of our society in our city of Shreveport and Bossier have no provision made for their needs in too many areas. We do have excellent Drug treatment program

but none for the deaf. Isn't it time that they are afforded what the rest of us enjoy and take for granted every day of our lives.

If I don't care, who will?

XX
Shreveport, LA 71109

cc- Shreveport Times
Brentwood Hospital
Riverside Hospital
Doctor's Hospital'
KTBS TV 12
Senator J. Bennett Johnson
Senator John Breaux
Representative Jim McCrery
Representative Cleo Fields
Silent News

P. S. My son has asked for an interpreter and one is being provided for him at Brentwood. Perhaps this time it will be different.
At least there is hope now.

(Handwritten) Our son draws SSI and all of these hospital bills have been filed on Medicare.

01-02474

Printed from AA Grapevine Inc. August 1986

The "Lonely Handicap"

Deafness and hearing loss mean much more than a diminished or nonexistent auditory capacity for an individual. It also means diminished or nonexistent services for that person, particularly where drug and alcohol problems are concerned.

"Alcoholism is a problem in all of society and unfortunately, people who are deaf have even less potential for getting services, let alone actually receiving them," said Dr. Gary Austin, director of Rehabilitation Institute at Southern Illinois University.

Substance abuse programs tend to be unresponsive to the hearing impaired due to a lack of understanding of the psychosocial aspect of deafness, and certainly the very real communication barrier that exists said Dr. Alexander Boros. On the other hand counselors for the hearing impaired tend to shy away from working with deaf substance abusers because they do not have the expertise in alcoholism and drug abuse.

Dr. Boros, a staff member for Project AID (Addiction Intervention with the Disabled) at Kent State University in Ohio, said, "The combination of fear operating within the deaf community, and ignorance operating in the agency world, results in barriers for the deaf alcoholic. Consequently, they are undiagnosed, untreated, and uncounted.

This lack of current, solid data was best summarized in a report by Norton Isaacs, PhD. and Art Berman, M.S.W. who stated, "It is a sobering fact that we know more about the alcohol use patterns of the few thousand Lepcha of the Himalayas than we do about the estimated 13 million hearing impaired persons in our country."

Alcoholism and Hearing Impairment

"The deaf live in a world designed for hearing people. They live in a speech society, not a deaf society. And that always poses a problem being a minority person," said Dr. Boros.

Karen Steitler, director of the Substance and Alcohol Intervention Services for the Deaf (SAISD), at the Rochester Institute of Technology in New York, said, "When you have this kind of social isolation, when you have failures in school, an inability to hold a job, or to produce an appropriate income to raise a family, when you find you are blocked in your interaction with people because of communication problems--these are all frustrations. Frustration that is repeated with no let up create substantial amounts of stress. The big lure of drugs and alcohol is that they become a relief from that anxiety and stress."

"Deafness has been called the "lonely handicap,' and alcoholism is the lonely disease--they definitely make for a deadly duo," said Carol Wentzel, a deaf services specialist and substance abuse therapist for the hearing impaired from Cypress, California.

The isolation experienced by the deaf in a hearing world represents a unique and painful experience. Helen Keller once said, "Being blind cut me off from the world of things, but being deaf cut me off from the world of people."

Modern technology has reduced a few of the communication barriers for the deaf. With the advent of closed captioning for television, the deaf are able to enjoy a small handful of programs, that is, if the deaf person can afford the somewhat expensive decoder devices for their television.

01-02475

TDD's (teletype devices for the deaf) were an advance that for time allowed the hearing impaired access to telephone communication with the outside world. Again, however, the number of facilities that have installed TDD's and the number of deaf who can afford TDD's is limited.

In deaf household, doorbell can be hooked to lights that flash, and special devices are available that cause lights to flash alerting deaf parents of a baby's cry.

In addition to the isolation and limited communications, lack of knowledge among the hearing impaired about substance abuse issues is substantial.

Dr. Austin says the general hearing population has improved their knowledge and attitudes toward drug and alcohol abuse in the last 5 to 10 years, largely due to mass media communications. However, the deaf do not have access to much of the information that has been presented over the radio and on television pertaining to drug and alcohol education.

In an interview with The U.S. Journal, conducted via TDD, Barbara Pollard, M.S.W., L.C.S.W., an assistant professor of social work at Gallaudet College, Washington, D.C., who is hearing impaired, said, "Alcoholism has been a taboo subject in the deaf community. There is a lack of information and an inaccessibility of media programs addressing this issue.

Wentzel pointed out that the deaf do not understand the concept of alcoholism as a disease. That is reflected even in their sign language which, she says, lacks signs for words such as "addiction" and "alcoholism." "The deaf use words such as 'hooked' or 'drunk;' or would say "drink, drink, drink," all of which have very moral cannotation

Treatment and Services Availability

"If you look at the delivery systems and the intervention systems that are available, it would have to be only a minuscule part of one percent," said Dr. Austin. Dr. Boros said that the deaf people with drug or alcohol problems "tend to die as alcoholic ... they don't get help. They don't get help, at least in part, because the agencies don't respond to them.

The inability to communicate with hearing impaired accounts for a large part of the poor response. There are few substance abuse professionals or doctors who are proficient in sign language.

Cultural Considerations

Even with the communication barrier overcome, the cultural (life-style) and psychosocial components of a hearing impaired lifestyle must be understood and appreciated.

Issues that need to be taken into consideration include whether the client was brought up in a deaf home or a hearing home, and whether his/her first language was English or ASL (American Sign Language). Also, was the client educated in a deaf residential school, or mainstreamed into public schools?

Dr. Boros said, "Deaf people represent so many different back-grounds and levels of communication. Researchers lump them all together and call them deaf -- but their backgrounds are all really quite different."

He said that prevention efforts are staring in the schools with the young deaf population, because of the difficulty in reaching the deaf adults population with substance abuse problems.

Part of the problem in reaching the adult deaf is that those who have substance abuse problems "are invariably from outside of the deaf community." He explained that the deaf community refers to those deaf who work and socialize together. Those who do not mix with the deaf community are referred to as the deaf population.

"About 5% of our deaf alcoholic clients come from the deaf community, and about 95% come from the deaf population," he said. He added that because those in the deaf population cannot be reached through the deaf organizations, yet also cannot be reached through media efforts, we are starting prevention with today's population--because we can't reach the adults."

Wentzel emphasizes further that there needs to be an awareness in the professional community that, for the most part, deaf individuals d not have medical insurance, and therefore do not have the option of paid inpatient care. Even if there were more of these treatment programs available for the deaf, paying for treatment is difficult due to the number of hearing impaired unemployed and under-employed.

She said that recovering deaf and hearing impaired individuals must be encouraged to "band together and to go into the field of alcoholism counseling. The field is void of hearing impaired people who are skilled and have an understanding of drug and alcohol problems

With s sigh she added, "One in 1,000 will get help for their problems. For every one of the deaf persons in my group on Monday nights, I swear there are 1,000 others out there who are not in treatment."

Susan Thanepohn; U.S.Journal

01 -02477

JUL 23 1993

The Honorable H. Martin Lancaster

Member, U. S. House of Representatives
Room 108 Federal Building
134 N. John Street
Goldsboro, North Carolina 27530

Dear Congressman Lancaster:

This letter is in response to your inquiry on behalf of a constituent regarding a physicians obligation to provide auxiliary aids or services for persons with disabilities.

The Americans with Disabilities Act (ADA) authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist your constituent in understanding the ADA's requirements. It does not, however, constitute a legal interpretation, and it is not binding on the Department.

The ADA requires public accommodations, including physicians, to furnish appropriate auxiliary aids and services where necessary to ensure effective communication with individuals with disabilities. A public accommodation may not impose a surcharge on any particular individual with a disability to cover the costs of measures, such as providing auxiliary aids, that are required by the ADA. These requirements appear in sections 36.301(c) and 36.303 of the enclosed ADA title III regulation, at pages 35596 and 35597, respectively. Also

enclosed is the Department's Title III Technical Assistance Manual, which may provide further assistance to your constituent. Pertinent discussion may be found at pages 22 (surcharges) and 25-28 (auxiliary aids). I have also enclosed the Department's Title III Technical Assistance Manual Supplement, which includes relevant discussion at pages 4-5.

cc: Records, Chrono, Wodatch, Breen, Nakata, McDowney, FOIZ, MAF
udd\Nakata\Congress.let\lancastr

01-02478

Under section 36.301(c) of the regulation, the cost of an interpreter must be absorbed by the public accommodation in the limited circumstances when an interpreter is necessary. However, as provided in section 36.303(f), a doctor is not required to provide any auxiliary aid that would result in an undue burden. The flexibility of the auxiliary aids requirement, the undue burden limitation, and the ability to spread costs over all patients should minimize any burden on the medical profession.

What constitutes an effective auxiliary aid or service will depend upon the unique facts of each situation, including the length and complexity of the communication involved. For example, in some instances, a doctor may satisfy the auxiliary aid or service requirement by using a note pad and written materials where a deaf patient is making a routine office visit. By contrast, a discussion of whether to undergo major surgery will generally require the provision of an interpreter. Other situations may also require the use of interpreters to ensure effective communication depending on the facts of the particular case. Further discussion of this point may be found on page 35567 of the enclosed regulation.

I hope this information will be helpful to you in responding to your constituent.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

Enclosures

01-02479

Congress
Of the
United States
House of Representative

H. MARTIN LANCASTER
NORTH CAROLINA
THIRD DISTRICT

April 21, 1993

Mr. Tony E. Gallegos
Acting Director Equal Employment Opportunity Commission
and The Americans With Disability Act
1801 L Street, N.W.
Washington, DC 20507

Dear Mr. Gallegos:

I have received the enclosed information from a physician who is rightly concerned that he is going to have to hire an interpreter to deal with hearing impaired patients, and may not charge the patient for the cost of these services, nor bill the patient's

insurance carrier. He indicates that the cost of the interpreter will be significantly more than his reimbursement for the health care service rendered. Is the information provided to him by the Communication Accommodations Project correct? If the doctor may not bill the patient or the insurance carrier, how do you propose that this cost be defrayed? Was this kind of result intended by the legislation? It certainly was not my personal intention.

Thank you for responding to these concerns.

Sincerely yours

H. Martin Lancaster
Member of Congress
HML: tgy
Enclosure

At-Large Majority Whip
Washington Office:
Committees:
Armed Services
Chairman, Morale, Welfare, and Recreation Panel
Merchant Marine and Fisheries
Small Business

Washington Office:
2436 Rayburn House Office Building
Washington, D.C. 20515
(202) 225-3415
District Office:
Room 108 Federal Building
134 N. John Street
Goldsboro, NC 27530
(800) 443-6847
(919) 736-1844

01-02480

JUL 27 1993

PL 479,505

xx
McMinnville, Oregon 97128

Dear xx

This is in response to your inquiries regarding the Americans with Disabilities Act of 1990 (ADA). You have asked whether a small historical museum operated by a non-profit private society that does not charge for admission is covered by title III of the ADA. Specifically, you inquire whether such a facility would be considered to "affect commerce" within the meaning of title III.

The A.D.A. authorizes the Department of Justice to Provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist you in understanding the A.D.A.'s requirements. However, it does not constitute a legal interpretation or legal advice, and it is not binding on the Department.

Title III of the A.D.A. covers entities that own or operate places of public accommodation whose operations affect commerce. Places of public exhibition, such as museums, are among the types of places of public accommodation listed in the statute. The term "affect commerce" is one frequently used in Federal statutes enacted pursuant to Congress' power to regulate commerce. The fact that a private museum operates with a volunteer staff and does not charge admission is not necessarily determinative of whether a facility operates in interstate commerce. Some other factors to examine would be whether the museum is open to out-of-state visitors; whether exhibits originated or were prepared out-of-state; whether the museum has a gift or souvenir shop that sells items that have moved in interstate commerce; and whether museums of its kind, in the aggregate, would affect interstate commerce. This Department does not undertake investigations to determine whether particular facilities are covered except in the course of a complaint investigation.

cc: Records, Chrono, Wodatch, Magagna, Breen, Novich, FOIA, MAF
Udd:Burton.Burton.Mus

01-02481

Your letter notes that the museum has no plans for alterations or new construction. If covered under title III, the museum then needs only to remove barriers to accessibility that are readily achievable to remove. According to the Department of Justice's title III regulation, a copy of which we previously provided to you, readily achievable means "easily accomplishable and able to be carried out without much difficulty or expense." Installing ramps, widening doors, and rearranging tables or display cases that obstruct an accessible route through the museum are examples of barriers that may be readily achievable for a small museum to remove. The cost of such

actions and the resources of the covered entity are factors in-deciding what is readily achievable. Any future alterations or new construction must meet the ADA standards for accessible design.

Title III of the ADA also requires covered entities to make reasonable modifications in its policies, practices, or procedures necessary to ensure that persons with disabilities may enjoy the same advantages of the museum as do others, so long as such modifications would not fundamentally alter the nature of the museum's services. For example, in order to serve blind patrons, a museum may need to modify policies to allow guide dogs in the museum. In addition to this requirement for modification of policies, title III requires the elimination of any eligibility criteria for admission and participation based upon disability, unless the criteria are necessary to the provision of the-museum's services. For example, it would be unlawful to deny admission to someone with Down's Syndrome because of that person's disability.

Finally, the museum must provide auxiliary aids and services where necessary for effective communication with persons with disabilities, unless to do so would pose an undue burden on the museum or would fundamentally alter its services. For example, if any information in the museum is given aurally, the museum may be required to provide a transcript of the information or a qualified sign language interpreter to serve a deaf patron if doing so would not be an undue burden. The cost of providing such aids and services and the resources of the covered entity are among the factors to consider in determining whether providing services and aids would be an undue burden.

I hope this information is useful to you.

Sincerely,
John L. Wodatch
Chief
Public Access Section

01-02482

XX
McMINNVILLE, OREGON 97128

20 March 1993

Office of the American With Disabilities Act
Civil Rights Division
U.S. Dept. of Justice
P.O. Box 66118
Washington, D.C. 20035-6118

Dear Dept. of Justice:

I am writing for the xx is operated primarily through visitor donations and membership dues.

About February 24, I talked with someone in your Civil Rights Division regarding compliance with Title III of the ADA. She agreed to send me some material on standards and procedures for implementation of the act, and your opinion as to whether or not our museum is a place of public accommodation under the definition on Page 35547 of the Federal Register/Vol. 56, No. 144/ Friday, July 26, 1992/ Rules and Regulations.

According to that definition, one of the criteria that a private entity must meet before it is considered a place of public accommodation is that its operations affect commerce.

Since we do not charge for museum visitation, we have concluded that our operation does not affect commerce and therefore we are not a place of public accommodation as defined in the above-described definition.

We would appreciate your comments on this matter. We would also appreciate if you can send us a copy of the Federal Register described on page 1 of our letter.

Sincerely,

xx
xx

01-02483

McMINNVILLE, OREGON 97128

29 January 1993

Office on the Americans with Disabilities Act
Civil Rights Division
U.S. Dept. of Justice
P. O. Box 66118
Washington, DC 20035-6118

Dear Sirs:

Please send me information about the ADA requirements affecting public services and public accommodations.

Our concern is in regard to a small historical museum operated by a non-profit private society here in Yamhill County, Oregon. We do not have any plans for new construction or alterations at this time, but we want to be certain that we are in compliance with the law.

Is there a time table set by act or regulation for a public service such as above described?

Sincerely,

xxx

U.S. Department of Justice
Civil Rights Division

t. 7/23/93
SBO:MF:MM:ca:jfb

Washington D.C. 20530
JUL 28 1993

Xx
Xx, Nevada

Re: Old Complaint Number
New Complaint Number

Dear Mr. xx

This letter constitutes the Department of Justice's Letter of Findings with respect to the complaint you filed against the County Sheriff's office alleging discrimination on the basis of disability. The Department of Justice is the agency responsible under title II of the Americans with Disabilities Act of 1990 (ADA) for investigating complaints filed against components of State and local government in the area of law enforcement.

Your complaint alleges that the xx County Sheriff's Office has discriminated against you by denying your participation in the patrol division because of your back injury and subsequent sick leave. The Civil Rights Division has completed its investigation of your complaint and has determined that the xx County Sheriff's office is not in violation of title II or the ADA for the reasons explained below.

Title II of the ADA prohibits discrimination in employment against qualified individuals with disabilities on the basis of disability. 28 C.F.R. 35.140(a). "Disability" is defined as a physical or mental impairment that substantially limits one or more major life activities, a record of such an impairment, or being regarded as having such an impairment. 28 C.F.R. 35.104. The preamble to the Department of Justice's title II regulation further defines what constitutes a disability as follows:

> [T)he duration, or expected duration, of an impairment is one factor that may properly be considered in determining whether the impairment substantially limits a major life activity. . . . The question of whether a temporary impairment is a disability must be resolved on a case- by-case basis, taking into consideration both the duration (or expected duration) of the impairment and the extent to which

it actually limits a major life activity of the affected individual.

56 F.R. 35699.

Our investigation of your complaint and the Sheriff's Office's response revealed that you injured your back xx xx returning to full duty xx you had recovered from your back injury and that it no longer limits you in any way. xx

Dr. xx confirmed xx Dr. wrote xxx you had recovered xx and were able to return to full duty work

Because you have recovered from your injury to the point that it no longer substantially limits any major life activities, your impairment was temporary. Furthermore, the full extent of your disability lasted ten months, and you were out of work for only two months and not on full duty for a total of six months. Because your impairment lasted a total of only ten months, and because you were able to function during much of this time, the Department has determined that you do not fall within the first prong of the definition of disability.

For the reasons stated above, you similarly do not fall within the second prong of the definition of disability: having a record of impairment which substantially limits a major life activity.

The third prong of the definition of disability is being regarded as having an impairment which substantially limits a major life activity. While it is clear that your supervisors at the Sheriff's Office were aware of your back injury and subsequent sick leave, they were also well aware of the doctor's statements mentioned above. Neither you nor the Sheriff's Office supplied any evidence that you were perceived by the Sheriff's Office as having an impairment that substantially limited a major life activity.

Based on the foregoing information, we have concluded that you are not a qualified individual with a disability entitled to the protections of title II. If you are dissatisfied with our determination, you may file a private complaint in the United States District Court under title II of the ADA.

This letter does not address other potential claims of discrimination on the basis of disability that may arise from the activities of the Washoe County Sheriff's Office. Rather, this letter is limited to the allegations presented in your complaint.

You should be aware that Federal law protects your right to file a complaint. A State or local government or recipient of Federal financial assistance may not intimidate, threaten, coerce, or engage in other discriminatory conduct against anyone who has either taken action or participated in an action to secure rights protected by the ADA or section 504. If at any time you feel you are being harassed or intimidated because of your dealings with the Department of Justice, we urge you to let us know immediately. This office would investigate such a complaint if the situation warrants.

Under the Freedom of Information Act, 5 U.S.C. S 522, we may be required to release this letter and other correspondence and records related to your complaint in response to a request from a third party. Should we receive such a request, we will safe-guard, to the extent permitted by the Freedom of Information Act and the Privacy Act, the release of information which could constitute an unwarranted invasion of your or other's privacy.

If you have any questions concerning this letter, please feel free to call Naomi Milton at (202) 514-9807.

Sincerely,

Stewart B. Oneglia
Chief
Coordination and Review section

Civil Rights Division

cc: xx
xx County Sheriff's Office

01-02488

AUG 9 1993

The Honorable Thomas Andrews
Member, U. S. House of Representatives
136 Commercial Street
Portland, Maine 04101

Dear Congressman Andrews:

This letter is in response to your inquiry on behalf of your constituent, Dr. John W. Wickenden of Rockland, Maine, regarding the cost of providing auxiliary aids or services for persons with disabilities.

The Americans with Disabilities Act (ADA) authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist your constituent in understanding the ADA's requirements. It does not, however, constitute a legal interpretation, and it is not binding on the Department.

The ADA requires physicians to furnish appropriate auxiliary aids and services where necessary to ensure effective communication with individuals with disabilities. A physician may not impose a surcharge on any particular individual with a disability to cover the costs of measures, such as providing auxiliary aids, that are required by the ADA. These provisions appear in sections 36.301(c) and 36.303 of the enclosed ADA title III regulation, at pages 35596 and 35597, respectively. Also enclosed is the Department's Title III Technical Assistance Manual, which may provide further assistance to your constituent. Pertinent discussion may be found at pages 22 (surcharges) and 25-28 (auxiliary aids).

What constitutes an effective auxiliary aid or service

will depend upon the unique facts of each situation, including the length and complexity of the communication involved. For example, in some instances a doctor may satisfy the auxiliary aid or service requirement by using a note pad and written materials where a deaf patient is making a routine office visit.

cc: Records, Chrono, Wodatch, Magagna, Yang, McDowney, MAF, FOIA
udd\yang\congress\andrews

By contrast, a discussion of whether to undergo major surgery will generally require the provision of an interpreter. Other situations may also require the use of interpreters to ensure effective communication, depending on the facts of the particular case. Further discussion of this point may be found on page 35567 of the enclosed regulation.

Under section 36.301(c) of the regulation, the cost of an interpreter must be absorbed by the doctor in the limited circumstances when an interpreter is necessary. However, as provided in section 36.303(f), a doctor is not required to provide any auxiliary aid that would result in an undue burden. The flexibility of the auxiliary aids requirement, the undue burden limitation, and the ability to spread costs over all patients should minimize any burden on the medical profession.

Dr. Wickenden's letter raises a specific question involving the use of interpreters. On one occasion, the family of a deaf patient made its own arrangements for a sign language interpreter, without giving the doctor the opportunity to make his own contractual arrangements for a qualified interpreter. Dr. Wickenden reports that the Maine Department of Human Services told him that he had no alternative but to accept, and pay for, the interpreter for whom the family had arranged. Of course, if that is a requirement of state law, the constraints experienced by Dr. Wickenden would have emanated from state and not Federal law and, thus, should be taken up with appropriate state officials.

However, if the Maine Department of Human Services was purporting to describe the requirements of Federal law, it did

so incorrectly. The title III regulation does not contemplate that patients who are deaf may unilaterally decide on the appropriate type of auxiliary aid, make arrangements for a particular deaf services provider to furnish the aid, and then bill the public accommodation for the services. Instead, doctors may determine how best to provide effective communication to their patients, and may themselves arrange for the necessary auxiliary aids or services. Of course, the needs and wishes of the patients should be taken into account in determining what kind of auxiliary aid is necessary to provide effective communication. Please refer to the enclosed January 1993 Supplement to the Department's Title III Technical Assistance Manual at page 5 for further discussion.

01-02490

I hope this information will be helpful to you in responding to your constituent.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

Enclosures
01-02491

THOMAS H. ANDREWS
MEMBER OF CONGRESS
FIRST DISTRICT MAINE

WASHINGTON OFFICE
1530 Longworth Building
Washington, DC 20515-1901
(202) 225-6116 CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES
DISTRICT OFFICE
136 COMMERCIAL STREET
PORTLAND, ME 04101
(207)772-8240
TDD (207)772-8240
1-800-445-4092

April 12,1993

Toni Davenport
Director
Congressional Affairs Division
Health Care Financing Administration
1555 Parklawn Building
5600 Fishers Lane
Rockville, MD 20857

Dear Ms. Davenport:

Enclosed is a copy of a letter I recently received from Dr. John Wickenden concerning the implementation of provisions of the Americans With Disabilities Act with respect to reimbursement for interpreters.

According to Dr. Wickenden, the Maine Department of Human Services has interpreted the ADA to require that physicians accept and pay for interpreters contracted for by the patient Dr. Wickenden is concerned that this will indirectly reduce access to health services for disabled individuals because of the high, direct costs to physicians. In his particular case, he estimates that the cost of an interpreter for one patient could exceed $1,000, for which Dr. Wickenden will not be reimbursed.

I would appreciate your review of this situation. As you may know, Congressman Andrews was a strong supporter of the ADA, and this office is committed to seeing it work. We would be concerned if provisions of the law had the unintended effect of actually reducing access to health services.

Please direct your response to me at the Portland address listed above, and don't hesitate to let me know if you require additional information.

Sincerely,
Laurie Lemley
Special Assistant to
Representative Thomas H. Andrews

Enclosure
01-02492

PENOBSCOT BAY ORTHOPAEDIC ASSOCIATES
PENOBSCOT BAY PHYSICIANS' BUILDING
GLEN COVE, ROCKLAND, MAINE
04841

JOHN W. WICKENDEN, M.D. Telephone 596-6653
Diplomate American Board Orthopaedic Surgery 1-800-640-0707
Fellow American Academy of Orthopaedic Surgeons

1 February 1993

Congressman Thomas H. Andrews
U.S. House of Representatives
Washington, DC 20510-1901

Dear Congressman Andrews:

Your commitment to the disabled is well known to me. I support it. I believe that my commitment is similar to yours. I am a "liberal Democrat." I have worked for you and I have lobbied for the

Americans with Disabilities Act.

In the context of that background, please weigh my comments.

An experience last week has convinced me that the regulations with which the ADA is implemented need fine tuning.

A deaf man made an appointment in my orthopedic surgery office. His family notified me that they had retained a deaf services interpreter from Portland. They did not give me the opportunity to provide a qualified interpreter. The Maine Department of Human Services told me that I had no alternative but to accept, and pay for, the interpreter for whom they had arranged. Thereby, the man had an orthopedic consultation (#99202) for which my fee is $57.00. Medicare will approve a payment of $34.75. The interpreter will bill me at $28.00 an hour. With travel to and from Portland, my cost for the interpreter will be $140.00 (for which I can seek no other remuneration). Therefore, I will be paid $34.75. In return for that payment I will have a direct cost of $140.00 and an indirect cost of another $22.25. If this man comes to surgery (as may well happen) it could cost me well over $1,000. for interpreter services. Moreover, Medicare will not, even reimburse me an amount which would pay the overhead costs for a patient who did not pose this additional burden.

Even without the ADA, I don't collect any take-home money for caring for Medicare and Medicaid patients. I can't live with the many mandates of the government. I can't shift enough charges to my "paying patients."

01-02493

AUG 9 1993

The Honorable John Breaux
United States Senator
705 Jefferson Street
Room 103 Federal Building
Lafayette, Louisiana 70501

Dear Senator Breaux:

This is in response to your letter requesting information for your constituent, Mr. Paul A. Fontana, about the Americans with Disabilities Act (ADA).

The ADA authorizes the Department of Justice to provide

technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist your constituent in understanding the ADA's requirements. However, it does not constitute a legal interpretation or legal advice, and it is not binding on the Department.

Much of your constituent's letter relates to discrimination in employment practices covered by title I of the ADA, which is enforced by the Equal Employment Opportunity Commission. We assume that the inquiry has also been referred to that agency. However, Mr. Fontana's question about the accessibility of an apartment complex's swimming pool for a woman with a head injury does implicate title III of the Act. Mr. Fontana states that the woman has asked the apartment complex to make reasonable accommodations to make the swimming pool accessible to her, but that a manager of the complex told her that she is responsible for making the pool accessible.

The ADA does not apply to strictly residential facilities. If the housing complex is strictly residential and the pool is intended for the exclusive use of the residents and their guests, the pool is considered an amenity of the residential complex. As such, it would not be considered a place of public accommodation subject to the ADA. Nonetheless, the apartment complex and the swimming pool would be subject to the requirements of the Fair Housing Act, which prohibits discrimination on the basis of

cc: Records, Chrono, Wodatch, McDowney, Bowen, Novich, FOIA, MAF
Udd:Burton:Poolpol

01-02494

disability and is enforced by the Department of Housing and Urban Development. Under that Act, a landlord is generally required to permit reasonable modifications to existing facilities at the tenant's expense.

If the swimming pool is made available to the general public for rental or use, or if the apartment complex is a social service center establishment, as are some retirement communities, it would be covered by the ADA. Once covered by the ADA, the owners or operators of the pool would be required to remove

architectural barriers to accessibility if their removal is readily achievable, that is, if they can be removed without much difficulty or expense.

I hope this information is useful to your constituent in understanding the apartment complex's obligations.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

01-02495

Center for Work Rehabilitation. Inc.

MAY 28, 1993

Senator John Breaux
705 Jefferson
Room 103

Lafayette, LA 70501

Dear Senator Breaux,

I am writing to request your assistance in obtaining answers from the Department of Justice and the Equal Employment Opportunity Commission on some matters relating to the Americans With Disabilities Act. I have attempted to obtain answers through the New Orleans and Washington, D.C. offices of each department, to no avail. When calling the Washington, D.C. phone number for either the Department of Justice or The Equal Employment Opportunity Center you do not get to speak to a person but rather to a never ending voice mail. The New Orleans field offices have not given any assistance I can use, but rather have referred me to the technical assistance manuals - which I have already tried to use to no avail.

I am a consultant to a very large private company as well as a municipality that have the same question in regards to complying with the employment requirements of the ADA. This is the scenario:

* The company/city interviews and hires the employee.
* All newly hired employees are sent to a physician for a back x-ray.
* If the x-ray is "normal" employee goes to work.
* If the x-ray is "abnormal" the employee is sent for very specific essential function testing based on the job description. Only those employees testing "abnormal" on a back x-ray are given a post hiring assessment of their ability to perform the essential functions of the job.

My understanding from all courses I've attended on the ADA is that this practice is discriminatory because it treats the "abnormal back" employee as disabled and differently from the non-disabled. The "normal back" employee does not have to prove he/she can do the job only the "abnormal back" employee.

01-02496

My first question is very straight forward. Can a company use a back x-ray and the resulting abnormal back classification to single out individuals for further testing to ensure they can perform the essential functions of the job when those with a 'normal back' x-ray do not have to prove they can do the job?

My second question is: In this context, is the Post Hiring Assessment of an employee's ability to perform the essential functions of the job considered a medical test?

Question number three: Is a functional capacity or work capacity assessment considered a medical test?

My next question that falls under the employment aspects of the ADA is as follows:

Scenario:

* An injured worker, after recovering from a lumbar back fusion, reaches maximum medical improvement and the treating physician releases him to a medium work level. Six months to a year later the recovered worker applies for a job which is considered heavy (lifting up to 100 lbs. infrequently and 50 lbs. frequently). The recovered worker passes the initial screening and is hired by the new employer.

* Upon "conditional offer of employment" the worker is sent to the company physician for a physical. Upon review of the worker's previous medical history the physician learns of the worker's previous fusion. With no further testing to ascertain whether the worker can perform the essential function of the job, the physician states the worker should not be allowed the job because of the heavy work it involves. The worker states he can perform the job safely but is not tested and is terminated:

Question:

Can an employer place restrictions or even terminate a worker based on previous work restrictions without testing whether or not a worker can perform the job?

My question concerning the ADA and the Department of Justice involves a head injured adult and an apartment complex. I might further state there is no way this head injured person would be able to deal with and gain any useful information from the never ending voice mail system the Department of Justice is utilizing
01-02497
Senator John Breaux
May 28, 1993

The woman has requested the apartment complex make reasonable accommodations to ensure the complex's swimming pool is accessible to her. One apartment manager told her this is her responsibility and not that of the apartment complex.

Question: What is this woman's options and how does she get the apartment complex to comply with the ADA?

I certainly appreciate any assistance your office can provide in getting answers - especially those involving the EEOC and employment issues. These companies are attempting to comply, but we are not getting sufficient Answers from those making the rules.

If I can provide additional insight or clarification to my questions and concerns please give me a call. I have a meeting scheduled for July 8, 1993 where these answers would be most helpful. I look forward to hearing from your office.

Sincerely,

Paul A. Fontana
PRESIDENT
CENTER FOR WORK REHABILITATION, INC.
CENTER FOR FUNCTIONAL EXCELLENCE, INC.

PAF:els

01-02498

AUG 9 1993

DJ 202-PL-612

Mr. Marc Fiedler
Koonz, McKenney, Johnson & Regan
2020 K Street, N.W.
Suite 840
Washington, D.C. 20006

Dear Mr. Fiedler:

This letter is in response to your inquiry of July 12, 1993, about whether the Americans with Disabilities Act of 1990, 42 U.S.C. 12101 et seq. ("ADA"), applies to places of public accommodation housed in federally owned buildings or facilities.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist you in understanding the ADA's requirements. However, it does not constitute a legal interpretation or legal advice, and it is not binding on the Department of Justice.

You are correct to assume that a privately owned, operated, or leased place of public accommodation which is housed in a federally owned facility may be covered by the Architectural Barriers Act of 1968, 42 U.S.C. 4151 et seq. ("ABA"), and may have to comply with the Uniform Federal Accessibility Standards. However, wholly apart from the question of whether such a place of public accommodation must comply with the ABA, it is covered by, and must comply with, the ADA.

Title II of the ADA prohibits discrimination on the basis of disability by any person who owns, operates, leases, or leases to, a place of public accommodation. 42 U.S.C. 12182(a). See also 28 C.F.R. 36.201(a). Thus, even if a private entity does not own the facility housing a place of public accommodation, if that private entity operates or leases a place of public accommodation, it is covered by title III of the ADA. The fact that the landlord in a particular case is not covered by the ADA -- such as the federal government in the case you describe -- does not negate the ADA's coverage of the private entities which lease or operate places of public accommodation within the

facility. Thus, there may be cases where a place of public

cc: Records, Chrono, Wodatch, Magagna, Contois, FOIA MAF
Udd:Contois:PL:Fiedler

01-02504

accommodation operated by a private entity is covered both by the ADA and ABA (because it is housed in a federal facility).

I hope this information is useful to you in understanding the requirements of the ADA.

Sincerely,

John L. Wodatch
Chief
Public Access Section

Enclosure
Title III regulation

01-02505

LAW OFFICES
KOONZ, McKENNEY, JOHNSON & REGAN
A PROFESSIONAL
CORPORATION
SUITE 840
2020 K STREET, N. W.
WASHINGTON, D.C. 20006
FAX (202) 785-3719

JULY 12, 1993

WRITER'S DIRECT
DIAL
(202) 822-1868

Joan Magagna, Esquire
Deputy Chief
Public Access Section
Civil Rights Division
United States Department of Justice
P.O. Box 66738
Washington, D.C. 20035-6738

Re: Request for Interpretive Letter or Amicus Participation

Dear Ms. Magagna:

I am writing to request an interpretive letter from your office or your office's involvement on an amicus curiae basis with respect to an issue that has arisen in the case of Fiedler v. American Multi-Cinema, Inc., Civil Action No. 92-0486 (TPJ), now pending in the United States District Court for the District of Columbia.

The case involves claims for compensatory damages and injunctive relief under the Americans with Disabilities Act, the District of Columbia Human Rights Act, and the common law by myself, a wheelchair-user, against American Multi-cinema, Inc. (AMC) which operates the AMC Union Station Nine Theatres in Washington, D.C. The claims arise from the fact that seating for wheelchair-users in all nine theaters of the Union Station multiplex (one of which has a seating capacity greater than 300) is clustered in or behind the back row of seats. The action seeks dispersal of wheelchair seating in each of the theaters.

AMC has now moved for summary judgment. One of their arguments is that they are exempt from compliance with Title II of the ADA because the Union Station Nine Theatres is located in a federal building and is leased from the federal government.

In light of the foregoing, the following question is presented: Is a private entity that meets the definition of a place of public accommodation under Title II of the ADA and the Justice Department's rules and regulations exempt from the application of the statute and rules by virtue of the fact that it leases its space from the federal government and is located in a federal building and therefore is required under the Architectural Barriers Act to comply with the Uniform Federal Accessibility Standards? I would appreciate it if your office could issue an interpretive letter on this matter or could enter an appearance as an amicus curiae to respond to AMC's argument. Our response to the motion for summary judgment is due on August 31, 1993.

For your information, I am enclosing a copy of the Amended Complaint, the Answer to the Amended Complaint, AMC's motion for summary judgment, AMC's motion for leave to file an amended answer to the Amended Complaint, and the most recent scheduling
order.

Thank you kindly for your attention to this matter. Please do not hesitate to contact me if you need further information.

Very truly yours,

Marc Fiedler

MF/jmm

Enclosures

01-0250

T. 7-28-93
Control No. 30629113538

AUG 09 1993

The Honorable Phil Gramm
United States Senate
370 Russell Senate Office Building
Washington, D.C. 20510-4302

Dear Senator Gramm:

This is in response to your recent inquiry on behalf of your constituent, Jim W. Sealy, who has raised questions about the enforcement provisions of the Americans with Disabilities Act (ADA). Specifically, Mr. Sealy asserts that the ADA is not being implemented because "design professionals cannot deal with the [ADA] interpretation process and the local governing authorities are prohibited from helping."

Although Mr. Sealy expresses a general concern that the ADA is not being implemented adequately by the Federal government, his remarks, in fact, are focused on only one aspect of the ADA: the Federal mandate for accessible building design. In fact, the ADA is much more than that. Through the ADA, Congress intended to "provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities." 42 U.S.C. 12101(b)(1). Title III of the ADA prohibits discrimination on the basis of disability by public accommodations; it requires new construction of (and alterations to) places of public accommodation and commercial facilities to comply with the ADA Standards for Accessible Design; and it requires certain examinations and courses to be offered in an accessible place and manner. In addition to complying with the ADA Standards for Accessible Design in new construction and alterations, public accommodations must comply with a range of title III requirements, including nondiscriminatory eligibility criteria; reasonable modifications in policies, practices, and procedures; provision of auxiliary aids; and removal of barriers in existing facilities. I have enclosed a status report highlighting the Department's recent efforts at enforcing

title III of the ADA.

The ADA is intended to provide strong and consistent Federal Standards addressing discrimination against individuals with disabilities, 42 U.S.C. 12101(b)(2), and to ensure that the Federal Government plays a central role in enforcing these standards, 42 U.S.C. 12101(b)(3).

cc: Records, Chrono, Wodatch, Blizard, McDowney, FOIA, Friedlander
n:\udd\blizard\control\gramm.4
01-02499

Therefore, the ADA requires the Attorney General to issue regulations implementing title III, and makes the Department of Justice primarily responsible for enforcing title III through compliance reviews, complaint investigations, and litigation. (Title II may also be enforced through lawsuits initiated by private parties.)

With respect to design and construction of buildings and facilities that are subject to title II, Mr. Sealy is correct that there is no ADA enforcement mechanism that is analogous to the traditional State building code enforcement process. No Federal agency is authorized by the ADA to act as a "building department" to review plans, issue building permits or occupancy certificates, or provide the type of interpretations of design standards usually provided by local code officials. The ADA, like other Federal civil rights statutes, requires each covered entity to use its best professional judgment to comply with the statute and the implementing regulations.

State and local government officials are neither required nor authorized to enforce title III of the ADA. However, they are not, as Mr. Sealy asserts, "prohibited from helping" in the process of ADA implementation. Nothing in the ADA or the title III regulation prevents State or local code officials from offering advice or assistance to individuals who are seeking to implement the ADA's requirements.

The ADA Standards recognize that there are times when judgment must be exercised in the application of the Standards. Where permitted by their local laws, code officials who are familiar with the ADA Standards may be able to assist covered entities in applying the title III requirements to specific projects. However, State or local code officials may not issue binding interpretations of the ADA Standards or take any action that purports to relieve a public accommodation or commercial facility of its obligation to comply fully with the ADA.

Title III of the ADA formally recognizes the important role of building code officials in the design of accessible buildings by authorizing the

Attorney General to certify that State laws, local building codes, or similar ordinances meet or exceed the title III standards for new construction and alterations. In ADA enforcement litigation, compliance with a certified code may Be offered as evidence of compliance with title III.

Although certification facilitates consistency between The ADA Standards and the building process at the State and local level, it does not change the authority of State or local code officials with respect to the ADA. Code officials implementing a certified code are authorized to enforce only the building regulations in force in their jurisdiction; they are not authorized to enforce title III.

Mr. Sealy states that private sector entities involved in the design and construction industry have prepared a model code document, which has been submitted to this Department for review, but has not yet been certified. He asserts that, through this submission, the code community has "complied with the provisions of the law that apply to equivalency certification," but that the Department "seems to be stalling" this effort to comply.

Mr. Sealy apparently misunderstands the certification process. Model codes or standards prepared by private sector organizations are not eligible for certification. The ADA permits the Department to certify only codes that have been adopted and submitted for certification by State or local governments; it does not permit the certification of model codes or standards. However, because the Department recognizes that many State and local codes rely on models, the title III regulation provides that the Department may review submitted model codes or standards and provide guidance as to whether the submitted document is consistent with the title II requirements. The Department is not required to review models, and review does not constitute certification of a model.

We believe that the document that Mr. Sealy referred to is the American National Standards institute's (ANSI) consensus accessibility standard, which was published in January 1993 by the Council of American Building Officials (CABO) as the CABO/ANSI A117.1-1992: American National Standard for Accessible and Usable Buildings and Facilities. At the request of CABO, this Division's Public Access Section is reviewing the CABO/ANSI A117.1-1992 standard to determine if it is equivalent to the ADA Standards. The Section intends to complete its review as soon as possible. However, the Section's current workload is heavy and its staff resources are limited. These

resource constraints necessarily limit the extent to which the Section is able to undertake discretionary activities such as the review of model codes.

I hope that this information is helpful to you in responding to Mr. Sealy.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

Enclosure

01-02501

JWS
9 March, 1993
Senator Phil Gramm
2323 Bryan Street
Suite 1500
Dallas, Texas 75201

Dear Senator Gramm:

Something must be done about the Americans With Disabilities Act: It is not working. I am not complaining about the act itself. The problem is a lack of activity in the progression of implementation of the act. When the act was put into place, enforcement was assumed by the Department of Justice and interpretation was left to the design professional. When ADA was in the public comment phase, many architects questioned the wisdom of removing the local Building Official from the process of implementing the act. Our worst fears have come true. Most design professionals cannot deal with the interpretation process and the local governing authorities are prohibited from helping. Something is drastically wrong with that premise, and it must be changed.

When the design, construction and code related industries realized what the law included for enforcement and interpretation, they set about to write a corresponding document that could be submitted to the Department of Justice for compliance certification. That document was completed and submitted to DOJ in June of 1992. In subsequent meetings and conversations with representatives of DOJ, we were told that their review of our submission would be completed by 31 October, 1992. We are still waiting for

the results of their review. Why? We can't find out why and we need help.

As most of us feared, the bulk of the ADA activity is taking place in The legal arena and not in implementation. Physically disabled citizens are not realizing the benefits that the act was designed to provide, because of this delay and inactivity. On the surface, it would appear that ADA is working, but it is not. Too many members of our business world are waiting for the results of litigation before they make their decisions about compliance. That is wrong.

Had enforcement of the law been relegated to the local code jurisdictions, we would be very close to implementation, at this point. I know Congress had reasons for drafting the bill in the way that it was enacted, but it has not helped those for whom it was intended. We in the design profession recognized that flaw and set about to assist in the general scheme of complying with the intent of the law. We have completed our part and have compiled with the provisions of the law that pertain to equivalency certification. The U.S. Department of Justice seems to be stalling our efforts to comply. Why?

JIM W. SEALY, AIA
ARCHITECT / CONSULTANT
1340 Prudential Drive Dallas, Texas 75235 - 214/637-3047
01-02502

I am copying Senators Kennedy and Dole, the cosponsors of the original bill. Both were very supportive and I am sure they will want to know their hard work has met with very little success. Besides being a design professional, I work with the formulation of national building codes and standards and, as a Board Director of the Dallas mayor's Committee for the Employment of People with Disabilities, I am an advocate for the rights of the disabled. Because of those varied activities, I can view ADA from several perspectives and I can tell you with certainty, that it is not working. Will you gentlemen please help?

Sincerely,

Jim. W. Sealy, FAIA
JWS/eb

Cc: Senator Robert Dole
Senator Ted Kennedy

01-02503

AUG 9, 1993

The Honorable Tom Harkin
United States Senator
210 Walnut Street
733 Federal Building
Des Moines, Iowa 50309

Dear Senator Harkin:

This letter is in response to your inquiry on behalf of your constituent, XX regarding the inability of spectators using wheelchairs to see over other spectators standing in front of them at a concert in the Veterans Memorial Auditorium in Des Moines, Iowa.

The Americans with Disabilities Act of 1990 ("ADA") authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal

guidance to assist your constituent in understanding the ADA's requirements. However, it does not constitute a legal interpretation and it is not binding on the Department.

As a facility owned by the city of Des Moines, the Veterans Memorial Coliseum is covered by title II of the ADA. That title requires State and local governments to operate each of their programs, services, and activities so that those programs services, and activities, when viewed in their entirety, are readily accessible to and usable by individuals with disabilities, unless doing so would either fundamentally alter the nature of program, service, or activity, or would constitute an undue financial or administrative burden on the public entity. If, as XX claims, individuals with disabilities who attend a concert are unable to see what other spectators can see, it is unlikely that the Memorial Auditorium has met the requirement of providing program access. In addition, requiring all persons in wheelchairs to sit in the balcony, rather than in the front row or in another accessible row on the main floor,

cc: Records; Chrono; Wadatch; McDowney; Bowen; contois; FOIA
MAF. \udd\contois\cgl\harkin2

01-02508

might also violate the ADA. Thus, unless it would be an undue burden on the city, or a fundamental alteration of the program or service, the city would be required by title II to provide spectators using wheelchairs with seating locations and lines of sight comparable to those for other spectators.

For your information, I am enclosing a copy of this Department's regulations implementing title II of the ADA and the Technical Assistance Manual that was developed to assist individuals and entities subject to the ADA to understand the requirements of title II. I hope this information is useful to you in responding to your constituent.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

Enclosures

01-02509 UNITED STATES SENATE

WASHINGTON, D.C. 20510-1502

MAY 28, 1993

John Wodatch, Director
Office of the Americans with Disabilities
Civil Rights Division
U.S. Department of Justice
P.C. Box 66788
Washington, DC 20035-2227

Dear Mr. Wodatch:

An employee of a residential group home for persons with disabilities in Des Moines, Iowa, contacted my office regarding problems residents encountered while attending concert at the Veterans Memorial Auditorium. The employee, XX , was concerned because the residents, who all used wheelchairs, were given seating on the first floor of the auditorium, in the fifteen row, and could not see the performer when people in front of them were standing.

Enclosed is a copy of the correspondence XX received in response to a complaint he made with the Veterans Auditorium. XX does not feel that the managers of the auditorium provided reasonable accommodations. I would appreciate your assistance by reviewing the correspondence and informing me of your impression if reasonable accommodations were provided.

Please direct your response to the attention of Denita Swenson in my Des Moines office.
The address and telephone number are listed below.

Thank you for your help.

Sincerely,

Tom Harkin
United States Senator

TH/ds
enclosure

01-02510

VETERANS MEMORIAL
AUDITORIUM

April 26, 1993

XX
XX
XX
Des Moines, IA 50310

Dear XX,

I would first like to thank you for taking the time to call us concerning the problems you encountered during our Michael W. Smith concert. Handicapped seating is a problem we are constantly dealing with and trying to find a better solution.

The wheelchair seating was located in row 15 on the main floor due to our fire code restrictions. Row 14 was held for anyone else in the party so everyone would be able to sit together. Unfortunately, the cashier sold tickets to your group in the wrong row.

We have examined the possibility of putting the handicapped seating in the first row. However, in other buildings who have tried this there has been a dramatic increase in the handicapped. People have even gone so far as to rent a wheelchair for the show, so they can have the first row. Unfortunately, we believe this has left people who are truly disabled, unable to get a seat.

The use of platforms has also been looked at but brings up another set of problems and concerns. The ramp to get to the platforms must be a certain length depending on the height of the platform which the location for this-must be placed as not to hinder a quick exit in case of emergency for all patrons. This also creates a problem because all people seated behind the platform can not see the entertainer.

Our ushers have been instructed to move any wheelchair patrons to a different location, if possible, where they would be able to see better. They could have suggested your party move up to our wheelchair seating in the balcony. This section has only been in use approximately three months, but so far has been very successful

and has been well received by our handicapped patrons.

833 Fifth Avenue, Des Moines. Iowa 50309 (515) 242-2946 * FAX (515)242-2988

01-02511

I want to extend my sincere apologies on behalf of myself and Veteran's Auditorium. As your patronage means a lot to us, we are sending you a gift certificate in the amount of $213.75, which is equal to your purchase, to be used at any event in our facility.

Sincerely,

Jacki Embrey
Box Office Manager

01-02512

T. 8-4-93
Control No. 3063013622

AUG 9,1993

The Honorable Mike Kopetski
U.S. House of Representatives
218 Cannon House Office Building
Washington, D.C. 20515-3705

Dear Congressman Kopetski:

This letter is in response to your inquiry on behalf of xx regarding accessibility for persons with disabilities to older buildings. He is particularly concerned that realistic standards be created for providing accessibility in older buildings.

The Americans with Disabilities Act (ADA) authorizes the Department of Justice to provide technical assistance to individuals and entities having rights and obligations under the Act. This letter provides informal guidance to assist your constituent in understanding the ADA's requirements. However, it does not constitute a legal interpretation and it is not binding on the Department.

Under the ADA, accessibility modifications to some older buildings are required under standards that are realistic. Title III of the ADA applies to privately owned places of public accommodation, like stores and restaurants, which are required to remove architectural barriers and communication barriers that are structural in nature if it is readily achievable to do so. Readily achievable means easy to accomplish without much difficulty or expense. The cost of removing barriers and the resources of the particular business involved are taken into account in determining whether a particular action is readily

achievable. The title III regulation promulgated by this Department lists examples of barrier removal that are likely to be readily achievable in many instances and suggests priorities for removing barriers if it is not readily achievable to remove all barriers at once.

When barriers are removed, the modifications must meet the technical requirements set forth in the ADA Standards for Accessible Design that were promulgated as part of the title III regulation. If it is not readily achievable to meet the

cc: Records, Chrono, Wodatch, Johansen, McDowney, FOIA, Friedlander
n:\udd\johansen\kopetski.ltr

01-02513

Standards, it is permissible to make non-complying modifications as long as they do not create a safety risk to persons with disabilities or others. If it is not readily achievable to remove barriers, other readily achievable measures to provide goods or service must be taken.

The Standards for Accessible Design have specific requirements for all elements of a building, including most of the items suggested in XX letter -- door opening force, door hardware, curb ramps, and bathroom sizes. See Standards Sections 4.13.9, 4.13.11, 4.7. 4.8, and 4.22. A copy of the title III regulation, which includes the Standards, is enclosed for your reference.

Nothing in the ADA prevents States and local governments from enforcing codes that provide for even greater accessibility than that required under the ADA.

We hope this information is helpful to you in responding to your constituent.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

Enclosure

01-02514
HOUSE OF REPRESENTATIVES MICHAEL J. KOPETSKI
216 Cannon House
Washington, DC 20515-3705
202-225-5711
Dear Michael;

I am a Physically Handicapped person aged 46 years. I have been diagnosed to have Limb-Girdle Muscular Dystrophy at age 34. This type of dystrophy affects the skeletal muscles of the arms legs and chest, a condition that steadily worsens. This causes me to be wheelchair bound, and have limited use of my arms and hands. I cannot reach out and raise my arms (as if to shake hands with someone for example).

I have traveled extensively in California and the North West and a few times to the East Coast. It is appalling to see the variety of non-accessible bath rooms in Restaurants and Motels that claim Handicap Accessibility by merely displaying a sign and marking a parking space. One such space was right on a steep incline that would make it impossible for a person in a wheelchair to get in or out of their car. The same Restaurant did not even have a way to get over the curb from the parking lot. Many even have several steps!

Most people have the illusion that those in wheelchairs can get up and walk a few steps when necessary. These are usually some elderly who are too weak to walk long distances, but most people in wheelchairs can't even stand! People who became paraplegic from accidents have normal upper body strength and usually have no trouble with doors. But those of us that have MS or MD are weak all over.

Some Restaurants have large enough bathrooms, but stalls that are too narrow, or stall doorways that are too narrow for a wheelchair. NONE (even those that were built to today's standards) have a way to CLOSE the stall door from the inside! I suggest another door handle inside the door. Some have spring-loaded stall doors that sometimes fight to keep you inside. In nearly ALL bathrooms, the entry doors are spring-loaded so stiffly that it is difficult to get in and nearly impossible to get out, without help!

When I worked for Hewlett-Packard, we ordered and installed a special door closer (made for the handicapped) and Louvers at the bottom of the door to equalize air pressure, yet not allow anyone to see in. This worked well for me as did the door handle inside the stall door.

It should be IMPERATIVE that the inspector that inspects a building for compliance, do so in a wheelchair! Only then would he see how impossible it is to enter and leave a bathroom, or the parking lot. Probably less than half the buildings would be considered Handicapped Accessible! Only then would the handicapped not be fooled by the Blue Wheelchair sign.

I don't know what the "New Building" code requirements are for the State of Oregon, but they seem to be pretty good. The NEW Kmart in Corvallis has all the suggestions I mention later, except the door handle inside the stall door. They have a coat
01-02515
hanger that works just as well.

Below are my suggestions for compliance requirements for older buildings to make them accessible for wheelchair bound people.

1. Softer springs on doors
2. Air vents in Bath doors
3. Handles inside the stall doors
4. Ramps at curbs
5. Bathrooms large enough to accommodate a wheelchair
6. Low light switches

It doesn't seem like I'm asking for a whole lot does it? I don't think that anyone should display the Wheelchair symbol if a wheelchair does not fit in their bathroom! I drive a 4 wheel electric scooter that has the footprint of a narrow wheelchair. There are some bathrooms that I manage to get into that someone in a regular wheelchair could not, because you can't hold a door open AND maneuver a regular wheelchair with only 2 hands.

We need to establish realistic standards for older buildings. I realize that older establishments are probably being forced to make their businesses handicapped accessible, so they paint a blue sign in a parking spot or two and figure that's

that.

I'm not militant about handicapped accessibility. I won't go to war with an establishment because I can't get into their bathroom. I'll just go some place else. There are too many places for me to fret over the ones that are not totally accessible. What I'm proposing is, that only places with TOTAL accessibility get to display the BLUE WHEELCHAIR! Businesses that do not have room to enlarge their bathrooms, should not be forced to do so. They could display maybe a RED WHEELCHAIR, or some other sign indicating no bathroom facilities, or a slash through the BLUE WHEELCHAIR sign in the parking lot.

It's no fun to be eating at a restaurant that displays the Blue Wheelchair sign, and then find out you can't get into the bathroom, especially if you wait to the last minute!

This letter is not meant to be a gripe session, but only a conveyance of my thoughts on this accessibility matter. Please feel free to respond.

Sincerely,

XX
Corvallis, OR

01-02516

AUG 11, 1993

The Honorable F. James Sensenbrenner, Jr.
Member, U.S. House of Representatives
120 Bishops Way, Room 154
Brookfield, Wisconsin 53005

Dear Congressman Sensenbrenner:

This letter is in response to your inquiry on behalf of your constituent, xx . According to your inquiry, xx contacted you regarding the inaccessibility of the second floor of the Sheboygan-area Menards store to persons with disabilities.

The Americans with Disabilities Act (ADA) authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist you in understanding the ADA's requirements. However, it does not

constitute a legal interpretation or legal advice and it is not binding on the Department of Justice.

Retail stores are places of public accommodation under title III of the ADA. The ADA requires public accommodations to remove architectural barriers in existing facilities where such removal is "readily achievable," i.e., easily accomplishable and able to be carried out without much difficulty or expense. Your constituent states that he is unable to gain access to the second floor of the Sheboygan-area Menards store. It is quite possible, however, that the store is not obligated to install an elevator. Under the ADA Standards for Accessible Design, elevators are not required in facilities that are less than three stories or that have less than 3000 square feet per story, unless the building is a shopping center, a shopping mall, or the professional office of a health care provider. See page 35613 of the enclosed Title III regulation.

Even if the Sheboygan-area Menards store is located in a building that qualifies as a shopping center or mall under the technical standards, or otherwise does not qualify for the elevator exemption, the store may not have to install an elevator. Determining if barrier removal in a public

cc: Records, Chrono, Wodatch, McDowney, Bowen, Foran, FOIA, MAF
Udd: Foran:Sensenbr.Con

01-02517

accommodation is readily achievable is necessarily a case-by-case judgment. Whether rendering the second floor of a particular retail store accessible is readily achievable would be determined according to the following factors:

(1) the nature and cost of the action needed;

(2) the overall financial resources of the site or sites involved in the action; the number of persons employed at the site, the effect on expenses and resources; legitimate safety requirements necessary for safe operation, including crime prevention measures; or any other impact of the action on the operation of the site;

(3) the geographic separateness, and the

administrative or fiscal relationship of the site or sites in question to any parent corporation or entity with respect to the number of employees; the number, type, and location of its facilities;

(4) if applicable, the overall financial resources of any parent corporation or entity; the overall size of the parent corporation or entity with respect to the number of its employees; the number, type, and location of its facilities; and

(5) if applicable, the type of operation or operations of any parent corporation or entity, including the composition, structure, and functions of the workforce of the parent corporation or entity.

Generally, a public accommodation would not be required to remove a barrier to physical access posed by a flight of steps if removal would require very extensive ramping or an elevator. In contrast, ramping a single step will likely be readily achievable, and ramping several steps will in many circumstances also be readily achievable. See preamble to enclosed title III regulation at page 35568.

As is clear from the foregoing, it is possible that rendering the second floor of the Sheboygan-area Menards store accessible may not be readily achievable under the law. Even if Menards can demonstrate that removal of barriers is not readily achievable, however, it still must make its goods and services available through alternative methods, if such methods are readily achievable. Thus, for example, the store might be obligated to ensure that a clerk is available to retrieve items from the second floor for persons with mobility impairments. See preamble to enclosed title III regulation at page 35570.

01-02518

If xx wishes to pursue his complaint against Menards, he may file a complaint with this office at the following address:

Public Access Section
Civil Rights Division
P.O. Box 66738
Washington, D.C. 20035-9998

The letter should include a full address for the particular Menards store which is the subject of his complaint.

Please make XX aware that, due to the volume of complaints received and limited resources of this office, not every complaint is investigated. It is not likely that we would open this complaint for investigation. In light of this, you may want to inform XX that the ADA provides a private right of action and that he is free to obtain private counsel.

In addition to contacting a private attorney, there are a number of avenues that XX may wish to pursue in order to resolve his complaint, including consulting State or local authorities, disability rights organizations, or organizations that provide alternative dispute resolution services (such as arbitration or negotiation). For your convenience, we have enclosed a list of organizations serving your constituent's area. These listings come from various sources, and our office cannot guarantee that the listings are current and accurate. These groups may be able to refer XX to national or regional groups with a focus on a particular type of disability. Your constituent's local or State bar association may be able to give him names of private attorneys or mediation services. Some Better Business Bureaus are also prepared to help settle ADA complaints.

Enclosed also please find a copy of the Department's Title III Technical Assistance Manual.

I hope this information will assist you in responding to your constituent.

Sincerely,

Brian K. Landsberg
Acting Assistant Attorney General
Civil Rights Division

Enclosures

01-02519

(Handwritten)
Dear Congressman,

I was in touch with your office a couple days ago and presented them with a problem I have with Menards. Menards is a building materials place & several other items I'm sure you are familiar with. My concern is this, I believe they are supposed to be handicap accessible. They are to a point but the have a second floor with items displayed up there, lights, ceiling fans, telephones etc, etc. I'm in a wheel chair and

cannot get up there to pick out light and ceiling fans as I am remodeling my house. I talked to the manager of the Sheboygon store and asked him if they were going to do something about making that portion handicap accessible. And, if so when he told me we're not going to do anything about it. So, I got the presidents name & address at their corporate headquarters in Eau Claire, WI and wrote him a letter asking him if & when they were going to make their upstairs handicap accessible and he did not even have the decency to answer my letters. I don't know where else to go but you. Can you help get this problem resolved?

Thank You

Sheboygon, WI 53081
Telephone
xx

01-02520

AUG 12 1993

The Honorable Thomas H. Andrews
Member, U.S. House of Representatives

136 Commercial Street
Portland, Maine 04101

Dear Congressman Andrews:

This letter is in response to your inquiry on behalf of your constituent, XX , concerning the applicability of the Americans with Disabilities Act ("ADA") to the costs of interpreters at meetings and other events.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist your constituent in understanding the ADA's requirements. However, it does not constitute a legal interpretation or legal advice, and it is not binding on the Department of Justice.

Your constituent inquires as to whether deaf Individuals must pay the additional costs associated with the provision of interpreters for meetings where both deaf and hearing individuals are present. Specifically, XX expresses concern that the "continuance of this expense (for the provision of interpreters] remains a drag on the on-going efforts to encourage deaf/hearing get-togethers."

The ADA requires that places of public accommodation provide auxiliary aids and services, including qualified interpreters, where such provision is necessary to ensure effective communication with people with disabilities. The cost of such services may not be financed by surcharges placed on particular individuals, or groups of individuals, with disabilities. Charges may, however, be spread out among all of the clients of a place of public accommodation.

For example, while a doctor may not raise his fee exclusively for an individual who requires an interpreter, the doctor may raise his fee generally for all his patients, so that the additional expense of providing an interpreter is covered.

cc: Records; Chrono; Wodatch; McDowney; Magagna; Perley; FOIA MAF. \udd\perley\congress\andrews

01-02521

Similarly, while a place of public accommodation may neither impose a surcharge solely on meeting participants who are deaf nor charge a fee solely for those meetings where there will be deaf attendees, the place of public accommodation could charge an entrance fee for all its meetings, regardless of whether or not there would be deaf participants, so that the expense of providing interpreters for particular meetings would be covered. For information concerning the provision of auxiliary aids and services under the ADA, see S 36.303 of the enclosed title III regulation at pages 35597 and 35565-68. For information concerning the prohibition on the imposition of surcharges, see S 36.301 of the regulation at pages 35596 and 35564.

Some of the meetings your constituent refers to may be related to the employment of a person with a disability and, therefore, would be covered under title I of the ADA. Title I requires employers to make reasonable accommodations for the known disability of an employee so that the employee may function effectively in the work place. Such an accommodation may include the provision of interpreter services at employment-related meetings and similar events. For further information on title I of the ADA, you may contact the Equal Employment Opportunity Commission.

Although there is no provision in the ADA for government reimbursement of the costs of providing interpreter services, there are a number of tax credits and deductions available for expenses related to the provision of accessibility services. These include the Targeted Jobs Tax Credit (Title 26, Internal Revenue Code, Section 51) and the Disabled Access Tax Credit (Title 26, Internal Revenue Code, Section 44). For further information on these provisions, your constituent may contact the Internal Revenue Service, Office of the Chief Counsel, P.O. Box 7604, Ben Franklin Station, Washington D.C. 20044 (202) 566-3292 (voice only).

I hope this information is helpful to you in responding to your constituent. You may wish to inform your constituent that further information is available through our Americans with Disabilities Act Information Line at (202) 514-0301 (voice), (202) 514-0383 (TDD).

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

Enclosures

01-02522

Maine Center on Deafness MCD

175 Lancaster Street
Suite 122
Portland, Maine 04101
(207) 761-2533 TDD/Voice

May 7, l993

Malory Otteson
Tom Andrews District Office
136 Commercial Street
Portland, Maine 04101

Dear Ms. Otteson:

Thank you for the opportunity to talk with you on the telephone on Friday. You have been most helpful in the past, and I am wondering now if you would be willing to check out one more thing for me.

As an advocate for the deaf I am trying, among other things, to test the adequacy of the Americans With Disabilities Act (ADA) in covering various needs of the deaf. In particular, at this time I am concerned about the cost of interpreters. It is true that in various settings, under the ADA, interpreters must be provided and paid for by people needing to communicate with the deaf. However, there are also situations where the deaf, in their meetings, need to hire and pay for interpreters themselves. This seems to conflict with what I interpret to be the true intent of the ADA.

Please let me give an example: I am a volunteer for the Maine Center on Deafness in Portland, Maine. As such, I have observed that at meetings and gatherings attended by both bearing and deaf, there is always an extra charge for the cost of interpreters. (A cost that is non-existent in meetings of the hearing only.) Similarly, interpreters are needed at regular board meetings as both hearing and deaf are board members.

Unless there is some way that interpreter costs can be recovered, the continuance of this expense remains a drag on the on-going efforts to encourage deaf/hearing get-togethers, and the spread of deaf awareness in today's world. I would be grateful if your office would explore this matter with the appropriate officials who are responsible for the mandates of the ADA and let me know their advice and decisions. Thank you for your

help.

Sincerely,

XX

01-02523

AUGUST 12, 1993

The Honorable Don Nickles
United States Senator
409 South Boston
Suite 3310
Tulsa, Oklahoma 74103

Dear Senator Nickles:

This letter is written in response to your correspondence on behalf of your constituent, xx who alleges that she was discriminated against on the basis of her disability by Sinco Gas Station in Elgin, Oklahoma. XX also requests information concerning her rights under the Americans with Disabilities Act of 1990 (ADA).

Title III of ADA prohibits sales establishments from discriminating against persons with disabilities by excluding such persons from their facilities or from the benefits of their services. All new construction and alterations to existing facilities, such as the gas station described by xx , must be readily accessible to and usable by persons with disabilities and should be designed and built according to the ADA Standards for Accessible Design, 36 C.F.R. pt. 36, Appendix A. By contrast, public accommodations in existing facilities must remove architectural barriers to access only where such removal is readily achievable, that is, where it can be accomplished easily and without much difficulty or expense. These requirements appear in sections 36.401 and 36.304 of the enclosed ADA title III regulation, at pages 35599-35600 and 35597- 35598, respectively. Also enclosed is the Department's Title III Technical Assistance Manual, which may provide further assistance to your constituent. Pertinent discussion may be found at pages 43-53 (new construction and alterations) and 28-36 (existing facilities).

Persons who believe that they have been discriminated against on the basis of disability have two enforcement options under the ADA: (1) they may secure private legal representation and bring an action in federal district court,

or (2) they may file a complaint with the U.S. Department of Justice.

cc: Records; Chrono; Wodatch; McDowney; Magagna; Nakata; FOIA;,
MAF. \udd\nakata\congress.let\nickles.1

01-02524

If XX wishes to file a formal complaint with the Civil Rights Division, she should send any relevant information to the Public Access Section, Civil Rights Division, U.S. Department of Justice, Post Office Box 66738, Washington, D.C. 20035-6738.

The Department is not able to open an investigation of every complaint it receives, but gives careful attention to every complaint that it receives.

I hope this information is of assistance to you in responding to your constituents complaint.

Sincerely,

Brian K. Landsberg
Acting Assistant Attorney General
Civil Rights Division

Enclosures

01-02525

17 Apr 93

Dear Senator David Boren, 612 N Robinson , OKC, OK 73102
Senator Don Nicholes, 100 N Broadway, OKC, OK 73102
Disabled American Vets, P.O. Box 75861, OKC, OK 73147
District Court Clerk, Federal Court House Bldg, OKC, OK
Community Actions Agency, 1904 SW Washington, Lawton, OK 73501
Comanche County Court House, 5th and D St., Lawton, OK 73501

I was in Elgin, Ok on 14 Apr 93. I stopped by the Sinco Gas Station to buy a coke and to go to the bathroom. To my surprise this station does NOT have handicapped bathrooms. I was born with Spinal Bifida and am confined to a wheelchair and require the special bathroom facilities.

I asked the young snotty girl who was working at the counter, when was the building constructed. She asked why I wanted to know. I told her I was sure that the building was constructed without following the rules of the ADA. She said she didn't care, she wasn't the owner. So I told her she had Better tell the owner I was turning him in for not following Federal laws. She replied I could call the owner, Rodney Ryder. So I said ok--well guess what the telephone is up a step behind the counter which I could not get up to either. And the young snotty girl took great pleasure in making a point of that.

I told her I was going to contact an attorney, John Zelbst from Lawton. She said she didn't care Rodney probably knew John personally. So she wasn't the least bit concerned.

I left and went to the Bank of Elgin and used the phone. I called John's office but he is out of town until 26 Apr. And I

did leave him a message to call me. At the bank I did ask a couple of questions and found out the station was constructed in the 1990 timeframe.

My question is--why was this building allowed to pass inspection when ADA requires all public buildings to be handicapped accessible? Who approved this? And what can be done to correct this? And Is there a FINE for the owner?

I would personally like this station restructured to meet the required laws. The soap container is too high. The hand drying machine wasn't working.

Please let me know what you do about this matter.

Thanks,
XX

Ok City, OK 73162
CF: , Lawton, OK 73501

01-02526

U.S. Department of Justice

Civil Rights Division

Coordination and Review Section
P.O. Box 66118
Washington, DC 20035-6118

Aug. 19 1993

Ms. Brenda K. Jacobs
Clark County Election Department
1860 E. Sahara Avenue
Las Vegas, Nevada 89104-3760

RE: Complaint Number XX

Dear Ms. Jacobs:

This letter constitutes our Letter of Findings with respect to a complaint filed with the Department of Justice, Civil Rights Division, Coordination and Review Section, against the Clark County Election Department. As you are aware, a complaint was filed with this office alleging that the Election Department failed to provide access to the polling site at the Las Vegas High School Auditorium, in violation of title II of

the Americans with Disabilities Act of 1990 (ADA) . As a result, an individual with a mobility impairment had to vote in the hallway.

The coordination and Review Section of the United States Department of Justice is responsible for investigating complaints of discrimination under title II for which it is the designated agency.

Following our notification to you of our receipt of this complaint, you provided a copy of your curbside voting policy for Clark County. We have reviewed this policy and concluded that it does not violate title II of the ADA. Section 35.149 of the enclosed title II regulation requires accessibility to programs services, and activities in facilities existing on the effective date of the statute, January 26, 1992. The principal focus of the program accessibility standard is access to programs, services, and activities, as opposed to access to physical structures. Therefore, existing polling places are not required to be accessible, provided that alternative

methods are effective in enabling individuals with disabilities to cast a ballot an the day of the election. The Clark County policy of taking the ballot outside to a voter who is unable to enter the polling place is an acceptable method of providing program access.

Because Clark County has a curbside voting policy in place that meets the requirements of title II of the ADA, we are closing our file in this case as of the date of this letter.

We are obligated to inform you that if any individual is harassed or intimidated because of the filing of a complaint or the participation in the investigation of a complaint, such an individual may file a complaint alleging such harassment or intimidation. The allegation of harassment or intimidation would be investigated as a separate complaint.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that we receive such a request, we will seek to protect, to the extent provided by law, personal information which, if released, could constitute an unwarranted invasion of privacy.

We appreciate your cooperation with the Department of Justice in this matter. If you have any questions concerning this letter, please contact Ms. Linda King, the investigator assigned to your case, who can be reached at (202) 307-2231 (Voice) or (202) 307-267S (TDD) (these are not toll-free numbers).

Sincerely,

Stewart B. Oneglia
Chief
Coordination and Review Section
Civil Rights Division

01-02528

AUG 19 1993

The Honorable Jim Saxton
U. S. House of Representatives
438 Cannon House Office Building
Washington, D.C. 20515-3003

Dear Congressman Saxton:

This letter is in response to your inquiry on behalf of your constituent, XX , who states that her son-in-law was not provided a sign language interpreter to convey information about his impending major heart surgery. I have also received the documents attached to your letter --XX letter to Governor Florio and the governor's response to it. This letter responds to your request for information about the duty of a medical institution under the Americans with Disabilities Act ("ADA") to provide the services of an interpreter under these circumstances.

Both public and private institutions that provide health care are subject to the provisions of the ADA. As such, they are required to take steps to provide auxiliary aids and services that will ensure that an individual with a disability is not excluded, denied services, segregated or otherwise treated differently from other individuals. Health care institutions will only be excused from providing these auxiliary aids and services if doing so would either fundamentally alter the nature of the services provided, or would result in an undue burden in terms of difficulty or cost.

The Justice Department's implementing regulations detail this requirement of non-discrimination, 28 C.F.R. SS 35.160, 36.303(a), and define auxiliary aids and services to include qualified interpreters. 28 C.F.R. S 36.303(b)(1). Therefore, a medical institution would need to provide a deaf patient with an interpreter to convey information about medical procedures, if necessary for effective communication, unless doing so would be

cc: Records; Chrono; Wodatch; McDowney; Magagna; Kuczynski;
FOIA; MAF. \udd\kuccynsk\saxton.cng

01-02529

too difficult or too costly. A similar obligation to provide an interpreter might also arise under 504 of the Rehabilitation Act and its implementing regulations, which prohibit discrimination on the basis of disability by activities and programs receiving federal financial assistance.

Since determinations of what is necessary for effective communication and what constitutes an undue burden are very fact-specific inquiries, it is impossible to know, without more information concerning the particular hospital involved, whether a violation of the ADA has actually occurred. Your constituent may wish to file a complaint to have the matter investigated. If the hospital involved is operated by a State or local government, she should write to:

Department of Health and Human Services
Region II
26 Federal Plaza
New York, N.Y. 10278.

If it is a private hospital, she should write to:

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

I hope this information will be helpful to you in responding to your constituent.

Sincerely,

Brian K. Landsberg
Acting Assistant Attorney General
Civil Rights Division

01-02530

CONGRESS of the UNITED STATES

HOUSE of REPRESENTATIVES

WASHINGTON. DC 20515-3003

July 15, 1993

Ms. Janet Reno
Attorney General
Department of Justice
Main Justice Building, ROOM 1603

Pennsylvania & Constitution Aves. NW
Washington, D.C. 20530

Dear Ms. Reno:

I was appalled after reading the enclosed letter from a constituent who outlined a situation which confronted a deaf family member. I believe that you, too, will find the letter shocking.

A deaf individual was faced with major heart surgery without an interpreter. An operation such as that is frightening enough without even the knowledge of what is occurring.

Consequently, I would like for you to provide information on the responsibility of a medical institution under the Americans with Disabilities Act in this situation.

Thank you for your attention to this matter.

Sincerely,

JIM SAXTON
MEMBER OF CONGRESS

HJS/brg

Enclosure

01-02531

(HANDWRITTEN)

DEAR GOVERNOR FLORIO,

THE PASSAGE AND IMPLEMENTATION OF THE AMERICANS WITH DISABILITIES ACT IS A MUCH NEED STEP TO ENSURE ALL AMERICANS RECEIVE THE CARE IN HOSPITALS THEY ARE ENTITLED TO.

HOWEVER THIS DOES NOT APPEAR TO BE THE CASE WHEN SOMEONE IS DEAF. MY SON-IN-LAW WAS RECENTLY HOSPITALIZED. HE REQUIRED MAJOR HEART SURGERY A QUADRUPLE BY-PASS. ALL THIS WITHOUT BENEFIT OF AN INTERPRETER

THE HOSPITALS INVOLVED MADE A HALF-HEARTED EFFORT TO PROVIDE THIS SERVICE. THE END RESULT WAS HE FACED THE SURGERY WITHOUT THE EXPLANATION YOU OR I, OR EVEN A SPANISH-SPEAKING PERSON, WOULD RECEIVE. THIS IS A DISGRACE AND INEXCUSABLE. THIS DISCRIMINATION MUST BE STOPPED.

MOST OFTEN THE HOSPITAL'S REPLY IS THE FAMILY USUALLY PROVIDES THE INTERPRETER. "WHY SHOULD I HAVE TO DO THIS WHEN THE LAW REQUIRES THE THE HOSPITAL TO PROVIDE THESE SERVICES.

I WOULD APPRECIATE IT IF YOU WOULD INVESTIGATE THIS ISSUE. HOW MANY OTHERS ARE DENIED AN UNDERSTANDABLE EXPLANATION OF MEDICAL PROCEDURES BECAUSE THE HOSPITAL STAFF CAN NOT COMMUNICATE WITH THE PATIENT?

THANK YOU FOR YOUR SUPPORT,
xx

VINCETOWN, NJ 08088

01-02532

AUG 20 1993

The Honorable Bill Paxon
U.S. House of Representatives
1314 Longworth
House Office Building
Washington, D.C. 20515

Dear Congressman Paxon:

This letter is in response to your inquiry on behalf of your constituent, xxxxxxxx who has requested some guidance concerning the Americans with Disabilities Act ("ADA"). Xx xxxxxxxxx request concerns statements found in the ADA Handbook regarding comments received by the Department of Justice during the rulemaking period for titles II and III of the ADA.

The ADA authorizes this Department to provide technical assistance to individuals and entities that have rights or responsibilities under the ADA. Therefore, this letter provides informal guidance to assist you in responding to xxxxxxxxxxx. However, this technical assistance does not constitute a legal interpretation, and it is not binding on the Department of Justice.

Xxxxxxxxxx first question refers to a statement in the ADA Handbook, at page II - 3, that an organization representing persons with hearing impairments "presented the Department with 479 individual comments, each providing in chart form a detailed representation of what type of auxiliary aid or service would be useful in the various categories of places of public accommodation."

Xxxxxxxxxxxx asked what specific recommendations were made. Given the number of comments received by the Department, it is not possible to summarize the recommendations that were made by those individuals. However, xxxxxxxxxxxx attention is directed to the preamble of the title III regulation that discusses the obligation of a place of public accommodation to provide auxiliary aids and services and many of the recommendations that the Department received regarding that

cc: Records, Chrono, Wodatch, Breen, Delaney, McDowney, MAF, FOIA
udd\delaney\congress\paxon

01-02533

obligation. For a fuller discussion of auxiliary aids and services, please refer to 28 C.F.R. S 36.303 of the title III regulation (copy enclosed) and the discussion in the preamble that can be found at 56 Fed. Reg. 35,565-35,568.

Xxxxxxxxxxxx second question refers to a statement in the ADA Handbook, at page II - 21, concerning the comments received by the Department urging that environmental illness (also known as multiple chemical sensitivity) be recognized as a disability under the ADA. As the ADA Handbook explains, the Department declined to make such a categorical determination.

Xxxxxxxxxxxxxx has asked whether multiple chemical sensitivity can be substantiated. As promulgated, the title II and III regulations require that a case-by-case determination be made as to whether a particular allergy, illness, or chemical sensitivity constitutes a disability within the meaning of the ADA. This analysis is the same as that applied for all other physical or mental impairments. For a fuller discussion of the issue of what constitutes a disability under the ADA, please refer to 28 C.F.R. S 36.104 of the title III regulation and the discussion in the preamble that can be found at 56 Fed. Reg. 35,548-35,550.

I hope this information is helpful in responding to your constituent.

Sincerely,

Brian K. Landsberg
Acting Assistant Attorney General
Civil Rights Division

Enclosure:

01-02534

Congress of the United States
House of Representatives
Bill Paxon
27th District, New York

June 29, 1993

Mr. Thomas Reinehardt
Director of Congressional Relations
U.S. Department of Justice
Pennsylvania and Constitution Avenues, NW
Washington, D.C. 20535

Dear Mr. Reinehardt:

I am writing on the behalf of one of my constituents, xxxxx Xxxxxxxxxx, and in reference to his questions regarding the Americans with Disabilities Act Handbook. I am hopeful that you and your staff can assist me in answering his questions.

Xxxxxxxxx contacted my office with the two following specific questions about Title II - Nondiscrimination on the Basis of Disability in Public Facilities:

1.) ADA Handbook, page II - 3, paragraph 3 (enclosure). Hearing impaired individuals provided comments on which auxiliary aid or service would be useful in various public accommodations. What specific recommendations were made?

2.) ADA Handbook, page II - 21, paragraph 3 (enclosure). In reference to multiple chemical sensitivity - under Department of Justice guidelines, can multiple chemical sensitivity be substantiated?

I would appreciate any assistance or information that you may be able to provide to me that would assist me in this matter and ask that you consider this request within the rules and regulations governing the Department of Justice. I look forward to your response.

Best wishes.

Sincerely,

Bill Paxon
Representative

BP: mk
01-02535

senting businesses in the private sector, and 67 from government units, such as mayors' offices, public school districts, and various State agencies working with individuals with disabilities.

The Department received one comment from a consortium of 540 organizations representing a broad spectrum of persons with disabilities. In addition, at least another 25 commenters endorsed the position expressed by this consortium, or submitted identical comments on one or both proposed regulations.

An organization representing persons with hearing impairments submitted a large number of comments. This organization presented the Department with 479 individual comments, each providing in chart form a detailed representation of what type of auxiliary aid or service would be useful in the various categories of places of public accommodation.

The Department received a number of comments based on almost ten different form letters. For example, individuals who have a heightened sensitivity to a variety of chemical substances submitted 266 post cards detailing how exposure to various environmental conditions restricts their access to public and commercial buildings. Another large group of form letters came from groups affiliated with independent living centers.

The vast majority of the comments addressed the Department's proposal implementing title III. Slightly more than 100 comments addressed only issues presented in the proposed title II regulation.

The Department read and analyzed each comment that was submitted in a timely fashion. Transcripts of the four hearings were analyzed along with the written comments. The decisions that the Department has made in response to these comments, however, were not made on the basis of the number of commenters addressing any one point but on a thorough consideration of the merits of the points of view expressed in the comments. Copies of the written comments, including transcripts of the four hearings, will remain available for public inspection in Room 854 of the HOLC Building, 320 First Street, N.W., Washington, D.C. from 10:00 am. to 5:00 p.m., Monday through Friday, except for legal holidays, until August 30, 1991.

4. Overview of the Rule

The rule is organized into seven subparts. Subpart A, "General," includes the purpose and application sections, describes the relationship of the Act to other laws, and defines key terms used in the regulation. It also includes administrative requirements adapted from section 504 regulations for self-evaluations, notices, designation of responsible employees, and adoption of

grievance procedures by public entities.

Subpart B, "General Requirements," contains the general prohibitions of discrimination based on the Act and the section 504 regulations. It also contains certain "miscellaneous" provisions derived from title V of the Act that involve issues such as retaliation and coercion against those asserting ADA
rights, illegal use of drugs, and restrictions on smoking. These provisions are also included in the Department's proposed title III regulation, as is the general provision on maintenance of accessible features.

The question of whether a temporary impairment is a disability must be resolved on a case-by-case basis, taking into consideration both the duration (or expected duration) of the impairment and the extent to which it actually limits a major life activity of the affected individual.

The question of whether a person has a disability should be assessed without regard to the availability of mitigating measures, such as reasonable modifications or auxiliary aids and services. For example, a person with hearing loss is substantially limited in the major life activity of hearing, even though the loss may be improved through the use of a hearing aid. Likewise, persons with impairments, such as epilepsy or diabetes, that substantially limit a major life activity, are covered under the first prong of the definition of disability, even if the effects of the impairment are controlled by medication.

Many commenters asked that environmental illness (also known as multiple chemical sensitivity) as well as allergy to cigarette smoke be recognized as disabilities. The Department, however, declines to state categorically that these type Of allergies or sensitivities are disabilities, because the determination as to whether an impairment is a disability depends on whether, given the particular circumstances at issue, the impairment substantially limits one or more major life activities (or has a history of, or is regarded as having such an effect.

Sometimes respiratory or neurological functioning is so severely affected that an individual will satisfy the requirements to be considered disabled under the regulation. Such

an individual would be entitled to all of the protections afforded by the Act and this part. In other cases, individuals may be sensitive to environmental elements or to smoke but their sensitivity will not rise to the level needed to constitute a disability. For example, their major life activity of breathing may be somewhat, but not substantially, impaired. In such circumstances, the individuals are not disabled and are not entitled to the protections of the statute despite their sensitivity to environmental agents.

In sum, the determination as to whether allergies to cigarette smoke, or allergies or sensitivities by the commenters as environmental illness are disabilities covered by the regulation must be made using the same case

ADA Handbook II-
01-02537
T. 8-3-93

AUG 23 l993

DJ 202-PL-565

Mr. James C. Bagley
Goodwyn, Mills & Cawood, Inc.
125 Interstate Park Drive
P.O. Box 3605
Montgomery, Alabama 36109-0605

Dear Mr. Bagley:

I am responding to your letter inquiring about the certification of State and local accessibility codes pursuant to the Americans with Disabilities Act (ADA). Specifically, your letter asks if the adoption of a model code by a State or local government requires the approval of the Department of Justice.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities that have rights or responsibilities under the Act. This letter provides informal guidance to assist you to understand the ADA. However, this technical assistance does not constitute a determination by the Department of your rights or responsibilities under the ADA, and it is not binding on the Department.

The ADA does not preempt all State regulation in the area of accessible design. States may continue to enact and enforce State accessibility codes. These codes do not require Department of Justice approval. However, if the State code provisions differ from the ADA requirements in a way that may result in less

accessibility, then a covered entity is required to comply with the ADA standards in addition to the State code.

The ADA requirements that govern the new construction or alteration of facilities subject to the ADA are contained in the Department of Justice regulations implementing titles II and III of the ADA. Title II of the ADA prohibits discrimination on the basis of disability by public entities, including all State and local governments. Title III of the ADA prohibits discrimination on the basis of disability by places of public accommodation, and it requires all new construction of, or alterations to, places of public accommodation and commercial facilities to be readily accessible to people with disabilities.

cc: Records, Chrono, Wodatch, Breen, Blizard, FOIA, Friedlander
n:\udd\blizard\cert\alabama.ta

The Department of Justice regulation implementing title II (28 C.F.R. pt. 35) requires all new construction of, or alterations to, public buildings after January 26, 1992, to comply with either the Uniform Federal Accessibility Standards or the Standards for Accessible Design published as Appendix A to the Department's regulation implementing title III (28 C.F.R. pt. 36). The Department's title III regulation requires all places of public accommodation and commercial facilities designed and constructed for first occupancy after January 26, 1993, or altered after January 26, 1992, to be designed in compliance with the requirements of Subpart D of the regulation and the Standards for Accessible Design.

The ADA recognizes that individuals involved in the design and construction of facilities subject to title III of the Act may want to be able to rely on compliance with State or local codes as a means of complying with the ADA. Therefore, title III permits the Department of Justice, in response to a request from a State or local government, to certify that the accessibility provisions of a State or local building code that apply to places of public accommodation or commercial facilities meet or exceed the requirements of the ADA. Certification of a code by the Department does not ensure that a facility constructed in compliance with the code will comply with the ADA, but it does enable a party in litigation that alleges a violation of title III to point to compliance with a certified code as rebuttable

evidence of compliance with the ADA. The ADA does not authorize the Department to certify State or local code requirements that apply only to the construction of public buildings or facilities.

For your information, I am enclosing copies of the Department's regulations implementing titles II and III of the ADA, and the Department's technical assistance manuals. I hope that this information is helpful to you.

Sincerely,

John L. Wodatch
Chief
Public Access Section

Enclosures

01-02540

Goodwyn, Mills & Cawood, Inc.
ENGINEERS ARCHITECTS SURVEYORS

May 10, 1993

THE OFFICE OF THE AMERICANS
WITH DISABILITIES ACT
CIVIL RIGHTS DIVISION
U.S. DEPARTMENT OF JUSTICE
Post Office Box 6618
Washington, D.C. 20035-6118

REFERENCE: CERTIFICATION OF LOCAL CODES - Request for Written Response

TO WHOM IT MAY CONCERN:

The State of Alabama Fire Marshall, who has the legal authority to promulgate and enforce regulations regarding accessibility, adopted UFAS-88 as Alabama's ADA Standard, in conjunction with or at least with endorsement of the State Building Commission. This has been in place for over a year, and is now relied upon across the state.

My understanding from numerous ADA meetings, seminars, convention activities, research, etc., and discussion with several lawyers where this has come up, is that the Department of Justice must endorse our State Fire Marshal's action before it is acceptable, 'official," later admissible as factual evidence, etc.

QUESTION: Does the adoption of a "Model Code" by a State or municipality require the endorsement, acceptance, or similar action by the

Department of Justice and/or other authority?

Thank you for your time in attention to this request. We will be looking forward to your response very soon.

Sincerely yours,

GOODWYN, MILLS & CAWOOD, INC.

James Bagley, AIA, CDT, CSI

JCB:mh:6400-ADA.ARC

01-02539

T. 8-5-93

DJ 202-PL-259

AUG 23 1993

Mr. Lowell C. Horton
Horton Products Company
601 East Burgess Road
Building H-4
Pensacola, Florida 32504

Dear Mr. Horton:

I am writing in response to your letter inquiring as to whether the standards issued under the Americans with Disabilities Act of 1990 (ADA) apply to swimming pools in places of public accommodations and whether swimming pool operators are required to remove architectural barriers.

The ADA authorizes the Department of Justice to provide

technical assistance and information to individuals and entities who have questions about the Act or the Standards for Accessible Design adopted under the Department's ADA regulations. This letter provides informal guidance to assist you in understanding and complying with the ADA's requirements. However, this technical assistance should not be viewed as legal advice or a legal opinion about your rights or responsibilities under the ADA.

The Access Board developed the ADA Accessibility Guidelines for Buildings and Facilities which were subsequently adopted as the Standards for Accessible Design (Standards) under the Departments regulations issued under title III of the ADA. A copy of the Department's regulations are enclosed for your use.

The Standards currently do not contain specific design criteria for providing access into a swimming pool. However, the Standards' general accessibility provisions would apply to access to the pool deck, dressing rooms, toilet rooms, parking, and other public and common use areas.

The Access Board has announced its intention to develop guidelines for recreational facilities and has convened a Federal Advisory Committee on Recreation to assist in the development of accessibility guidelines for all types of recreational facilities, including swimming pools. As new guidelines are

cc: Records, Chrono, Wodatch, Breen, Lusher, FOIA, Friedlander
n:\udd\mercado\plcrtltr\horton.rhl

01-02541

developed by the Board, the Department will enter into rulemaking to adopt the guidelines as enforceable standards under the ADA.

All public accommodations covered by the ADA must comply with the nondiscrimination and accessibility requirements of title lll. In existing facilities, all barriers to accessibility must be removed if the removal is readily achievable. Readily achievable means easily accomplishable and able to be carried out without much difficulty or expense. Sections 36.304(b) and (c) of the enclosed title III regulations, at pages 35597-98, provide examples and suggest priorities for barrier removal steps. Public accommodations are urged first to provide an accessible route into the facility from public sidewalks, parking or transportation. Next, a public accommodation should provide

access to, in order of priority, areas where goods and services are made available and to restroom facilities. The public accommodation should then provide access to the remainder of its "goods, services, facilities, privileges, advantages, or accommodations." Please consult the enclosed regulation and Technical Assistance Manual for a more complete discussion of barrier removal.

The ADA establishes two avenues for enforcement of the requirements of title III:

1. Private suits by individuals who are being subjected to discrimination or who have reasonable grounds for believing that they are about to be subjected to discrimination.

2. Suits by the Department of Justice, whenever it has reasonable cause to believe that there is a pattern or practice of discrimination, or where discrimination raises an issue of general public importance. The Department will investigate complaints and conduct compliance reviews of covered entities.

I hope this information is useful to you.

Sincerely,

John L. Wodatch
Chief
Public Access Section

Enclosures
01-02542

HORTON PRODUCTS
C 0 M P A N Y
PO. Box 36277 1200 Old Corry Field Road Pensacola, Florida 32516
Phone 904/438-4111 FAX 904/438-4226

RESPOND TO:

July 13, 1992

601 E. Burgess Rd
Building H-4
Pensacola, Fl 32504

Mr. John Wodatch
Head, AMERICANS WITH DISABILITIES ACT

U.S. Department of Justice
P.O. Box 66738
Washington, D.C. 20035-9998

Dear Mr. Wodatch:

This is my fourth effort through various members of your staff to obtain simple, written answers to three clear, direct questions concerning certain ADA requirements. To date, I have received only stacks of regulations - but not one single word from any staff member addressing my spefific questions.

In total frustration I am asking for your assistance. Will you please see that I am provided simple, black and white answers to my questions?

My questions are: (1) do ADA standards of equal access apply to swimming pools in those places of public accommodations listed on Page 30.7 of the House of Representatives Report 101-596; (2) are those pool operators listed therein required to remove architectural barriers prohibiting equal pool access provided such removal does not cause undue burden, and (3) is the Government actually going to enforce ADA standards or "look the other way" on enforcement?

Please respond to me in simple, understandable language and I will be most grateful.

Yours very truly,

JUL 17 1992

HORTON PRODUCTS COMPANY Received-OADA

Lowell C. Horton
President

LCH/jc
Enclosure 202-PL-259
01-02543

U.S. Department of Justice

Civil Rights Division
Coordination and Review Section

PO Box 66118
Washington, D.C. 20035-6118

xxxxxxxxxxx AUG 25 1993
xxxxxxx Florida xxxxxxx

RE: Complaint Number XXX

Dear xxxxxxxxxxx

This constitutes our Letter of Findings with regard to your complaint against the Supervisor of Elections, Pinellas County, Florida, under title II of the Americans with Disabilities Act (ADA), which prohibits discrimination against qualified individuals with disabilities on the basis of disability by State and local governments. Specifically, you allege that the Supervisor of Elections of Pinellas County does not provide Braille ballots or an electronic system of voting, such as voting by telephone, to blind voters. You further allege that the present system of providing assistance at the polling place does not allow a blind voter to cast a secret ballot.

The Civil Rights Division has completed its investigation of your complaint. Our investigation revealed that the Supervisor of Elections of Pinellas County follows the Florida statute (Chapter 97.061, F.S.), which requires the following provisions for voters with visual impairments: 1) the assistance of any two election officials at the polling place; or 2) the assistance of any one person of the individual's choice. Pinellas County also provides a magnifying lens at polling places. In a telephone conversation with our office, Ms. Dorothy Ruggles, Supervisor of Elections, stated that when a blind person comes to the polling place to vote, the poll workers offer a choice of allowing someone the person knows or two poll officials to assist in casting the ballot.

01-02544

Legal Requirement

The Department of Justice's regulation implementing title II provides that a public entity must ensure that its communications with individuals with disabilities are as effective as communications with others and must furnish appropriate auxiliary aids and services where necessary to afford an individual with a disability an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity conducted by a public entity. 28 C.P.R. 35.160. A public entity is not required to take any steps that would result in a fundamental alteration in the service, program, or activity or in undue financial and administrative burdens. 28 C.F.R. S 35.164

In determining what type of auxiliary aid or service is necessary, a public entity must give primary consideration to the requests of the individual with a disability, that is, the public entity must provide an opportunity for individuals with disabilities to request the auxiliary aids and services of their choice and must honor that choice unless it can demonstrate that another effective means of communication exists or that provision of the aid or service requested would result in a fundamental alteration or in undue financial and administrative burdens. 28 C.F.R. SS 35.160(b) (2); 35.164.

Discussion

The Pinellas County Supervisor of Elections provides magnifying lenses and readers for individuals with vision impairments seeking to vote. The election procedures specify that an individual who requests assistance will be assisted by two poll workers, or by one person selected by the voter. Your complaint alleged that the provision of assistance to an individual who is unable to fill out a printed ballot is inadequate because it does not allow a blind voter to cast a secret ballot. A Braille ballot, however, would not meet your objective of keeping your vote secret, because it would have to be counted separately and would be readily identifiable. Also, electronic systems of voting by telephone that meet the security requirements necessary for casting ballots are not currently available.

Although providing assistance to blind voters does not allow the individual to vote without assistance, it is an effective means of enabling an individual with a vision impairment to cast a ballot. Title II requires a public entity to provide equally effective communications to individuals with disabilities, but

"equally effective" encompasses the concept of equivalent, as opposed to identical, services.1 Poll workers who provide assistance to voters are required to respect the confidentiality of the voter's ballot, and the voter has the option of selecting an individual of his or her choice to provide assistance in place of poll workers. The Supervisor of Elections is not, therefore, required to provide Braille ballots or electronic voting in order to enable individuals with vision impairments to vote without assistance.

Based upon the facts and legal requirements discussed above, we have determined that the Pinellas County Supervisor of Elections is not in violation of title II with respect to the issues you have raised. If you are dissatisfied with our determination, you may file a private complaint in the appropriate United States District Court under title II of the ADA.

You should be aware that no one may intimidate, threaten, coerce, or engage in other discriminatory conduct against anyone who has either taken action or participated in an action to secure rights protected by the ADA. Any individual alleging such harassment or intimidation may file a complaint with the Department of Justice. We would investigate such a complaint if the situation warrants.

Under the Freedom of Information Act, 5 U.S.C. S 522, we may be required to release this letter and other correspondence and records related to this complaint in response to a request from a third party. Should we receive such a request, we will safe-guard, to the extent permitted by the Freedom of Information Act and the Privacy Act, the release of information which could constitute an unwarranted invasion of privacy.

_____

1 This interpretation is consistent with long-standing interpretation of section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of disability in federally assisted programs and activities. See the discussion of the general prohibitions of discrimination in the preamble to the Department's title II regulation at 56 FR 35,703 and the analysis of the Department of Health, Education, and Welfare's original regulation implementing section 504 (later transferred to the Department of Health and Human Services) at 45 C.F.R. pt. 84, Appendix A.

If you have any questions, please contact Linda King at (202) 307-2231.

Sincerely,

Stewart B Oneglia
Chief
Coordination and Review section
Civil Rights Division

AUG 25 1993

Ms. Dorothy Walker Ruggles
Supervisor of Elections
315 Court Street
Clearwater, Florida 34616-5190

RE: Complaint Number xxxxxxxxxxxxx

Dear Ms. Ruggles:

This letter constitutes our Letter of Findings with regard to a complaint filed with our office on July 8, 1992, against the Supervisor of Elections, Pinellas County, Florida, under title II of the Americans with Disabilities Act (ADA), which prohibits discrimination against qualified individuals with disabilities on the basis of disability by State and local governments.

As Ms. Linda King of my staff explained to you, the complainant alleges that the Supervisor of Elections of Pinellas County does not provide Braille ballots or an electronic system of voting, such as voting by telephone, to blind voters. The complainant further alleges that the present system of providing assistance at the polling place does not allow a blind voter to cast a secret ballot.

The Civil Rights Division has completed its investigation of the complaint. Our investigation revealed that the Supervisor of Elections of Pinellas County follows the Florida statute (chapter 97.061, F.S.), which requires the following provisions for voters with visual impairments: 1) the assistance of any two election officials at the polling place; or 2) the assistance of any one person of the individual's choice. Pinellas County also provides a magnifying lens at polling places. In a telephone conversation with Ms. King, you stated that when a blind person comes to the polling place to vote, the poll workers offer a choice of

udd\Kinglllld\LOF.FL

allowing someone the person knows or two poll officials to assist in casting the ballot.

Legal requirements

The Department of Justice's regulation implementing title II provides that a public entity must ensure that its communications with individuals with disabilities are as effective as communications with others and must furnish appropriate auxiliary aids and services where necessary to afford an individual with a disability an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity conducted by a public entity. 28 C.F.R. S 35.160. A public entity is not required to take any steps that would result in a fundamental alteration in the service, program, or activity or in undue financial and administrative burdens. 28 C.F.R. S 35.164

In determining what type of auxiliary aid or service is necessary, a public entity must give primary consideration to the requests of the individual with a disability, that is, the public entity must provide an opportunity for individuals with disabilities to request the auxiliary aids and services of their choice and must honor that choice unless it can demonstrate that another effective means of communication exists or that provision of the aid or in service requested would result in a fundamental alteration or undue financial and administrative burdens. 28 C.F.R. SS 35.160 (b) (2) ; 35.164.

Discussion

The Pinellas County Supervisor of Elections provides magnifying lenses and readers for individuals with vision impairments seeking to vote. The election procedures specify that an individual who requests assistance will be assisted by

two poll workers, or by one person selected by the voter. The complaint alleged that the provision of assistance to an individual who is unable to fill out a printed ballot is inadequate because it does not allow a blind voter to cast a secret ballot. A Braille ballot, however, would not meet the objective of keeping a vote secret, because it would have to be counted separately and would be readily identifiable. Also, electronic systems of voting by telephone that meet the security requirements necessary for casting ballots are not currently available.

Although providing assistance to blind voters does not allow the individual to vote without assistance, it is an effective

means of enabling an individual with a vision impairment to cast a ballot. Title II requires a public entity to provide equally effective communications to individuals with disabilities, but "equally effective," encompasses the concept of equivalent, as opposed to identical, services.1 Poll workers who provide assistance to voters are required to respect the confidentiality of the voter's ballot, and the voter has the option of selecting an individual of his or her choice to provide assistance in place of poll workers. The Supervisor of Elections is not, therefore, required to provide Braille ballots or electronic voting in order to enable individuals with vision impairments to vote without assistance.

Based upon the facts and legal requirements discussed above, we have determined that the Pinellas County Supervisor of Elections is not in violation of title II with respect to the issues raised in the complaint. If you have any questions, please contact Linda King at (202) 307-2231.

You should be aware that no one may intimidate, threaten, coerce, or engage in other discriminatory conduct against anyone who has either taken action or participated in an action to secure rights protected by the ADA. Any individual alleging such harassment or intimidation may file a complaint with the Department of Justice. We would investigate such a complaint if the situation warrants.

Under the Freedom of Information Act, 5 U.S.C. S 522, we may be required to release this letter and other correspondence and records related to this complaint in response to a request from a

third party. Should we receive such a request, we will safe-guard, to the extent permitted by the Freedom of Information

---

1 This interpretation is consistent with long-standing interpretation of section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of disability in federally assisted programs and activities. See the discussion of the general prohibitions of discrimination in the preamble to the Department's title II regulation at 56 FR 35,703 and the analysis of the Department of Health, Education, and Welfare's original regulation implementing section 504 (later transferred to the Department of Health and Human Services) at 45 C.F.R. Pt. 84, Appendix A.

Act and the Privacy Act, the release of information which could constitute an unwarranted invasion of privacy.

Sincerely,

Stewart B. Oneglia
Chief
Coordination and Review Section
Civil Rights Division

01-02551

T. 8/2/93
DJ 204-012-00032

AUG 27 1993

Ms. Sonja D. Kerr
Attorney at Law
3421 Kent Street
Shoreview, Minnesota 55126

Dear Ms. Kerr:

This letter responds to your letter requesting a copy of the "new school board accessibility standards under the ADA when they are published." In addition, you seek our assistance on the application of title II of the Americans with Disabilities Act (ADA), 42 U.S.C. 55 SS 12131-12134, to a public school district's responsibilities to provide program access. In particular, you seek advice on whether title II expanded a public school district's obligations to provide for program accessibility to its different school facilities beyond the requirements of Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. S 794.

The ADA authorizes the Department of Justice to provide technical assistance to individuals who have rights under the Act. This letter provides informal guidance to assist you in understanding how the ADA applies to the question you present. This technical assistance, however, does not constitute a determination by the Department of Justice of your or other's rights under the ADA and is not a binding determination by the Department of Justice.

We are not aware of any document that specifically covers school board accessibility standards. However, the Architectural and Transportation Barriers Compliance Board (Access Board) has issued proposed accessibility guidelines under title II of the ADA relating to the construction of new State and local government facilities, including schools. We are providing you with a copy of the proposed guidelines for your review. You can obtain a copy of the final guidelines from the Access Board when they are published, probably in the late fall.

cc: Records CRS Chrono Friedlander Stewart.kerr.ltr
FOIA Breen

01-02552

With respect to your second inquiry, title II protects qualified individuals with disabilities from discrimination on the basis of disabilities in the services, programs, or activities of all State and local governments. It extends the prohibition against discrimination on the basis of disability established by section 504 of the Rehabilitation Act of 1973, as amended, to all activities of State and local governments, including those that do not receive Federal financial assistance.

The Department of Justice's title II regulation adopts the general prohibitions against discrimination established under section 504, and includes specific prohibitions of discrimination from ADA. See 42 U.S.C. S 12134; 28 C.F.R. S 103(a). The preamble to the title II regulation explains the import of these statutory and regulatory provisions:

> The standards of title V of the Rehabilitation Act apply for purposes of the ADA to the extent that the

> ADA has not explicitly adopted a different standard than title V. Because title II of the ADA essentially extends the antidiscrimination prohibition embodied in section 504 to all actions of State and local governments, the standards adopted in [the Department of Justice's title II regulation] are generally the same as required under Section 504 for federally assisted programs.

56 F.R. 35694, 35696 (July 26, 1991). In the area of program accessibility to the public school sites, the Department's regulation does not expand upon the requirements of section 504.

It has been the policy under section 504 of the Department of Education and its predecessor department, the Department of Health Education (ED) and Welfare, not to require a school district to make each and every one of its school sites accessible to students with disabilities. With respect to existing facilities, HEW's section 504 regulation did not mandate that each and every facility operated by a recipient be accessible. 45 C.F.R. S 84.21 (a).

HEW's approach was continued in ED's section 504 regulation, 34 C.F.R. S 104.21 (a), is restated in the Department of Justice, title II regulation. 28 C.F.R. S 35.150 (a)(1). Consequently, similar standards for determining a school district's obligation to provide program accessibility exist under title II and section 504. As stated in the Department of Justice's Title II Technical Assistance Manual:

> A school system should provide for wheelchair access at schools dispersed throughout its service area so that children who use wheelchairs can attend school at locations comparable in convenience to those available to other children. Also, where "magnet" schools, or schools offering different curricula or instruction techniques are available, the range if choice provided to students with disabilities must be comparable to that offered to other students.

See Technical Assistance Manual at page 10, S II-3.4200. For your convenience we have enclosed a copy of this manual. Thus, a school district normally is not required under section 504 or title II of the ADA to make each and every one of its schools serving the same grade levels accessible. The determination whether a school district has complied with this standard would

be based on a review to ensure that the educational opportunities provided to students with disabilities are comparable to the opportunities afforded to others.

It is important to note, however, that any school receiving federal financial assistance that was constructed after May 4, 1977, the effective date of ED's section 504 regulation for federally assisted programs, would be considered "new" under that regulation. Accordingly, section 504 requires any such school to have been built in accordance with the American National Standards Institute guidelines, the standard cited in the ED regulations for construction occurring between May 4, 1977 and January 19, 1991, or the Uniform Federal Accessibility Standards for construction after January 19, 1991.

I hope this information is helpful to you.

Sincerely,

Stewart B. Oneglia
Chief
Coordination and Review Section
Civil Rights Division

Enclosures (2)

01-02554

SONJA D. KERR
Attorney at Law
3421 Kent Street
Shoreview, MN 55126
(612) 483-6209
Fax (612) 483-0882

May 27, 1993

John R. Dunne
Assistant Attorney General
Civil Rights Division
United States Department of

Justice
Office on the Americans with Disabilities Act
P.O. Box 66118
Washington, DC 20035-6118

Re: Access regulations

Dear Mr. Dunne:

I would appreciate receiving a copy of the new school board accessibility standards under the ADA when they are published.

I would also like to provide the following general comment and request an answer to an inquiry.

In 1991, in Schuldt v. Mankato. 937 F.2d 1357 (8th Cir. 1991), cert denied, the Eighth Circuit ruled that a school district could legally bus Erika Schuldt a child who uses a wheelchair, from her neighborhood to a school four miles away because her neighborhood school was not accessible. I have a very simple question: could the school district do the same today even under the ADA?

It seems to me that the legislative history of the ADA is clear that simply providing one accessible school in a district or a part of a district is insufficient. Title II of the ADA makes the enactment applicable to school districts. According to the Report of the House Judiciary Committee, Title II was intended to improve the effects of Section 504, which has been in place since 1973. H.Rep. No. 485, 101st Cong., 2d Sess. 49 (May 15, 1990). The ADA was designed to be more than Section 504 and was to be the "end of exclusion and segregation." H. Rep. No. 485, at 26. The intent was to permit persons with disabilities to enjoy all of the rights that other Americans take for granted. Separate-but-equal services was not considered to be accomplishing this goal and the Congress rejected that approach. H.Rep. No. 485, supra, at 50 and at n. 52. The Report makes crystal clear that the existence of separate programs can never be used as a basis to excluse a person with a disability from program

that is offered to persons with disabilities, or to refuse to provide an

accommodation in a regular setting." Id. at 50

Indeed, the Congress was specifically aware of the issue of schools and stigmatizing practices with respect to children with disabilities. Senator Dodd, a co-sponsor of the ADA, noted that 'The ADA requires that children with disabilities, regardless of the severeity of their disabilities, be permitted to utilize the same public services that others without disabilities utilize as a matter of course. They are to be permitted to utilize the same ... schools.. that they would normally utilize, in their communities, if they were not disabled ... No longer will children be subjected to forced bussing to programs outside of their neighborhoods because that is where the "handicapped" program is located. Such practices severely stigmatize children with disabilities and their families." 135 Cong. Rec. S10721

Thank you for your assistance.

Very truly yours,
Sonja D. Kerr
Attorney at Law

cc: Senator Paul Wellstone

01-02556

(Handwritten) From Title II Manual - Dept of Justice
below, but general principle underlying these obligation is the mandate for an equal opportunity to participate in and benefit from a public entity's services, programs, and activities.

II-3.400 Separate benefit/integrated setting. A primary goal of the ADA is the equal participation of individuals with disabilities in the "mainstream" of American society. The major principles of mainstreaming are-

1) Individuals with disabilities must be integrated to the maximum extent appropriate.
2) Separate programs are permitted where necessary to ensure equal opportunity. A separate program must be appropriate to the particular individual.
3) Individuals with disabilities cannot be excluded from the regular program, or required to accept special services or benefits.

II-3.4100 Separate programs. A public entity may offer separate or special programs when necessary to provide individuals with disabilities an equal opportunity to benefit from the programs. Such programs must, however, be specifically designed to meet the needs of the individuals with disabilities for whom they are provided.

ILLUSTRATION 1: Museums generally do not allow visitors to touch exhibits because handling can cause damage to the objects. A municipal museum may offer a special tour for individuals with vision impairments on which they are permitted to touch and handle specific objects on a limited basis. (It cannot, however, exclude a blind person from the standard museum tour.)

ILLUSTRATION 2: A city recreation department may sponsor a separate league for individuals who use wheelchairs.

II-3.4200 Relationship to "program accessibility" requirement. The integrated setting requirement may conflict with the obligation to provide program accessibility, which may not necessarily mandate physical access to all parts of all facilities (see II-5.0000). Provision of services to individuals with disabilities in a different location, for example, is one method of achieving program accessibility. Public entities should make every effort to ensure that alternative methods of providing program access do not result in unnecessary segregation.

ILLUSTRATION: A school system should provide for wheelchair access at schools dispersed throughout its service area so that children who use wheelchairs can attend school at locations comparable in convenience to those available to other children. Also, where "magnet" schools, or schools offering different curricula or instruction techniques are available, the range of choice provided to students with disabilities must be comparable to that offered to other students.

II-3.4300 Right to participate in the regular program. Even if a separate or special program for individuals with disabilities is offered, a public entity cannot deny a qualified individual with a disability participation in its regular program.

AUG 30 1993

The Honorable Charles S. Robb
United States Senator
Old City Hall
1001 East Broad Street
Richmond, Virginia 23219

Dear Senator Robb:

This is in response to your inquiry on behalf of your constituent, xxxxx concerning the Americans with Disabilities Act (ADA). Your constituent complains of barriers to people who use wheelchairs in entering and maneuvering around the lobby of his apartment building xxxxxxx

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist your constituent in understanding the ADA's requirements. However, it does not constitute a legal interpretation or legal advice, and it is not binding on the Department.

Title III of the ADA does not apply to strictly residential facilities. Nonetheless, the apartment complex and its lobby are subject to the requirements of the Fair Housing Act, which prohibits discrimination on the basis of disability and is enforced by the Department of Housing and Urban Development. For more information about the requirements of the Fair Housing Act, your constituent may wish to contact the U.S. Department of Housing and Urban Development, specifically its Office of Fair Housing and Equal Opportunity at the following address:

Office of Fair Housing and Equal opportunity
U.S. Department of Housing and Urban Development
451 7th Street, S.W.
Washington, D.C. 20410

or by calling (202) 708-3855
cc: Records; chrono; Wodatch; McDowney; Breen; Novich; FOIA, MAF
\udd\burton\robbpol

In certain circumstances an apartment lobby may be covered by the ADA, if portions of the apartment complex, such as a party room or swimming pool, are made available for use by the general public, i.e., persons other than tenants or their guests. ADA coverage would also result where a facility provides enough social services for it to be considered a social service center establishment.

Once covered by the ADA, the owners or operators of an existing apartment building would be required to remove architectural barriers to accessibility if their removal is readily achievable, that is, if they can be removed without much difficulty or expense. For more information on readily achievable barrier removal, see 36-304 at pages 35,597 - 35,598 of the enclosed title III regulation.

I hope this information is useful to your constituent in understanding the apartment complex's obligations.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

Enclosure

(Handwritten)

Senator Charles Robb
1001 East Broad Street
Richmond, VA 23219

Dear Senator Robb,

I live at XX , Virginia.
I also have a 93 year old invalid mother
who uses a wheelchair and walker.

In the lobby XX there
are 3 steps which must be negotiated
any time I have to or wish to take
my mother out. In order to do this she
gets in the wheel chair at the apartment
and we go to the steps. I have to
take her only the chair support a great
deal of her weight to get her down
these steps, then back into the wheel-
chair & to the car. If we wish to
sit in the lobby, which we do daily,
we go through the same ordeal.

The management has been telling
us for over a year we are getting
a lift or ramp. So far nothing.

01-02560

2

I am of the opinion that the
American Disability Act states
people areas must meet the needs
of the handicap.

I would appreciate your help
in having these people comply with
the law.

The Management Company is:
XX

Thank you so much

Sincerely,

01-02561

T. 8-19-93
Control No. 3072315807

AUG 30 1993

The Honorable Olympia T. Snowe
U.S. House of Representatives
2268 Rayburn House Office Building
Washington, D.C. 20515-1902

Dear Congresswoman Snowe:

This letter is in response to your inquiry on behalf of your constituent, Mary Lou Fenno, concerning emergency evacuation standards and the Americans With Disabilities Act (ADA).

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist your constituent in understanding the ADA's requirements. However, it does not constitute a legal interpretation or legal advice and it is not binding on the Department of Justice.

Your constituent states that she is concerned that the ADA does not properly balance safety concerns with individual rights to access. Ms. Fenno is particularly concerned with the application of the ADA to multi-story facilities.

The ADA was not designed as a substitute for local, state, or federal safety regulations and it does not address evacuation procedures specifically. The ADA requires that newly constructed buildings provide the same number of accessible means of egress as is required by local building codes and/or life safety regulations. See section 4.1.3(9) of the Standards for Accessible Design ("the Standards"), in the enclosed title III regulation, at page 35614. New buildings that do not have supervised automatic sprinkler systems also are required to provide areas of rescue assistance on each level that does not have an accessible exit. Such areas of rescue assistance must be provided in a smoke-proof and fire resistant enclosure. For more information on the requirements for areas of rescue assistance, see sections 4.1.3(9) and 4.3.11 of the Standards, at pages 35614 and 35626.

cc: Records, Chrono, Wodatch, Perley, McDowney, FOIA, Friedlander
n:\udd\perley\congress\snowe

Existing facilities are not required to provide areas of rescue assistance. Despite this fact, existing facilities should develop evacuation plans that take into consideration the needs of people with disabilities. Depending on the constraints of the facility, such a plan might utilize trained personnel, evacuation devices, or other means of accommodating those individuals who may need assistance in an emergency situation.

Please note that the ADA does not allow businesses to refuse access to an individual because of a concern for that person's safety in case of an emergency. The ADA only permits a place of public accommodation to consider the direct threat to the health and safety of others. For more information on the ADA's definition of a direct threat, see the discussion of section 36.208 of the title III regulation, at pages 35560 and 35595. A copy of the Department's Title III Technical Assistance Manual is also enclosed.

I hope this information is helpful to you in responding to your constituent. You may wish to inform Ms. Fenno that further information is available through our Americans with Disabilities Act Information Line at (202) 514-0301.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

Enclosures

01-02563

OLYMPIA J. SNOWE
2D District Maine
Congress of the United States
Washington, DC 20515-1902

COMMITTEE
FOREIGN AFFAIRS
BUDGET COMMITTEE

WASHINGTON OFFICE
2268 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-1902
(202) 225-6306

DISTRICT OFFICES:
ONE CUMBERLAND PLACE
SUITE 306
BANGOR, ME 04401-5000
(207) 945-0432

TWO GREAT FALLS PLAZA
SUITE 7B
AUBURN, ME 04210-5813
(207)786-2451

169 ACADEMY ST.
PRESQUE ISLE, ME 047769-3166
(207) 764-5124

July 15, 1993
Tom Reinehardt, Director
Congressional Relations
U.S. Department of Justice

Main Justice Building, Room 1603
Pennsylvania and Constitution Avenues NW
Washington, D.C. 20530

Dear Mr. Reinehardt:

Enclosed please find a copy of the letter I received from Mary Lou Fenno of Ellsworth, Maine.

Ms. Fenno's letter expresses concern with Title III of the Americans with Disabilities Act and its lack of balance between access to public accommodations and the related safety issues. As your Department has jurisdiction over Title III, I would appreciate your assistance in responding to Ms. Fenno's concerns.

Thank you for your attention to this issue.

Sincerely,

OLYMPIA J. SNOWE
Member of Congress
2nd District, Maine

OJS:jc
Enclosure

IN MAINE. CALL TOLL-FREE
1-800-432-1599
PRINTED ON RECYCLED PAPER

01-02564

Colonial Motor Lodge
Bar Harbor Road
Ellsworth, Maine 04605
June 28, 1993

RECEIVED
JUL 01 1993

Representative Olympia Snowe
2464 Rayburn Building
Washington, DC 20515-1902

Dear Rep. Snowe:

The enclosed material is being submitted to several Maine newspapers and to two offices in Washington, DC. The Washington contacts were suggested by a Mr. Rick Curry, the founder and head of the National Theatre Workshop of the Handicapped in New York City. Mr. Curry deals with the problems I have outlined on a daily basis.

I am a strong supporter of the ADA. But I speak for many business people in Maine when I say we're between the proverbial rock and a hard place. Most are pro-handicapped and want to do the right thing. But the safety factor is a horrendous problem.

Clarification of the safety issue is badly needed. Participation by your office would be greatly appreciated.

Sincerely,

Mary Lou Fenno
Owner
Colonial Motor Lodge

MLF/grd

U.S. Department of Justice
Civil Rights Division
Coordination and Review Section

P.O. Box 66118
Washington, D.C 20035-6118

September 8, 1993

(b) (6)
Xxxxxxxxxxxxx
Xxxxxxxxxxxxxxxxxxxxx
Xxxxxxxxxxxxxxxxxxxxx
xxxxxxxxxxxxxxxxxxxxxxxxx

Memphis, Tennessee 38137

RE: Complaint Number xxxxxxxxxxxx
New Complaint Number xxxxxxxxxxx

Dear xxxxxxxxxx

This letter constitutes our Letter of Findings with respect to the complaint you filed against the Shelby County xxxxxxxx, alleging discrimination on the basis of disability and retaliation. The Department of Justice is the agency responsible for investigating complaints filed under title II of the Americans With Disabilities Act of 1990 (ADA). Title II prohibits discrimination against qualified individuals with disabilities on the basis of disability by State and local governments.

Your complaint alleges that you were terminated on Xxxxxxxxx, xxxxxxxxxx because of your disabilities (stress and carpal tunnel syndrome) and in retaliation for asserting rights protected by the law, in violation of the ADA. The Department has completed its investigation of your complaint and has determined that the Shelby County xxxxxxxxx is not in violation of title II of the ADA for the reasons explained below. Our investigation included the review of documents and an onsite visit to interview you, and your successor.

01-02566

Issue I. Was the complainant terminated on the basis of disability?

Our investigation revealed that prior to meeting with the County xxxxxxxx (b)(6)in mid-May 1992, you had not previously claimed that you were an individual with a disability. The assertions made and evidence you presented were insufficient to support the claim that you were a disabled individual as defined by S 35.104 of the title II regulation, which states: "Disability means ... a physical or mental impairment that substantially limits one or

more of the major life activities... ; a record of such an impairment; or being regarded as having such an impairment." While "stress" may have been a factor in your work, you did not show that it constituted a mental or physical impairment - substantially limiting one or more major life activities within the meaning of the ADA. You were never diagnosed with a mental or physical condition considered as a disability, nor did you demonstrate that you had a record of any impairment, or that you were regarded as disabled by your employer or coworkers. Contrary to your assertion that you were substantially limited in the major life activity of working, there was no evidence presented to show that the stress-related symptoms you described were not related to your experience in the specific position you occupied-xxxxxx, A person is not considered substantially limited in working if she is limited substantially in performing only a particular job.

You told the Department that the carpal tunnel syndrome (CTS) you developed was the result of inputting computer data for extensive periods. We found that this was a temporary condition that you incurred after being notified of the termination. As the xxxxxxxx, inputting data was not a major duty of your position, but rather one that was normally the responsibility of your subordinates. Despite your decision to input data for extensive periods of time, your employer provided an accommodation at your request, when it supplied a keyboard drawer to compensate for the CTS. This was the only alleged specific disability you brought to your employer's attention.

Based upon the evidence obtained, DOJ concludes that neither condition alleged to be a disability was sufficient to support your claim that you are an individual with a disability. Since you do not meet this definition, you do not come under the protection of the ADA. We conclude, therefore, that the Shelby County XXXXXXX did not discriminate against you on the basis of disability when it terminated you.

Issue II. Was the complainant terminated in retaliation for requesting a reasonable accommodation?

You alleged that at a mid-May 1992 meeting with the xxxx, (b)(6) you requested a restructuring of your duties or a reassignment because of the stress you were under. The xxxxxxxxx characterized

the meeting similarly, but added that you also tendered your resignation because of the work-related problems you were experiencing. Although you dispute the xxxxxxxxx claim that you voluntarily resigned at the meeting, the investigation revealed that you were notified shortly after the meeting that plans were underway to process your termination. It does not appear that the xxxxxx retaliated against you, but rather believed you when you said you resigned. The xxxxxxxxxx asserted that had you not resigned, you would have been fired. The investigation disclosed sufficient evidence to support the contention that your termination was based upon your stated preference to find another job and because of your job performance, and not in retaliation for filing complaints or for asserting rights protected by the law.

The timing of the events in your case also weighed against your claim. You incurred CTS in late May, following the meeting with the xxxxxxxx. Although not related to your primary job duties, the xxxxxxx provided an accommodation for this condition. Subsequently on July 22, you filed complaints with the Department of Justice (DOJ) and the Equal Employment Opportunity Commission (EEOC) . These were the first claims of record alleging discrimination and retaliation. Both were made after receiving notice that you would be terminated. The timing of the complaints, coming as they did after the notice of termination, fails to support the allegation that you were retaliated against for engaging in protected activities. We find no basis, therefore, to conclude that the Shelby County xxxxxxxxx retaliated against you, in violation of S 33.134 of the title II regulation.

During the investigation, the Department learned that the xxxxxxx Office did not maintain separate files for medical and personnel information about its employees. The ADA requires that all information from post-offer medical examinations and inquiries must be collected and maintained on separate forms, in separate medical files and must be treated as a confidential medical record. In response to this concern, the xxxxxxxxxxxx Office and Shelby County changed their record-keeping procedures to create separate medical files for each employee. This action resolves this matter and concludes our investigation.

You should be aware that no one may intimidate, threaten, coerce, or engage in other discriminatory conduct against anyone

who has either taken action or participated in an action to secure rights protected by the ADA. Any individual alleging such harassment or intimidation may file a complaint with the Department of Justice. We would investigate such a complaint if the situation warrants.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that we receive such a request, we will seek to protect, to the extent provided by law, personal information which, if released, could constitute an unwarranted invasion of privacy.

This letter constitutes our findings with respect to your allegations of discrimination and retaliation in your administrative complaint. If you are dissatisfied with our determination, you may file a private complaint in the appropriate United States District Court.

Sincerely,

Stewart B. Oneglia
Chief
Coordination and Review Section
Civil Rights Division

cc:xxxxxxxxxxxxxxxxxx
xxxxxxxxxxxxxxxxxxxxx
xxxxxxxxxxxxxxxxxxxxxxx, Shelby County

01-02569

U.S. Department of Justice

Civil Rights Division

Coordination and Review Section

P.O. Box 66118
Washington, DC 20035-6118

Xxxxxxxxxxxxxxxxxxx
Shelby County xxxxxxxxxx
One Memphis
200 Jefferson Avenue, Suite 336
Memphis, Tennessee 38103

RE: Complaint Number xxxxxxxxxxxx
New Complaint Number xxxxxxxxxxxxxx

Dear Mr. Patterson:

The enclosed letter constitutes the Department of Justice's findings in the matter of xxxxxx v. Shelby County xxxxxxxx. The Department has determined that the xxxxxxx Office is not in violation of title II of the Americans with Disabilities Act of 1990 (ADA) with respect to the allegations raised by xxxxxxxx. In the course of the investigation, this office found that the xxxxxx Office did not maintain separate files for the medical and the personnel information that it retained on its employees. The ADA requires that all information from post-employment offer medical examinations and inquiries must be collected and maintained on separate forms, in separate medical files, and must be treated as confidential medical records. In response to this concern, the xxxxxx Office and Shelby County changed its record-keeping procedures to create separate medical files for each employee. This action resolves the issue and concludes our investigation.

The Department would like to thank you for your cooperation throughout this investigation. If you have any questions or need further information about this determination, or would like

technical assistance concerning title II, please let us know. Should you contact this office, please call Mr. Thomas Esbrook of my staff at (202) 307-2940.

Sincerely,

Stewart B. Oneglia
Chief
Coordination and Review Section
Civil Rights Division

Enclosure

cc: xxxxxxxxxxxxxxx

U.S. Department of Justice

Civil Rights Division

Coordination and Review Section

P.O. Box 6611
Washington, D.C. 20035-6118

SEP 8 1993

xxxxxxxxxxxxxxxx
xxxxxxxxxxxxxxxxxxxxxxxx
RE: Complaint Number xxxxxxxxxxxxx
New Complaint Number xxxxxxxxx
New Complaint Number xxxxxxxxxx
New Complaint Number xxxxxxxxx

Dear xxxxxxxxxxxxxxxx

Please note the new complaint number assigned to your complaint. Please use the new number in all correspondence and other communications regarding this complaint.

This letter constitutes our letter of findings with respect to your complaint filed with our office alleging discrimination by the City of San Francisco in violation of title II of the Americans with Disabilities Act (ADA) . You alleged that, as an individual with environmental illness, you were denied access to municipal buildings because of the perfume used by municipal employees.

Title II of the ADA, prohibits discrimination on the basis of disability in the services, programs, and activities of public entities (State and local governments). This office is responsible for investigating alleged violations of title II by public entities for which it is the designated enforcement agency, including State and local government support services and other government functions not assigned to other designated

agencies.

Your complaints against the Museum of Modern Art and the San Francisco Municipal Railway have been referred to the Departments of the Interior and Transportation, respectively. These are the designated agencies for enforcement of title II with respect to the subjects of those complaints. Copies of our referral letters are enclosed for your information.

Your complaint alleges generally that the City and County of San Francisco has not adopted a public access policy for individuals with environmental illness. Although formal adoption of nondiscrimination policies may be helpful in ensuring that a public entity meets its obligations under the statute and regulation, the regulation does not require public entities to adopt such policies with respect to individuals with disabilities or any particular class of individuals with disabilities. Also, since your complaint was filed, the City has adopted an accessible meeting policy that includes a requirement that all public meeting notices and agendas must include a notice asking individuals attending the meeting to refrain from wearing perfume or other scented products in order to allow individuals with environmental illness or multiple chemical sensitivity to attend the meeting.

We have reviewed your allegation that you are denied access to public buildings because of the use of scented products by employees in those buildings. Section 35.130 (b) (7) of the Department's regulation implementing title II provides that

> A public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.

Assuming, for purposes of this letter, that you are an individual with a "disability," as that term is defined in our regulation at 28 C.F.R. S 35.104, we have determined that a public entity is not required to prohibit use of perfume or other scented products by employees who come into contact with the public because such a requirement would not be a "reasonable" modification to its personnel policies. Furthermore, nothing in the ADA or its legislative history indicates that Congress intended to require

public entities to regulate use of such products by its employees. The failure of a public entity to adopt such a policy, therefore, does not violate title II of the ADA.

We have therefore determined that the allegations in your complaint do not state a violation of title II of the ADA. If you are dissatisfied with this Letter of Findings, you may file a private complaint presenting your allegations of discrimination in the United States District Court under title II of the ADA.

Please be advised that your right to file a complaint is protected by Federal law. A State or local government may not intimidate, threaten, coerce, or engage in other discriminatory conduct against anyone who has either taken action or

participated in an action to secure rights protected by the ADA. If at any time you feel you are being harassed or intimidated because of your dealings with the Department of Justice, please let us know immediately. This office would investigate such a complaint if the situation warrants.

Under the Freedom of Information Act, 5 U.S.C. S 522, we may be required to release this letter and other correspondence and records related to your complaint in response to a request from a third party. Should we receive such a request, we will safeguard, to the extent permitted by the Freedom of Information Act and the Privacy Act, the release of information which could constitute an unwarranted invasion of your or other's privacy.

Sincerely,

Stewart B. Oneglia
Chief
Coordination and Review Section
Civil Rights Division

01-02574

U.S. Department of Justice

Civil Rights Division
Coordination and Review Section

P.O. Box 66118
Washington, D.C. 20035-6118

SEP 8 1993

Ms. Carmen R. Maymi
Director
Office for Equal Opportunity
Office of the Secretary
Department of Interior
18th & C Streets, N.W.
Washington, D.C. 20547

Re: Correspondence of XX
California

Date Received by DOJ: August 14, 1993
DOJ Number: XX
DOJ Contact Person: Ms. Flora Brown

Dear Ms. Maymi:

I am referring this correspondence to your agency for investigation to determine whether the allegations of discrimination by the San Francisco Museum of Modern Art, if true, violate section 504 of the Rehabilitation Act or title II of the Americans with Disabilities Act. We believe that your agency is designated to investigate this matter by subpart G of the title II regulation found at 28 C.F.R. Part 35. This Department has referred the complaint against the San Francisco Municipal Railway to the Department of Transportation. The attached letter of findings, which resolves the complaint with respect to other City agencies, reflects our policy, and we urge you to follow our direction.

If you have section 504 jurisdiction, please investigate the allegations for compliance with both your agency's section 504 regulation and the Department of Justice's (DOJ) title II regulation. Even if you do not have section 504 jurisdiction, we believe your agency is designated under subpart G of the title II regulation to investigate this matter. If so, please investigate

the allegations under the procedures in subpart F of that regulation. Within 30 days of the date of this letter, please tell us what statute you are using. If you have no jurisdiction over this complaint, please return it promptly to DOJ.

Because we are responsible for coordinating enforcement of title II, please send any final written disposition of the matter to the Coordination and Review Section, P.O. Box 66118, Washington, D.C. 20035-6118. In all correspondence please reference the correspondent's name, name of the alleged discriminating entity, and the DOJ number. If you have any questions, please contact Flora Brown, of my staff, at (202) 628-1168.

Sincerely,

Stewart B. Oneglia
Chief
Coordination and Review Section

Civil Rights Division

Enclosures

01-2578

SEPT 10 1993

Mr. Farley Lozowick
FML Design Group, Ltd.
999 18th Street, Suite 1800
Denver, Colorado 80202

Dear Mr. Lozowick:

I am writing in response to your letter requesting clarification of issues under the Americans with Disabilities Act of 1990 (ADA) in regard to the design of a Montessori school in Ft. Worth, Texas.

The ADA authorizes the Department of Justice to provide technical assistance and information to individuals and entities who have questions about the Act or the Standards for Accessible Design adopted under the Department's ADA regulations. This letter provides informal guidance to assist you in understanding and complying with the ADA's requirements. However, this technical assistance should not be viewed as legal advice or a

legal opinion about your rights or responsibilities under the ADA.

The ADA requires generally that all toilet rooms meet the technical standards in S 4.22 of the ADA's Standard for Accessible Design (enclosed). However, restrooms in classrooms for use exclusively by small children may have drinking fountains, lavatories, and toilets that are designed specifically for use by small children. The ADA standards are indeed based on adult dimensions and anthropometrics and there are no accessibility standards at this time for small children.

The Americans with Disabilities Act is a Federal law and does not require any state regulations for its enforcement.

We hope this information is helpful to you.

Sincerely,

John L. Wodatch
Chief
Public Access Section

Enclosure

: Records, Chrono, Wodatch, Johansen, FOIA, Friedlander
\udd\johansen\lozowick.ltr

01-02579

01-2578

05-18-1993 12:39PM FROM FML TO 12023071198 P.02

FML Design Groups Ltd.
999 18th St Suite 3550
Denver, Colorado 80202
(303) 294-9500

May 18, 1993
Ms. Lucille Johansen
Assistant to Mr. John Wodatch
American Disabilities Act
1111 18th Street, N.W.
Suite 501
Washington, D.C. 20036

Dear Ms. Johansen:

Our senior designer, Ms. LaDonna Holmes had a discussion with you yesterday regarding a clarification on an A.D.A. issue. We are an interior architectural firm that is currently designing a Montessori school in Ft. Worth, Texas. The school will consist of children ages from infant to 6 years old with classrooms as follows:

Infant - 0-12 months
Toddler - 12-24 months
Mini - 2-3 years
3-4 years old
5-6 years old

In the common areas, we have provided a restroom facility that contains a toilet, a lavatory and a urinal; all that meet the ADA regulations in full. However, in each of the classrooms, we have provided a myriad of drinking fountains, lavatories and toilets for small children's usage. The facilities offered for these children do not comply with the ADA regulations. As we understand it, the ADA regulations are for adults only. It is also our understanding, that there are no ADA regulations in the states of Colorado and Texas.

If you are in agreement with the preceding, please indicate by signing on the line below and faxing this back to our office, along with a copy of your business card for our files.

Thank you for your time.

Sincerely,

Farley Lozowick
Signature Date
01-02580
DJ 202-PL-227

SEP 10 1993

A. Laurence Field
A. Laurence Field & Associates
1322 Bayview Road
Middletown, Delaware 19709

Dear Mr. Field:

This letter is in response to your inquiry about the Americans with Disabilities Act (ADA).

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist you in understanding the ADA's requirements. However, it does not constitute a legal interpretation or legal advice, and it is not binding on the Department.

You ask whether the ADA permits public or private entities to provide medical or dental treatment to persons with AIDS in segregated settings.

The ADA prohibits discrimination against an individual on the basis of that individual's HIV or AIDS condition. This is true regardless of whether the discriminating entity is publicly or privately owned. State or local government entities or instrumentalities that provide medical or dental care are covered by title II of the ADA as public entities. Private entities that offer medical or dental care are public accommodations, which are covered by title III of the ADA. Under both titles II and III, the ADA generally prohibits the provision of separate or different services to individuals with disabilities, unless it is necessary to make the services as effective for people with disabilities as they are to others. In addition, both public entities and public accommodations are required to provide their services in the most integrated settings appropriate to the needs of the individuals with disabilities.

cc: Records, Chrono, Wodatch, Magagna, Novich, FOIA, MAF
Udd:Novich:Policy:227

01-02581

However, both titles II and III contain an exception to the general non-exclusion and integration requirements when an individual with a disability poses a direct threat to the health or safety of others. A direct threat is defined as a significant risk to the health or safety of others that cannot be eliminated or satisfactorily mitigated by reasonable modifications to the covered entity's procedures. Under section 35.104 of the title

II regulation, an individual who poses a such a direct threat is not considered a "qualified" individual for the services or programs being offered. Similarly, section 302(b)(3) of the Act states that public accommodations are not required to permit participation of individuals who pose a direct threat to the health or safety of others. However, the titles II and III regulations specify that the determination of whether an individual poses a direct threat be

> an individualized assessment, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence, to ascertain: the nature, duration, and severity of the risk; the probability that the potential injury will actually occur; and whether reasonable modifications of policies, practices, or procedures will mitigate the risk.

See section 35.104 of the enclosed title II regulation, at pages 35717 and 35701, and section 36.208 of the title III regulation, at pages 35595-35596 and 35560-35561, for discussions of the direct threat exception.

Therefore, under titles II and III of the ADA, individuals with HIV or AIDS may not be treated in segregated setting unless necessary to provide those individuals with treatment as effective as is provided to individuals without HIV or AIDS, or unless the providers can demonstrate that a specific individual poses a direct threat to the health or safety of others. Individuals with HIV or AIDS do not pose a direct threat to health professionals or other medical patients as long as reasonable sanitation methods can satisfactorily mitigate the risk of spreading the disease. The Centers for Disease Control and Prevention (CDCP) have issued recommended precautionary measures to mitigate the risk of transmission of HIV, and other communicable diseases, in health care settings. For more information on these measures, known as the "Universal Precautions," contact the CDCP National HIV/AIDS Hotline at (800) 342-2437.

In addition, The American Dental Association has issued an opinion stating that patients with HIV may be safely treated when recommended precautions are used. You may contact the American Dental Association at (312) 440-2500.

I hope this information is useful to you.

Sincerely,

John L. Wodatch
Chief
Public Access Section

Enclosures
Title II Regulation
Title III Regulation

01-02583

A. Laurence Field & Associates (302)378-1600
1322 Bayview Road SPECIALISTS IN ACCESSIBILITY
Middletown, DE 19709 AND BARRIER REMOVAL

July 2, 1992

Colleen Miller
Coordination & Review Section
Civil Rights Division
P.O. Box 66118
Washington, DC 20035-6118

re: Request for ADA Technical Assistance/
Segregated Dental Facilities for Persons with AIDS

Dear Ms. Miller:

As we discussed by phone today, I am requesting assistance from your office in understanding the extent to which persons with AIDS may be offered medical treatment in a segregated setting.

The specific issue is the delivery of dental services by an instrumentality of the state. Comments on this specific issue would be most appreciated. If information on the broader question posed in the first paragraph is readily available, I would appreciate that as well.

Thank you very much, Ms. Miller, for your assistance.

Very truly yours,

A. Laurence Field

01-02584

DJ 202-PL-367

SEP 10 1993

Mr. Kent Lee Woodman
ADAAG Compliance Services
12920 Hillside Drive
Anchorage, Alaska 99516-3260

Dear Mr. Woodman:

This letter responds to your inquiry about the obligations of public accommodations to remove architectural barriers to access or to provide alternatives to barrier removal. We apologize for the delay in responding.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist you in understanding the ADA's requirements. However, it does not constitute a legal interpretation or legal advice, and it is not binding on the Department of Justice.

Your letter asks about the obligations of landlords who own facilities with inaccessible levels, and whether a landlord may rent space to a public accommodation on an upper or lower level not served by an elevator. You correctly point out that elevators are not required in buildings that are less than three stories or less than 3,000 square feet per story if they do not house shopping centers, offices of a health care provider, or transportation depots.

There is nothing in the title III regulation that prohibits the owner of a building from renting a second floor space to a place of public accommodation, even if the building has no elevator. Public accommodations located on the second floor of an existing building are subject to the same barrier removal requirements as are entities located on ground floors -- that is, they must remove architectural barriers to access where it is readily achievable to do so. This requirement may mean that a second floor establishment must install grab bars in its restrooms, rearrange its furniture to provide maneuvering room,

cc: Records, Chrono, Wodatch, Magagna, Contois, FOIA, MAF

01-02585

install accessible door hardware, or otherwise remove barriers to access to its facility if such modifications are readily achievable -- that is, able to be accomplished without much difficulty or expense. However, neither the business nor the landlord would be required to provide an elevator or other means of vertical access to the second floor of a building that qualifies for the elevator exemption. For more information on the removal of architectural barriers, see section 36.304 of the enclosed title III regulation at pages 35597-98 and the discussion of that section at pages 35568-69.

I hope this information is useful to you in understanding the requirements of the ADA.

Sincerely,

John L. Wodatch
Chief
Public Access Section

Enclosures (2)
Title III Technical Assistance Manual
Title III Regulations

01-02586

ADAG* COMPLIANCE SERVICES
12920 Hillside Drive
Anchorage, Alaska 99516-3260
Phone: (907)345-1356 FAX: (907) 345-1626

OFFICE ON THE AMERICANS WITH DISABILITIES ACT
Civil Rights Division
U.S. Department of Justice
Post Office Box 66118
Washington, D.C. 20035-6118

Gentlepersons, 07 October 1992

I write to communicate a concern about ADA that has surfaced locally, and to request if you folks have been party to any discussions or have any knowledge of the principals noted below. Let me begin by telling you that I have no position. I am an independent consulting engineer who specializes in helping landlords and owners perform facility Surveys and to write PLANS to help them comply with the provisions of Title III of the ADA with minimum disruption and maximum efficiency.

As I work with owners, I frequently find that they were much more worried and concerned about what the impact was going to be on them fiscally before I do my work, than after. This is in part simply because there is so much misinformation out there. However, Alaska has been in a financial bust for about 6 years, and most building owners have lost many, many dollars in lowered rents and empty facilities. There have been thousands of foreclosures on buildings where they could not rent due to the economy. I tell you this to set the stage.

Several months ago there was a Supreme Court case that involved a couple in California. (Sorry I do not have the cite) It seems they had been paying for a lovely piece of Pacific Ocean beach front property for years and finally got it paid off and put enough away to build their retirement dream home. In the interim, their local jurisdiction, which controls architectural details, determined that there was too much construction out that way and that their pristine ocean views were disappearing, and they refused them a building permit.

The couple complained that that constituted a "taking" without compensation, for they now owned the most expensive piece of private park property on the

Coast. The Supreme Court agreed and it was a landmark case for realtors and local jurisdictions.

Now let us apply the principal as it is being discussed locally with the ADA: Let us imagine that someone owns a 2 story building of say 10,000 SF/floor. It is composed of general office spaces and would variously rent out to as few as 2 or as many as a dozen renters, depending on their space requirements. Let us go further and stipulate that the building has NO health care providers. Accordingly, EXEMPTION I of ADA Guide 4.1.3(5) applies, and there is an exemption which tells the landlord that he/she need NOT spend $100,000 to retrofit the aging and fiscally losing facility with a 2 story elevator. (notwithstanding the test of "readily achievable")

*Americans with Disabilities Act Guidelines

Now let us assume that the second floor of the building has been empty for 2 years; a circumstance not the least bit unusual locally, but the owner has somehow managed to hang on, perhaps using up all his/her savings. In good faith, the owner has been trying hard to rent the upper floor; has listed it continuously and has showed it frequently. He/she finds the market very soft, as competitors all over town offer their space for less just to fill it and get some cash flow.

Enter ADA. EXCEPTION I to ADA Guide 4.1.3(5) indicates that even with the Exception in place, that there is NO reduction of the duty to offer services to the public on the part of the 2nd floor occupancies. Specifically:

> The elevator exemption set forth in this paragraph does not obviate or limit in any way the obligation to comply with the other accessibility requirements established in section 4.1.3....

In our hypothetical building, let us assume that there is minimum common area, so setting up a desk in the lobby to offer "Alternate service", is not practical.

And so the landlord goes searching for tenants. Because of publicity surrounding the ADA implementation, tenants are now a little better educated and they ask specifically how the landlord will facilitate the alternate service if they rent upstairs. The landlord has no answer.

The landlord then meets with a consultant like me and his Realtor and we brainstorm. Obvious answer is to rent the upper floor only to those type of rentals which do not constitute a PUBLIC ACCOMMODATION; i.e. an office for a consultant like me who never sees the public in the office, or storage, or an employee-only area for someone renting on the first floor.

It does not take the gathered brainstormers long to recognize that they have

thus limited their potential renting clientele to about ten percent (10%) of the public. The building owner is disturbed, because when he built the place he completely complied, and now he perceives A GREATLY REDUCED VALUE due to the inability to successfully market the 2nd floor to the same public as in the past. (not to mention problems when trying to sell it) Though he/she is protected by the elevator exemption, his/her lessees are NOT exempted from providing the accesses required for a Public Accommodation, and they do not see how they can comply if they rent the sample building.

BOTTOM LINE: How is this not a "public taking" without compensation? What do you tell this building owner as he/she laments and torments, all the while not renting his/her facility, and ultimately going into a chapter proceeding to attempt to buy time?
I find this an intriguing scenario, and I would be very pleased to read anything you may already have, or to share your thoughts and observations. Thank you in advance!

KENT LEE WOODMAN, Principal
[ws7.0a:\D:\WSFILES\ADA\JUSTICE]
01-02588
DJ xx SEP 10 1993
III - 1.3000

XX
XX
Las Cruces, New Mexico XX

Dear XX :

This is in response to your correspondence requesting information about the Americans with Disabilities Act (ADA). We apologize for the delay in responding.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist you in understanding the requirements of the ADA. However, it does not constitute a formal legal interpretation or opinion and it is not binding on the Department.

Your inquire about the ADA obligations imposed on manufacturers to respond to consumer complaints from individuals with hearing impairments. The ADA lists twelve categories of entities as places of public accommodations. Manufacturing activities do not fall within these categories. However, it is our view that an extensive customer services operation of a large manufacturer is separately covered as a public accommodation if

it is providing a service in connection with the retail sales of its products. Accordingly, such a customer service office is required to ensure effective communication with its customers having disabilities by providing auxiliary aids and services unless providing them would constitute an undue administrative or financial burden.

There are a variety of aids and services that can be provided to ensure effective communication with persons having hearing or speech impairments. For telephone communications, the ADA has required the establishment of telecommunications relay services which are now available on phone systems throughout the country. The relay system allows persons with hearing impairments to use TDDs to contact specially trained operators

cc: Records, Chrono, Wodatch, Magagna, MAF
udd\Magagna, pl.74

01-02589

who then relay the calls by voice to the parties to whom the TDD users wish to speak. Your local phone company should be able to provide you with more information about its relay system.

We hope this information is useful to you in evaluating your rights under the ADA.

Sincerely,

John L. Wodatch
Chief
Public Access Section

01-02590

XX
Las Cruces, New Mexico XX
302 b2a XX

January 27, 1992

Ass't. Attorney General for Civil Rights
Department of Justice
Washington, D.C. 20530

Re: Americans with Disabilities Act

Hello:

I suffer from severe hearing impairment and must rely on lip reading to carry on a conversation. With an amplified telephone, I can "make out" some of what a person is saying but I have no confidence whatsoever that I am hearing correctly on the telephone. Consequently, I have a policy of not doing business over the phone.

I am presently involved in a dispute with the Chrysler Corporation regarding a Plymouth mini-van that experienced total crankshaft failure at 14,000 miles. Twice, Chrysler corporation representatives have called me on the phone to discuss the matter. In both instances, I asked the caller to send me a letter. To date, I have heard from neither of them.

Does the Act require businesses firms to recognize hearing impairment and use written correspondence instead of the telephone? I understand that the Corporation has a computer answering system(blah, blah, blah, push 1; blah, blah, blah, blah, push 2; etc.) but there is no way in the world that I can get through such a system.

I hope you can help me, or, at least, tell me how I should proceed. Any help you can offer will be greatly appreciated.

Yours very truly,

XX

C: K.K. Jones
Owner Relations Coordinator
Chrysler Corporation
26001 Lawrence Ave.
Center Line, MI 48015-1231

01-02591

U.S. DEPARTMENT OF JUSTICE
Civil Rights Division

T. 9/15/93
SBO:MAF:MM:jfb

204-012-00043 Washington, DC 20530

XX
(b)(6)
Big spring, Texas XX

Dear XX (b)(6)

This is in response to your letter to this office regarding the banning of smoking in public buildings.

The ADA authorizes the Department of Justice to provide technical assistance to entities that are subject to the Act. This letter provides informal guidance to assist you in understanding how the ADA nay apply to you. However, this technical assistance does not constitute a determination by the Department of Justice of your rights or responsibilities under the ADA and does not constitute a binding determination by the Department of Justice.

Under the Americans with Disabilities Act of 1990 (ADA), the Department of Justice declined to state categorically that allergy or sensitivity to cigarette smoke should be recognized as a disability under the ADA, because in order to be viewed as a disability under the ADA an impairment must substantially limit one or more major life activities. An individuals respiratory or neurological functioning may be so severely affected by allergies or sensitivity to cigarette smoke that he or she will satisfy the requirements to be considered disabled under the ADA. Such an individual would be entitled to all of the protections afforded by the ADA. In other cases, however, individuals' sensitivities to smoke or other environmental elements will not rise to the level needed to constitute a disability. If, for instance, an individuals major life activity of breathing is somewhat, but not substantially, impaired, the individual is not disabled and is not entitled to the protections of the statute. Thus, the determination as to whether allergies or sensitivity to smoke are disabilities covered by the regulation must be made using the same case-by-case analysis that is applied to all other physical or mental impairments. (See the enclosed title III regulation at page 35549.)

cc: Records Chrono CRS Friedlander Milton ca, FOIA, Breen,

udd:Milton.Letters.Smoking.Spe

01-02592

Because of the case-by-case nature of the determination, the Department of Justice ADA regulations do not mandate restrictions an smoking. It is important to note that section 501(b) of the statute merely states that the prohibition of, or the imposition of restrictions on, smoking in places of public accommodation is not precluded by the ADA. The statute does not mandate imposition of any restrictions. Furthermore, there is currently no Federal statute that absolutely bans smoking in public buildings.

If you believe that you satisfy the requirements to be considered disabled under the ADA and wish to take advantage of its protections, you may either file a private suit in Federal court or send a complaint to the Department of Justice for investigation. Complaints against State and local government buildings should be filed with this office. Complaints against privately owned facilities should be mailed to: Public Access Section, Civil Rights Division, Department of Justice, P.O. Box 66738, Washington, D.C. 20035-6738.

I hope this information has been helpful to you.

Sincerely,

Stewart B. Oneglia
Chief
Coordination and Review Section
Civil Rights Division

Enclosure

01-02593

(Handwritten)
(b)(6)
XX
Big Spring, Texas
XX

U.S. Department of Justice
Civil Rights Division
Coordination and Review Section
P.O. Box 66118
Washington, D.C. 20035-6118

To Whom It May Concern:

As a disabled person I'd like to know why smoking can't be banned inside any building - with my breathing problem, I've found this to be a real problem. You see, I have Myasthenia Gravis and can only use the upper part of my chest to get air. My shoulders raise with each breath I take - also I have asthma and few allergies.

It's hard to get out on good days

01-02594

but the smokers make my life miserable. If we can get into a building we have to be able

to breathe in order to do anything there.
Our Wal-Mart store has no
smoking - but people sit in the
enclosure were we have to enter
the area fields with smoke.
I've been in grocery stores and
people in line right behind me
blowing smoke all around me.
I get a Kleenex out and put over
my mouth and nose, but some people
just won't take the hint. I guess
I need to speak-up but I've never
been one to make a scene.

My point, why can't the Act of 1990
help us to carry this extra
step? Has it been considered?
Is there another legislation needed?

Think of all the other people who
have asthma - allergies
and emphysema - not only the disabled.
If people have to smoke why let
them ruin the air we need
- and I might add not only
air we need, but air harder
to get because our muscles have
to work harder to get what air
we can get.

I haven't even been in my own
father and mother's home in years
because my father is a pipe
smoker and he says he can't stop.
This has been very hard emotionally
for me as I love them so much, but
it is his home - when they come to see me
he does go outside to smoke, no one smokes
in our home.

It's terrible to eat out in restaurants

with poor ventilation or be seated at the edge of a non-smoking area - or the air-intake circulator be near so the smoke just circles all over - then you can't get enough air to eat, as just to eat takes a lot of strength.

Maybe you can let me know if this has been considered or if more is needed to be done in this area. It really is a problem and I'm sure I'm not alone.

Thank you for taking the time to read this. I'd appreciate some "out-put" or information from you.

Thanks,
(b)(6)

01-02597.1

DJ 202-PL-518

SEP 15 1993

Myron Koplin
Macon Iron & Paper Stock Co., Inc.
P.O. Box 506
Macon, GA 31202

Dear Mr. Koplin:

This letter is in response to your inquiry about the application of the Americans with Disabilities Act of 1990 (ADA) to your residential apartment building.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist you in understanding the ADA's requirements. However, it does not constitute a legal interpretation or legal advice, and it is not binding on the Department.

You ask whether the ADA requires the installation of an entry and exit ramp in your apartment building in order to provide access for the elderly. Strictly residential facilities are not covered by title III of the ADA. However, there is one possible application to your apartment building. Common areas within residential buildings that are used by persons other than building tenants and their guests, are covered by the ADA if they fall into at least one of the 12 categories of places of public accommodation. A rental office, for example, would be a place of public accommodation within the meaning of the ADA. A swimming pool for which memberships are sold to the general public would also be a place of public accommodation. Areas that serve these places of public accommodation, such as parking lots, entrances, and paths of travel, are required under the ADA to be accessible. In your case, for example, a ramp may be required if necessary to provide access to a place of public accommodation within the apartment building.

cc: Records, Chrono, Wodatch, Breen, Novich, FOIA, MAF
Udd:Novich:Policy:518

01-02598

2

For your further information, I am enclosing the regulation promulgated under title III and the Title III Technical Assistance Manual and Supplement. ADA coverage of common areas in residential facilities is discussed on page I of the Supplement. I hope this information is helpful to you.

Sincerely,

Philip L. Breen
Special Legal Counsel
Public Access Section

Enclosures
Title III regulation
Title III Technical Assistance Manual and Supplement

01-02599

U.S. Department of Justice

Civil Rights Division

Public Access Section

P.O. Box 66738
DJ 202-PL-518 Washington, D.C. 20035-6738

APR 28 1993

Mr. Myron Koplin
Macon Iron & Paper Stock Company, Inc.
P.O. Box 506
Macon, Georgia 31202

Dear Mr. Koplin:

The Civil Rights Division of the Department of Justice has received your request for an interpretation of the Americans with Disabilities Act (ADA). The ADA authorizes the Department of Justice to provide technical assistance to entities that have rights or responsibilities under the Act. The Civil Rights Division will treat your inquiry as a request for technical assistance and will provide informal guidance to you. However, because of the large volume of requests for interpretations of the ADA, we are unable to answer your letter at this time.

Please be assured that the Division will respond to your letter as soon as we can, although we cannot guarantee a response by a certain date. We regret any inconvenience caused by our delay in responding and have enclosed for your information two

documents on the ADA: "Title II Highlights" and "Title III Highlights."

Sincerely,

Philip L. Breen
Special Legal Counsel
Public Access Section
Civil Rights Division

(handwritten)
Many thanks.
Enclosures Thanks for documents.
Under Title III, is a residential apartment building.*
construed as a public accommodation?
Response to this is my single question.

*Eight floors
45 units Myron Koplin

01-02600
RapidForms
LETTER-LIMINATOR

TO
Office on the Amer. w Dis. Act.
P. O. Box 66118
Washington, DC 20035

FROM
MACON IRON & PAPER STOCK CO., INC.
"Serving Middle Georgia Since 1919"
P. O. Box 506 Macon, GA 31202
(912) 743-6773 Fax (912) 743-9965

Subject: Wheelchair Access to 50 unit Apartment, 7 floors

4/15/93 MESSAGE

I requested apartment to install entry and exit ramps for elderly, they replied that because is a residential Historic District, they are exempt. Is this correct? I thought if installation can comply with zoning requirement, ramp would be required. Can you advise. With thanks.

Myron Koplin.

REPLY

202-PL-518

LETTER-LIMINATOR

01-02601

DJ 202-PL-229

SEP 16 1993

Ms. Barbara M. Japha
Counsel -- Real Estate
U.S. West Business Resources, Inc.
168 Inverness Drive West, Suite 500
Englewood, Colorado 80112

Dear Ms. Japha:

I am writing in response to your June 30, 1992, letter requesting information about the Americans with Disabilities Act (ADA).

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist you in understanding the ADA's requirements; however, it does not constitute a legal interpretation and it is not binding on the Department.

Your letter raises the question of whether "non-work

equipment reporting facilities" are commercial facilities subject to the new construction requirements under the ADA Accessibility Guidelines. The term "commercial facilities" includes non-residential facilities affecting commerce. Because the facilities under consideration fall into this category, Construction or alteration of the facilities must be carried out in compliance with this Department's accessibility standards.

In your conversations with Ken Nakata from this office, you indicated that these "non-work equipment reporting facilities" were telephone "switching stations." We understand these stations comprise either small unstaffed work areas that are infrequently visited by service personnel for repair, service, and maintenance or larger specially constructed metropolitan stations with accessible control rooms and separate equipment work areas housing large racks of equipment accessible only by ladders. We also understand that the smaller, unstaffed

cc: Records; Chrono; Wodatch; Bowen; Nakata; FOIA; MAF.
\udd\nakata\PL229

01-02602

switching stations are arranged in various configurations, including units located below ground and accessible only by manholes, ladders, and narrow stairwells or units located above ground and accessible by several small stairs.

Under the Department's regulations, accessibility is not required for non-occupiable spaces accessed only by ladders, catwalks, crawl spaces, very narrow passageways, or freight (non-passenger) elevators, and frequented only by service personnel for repair purposes. See Section 4.1.1 of the standards for accessible design, found at Appendix A to the Department's regulation implementing title III. Therefore, the smaller switching stations that you described would be exempt from the ADA's accessibility requirements if they constitute a non-occupiable space and to the extent that they are entered or approached through one of these very limited means. Furthermore, to the extent that smaller switching stations are not located on a "site" (as where a switching station is located beneath a

public street and accessible only by manhole), they cannot be deemed "facilities" under the accessibility standards and would again be exempt from the ADA's accessibility requirements. See Section 3.5 (definition of "facility"). Other smaller switching facilities and equipment rooms in larger metropolitan facilities would be deemed "work areas" and should be designed and, constructed so that individuals with disabilities can approach, enter, and exit the areas. See Section 4.1.1(3). They would also be subject to the ADA's accessibility requirements to the extent that they are altered.

I have enclosed a copy of the Department's Title III Technical Assistance Manual, which may further assist you in understanding your obligations under the ADA. I hope this information is useful to you.

Sincerely,

John Wodatch
Chief
Public Access Section

Enclosures
Title III Regulation
Title III Technical Assistance Manual

01-02603

U.S. Department of Justice
Civil Rights Division
Coordination and Review Section

P. O. Box 66118
Washington, DC 20035-6118

SEP 16 1993

(b)(6)
XX
Galax, Virginia XX

RE: Complaint Number XX (Please note new complaint (b)(6) number.)

Dear (b)(6)

This letter constitutes our Letter of Findings in response to your complaint filed with our office against the Alleghany County Department of Social Services (Department) under title II of the Americans with Disabilities Act of 1990 (ADA). Title II of the ADA protects qualified individuals with disabilities from discrimination on the basis of disability in the services, programs, and activities of a State or local government. Your complaint alleges that the Department made recommendations to the District Court for Alleghany County, North Carolina (Court), that were based on eligibility criteria that were in violation of the ADA.

You have stated that you petitioned the Court for custody of your two minor grandchildren and that, in proceedings before the Court, the Department introduced evidence of your prior hospitalization in a psychiatric hospital as the basis for its recommendation that custody be denied to you. You further stated that this hospitalization occurred in 1984 and 1986 and has no bearing on your current ability to parent your grandchildren.

Section 35.130(b)(8) of the Department of Justice's title II regulation prohibits the use by a public entity of any eligibility criteria that would screen out or tend to screen out persons with disabilities from the full enjoyment of the benefits of any program, service, or activity of the entity, unless the criteria can be shown to be necessary for the provision of the service, program, or activity. The program operated by the Department for the placement of children after a court ordered termination of parental rights falls within this prohibition.

Prior to the custody hearing, this office contacted the Department. The Department agreed verbally that it would take steps to protect your rights under the ADA. Specifically, the

Department agreed that, with respect to your history of mental illness, it would agree to base any arguments against your petition for custody entirely on evidence that was related to your current ability to parent and care for your minor grandchildren, and that particular care would be taken where that evidence was more than five years old.

After reviewing the Department's written final argument to the court and relevant portions of the trial transcript, we find that, while the eligibility criteria that were used would tend to

screen out individuals with disabilities, they were, in this case, necessary to the operation of the placement program of the Alleghany County Department of Social Services. Therefore, we have determined that no violation of title II occurred.

This letter contains our determination with respect to your allegations of discrimination in your administrative complaint. If you are dissatisfied with our determination, you may file a complaint presenting your allegations of discrimination in an appropriate United States District Court under title II of the ADA.

Under the Freedom of Information Act, 5 U.S.C. S 522, we may be required to release this letter and other correspondence and records related to the complaint in response to a request from a third party. Should we receive such a request, we will safeguard, to the extent permitted by law, release of information that could constitute an unwarranted invasion of your or other's privacy.

If you have any questions regarding this letter, please contact Merle Morrow at (202) 514-3571.

Sincerely,

Stewart B. Oneglia
Chief
Coordination and Review Section
Civil Rights Division

cc: Dan R. Murray
Attorney at Law

01-02605

U.S. Department of Justice
Civil Rights Division
Coordination and Review Section

P. O. Box 66118
Washington, DC 20035-6118

SEP 30 1993

Ms. Arlys Ward
Executive Director
City and County of Denver
Election Commission
303 West Colfax Avenue, Suite 101
Denver, Colorado 80204-2617

RE: Complaint Number XX

Dear Ms. Ward:

This letter constitutes our Letter of Findings with respect to the complaint filed with our office against the City and County of Denver Election Commission (Commission) under title II of the Americans with Disabilities Act (ADA). Title II prohibits discrimination against qualified individuals with disabilities on the basis of disability by state and local governments.

The Civil Rights Division has completed its investigation of the complaint. Our investigation revealed that the State of Colorado requires that when a voter with a mobility impairment is not able to use a voting machine, election judges shall assist the voter outside the polling place within 100 feet of the polling place. The Commission has advised us that it follows these procedures in all of its elections. Two elections judges assist the voter by taking a sample ballot and pen to the voter and observing while the voter marks the ballot. One of the judges will record the vote on a voting machine and, then, destroy the sample ballot.

Title II of the ADA, which applies to public entities (State and local governments), requires "program access," rather than "facility access," for buildings and facilities existing on the effective date. A public entity must operate each program, service, or activity so that the service, program, or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities, but is not necessarily required to make each of its existing facilities accessible to and usable by individuals with disabilities. 28 C.F.R. S 35.150 (the Department of Justice's regulation implementing title II, 28 C.F.R. pt. 35 (copy enclosed)). Removal of architectural

barriers is one method of providing access to programs and activities in existing facilities, but other methods are also

permitted if they provide program access. The "curbside" voting procedure followed by the commission meets the requirement for program accessibility because it provides an equal opportunity for voters with disabilities to cast their ballots on the day of the election.

You should be aware, however, that your curbside voting procedure is a permissible alternative only if it is an effective method of providing access to the program or activity. Thus, if the Commission failed to follow its procedures for curbside voting, or otherwise denied an individual with a disability the opportunity to vote, it would be in violation of title II and an individual could file a complaint concerning that particular incident with our office.

You should be aware that no one may intimidate, threaten, coerce, or engage in other discriminatory conduct against anyone because she or he has either taken action or participated in an action to secure rights protected by the ADA. Any individual alleging such harassment or intimidation may file a complaint with the Department of Justice. We would investigate such a complaint if the situation warrants.

Under the Freedom of Information Act, 5 U.S.C. S 522, we may be required to release this letter and other correspondence and records related to this complaint in response to a request from a third party. Should we receive such a request, we will safe-guard, to the extent permitted by the Freedom of Information Act and the Privacy Act, the release of information which could constitute an unwarranted invasion of privacy.

Based upon our determination that the Commission's procedures for curbside voting meet the requirements of title II, we are closing our files in this matter as of the date of this letter. Thank you for your cooperation in this matter. If you have any questions, please contact Linda King at (202) 307-2231.

Sincerely,

Stewart B. Oneglia
Chief
Coordination and Review Section
Civil Rights Division

Enclosure

01-02607

U.S. Department of Justice
Civil Rights Division
Coordination and Review Section

P. O. Box 66118
Washington, DC 20035-6118

SEP 30 1993

XX
XX
Denver, Colorado XX

RE: Complaint Number XX

Dear XX

This letter constitutes our Letter of Findings with respect to your complaint filed with our office on January 11, 1993, against the City and County of Denver Election Commission (Commission), under title II of the Americans with Disabilities Act (ADA). Title II prohibits discrimination against qualified individuals with disabilities on the basis of disability by State and local governments. Specifically, you allege that the voting machines used by the Commission are not accessible to persons with mobility impairments.

The Civil Rights Division has completed its investigation of your complaint. our investigation revealed that the State of Colorado requires that when a voter with a mobility impairment is not able to use a voting machine, election judges shall assist the voter outside the polling place within 100 feet of the polling place. The Commission has advised us that it follows these procedures in all of its elections. Two elections judges assist the voter by taking a sample ballot and pen to the voter and observing while the voter marks the ballot. One of the judges will record the vote on a voting machine and, then, destroy the sample ballot.

Title II of the ADA, which applies to public entities (State and local governments), requires "program access," rather than "facility access," for buildings and facilities existing on the effective date. A public entity must operate each program, service, or activity so-that the service, program, or activity, when viewed in its entirety, is readily accessible to and usable

by individuals with disabilities, but is not necessarily required to make each of its existing facilities accessible to and usable by individuals with disabilities. 28 C.F.R. S 35.150 (the Department of Justice's regulation implementing title II, 28 C.F.R. pt. 35, a copy of which is enclosed). Removal of architectural barriers is one method of providing access to programs and activities in existing facilities, but other methods are also permitted if they provide program access. The "curbside" voting procedure followed by the Commission meets the requirement for program accessibility because it provides an equal opportunity for voters with disabilities to cast their ballots on the day of the election.

If you are aware of instances when the commission has failed to follow its procedures for curbside voting, or otherwise has denied you or another individual with a disability the opportunity to vote, you may file a complaint concerning that particular incident with our office.

Based upon our determination that the Commission's procedures for curbside voting meet the requirements of title II, we are closing your complaint as of the date of this letter. If you are dissatisfied with our determination, you may file a private complaint in the appropriate United States District Court under title II of the ADA.

You should be aware that no one may intimidate, threaten, coerce, or engage in other discriminatory conduct against anyone because she or he has either taken action or participated in an action to secure rights protected by the ADA. Any individual alleging such harassment or intimidation may file a complaint with the Department of Justice. We would investigate such a complaint if the situation warrants.

Under the Freedom of Information Act, 5 U.S.C. S 522, we may be required to release this letter and other correspondence and records related to this complaint in response to a request from a third party. Should we receive such a request, we will safe-guard, to the extent permitted by the Freedom of Information Act and the Privacy Act, the release of information which could constitute an unwarranted invasion of privacy.

Please use the Department of Justice complaint number in all correspondence and other communications regarding this complaint. If you have any questions, please contact Linda King at (202) 307-2231.

Sincerely,

Stewart B. Oneglia
Chief
Coordination and Review
Civil Rights Division

Enclosure

01-02610

T. 9-15-93
Control No. 3082519126

SEP 30 1993

The Honorable Amo Houghton
Member, House of Representatives
P.O. Box 908
Jamestown, New York 14702-0908

Dear Congressman Houghton:

(b)(6)
This letter responds to your inquiry on behalf of your constituent, XX concerning the regulatory requirements of the Americans with Disabilities Act (ADA)for toilet rooms.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities with rights or obligations under the Act. This letter provides informal guidance to assist your constituent in understanding the ADA accessibility standards. However, this technical assistance does not constitute a legal interpretation of the statute and it is not binding on the Department.

(b)(6) has questioned whether he is required to provide accessible toilet facilities in his small business with only two employees. A local building code or plumbing code, not the ADA, should be consulted to determine the number of toilet rooms and plumbing fixtures required in a particular building or facility. The ADA Standards for Accessible Design, in turn, impose requirements for accessibility of all toilet rooms provided in new and altered buildings and facilities. The Standards may be found in Appendix A of the enclosed regulation implementing title III of the ADA. Section 4.1.3(11) of the Standards clearly

specifies that if toilet rooms are provided, then each public and common use toilet room shall comply with 4.22.

Please encourage your constituents to contact the Public Access Section directly anytime they have questions or need information. The Department maintains a telephone information line to provide technical assistance regarding the rights and obligations of individuals, businesses, agencies, and others covered or protected by the ADA. This technical assistance is available by calling 202-514-0301 (voice) or 202-514-0383 (TDD) between 1:00 p.m. and 5:00 p.m., Monday through Friday.

cc: Records, Chrono, Wodatch, Harland, McDcwney, FOIA, Friedlander
n:\udd\harland\cong.hou

01-02611

I hope the information we have provided is helpful to you and your constituent.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

Enclosure

AMO HOUGHTON
31ST DISTRICT, NEW YORK

COMMITTEES
COMMITTEE ON WAYS
AND MEANS
SUBCOMMITTEE ON OVERSIGHT
RANKING MEMBER
SUBCOMMITTEE ON
SOCIAL SECURITY
SELECT COMMITTEE ON
AGING

CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES

MEMBER
NORTHEAST-MIDWEST
COALITION
NORTHEAST AGRICULTURE
CAUCUS
COMPETITIVENESS CAUCUS
VICE CHAIRMAN
OFFICE OF
TECHNOLOGY ASSESSMENT

August 18, 1993

U.S. Attorney General Janet Reno
Department of Justice
Main Justice Building Room 5111
Pennsylvania and Constitution Avenues NW
Washington, D.C. 20530

Dear Attorney General Reno:

I have recently been contacted by a constituent who is starting a small, but new business. The business has only two (b)(6) employees, my constituent, xx and his mother-in-law.

In remolding an area in an old building for his business, the contractor involved, told xx that he would have to provide (b)(6) handicapped accessible toilet facilities. Is this true, even if there are only the two employees, with no foreseeable increase in number of people? This building will not house any other business or provide living accommodations for anyone.

I would appreciate any information you may be able to provide which would help xx . Please address all correspondence to me at (b)(6) my Jamestown District Office, in care of Staff Assistant Carol Sheldon, P.O. Box 908, Jamestown, New York 14702-0908.

I look forward to your response and appreciate your consideration of this request.

Sincerely,

Amo Houghton

AH/cas

01-02613

DEPARTMENT OF JUSTICE

FOR IMMEDIATE RELEASE CR
TUESDAY, OCTOBER 6, 1993 (202) 616-2765
TDD (202) 514-1888

JUSTICE DEPARTMENT SETTLES WITH UTAH COURT TO ENSURE DEAF INDIVIDUALS MAY SERVE AS JURORS

WASHINGTON, D.C. -- A Utah court has agreed to no longer exclude deaf individuals from jury service, under a settlement agreement announced today by the Department of Justice. Today's agreement resolves a complaint filed with the Justice Department alleging that the Salt Lake City district court required individuals who are deaf to provide their own interpreters in order to serve on jury duty.

The agreement with the Utah Administrative Office of the Courts is the first settlement agreement with a State court agency under title II of the Americans with Disabilities Act (ADA). Title II of the ADA prohibits discrimination against qualified individuals with disabilities on the basis of disability by State and local governments.

"Through their cooperation with the Department in resolving

this complaint, the Utah Administrative Office of the Courts avoided costly litigation," said Acting Assistant Attorney General for the Civil Rights Division, James P. Turner. "It is

(MORE)

in the spirit of the ADA for local agencies to use scarce resources to comply with the law rather than to combat it."

The agreement, which affects all courts throughout Utah, incorporates the requirements of title II which obligate courts to provide appropriate auxiliary aids and services, including qualified interpreters, whenever necessary to give an individual with a disability an equal opportunity to participate in the court's programs.

The settlement agreement requires the Utah court agency to:

- Establish a written policy on the provision of interpreters for jurors who are deaf or hard of hearing.
- Secure, at the court's expense, the services of a qualified interpreter whenever necessary to ensure effective communication.
- Publicize the policy through public notices in local newspapers.
- Inform and instruct all appropriate district court officials responsible for conducting proceedings to comply with the policy.
- Conduct at least four regional training seminars an how the Americans with Disabilities Act applies to jury trials and other court proceedings.

The agreement also permits the Justice Department to petition the U.S. District Court to seek specific performance of the agreement's terms if the court fails to comply.

# # #

93-306
01-02615

SETTLEMENT AGREEMENT BETWEEN

THE UNITED STATES OF AMERICA

AND

THE UTAH STATE ADMINISTRATIVE OFFICE Or THE COURTS

Department of Justice Complaint Number XX

This matter was initiated by a complaint filed under title 11 of the Americans with Disabilities Act (ADA), 42 U.S.C. 12131 -12134, with the United States Department of Justice (Department of Justice) against The Third Judicial District Court, Salt Lake County, Utah. The complaint was investigated by the coordination and Review Section of the Civil Rights Division of the Department of Justice, under the authority of 28 C.F.R. pt. 35, subpt F. The complaint alleges that The Third Judicial District court disqualified or otherwise excused individuals who are deaf or hard of hearing from jury duty unless they provide their own interpreting services.

The Department of Justice is authorized under 28 C.F.R. pt. 35, subpt. F, to investigate fully the allegations of the complaint in this matter to determine the compliance of The Third Judicial District Court with title II of the ADA and the Department's implementing regulation, issue findings, and, where appropriate, negotiate and secure voluntary compliance agreements. Furthermore, the Attorney General is authorized under 42 U.S.C. 12133, to bring civil action enforcing title II of the ADA should the Department fail to secure voluntary compliance pursuant to subpart F. In consideration of the terms of this Agreement as set forth below, the Attorney General agrees to refrain from undertaking further investigation or from filing civil suit in this matter.

The parties to this Agreement are the United States of America and the Utah State Administrative Office of the Courts, a public entity as defined by title II of the ADA. Pursuant to the provision of the ADA entitled "Alternative Means of Dispute Resolution," 42 U.S.C. 12212, the parties have entered into this Agreement. In order to avoid the burdens and expenses of possible litigation, the parties hereby agree as follows:

1. Title II of the ADA and its implementing regulation prohibit discrimination against qualified individuals with disabilities on the basis of disability in the services, programs, or activities of the district courts, such as Jury service.

2. The district court must, upon notice, provide appropriate auxiliary aids and services when necessary to afford an individual with a disability an equal opportunity to participate in, and enjoy the benefits of, the district court's services, programs, or activities. Auxiliary aids and services include qualified interpreters.

3. An individual who is deaf or hard of hearing may not be excluded from jury service or otherwise treated differently because of the disability or because of the requirement for interpreting services.

4. The subject of this Settlement Agreement is the development of a policy to ensure that no otherwise qualified individual who is deaf or hard of hearing will be excluded from jury service because of the disability or because of the requirement for interpreting services.

5. The Utah State Administrative office of the Courts has developed a written policy (attached), which requires that district courts provide qualified interpreters in those proceedings involving a prospective juror who is deaf or hard of hearing when necessary to ensure an equal opportunity to serve as a juror.

6. Beginning on the effective date of this Agreement, the Utah State Administrative office of the courts will inform and instruct all appropriate district court officials responsible for conducting proceedings to adhere to and comply with the provisions of this Agreement.

7. The Administrative Office of the Courts will, no later than January 31, 1994, conduct at least four regional training seminars addressing the practical application of the ADA and this Agreement in jury trials and other court proceedings.

6. Within thirty (30) days of the effective date of this Agreement, the Utah State Administrative Office of the Courts will publish the following notice or an equivalent on two separate occasions in a newspaper of general circulation serving

Salt Lake County:

01-02617

In accordance with the requirements of title II of the Americans with Disabilities Act, district courts of the State of Utah will not discriminate against qualified individuals with disabilities on the basis of disability in jury service. In order to ensure that a prospective juror who is deaf or hard or hearing is not denied an equal opportunity to serve as a juror because of the requirement for interpreting services, the district court will, upon notice, ensure such an equal opportunity by providing, at the court's expense, the services of qualified interpreters.

9. The Department of Justice may review compliance with this Agreement at any time. If it determines that this Agreement or any requirement thereof has been violated, it may institute civil action seeking specific performance of the provisions of this Agreement in an appropriate Federal court.

10. Failure by the Department of Justice to enforce this entire Agreement or any provision thereof with respect to any deadline or any other provision herein will not be construed as a waiver of the Department's right to enforce other deadlines and provisions of this Agreement.

11. This Agreement is a public document. A copy of this document or any information contained in it may be made available to any person. The Utah State Administrative Office of the Courts will provide a copy of this Agreement to any person upon request.

12. In the event that the Utah State Administrative Office of the Courts or the district court fails to comply in a timely manner with any requirement of this Agreement without obtaining sufficient advance written agreement with the Department as a temporary modification of the relevant terms of this Agreement, all terms of this Agreement will become enforceable in an appropriate Federal court.

13. The effective date of this Agreement is the date of the last signature below.

14. This Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or agents of either party, that is not contained in this written agreement, will be enforceable. This Agreement does not

purport to remedy any other potential violations of the ADA or

any other Federal law. This Agreement does not affect the Utah State Administrative Office of the Courts' or the district courts' continuing responsibility to comply with all aspects of the ADA.

For the Utah State Administrative Office of the Courts:

Ronald W. Gibson
State Court Administrator

Colin R. Winchester
General Counsel

Administrative Office
of the Courts
230 South 500 East
Suite 300
Salt Lake City, Utah 84102

Date October 5, 1993

For the United States:

Stewart B. Oneglia
Chief

Robert J. Mather
Attorney

Coordination & Review Section
Civil Rights Division
U.S. Department of Justice
P.O. Box 66118
Washington, D.C. 20035-6118

Date October 6, 1993

THE UTAH STATE

ADMINISTRATIVE OFFICE OF THE COURTS

POLICY ON JURY DUTY AND THE PROVISION OF INTERPRETING SERVICES

IT SHALL BE THE POLICY OF THE UTAH STATE ADMINISTRATIVE OFFICE OF THE COURTS THAT WHEN THE DISTRICT COURT HAS NOTICE THAT INTERPRETING SERVICES ARE REQUIRED TO ENSURE THAT A PROSPECTIVE JUROR WHO IS DEAF OR HARD OF HEARING HAS AN EQUAL OPPORTUNITY TO PARTICIPATE AS A JUROR, THE COURT WILL PROVIDE, AT THE COURT'S EXPENSE, THE SERVICES OF A QUALIFIED INTERPRETER(S).

BY ORDER OF THE UTAH STATE ADMINISTRATIVE OFFICE OF THE COURT THIS 5th DAY OF OCTOBER 1993.

01-02620

U.S. Department of Justice
Civil Rights Division
Coordination and Review Section
P. O. Box 66118
Washington, DC 20035-6118

Mr. Donald E. Keister OCT 12 1993
President
IRMA, Inc.
527 Chesapeake Avenue
Baltimore, Maryland 21225

Dear Mr. Keister:

This responds to your letter to President Clinton concerning small Business Administration (SBA) loans for individuals with disabilities. Your letter concerns a $150,000 "cap" on SBA loans under the Handicapped Assistance Loan Program and the exclusion of business owners with disabilities from Minority Business "set aside" programs. The SBA is not covered by the Americans with Disabilities Act (ADA). It is, however, covered by section 504 of the Rehabilitation Act, 29 U.S.C. S 794, which prohibits discrimination against qualified individuals with disabilities in programs and activities conducted by Federal Executive agencies. We have therefore referred your letter to the office of the SBA responsible for enforcing section 504.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This response provides informal guidance to assist you in understanding the ADA's requirements. It does not, however, constitute a legal interpretation and is not binding on the Department.

The exclusion of individuals with disabilities from the classes of individuals eligible for minority set aside programs would not necessarily constitute a violation of the ADA or section 504 of the Rehabilitation Act of 1973, as amended, which applies to federally assisted as well as federally conducted programs and activities.

Title II of the ADA and the Department of Justice implementing regulation, 28 C.F.R. pt. 35 (copy enclosed),

prohibit a public entity from discriminating on the basis of disability against a qualified individual with a disability in the benefits and services it provides. 28 C.F.R. S 35.130 (a). A "qualified individual with a disability" is one who meets the essential eligibility requirements for the receipt of services or

participation in the program or activity provided by the public entity. The ADA does not limit the authority of a public entity to establish eligibility requirements that are unrelated to disability, so long as those requirements do not exclude qualified individuals with disabilities. The exclusion of individuals with disabilities from a "set aside" established for particular classes of individuals, such as racial, ethnic, or other minority groups, would not be discriminatory, unless individuals with disabilities who are also members of the particular classes covered by the set aside are excluded because of their disabilities. (Such an exclusion of an individual who is "qualified" because he or she meets the eligibility requirement of membership in a covered group could violate the ADA.)

We understand your position to be that the failure to include business owners with disabilities is discriminatory because those business owners are "disadvantaged" by their disabilities in the same way as others are disadvantaged by their membership in the covered groups. This argument is premised on the assumption that, in establishing a preference for particular classes of "disadvantaged" business owners, the State is obligated to include all categories of business owners that are similarly "disadvantaged." The ADA does not establish such an obligation. It does not prohibit State and local governments from establishing eligibility criteria that target specific groups as intended beneficiaries, based on the goals and purpose of authorizing legislation, so long as the program does not exclude or discriminate against persons with disabilities because of their disability.

Of course, if you seek to have the programs in question amended or revised to include the specific groups you represent as eligible for services or benefits, you should contact the State agencies administering these programs and the appropriate legislative bodies that authorize them.

I hope this information is helpful.

Sincerely,

Stewart B. Oneglia
Chief
Coordination and Review Section
Civil Rights Division

Enclosures

01-02622

U.S. Department of Justice
Civil Rights Division
Washington, DC 20530

OCT 12 1993

Mr. J. Arnold Feldman
Chief
Office of Civil Rights
and Compliance
Small Business Administration
409 Third Street, S.W.
Washington, D.C. 20416

Re: Correspondence of Mr. Donald E. Keister, Baltimore, Maryland

Date Received by DOJ: August 22, 1993
DOJ Number: 204-35-0
DOJ Contact Person: Mr. Bruce Pruvis

Dear Mr. Feldman:

I am referring this correspondence to your agency for response because it concerns compliance with section 504 of the Rehabilitation Act of 1973 as it applies to programs and activities conducted by your agency. See 13 C.F.R. pt. 136. You may also have section 504 jurisdiction with respect to the State agencies mentioned because your agency provides financial assistance to the subject of the correspondence.

You should process the complaint according to the procedures established in S 136.170 of your regulation implementing section 504 for your federally conducted programs. 13 C.F.R. S 136.170. Please be aware, however, that a cap on loans under a special program limited to individuals with disabilities would not necessarily be a violation of section 504, so long as individuals with disabilities are not excluded from programs that are not subject to the cap. See 13 C.F.R. SS 136.130 (c); (h).

Because we are responsible for coordinating enforcement of section 504, please send any final written disposition of the matter to us at the above address. In all correspondence, please

give the correspondent's name, the name of the alleged discriminating entity, and the DOJ number.

Sincerely,

Stewart B. Oneglia
Chief
Coordination and Review Section
Civil Rights Division

Enclosures

01-02624

IRMA
327 CHESAPEAKE AVENUE BALTIMORE, MARYLAND 21225 SALES & SERVICE & INSTALLATION
MARYLAND'S MAINTENANCE OF TRAFFIC SPECIALISTS
TOLL FREE 1-800-486-IRMA FAX (410) 354-4462 MBE# 92-055

July 10, 1993

President Bill Clinton
White House
1600 N. W. Pennsylvania Avenue
Washington, D. C. 20500

Dear Mr. President:

Please allow me to introduce myself. I am Donald E. Keister, President of IRMA, Inc. located in Baltimore City Maryland and Certified as a Minority Business Enterprise by the Maryland Department of Transportation and many other Government agencies for both Federal and State projects.

My certification was a result of the cold hard fact that I am a Disabled American and although I am entitled to receive Social Security Disability Benefits, it was my decision fifteen years ago to try to do what no one in my class had done before and that was to successfully run my own company and to employ others to help me to run my firm.

I am proud to say that for fifteen years I have not had to draw one dime of Social Security Disability Benefits and that I am a self dependent tax paying handicapped person.

Recently my firm received a loan from the Small Business Administration in the amount of $ 150,000.00 under the guidelines of the (HAL) Handicapped Assistance Loan Program, although my firm required and requested $ 500,000.00 for the total implementation of our well designed business plan there was a $ 150,000.00 cap on this program to assist Handicapped Persons with their business and our business plan had to be down-sized. Yet other Minorities and Non-Minorities are allowed to borrow up to $ 750,000.00. I might also note that the local office was not aware of the HAL program as no loans had ever been made to a Handicapped business owner under this program.

Inasmuch as my firm is a small business with just a little over $ 800,000.00 in gross receipts for 1992 and legal expenses of around eight percent of gross it is very hard to show a good profit.

Why are my legal fee's so high you may ask? Well it's because I have had to fight for my rights as a Disabled American every step of the way.

Finally when your predecessor signed the American with Disabilities Act of 1990 and upon my review of same I noticed that among other things it said that Disabled Americans are a discreet and insular class of Minorities who have faced discrimination, without the power to fight for their rights and who are to be accorded the same civil rights as those accorded the civil rights act of 1964.

That the purpose of this act was to help Disabled Americans enter into the Mainstream of American Life, and so on.

The bottom line is that The Maryland Department of Transportation and many other Government agencies has included my firm as owned and controlled by a Disabled American as a Minority Business Enterprise. As I understand it, they have in fact reviewed and determined the Code of Federal Regulations (CFR) 49 23.53 basically includes and protects my new class as a protected class under the general guidelines.

Inasmuchas CFR 49 23.53 was (I think) written after the civil rights act of 1964 and has not been revised since then to include the words Disabled American or Handicapped Person or to have someone in the Government issue an addendum to the code. I have found that each agency who receives Federal funds can decide if they want to protect my class.

As a result of negative decisions I have had to employ an attorney to fight these remaining barriers at my cost in my attempts to clear the way so that other members in my class can secure the same dream that I feel that I have almost accomplished of being a well respected, self supporting, tax paying, instead of tax receiving Disabled American.

I am proud to say that next month I am due to receive the "Know I care award" to be presented by the Police Commissioner of Baltimore City, Maryland and several years ago I received the "Baltimore's Best Award", at the same time I am also ashamed to say that the Baltimore City Government will not voluntary open it's eyes and recognize my firm as a Minority Business Enterprise as they cite their program to protect only Racial and Women Minorities.

Yet I can not find any evidence that the City of Baltimore has in the last twenty years discriminated against racial Minorities or Women, however; I can find that in the last twenty years that the City of Baltimore has in fact discriminated against Disabled Americans.

It seems so unfair that they have or think they have the right to protect one class of people without protecting all of the classes of people within the same class and they know that just one person of a protected class, currently one like me can not afford (because of economic disadvantages) to bear the costs to force them to protect all of the classes.

It is also a part of my dream and after my fight is over or perhaps even before that one day I be appointed to serve on one of our Governors committees for the encouragement of economic growth of and self sufficiency of Disabled - Handicapped Americans.

I do not mind telling you that I have written several letters to you predecessor and that I have even paid an attorney to professionally write with regard to this matter and I have only received "form" letter replies and false promises to no avail.

I some how feel that you are a real person and you will address this problem as a real problem and please remember that it was not long ago and sometimes even today that families of Disabled children put those family member's away or even dispose of them in horrible ways.

Thank you for your consideration.

Very truly yours,

Donald E. Keister, DA.
President

01-02627

U.S. Department of Justice
Civil Rights Division
Public Access Section

202-PL-243 P. O. Box 66738
Washington, DC 20035-6738

OCT 13 1993

Mr. J. Larry Poole
Architect
116 East Market Street
Kingsport, Tennessee 37660

Dear Mr. Poole:

This letter responds to your inquiry regarding the Americans With Disabilities Act (ADA). Specifically, you asked for guidance regarding ADA requirements for rescue and ambulance stations in Sullivan County, Tennessee. We regret the delay in responding.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist you in understanding the ADA's requirements. However, it does not constitute a legal interpretation and it is not binding on the Department.

In your letter, you asked several questions regarding ADA requirements for rescue and ambulance stations operated by your County. First, you inquired as to whether title IV of the ADA (addressing telecommunications relay services for individuals with hearing or speech impairments) requires each such station to have a TDD (telecommunications device for the deaf). As your letter recognizes, title IV addresses only the duty of common carriers to establish relay systems (services that enable two-way communication between an individual who uses a TDD or other nonvoice terminal device and an individual who does not use such a device.) Title IV does not address the legal duties of state and local government entities under the ADA. These obligations are covered by title II of the Act.

The Department of Justice regulation implementing title II

contains several provisions addressing the duty of state and local government entities to communicate effectively with members of the public, including requiring such entities to be equipped with TDD's in certain circumstances. These requirements differ depending on whether emergency or non-emergency services are at issue.

01-02628

Emergency Telephone Services

The regulation applicable to telephone requirements for emergency services provided by state or local government entities states:

> Telephone emergency services, including 911 services, shall provide direct access to individuals who use TDD's and computer modems.

28 C.F.R. S 35.162; see enclosed title II regulation at pages 35721 and 35712-35713. "Direct access" means that emergency telephone services can directly receive calls from TDD and computer modem users without relying on outside relay services or third party services. This means that where 911 service is available, the state or local government entities operating the 911 service must be equipped with TDD's and thus provide direct access to individuals who use TDD's and computer modems. The logic behind the "direct access" requirement is obvious, since the speed with which a person can reach emergency services may have life or death consequences.

The question posed in your letter is not whether state or local government entities operating 911 emergency services must be equipped with TDD'S, but whether an individual rescue or ambulance station must be so equipped. The answer depends in part, however, upon the comprehensiveness of your locality's 911 system. Your letter of inquiry does not contain facts sufficient to determine the comprehensiveness of Sullivan County's 911 system. To answer your question, it is therefore necessary to consider several different scenarios.

Under the first scenario, let us assume that Sullivan County, Tennessee, has 911 telephone emergency services which comply with the ADA (i.e., that the entities operating such services are equipped with TDD's and are compatible with computer modems, thus providing direct access to non-voice callers). Let us further assume that the emergency services provided by Sullivan County rescue and ambulance stations can be accessed via 911, meaning that a citizen who needs emergency services from the rescue or ambulance stations typically dials 911 to obtain such services. Under this scenario, the ADA would not require individual rescue or ambulance stations to obtain TDD'S.

Quite a different result is obtained if we assume that Sullivan County's 911 service does not cover the rescue or ambulance stations at issue, and members of the public could obtain emergency services only by dialing the stations direct. Under this scenario, the rescue or ambulance station would have

to be equipped with TDD's to provide direct access to nonvoice callers. The station could provide two separate lines to reach this service -- one for voice calls, and another for nonvoice
01-02629

calls -- but it would have to ensure that the service for nonvoice calls was as effective as that offered for voice calls in terms of response time and availability in hours. Also, the nonvoice number would have to be publicized as effectively as the voice number, and displayed as prominently as the voice number wherever such emergency numbers are listed. See Title II Technical Assistance Manual at pages 38 and 39.

A third possibility is that the emergency services of the rescue or ambulance stations at issue here can be obtained by either dialing 911 or a seven-digit (voice) number. Such an arrangement would comply with the ADA so long as nonvoice callers whose calls were directed through 911 received emergency attention as quickly as voice callers who dialed local seven-digit numbers for emergency assistance instead of 911. See generally preamble to enclosed title II regulation at 35713.

Non-Emergency Telephone Services

Where a public entity communicates with applicants and beneficiaries by telephone in non-emergency situations, the public entity does not have to provide "direct access.,, Instead, public entities have the option of using TDD's or "equally effective telecommunication systems" to communicate with individuals with impaired speech or hearing. See 28 C.F.R. S 35.161. Under the regulation, relay services such as those required by title IV (involving a relay operator who uses both a standard telephone and a TDD to type the voice messages to the TDD user and read the TDD messages to the standard telephone user) constitute equally effective telecommunication systems.

Title IV of the ADA requires all common carriers (i.e., the telephone companies) to provide telephone relay services by July 26, 1993. Thus, most County government entities in Tennessee could choose to rely on relay services provided by the phone companies for non-emergency communications with individuals with impaired speech or hearing. Entities which have extensive telephone contact with the public such as city halls, public libraries and public aid offices, however, are strongly encouraged to have TDD's to ensure more immediate access. See preamble to title II regulation at 35712 ("The Department encourages those entities that have extensive telephone contact with the public. . . to have TDD's to insure more immediate access. Where the provision of telephone service is a major function of the entity, TDD's should be available.")

Physical Accessibility of Rescue and Ambulance Stations

Your letter also asks about the ADA's requirements for

physical accessibility of rescue and ambulance stations. As you know, title II of the ADA prohibits discrimination against persons with disabilities in all services, programs and

activities provided or made available by state or local governments. This obligation does not require extensive retrofitting of existing facilities utilized by state and local government entities. Instead, the operative concept is "program accessibility." The "program" at issue here -- i.e., emergency rescue and ambulance service -- must be accessible to persons with disabilities. Members of the public are not typically invited into rescue and ambulance stations: instead, station personnel go to the site of an emergency. Under these circumstances, it may not be necessary to render accessible the physical facility housing the rescue or ambulance station. Of course, if stations offer programs or services requiring members of the public to enter and use the facilities (such as educational tours, for example), the County would need to ensure that the portions of the stations open to the public were accessible, unless the County could demonstrate that this obligation caused a fundamental alteration in its program or resulted in undue financial and administrative burdens. See S 35.150 at page 35719 of the enclosed title II regulation, and interpretive commentary at pages 35708-9 and 35720-1. See also Title II Technical Assistance Manual at pages 19-23.

Standards Applicable to Separate Titles of the ADA

In your letter, you observe that the terms "reasonable accommodations," "undue hardship," and "readily achievable" are "scattered throughout" the public law. Your letter goes on to state the following with respect to Sullivan County's rescue and ambulance stations:

> My understanding of the law is that the accommodations must be accomplished as soon as is reasonably possible "without much difficulty or expense."

This conclusion is incorrect. Each of the legal standards cited above apply to separate titles of the ADA. For example, the term "reasonable accommodation" applies only to employment situations. It has no relevance to analysis of any other part of the ADA. Similarly, the term "readily achievable" is not applicable to ADA obligations of state or local government entities such as Sullivan County. "Readily achievable" is the title III legal standard applicable to barrier removal in existing facilities of private entities which own, operate, or lease places of public accommodations. As discussed above, the standard applicable to programs and services offered by Sullivan

County is that of "program access." Defenses to non-provision of such access are "fundamental alteration" or "undue financial and administrative burdens." As discussed above, these terms are found in the title II regulation, as are deadlines for providing program access, accomplishing structural modifications, and completing self-evaluations and transition plans. See discussion 01-02631

of time periods at pages 35720 and 35709-10 of the enclosed title II regulation.

Finally, in your letter, you express concern with the multitude of so-called "experts" on the ADA attempting to market their consultant services to covered entities. You should be aware that the Department of Justice has not certified any outside persons or organizations as authorities on the ADA. A number of entities have received grants from the Department to develop materials to educate the public regarding rights and responsibilities under the ADA, however, and a list of these grantees is attached for your information.

I hope that this information has been helpful to you. If you have any questions, you may wish to call our information line at (202) 514-0301 (voice) or (202) 514-0383 (TDD).

Sincerely,

John L. Wodatch
Chief
Public Access Section

Enclosures
Title II regulation
Title II Technical Assistance Manual
Grantee Information

01-02632

J. L A R R Y P O O L E

ARCHITECT
116 EAST MARKET STREET
KINGSPORT, TENNESSEE 37660
A I A AREA CODE 615 TELEPHONE 245-5221

August 2, 1993

The Honorable James Quillen
US House of Representatives
Washington, D.C. 20515

Dear Representative Quillen:

I would appreciated your help in getting an answer from the Justice Department to the enclosed letter. I believe you will find the enclosed material self-explanatory.

Thank you for your help in this matter,

J. Larry Poole

JLP/m

01-02633

July 3, 1992

U. S. Department of Justice
Civil Rights Division
Co-Ordination & Review Section
P. 0. Box 66118
Washington, D.C. 20035-6118

RE: TITLE IV - TELECOMMUNICATIONS, PUBLIC LAW 101-336 - JULY 26, 1990 (THE AMERICANS WITH DISABILITIES ACT OF 1991)

Dear Sir:

I have been asked to assist the County Attorney of Sullivan County, Tennessee in assessing certain County properties for compliance with the Americans with Disabilities Act. One type of property in question are the Rescue/Ambulance stations. The County Attorney attended a seminar at which one of the instructors indicated that all such stations must have Telecommunications Devices. I do not interpret the amendment to Section 401 as written in the ADA manual as requiring these devices in every emergency station. As I understand this Section, it is the Common Carrier who must be equipped with the TTD equipment.

I do not remember any regulation which has produced the quantity of "Certified Experts" as this new law. We have them coming out of the woodwork, especially from the University of Tennessee. One of the instructors at the above mentioned seminar indicated that all public owned facilities must be treated as open to the general public. I am having a hard time defining a Rescue/Ambulance Station or Fire Station as "open to the public". I can understand providing this type of facility with the amenities required for handicapped employees but I would not classify them as open to the general public.

Scattered through out Public Law 101-336 are such terms as "reasonable accommodations, undue hardship, and readily achievable." My understanding of the law is that the

accommodations must be accomplished as soon as is reasonably possible "without much difficulty or expense". In the case of the Rescue/Ambulance stations, the County has been told that they are not allowed to contribute finances until these stations are in compliance.

Please let me have your opinions and suggestions in this matter. These stations cannot operate for long with out the support of the County.

Sincerely,

J. Larry Poole

JLP/m

01-02635

DJ 202-PL-670 OCT 15 1993

Ms. Catherine E. Chambless
Executive Director
Utah Governor's Council for
People with Disabilities
350 E. 500 So.
Suite 201
Salt Lake City, Utah 84111

Dear Ms. Chambless:

This letter is in response to an inquiry from your office about whether, under the Americans with Disabilities Act of 1990 (the "ADA"), the Department of Justice certifies or endorses particular individuals as ADA consultants.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist you in understanding the ADA's requirements. However, it does not constitute a legal interpretation or legal advice, and it is not binding on the Department of Justice.

Your letter indicates that certain individuals or businesses in Utah are claiming that the United States Department of Justice has provided them with an "ADA Consultant Certification" or some similar endorsement. The Department of Justice has not done so. The Department of Justice does not certify or endorse any individual or organization as ADA consultants, and does not approve or endorse any products or designs as being in compliance with the ADA. Any individual or business claiming to have such a certification or endorsement may be violating various state and federal laws prohibiting fraud and misrepresentation.

Some confusion may arise because, through its technical assistance program, the Department has provided funding to organizations that conduct ADA training. Individuals completing such training may receive certificates indicating they have done so. However, this is not an endorsement by the Department that such individuals are certified or approved ADA consultants.

cc: Records, Chrono, Wodatch, Magagna, Contois, FOIA, NAF

01-02636

I hope this information is useful to you.

Sincerely,

Joan A. Magagna
Deputy Chief
Public Access Section

01-02637

350E 500 So. Suite 201 Salt Lake City, Utah 84111
Telephone 801-533-4128 (v/tdd) Fax No: 533-5305

Catherine E. Chambless-Executive Director Barbara Rex - Grants Manager
Tamara Wharton - ADA Ombudsman Teresa Hite - Admin. Secretary

September 20, 1993

Mr. John Wodatch, Director
Office on the Americans with Disabilities Act,
Civil Rights Division
US Dept. of Justice
Washington, D.C. 20530

Dear Mr. Wodatch:

Several concerned citizens have contacted our office regarding the validity of an apparent 'ADA Consultant Certification' provided by the U.S. Dept. of Justice. It is our understanding that DOJ neither certifies nor endorses such individuals or businesses.

If such certification or endorsement does exist, it would be helpful for other interested parties to be informed of the appropriate procedures to follow
to secure same. Otherwise, we would appreciate a written response to this concern before September 30, 1993.

It is our goal to provide timely and accurate information for our citizens. Your clarification of this matter is greatly appreciated. Thank you in advance for your assistance.

Sincerely,
Tamara Wharton
ADA Ombudsman

The Utah Council is a planning and advisory body mandated by federal and state

legislation and appointed by executive order of the Governor.

01-02638

ACCESSABILITY IS. . .

o A national consulting firm specializing in disability-related issues.

o An established authority on the Americans with Disabilities Act (ADA), delivering dramatic savings and decreased liability to its Clients.

o Skilled in the evaluation of existing structures and architectural plans for compliance with the ADA

o A resourceful company that examines ADA requirements from both disabled and non-disabled view points, delivering common-sense, low-cost solutions.

WHAT CLIENTS SAY. . .

"ACCESSABILITY was not only very knowledgeable and efficient in performing ADA audits at our various divisions, they made some excellent suggestions on ways we could meet some of the ADA requirements without incurring a lot of expense."

Talmadge Ball
Vice President, Engineering
Bonneville International Corporation

"After hearing ACCESSABILITY'S presentation at the CEO Roundtable, it was immediately apparent that Rick Rambo knew what he was talking about. We contracted for services, and promptly received accurate information, helpful analysis, and follow-up assistance which fully met our expectations."

-Richard Fetzer
Fetzer's Inc.

"ACCESSABILITY provides an appropriate mechanism for ADA implementation which will significantly reduce the risk and liability when demonstrating good faith effort compliance."

-The United States Department of Justice

ACCESSABILITY CAN. . .

. Plan appropriate access to buildings, restrooms, work spaces, etc. for the disabled.

. Access the practicality of change to buildings and structures, complete with cost estimates.

. Provide education and training in order to increase sensitivity and awareness toward disability concern.

. Deliver interpreter services to the deaf at public hearings and business meetings.

01-02640

OCT 16 1993

The Honorable Tom Lewis
Member, U.S. House of Representatives
440 PGA Boulevard
Suite 406
Palm Beach Gardens, Florida 33410

Dear Congressman Lewis:

This letter is in response to your inquiry on behalf of your constituent, Dr. Steven Rosenberg, regarding a physician's obligation to provide auxiliary aids or services for persons with disabilities.

The Americans with Disabilities Act (ADA) authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist your constituent in understanding the ADA's requirements. It does not, however, constitute a legal interpretation and it is not binding on the Department.

The ADA requires public accommodations, including physicians, to furnish appropriate auxiliary aids and services where necessary to ensure effective communication with individuals with disabilities. In determining what constitutes an effective auxiliary aid or service, a physician must consider, among other things, the length and complexity of the communication involved. For instance, a notepad and written materials may be sufficient to permit effective communication when a physician is explaining possible symptoms resulting from a simple laceration. Where, however, the information to be conveyed is lengthy or complex, the use of handwritten notes may be extremely slow or cumbersome and the use of an interpreter may be the only effective form of communication.

Use of interpreter services is not necessarily limited to the most extreme situations---for example, a discussion of whether to undergo surgery or to decide on treatment options for

cancer. Further discussion of this point may be found on page 35567 of the preamble to the enclosed regulation. While the

cc: Records, Chrono, Wodatch, McDowney, Breen, Nakata FOIA, MAF
Udd:Nakata:Congress.let:Lewis.1

01-02641

nature of medical services is considered one factor in determining what auxiliary aid is necessary for effective communication, the focus should be not only on the nature of the services, but also on the type of communication between the physician and the patient. Generally, interpreters are not needed for routine office visits. However, the fact that an office visit is characterized as routine does not necessarily negate the need for interpreting services. For instance, an interpreter may be required if a note pad does not facilitate effective communication between the physician and an individual who is undergoing a complete physical examination and related testing procedures.

Under section 36.301(c) of the regulation, when an interpreter or other auxiliary aid or service is necessary to ensure effective communication, the physician must absorb the cost for this aid or service. As provided in section 36.303(f), however, the physician is not required to provide any auxiliary aid that would result in an undue burden. The term "undue burden" means "significant difficulty or expense." Undue burden must be determined on a case-by-case basis in light of factors such as the nature and cost of the aid or service, and the overall financial resources of the practice. Further discussion of the meaning and application of the term undue burden may be found in the preamble discussion of section 36.303, on pages 35567-35568.

In determining whether the provision of an interpreter would result in an undue burden, the physician should consider not only the fees paid for providing the medical service or procedure, but also the overall financial resources of the practice. The physician should consider other factors that would minimize the degree of burden on the practice, such as the ability to spread costs throughout the general clientele and the provision of tax credits for costs of providing auxiliary aids (which is available for eligible small businesses).

The Department's Technical Assistance Manual for title III (copy enclosed) at page 26, and the ADA's legislative history, as described in the regulations preamble, at pages 35566-35567, strongly encourage consultation with persons with disabilities in order to determine which particular auxiliary aid or service will ensure effective communication. Not only will consultation ensure that equal services are provided to individuals with disabilities, it may also significantly reduce the costs of providing such auxiliary aids or services.

Dr. Rosenberg's letter also raises the issue of whether a public accommodation may charge patients requesting an

interpreter a cancellation fee when the patient cancels an appointment after the physician becomes financially liable for the interpreter service. A public accommodation is not permitted
01-02642

to impose surcharges for auxiliary aids or services necessary for effective communication, regardless of whether those aids or services are used or not. While we appreciate Dr. Rosenberg's desire to avoid unnecessary expense, events may arise in an individual's life that are beyond his or her control, such as illness or business emergencies. Imposing the costs of interpreter services in the event of cancellation under such circumstances places the person in need of an auxiliary aid or service at a distinct disadvantage relative to others in similar situations. Of course, the ADA would not prohibit Dr. Rosenberg from charging a standard cancellation fee for missed appointments provided that the policy of charging cancellation fees is applied uniformly to all patients.

Dr. Rosenberg's letter raises a specific question involving use of interpreters concerning a deaf patient who made an appointment and then demanded that Dr. Rosenberg's office provide an interpreter. Clearly, the auxiliary aid provisions of the ADA (cited above) do not contemplate that a person with a disability can unilaterally decide on the appropriate type of auxiliary aid. Further discussion on this point can be found in the enclosed January 1993 update to the Department's Title III Technical Assistance Manual (copy enclosed) at page 5.

I hope this information will be helpful to you in responding to your constituent.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

Enclosures

01-02643

steven p. rosenberg, m.d., p.a.
elaine zoberman-saltiel, m.d.
DIPLOMATES OF THE AMERICAN BOARD OF DERMATOLOGY
FELLOWS OF THE AMERICAN ACADEMY OF DERMATOLOGY

August 2, 1993
Congressman Clay Shaw
1512 East Broward Boulevard
Ft. Lauderdale, FL 333Ol

Dear Congressman Shaw:

I would appreciate your helping to clarify a matter that developed today in reference to our compliance with the Americans with Disabilities Act. I have supported the principles and concepts of the ADA, but as a result of some confusion today I realize that this is a complicated issue.

Specifically, a patient was provided an appointment who is hearing impaired and she demanded that we provide an interpreter. The legal advice that I was able to receive from the Florida Medical Association indicates that we are required to "ensure effective communication." I have been practicing for approximately fifteen years and have taken care of numerous patients with various disabilities. In the past we have never had difficulty by communicating with written notes in those individuals who are hearing impaired. The nature of the dermatology practice is such that the majority of issues are relatively straightforward and can be handled efficiently in this fashion. As there appears to be some confusion between the patient's demands and the legal advice that I had received which indicates that such notes should be acceptable unless the physician feels otherwise, I would appreciate clarification.

I would also like to point out that the cost for obtaining an interpreter have minimum charges of between $60.00-$75.00. An initial office visit is $50.00 and, as you are aware, many third party payers including Medicare reimburse office visits in the $22.00 - $40.00 range. This would result in a net loss per patient visit in a situation where our overhead costs are already astronomical. I am curious whether this places an "undue burden" according to the definitions of the act.

In addition, I would like to know whether we can bill the patient for the cancellation fee that the interpreter charges should the patient fail to keep their appointment. The interpreter services indicated that if the services are not cancelled with twenty four hour notices that there is a charge and that we would be responsible for the full amount even if the patient does not show. I understand my financial responsibility to provide this service for the hearing impaired but I am also concerned that there may be opportunities where patients cancel at the last minute or do not show and therefore these costs would not be associated with my actually providing an office visit.

470 COLUMBIA DRIVE, SUITE 102A WEST PALM BEACH, FLORIDA 33409-1968 TELEPHONE
(407) 640-4400
01-02644

Finally, I would like to know whether third party payers including Medicare will reimburse for interpreter services and if so, more specifically how should we go about obtaining such payment from Medicare.

Your prompt help and cooperation would be appreciated. Please do not hesitate to contact me by phone should that be necessary. You may also fax information to me at 407/640-8098.

Sincerely,

Steven P. Rosenberg, M.D.

SPR/dm

faxed to 305 768 0511

01-02645

U.S. Department of Justice

Civil Rights Division

Coordination and Review Section

P. O. Box 66118
Washington, DC 20035-6118

OCT 18 1993

Mr. William F. Carroll
Executive Director
Portable Sanitation Association
International
7800 Metro Parkway, Suite 104
Bloomington, Minnesota 55425

Dear Mr. Carroll:

This is in response to your letter to the Civil Rights Division concerning portable restroom facilities and the Americans with Disabilities Act (ADA).

The ADA authorizes the Department of Justice to provide technical assistance to entities that are subject to the Act. This letter provides informal guidance to assist you in understanding how the ADA may apply to you. However, this technical assistance does not constitute a determination by the Department of Justice of your rights or responsibilities under the ADA and does not constitute a binding determination by the Department of Justice.

Under section 4.1.2(6) of the Americans with Disabilities Act Accessibility Guidelines (ADAAG), at least five percent of single user portable toilets clustered at a single location must be accessible. In order to be accessible under the ADA, these toilets must comply with either section 4.22 (Toilet Rooms) or 4.23 (Bathrooms, Bathing Facilities, and Shower Rooms) of ADAAG. If you feel that the portable toilets that you manufacture are accessible although they do not comply with either section 4.22 or 4.23 of ADAAG and you believe the standards should be modified to permit your design, then you should contact the Architectural and Transportation Barriers Compliance Board, as that is the

Federal agency responsible for drafting and amending ADAAG.

You should also be aware that section 2.2 of ADAAG (Equivalent Facilitation) states that: "Departures from particular technical and scoping requirements of this guideline

01-02646

by the use of other designs and technologies are permitted where the alternative designs and technologies used will provide substantially equivalent or greater access to and usability of the facility." Thus, if your design provides equivalent facilitation, use of your portable toilets as accessible facilities may be permitted under the ADA.

The Department of Justice does not grant grace periods for enforcement of the ADA, and accessible portable toilets should have been made available where portable toilets were provided as of the effective date of the Act. However, you should note that it would be the public accommodation, commercial facility, or public entity utilizing a noncomplying toilet that would be liable for violating the ADA (rather than the manufacturer of the toilet).

I hope this information has been helpful to you.

Sincerely,

Stewart B. Oneglia
Chief
Coordination and Review Section
Civil Rights Division

PORTABLE SANITATION ASSOCIATION INTERNATIONAL
7800 METRO PARKWAY, SUITE 104
BLOOMINGTON, MINNESOTA 55425
1-800-822-3020 . (612) 854-8300
FAX: (612) 854-7560

June 16, 1993

Mr. John Wodatch
Chief, Public Access Division
Civil Rights Division
U.S. Department of Justice
PO Box 66738
Washington, DC 20035-6738

Dear Sir,

The mission of the Portable Sanitation Association International (PSAI) is "To expand and improve portable sanitation services and facilities worldwide and to be recognized as the preeminent authority within our industry."

In the spirit of our mission statement, members of our industry have been providing the disabled with accessible portable restroom facilities prior to the enactment of the Americans with Disabilities Act of July 26, 1990.

On May 21, 1993 a delegation of members from our industry, including manufacturers of portable restrooms and portable sanitation service company operators, met with representatives of the Access Board in Washington. DC.

Based on the outcome of this meeting there are no portable restrooms currently being utilized by the disabled community that are in compliance with Title III of the ADA. This is not to say that, in the opinion of the Portable Sanitation Association International, portable sanitation facilities currently in use by the disabled are not adequate to meet their needs.

Portability, clear floor/ground space, transportation and set-up are the reasons existing accessible portable restroom facilities were designed and why they have been used for twenty years without objection. However, based on the ADA requirements and recommendations from the Access Board, the manufacturers are in the process of reviewing the ADA standards to develop portable sanitation facilities that will meet the requirements of the ADA.

The problem in existence now is when the portable sanitation service companies are asked to provide a portable accessible restroom that meets the ADA requirements they are unable to do so, because they do not exist.

The Portable Sanitation Association International requests that the manufacturers of portable restroom facilities be granted a 24 month research and development period to provide the disabled accessible portable restrooms that meet the requirements of the ADA.

In addition we request that the portable restroom service companies receive grandfathering to allow continued use of the accessible portable restrooms currently being utilized in their rental fleet. This period of time should be long enough to allow these companies to change their existing equipment to the new equipment through normal attrition of their current fleet.

As you can understand, this issue is time sensitive and needs to be resolved as quickly as possible. Please do not hesitate to contact me regarding this matter.

Sincerely,

William F. Carroll
Executive Director

WC/SW

01-02649

T. 9/28/93
DJ 204-50-0

OCT 18 1993

The Honorable John M. McHugh
U.S. House of Representatives
Washington, D.C. 20515-3224

Dear Congressman McHugh:

This letter is in response to your correspondence on behalf of your constituent, William J. Morrow, concerning Federal closed captioning requirements.

At least four Federal requirements deal with the provision of closed captioning: titles II, III, and IV of the Americans with Disabilities Act (ADA), and section 504 of the Rehabilitation Act of 1973, as amended.

The information reflected in Mr. Morrow's letter is essentially correct. Title II of the ADA prohibits discrimination on the basis of disability in all programs, activities, and services provided or made available by State and local governments, instrumentalities, or agencies, regardless of the receipt of Federal funds. Title III of the ADA covers public accommodations such as shopping centers, doctors' offices, museums, zoos, private schools, and other private establishments. Copies of the title II and III regulations and manuals explaining the regulations are enclosed.

Regulations implementing titles II and III require the provision of auxiliary aids and services by public and private entities where necessary to ensure effective communication with an individual who is deaf or hard of hearing (section 35.160, p. 35721, of the title II rule; and section 36.303, p. 35597, of the title III rule, respectively). For individuals with hearing impairments, auxiliary aids and services include, but are not limited to, qualified interpreters, closed captioning, and transcription services such as computer aided real-time transcription (section 35.l04, p. 35717, of the title II regulation; and section 36.303(b)(1), p. 35597, of the title III

regulation).

cc: Records, CRS, Chrono, FOIA, Friedlander (3),
Mather.ltr.mcHugh, Breen, McDowney

01-02650

As Mr. Morrow also noted, the title II regulation covers television and videotape programming produced by public entities. Access to audio portions of such programming may be provided by closed captioning. Page 35712 of the title II regulation explains this concept.

With regard to commercial operations, the title III regulation, section 36.307, p. 35598, does not require that video-tape rental establishments stock closed-captioned video tapes, although the most recent offerings in those establishments are, in fact, closed-captioned. Further discussion of this point can be found on p. 35571 of the title III regulation.

Movie theaters are not required by title III to present open-captioned films. However, other public accommodations that impart verbal information through soundtracks on films, video tapes, or slide shows are required to make such information accessible to persons with hearing impairments. Captioning is one means to make information accessible to individuals with disabilities. This concept is explained on page 35567 of the title III regulation.

Title IV of the ADA requires that any televised public service announcements that are wholly or partially funded by the Federal government include closed captioning of the verbal content of the announcement. However, individual television stations are not required to supply the closed captioning for any announcements that do not include closed captioning. For more information on this requirement, please contact the Federal Communications Commission, the agency responsible for implementing and enforcing title IV.

Section 504 of the Rehabilitation Act of 1973, as amended, prohibits discrimination on the basis of disability in federally conducted and assisted programs. Like the title II regulation, regulations implementing section 504 require that Federal agencies and recipients provide auxiliary aids and services whenever necessary to ensure effective communications with members of the public. Services include the provision of closed captioning.

I hope this information is helpful to you.

Sincerely,

James P. Turner
Acting Assistant Attorney General

Enclosures (4)
01-02651

JOHN M. McHUGH
24TH DISTRICT NEW YORK

418 CANNON HOUSE OFFICE BUILDING
Washington, DC 20515-3224

Telephone
202-225-4611

CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES

COMMITTEE ON
ARMED SERVICES
Subcommittee on Military
Installations and Facilities
Subcommittee on Oversight
and Investigations

COMMITTEE ON
GOVERNMENT OPERATIONS
Subcommittee on Environment,
Energy and Natural Resources
Subcommittee on Employment,
Housing and Aviation

September 3, 1993

The Honorable Janet Reno
U.S. Attorney General
U.S. Department of Justice
Constitution Avenue and 10th Street
Washington, D.C. 20530

Dear Madam Attorney General:

I am writing with regard to the enclosed correspondence I received from Mr. William J. Morrow, President of the North Country Association for the Deaf in in Adams Center, New York, concerning the closed captioning requirements under the Americans with Disabilities Act for State and local governments and non-profit agencies.

Any information, comments or assistance you may be able to provide concerning this matter would be appreciated so that I may furnish my constituent with a complete report.

Sincerely yours,

John M. McHugh
Member of Congress

JMM/jmb
Enclosure

01-02652

NORTH COUNTRY ASSOCIATION OF THE DEAF
ORGANIZED ESTABLISHED 1973

Senator James W. Wright
RM 814, LOB
Albany, N.Y. 12247

AUG 12 1993

Dear Senator Wright:

we are writing this letter to you in hopes that you can help change the way most local and state government agencies and non profit agencies (such as the hospitals, schools, retirement homes, libraries, museums ect.) feel about closed captions. We have written many letters requesting that these agencies please close caption their public videos as well as their Public Service Announcements, training videos, and archived videos. However, we have received little or no response to our pleas to be included in their messages and public information. The few responses that we have received either were unacceptable or nothing happened at all.

The reason that we have chosen to write to you is because of the July 29th meeting at the State Office building in Watertown. We were very happy to inform our organization that you are "A BIG SUPPORTER" of the ADA laws. We were a little disappointed that we did not get a chance to speak to you personally about this issue but we understand that you are a very busy person.

We received a letter from the U.S. Department of Justice claiming that Title II of the ADA prohibits discrimination on the basis of disability in all programs, activities, and services provided or made available by State and local governments, instrumentalities, or agencies, regardless of the receipt of Federal funds. Title III of the ADA covers public accommodations such as shopping centers, doctors' offices, museums, zoos, private schools, and other private establishments.

We were also informed that regulations implementing titles II and III require the provision of auxiliary aids and services by public and private entities where necessary to ensure effective communication with an individual who is deaf or hard of hearing (section 35.160, p. 35721, of the title II rule; and section 36.303, p. 35597, of the title III rule, respectively).
For individuals with hearing impairments, auxiliary aids and services include, but are not limited to, qualified interpreters, closed captioning, and transcription services such as computer aided real-time transcription (section 35.104, P. 35717, of the title II regulation; and section 36.303 (b) (1), p. 35597, of the title III regulation).

The titles II regulation covers television and videotape programming produced by public entities. Access to audio portions of such programming may be provided by closed captioning.

We do not presume that you are unaware of the ADA laws and how they pertain to the deaf and hearing impaired. We know that you were an advocate for these laws. We only wish that you could
01-02653

confirm to us that we have been given good information regarding these laws and that the agencies in the State of New York in which these laws pertain, will adhere to these laws promptly.

Once again, we thank you for taking the time to speak at the State Office building and supporting our cause. We will be awaiting patiently to hear from you regarding this letter and watching for the changes in the way these agencies deal with the hearing impaired.

Sincerely,

North Country Association
of the Deaf
P.O. Box 265
Adams Center N.Y. 13606
ATTN: Barbara Hunter

William J. Morrow
President,
North Country Association
of the Deaf

01-02654

OCT 18 1993

The Honorable Howard L. Berman
Member, U.S. House of Representatives
14600 Roscoe Boulevard, Suite 506
Panorama City, California 91402

Dear Congressman Berman:

This letter is in response to your inquiry on behalf of your constituent, Mr. David Bidna, Director of the Summer Academic Enrichment Program ("SAEP"), who wants to know the extent to which the Americans with Disabilities Act ("ADA") requires a private school to provide sign language interpreters to deaf students.

The ADA authorizes the Department to provide technical assistance to entities that are subject to the Act. This letter provides informal guidance to assist you in understanding how the ADA may apply to the question raised by your constituent. This technical assistance, however, does not constitute a determination by the Department of Justice of your constituent's rights or responsibilities under the ADA and does not constitute a binding determination by the Department of Justice.

Private schools are places of public accommodation subject to the provisions of the ADA. As such, they are required to provide auxiliary aids and services that will ensure that individuals with disabilities are not excluded, denied services, segregated or otherwise treated differently from other individuals. A private school will only be excused from providing these auxiliary aids and services if doing so would either fundamentally alter the nature of the services it provides, or would result in an undue burden in terms of difficulty or cost.

cc: Records; Chrono; Wodatch; McDowney; Magagna; Kuczynski;
FOIA, MAF. X udd\kuccynsk\magagna\congress\berman.let

The Justice Department's implementing regulations detail this requirement of non-discrimination, 28 C.F.R. 36.303(a), and define auxiliary aids and services as including qualified sign language interpreters. 28 C.F.R. 36.303(b)(1). Therefore, SAEP would be required to provide a deaf student with an interpreter, if necessary for effective communication, and if doing so would not be too difficult or too costly.

The regulations set out some guidelines for determining whether the provision of an auxiliary aid or service would result in an undue burden. They include: the nature and cost of the aid or service needed; the overall financial resources of the public accommodation; the effect on expenses and resources of providing a certain auxiliary aid or service; the size, financial resources, and type of operation of any parent corporation that might exist; and the fiscal and administrative relationship of the accommodation in question to a parent corporation. 28 C.F.R. 36.104.

It is important to bear in mind, however, that determining what is necessary for effective communication and what constitutes an undue burden requires a highly fact-specific inquiry. The ADA might require that a place of public accommodation, like SAEP, provide sign language interpreters for two students, but might not require a different interpreter for each of fifty students. However, the fact that this particular accommodation might constitute an undue burden would not alone justify denying admission to deaf applicants. The program would need to investigate less expensive means of providing effective communication. For example, although the program might not be able to provide each student with an interpreter, perhaps several deaf students in a classroom could benefit from the use of a single interpreter. Forms of effective communication other than interpreters might also be available, such as transcripts or notes of class materials.

Some alternatives might involve the modification of program policies, practices, and procedures. The ADA requires places of public accommodation to make such modifications where necessary to afford persons with disabilities the opportunity to participate in their goods, services, facilities, privileges,

advantages, and accommodations.

You should, therefore, advise your constituent that the inability to provide interpreters for each deaf student in his program does not relieve the program of the obligation to find less burdensome means of providing effective communication. Nor are auxiliary aids and services and the modifications mentioned in this letter necessarily the only alternatives available or the most appropriate ones for every circumstance. The information concerning auxiliary aids found in the enclosed copies of the Justice Department's title III implementing regulation and the 01-02657

Title III Technical Assistance Manual may help your constituent formulate a plan for effective communication with students with hearing impairments that will satisfy SAEP's obligations under the ADA.

I hope this information will be helpful to you in responding to your constituent.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

Enclosures

The California State University
California State University, Northridge
Department of Secondary and Adult Education
SAEP-Summer Academic Enrichment Program 18111 Nordhoff Street - EDUC
(818) 885-3333 P.O. Box 1277
Northridge, California 91328-1277
August 5, 1993 (818) 885-2586

Congressman Howard Berman
14600 Roscoe Blvd., Suite 506
Panorama City, California 91402

Dear Howard:
I talked to Margaret Mott about a problem we had in our Summer Academic Enrichment Program involving the Disabilities Act. For the first time in 15 years of our operation, we were asked to enroll two deaf high school students. Although we were very pleased to have them in our program, we were also asked to furnish and pay for their interpreter(s). SAEP is a private school sponsored by the Department of Secondary Education run through the CSUN Foundation.

As you know, CSUN has an outstanding Deaf Studies program for college-age deaf students, but the Secondary Education Department does not pay for the interpreters for these students. I have had these students in my classes. There is a National Center on Deafness at CSUN, headed by Dr. Herb Larson.

We checked with the CSUN attorney on campus, Earl Weiss, who said we are legally obligated to pay for their interpreter, who could cost from $12.50 to $40.00 per hour. The going rate at CSUN is $25.00 per hour.

Our SAEP students attend class for four hours per day for four weeks. Parents pay $300. Potentially, we could be paying the interpreter $2000 and receiving only $300 less expenses (about 20%). Carrying these figures out, if we had 10, 20, or 50 deaf high school students (which is a possibility next year), SAEP could not survive.

We're sure the supporters and writers of the Disability Act did not have this in mind when they promoted the bill. I was a strong advocate for the legislation, with petitions and letters being sent to Washington.

Whatever you can do to help clarify this problem as quickly as possible would be appreciated. We're going to make it this year, but just recently we received a call from a parent whose child goes to the Riverside School for the Deaf and wants to attend our summer school next year. When word gets out that we had deaf students in our program this summer, we could be inundated next summer, running at a financial loss.
01-02659

I missed you in Washington, D.C. on June 26, but I did invite your staff to the reception in the Canon Caucus Room hosted by the Center for civic Education in Calabassas (I spoke with Max, who happens to have the same name as my newest grandchild).

With best wishes,

Bidna, Ed.D.
Professor of Education &
Co-Director, Summer Academic Enrichment Program

cc: Congressman Beilenson
Earl Weiss, Special Assistant to CSUN President
Dr. James Cunningham, Chairman, Secondary and Adult Education
Dean Carolyn Ellner, School of Education

01-02660

OCT 18 1993

The Honorable E. Clay Shaw, Jr.
U.S. House of Representatives
2267 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Shaw:

This letter is in response to your inquiry on behalf of your constituent, Dr. Steven Rosenberg, regarding a physician's obligation to provide auxiliary aids or services for persons with disabilities.

The Americans with Disabilities Act (ADA) authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist your constituent in understanding the ADA's requirements. It does not, however, constitute a legal interpretation and it is not binding on the Department.

The ADA requires public accommodations, including physicians, to furnish appropriate auxiliary aids and services

where necessary to ensure effective communication with individuals with disabilities. In determining what constitutes an effective auxiliary aid or service, a physician must consider, among other things, the length and complexity of the communication involved. For instance, a notepad and written materials may be sufficient to permit effective communication when a physician is explaining possible symptoms resulting from a simple laceration. Where, however, the information to be conveyed is lengthy or complex, the use of handwritten notes may be extremely slow or cumbersome and the use of an interpreter may be the only effective form of communication.

Use of interpreter services is not necessarily limited to the most extreme situations--- for example, a discussion of whether to undergo surgery or to decide on treatment options for cancer. Further discussion of this point may be found on page 35567 of the preamble to the enclosed regulation. While the nature of medical services is considered one factor in determining what auxiliary aid is necessary for effective

cc: Records, Chrono, Wodatch, McDowney, Breen, Nakata, FOIA, MAF
Udd:Nakata:Congress.let:Shaw.1

01-02661

communication, the focus should be not only an the nature of the services, but also on the type of communication between the physician and the patient. Generally, interpreters are not needed for routine office visits. However, the fact that an office visit is characterized as routine does not necessarily negate the need for interpreting services. For instance, an interpreter may be required if a note pad does not facilitate effective communication between the physician and an individual who is undergoing a complete physical examination and related testing procedures.

Under section 36.301(c) of the regulation, when an interpreter or other auxiliary aid or service is necessary to ensure effective communication, the physician must absorb the cost for this aid or service. As provided in section 36.303(f), however, the physician is not required to provide any auxiliary aid that would result in an undue burden. The term "undue burden" means "significant difficulty or expense." Undue burden must be determined on a case-by-case basis in light of factors such as the nature and cost of the aid or service, and the

overall financial resources of the practice. Further discussion of the meaning and application of the term undue burden may be found in the preamble discussion of section 36.303, on pages 35567-35568.

In determining whether the provision of an interpreter would result in an undue burden, the physician should consider not only the fees paid for providing the medical service or procedure, but also the overall financial resources of the practice. The physician should consider other factors that would minimize the degree of burden on the practice, such as the ability to spread costs throughout the general clientele and the provision of tax credits for costs of providing auxiliary aids (which is available for eligible small businesses).

The Department's Technical Assistance Manual for title III (copy enclosed) at page 26, and the ADA's legislative history, as described in the regulation's preamble, at pages 35566-35567, strongly encourage consultation with persons with disabilities in order to determine which particular auxiliary aid or service will ensure effective communication. Not only will consultation ensure that equal services are provided to individuals with disabilities, it may also significantly reduce the costs of providing such auxiliary aids or services.

Dr. Rosenberg's letter also raises the issue of whether a public accommodation may charge patients requesting an interpreter a cancellation fee when the patient cancels an appointment after the physician becomes financially liable for the interpreter service. A public accommodation is not permitted to impose surcharges for auxiliary aids or services necessary for effective communication, regardless of whether those aids or

services are used or not. While we appreciate Dr. Rosenberg's desire to avoid unnecessary expense, events may arise in an individuals life that are beyond his or her control, such as illness or business emergencies. Imposing the costs of interpreter services in the event of cancellation under such circumstances places the person in need of an auxiliary aid or service at a distinct disadvantage relative to others in similar situations. Of course, the ADA would not prohibit Dr. Rosenberg from charging a standard cancellation fee for missed appointments provided that the policy of charging cancellation fees is applied uniformly to all patients.

Dr. Rosenberg's letter raises a specific question involving use of interpreters concerning a deaf patient who made an appointment and then demanded that Dr. Rosenberg's office provide

an interpreter. Clearly, the auxiliary aid provisions of the ADA (cited above) do not contemplate that a person with a disability can unilaterally decide on the appropriate type of auxiliary aid. Further discussion on this point can be found in the enclosed January 1993 update to the Department's Title III Technical Assistance Manual (copy enclosed) at page 5.

I hope this information will be helpful to you in responding to your constituent.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

Enclosures

01-02663

steven p, rosenberg, m.d., p.a.
elaine zoberman-saltiel, m.d,
DIPLOMATES OF THE AMERICAN BOARD OF DERMATOLOGY
FELLOWS OF THE AMERICAN ACADEMY OF DERMATOLOGY

August 9, 1993

E.P. Clay Shaw, Jr.
1512 East Broward Blvd.
Suite 101
Fort Lauderdale, FL 33301

Attention: Pamela

Dear Pamela:

I am enclosing a copy of the letter that I had previously sent to you, that has been forwarded to Congressman Lewis. As I indicated to you, I do live in Representative Shaw's district and, therefore, contacted your office. I tried to follow through with your recommendation, but unfortunately, did receive somewhat of a run around as the numbers provided for the Equal Opportunity Department and from what I could ultimately determine, the responsibility for interpreting the ADA falls with the Justice Department I would, therefore, respectfully request that you pursue the three item of concern. I was also informed by a representative in the Justice Department that they would not be capable of answering the question in reference to reimbursement by Medicare or Medicaid for charges associated with hiring an interpreter. I had spoken briefly with an attorney at the Department of Justice (Bee Bee Ellen Novich) who informed me that the intent of the law was that these costs be passed on to other clients or patients. Ms. Novich seemed somewhat surprised that we could not pass these costs on to Medicare beneficiaries or individuals insured by HMO's or PPO's where these reimbursements had previously been fixed. Certainly if that was the intent of the law then it seems reasonable that Medicare should either pay, for these services or increase their reimbursements to physicians if these costs were to be absorbed by a larger group than the physicians themselves.

Thank you again your prompt reply of August 4, 1993, and I look forward to hearing from you promptly.

Sincerely,

Steve P. Rosenberg, M.D.

SPR/jd

Enclosure

470 COLUMBIA DRIVE, SUITE 102A WEST PALM BEACH, FLORIDA 33409-1968
TELEPHONE(407) 640-4400

01-02664

steven p. rosenberg, m.d., p.a.
elaine zoberman-saltiel, m.d,
DIPLOMATES OF THE AMERICAN BOARD OF DERMATOLOGY
FELLOWS OF THE AMERICAN ACADEMY OF DERMATOLOGY

August 2, 1993

Congressman Clay Shaw
1512 East Broward Boulevard

Ft. Lauderdale, FL 33301

Dear Congressman Shaw:
I would appreciate your helping to clarify a matter that developed today in reference to our compliance with the Americans with Disabilities Act. I have supported the principles and concepts of the ADA, but as a result of some confusion today I realize that this is a complicated issue.

Specifically, a patient was provided an appointment who is hearing impaired and she demanded that we provide an interpreter. The legal advice that I was able to receive from the Florida Medical Association indicates that we are required to "ensure effective communication". I have been practicing for approximately fifteen years and have taken care of numerous patients with various disabilities. In the past we have never had difficulty by communicating with written notes in those individuals who are hearing impaired. The nature of the dermatology practice is such that the majority of issues are relatively straightforward and can be handled efficiently in this fashion. As there appears to be some confusion between the patient's demands and the legal advice that I had received which indicates that such notes should be acceptable unless the physician feels otherwise, I would appreciate clarification.
I would also like to point out that the cost for obtaining an interpreter have minimum charges of between $60.00-$75.00. An initial office visit is $50.00 and as you are aware, many third party payers including Medicare reimburse office visits in the $22.000-$40.00 range. This would result in a net loss per patient visit in a situation where our overhead costs are already astronomical.

I am curious whether this places an "undue burden" according to the definitions of the act.

In addition, I would like to know whether we can bill the patient for the cancellation fee that the interpreter charges should the patient fail to keep their appointment. The interpreter services indicated that if the services are not cancelled with twenty four hour notices that there is a charge and that we would be responsible for the full amount even if the patient does not show. I understand my financial responsibility to provide this service for the hearing impaired but I am also concerned that there may opportunities where patients cancel at the last minute or do not show and therefore these costs would not be associated with my actually providing an office visit.
01-02665

Page 2

Finally, I would like to know whether third party payers including

Medicare will reimburse for interpreter services and if so, more specifically how should we go about obtaining such payment from Medicare.

Your prompt help and cooperation would be appreciated. Please do not hesitate to contact me by phone should that be necessary. You may also fax information to me at 407/640-8098.

Sincerely,

Steven P. Rosenberg, M.D.

SPR/dm

01-02666

T. 10/12/93
SBO:LMS:ca
DJ XX
(b)(6)

XX (b)(6)
XX
Hutchinson correctional Facility
Hutchinson, Kansas

Dear XXX (b)(6)

This letter responds to your letter requesting our assistance on the application of title II of the Americans with Disabilities Act (ADA), 42 U.S.C. 12131-12134, to a State correctional facility's responsibilities to provide program access. In particular, you seek advice on whether title II requires that a State correctional facility provide wheelchairs to inmates with mobility impairments.

The ADA authorizes the Department of Justice to provide technical assistance to individuals who have rights under the Act. This letter provides informal guidance to assist you in understanding how the ADA applies to the questions you present. This technical assistance, however, does not constitute a determination by the Department of Justice of your or other's rights under the ADA and is not a binding determination by the Department of Justice.

A correctional facility may not deny the benefits of its programs, activities, and services to inmates with disabilities because its facilities are inaccessible. A correctional facility's services, programs, or activities, when viewed in their entirety, must be readily accessible to and usable by individuals with disabilities. This standard, known as "program accessibility," applies to all existing facilities of a correctional facility. See section 35.150 of the enclosed title II regulation issued by the Department.

A correctional facility, however, does not have to take any action that it demonstrates would result in a fundamental alteration in the nature of its program or activity or in undue financial and administrative burdens. Such considerations may.

cc: Records CRS Chrono Friedlander Stewart. XX (b)(6)3. ltr, FOIA

01-02667

include the particular needs for security and safety in the prison setting. This determination must be made by the head of the correctional facility or his or her designee and must be accompanied by a written statement of the reasons for reaching that conclusion. The determination that undue burdens would result must be based on all resources available for use in the correctional program. If an action would result in such an alteration or such burdens, the correctional facility must take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with disabilities receive the benefits and services of the program or activity.

With reference to your specific questions concerning the provision of wheelchairs and attendants, 35.135 of the title II regulation states the general principle that personal devices and services are not required. The preamble to the regulation, however, notes:

> A public entity is not ... required to provide attendant care, or assistance in toileting, eating, or dressing to individuals with disabilities, except in special circumstances, such as where the individual is an inmate of a custodial or correctional institution.

See enclosed preamble to title II regulation at page 35705 (emphasis added). Thus, in appropriate circumstances, it may be necessary to provide a wheelchair and/or attendant to allow an inmate to use a wheelchair. This would be based on an individualized assessment of the individual's need for such services.

I hope this information is helpful to you.

Sincerely,

Stewart B. Oneglia
Chief
Coordination and Review Section
Civil Rights Division

Enclosure

Office of the Americans With
Disabilities Act, Civil Right Division
U.S. Department of Justice
Stewart B. Oneglia

July 6, 1993

Greetings Mr Oneglia;

I am writnig you concerning some questions about the A.D.A. I noticed in the Federal Register/ Vol. 56 No. 144 Friday, July 26, 1991/ Rules and Regulations 35705 Paragraph (b)(8) that in special circumstances, such as an individual is an inmate of a correctional institution that attendant care or assistance in toileting, eating or dressing, but it says nothing about helping a inmate with a disability in a wheel chair in going to outside recretation (yard). I would like to know the answer to this question as well as some others that I will be asking through out this letter. In this in the same Federal Register on page 35707 Section 35.135 Personal Devices and Services. I would like to know if wheelchairs for individuals with disabilities in correctional facilities fall within this section, if not then where dose it fall and what rules governs correctional facilities as far as providing wheelchairs to the disabled whom they incarcerate. Now I would like to talk alittle about the maintenance of those wheelchairs if provided to disabled inmates, what rules and regulations governs maintenance of wheelchair provided by

correctional facilities. In the same Federal Register on page

35719 Section 35.195 talks about personal devices, it states.

01-02669

that this part dose not require a pubity entity to provide to

individuals with disabilities personal devices such as wheel-

chairs. Dose this also apply to indivuals who are in custody

of a correctional instutitionals? Is there a duty owed to disabled

individuals who are incarcerated in correctioal institutionals

to be provided with adequate personal devices (wheelchairs).

I would like your help in obtaining answers to these questions,

and I also would like to have copies of any rules and regulations

concerning the questions ask. May I also request a copy of the

UNIFORM DUTIES TO DISABLED PERSONS ACT.

I would like to receive this information if possible within the

time guidelines setforth in THE FREEDOM OF INFORMATION ACT.

These question are very important to me as I am a disabled person

within the guidelines of the American With Disabilities Act.

XXXX (b)(6)
XXXX

Hutchinson Correctional Facility
Hutchinson, KS. XX

01-02670

T. 10/7/93

XXXX(b)(6)
Falmouth, Maine XXXX

RE: Complaint Number XX (formerly) XXX (B)(6)

Dear XX

This letter constitutes our Letter of Findings in response to your complaint filed with our office against the Town of Falmouth, Maine (Town) under title II of the Americans with Disabilities Act of 1990 (ADA). Title II of the ADA protects qualified individuals with disabilities from discrimination on the basis of disability in the services, programs, and activities of a State or local government. In your complaint you allege that the programs, services, and activities provided by the Town in the Falmouth Town Hall (Town Hall) are not accessible to individuals with mobility impairments. Specifically, you allege that the hearing rooms in which programs, such as hearings, on general assistance and tax matters, are held are located on the second floor of the Town Hall and that the second floor is not accessible to individuals with disabilities. You further allege that the Town has not taken steps to appropriately relocate the programs or to otherwise make them accessible to individuals with disabilities. In addition, you allege that the accessible parking that is provided at the Town Hall by the Town fails to meet the requirements of the ADA because there are not enough accessible spaces provided and the accessible spaces are incorrectly marked. In conducting our investigation we relied on information that you provided to us, as well as information provided to us by the Town and by the Maine Human Rights Commission, with whom you have filed a similar complaint.

Section 35.150(a) of the Department of Justice's title II

implementing regulation requires that a public entity operate each of its programs so that, when viewed in its entirety, the program is readily accessible to and usable by individuals with

cc: Records CRS Chrono Friedlander Morrow.XX closure. Lof (b)(6)

01-02671

disabilities. Section 35.150(b) lists a number of the methods that a public entity may use to make its programs accessible. These methods include reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, and alteration of existing facilities. Structural changes in existing facilities generally are required only when there is no other feasible way to make the program accessible.

The Town acknowledges that the second floor of the Town Hall can be reached only by ascending a flight of stairs and that the second floor is inaccessible to some people with disabilities. In July of 1992 the Town received a final report from an architectural firm entitled "Accessibility and Expansion Study for the Falmouth Town Hall." The Town has since made the changes to the first floor and building entrance that were recommended for accessibility to those areas, and our information shows that the first floor is now fully accessible. Other recommendations for providing access to the second floor will be implemented and are scheduled to be completed in 1994.

Until there is an accessible route to the second floor, when people with disabilities need to access a program, service, or activity on the second floor, the Town will relocate it to the first floor. This has been done in the past when you have requested it, specifically with respect to tax abatement hearings, and when other citizens have requested it. Our information shows that this accommodation was made in an appropriate manner. Although the Town Council Chamber, the area to which hearings usually are relocated, was not available for one of your hearings, alternative space on the first floor was used. That space did not provide the amenities of the Council

Chamber, but you were provided with access to a hearing, nonetheless.

You submitted photographs of parking spaces that were designated as accessible spaces at the Town Hall. The access aisle in those pictures was located at the wrong end of the ramp. Since you submitted those photographs to us, the Town has repainted the striping at the accessible spaces to provide the correct route of access.

You also wrote that the Town did not provide enough accessible parking spaces at the Town Hall. The information that we received from the Maine Human Rights Commission shows that the number of accessible parking spaces at the Town Hall complies with the requirements of title II of the ADA.

We find that the Town has taken appropriate steps to provide access to its programs, services, and activities, including relocating them to space that it has made accessible and

providing appropriate parking. Therefore, we have determined that no violation of title II occurred.

This letter contains our determination with respect to your allegations of discrimination in your administrative complaint. If you are dissatisfied with our determination, you may file a complaint presenting your allegations of discrimination in an appropriate United States District court under title II of the ADA.

You should be aware that no one may intimidate, threaten, or coerce anyone or engage in other discriminatory conduct against anyone because he or she either has taken action or participated in an action to secure rights protected by the ADA. Any individual alleging such harassment or intimidation may file a complaint with the Department of Justice. We would investigate such a complaint if the situation warrants.

Under the Freedom of Information Act, 5 U.S.C. 522, we may be required to release this letter and other correspondence and records related to the complaint in response to a request from a third party. Should we receive such a request, we will safeguard, to the extent permitted by law, release of information that could constitute an unwarranted invasion of your or other's privacy.

If you have any questions regarding this letter, please

contact Merle Morrow at (202) 514-3571.

Sincerely,

Stewart B. Oneglia
Chief
Coordination and Review Section
Civil Rights Division

cc: Ms. Barbara L. Krause, Attorney
Town of Falmouth, Maine

01-02673

2T. 10/21/93 OCT 27 1993

DJ 204-013-00050

James S. Curry, Esquire
McLeod, McLeod & McLeod, P.A.
Post Office Drawer 950
Apopka, Florida 32704

Dear Mr. Curry:

This responds to your letter of September 1, 1993. In your letter, you seek information on the obligations of the Circuit Court of Florida, Ninth Circuit, a public entity, to issue a notice of nondiscrimination on the basis of disability under title II of the Americans with Disabilities Act (title II).

The Americans with Disabilities Act (ADA) authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist you in understanding the ADA's requirements. It does not constitute, however, a legal interpretation and it is not binding on the Department.

The Department of Justice issued a regulation implementing the requirements of title II at 28 C.F.R. Part 35. With respect to a public entity's obligation to issue a notice of its title II obligations, the regulation states:

> A public entity shall make available to applicants, participants, beneficiaries, and other interested persons information regarding the provisions of this part and its applicability to the services, programs, or activities of the public entity, and make such information available to them in such manner as the head of the entity finds necessary to apprise such persons of the protections against discrimination assured them by the Act and this part.

cc: Records, CRS Chrono Friedlander Stewart.curry.ltr
FOIA

01-02674

28 C.F.R. 35.106. The information you enclosed with your letter reflects that the Chief Judge of the Circuit Court of Florida, Ninth Circuit, issued on April 15, 1993, a notice by court order of the obligations under title II of the ADA of that court and those who practice before that court. Thus, as required by section 35.106, the head of the public entity, the Chief Judge of the Circuit Court of Florida, Ninth Circuit, has determined through court order the manner and procedures for apprising individuals of the protections provided by the ADA.

The questions you raise concerning whether the court should "enter" its order of notice of title II's nondiscrimination requirements and the penalties that may be imposed upon individuals who fail to follow the court's order, should be addressed to the court.

We hope this information is responsive to your request.

Sincerely,

Stewart B. Oneglia
Chief
Coordination and Review Section
Civil Rights Division

01-02675

McLEOD, MCLEOD & McLEOD, P.A.
ATTORNEYS AT LAW

POST OFFICE DRAWER 950
APOPKA, FLORIDA 32704
JOHNIE A. MCLEOD
RAYMOND A. McLEOD
WILLIAM J. MCLEOD
JAMES S. CURRY

September 1, 1993
48 E MAIN STREET
TELEPHONE (407) 886-3300
FAX (407) 886-0087

Honorable Janet Reno
Attorney General of the United States
Department of Justice
10th & Constitution Avenue, N.W.
Washington, D.C. 20530

Re: Americans With Disabilities Act of 1990

Dear Ms. Attorney General:

This letter comes to you in request of information concerning the notice requirements of the Americans With Disabilities Act ("ADA').

As you are aware, part of the requirements of the ADA is the inclusion of certain language within all notices of court related proceedings informing the individual who may be disabled that accommodations can be made for their attendance. Said notice is also to provide a telephone number of the court administrator through whom such accommodations are to be made.

On April 15, 1993, in the Ninth Judicial Circuit, in and for Orange County, Florida, then Chief Judge Frederick Pfeiffer entered his Administrative Order implementing said notice requirement. A copy of said order is enclosed.

We feel the notice requirement is appropriate and have complied since that date. My question to your office is two-fold. One, is there a separate requirement within the ADA mandating that Orders such as the one enclosed be entered to implement the notice requirement; and Two, what are the penalties/sanctions to be posed against a party who fails to include the notice requirement.

We have contacted the Court Administrator for the Ninth Judicial Circuit who informed us that she knew of no mandate to enter the subject Order nor penalty or sanction to be imposed for failure to include the notice requirement. We have conducted additional research into the area of penalties/sanctions for non-compliance but have not been successful in identifying those areas within the ADA. We find it difficult to believe that a mandated requirement of an act such as the ADA would not have any teeth.

01-02676

I would ask that your office direct us to the appropriate document(s) which might contain the information we seek, or, if they are readily available, to please send us copies of same. As noted above, we have reviewed those portions of the ADA available to us and do not find the mandate or any provision for

penalties/sanctions.

Should your office require any further information in responding to this request please contact us. Your valuable time and consideration in this request is greatly appreciated. Awaiting your reply, I remain,

Very Truly Yours,

James S. Curry

JSC/
enc.

01-02677

ADMINISTRATIVE ORDER NO 07-92-26

IN THE CIRCUIT COURT OF FLORIDA, NINTH JUDICIAL CIRCUIT, ORANGE AND OSCEOLA COUNTIES

ADMINISTRATIVE ORDER RE: AMERICANS WITH DISABILITIES ACT OF 1990

WHEREAS, the Americans With Disabilities Act of 1990 (ADA) requires that reasonable accommodations be provided to requesting qualified persons with disabilities in order that they might participate fully in court programs, services, activities, and benefits; and

WHEREAS, it is the intent of the Ninth Judicial Circuit to facilitate provision of reasonable accommodations when requested by qualified persons with disabilities;

IT IS ORDERED that all communications noticing court proceedings including, but not limited to, subpoenas for trial, jury summons, notice of hearings, notice for depositions and all other court related proceedings shall provide that persons with a disability who need a special accommodation, shall contact the individual or agency sending the notice not later than seven days prior to the proceeding to insure that reasonable accommodations are available. Such communications noticing court proceedings shall include the following substantive language:

01-02678

"In accordance with the Americans With Disabilities Act, persons with disabilities needing a special accommodation to participate in this proceeding should contact the individual or agency sending the notice at (address), Telephone: (area code and number) not later than seven days prior to the proceeding.

If hearing impaired, [TDD) 1-809-955-8771, or

Voice (V) 1-800-955-8770, via Florida Relay Service.

DONE AND ORDERED at Orlando, Florida, this 15th day of April, 1993.

Frederick Pfeiffer
Chief Judge

Copies to:

All Circuit & County Judges, Ninth Judicial Circuit
State Attorneys Office, Ninth Judicial Circuit
Public Defender's Office, Ninth Judicial Circuit
General Counsel, Orange County Sheriff's Office
Orange County Corrections
Orange County Bar Association
Bar Briefs, Orange County Bar Association
Paul C. Perkins Bar Association
Hispanic Bar Association of Orange County
Clerk of Courts, Orange County
Orange County Law Library
Clerk of Courts, Osceola County
The Osceola County Bar Association
The Osceola County Law Library
The Osceola County Sheriff's office
The Legal Review

Administrative Order 07-92-26

(Handwritten) 4-15-93 Carol Walker

T. 10/25/93

DJ XXXXXXXXX
204-012-0049

NOV 1 1993

Mr. Lu Hoover
Planner
Borough of State College
118 South Fraser Street
State College, Pennsylvania 16801

Dear Mr. Hoover:

This is in response to your letter to the Civil Rights Division concerning compliance with the Uniform Federal Accessibility Standards (UFAS) and the Americans with Disabilities Act Accessibility Guidelines (ADAAG) under title II of the Americans with Disabilities Act of 1990 (ADA).

The ADA authorizes the Department of Justice to provide technical assistance to entities that are subject to the Act. This letter provides informal guidance to assist you in understanding how the ADA may apply to you. However, this technical assistance does not constitute a determination by the Department of Justice of your rights or responsibilities under the ADA and does not constitute a binding determination by the Department of Justice.

Currently, the Department of Justice's title II regulation gives State and local government facilities the choice of complying with either UFAS or ADAAG in new construction and alterations. The Department of Justice, along with the Architectural and Transportation Barriers compliance Board, is in the process of amending ADAAG, after which time the choice of following UFAS may be removed from the title II regulation. You are concerned that if State College modifies its facilities to comply with UFAS, as allowed under the current regulation, you may later be required to make further modifications to comply with ADAAG. You are also concerned that you may even be required to change your choice of accessibility standards in "midstream" if the title II regulation is amended while your construction project is underway.

cc: Record CRS Chrono Friedlander Milton.ufasadaa.hoo

01-02680

Under the existing title II regulation, as mentioned above, any new construction or alterations project may be undertaken using UFAS as the accessibility standard. If the title II regulation is amended to allow only ADAAG as the accessibility standard, the amendment would specify that ADAAG is the sole standard for construction and alteration commenced after the effective date of the regulation. Facilities under design on that date would be governed by that provision only if the date that bids were invited fell after the effective date of the amendment. Furthermore, the amendment would not be applied retroactively. Facilities designed, constructed, or altered in conformance with the requirements of the title II regulation prior to the effective date of the amendment would not be required to be retrofitted to conform to the new standard.

I hope this information has been helpful to you.

Sincerely,

Stewart B. Oneglia
Chief
Coordination and Review Section
Civil Rights Division

01-02681

STATE COLLEGE, PA Borough of State College 118 South Fraser Street
State College, PA 16801

August 4, 1993

Mr. Dan Vanchulis
Architecture and Transportation Barriers Compliance Board
1331 F Street NW., Suite 1000
Washington, D.C. 20004-1111

Dear Mr. Vanchulis:

State College Borough has completed an ADA assessment of its facilities using Uniform Federal Accessibility Standards (UFAS). We chose these guidelines because State College receives Community Development Block Grant funds from the U.S. Department of Housing and Urban Development, and we are required to comply with UFAS.

Proposed regulations for State and Local Government Facilities were issued on Monday, December 21, 1992. In those proposed regulations it was noted that the Department of Justice anticipated it would be amending its Title II regulations to adopt ADAAG as the accessibility standards for State and local government facilities after the Board supplements ADAAG.

I am concerned that if State College modifies its facilities to comply with UFAS standards, at a later date, we may be required to make changes again to comply with ADAAG. In addition, if we make modifications to comply with UFAS and during the construction the Department of Justice issues a Final Rule adopting ADAAG as the accessibility standard, we may be required to modify the plans in "midstream' to comply with ADAAG.

I would appreciate any guidance you could give in this matter. If you have any questions, please call me at (814) 234-7109.

Sincerely,

Lu Hoover
Planner

Mayor (814)234-7100
Arnold Addison (814)234-3082 fax

Council President Borough Council
R. Thomas Berner Thomas E. Daubert Felicia Lewis William Welch, Jr.
Ruth K. Lavin Jean W. McManis Jerry R. Wettstone
01-02682

NOV 9 1993

The Honorable James L. Oberstar
Member, U.S. House of Representatives
231 Federal Building
Duluth, Minnesota 55802

Dear Congressman Oberstar:

This letter is in response to your inquiry on behalf of your constituent, XXXX(b)(7)(C) who has requested some guidance concerning the Americans with Disabilities Act ("ADA")

The ADA authorizes this Department to provide technical assistance to individuals and entities that have rights or responsibilities under the ADA. Therefore, this letter provides informal guidance to assist you in responding to XXXXXX(b)(7)(c) However, this technical assistance does not constitute a legal interpretation, and it is not binding an the Department of Justice.

XXXXX(B)(7)(C) has e pressed concern about a Federal regulation that requires persons with boats to lower appurtenances unessential to navigation when transiting drawbridges. This regulation, which was issued by the U.S. Coast Guard, prescribes general requirements relating to the use and operation of drawbridges across the navigable waters of the United States. 33 C.F.R. 117.11. XXXXXXX(b)(7)(C) believes that this regulation violates the ADA or other Federal statutes that prohibit discrimination on the basis of disability.

The ADA is not applicable to the Federal Government. However, as part of the U.S. Department of Transportation, a Federal Executive agency, the Coast Guard is subject to section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of disability in the programs and activities of Executive agencies.

cc: Records; Chrono; Wodatch; McDowney; Blizard; Delaney; FOIA; MAF. \udd\blizard\control\oberstar

01-02683

In this regard, I note that XXX(b)(7)(C) letter already has been brought to the attention of the Coast Guard which has provided a response. If, as appears, he remains dissatisfied with the Coast Guard's response, he may file a complaint pursuant to the provisions of section 504 by sending a letter to the Department of Transportation at the following address: Assistant General Counsel for Regulation and Enforcement, U.S. Department of Transportation, 400 Seventh Street, S.W., Room 10424, Washington, D.C. 20590.

I hope this information is helpful in responding to your constituent.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

01-02684

Honorable James Oberstar
231 Federal Bldg.
Duluth, MN 55802

XXXXXXXXX(b)(7)(c)
XXXXXXXXXXXXXX
Duluth, MN XXXXX

Re: 33 CFR # 117.11

June 7, 1993

Dear Congressman Oberstar:

If I may Sir, I would like to bring to your attention the above federal regulation, having to do with the Aerial Lift Bridge here in Duluth and I'm sure other bridges in the United States also.

My basic understanding of this reg. is that all non-essential navigational equipment must be lowered if at all possible to avoid unnecessary raising of the bridge(s).

What I find void in this regulation is consideration for disabled and elderly people. I personally was instructed to lower my antennas on my radar arch on May 16, 1993 in 4/5 foot swells at lakeside of the lift bridge. I am 100% disabled. I feel this request was nothing less than reckless endangerment of my craft and crew. If I may add, my radio was out and I could not inform the bridge of my

personal problem. However, radios are not required.

If I may, could I suggest that provisions be afforded in these reg. for disabled and elderly people. Our Twin Ports here have many, many disabled and elderly boaters!

To prompt honesty for identification purposes for elderly and disabled people, might I also suggest a flag, or a sticker visible, identifiable for bridge operators ..... such as I have for my car for parking purposes.

Sir, I thank you for your time and consideration in the above matter and await your response.

Sincerely,
XXXXX(b)(7)(c)

01-02685

U S. Department of Transportation

Commandant
US Coast Guard

2100 Second Street SW
Washington, DC 20593-0001
Staff Symbol: G-CC/104
Phone 202 366-4280

July 16, 1993

The Honorable James Oberstar
Member, United States House of Representatives
231 Federal Building
Duluth, Minnesota 55802

Dear Mr. Oberstar:

This is in reply to your letter of June 14, 1993, on behalf of XXXXXXXXXXXXXXXXXXXXXX(b)(7)(C) equested that the Coast Guard consider regulations which would exempt handicapped and elderly people from the requirement to lower appurtenances unessential to navigation when transiting drawbridges.

The Coast Guard shares X(b)(7)(C) concerns and endeavors to issue regulations which provide every citizen with the opportunity to enjoy the nation's waterways as conveniently and as safely as possible. At the same time we also must provide for the efficient and safe passage of vehicular traffic that use drawbridges. Present regulations allow for the opening of drawbridges during emergency conditions.

XXXX(b)(7)(C) suggestion, although understandable, is not practical as it would be difficult to enforce. Bridge tenders are located at such a distance that it would be difficult, if not impossible, to identify vessels with handicap designations. Additionally, the possibility of widespread abuse exists due to the drawtenders' inability to verify legitimate handicapped vessel operators when a signal for a drawbridge opening is given. The resultant unnecessary bridge openings would adversely affect highway traffic.

XXXX(b)(7)(C) suggestion is appreciated and will be kept in our files for possible use should circumstances in the future render feasible. At present XXXX(b)(7)(C) may wish to pursue appropriate modification of his vessel to enable him to lower and raise appurtenances unessential to navigation more easily.

Sincerely,

JOHN W. WHITEHOUSE
Commander, U.S. Coast Guard
Deputy Chief, Congressional Affairs Staff

01-02686

The Honorable James Oberstar XX
231 Federal Building XX
Duluth, MN 55802 Duluth, MN XX

July, 26, 1993

Re: Letter of 7-11-93
John W. Whitehouse

Dear Mr. Oberstar,

Thank you for responding to my concern, and affording copy of the letter you received from Commander Whitehouse.

However Sir, with all due respect to all parties concerned, I am of the supported position that the response from Commander Whitehouse is, as with the Federal reg. in question, lacking reasonable research and

concern for the elderly and handicapped.

In response to the letter from Commander Whitehouse, paragraph three, and I quote: "XXXX suggestion, although understandable, is not practical as it would be difficult to enforce. Bridge tenders are located at such a distance that it would be difficult, if not impossible, to identify vessels with handicap designations".....

Sir, again with all due respect ..... I checked with Supervisor Mr. Steve Douville of the Duluth Aerial Bridge, and with Mr. Dick Maron of the Grassy Point Bridge here in Duluth. Both, as suspected, carry as required equipment, binoculars. I fail to understand where "distance" could create a problem for "verifying legitimate handicapped vessel operators".

I still further fail to understand why this federal reg. failed to incorporate considerations for the handicapped and elderly? Sir, I may stand corrected, but isn't it federal law that considerations for the handicapped be of concern?

Sir, I am of the supported position that a void of handicap designation for concerned vessels will indeed create, in itself, wide spread abuse among vessel owners. With this present "void", a bridge owner must error on the side of caution, and except the word of the vessel operator that he/she is handicapped, without any means of varification.

I thank you again Mr. Oberstar, for your continued concern over this issue. Also Sir, might someone review the Americans With Disabilities Act of 1990?

Sincerely,
XX

01-02687

November 12, 1993

The Honorable Lane Evans
Member, U.S. House of Representatives
1535 47th Avenue, #5
Moline, Illinois 61265

Dear Congressman Evans:

This letter is in response to your inquiry to the Equal Employment opportunity Commission (EEOC) on behalf of your constituent, Mr. Larry Plachno, concerning his rights under the

Americans with Disabilities Act of 1990 ("ADA"). The EEOC referred your letter to us because the issues raised by Mr. Plachno are not within the jurisdiction of that agency.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist your constituent in understanding the ADA's requirements. However, it does not constitute a legal interpretation, and it is not binding on the Department.

Mr. Plachno first expresses a concern that the ADA and its implementing regulations may offer protection only for individuals who use wheelchairs, but not for other individuals with disabilities. In particular, Mr. Plachno is concerned about individuals who, like himself, have disabilities which necessitate frequent access to restroom facilities.

The ADA and the implementing regulations developed by the Department of Justice in no way limit their application to individuals who use wheelchairs. Both the statute and the regulations define the term "disability" to mean any physical or mental condition that substantially limits one or more major life activities, like walking, seeing, hearing, working, caring for oneself, or performing manual tasks. Indeed, the Department of Justice's regulation implementing title III of the ADA, the title of the ADA that prohibits discrimination on the basis of

cc: Records, Chrono, Wodatch, McDowney, Blizard, Contois, FOIA, MAF
Udd:Contois:CGL:Evans.JLB

01-02688

disability by privately owned and operated places of public accommodation, lists several examples of physical impairments, other than mobility impairments, that may be considered disabilities under the ADA, including impairments of the sense organs, or impairments of the respiratory, cardiovascular, reproductive, digestive, and genitourinary systems. In sum, the individuals Mr. Plachno is concerned about are quite probably individuals who come within the protections of the ADA, and the Department's implementing regulations.

At the same time, however, it must be noted that the ADA generally does not require either privately owned places of public accommodation, or publicly owned buildings or facilities, to provide a particular number of restroom facilities, or even to provide restrooms at all. Typically, the question of whether and how many restrooms a particular type of facility must provide for the public is an issue that is addressed by state and local building codes. The approach of the ADA is simply to require that if they are provided, restroom facilities must be accessible to all of our citizens, including all of our citizens with disabilities. Thus, if Mr. Plachno has concerns that not enough restrooms are provided by certain types of facilities, he should address those concerns to the officials or organizations responsible for the state and local building codes which govern whether particular types of facilities must provide restrooms, and how many.

Mr. Plachno next expresses his concern about the accessibility of restrooms in municipal buses and intra-city rail facilities. Under the ADA, the Department of Transportation has jurisdiction over public transit systems; accordingly, we are not able to provide guidance or assistance on this issue. Rather, Mr. Plachno should address his questions and comments to the Assistant General Counsel for Regulation and Enforcement, U.S. Department of Transportation, 400 Seventh Street, S.W., Room 10424, Washington, D.C. 20590.

Similarly, the Department of Transportation sets the passenger safety rules which prohibit use of restroom facilities on aircraft during takeoff and landing, another of Mr. Plachno's concerns. If Mr. Plachno wishes to petition the Department of Transportation for changes in those rules, he may write to them at the address in the preceding paragraph.

Finally, Mr. Plachno suggests that places of public accommodation be required to provide parking spaces for recreational vehicles, so that individuals with disabilities who

use such vehicles for mobility will have better access to places of public accommodation. Title III does not currently require places of public accommodation to provide parking for

recreational vehicles, and there are many places of public accommodation, particularly in urban or other heavily developed areas, which might have great difficulty in providing sufficient space for parking recreational vehicles.

Nonetheless, we contacted the Architectural and transportation Barriers compliance Board, the federal agency which has responsibility for drafting the ADA Accessibility Guidelines, the architectural standards governing the design and construction of new places of public accommodation and commercial facilities. Representatives of the Board indicated that they had also received a letter from Mr. Plachno, and were considering his comments. Indeed, they may have already responded to him directly.

I have enclosed for your information copies of the Department of Justice's title III implementing regulation, and the Department's Title III Technical Assistance Manual. The regulation defines the term disability and gives examples of the kinds of conditions that are covered in section 36.104 (page 35593), and the definition of the term disability is discussed at length in the preamble to the regulation (pages 35548-35550). In addition, the Technical Assistance Manual explains the coverage of the ADA on pages 8-12.

I hope this information is useful to you in responding to your constituent.

Sincerely,

Brian K. Landsberg
Acting Assistant Attorney General
Civil Rights Division

Enclosures

Larry Plachno
Publisher - Writer - Book Author - Transportation Historian
9704 West Judson Road Polo, Illinois 61064
Phone: (815) 946-2341 Fax: (815) 946-2347

Representative Lane Evans Date: 09/10/93
1535 47th Avenue, No. 5 Page: 1
Moline, Illinois 61265

Dear Representative Evans,

I am writing to request information on when implementation procedures will be issued under the Americans with Disabilities Act (ADA) for handicapped Americans other than wheelchair users.

It is my understanding that the basic intent of the Americans with Disabilities Act was to end discrimination and to provide both access and mobility that had been denied to Americans with physical handicaps. However, all of the implementation guidelines I have seen to date appear to be directed solely towards Americans in wheelchairs. This may well be the discrimination the ADA was expected to eliminate since it ignores other Americans who are denied both access and mobility because of other physical handicaps. In particular, I refer to those Americans who have been denied both access and mobility because of a physical handicap that requires frequent access to restroom facilities.

Many Americans suffer from a physical disability that requires frequent access to restroom facilities. These physical disabilities include ulcers, a nervous stomach, enlarged prostate, plus various other kidney, bladder and internal disorders. In addition, most Americans will temporarily have a similar need from time to time because of flu, diarrhea or a stressful situation. Some of the major problem areas are as follows:

1. Public Buildings and Shopping

While most major public buildings, shopping centers and larger department stores provide public toilets, there are other areas that do not, or have inadequate signage pointing to such facilities. In particular, supermarkets are notoriously bad about providing public

toilets. One of the worst situations is a tourist or shopping area consisting primarily of smaller shops, stores or restaurants which feel that each is too small to provide public restroom facilities. For example, it is very difficult to find public restrooms in San Francisco's Chinatown and in the French Quarter in New Orleans. The downtown area in smaller communities frequently provides similar problems.

2. Public Transportation and Interstate Highways

Most rail transportation and interstate buses are equipped with adequate restroom facilities. Commercial aviation is borderline at best. Most airports provide adequate restroom facilities. However, once on board the aircraft, passengers are excluded from the restrooms for prolonged periods during takeoff and landing. In addition, there are many smaller commercial airplanes with no restrooms at all.One of the major problems in regard to access and mobility is city transit since most city buses and rapid transit cars do not have restroom facilities. While interstate buses and railroad trains have provided restroom facilities for years, the city transit people have discriminated against people who require these facilities.

01-02691

Like many people with a similar disability, I have long since given up counting the number of times I have been unable to use public municipal transportation because of the lack of restroom facilities. It should be mentioned that providing restroom facilities at rapid transit stations does not solve the problem. I once had a serious problem on the rapid transit in Miami when I was unable to locate a transit employee with a key to unlock the facilities at a station.

People with this type of disability find it difficult to use our federal interstate highway system because of inadequate restroom facilities.

The single biggest problem area I have found is a section of interstate highway that I use regularly. I enter Interstate 39 just east of Mendota, Illinois at U.S. 34. From here I drive south to Bloomington, Illinois And then east on Interstate 74 to the Indiana state line. There is no rest area located south and east-bound on this route - a driving distance of over three hours. West and northbound on this route there is one rest area just west of Danville, which still leaves a driving distance of approximately three hours without a rest area.

The next worst area I am aware of is on Interstate 30 on the east side of Dallas, Texas. Any route through Dallas (such as from or to Fort Worth or San Antonio) involving this segment of Interstate 30 may stretch out to two hours of driving without a rest area. And, the situation gets worse if you are caught in rush hour traffic getting through Dallas.

A similar situation to Dallas exists on interstate routes through many major cities because rest areas are almost never located within major cities or on city bypass routes. One location that comes particularly to mind is Interstate 75 through Atlanta since rest areas in both directions are located quite some distance from the city.

The similarity in access and mobility between the wheelchair handicapped and those who require restroom facilities should be obvious. The wheelchair people have a physical handicap that requires ramps, lifts, and elevators for access and mobility. The restroom people have a physical handicap that requires toilet facilities for access and mobility.

3. Vehicle Discrimination

One of the major problems with this type of handicap is vehicle discrimination. Because my occupation requires extensive travel, I have taken to using a converted motorcoach. In addition to having its own

toilet, it also provides me with hot liquids and a shower. It effectively serves the same purpose as a wheelchair does to a non-ambulatory person. But, like a wheelchair, it encounters problems in access and mobility.

Noteworthy is the fact that Illinois and Ohio allow automobiles to travel at 65 miles per hour on the interstates but Illinois restricts RV's to 55 miles per hour and Ohio restricts non-commercial buses to 55 miles per hour. Clearly a discrimination against private vehicles equipped with toilets.

In many places, our converted coaches and RV's have parking problems. Where wheelchairs have problems because buildings are designed for the ambulatory, we have problems because parking lots are designed for automobiles.
We need larger parking spaces plus curves and turns designed for larger vehicles
that have a larger turning radius. Unlike the wheelchair people, we do not require premium space in the front and will settle for space along the far edges of the parking lot.

Although I have not had a serious problem, there are complaints about weight restrictions and residential parking restrictions that permit automobiles but discriminate against RVs and converted coaches.

There are times when I feel that we need special license plates, just like the wheelchair people. Admittedly, it might be a little tacky to use a toilet symbol in place of the wheelchair symbol on the license
01-02692

plate, but I presume that another appropriate symbol or letter could be found.

Incidentally, I might mention that there are some organizations and companies that have already made some effort to improve this situation. For example, the Cracker Barrel restaurant chain has several locations with specific parking allocated to RV's and similar larger vehicles. Most of the Flying J service stations have special fueling islands for RV-type vehicles and even offer dump stations for our toilets.

Going back to my original request, I am very much afraid that we have been left out of the ADA. I would appreciate information on time schedules for implementation procedures for handicapped Americans other than wheelchair users.

Thank you.

Yours sincerely,

Larry Plachno

01-02693

U.S. Department of Justice

Civil Rights Division

Coordination and Review Section

PO. Box 66118
Washington, D.C. 20035-6118

NOV 16 1993

XXXXXXXXXXXX
XXXXXXXXXXXXX(b)(6)
Norwood, Ohio XXXXXXX

RE: Complaint Number XXXXX(b)(6) Formerly XXXXX(b)(6)

Dear Mr. XXXXXX(b)(6):

This letter is in reference to the complaint you filed with the Department of Justice, Civil Rights Division, Coordination and Review Section, alleging that the programs at the Norwood City Hall are not readily accessible to and usable by persons with mobility impairments because they are housed in an inaccessible facility.

Enclosed is a copy of the fully-executed Settlement Agreement between the Department of Justice and the City of Norwood, Ohio. The Settlement Agreement states that the City will make the programs and services provided in the City Hall accessible to persons with mobility impairments, and they will submit the architectural plans to us if structural changes are needed.

Based on the assurances in this voluntary Settlement Agreement, we have determined that the City is in compliance with title II and we are closing this case as of the date of this letter. Continued compliance is contingent upon the City's completion of the actions required by the Settlement Agreement. The coordination and Review Section will monitor the City's progress in implementing the requirements of the Settlement Agreement. If you are dissatisfied with the terms of the Settlement Agreement, you may file a private complaint in the appropriate United States District Court under title II of the

ADA. Our determination of the City's compliance is not intended, nor should it be construed, to cover any other issues regarding compliance with title II that may exist and that are not specifically addressed in the Settlement Agreement.

01-02694

You should be aware that no one may intimidate, threaten, or coerce, or engage in other discriminatory conduct against anyone because he or she has either taken action or participated in an action to secure rights protected by the ADA. Any individual alleging such harassment or intimidation may file a complaint with the Department of Justice. We would investigate such a complaint if the situation warrants.

Under the Freedom of Information Act, it may be necessary to release this document and records related to these complaints in response to a request from a third party. Should we receive such a request, we will safeguard, to the extent permitted by the Freedom of Information Act and the Privacy Act, the release of information which could constitute an unwarranted invasion of privacy.

If you have any questions concerning this letter, please feel free to call Richard Waters at (202) 307-2211.

Sincerely,

Stewart B. Oneglia
Chief
Coordination and Review Section
Civil Rights Division

Enclosure

01-02695

SETTLEMENT AGREEMENT BETWEEN
THE UNITED STATES OF AMERICA

AND

THE CITY OF NORWOOD, OHIO
Department of Justice Complaint Number X(b)(6)
(formerly X(b)(6))

This matter was initiated by a complaint filed under title II of the Americans with Disabilities Act (ADA), 42 U.S.C 12131-12134, with the United States Department of Justice, Civil Rights Division, Coordination and Review Section, against the City of Norwood, Ohio. The complaint alleges that the Norwood City Hall is inaccessible to individuals with mobility impairments. Pursuant to the provision of the ADA entitled "Alternative Means of Dispute Resolution," 42 U.S.C. 12212, the parties have entered into this Agreement.

The Department of Justice (Department) is authorized under 28 C.F.R. Part 35, Subpart F, to investigate fully the allegations of the complainant in this matter to determine the compliance of the city of Norwood with title II of the ADA and the Department's implementing regulation, issue findings, and, where appropriate, negotiate and secure voluntary compliance agreements. Furthermore, the Attorney General is authorized under 42 U.S.C. 12133, to bring civil action enforcing title II of the ADA should the Department fail to secure voluntary compliance pursuant to Subpart F. In consideration of the terms of this Agreement as set forth below, the Attorney General agrees to refrain from undertaking further investigation or from filing a civil suit in this matter.

The parties to the Agreement are the United States of America and the City of Norwood. The parties agree that this Agreement is not an admission of liability and should not be

construed as an admission by the City of Norwood of any liability. In the interests of securing compliance by voluntary means, the parties hereby agree as follows:

1. The City of Norwood owns and operates the City Hall located in Norwood, Ohio.

2. The ADA applies to the City of Norwood because it is a public entity as defined in 42 U.S.C. 12131.

3. Because of architectural barriers, the programs offered in the Norwood City Hall are not readily accessible to and usable by persons with mobility impairments.

4. Title II of the ADA and its implementing regulation prohibit discrimination against qualified individuals with disabilities on the basis of disability in the services, programs, or activities provided by the City of Norwood in the City Hall.

5. An individual who is mobility impaired may not be denied an equal opportunity to participate in or benefit from the Norwood City services, programs, or activities or otherwise be treated differently because of a disability that makes the City Hall inaccessible.

6. Under title II of the ADA, the services, programs, or activities provided by the City, when viewed in their entirety, must be accessible to and usable by persons with disabilities.

7. The subject of this Settlement Agreement is the development of a Compliance Plan which will provide access to the services, programs, and activities provided by the City of Norwood in the Norwood City Hall.

8. The City will develop a written Compliance Plan, including a timetable to provide access to the services, programs, and activities in the City Hall and submit the Plan for approval to the Department of Justice.

The Plan will include the following:

a. A statement as to how each program or activity conducted in the Norwood City Hall will be made accessible, including identification of structural changes, if any, that will be made;

b. If structural changes are needed:

1. An architectural drawing, or detailed description with specifications, of any proposed modifications;

2. A detailed description, including a schedule, setting out steps that the City will take, on an interim basis, to provide access to the services, programs, and activities in the City Fall for persons who are mobility impaired until corrective action has been completed; and

3. A schedule for obtaining architectural specifications, estimates, and completion of each phase of the proposed modifications, if any, to existing structures to provide access to the City Hall.

9. Alteration and construction of buildings and sites in conformance with either the Uniform Federal Accessibility Standards (UFAS) or the Americans with Disabilities Act Accessibility Guidelines (ADAAG) will be deemed to comply with the requirements of the ADA, except that where ADAAG is used, the elevator exemption in section 4.1.3 is not available to entities covered by title II.

10.xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx As of Feb. 1, 1994 xxxxxxxxxxxx, the City shall submit a copy of the final written Compliance Plan to the Department for review and approval.

11. At the end of the 90 day period following Departmental approval of the Plan, and at the end of each 90 day period thereafter, the City will submit written progress reports on its implementation of this Agreement, and the Compliance Plan developed pursuant to this Agreement, to the Department.

12. At the completion of the steps set out in the Compliance Plan approved by the Department, the City will submit a final report to the Department.

13. If at any time the City desires to modify any portion of this Agreement or the Compliance Plan because of changed conditions making performance impossible or impractical or for any other reason, it shall promptly notify the Department in

writing, setting forth the facts and circumstances thought to justify modification and the substance of the proposed modification. Until there is written agreement by the Department to the proposed modification, the proposed modification shall not take effect.

14. In the event that the city fails to comply in a timely manner with any requirement of this Agreement without obtaining sufficient advance written agreement from the Department as to a modification of the relevant terms of this Agreement or the Compliance Plan, all terms of this Agreement and the Compliance Plan shall become enforceable in an appropriate Federal court.

15. The Department may review compliance with this Agreement and the compliance Plan developed pursuant to this Agreement at any time. if it determines that this Agreement or the Compliance Plan or any requirement thereof has been violated, it may institute a civil action seeking specific performance of the provisions of this Agreement in an appropriate Federal court.

16. Failure by the Department to enforce this entire agreement, the Compliance Plan, or any provision thereof with respect to any deadline or any other provision herein shall not be construed as a waiver of the Department of Justice's right to enforce other deadlines and provisions of this Agreement or the Compliance Plan.

17. This document is a public agreement. A copy of this document or any information contained in it may be made available to any person by the city or the Department on request.

18. The effective date of this Agreement is the date of the last signature below.

19. This Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or agents of either party, that is not contained in this written agreement, shall be enforceable. This Agreement does not purport to remedy any other potential violations of the ADA or any other Federal law. This Agreement does not affect the City's continuing responsibility to comply with all aspects of

the ADA.

For the City: For the United States:

(Handwritten)
Joseph (illegible) Stuart B. Oneglia, Chief
Mayor Coordination and Review Section
Civil Rights Division

Date (handwritten) 10/28/93 Date (handwritten) 11/16/93

01-02699

FOR IMMEDIATE RELEASE CR
FRIDAY, NOVEMBER 19, 1993 (202) 516-2765

NORWOOD, OHIO AGREES TO MAKE CITY HALL ACCESSIBLE
UNDER DEPARTMENT OF JUSTICE SETTLEMENT

WASHINGTON, D.C. -- An Ohio community has agreed to make it easier for persons using wheelchairs to enter its city hall. The action settles a complaint filed with the Department of Justice under the Americans with Disabilities Act (ADA).

The complaint alleged that persons with mobility impairments could not enter or use the building in Norwood, Ohio. The

settlement, signed on Tuesday, requires Norwood to submit to the Department by February 1994 plans to correct the problem.

The settlement was negotiated under Title II of the ADA, which prohibits discrimination against individuals with disabilities on the basis of their disability by state and local governments.

The city of Norwood has cooperated with the Department in reaching an agreement to provide equal access to its programs for all its citizens, which is the essence of the ADA, said Acting Assistant Attorney General James P. Turner of the Civil Rights Division.

The agreement requires Norwood to:

(MORE)

01-02700

--Develop a written compliance plan that includes a timetable for providing access to the services, programs, and activities in the city hall.

--Submit architectural plans, if appropriate, to the Department for review.

--Make the agreement available to the public.

The settlement also permits the Department to petition U.S. District Court to seek specific performance if the city falls to comply with its terms.

####

93-365

01-02702

FOR IMMEDIATE RELEASE CR
FRIDAY, NOVEMBER 19, 1993 (202) 516-2765

NORWOOD, OHIO AGREES TO MAKE CITY HALL ACCESSIBLE
UNDER DEPARTMENT OF JUSTICE SETTLEMENT

WASHINGTON, D.C. -- An Ohio community has agreed to make it easier for persons using wheelchairs to enter its city hall. The action settles a complaint filed with the Department of Justice

under the Americans with Disabilities Act (ADA).

The complaint alleged that persons with mobility impairments could not enter or use the building in Norwood, Ohio. The settlement, signed on Tuesday, requires Norwood to submit to the Department by February 1994 plans to correct the problem.

The settlement was negotiated under Title II of the ADA, which prohibits discrimination against individuals with disabilities on the basis of their disability by state and local governments.

The city of Norwood has cooperated with the Department in reaching an agreement to provide equal access to its programs for all its citizens, which is the essence of the ADA, said Acting Assistant Attorney General James P. Turner of the Civil Rights Division.

The agreement requires Norwood to:

(MORE)

01-02700

--Develop a written compliance plan that includes a timetable for providing access to the services, programs, and activities in the city hall.

--Submit architectural plans, if appropriate, to the Department for review.

--Make the agreement available to the public.

The settlement also permits the Department to petition U.S. District Court to seek specific performance if the city falls to comply with its terms.

####

93-365

01-02702

T. 11-18-93
202-PL-483

NOV 19 1993

Mr. Thomas Mohr
President
Mohr Transit, Inc.
3311 South Harrison Street
Fort Wayne, Indiana 46807

Dear Mr. Mohr:

I am responding to your letter asking for clarification of the requirements of title III of the Americans with Disabilities Act (ADA), 42 U.S.C. 12101 et seq., and this Department's regulation implementing title III, 28 C.F.R. pt. 36. You have asked whether the ADA would require Mohr Transit, Inc. to use lift-equipped vehicles for a combined mobile restaurant and local tour vehicle.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities that have rights or responsibilities under the Act. This letter provides informal guidance to assist you in understanding the ADA and the Department's regulation. However, this technical assistance does not constitute a determination by the Department of Justice of your rights or responsibilities under the ADA, and it is not binding on the Department.

Title III of the ADA prohibits discrimination on the basis of disability in any place of public accommodation that is subject to the Act. Places that serve food or drink, places of public gathering, and places of entertainment are public accommodations that are subject to title III; therefore, the mobile restaurant and sight-seeing tour that Mohr Transit plans to operate will be required to make its services accessible to people with disabilities in accordance with the full range of title III requirements, such as nondiscriminatory eligibility criteria; reasonable modifications in policies, practices, and procedures; provision of auxiliary aids; and removal of barriers in existing facilities. The ADA requires places of public accommodation to remove architectural, transportation, and communication barriers to the extent that it is readily achievable to do so; however, the Act specifies that retrofitting an existing vehicle with a hydraulic lift is not required.

cc: Records, Chrono, Wodatch, Blizard, FOIA, Friedlander
n:\udd\blizard\adaltrs\mohr

01-02704

In addition, Mohr Transit is required to comply with the applicable ADA standards for accessible design. This Department's current Standards contain no requirements that apply to the construction of an accessible vehicle; however, Mohr Transit is also subject to ADA regulations issued by the U.S. Department of Transportation, 49 C.F.R. Parts 37 and 38. These regulations establish the requirements for the purchase of accessible vehicles by private entities that provide transportation services, and they establish design and Construction standards for accessible vehicles. For further information about these regulations, you should write to:

The Office of the General Counsel
U.S. Department of Transportation
400 7th Street, S.W.
Washington, D.C. 20590

For your information, I am enclosing a copy of the Department's regulation implementing title III of the ADA and the Title III Technical Assistance Manual, which was developed to assist individuals and entities subject to the ADA to understand the requirements of title III. I hope that this information is helpful to you.

Sincerely,

John L. Wodatch
Chief
Public Access Section

Enclosures

01-02705

MOHR TRANSIT, INC.
services for
"Allen County Non-Public Schools" and "Mohr-To-See Tours"
331 1 S. Harrison Street Fort Wayne, Indiana 46807
219/745-5554

February 26, 1993
Public Access Section
Civil Rights Division
U.S. Dept. of Justice
P.O. Box 66738
Washington D.C. 20035-6738

Greetings
Initial plans are underway to offer a combination mobile restaurant and sight-seeing tour whereby participants can enjoy a three course meal while taking a 2 or 3 hour bus trip of Fort Wayne and the immediate area.

Before progressing any further I need to know what the governments' ruling (both State and Federal) would be regarding my business and the handicap.

If a chairlift is mandatory, these. consequences will follow:

1. The ridership will be reduced by one-sixth, thus losing $180 to $200 of income per trip unless there is handicap ridership, which would not be the case most of the time.

2. The chairlift itself would be an added expense.

3. The chairlift itself can never be made "noise proof" or invisible. Thus, distracting the view for other tourists and disturbing the presentation by the "rattles" a chairlift creates.

4. Another vehicle mast be purchased, since my buses do not have chairlift access doors.

Therefore, if chairlifts must be demanded for this enterprise, this business, related ministry, etc. will be forced to dissolve.

I am not opposed to serving the handicap, but prefer to provide a separate vehicle for such individuals at a later time after determining the success of the adventure.

Would appreciate a written, legal, documental ruling regarding

this request as soon as possible, since any further action is contingent upon this factor.

Yours truly,

Thomas Mohr, President/owner
A Christian Service; Not Just A Business!
01-02706
T. 11-04-93

DJ 202-PL-671

NOV 19 1993

Mr. Jim Bethea
President
Slip-Free Surfaces
P.O. Box 15344
Myrtle Beach, South Carolina 29587

Dear Mr. Bethea:

This letter responds to your correspondence regarding the application of the Americans with Disabilities Act (ADA) to flooring surfaces.

The ADA authorizes the Department of Justice to provide technical assistance and information to individuals and entities who have questions about the Act or the Department's Standards for Accessible Design (Standards). This letter provides informal guidance to assist you in understanding and complying with the ADA accessibility standards. However, this technical assistance should not be viewed as legal advice or a legal opinion about your rights or responsibilities under the ADA.

The Standards, published as Appendix A to the title III rule (enclosed), require that floor surfaces be stable, firm, and slip-resistant (see section 4.5). Recommendations regarding appropriate coefficients of friction are presented in the appendix to the Standards (see section A4.5.1). The information in appendix section A4.5.1 is advisory, rather than mandatory, and is intended to give the designer/specifier an understanding of the requirements of accessible design and to allow flexibility in choosing appropriate products.

Please contact the Public Access Section any time you have questions or need information. The Department maintains a

telephone information line to provide technical assistance regarding the rights and obligations of individuals, businesses, agencies, and others covered or protected by the ADA. This technical assistance is available by calling 202-514-0301 (voice)

cc: Records, Chrono, Wodatch, Harland, FOIA, Friedlander
n:\udd\harland\bethea.671

01-02707

or 202-514-0383 (TDD) between 1:00 p.m. and 5:00 p.m., Monday through Friday.

Sincerely,

John L. Wodatch
Chief
Public Access Section

Enclosure

01-02708

September 21, 1993

Jim Bethea
Slip-Free Surfaces
P.O. Box 15344
Myrtle Beach, SC 29587

Department Of Justice
Office Of The Americans With Disabilities Act
Civil Rights Division
Washington, DC 20530

Dear Sirs:

I am writing in hopes of getting some answers for some very puzzling questions concerning the ADA Title III Act. My company is in the business of applying non-skid flooring surfaces. We were under the impression that the new ADA laws were requiring all public accommodations to provide a firm, stable, and non-skid surfacing on the path of travel areas of their flooring. We also were under the impression that there were fines of up to $50,000 for persons or businesses that failed to comply with these laws.

(b)(7)(c)

I contacted XX at the University of West Virginia back in January and she confirmed that businesses must comply with this law and provide a coefficient of friction of at least .6 for level and .8 for ramp surfaces.

I was just reading a copy of "ACCESS AMERICA" (ref. pg. 9 - question #10) stating that there is no specification for a min= imum of slip-resistance. That the .6 is just a recommendation, like all others in the 4.5.1 appendix.

This is very confusing to our company. Are the businesses

required to have any certain level of coefficient of friction? Are they subject to any fines for not providing this level? If these businesses are not required to maintain the .6 level how would you know if they are in violation of not providing a stable, firm, and slip-resistant floor surface? Can you suggest any type of notification that we might use to help prompt businesses to take any of these actions?

We have been telling businesses that they should (under the ADA TITLE III ACT) provide a non-skid surface for their customers. Have we been doing wrong by suggesting this information?

The majority of the persons or businesses that we have made personal contact with, indicate that they are not interested in doing anything in regards to providing a slip-resistant flooring. We have heard comments such as (e.g. "we are not going to do anything about our floors until they make me" ---- We are going to wait and see if anything comes from these laws" ---- We are going to wait and see if they are going to enforce these laws")
01-02709

And one nursing home administrator stated ("if the ADA doesn't come around any more often than the O.S.H.A. does we probably won't ever need to anyway'). So you can see were it is very frustrating to try to get people to take or make any precautionary actions in regards to the ADA laws without some more clarifying laws or rules.

Any help that you could give us would be greatly appreciated. Look forward to hearing from you soon.

Thanks,

Jim Bethea/pres

01-02710

T. 11-19-93

DJ 202-PL-471

Ms. Charlotte Halsema
Patient Representative
Indiana University Medical Center
Hospital Administration
University Hospital 1305
550 North University Boulevard
Indianapolis, Indiana 46202-5262

Dear Ms. Halsema:

This letter is in response to your letter in which you ask if there is any regulation that prevents you from metering accessible parking spaces. I apologize for the delay in our response.

The Americans with Disabilities Act (ADA) authorizes the Department of Justice to provide technical assistance to individuals and entities that are subject to the Act. This

letter provides informal guidance to assist you in understanding the ADA accessibility standards. However, this technical assistance does not constitute a legal interpretation of the application of the statute and it is not binding on the Department.

Section 36.202(c) of the regulation issued by the Department under title III provides that, "A public accommodation shall not provide an individual or class of individuals, on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements, with a good, service, facility, privilege, advantage, or accommodation that is different or separate from that provided to other individuals, unless such action is necessary to provide the individual or class of individuals with a good, service, facility, privilege, advantage, or accommodation, or other opportunity that is as effective as that provided to others." As long as the accessible parking spaces comply in number and size with the ADA requirements, there is no need to provide a separate and additional benefit of free parking for people using these spaces. You are therefore free to meter accessible parking spaces as long as nonaccessible spaces in the same area are metered as well.

cc: Records, Chrono, Wodatch, Blizard, Johansen, FOIA , Friedlander
n:\udd\mercado\plcrtltr\halsema.lkj
01-02711

We hope this information is helpful to you. We are enclosing a copy of the title III regulation as well as our Title III Technical Assistance Manual.

Sincerely,

John L. Wodatch
Chief
Public Access Section

Enclosures

01-02712

INDIANA UNIVERSITY MEDICAL CENTER
Riley Hospital for Children
University Hospital
IU School of Medicine
Hospital Administration
University Hospital 1305
550 N. University Blvd.,
Indianapolis, IN
46202-5262

phone (317) 274-2117

February 16, 1993

U.S. Department of Justice
Civil Rights Division
Coordination Review Section
P.O. Box 6618
Washington, D.C. 20035-6118

Dear Sir or Madam:

I am writing to obtain information regarding handicapped parking spaces. It is my understanding that in compliance with the Americans with Disabilities Act, a hospital required to provide a certain number of handicapped parking spaces. However, my question is, if our other spaces are metered, is there any regulation that prevents us from metering handicapped spaces also?

Any written response or documentation addressing this question would be greatly appreciated. Thank you for your assistance. I look forward to hearing from you in the near future.

Sincerely,

Charlotte Halsema
Patient Representative

01-02713

DJ XX

NOV 19 1993

Ms. Camille Jones
Culver City Human Services Department
4153 Overland Avenue
Culver City, California 90230

Dear Ms. Jones:

This letter is in response to your inquiry regarding the

City's responsibilities under the ADA for providing accessible telephones. We apologize for the delay in responding.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights and obligations under the Act. This letter provides informal guidance to assist you in understanding the ADA's requirements. However, it does not constitute a legal opinion or legal advice and it is not binding on the Department.

You inquire whether the ADA requires the City of Culver to replace payphones on City property with amplified models, whether coin-operated TDD's are also required, and finally, whether the City or the phone company bears the financial burden of altering or replacing equipment. You indicate that the payphones in question are either leased from the phone company by the City or placed on City property at the request of the telephone company (we presume there is no cost to the City for the latter).

Where pay phones are installed on City property, this constitutes a service provided by the City that is subject to the accessibility obligations of the ADA. In our view, it is of no significance whether the phones are placed at the City's request or the telephone company's. The City is thus responsible for any required accessibility changes. The telephone company does not have any legal obligations under title II. However, the City could require the company to install accessible phones as the condition for granting permission to locate the phones on public property and negotiate with the company as to which party shall bear this cost.

cc: Records, Chrono, Wodatch, Magagna, Breen
udd\maganga\pl\438

01-02714

You indicate that the City has selected UFAS for purposes of its transition plan. You are correct that UFAS does not require the installation of coin-operated TDD'S. However, as noted in regard to the amplification equipment, the City could, in its

Negotiations with the telephone company, require TDD installations.

I hope this information is useful to you.

Sincerely,

John L. Wodatch
Chief
Public Access Section

01-02715

U.S. Department of Justice
Civil Rights Division
Coordination and Review Section

P.O. Box 66118
Washington, D.C. 20035-6118

NOV 23 1993

CERTIFIED MAIL RETURN RECEIPT REQUESTED

The Honorable Dale Lynch
County Judge
Van Buren County Courthouse
Clinton, Arkansas 72031

Re: Van Buren County, Arkansas - Department of Justice
Number XX

Dear Judge Lynch:

This letter constitutes our Letter of Findings under title II of the Americans with Disabilities Act (ADA) in the above-referenced matter. Title II prohibits discrimination against qualified individuals with disabilities on the basis of their disabilities in the services, programs, or activities of a local government, such as Van Buren County. Our office enforces title II's requirements, as applied to the county's services and programs, through investigation, negotiation, issuance of Letters of Findings, and, if necessary, referral for possible litigation.

Summary of Facts

In a letter dated October 13, 1992, we advised you that we had received a complaint alleging that the courtroom facilities located in the Van Buren County Courthouse are inaccessible to individuals with disabilities -- particularly those with mobility impairments. We requested that you provide us specific information to resolve the merits of the complaint by November 13, 1992.

After repeated delays, Ralph J. Blagg, counsel for the county, provided the requested information by a letter dated June 7, 1993. Subsequently, we obtained additional information during a telephone conversation between Louis M. Stewart of this office and Mr. Ron Bennett, the county's ADA Coordinator, on June 21, 1993. Based on our inquiry, we find as follows.

01-02716

The Van Buren County Courthouse is inaccessible to individuals with mobility impairments. To enter the first floor of the courthouse, an individual must climb a flight of stairs. The courtroom facilities are located on the second floor of the courthouse which also is reached by climbing a flight of stairs.

With respect to the inaccessible courtroom facilities located in the courthouse, we were advised by Mr. Blagg that:

> The Van Buren County Law Library is available for use as a courtroom when an individual with physical disabilities desires to attend a proceeding. A sign identifying the library as the 'Van Buren County Auxiliary Courtroom' has been painted on the window in 5" gold letters .... Court proceedings are relocated to this site less than one city block away anytime the need arises.

According to information provided by Mr. Blagg and Mr. Bennett, however, there is no written policy for relocating court proceedings to the "auxiliary" courtroom, and such policy as exists has never been published by the county or disseminated to the public. Rather, we understand that information on the availability of the Van Buren County Law Library as an auxiliary courtroom is simply conveyed by the Court and lawyers for parties who are mobility impaired.

In addition to the courtroom facilities, the offices of the county judge, county clerk, and county treasurer are also located on the first floor of the county courthouse. Thus, the services and activities of these offices are also inaccessible. Moreover, no information was forthcoming that would indicate that consideration has been given to or policies developed for providing alternative access to the services and benefits provided by these offices to individuals with mobility impairments.

Finally, with regard to the county's overall title II compliance efforts, we note that even though Mr. Bennett was appointed the ADA Coordinator approximately 1 1/2 years ago, that information was never disseminated to the public. Nor does it appear that the county has ever conducted a self-evaluation of its policies to determine whether they comport with the requirements of title II as contained in the title II regulation. In addition, the county has never issued a notification of its obligation to comply with title II. Moreover, the county has never adopted a grievance procedure for title II complaints or

developed a transition plan, even though it employs more than fifty employees.

Applicable Legal Standards
and Legal Conclusions of Compliance Status

Coverage by Title II

Van Buren County is a public entity. As such, it is required to comply with title II of the ADA and the Department of Justice's title II regulation. 42 U.S.C. 12131; 28 C.F.R. Part 35.

Program Access to Courtroom Facilities and other Services Located in the Courthouse

The county may not deny the benefits of or participation in its courtroom facilities or other programs to individuals with disabilities because the courthouse is inaccessible. Each of Van Buren County's services, programs, or activities, when viewed in its entirety, must be readily accessible to and usable by individuals with disabilities. This standard, known as "program accessibility," applies to all programs, services, and activities offered by Van Buren County as of January 26, 1992, the effective date of title II. See 28 C.F.R. 35.150(a) & (b).

The county does not have to take an action that it can demonstrate would result in a fundamental alteration in the nature of its program or activity or in undue financial and administrative burdens. 28 C.F.R. 150(a)(3). However, a specific determination to that effect must be made by the head of the county government or his or her designee and must include a written statement of the reasons for reaching the conclusion. The determination that undue burdens would result must be based on all resources available for use in a particular program or activity. If an action would result in such an alteration or such burdens, the county must take other alternative actions that would not result in such an alteration or such burdens but would nevertheless guarantee that individuals with disabilities receive the benefits of its programs and activities.

The county may achieve program accessibility by a number of methods and need not necessarily make each of its existing facilities accessible. In many situations, providing access to facilities through structural methods, such as alteration of existing facilities and acquisition or construction of additional

facilities may be the most efficient method of providing program accessibility. As alternatives to structural changes, however, the county may achieve program accessibility by such nonstructural methods as acquisition or redesign of equipment, assignment of aides to beneficiaries, and provision of services at alternative accessible sites.

For example, if the courtroom facilities in the courthouse are inaccessible as a result of physical barriers that prevent access to qualified individuals with disabilities (e.g., visitors, witnesses, jurors, attorneys, parties to litigation, etc.), the county could develop a written policy that provides for the relocation to a site that is accessible, when an individual with a mobility impairment desires to attend a proceeding.

Although the county appears to have taken some steps in that direction here by designating its Law Library as an auxiliary courtroom facility, it has never notified the public of this fact or published procedures so that individuals may request that court proceedings be relocated. In addition, it appears that the unpublished policy is limited to actual participants in a court hearing. Title II, however, is applicable to other individuals including visitors and potential jurors. In addition, the county has not addressed the other services and activities located in the courthouse to insure that procedures are implemented that provide for access to them.

While we are mindful of Mr. Bennett's representation during his conversation on June 21, 1993, that the county was unable to make the structural changes necessary to comply with title II of the ADA due to its limited budget, this statement alone is not sufficient to demonstrate undue financial burdens. Moreover, the county has provided no indication that it has considered other less costly alternatives.

For these reasons, we determine that the county has failed to provide program access to the programs and services located in its courthouse and is in noncompliance with title II as implemented by 28 C.F.R. 35.150(a) & (b).

Self-Evaluation

With respect to the completion of a self-evaluation, 28 C.F.R. 35.105(a) states that "(a) public entity shall ...

(by January 26, 1993] evaluate its current services, policies, and practices, and the effects thereof, that do not or may not meet the requirements of this part and, to the extent modification of any such services, policies, and practices is required, the public entity shall proceed to make the necessary modifications." In performing the self-evaluation, the county " ... shall provide an opportunity to interested persons, including individuals with disabilities or organizations representing individuals with disabilities, to participate in the self-evaluation process by submitting comments." 28 C.F.R. 35.105(b)

The county has failed to do a self-evaluation and, therefore, is in noncompliance with title II as implemented by 28 C.F.R. 35.105.

Notification to the Public

The county must give information on title II's requirements to applicants, participants, beneficiaries, and other interested persons. The notice should explain title II's applicability to the county's services, programs, or activities. The county shall provide such information as the head of the county determines to be necessary to apprise individuals of title II's prohibitions against discrimination. See 28 C.F.R. 35.106.

The county has failed to provide the required notification and, therefore, is in noncompliance with title II as implemented by 28 C.F.R. 35.106.

Designation of Responsible Employee and Grievance Procedure

Because the county employs 50 or more persons, it is required to designate at least one employee to coordinate its efforts to comply with and fulfill its responsibilities under title II, including the investigation of complaints. The county should publish the name, office address, and telephone number of the designated employee. In addition, the county must adopt and publish grievance procedures providing for prompt and equitable resolution of complaints alleging any action that would be prohibited by title II. See 28 C.F.R. l07.

Although the county did appoint an ADA Coordinator, it has never published the fact of this appointment so that interested individuals might avail themselves of the services of the coordinator with regard to the ADA. Moreover, the county has failed to adopt grievance procedures and, therefore, is in noncompliance with title II as implemented by 28 C.F.R. 35.107.

Transition Plan

Where structural modifications are required to achieve program accessibility, a public entity with 50 or more employees must have done a transition plan by July 26, 1992, that provides for the removal of these barriers. Any structural modifications must be completed as expeditiously as possible, but, in any event, by July 26, 1995. See 35.150(d).

The county has not made the necessary determinations or :devised the transition plan required to make any or all of its programs accessible. Therefore, it is in noncompliance with title II as implemented by 28 C.F.R. 35.150(d).

01-02720

Conclusion

In view of the foregoing, we conclude that the county is not in compliance with title II in the areas reviewed above and that the informal attempts already made by the county have been ineffective in correcting these violations.

Because we find the county in noncompliance, we must "[i]nitiate negotiations with ... [the county] to secure compliance by voluntary means." 28 C.F.R. 35.173(a)(2). To remedy these violations, please submit to this office, within 10 days of your receipt of this letter, a plan of action addressing each area identified. If we are unable to obtain voluntary compliance, this matter may be referred for litigation. 28 C.F.R. 35.174.

If you have any questions concerning this letter, please contact Louis M. Stewart at (202) 616-7779.

Sincerely,

Stewart B. Oneglia
Chief
Coordination and Review Section
Civil Rights Division

The Honorable Nick Smith NOV 23
Member, U.S. House of Representatives
121 S. Cochran Avenue
Charlotte, Michigan 48813

Dear Congressman Smith:

This letter is in response to your inquiry on behalf of your constituent, XX (b)(7)(c) alleging that an airline policy regarding the use of oxygen on commercial airline flights discriminates against individuals with disabilities in violation of the Americans with Disabilities Act (ADA).

Airlines are not subject to the ADA; however, they are subject to the Air Carrier Access Act of 1986, which prohibits discriminatory treatment of people with disabilities when travelling by air. The Air Carrier Access Act is enforced by the U.S. Department of Transportation.

(b)(7)(c) XX complaint also concerns the requirements of a regulation published by the Federal Aviation Administration. Therefore, it may be subject to section 504 of the Rehabilitation Act of 1973 and the Department of Transportation regulation implementing section 504.

(b)(7)(c)

Because the issues raised by XX complaint are not within the jurisdiction of the Department of Justice, we have

referred his complaint to the Department of Transportation for appropriate action. I have enclosed a copy of the referral.

I hope this information will be helpful to you in responding to your constituent.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

Enclosure

cc: Records, Chrono, Wodatch, McDowney, Blizard, Nakata, FOIA, MAF. \udd\Nakata\Congress.let\Smith.1

01-02722

U.S. House of Representatives
Washington, DC 20515-2207

September 10, 1993

Tom Reinehardt, Director
Congressional Relations
U.S. Department of Justice
Main Justice Building, Room 1603
Pennsylvania and Constitution Avenues NW
Washington, DC 20530

RE: XX (b)(7)(c)

Lansing, Michigan XX

Dear Mr. Reinehardt:

Enclosed please find a copy of a letter from XX (b)(7)(c) to your Civil Rights Division regarding the use of oxygen on commercial flights.

As you can see, XX (b)(7)(c) feels that his wife as well as thousands of other people dependent on oxygen, are being discriminated

against. He feels the airline's actions are in violation of the American Disability Act ("ADA") .

I would appreciate it if you or a member of your staff could review XX (b)(7)(c) concerns and advise him as well as my office as to the Department of Justice's position in the matter and what recourse XX (b)(7)(c) might have available.

Thank you for your attention to this matter. If you have any questions or need any additional information, please feel free to contact my Charlotte district office at (517) 543-0055.

Sincerely,

Nick Smith
Member of Congress

Enclosure

NS: jmh

121 S. Cochran Avenue 1708 Longworth Building 209 E. Washington #200D
Charlotte, MI 48813 Washington, DC 20515 Jackson, MI 49201
(517) 543-0055 (202) 225-6276 (517) 783-4486

01-02723
(handwritten)

Aug 28, 1993

Mr. Donald Walker
U.S. Dept. of Justice
Civil Rights Division
10th + Pennsylvania, N.W.
Washington, D.C. 20530

It has been suggested to us (by U.S. Senator Carl Levin) that we contact your office regarding the use of oxygen on commercial flights and while in terminals awaiting connecting flights. Oxygen provided by airlines adds a cost of $50 - $75 per flight segment, and does not permit use while in terminals or when flying on air link (commuter lines.

We feel that as handicapped persons that our rights to travel are being severely curtailed. We are aware that F.A.A. (D.O.J.) Regulations 121.574 states "A certificate holder" may allow a passenger to carry and operate equipment etc.

Part 7 (b) is no longer relevant, smoking on domestic flights is banned. As for sec. a, our suppliers are certificate holders and maintain equipment under regulations and can supply us with the type of equipment to fit under a seat in even the Air Ling (Commuter) air craft.

As the regulation now stands, those of us who need or have spouses that need oxygen are definitely being discriminated against for being handicapped.

Public Law 101-336, July 26, 1990. Sec 2 (b) purpose
1. to provide a clear and comprehensive mandate for the elimination of discrimination against individuals with disabilities.

We request correction of this discriminatory action by the F.A.A.

c.c. Sen. Carl Levin

01-02724

Further Public Law 101-336 July 26, 1990, Section 2. Findings Purposes

a. Findings
(3) discrimination against individuals with disabilities persists in such critical areas as employment housing, public accommodations, education, trans portation, communications, recreation, institutional ization, health services, voting and access to public services.

(5) individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion, the discrimination effects of architectural, transportation, and communication

barriers, overprotective rules and policies, failures, to make modifications to existing facilities and practice exclusionary qualification standards and criteria, segregation and relegation to lesser services, program activities, benefits, jobs, or other opportunities.

b. Purpose - it is the clear purpose of this act-

(1) to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities

(3) to ensure that the Federal Government play a central role in enforcing the standards established in this act on behalf of individuals with disabilities and

(4) to involve the sweep of congressional authority, indic ing the power to enforce the fourteenth amendment and to regulate commerce in order to address the major areas of discrimination faced day to day by people with disabilities.

It is also discriminatory to charge $50 - $75 per segment and not allow the patient to return the oxygen during a layover. How are we to get to a destination where commuter lines are the final segment?

c.c. Senator Carl Levin

01-02725

We have been denied the ability to fly to visit our children. This is due to F.A.A. regulation 121.574 which allows airlines to establish rules by which persons needing oxygen may use this form of transportation.

First, we are denied access to any commuter flights. The claim by these lines are that oxygen tanks will not fit under the seat. This means we must find other means of travel to complete a Trip.

Secondly, we will be charged $50 - $75 by the
on the airline) per segment; the (ILLEGIBLE)
the cost of the ticket. When awaiting a connection
flight we would not retain the oxygen at the
terminal and have to pay again to h(ILLEGIBLE)
brought to us. These costs could add $300 - $500 to the
cost of our trip.

Third, the airlines under F.A.A. regulations
will not allow us to use the oxygen we (ILLEGIBLE)
day as route to survive. Tests of buoyancy can be
conducted as security. Smoking on domestic (ILLEGIBLE)
that as possible
hazard.

We therefore are being discriminated against
And as a . The ADA
The discrimination of handicapped

We are looking to our government for a redress
Of grievance by forulation of a (ILLEGIBLE)
The handicapped (ILLEGIBLE)

c.c. Sen. Carl Levin
XX (b)(7)(c)
01-02726

NOV 23 1993

The Honorable Dennis DeConcini
United States Senate
328 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator DeConcini:

This letter is in response to your inquiry an behalf of your constituent, John McGuire, regarding interior signage in buildings under the Americans with Disabilities Act (ADA).

Title III of the ADA applies to public accommodations and commercial facilities. Title III has different technical requirements for various types of building signs. These requirements are set forth in the ADA Standards for Accessible Design at 4.30. These Standards were adopted as Appendix A to the title III implementing regulation. A copy of the regulation and Appendix are enclosed. The technical requirements for signage are also discussed in the enclosed Title III Technical Assistance Manual, p. 59.

Signage meeting the technical requirements set forth in the Standards is required in all newly constructed buildings, if first occupancy is after January 26, 1993. See 36.401 of the regulation and 4.1.3(16) of the Standards. In addition, each element of a building that is altered must conform to the standards where technically feasible if the alteration was commenced after January 26, 1992. See 36.402 of the regulation and 4.1.6 of the Standards.

For existing buildings not undergoing alterations, public accommodations (but not commercial facilities) have an obligation to remove architectural barriers to access and communication barriers that are structural in nature where it is readily achievable to do so. See 36.304 of the regulation. Replacing non-conforming signage with new signage that complies with the ADA technical standards may be readily achievable in some circumstances.

cc: Records; Chrono; Wodatch; McDowney; Magagna; Johansen; FOIA;
MAF. \udd\johansen\deconcin.ltr

01-02727

The ADA authorizes private individuals and the Attorney General to file lawsuits to enforce title III. In private suits,

if the court finds a violation it may order injunctive relief to make the necessary architectural changes to bring a building into compliance and may award the prevailing plaintiff costs and attorney's fees. In suits brought by the Attorney General, if the court finds a violation it may order similar injunctive relief and may also award compensatory damages to individuals aggrieved by the violation and civil penalties of up to $50,000 for the first violation and $100,000 for subsequent violations.

We hope this information will assist you in responding to your constituent.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

Enclosures

01-02728

Received Washington
1993 AUG 25 PM 4:45

Received Phoenix
1993 AUG 17 AM 11:37

August 16, 1993

DENNIS DeCONCINI, U.S. SENATOR

PHOENIX, ARIZONA

RE: ADA ACT

IT HAS COME TO MY ATTENTION THAT THE AMERICANS WITH DISABILITIES

ACT ADDRESSES REQUIRED SIGNAGE OF BUILDING INTERIORS. COULD YOUR

OFFICE FURNISH A COPY OF THE REGULATIONS, IMPLEMENTATION DATES

AND APPLICABLE PENALTIES FOR NON-COMPLIANCE?

THANK YOU FOR YOUR ASSISTANCE IN THIS MATTER.

JOHN C. MC GUIRE

TaxWorks "Dealer of the Year" - 1993
INCOME PROCESSORS, INC. 4539 N. 22nd St. #203 Phoenix, AZ 85061-1639
602-954-6392

NOV 23 1993

The Honorable Daniel P. Moynihan
United States Senate
464 Russell Senate Office Building
Washington, D.C. 20510

Dear Senator Moynihan:

This letter responds to your inquiry on behalf of your constituent, Edward M. McNally, concerning the regulatory requirements of the Americans with Disabilities Act (ADA) for soap dispensers for use in public washrooms.

Mr. McNally is concerned because he has been told by one of his distributors that the soap dispenser he manufactures does not comply with ADA requirements. The Standards for Accessible Design establish requirements for elements and features required to be accessible in new and altered buildings and facilities. The standards are included as Appendix A to the title III rule, a copy of which is enclosed. Section 4.22.7 (page 35653) requires that one dispenser, if dispensers are provided, in an accessible toilet room must comply with 4.27. Section 4.27.4 (page 35658) stipulates that controls and operating mechanisms shall be operable with one hand and shall not require tight grasping, pinching, or twisting of the wrist. Looking at the illustrations of the soap dispenser provided by Mr. McNally, it appears that the operation of the crank or button may indeed require pinching and, perhaps, turning of the wrist. If such is the case, this soap dispenser would not be considered suitable for use as the required accessible dispenser in a toilet room. However, in no way would this limit the use of the soap dispenser at lavatories other than the one required to be accessible.

Please encourage your constituents to contact the Public Access Section any time they have questions or need information. The Department maintains a telephone information line to provide technical assistance regarding the rights and obligations of

cc: Records; Chrono; Wodatch; McDowney; Harland; FOIA; MAF.
\udd\harland\cong.moy

individuals, businesses, agencies, and others covered or protected by the ADA. This technical assistance is available by calling 202-514-0301 (voice) or 202-514-0393 (TDD) between 1:00 p.m. and 5:00 p.m., Monday through Friday.

I hope the information we have provided is helpful to you and your constituent.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

Enclosure

VOORHIS TIEBOUT COMPANY, INC.
V-T SOAP DISPENSERS AND V-T HAND SOAPS
SoapMaster
P.O. Box 248
RED HOOK - N.Y 12571

July 22, 1993

Senator Patrick Moynihan
Room 464
Russell Senate office Bldg.
Washington, D. C. 20510

Dear Senator Moynihan:

As the owner of a small business consisting of the assembly and sale of a soap dispenser for use in public washrooms, I wish to call to your attention the disastrous effect of the Americans With Disability Act (ADA) on my company, which, incidentally, has been in business for sixty-one years in New York State.

Recently one of my distributors informed me that our soap dispensers, described in the enclosed brochure, does not meet the requirements set forth in Title III of the ADA, according to the purchasing officials of several school districts in his state.

Evidently the bureaucrats who drew up these specifications in Title III of the ADA were unfamiliar with our soap dispenser or simply preferred the products of our competitors. In that approximately 75% of our installations are in public school systems throughout the U.S., our inability to meet the specifications of the ADA will mean the termination of our business.

Ironically, over the years our soap dispenser has been preferred by schools because it has proven superior to other soap dispensing systems when it comes to performance and economy--two extremely important factors in these critical times.

It is hard for me to understand how a regulation like this was passed by Congress and signed by the President of the United States. Obviously the resulting hardships to small businesses like mine were not given a great deal of consideration.

Certainly the handicapped deserve our compassion and cooperation. However, in order to improve their way of life is it necessary or advisable to bring about the demise of a small company like mine?

Respectfully,
VOORHIS TIEBOUT CO., INC.

Edward M: McNally
President

EMM:RD
Enc.
01-02732

U.S. Department of Justice
Civil Rights Division
Coordination and Review Section
P.O. Box 66118
Washington, D.C. 20035-6118

NOV 23 1993

The Honorable Jon Lindgren
Mayor
City of Fargo
City Hall, 200 North 3rd Street
Fargo, North Dakota 58102

Re: Department of Justice Complaint Number XX (b)(6)

Dear Mayor Lindgren:

Enclosed is a copy of the executed settlement agreement between the government of the City of Fargo, North Dakota, the FARGODOME, and the Department of Justice. As you know, this settlement resolves a complaint with our office alleging that the City of Fargo and the FARGODOME. are in noncompliance with the requirements of title II of the Americans with Disabilities Act (ADA).

The complainant alleged that the FARGODOME, a sports stadium and general entertainment facility, owned and operated by the City of Fargo, North Dakota, had failed to adopt a ticket pricing policy providing for equivalent prices for tickets to events for individuals with disabilities requiring special seating as

compared to others who attend such events. In addition, the complainant asserted that the city had failed to appoint an ADA coordinator for its sports facility, did not have a grievance procedure, and had not conducted a self-evaluation of the facility's policies and practices to determine whether they comport with the requirements of the ADA. Under paragraph 21 of the agreement, the agreement is effective on the date of my signature.

Reporting Requirements Under the Settlement

Under the paragraph 16 of the settlement, the following actions (as set forth in paragraphs 8 to 15 of the agreement) shall be taken by city of Fargo and the FARGODOME:

Within 30 days of the execution of this agreement, the City shall provide the Coordination and Review Section, Civil Rights Division, the following documentation:

A. A copy of its self-evaluation that addresses the policies and practices of the FARGODOME as required by 28 C.F.R. 35.l05;

B. A copy of its published grievance procedures for resolving ADA grievances involving the FARGODOME which comply with the requirements of 28 C.F.R. 107(b);

C. The name, address, and telephone number of its ADA Coordinator responsible for the programs, services, and activities of the FARGODOME as required by 28 C.F.R. 107(a); and,

D. A copy of the final written ticketing policy.

Within 30 days of our receipt of this documentation, we shall evaluate these documents for compliance with the agreement and the Department's title II regulation. We shall report our

determination to you. Thereafter, if we find that the actions taken by the city comply with the agreement, the city is required to provide the notices contained in paragraph 18.

Please address any future correspondence to me at P.O. Box 66118, Washington, D.C. 20035-6118. In future correspondence to the Coordination and Review section, please reference the Department of Justice Complaint Number stated above. Should you have any questions concerning this letter, call Louis M. Stewart at (202) 616-7779.

Sincerely

Stewart B. Oneglia
Chief
Coordination and Review Section
Civil Rights Division

Enclosure

cc: John Gordon, FARGODOME

01-02734

U.S. Department of Justice
Civil Rights Division
Coordination and Review Section
P.O. Box 66118
Washington, D.C. 20035-6118

(b)(6) NOV 23 1993
XX
XX
Moorhead, Minnesota XX

Re: Department of Justice Complaint Number XX

Dear Mr. XX

Enclosed is a copy of the executed settlement agreement between the government of the City of Fargo, North Dakota, the FARGODOME, and the Department of Justice. This settlement resolves your complaint with our office alleging that the City of Fargo and the FARGODOME are in noncompliance with title II of the Americans with Disabilities Act (ADA).

Specifically, you alleged that the FARGODGME, a sports

stadium and general entertainment facility, owned and operated by the City of Fargo, North Dakota, had failed to adopt a ticket pricing policy providing for equivalent prices for tickets to events for individuals with disabilities requiring special seating as compared to others who attend such events. In addition, you asserted that the city had failed to appoint an ADA coordinator for its sports facility, did not have a grievance procedure, and had not conducted a self-evaluation of the facility's policies and practices to determine whether they comported with the requirements of the ADA.

Under the terms of the settlement, city and FARGODOME officials agreed to adopt a formal ticket pricing policy that provides for equivalent tickets prices for individuals with disabilities needing special seating to attend events in the facility as compared to the prices charged to others. The city agreed to publicize its new policy through dissemination of notices to the public and local newspapers. The city also agreed to appoint an ADA coordinator for the FARGODOME, develop grievance procedures, and conduct a self-evaluation.

By this letter, we are closing the investigation of your complaint. We will be monitoring, however, the compliance by the city and the FARGODOME with this agreement. We appreciate your cooperation in the course of our investigation,

If you have any questions, please contact Louis M. Stewart of this office at (202) 616-7779. Please reference the complaint number cited above in all future correspondence or contact with this office.

Sincerely

Stewart B. Oneglia
Chief
Coordination and Review Section
Civil Rights Division

Enclosure

01-02736

DEPARTMENT OF JUSTICE

FOR IMMEDIATE RELEASE CR
WEDNESDAY, NOVEMBER 24, 1993 (202) 616-2765

FARGODOME WILL END DISCRIMINATORY TICKET PRICING FOR PERSONS WITH DISABILITIES UNDER DEPARTMENT OF JUSTICE SETTLEMENT

WASHINGTON, D.C. -- The Fargodome in Fargo, North Dakota, agreed today to charge persons with disabilities ticket prices equivalent to those it charges others attending sport and

entertainment events in the stadium. The settlement resolves a complaint filed with the Department of Justice under the Americans with Disabilities Act (ADA), a 1990 law prohibiting discrimination against individuals with disabilities.

The complaint alleged that the Fargodome, the city's sports stadium and general entertainment facility, had a ticket pricing policy that resulted in persons with disabilities who required special seating paying more for seats than others who attend such events. Today's agreement, reached through informal negotiations, establishes a formal policy providing for equivalent pricing.

"The Department of Justice remains committed to the enforcement of the ADA," said Acting Assistant Attorney General for the Civil Rights Division James P. Turner. We encourage

(MORE)

other sport and entertainment complexes to review their pricing policies to ensure compliance with the law."

In addition to adopting a new price policy for tickets, the Fargodome will appoint an ADA coordinator, develop a grievance procedure, conduct a self-evaluation of its practices, and

publicize its new policy in local papers.

The agreement also permits the Department to petition U.S. District Court to seek specific performance if the city fails to comply with the terms of today's agreement.

###

93-369

01-02738

SETTLEMENT AGREEMENT

between

THE UNITED STATES OF AMERICA

and

THE CITY OF FARGO, NORTH DAKOTA

and

FARGO DOME AUTHORITY

DEPARTMENT OF JUSTICE COMPLAINT NUMBER XX

This matter was initiated by a complaint filed in March, 1993, under Title II of the Americans with Disabilities Act (ADA) , 42 U.S.C. 12131-12134, with the United States Department of Justice, Civil Rights Division, Coordination and Review section, against the city of Fargo, North Dakota (the City) . The complaint alleged that the ticketing pricing policies of the City's FARGODOME discriminate against individuals with disabilities who require special seating to attend events in the FARGODOME. In addition, the complaint asserted that no self-evaluation had been done on the FARGODOME. Pursuant to the provision of the ADA entitled "Alternative Means of Dispute Resolution," 42 U.S.C. 12212, the parties have entered into this agreement.

The parties to this agreement are the United States of America, the City of Fargo, North Dakota, a municipal corporation, (hereinafter referred to as "City") and the Fargo Dome Authority, a body created pursuant to Article III(P) of the Fargo Home Rule Charter (hereinafter referred to as "Authority" or "FARGODOME").

01-02739

In order to avoid the burdens and expenses of an investigation and possible litigation, the parties hereby agree as follows:

1. The ADA applies to the City and the Authority because

they are public entities as defined in 42 U.S.C. 12131.

2. The City owns and the Authority operates a general use facility named the FARGODOME.

3. Title II of the ADA prohibits discrimination against qualified individuals with disabilities on the basis of disability, in the services, programs, or activities of a public entity such as the City and Authority including the ticketing pricing policies for events at the FARGODOME.

4. The City and Authority may not deny or limit the benefits of or participation of individuals with disabilities in the events held at FARGODOME based on the FARGODOME's ticket pricing policies.

5. At the time the complaint in this matter was filed, the FARGODOME had not formally adopted and publicly published any policies relating to special ticket pricing for seats at events designated for individuals needing special seating because of their mobility or other impairments.

6. At the time the complaint in this matter was filed, the City and Authority had not done a self-evaluation plan addressing the services, policies, and practices as required by the Department's Title II regulation at 28 C.F.R. 35.105; written and published a grievance procedure applicable to the programs, services, and activities of the FARGODOME as required by 28 C.F.R. 35.107(b); or, designated an employee with responsibility to

coordinate its compliance with the requirements of the ADA at the FARGODOME as required by 28 C.F.R. 35.107(a).

7. The subjects of this settlement agreement include the development of a plan which will provide equivalent ticket prices to those individuals with disabilities needing special seating who wish to attend particular programs and activities held in the FARGODOME. In addition, this settlement agreement requires the completion of a self-evaluation of the policies and practices of the FARGODOME to ensure non-discriminatory treatment of individuals with disabilities, the development of a grievance procedure for the FARGODOME, and the selection of an ADA coordinator for the FARGODOME.

8. The City and Authority shall issue to the public a formal written policy on the ticket pricing policy at the FARGODOME for special seating for individuals with mobility impairments or others who have limited mobility.

9. This policy shall ensure that an equivalent range of ticket prices is offered to individuals with disabilities requiring special seating as the prices for those not requiring such seating.

10. The policy shall state that where the only seating available to individuals with disabilities needing special seating is located in the areas with higher priced tickets, the FARGODOME shall adjust the ticket prices for the event to ensure that individuals with disabilities who need special seating are not

required to pay higher prices for tickets.

01-02741

11. copies of the written policy shall be provided to members of the public upon request and shall be prominently displayed on all bulletin boards in the FARGODOME.

12. The City and Authority shall issue instructions concerning this policy to employees of the FARGODOME or other individuals responsible for selling tickets to the public.

13. The City and Authority shall adopt reasonable methods to ensure that this policy is disseminated to the general public on a continuing basis.

14. The city and Authority shall ensure that a copy of this policy is included in all the informational packages or promotional materials provided to prospective and actual lessees of Dome facilities.

15. The City and Authority shall incorporate into the contracts of all lessees using the FARGODOME for public events a clause containing the requirements of its ticket pricing policies.

16. Within 30 days of the execution of this agreement, the City and Authority shall provide the Coordination and Review Section, Civil Rights Division, the following documentation:

A. A copy of its self-evaluation that addresses the policies and practices of the FARGODOME as required by 28 C.F.R. 35.105;

B. A copy of its published grievance procedures for resolving ADA grievances involving the FARGODOME that comply with the requirements of 28 C.F.R 107 (b) ;

c . The name, address, and telephone number of its ADA

Coordinator responsible for the programs, services, and activities of the FARGODOME as required by 28 C.F.R. 107(a); and,

D. A copy of the final written ticketing policy.

17. The Department shall review these documents for compliance with this agreement and the Department's Title II regulation within 30 days of its receipt of the documentation.

18. within thirty (30) days of Departmental approval of the written policy and other written submissions required by this agreement, the written policy shall be published on two separate occasions in a newspaper of general circulation serving Fargo, North Dakota. In addition to including the written policy, the notice shall state that "Pursuant to the requirements of Title II of the Americans with Disabilities Act, the FARGCDOME will not discriminate against qualified individuals with disabilities on the basis of disability, in the FARGODOME's services, programs, or activities."

19. The Department may review compliance with this agreement at any time.

20. This document is a public agreement. A copy of this document or any information contained in it may be made available to any person by the city, Authority or the Department on request.

21. The effective date of this agreement is the date of the last signature below.

22. The Department of Justice is authorized under 28 C.F.R.

Part 35, Subpart F, to investigate fully the allegations of the complaint in this matter to determine the compliance of the City with Title II of the ADA and the Department's implementing Title II regulation, issue findings, and, where appropriate, negotiate and secure voluntary compliance agreements. Furthermore, the Attorney

General is authorized under 42 U.S.C. 12133, to bring a civil Action enforcing Title II of the ADA should the Department of Justice fail to secure voluntary compliance pursuant to Subpart F. In consideration of the term of this agreement as set forth above, the Attorney General agrees to refrain from undertaking further investigation or from filing civil suit in this matter.

23. The Department of Justice may review compliance with this agreement at any time. If it determines that this agreement or any requirement thereof has been violated, it may institute a civil action seeking specific performance of the provisions of this agreement in an appropriate federal court.

24. The Department of Justice's failure to enforce this entire agreement or any provision of thereof with respect to any deadline of any other provision herein shall not be construed as a waiver of the Department of Justice's right to enforce other deadlines and provisions of this agreement.

25. In the event that the City or Authority fails to comply in a timely manner with any requirement of this agreement without obtaining sufficient advance written agreement with the Department

of Justice as a temporary modification of the relevant terms of this agreement, all terms of this agreement shall become enforceable in an appropriate federal court.

26. This agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or agents of either party, that is not contained in this written

agreement, shall be enforceable. This agreement does not purport to remedy any other potential violations of the Americans with Disabilities Act or any other federal law. This agreement does not affect the City's and Authority's continuing responsibility to comply with all aspects of the Americans with Disabilities Act.

DATED this 8th day of November, 1993.

For the CITY OF FARGO,
NORTH DAKOTA, a municipal
corporation

By
Jon G. Lindgren, Mayor

ATTEST:

(Signature)
Mark Thelen, Finance Director

DATED this 10th day of November, 1993.

For the FARGO DOME AUTHORITY

By (Signature)

Its President (Handwritten)

DATED this 23 day of November, 1993.

For the UNITED STATE OF AMERICA

By
Stewart B. Oneglia
Louis M. Stewart
Attorneys
Coordination & Review section
Civil Rights Division
U.S. Department of Justice
P.O. Box 66738
Washington, D.C. 20035-6738

ws38694/skr693

7

01-02745

U.S. Department of Justice

Civil Rights Division

Public Access Section

P. O. Box 66738
DJ XXX Washington, DC 20035-6738

NOV 24 1993

Elaine B. Feingold, Co-director
Clinical Legal Education Program
Disability Rights Education and Defense
Fund, Inc.
2212 Sixth Street
Berkeley, California 94710

Dear Ms. Feingold:

This letter is in response to your November 22, 1993, inquiry regarding the scope of the "association" provision of title III of the Americans with Disabilities Act.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to you in understanding the ADA's requirements.

However, it does not constitute a legal interpretation, and it is not binding on the Department.

You describe a situation in which an individual with a disability, A, attempts to rent a car to take a vacation with her two friends, B and C. A intends for one of her two friends, B, to drive because she cannot. However, B has a disability that requires the use of hand controls. The rental car company refuses to make available a vehicle with hand controls. It also refuses to rent to A, because it will only rent a vehicle when the intended driver has a valid credit card, which B does not.

Your question is whether C, who does not have a disability, has an ADA cause of action under 42 U.S. C. 12182 (b) (1) (E) and 28 C.F.R. 36.205, because he was deprived of the opportunity to participate in the planned trip, because of his association with A and B. The statute provides:

> It shall be discriminatory to exclude or otherwise deny equal goods, services, facilities, privileges, advantages, accommodations, or other opportunities to an individual or entity because of the known disability of an individual with whom the individual or entity is known to have a relationship or association.

42 U.S.C. 12182(b)(1)(E). The Department's regulation provides:

> A public accommodation shall not exclude or otherwise deny equal goods, services, facilities, privileges, advantages, accommodations, or other opportunities to an individual or entity because of the known disability of an individual with whom the individual or entity is known to have a relationship or association.

28 C.F.R. 36.205.

We believe that the situation that you have presented to us is analogous to an illustration provided both in the analysis to

36.205 of the Department's ADA title III regulation and III-3.5000 of the Department's ADA Title III Technical Assistance Manual. Both the regulation and the Manual make clear that, if a party of individuals is refused entry to a theater because one of the individuals has cerebral palsy, the other individuals in the party have an independent cause of action under the association provision. Likewise, in the situation that you present, C would have an independent cause of action because he has been denied the "advantages" that car rental would provide for the planned vacation experience. This conclusion assumes that the rental car company acted with knowledge of C's "relationship or association" with the individuals with disabilities.

We hope that this discussion is helpful to you.

Sincerely,

John L. Wodatch
Chief
Public Access Section

01-02747

T. 11-22-93

DJ 202-PL-554

NOV 29 1993

Mr. Mike Warren
Storage Systems Company
130 East Chestnut Street
Columbus, Ohio 43215

Dear Mr. Warren:

I am responding to your letter concerning the requirements of the Americans with Disabilities Act (ADA), in which you asked:

1) When a covered entity would be required to purchase and install the type of office systems equipment that your company sells;

2) What the consequences of failure to comply with the ADA would be; and

3) What liability you may incur if you fail to inform your customers of their ADA obligations.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities that have rights or responsibilities under the Act. This letter provides informal guidance to assist you in understanding the ADA. However, this technical assistance does not constitute a legal interpretation of the ADA, and it is not binding on the Department.
The ADA prohibits discrimination on the basis of disability in employment, in the provision of public services, in transportation, and in the operation of places of public accommodation. In addition, the ADA requires newly constructed or altered public buildings, places of public accommodation, and commercial facilities to be accessible to people with disabilities.

Enforcement of these ADA requirements is divided among the Equal Employment Opportunity Commission, the Department of Transportation, and the Department of Justice. Each of these enforcement agencies has issued regulations to implement the ADA provisions within its jurisdiction. The determination of any

cc: Records, Chrono, Wodatch, Blizard, Friedlander
n:\udd\blizard\adaltrs\warren

01-02748

entity's specific responsibility under the ADA requires a case-by-case analysis.

The Department of Justice has issued regulations to implement the ADA requirements that apply to public entities, public accommodations, and commercial facilities. The Department has also published two technical assistance manuals to assist individuals and entities affected by the ADA to understand the Act. Copies of these documents are enclosed for your information. These documents should enable you to determine how title II and title III of the ADA apply to your customers and to determine what enforcement measures may be taken against covered entities that fail to meet their obligations.

To obtain information about the employment requirements that may apply to your customers, you may write to the Equal Employment Opportunity Commission (1801 L Street, N.W., Washington, D.C. 20507). Information about the transportation requirements of the ADA may be obtained from the U.S. Department of Transportation (400 Seventh Street, S.W., Washington, D.C. 20590).

With respect to your potential liability, please note that the ADA imposes no obligation on vendors to advise their customers about their legal obligations. However, the ADA does not alter any other State or Federal law that may govern your responsibilities to your customers; therefore, you may have liability arising from a statutory or common law obligation unrelated to the ADA. To determine your specific obligations, you should consult with your own attorney.

I hope that this information is helpful to you.

Sincerely,

John L. Wodatch
Chief
Public Access Section

Enclosures

01-02749

Storage Systems Company

May 25,1993

Mr. John Wodatch
U.S. Department of Justice
Civil Rights Division
Public Access Section
P.O. Box 66738
Washington, DC 20035-6738

Dear Mr. Wodatch:

We are having a very difficult time during our selling process of convincing our clients that they need to comply to ADA standards when designing filing systems like those enclosed. The purpose of this letter is to solicit your help.

These clients typically respond with "that doesn't effect us" or "we will never have a handicap person work in the file room". This response has come from both the private and government sectors.

Our request: Can you address specifically those areas which should be complied to with our equipment, and the consequences of knowingly not doing so.

Besides wanting to improve the quality of life for these disadvantaged workers, we are also concerned about our own liability if we fail to inform our clients of these responsibilities. If we sell ourselves as "the professional", this may hold us accountable. Any clarification you can provide on this issue would also be beneficial.

Thank you in advance for your prompt attention to this matter. Please contact me upon receiving this letter so that we may discuss in further detail.

Sincerely,

Mike Warren

MW/kkm

130E CHESTNUT ST. - COLUMBUS, OH 43215 - 614-228-2112

FAX: 614-228-2144

01-02750
T. 11-24-93

DJ 202-PL-705

NOV 29 1993

Mr. Anthony H. Vergona
1653 Dogwood Drive
Harvey, Louisiana 70058-3534

Dear Mr. Vergona:

This letter is in response to your inquiry about the application of the Americans with Disabilities Act (ADA) to cruise ships and casino boats that operate on the Mississippi River.

The ADA authorizes the Department to provide technical assistance to individuals and entities that have rights or responsibilities under the Act. This letter provides informal guidance to assist you in understanding the ADA. However, this technical assistance does not constitute a legal interpretation of the statute, and it is not binding on the Department.

Cruise ships and casino boats may be subject to the requirements of both the Department of Justice and the Department of Transportation regulations implementing title III of the ADA. This Department's regulation implementing title III applies to private entities that own, operate, lease, or lease to a private entity whose operations fall within one or more of twelve specified categories. Among those categories are places of lodging, places that serve food or drink, places of public gathering, and places of recreation or entertainment. If the activities conducted on a ship fall within one or more of these categories, the ship would be considered a place of public accommodation that is subject to the Department of Justice title III regulation.

A ship that is a place of public accommodation must comply with the full range of title III requirements, which include nondiscriminatory eligibility criteria; reasonable modifications in policies, practices, and procedures; provision of auxiliary aids; and readily achievable removal of barriers in existing facilities. However, a ship is not required to comply with a specific accessibility standard for new construction or alterations because no Federal standard for the construction of accessible ships has been developed.

cc: Records, Chrono, Wodatch, Blizard FOIA Friedlander
n:\Udd\blizard\adaltrs\vergona

01-02751

Coverage of cruise ships is discussed in the preamble to section 36.104 of this Department's title III regulation (at page

35550) and in section III-5.3000 of the Title III Technical Assistance Manual. Copies of the regulation and the Technical Assistance Manual are enclosed for your information.

Under the regulation issued by the Department of Transportation, cruise ships are classified as "specified public transportation," because they are operated by a private entity that is primarily engaged in the business of providing transportation. Entities operating forms of specified public transportation may not discriminate on the basis of disability in providing transportation services. Additional information about the regulation issued by the Department of Transportation may be obtained from the Office of the General Counsel, U.S. Department of Transportation, 400 7th Street, S.W., Washington, D.C. 20590.

I hope that this information is helpful to you.

Sincerely,

John L. Wodatch
Chief
Public Access Section

Enclosures

01-02752

ANTHONY H. VERGONA S.F.O.
CONSUMER ADVOCATE
1653 DOGWOOD DRIVE
HARVEY, LA. 70058-3534

504/362-0975 - Voice/TDD

(handwritten)

November 9, 1993

U.S. Department of Justice

P. O. Box 66738

Washington, DC 20035-6738

Dear Sir:

I would like to know if current river tour boats operating here at the Lower Mississippi River and Casino boats are covered by A.D.A.

More specifily Title III of the American with Disabilities Act.

I would like this addressed by your office to these cases especially so we can show + advise these tour boat/casino boat operations.

Thank you.

Sincerely,

A. H. Vergona

01-02753

11-24-93

DJ 202-PL-315

29 1993

Mr. Danny Ledford
Division Manager
Brown Sprinkler Corporation
4705 Pinewood Road
Louisville, Kentucky 40218

Dear Mr. Ledford:

This is in response to your letter requesting information on alarm systems under the Americans with Disabilities Act (ADA). I apologize for our delay in responding to you.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities that are subject to the Act. This letter provides informal guidance to assist you in understanding the ADA accessibility standards. However, this technical assistance does not constitute a legal interpretation of the application of the statute and it is not binding on the Department.

Section 4.1.3(14) of the ADA Standards for Accessible Design (standards) states, in part, that, "If emergency warning systems are provided, then they shall include both audible alarms and visual alarms complying with 4.28 . . . . " Therefore, if the local fire code officials do not require an alarm system in a facility, the ADA does not require that one be installed. However, whether or not local fire codes require installation of a fire alarm, if a fire alarm is installed, it must comply with the ADA Standards.

We are enclosing for your reference the title III regulation (including the Standards) and the Title III Technical Assistance Manual. We hope this information is helpful to you.

Sincerely,

John L. Wodatch
Chief
Public Access Section

Enclosures

CC: Records, Chrono, Wodatch, Blizard, Johansen, FOIA, Friedlander
n:\udd\mercado\plcrtltr\ledford.lkj

01-02754

SEP 03 '92 13:45 BROWN SPRINKLER CORP P.1
Fax Transmittal Memo 7672

BROWN Sprinkler Corporation
AUTOMATIC
SPRINKLER 4705 Pinewood RD., Louisville, Kentucky 40218
SYSTEM 742-A Werne Drive, Lexington, Kentucky 40504

September 3, 1992

Department of Justice
Americans with Disabilities

Attn: John Wodatch

RE: Americas with Disabilities Act
Fire Alarm System
Rules and regulations

Dear Sir,

This letter is to request an interpretation on the requirements of the American with Disabilities Act.

The project in questions is a retail facility located in the State Kentucky. The local building code does not require a fire alarm system In this type of facility. The automatic sprinkler system is supervised by an alarm panel connected to one (1) interior and one (1) exterior electric bell and one (1) alarm horn located an the wall of sales. floor. The alarm panel will also be monitored by a central station With this system fall within the requirement of the Americans with Disabilities Act, requiring audio and visual alarms throughout the facility.

Please respond to the above ASAP. Any questions, please feel free to contact me in our Lexington Office.

Very truly yours,
Brown Sprinkler Corporation

Danny Ledford
Division Manager

01-02755

T. 11-18-93
DJ 202-PL-136 NOV 29 1993

Ms. April E. Poland
Leech Architects, Inc.
7785 East 126th Street
Fishers, Indiana 46038

Dear Ms. Poland:

I am responding to your letter asking for clarification of the requirements of title III of the Americans with Disabilities Act (ADA) and the Department of Justice regulation implementing title III. I apologize for our delay in responding to you.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities that have rights or responsibilities under the Act. This letter provides informal guidance to assist you in understanding the ADA and the Department's regulation. However, this technical assistance does not constitute a determination by the Department of your rights or responsibilities under the ADA, and it is not binding on the Department.

You have asked whether a retail business located in a strip shopping mail is required to install an elevator if it alters the facility to add a mezzanine level that will contain only office space. To determine if elevator access to a mezzanine in a specific building is required, you must look to the requirement that applies to the building in which the mezzanine is located.

In new construction and alterations, title III generally requires that at least one accessible passenger elevator serve each level of a multistory building. However, there is an exception to this general rule. Elevators are not required in facilities that are less than three stories or have fewer than

3000 square feet per story, unless the building is a shopping center or mall; the professional office of a health care provider; a public transit station; or an airport passenger terminal.

Section 3.5 of the ADA Standards for Accessible Design (Appendix A to the enclosed regulation) defines a "story" as:

> That portion of a building included between the upper surface of a floor and upper surface of the floor or roof next above. If such portion of a building does not include occupiable space, it is not considered a

cc: Records, Chrono, Wodatch, Blizard, FOIA, Friedlander
n:\Udd\blizard\adaltrs\poland

01-02756

> story for purposes of these guidelines. There may be more than one floor level within a story as in the case of a mezzanine or mezzanines.

A mezzanine, defined as "that portion of a story which is an intermediate floor level placed within the story and having occupiable space above and below its floor," is not considered a "story" for the purpose of determining if an elevator is required.

Section 36.404(a)(2) of the title III rule defines a "shopping center or mall" for the purpose of applying the elevator exemption to an existing facility, as

> A series of buildings on a common site, connected by a common pedestrian route above or below the ground floor, that is under common ownership or common control or developed either as one project or as a series of related projects, housing five or more sales or rental establishments. . . .

(Emphasis added.) If there is no common pedestrian route connecting the buildings above or below the ground floor on the site that is being altered, then the facility is not a shopping center or mall and the elevator exemption would apply. If no elevator is required in a building, then no accessible means of vertical access to mezzanines within that building is required.

If the elevator exemption does not apply, then, under sections 4.1.3(5) and 4.1.6(l)(f) of the ADA Standards, a

multistory facility that undertakes an alteration that includes the addition of an escalator or stairs (where none existed previously) that requires major structural modifications for installation, is required to install an elevator unless it is technically infeasible to do so. When a multistory building does not qualify for the elevator exemption, all floors must be served by elevators, even if the floors are used only by employees.

For your information, I am enclosing a copy of this Department's regulation implementing title III of the ADA and the Title III Technical Assistance Manual.

I hope that this information is helpful to you.

Sincerely,

John L. Wodatch
Chief
Public Access Section

Enclosures
01-02757

LEECH ARCHITECTS, INC.
7785 E 126th Street
Fishers, Indiana 46038
Telephone 317-842-1931

June 23, 1992

Attn: Mr. Joe Beard
Office on the Americans with Disabilities Act
Civil Rights Division
P.O. Box 66118
Washington, DC 20035-6118

Mr. Beard,

I am writing to reconfirm my conversation with you during the week of April 6, 1992. My previous letter dated April 13, 1992 must not have reached you. I am requesting written verification and clarification of the following question.

My question to you was regarding elevator/lift requirements for existing construction to be altered in a retail store, within a strip shopping mall. You indicated that the ADA requirements will not allow the elevator exemption for shopping centers or malls. You then identified to me the definitions for shopping centers and malls, and you also indicated that once there are more than (5)retail stores with a common pathway; that an elevator would be required.

But you then indicated that floors that do not house retail or rental

establishments are not defined as "shopping center or mall"; therefore you indicated that an elevator to an office area of less than 3,000 square feet for a retail store probably would not be required.

Thus, in this scenario, a retail store that is to be remodeled in such a way as to add a mezzanine area for offices; even though the main level -is considered a shopping mall or center - the mezzanine level (if it is under 3,000 s.f. or less than (3) stories, and houses no sales or rental establishments) should be exempt from the elevator requirement. This, then, implies that we are within compliance for the Title III portion of the ADA as you indicated during our conversation.

As per our conversation and this review I am proceeding, but you stated that you cannot confirm in writing our conversation unless specifically requested. Thus, this is my request for your confirmation. I would appreciate it if you could document your confirmation of this interpretation to me as soon as possible, thus verifying all questions regarding elevator/1 if t requirements for the project this inquiry has been undertaken.

Thank-you again for your time, I look forward to receiving your verification promptly after your review of this letter.

Sincerely,

April E. Polland

cc: William Cooper
Tom Huller
Mark Mathias
Donna Tarr
Curt Johanson
Greg Lyons
Daniel Patterson

LEECH ARCHITECTS, INC.
7785 E 126th Street
Fishers, Indiana 46038
Telephone 317-842-1931

April 13, 1992

Attn: Mr. Joe Beard
Office on the Americans with Disabilities Act
Civil Rights Division
P.O. Box 66118
Washington, DC 20035-6118

Mr. Beard,

I am writing to confirm my conversation with you during the week of April 6, 1992., My question to you was regarding elevator/lift requirements for existing construction to be altered in a retail store, within a strip shopping mall. You indicated that the ADA

requirements will not allow the elevator exemption for shopping centers or malls. You then identified to me the definitions for shopping centers and malls, and you also indicated that once there are more than (5) retail stores with a common pathway; that an elevator would be required.

But you then indicated that floors that do not house retail or rental establishments are not defined as "shopping center or mall"; therefore you indicated that an elevator to an office area of less than 3,000 square feet for a retail store probably would not be required.

Thus, in this scenario, a retail store that is to be remodeled in such a way as to add a mezzanine area for offices; even though the main level is considered a shopping mall or center - the mezzanine level (if it is under 3,000 s.f. or less than (3) stories, and houses no sales or rental establishments) should be exempt from the elevator requirement. This, then, implies that we are within compliance for the Title III portion of the ADA as You indicated during our conversation.

As per our conversation and this review I am proceeding, but you stated that you cannot confirm in writing our conversation unless specifically requested. Thus, I am writing to request your confirmation. I would appreciate it if you could document your confirmation of this interpretation to me as soon as possible, thus verifying all questions regarding elevator/lift requirements for the project this inquiry has been undertaken.

01-02760

Thank-you again for your time, I look forward to receiving your verification promptly after your review of this letter.

Sincerely,

April E. Poland

cc: William Cooper
Tom Muller
Mark Mathias
Donna Tarr
Curt Johanson
Greg Lyons
Daniel Patterson.

01-02761

DJ XX

NOV 29 1993

Professor Bonnie Tucker
Arizona State University
College of Law
Tempe, Arizona 85287

Dear Professor Tucker:

This letter is in response to your letter of May 6, 1993,

requesting clarification of the transportation provisions of the Americans with Disabilities Act of 1990 ("ADA"). I apologize for not responding to your letter earlier.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist you in understanding the ADA's requirements. However, it does not constitute a legal interpretation or legal advice and it is not binding on the Department of Justice.

In your letter, you request clarification regarding the apparent conflict between the regulations promulgated by the Department of Justice ("DOJ"), and the regulations promulgated by the Department of Transportation ("DOT") . Although the DOT's regulations may be narrower than those of the DOJ, we do not believe that they conflict with each other.

I. Private Universities

Private universities are considered "public accommodations" under the ADA, and, therefore, have ongoing obligations under title III of the statute. As you note, title III requires private entities, including private universities, to provide people with disabilities "full and equal enjoyment" of their programs and services, 28 C.F.R. S 36.201, and may require a private entity to modify its policies, practices or procedures, 28 C.F.R. S 36.302; provide necessary auxiliary aids and services, 28 C.F.R. S 36.303; and remove barriers to access in existing facilities when such removal is readily achievable, 28 C.F.R. S 36.304.

cc: Records, Chrono, Wodatch, Magagna, Perley
udd\perley\policy\tucker

01-02762

Title III also contains specific provisions regarding the operation of fixed route and demand responsive systems by private entities. 28 U.S.C. S 12182 (B) and (C); see also 28 C.F.R. S 36.310. Specifically, the statute requires private entities that operate fixed route systems, when acquiring vehicles, to either (a) purchase or lease vehicles that are readily accessible to and usable by individuals with disabilities (if the vehicle

has a seating capacity in excess of 16 passengers), or (b) ensure, upon the purchasing or leasing of a vehicle that has a seating capacity of 16 or fewer passengers, that the system provides a level of service to individuals with disabilities, including individuals who use wheelchairs, equivalent to the level of service provided to individuals without disabilities. 28 U.S. C. S 12182 (B) . The statute is silent as to a private entity's responsibilities regarding the operation of a fixed route system absent the purchase or lease of a vehicle.

With respect to demand responsive systems, the statute requires a private entity to operate its demand responsive system so that, when viewed in its entirety, the system ensures a level of service to individuals with disabilities, including individuals who use wheelchairs, equivalent to the level of service provided to individuals without disabilities. 28 U.S.C. S 12182(C). This requirement exists whether or not the private entity has purchased or leased a new vehicle.

In interpreting these provisions, the DOJ regulations specifically defer to those promulgated by the DOT. see 28 C.F.R. S 36.310 (c) ("a public accommodation ... shall comply with the requirements pertaining to vehicles and transportation systems in the regulations issued by the Secretary of Transportation"). Under the DOT regulations, transportation services operated by private universities are subject to the provisions governing private entities not primarily engaged in the business of transporting people, 49 C.F.R. SS 37.25(a), 37.101. These regulations track the statutory requirements for fixed route systems presented above.

The issue remains, therefore, as to what obligations, if any, other than those relating to vehicle acquisition, apply to private universities that operate fixed route systems. As both the statute and the DOT regulations are silent on this issue, the DOJ regulations are controlling. Section 36.310(b) of the DOJ regulation provides that a private entity shall remove transportation barriers in existing vehicles used for transporting passengers where such removal is readily achievable. The regulation specifically provides, however, that such barrier removal does not include the installation of lifts. Accordingly, a private university must remove architectural barriers in its existing vehicles so long as such removal does not require the installation of lifts.

A private university must also make reasonable modifications in its policies, practices, and procedures. Such modifications may include the provision of transportation services to

individuals with disabilities who are unable to use the existing system. See 28 C.F.R. S 36.302 (modifications in policies, practices, or procedures). For example, a university might be required to provide shuttle car or van service on demand. Alternatively, a university might be required to reimburse a student for any costs incurred in arranging her own transportation. The modifications required would depend upon the service provided by the university, the particular needs of the individual, and the nature and cost of the modifications.

In your letter, you ask whether a university must either (a) purchase or lease accessible vehicles now or (b) provide some form of "paratransit" service. in light of the above analysis, a private university is not necessarily required to purchase or lease accessible vehicles now. Private universities that operate demand responsive systems must now provide some sort of equivalent service to persons with disabilities. Although this need not specifically be "paratransit" service (i.e., it need not comply with the DOT regulations governing the provision of paratransit services by public entities), the service must satisfy the standards delineated in S 37.105 of the DOT's regulations ("equivalent service standard. ") Likewise, private universities that operate fixed route systems must engage in readily achievable barrier removal and make reasonable modifications in their policies, practices, and procedures. Such modifications may result in the provision of paratransit-like services, although these services need not comply with the DOT's regulations governing public-sector paratransit systems.

II. Public Universities

The analysis regarding public universities is similar. Public universities are operated by State or local governments, and, therefore, are governed by title II of the ADA. See 42 U.S.C. S 12 115 (I)(B) (definition of public entity).

Like title III, title II contains specific provisions regarding the operation of fixed route and demand responsive systems by public entities. See 28 U.S.C. SS 12142-45. With respect to public universities that operate fixed route systems, DOT has determined that such systems should be treated like commuter bus services. 49 C.F.R. S 37.25 (b) .

Under title II, a public entity that operates a fixed route system must purchase or lease new vehicles so that they are readily accessible to and usable by individuals with disabilities. 42 U.S.C. S 12142(a). Most public entities, but not commuter bus services, must also provide supplementary paratransit services that strictly comply with regulations

promulgated by the DOT. 42 U.S.C. S 12143 (a). Because public university operated fixed route systems are treated like commuter bus services under the DOT regulations, a public university must only purchase or lease new vehicles that are accessible, but is not required to offer paratransit services.

With respect to demand responsive systems, a public university that operates such a system and purchases or leases a new vehicle must either (a) ensure that the vehicle is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, or (b) ensure that the system, when viewed in its entirety, provides a level of service to such individuals equivalent to the level of service such system provides to individuals without disabilities. 42 U.S.C. S 12144. The statute and the DOT regulations are silent as to a public university's obligations regarding the operation of an existing system independent of vehicle acquisition.

Under the general provisions of title II, however, the public university must, to the maximum extent possible, ensure that the services, programs, and activities operated by the private university are, when viewed in its entirety, readily accessible to persons with disabilities. 28 C.F.R. 35.150. The above discussion demonstrates that a public university need not install lifts in its existing vehicles, nor need it provide "paratransit" services as described in the DOT regulations. Nevertheless, the university has the ongoing obligation to ensure that its services -- here, the operation of fixed route or demand responsive transportation systems -- are readily accessible to persons with disabilities. Accordingly, the public university has the obligation to provide transportation services that will enable a person with a disability to have an equal opportunity to participate in the programs offered by the university. Again, this could result in a "paratransit-like" system.

I hope that this information answers your questions, and clarifies any apparent contradictions between the DOJ regulations and the DOT regulations. Thank you for your concern.

Sincerely,

John L. Wodatch
Chief

Public Access Section

01-02765

T. 12-3-93

DJ 202-PL-00056

DEC 3

Mr. Scott R. Edwards
Director of Marketing
Fire Protection Products
Gentex Corporation
10985 Chicago Drive
Zeeland, Michigan 49464

Dear Mr. Edwards:

This letter responds to your correspondence regarding the application of the Americans with Disabilities Act (ADA) to the placement of visual alarms. I apologize for our delay in responding to you.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities with rights or obligations under the Act. This letter provides informal guidance to assist you in understanding the ADA accessibility standards. However, this technical assistance does not constitute a legal interpretation of the statute and it is not binding on the Department.

Section 4.28.3(6) of the ADA standards for Accessible Design, 28 C.F.R. pt. 36, Appendix A, requires that visual alarm signal appliances in new construction be placed 80 inches above the highest floor level or 6 inches below the ceiling whichever is lower. This location is required because smoke can collect near the ceiling and thereby obscure a signal if the alarm is mounted on the ceiling. The regulation was-developed based on consideration of established data and is supported by the advisory guidance issued by the National Fire Protection Association. In certain situations a stem-pendant ceiling mounted signal appliance might satisfy this requirement appropriately. However, we have not made a determination that. any particular alternative to strict compliance with this section of the Standards would be equivalent facilitation.

Determinations of equivalent facilitation must be made on a case-by-case basis taking into consideration whether the building element in question, as installed in a specific site, actually

provides equal or greater accessibility. Neither the Department of Justice nor any other entity will certify that a specific

cc: Records, Chrono, Wodatch, Blizard, FOIA, Friedlander
n:\udd\blizard\gentex.eh

01-02766

product or design alternative that varies from the technical requirements of the ADA regulation will be "equivalent" in all circumstances.

You have also asked if any summary exists of the comment sent to the Department by an organization representing people with hearing impairments. That comment consisted of 479 responses to a two page survey. No tabulation of that survey exists. Because the-responses to the survey were submitted to the Department as a comment on the then-proposed regulation, they are available for public inspection at the office of the Public Access Section. A copy of the survey responses (approximately 1000 pages) may also be requested from the Civil Rights Division's Freedom of Information/Privacy Acts Branch..

For your information, I have enclosed a copy of this Department's Title III Technical Assistance Manual and a technical assistance bulletin on visual alarms issued by the Architectural and Transportation Barriers compliance Board. I hope this information is helpful to you in understanding and complying with the ADA.

Sincerely,

Janet L. Blizard
Supervisory Attorney

Enclosures

01-02767

GENTEX
CORPORATION

March 13, 1992

Mr. John Wodtash, Director, Americans with Disabilities Act
Office on the Americans with Disabilities Act
Civil Rights Division
U.S. Department of Justice
P.O. Box 66118
Washington, DC 20035-6118

Dear Mr. Wodtash:

In reviewing the supplementary information contained in 28CFR Part 36, "Non-Discrimination on the Basis of Disability by Public Accommodations and In Commercial Facilities", reference is made on page 3, 5th paragraph that an organization representing persons with hearing impairments submitted 479 individual comments. These comments were in chart form and detailed what type of auxiliary and/or service would be helpful. Sir, I am requesting from your office if available, a summary of these 479 comments.

Another question in regards to the placement of visual signals (4.28.3 (6)). This section says you must place the visual signal 80" above the highest floor level. Is there any provisions of mounting the visual signal on the ceiling? We understand that your department has allowed placement of visual signals on the ceiling with justification being section 2.2 Equivalent Facilitation. We agree with this as the visual signal's light intensity will not be lessened when placed on the ceiling. Also, in the industry, many visual signals are already on the ceiling. Please advise if, indeed, visual signals may be placed an the ceiling under equivalent facilitation.

Thank you for your assistance.

Best Regards,

GENTEX CORPORATION

Scott R. Edwards
Director of Marketing
Fire Protection Products

JL

10985 CHICAGO DR., ZEELAND, MI 49464, 616/392-7195 FAX 616/392-4219

01-02768

12-1-93

DJ XX DEC 3 1993

(b)(7)(c)
XX
XX
Crowley, Texas XX

Dear XX

I am responding to your letter requesting information about the obligations of municipal governments under the Americans with Disabilities Act (ADA). I apologize for our delay in responding.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities that have rights or responsibilities under the Act. This letter provides informal guidance to assist you in understanding the ADA and the Department's regulation. However, this technical assistance is not a legal interpretation of the statute, and it is not binding on the Department.

You have asked about the construction standards that apply to public buildings, and the ADA enforcement process that applies to public entities. Title II of the ADA prohibits discrimination on the basis of disability by public entities. To implement this requirement, the Department of Justice has issued a regulation that sets forth the specific obligations of public entities. The regulation also establishes the procedures through which the regulation may be enforced. The title II regulation and the Department's Title II Technical Assistance Manual are enclosed for your information.

Section 35.151 of the Department's regulation requires all facilities designed, constructed, or altered by, on behalf of, or for the use of a public entity to be readily accessible to and usable by individuals with disabilities, if the construction or alteration began after January 26, 1992. This means that each facility must be designed, constructed, or altered in strict compliance with either the ADA Standards for Accessible Design or the Uniform Federal Accessibility Standards. This requirement applies both to buildings that are open to the public and to those that are not. This requirement is discussed further in the preamble to the enclosed regulation at pages 35710-35711, and in section II-6.0000 of the Technical Assistance Manual.
(b)(7)(c)

cc: Records, Chrono, William, Blizard, Johansen, FOIA, Friedlander
n:\udd\blizard\adaltrs\ XX

01-02769

If a public entity is offering a program, service, or activity in an existing building, it is subject to section 35.150 of the regulation, which provides that a public entity may not deny the benefits of its programs, activities, and services to individuals with disabilities because its facilities are inaccessible. A public entity's services, programs, or activities, when viewed in their entirety, must be readily accessible to and usable by individuals with disabilities. This standard, known as program accessibility, applies to all existing facilities of a public entity. This requirement is discussed further in the preamble to the enclosed regulation at pages 35708-35710, and in section II-5.0000 of the Technical Assistance Manual.

If a public entity fails to comply with title II, a person, a specific class of individuals, or their representative may file an administrative complaint alleging discrimination on the basis of disability with an appropriate Federal agency, or may file a lawsuit in Federal district court. It is not necessary to exhaust administrative remedies before filing a lawsuit. The title II enforcement procedures are established in subparts F & G of the regulation; they are discussed at pages 35713-35716 of the preamble to the regulation, and in section II-9.0000 of the Technical Assistance Manual.

I hope that this information is helpful to you.

Sincerely,

Janet L. Blizard
Supervisory Attorney

Enclosures

01-02770

March 29,1993

(b)(7)(c)
XX
XX
Crowley, Texas XX

Civil Rights Division
Office on Americans With Disabilities Act
U.S. Department of Justice
P.O. Box 66118
Washington, D.C. 20035-6118

Dear sirs;

Pursuant to regulations as regards the ADA construction standards for public buildings, I would appreciate some information as regards public entities.

1. Are municipal governments required to follow the standards for new construction of facilities which are used for public meetings (i.e. standards for construction under rules pursuant to Title V of the ADA)? or is the exemption from such standards under Title III enforceable under Title II which seems to require the same construction standards as for privately-owned facilities under Title III?

2. Are all publicly-owned buildings required to follow the

same construction standards, or is this limited only to those which the public would be reasonably expected to use or have need to enter in a normal business sense (i.e. access to a police department facility or city hall vs. access to a public works work facility or water department work shop/office area)?

3. What is the liability in the event such a facility does not follow the standards for construction when the facility is owned and operated by a municipality even though construction of the facility began after publication of the standards for construction were published and made available?

4. Can a private citizen, not necessarily a disabled person as defined under current laws, have standing to file a complaint as regards accessibility standards and force compliance through the Department of Justice Civil Rights Division?

I am not a lawyer but am very interested in learning about these particular aspects of the Americans with Disabilities Act of 1990 as I am very active in the community and have been unable to get answers to these questions just by reading the Act itself, and because the rules themselves are not in our local library. I would appreciate your assistance in getting these questions answered.

Sincerely,
(b)(7)(c) XX

01-02771
T. 10/29/93
SBO:AMP:ca
XX
(b)(6) DEC 3 1993

The Honorable Dennis DeConcini
United States Senator
40 North Center, Suite 110
Mesa, Arizona 85201

Dear Senator DeConcini:

This is in response to your recent letter on behalf of your constituent, XX , who inquires whether there are any Federal laws that make it illegal for his neighbors to bloc sidewalks with their trash or cars. While the activities of XX neighbors may violate State or local laws, there are no Federal laws that directly outlaw such behavior by private individuals. However, allowing public sidewalks to remain blocked may constitute a violation of title 11 of the Americans

with Disabilities Act of 1990 (ADA).

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities with rights or obligations under the Act. This letter provides informal guidance to assist your constituent in understanding the ADA's requirements. It does not, however, constitute a legal interpretation and is not binding on the Department.

Title II of the ADA prohibits discrimination against qualified individuals with disabilities in all programs, activities, and services provided by or on behalf of State and local governments. With respect to your constituent's problem, if a public entity has responsibility for, or authority over, sidewalks or other public walkways, section 35.133 of the enclosed title II regulation requires that public entities must maintain them in operable working condition. Such maintenance may include the removal of cars, trash, or other objects blocking the passage of persons using wheelchairs or other devices to assist mobility.

cc: Records CRS Chrono Friedlander Pecht.cong.93.deconcin.b
McDowney FOIA

01-02772

The title II rule also requires that a public entity make reasonable modifications to its programs, practices, or procedures when " ... necessary to avoid discrimination an the basis of disability.,, See section 35.130(b)(7) of the title II rule. Under this provision, title II may also require the public entity to modify its policies, practices, or procedures to ensure that, aside from temporary and unavoidable situations, public sidewalks are not blocked by cars, trash, or other impediments to travel by wheelchair.

Although, as noted above, there are no Federal laws that directly prohibit individuals from blocking public sidewalks, you may wish to suggest to your constituent that he contact the appropriate local authorities to determine whether any State or local laws directly prohibit such behavior. If such laws exist,

your constituent may wish to draw the situation to the attention of the local enforcement agency.

I hope this information will be useful to you in responding to your constituent.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

Enclosure

01-02773

DENNIS DECONCICNI
ARIZONA
CHAIRMAN
SELECT COMMITTEE ON
INTELLIGENCE
COMMISSION ON
SECURITY AND COOPERATION
IN EUROPE

COMMITTEES
APPROPRIATIONS

United States Senate
Washington, DC 20510-0302

PLEASE DIRECT YOUR RESPONSE TO
WASHINGTON OFFICE
PHOENIX OFFICE
TUCSON OFFICE
MESA OFFICE

JUDICIARY
VETERANS AFFAIRS
INDIAN AFFAIRS
RULES AND ADMINISTRATION

September 22, 1993

Mr. John Wodatch, Section Chief
Public Access Section
Civil Rights Division
Department of Justice
P.O. Box 66738
Washington, D.C. 20035

Dear Mr. Wodatch:

Senator DeConcini has been contacted by his constituent, XX (b)(6) XX regarding his concerns about federal laws regarding blocking sidewalks.

Enclosed, please find a copy of his letter for your information.

It would be greatly appreciated if you would look into this matter and respond to the concerns raised by this constituent.

Thank you for your assistance in this matter.

Sincerely,

PAMELA K. NOLAN
Assistant to the Senator
Office of Dennis DeConcini
40 North Center, Suite 110
Mesa, Arizona 85201
(602) 379-4998

PN/g
Enclosure

01-02775

SEP 21 1993

Dear Sirs:

Are there any federal laws that make it illegal to block the sidewalks with your trash or car.

im a vet and i lost both legs in Vietnam XX
XX

I get around in a wheel chair. my neighbors are always blocking the sidewalk with their cars or by placing garbage on the sidewalk.

are there any federal laws against this.

XX
XX
(b)(6)

01-02776

T. 12-3-93
202-PL-0052

DEC 6 1993

G. William Quatman, Esq.
Shughart Thomson & Kilroy
Twelve Wyandotte Plaza
120 West 12th Street
Kansas City, Missouri 64105-1929

Dear Mr. Quatman:

I am responding to your letter asking for clarification of the alterations requirements of title III of the Americans with Disabilities Act (ADA) and this Department's regulation implementing title III.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities that have rights or responsibilities under the Act. This letter provides informal guidance to assist you in understanding the ADA and the Department's regulation. However, this technical assistance does not constitute a legal interpretation of the statute, and it is not binding on the Department.

Your letter asks about the application of the alterations requirements of the ADA to an addition to a commercial facility. In the specific situation that you describe, the plan for an addition was initially developed by an architect before July 1991. Pursuant to the plan, an existing portion of the building that was altered was detached and relocated on the same site in August 1991. Construction of an addition to the existing building was begun after January 26, 1992, the effective date of the ADA. You have asked if the alterations requirements of the ADA apply to the construction commenced after January 26, 1992, or if the addition to the building is exempt from coverage because the project began before the effective date.

Section 36.402(a) (2) of the Department's regulation implementing title III provides that an alteration to a commercial facility is subject to the requirements of the ADA if "the physical alteration of the property begins after that date." Construction undertaken pursuant to a single plan, or under the authority of a single building permit, is a single action for purposes of determining ADA coverage. Therefore, if your client

cc: Records, Chrono, Wodatch, Blizard, FOIA, Friedlander
n:\Udd\blizard\adaltrs\quatman

01-02777

was acting to implement a single building plan, pursuant to a permit issued prior to the effective date, ADA coverage would not be triggered because the physical alteration of the facility began when the prefabricated building was detached from the existing building in August 1991. If, however, the project was undertaken in discrete segments, and a building permit was issued for the construction of the addition that did not include the relocation of the prefabricated building in the scope of the project, then the construction of the addition would be considered a separate project, subject to the ADA requirements because the physical alteration of the addition to the existing building began after the effective date of the Act.

For your information, I am enclosing a copy of the Department's regulation implementing title III of the ADA and the Department's Title III Technical Assistance Manual, which was developed to assist individuals and entities subject to the ADA to understand the requirements of title III. I hope that this information is helpful to you.

Sincerely,

John L. Wodatch
Chief
Public Access Section

Enclosures

01-02778

LAW OFFICES
SHUGHART
THOMSON
& KILROY
A Professional Corporation

Twelve Wyandotte Plaza
120 West 12th Street
Kansas City, Missouri 64105-1929
(816) 421-3355
FAX (816) 374-0509

32 Corporate Woods, Suite 1100
9225 Indian Creek Parkway
Overland Park, Kansas 66210-2011
(913) 451-3355
FAX (913) 451-3361

October 29, 1993

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

Re: DJ 202-PL-436

Dear Ms. Blizzard:

On January 13, 1993, I wrote to your office requesting a written interpretation of Title III of the Americans with Disabilities Act. L. Irene Bowen, of your office, confirmed receipt of my request in her letter dated February 18, 1993. As of this date, I have not yet received a written response to this inquiry.

As you might understand, our client is extremely anxious to get a written clarification from your office, confirming the oral interpretation we received back in January. I would appreciate your efforts to expedite your review of this matter. If you have any questions, or if I can be of any assistance in clarifying the issues, please contact me at (816) 421-3355.

Very truly yours,

G. WILLIAM QUATMAN

GWQ/pjo

01-02779

LAW OFFICES
SHUGHART
THOMSON
& KILROY
A Professional Corporation

Twelve Wyandotte Plaza
120 West 12th Street
Kansas City, Missouri 64105-1929
(819) 421-3344
FAX (816) 374-0509

32 Corporate Woods, Suite 1100
9225 Indian Creek Parkway
Overland Park, Kansas 66210-2011
(913) 451-3355
FAX (913) 451-3361

January 13, 1993

John Wodatch, Esq.
Section Chief
U.S. Department of Justice
Public Access Section
Civil Rights Division
P.O. Box 66738
Washington, D.C. 20035-6738

Dear Mr. Wodatch:

It has been suggested by an attorney in your department that we write to you for a written interpretation of the Title III Regulations of the Americans with Disabilities Act. We posed the following facts and question verbally to your department on January 4, 1993:

Fact Situation. owner desires to expand its existing commercial facility by the addition of two stories of new construction to be built on top of the existing one-story building, and with other additions on the first level. The architect was retained in May of 1991 and began discussing plans for the

alteration with the owner. In June and July, 1991, preliminary plans were transmitted to the owner by the architect showing the proposed new construction.

Due to the location of new columns for the two-story addition, an existing portion of the building (an attached prefabricated building) was detached and relocated on the site in August, 1991. Architectural plans are completed in January, 1992. New construction begins in February, 1992.

191199 VI
01-02780

Question. Does the relocation of the attached prefabricated building constitute the beginning of "physical alteration of the property" within the meaning of 28 C.F.R. S 36.402?

We understand that additions are deemed "alterations" under ADAAG S 4.1.5 and are therefore governed by S 36.402. Although new construction of the addition to the building did not begin until after the January 26, 1992 effective date for Title III alterations, site preparation included the relocation of this building on the property. We have received a preliminary verbal interpretation from the Deputy Section Chief that as long as there were plans in existence at the time the building was relocated showing the intended new construction, and that the relocation was part of the contemplated plan for the new construction, then the building relocation in August, 1991 constitutes the first "physical alteration" to the property. As a result, the remaining new construction performed in February, 1992 and thereafter on this project is not required to be accessible under 28 C.F.R. S 36.402.

We look forward to receiving your written interpretation. If you have any questions regarding the above fact scenario, or need more information, please do not hesitate to call.

Very truly yours,

G. William Quatman

GWQ/Pjo

191189 VI

01-02781

T. 1-22-93

DJ 202-PL-436

FEB 18 1993

Mr. G. William Quatman
Shughart Thomson & Kilroy
Twelve Wyandotte Plaza
120 West 12th Street
Kansas City, Missouri 64105-1929

Dear Mr. Quatman:

The Civil Rights Division of the Department of Justice has received your request for an interpretation of the Americans with Disabilities Act (ADA). The ADA authorizes the Department of Justice to provide technical assistance to entities that have rights or responsibilities under the Act. The Civil Rights Division will treat your inquiry as a request for technical assistance and will provide informal guidance to you. However, because of the large volume of requests for interpretations of the ADA, we are unable to answer your letter at this time.

Please be assured that the Division will respond to your letter expeditiously. We regret any inconvenience caused by our delay in responding and have enclosed for your information two documents on the ADA: "Title II Highlights" and "Title III Highlights."

Sincerely,

L. Irene Bowen
Deputy Chief
Public Access Section
Civil Rights Division

Enclosures

cc: Records, Chrono, Wodatch, Bowen
data2:udd:mercado:merge:mergelist.3.bowen
01-02782

DEC 6 1993

James M. Gran
Associate Counsel
Maytag Corporation
403 West Fourth Street North
Newton, Iowa 50208

Dear Mr. Gran:

This letter is in response to the questions we discussed at our October 29, 1993, meeting in Washington, D.C.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist you in understanding the ADA's requirements. However, it does not constitute a legal interpretation, and it is not binding on the Department.

At that meeting, representatives from Maytag asked: (1) how to distinguish fixed from free-standing washing machines under the Americans with Disabilities Act ("ADA"); (2) whether washing machine drums are operating mechanisms subject to ADA reach range requirements; and (3) the number of accessible washing machines required in new construction under title III of the ADA and the Uniform Federal Accessibility Standards ("UFAS").

The ADA Standards for Accessible Design ("Standards") prescribe specific accessibility requirements for new construction and alteration of facilities covered by title III of the ADA. As our previous letter indicated, those requirements apply only to equipment that is fixed or built into the structure of the building, not to machines that are free-standing. Some examples of fixed equipment are: machines that are bolted to floors or walls, machines connected to building plumbing systems with rigid pipe (rather than flexible tubing), and machines that require connection by professional installation.

cc: Records, Chrono, Wodatch, Bowen, Breen, Blizard, Novich,
FOIA, MAF
Udd:Novich:Congress:Gran

01-02783

According to the Standards, fixed equipment must meet ADA requirements for controls and operating mechanisms. Section 4.27 of the Standards requires that "the highest operable part of controls, dispensers, receptacles and other operable equipment" meet reach range requirements specified in section 4.2 of the Standards. "Operable part" is defined in section 3.5 of the Standards as:

> A part of a piece of equipment or appliance used to insert or withdraw objects or to activate, deactivate, or adjust the equipment or appliance (for example, coin slot, pushbutton, handle).

Operable parts of washing machines, which must meet ADA reach range requirements, are, for example, coin slots, machine on/off buttons, and cycle control buttons. The lids or doors into washing machine drums are also operable parts which must meet ADA reach range requirements, although the drums themselves, which do not fall squarely within the above definition of "operable part," should not be required to meet ADA reach ranges. Thus, a washing machine in which the bottom or back of the drum exceeds ADA reach range requirements does not appear to violate the Standards, as long as the lid, door, or other opening of the drum meets the reach range requirements.

Front-loading machines may be preferable for persons who use wheelchairs, because, even if a person cannot reach the back of the drum, he or she can at least see whether any articles of clothing have lodged there and need to be retrieved by alternative means. Most top-loading machines, including those that meet ADA reach range requirements, do not allow a person in a wheelchair to see the bottom of the drum.

The ADA Standards specify the number of accessible washing machines required in new construction and alteration of transient lodging in homeless shelters, halfway houses, transient group homes, and other social service establishments (see Standards

9.5.2), but the Standards provide no similar scoping requirement for washing machines in other places of public accommodation. If the Standards provide no applicable scoping requirements, then a reasonable number, but at least one, in each common use laundry area, must be accessible. In determining what a reasonable number is, consideration should be given to the type of facility that will house the machines and the likely demand for accessible machines.

As mentioned in our previous letter, the proposed ADA guidelines for residential units covered by title II specify that at least one washing machine in any accessible dwelling unit or in a common use laundry facility serving one or more accessible dwelling units must be front-loading, and must meet other requirements from the Standards for controls. In contrast, under

UFAS, all washing machines provided within individual accessible dwelling units, or within common use laundry rooms that serve accessible dwelling units, must be front-loading. See proposed title II guidelines and preamble, S 13.3.5, at pages 60663 and 60639, and UFAS SS 4.34.7, 4.34.7.2, both of which were sent with our previous letter.

Please keep in mind the discussion in our previous letter describing the additional accessibility requirements that apply to the use of washing machines in places of public accommodation under sections 36.201 and 36.202 of the regulation promulgated under title III.

I hope this information is helpful to your company.

Sincerely,

John L. Wodatch
Chief
Public Access Section

cc: The Honorable Charles E. Grassley

October 27, 1993

403 West Fourth Street North
Newton, Iowa 50208
Telephone: 515.792.3000
MAYTAG
Corporation

Ms. Maria Olsen VIA FAX TO: 202-514-0452

Re: Meeting With Representatives of Maytag Company
Friday, October 29, 1993
10:00 a.m. E.D.T. to Noon E.D.T.
Department of Justice Room 4039

Dear Ms. Olsen:

Thank you for agreeing to meet with representatives of Maytag Company. Attending on behalf of Maytag in addition to Mr. Horstman and myself will be Doug Ringger, Director, Product Planning; Dave Ellingson, Director, Advance Engineering; Randy Karn, Commercial Regional Sales Manager; and Steve Holdsworth, Product Information Specialist. I understand that attendees from your offices will include at least yourself and Mr. Wodatch. I also understand that a member of Senator Grassley's staff will also be attending.

Enclosed find copies of the following:

1. My September 1, 1992 letter to Mr. Wodatch (3 pages).

2. Various portions of ADA Accessibility Guidelines reference in enclosure #1 (4 pages).

2. The Department of Justice's July 21, 1993 letter (8 pages).

As you may be aware, the Department of Energy's May 14, 1991 (56 Federal Register 22250) final rules on energy standards caused the entire laundry manufacturing industry to investigate the possibility of manufacturing horizontal axis washing machines. Historically, these types of washing machines were described as "front-loading". In general, horizontal axis washing machines use less water (including less hot water) and therefore use less energy than top-loading washing machines with which you are familiar (and may have in your residence). Several European manufacturers are currently producing top-loading horizontal axis machines.

Maytag has requested this meeting because it is rapidly approaching some critical decisions concerning potential applicability of horizontal axis technology. Those decisions will take into account the additional information you will provide.

Maytag needs additional information concerning the following regulations: ADA Title III, Uniform Federal Accessibility Standards, and Housing and Urban Development. Specifically, Maytag would like to discuss and resolve the following issues:

What ADA/UFAS/HUD/ANSI "requirements" apply to the "reach to load and unload clothes" from top-load clothes washers and clothes dryers (please refer to page 5, 91 of the DOJ's July 21, 1993 letter)?

01-02786

2. Do you consider the Thomson & Miele machines (pictures of which will be provided to you during our meeting) to be ADA accessible? If so, do you consider them as meeting UFAS requirements?
   HUD requirements?

3. Under UFAS and HUD (both based on ANSI 117.1-1986), front-load washers appear to be conclusively presumed to be accessible. Why? For example:

   a. Many of their containers for detergent, fabric softener, and other laundry aids (as well as coin slides) are placed over obstructions higher than 34".

   b. Isn't it as easy for a disabled individual to load and unload clothing from a top-loading washer as it is from a front-loading washer (for example, the Miele product)?

4. How many (number/percentage) ADA-accessible machines must be installed in the following circumstances:

   a. New laundry facilities (coin store, common use laundry facilities in multi-family housing/dormitories).

   b. "Altered" laundry facilities.

c. To replace existing equipment in otherwise unaltered pre-ADA laundry facilities? At what point does replacing only equipment make the facility become "altered", thereby possibly triggering path of travel alterations? (Two machines? Three?

d. Same questions concerning "front-loading" equipment

5. In addition to universities that receive Federal funds, what other types of federal involvement would constitute the "receipt of Federal funds" thereby requiring laundry areas to comply with UFAS?

6. Which, if any, of the ADA/UFAS/HUD regulations affect privately-owned multiple family dwellings?

Sincerely,

James M. Gran
Associate Counsel

cc: Doug Hortsman VIA FAX TO: 703-442-9587
Randy Karm VIA M TO: 609-988-3842
Doug Ringger
Dave Ellingson
Steve Holdsworth

01-02787

September 1, 1992 MAYTAG CORPORATION

Mr. John Wodatch
Office of ADA
Civil Rights
U.S. Department of Justice
P.O. Box 66738
Washington, D.C. 2O035-9998

Re: American With Disabilities Act of 1990
Interpretations of Title III Department of Justice Regulations

Dear Mr. Wodatch:

I am writing on behalf of Maytag Company and Dixie-Narco, Inc. concerning different, but related, issues which are being raised by their customers. Maytag Company is a division of Maytag Corporation. Dixie-Narco, Inc. is a wholly-owned subsidiary of Maytag Corporation. The issues are:

1. Commercial washer compliance with A.D.A.; and

2. The extent to which A.D.A requires Braille lettering on commercial laundry and vending equipment.

Both issues directly affect customers' demands for products sold by those two parts of the corporation.

1. COMMERCIAL WASHERS

1. Product Background

Commercial washers used in coin laundries and multiple dwelling situations (apartments, dormitories, etc.) are either top-loading (and operate much like your washer at home) or front-loading (place clothing through a door In the front of the machine).

Front-loading washers cost their ultimate purchaser from two-to-four times as much as top loaders. Each wash load in a front-loading washer costs the laundry customer between 50% and 75% more than does each load in a top-loading washer. Front-loading washers are typically installed by bolting them to a raised concrete platform, with the exception of a Wascomat Model P-12 (manufactured for Wascomat in Italy) and a Miele product (manufactured by Miele in Germany). Front-loading washers, with the exception of the Wascomat Model P-12 and the Miele product are typically designed for detergent, fabric softener, and other laundry aids to be used by placing them in compartments on top of the washer.

Industry sales figures for front-loading washers are somewhat sketchy. However, in 1991 269,000 commercial top-load washers were sold in the U.S. This figure was down approximately 15% from 1990 unit sales. Of these units, approximately 80% were placed in multiple housing locations. Maytag Company enjoys are significant share of the multiple housing top-load washer market.

In normal installations, the tops of Maytag Company's top-load washers are approximately 36" above floor level. Maytag Company has anecdotal evidence that wheelchair-bound customers prefer to use top-loading washers over front-loading washers. Also, Maytag Company conducted unscientific experiments which indicate that wheelchair-bound customers can completely operate a normally-installed Maytag top-load washer.

2. ADA Regulation

The only specific ADA Accessibility Guidelines that affect laundry equipment are those concerning controls and operating mechanisms, ADAAG 4.27; 4.2.5; and 4.2.6.

According to ADAAG Figures 6(b) and 6(c), there are two different methods of determining whether controls and operating mechanisms are accessible. The first method applies to equipment which can be operated without reaching over an obstruction. If the operator is not reaching over an obstruction, the controls and operating mechanisms can be as high as 54" off the ground and can be as low as 9" above the ground.

The second method applies to equipment which can be operated while reaching over an obstruction. If the operator is reaching over an obstruction, the height of the obstruction can only be 34" off the floor. Also, the control or operating mechanism which you are trying to reach over that 34" obstruction can be no more than 24" from the front of that obstruction.

Thus, the Department of Justice's ADA Title III regulations suggest that both top-loading washers and front-loading washers (which normally operate by placing detergent, fabric softener, and other laundry aids in compartments on top of the front-load washer) comply with ADA Title III if the tops of both types of equipment are no higher than 34" from the floor.

3. ADA Compliance

If necessary, the ADA Title III Department of Justice standard can be met for Maytag top-load washers by Installing 2" false floors or lowering the washer 2" below the customer's floor level. The only way it can be met for front-loading washers is by forcing the use of the foreign-produced machines or by ignoring the fact that users of domestic-produced front-load washers (as designed for normal operation) need to reach over an obstruction higher than 34" in order to place detergent, fabric softener, and other laundry aids necessary to launder clothing.

Other practical concerns include the following. Must 100% of the washers (whether front-loading or top-loading) be accessible? If not, how many wash-ers must be accessible?

4. Contradictory Federal Regulations?

a. U.F.A.S.

The Uniform Federal Accessibility Standards, adopt ANSI A117.1-1986, a later version of the same standard which was the basis of the Department of Justice's ADA Title III regulations. ANSI A117.1-1986 contains the same reach require-

ments as the ADA Tittle III regulations. However, L.F.A.S. adopts ANSI A117.1-1986 In its entirety and states that washing machines and clothes dryers in common-use laundry rooms "shall be front loading." Are front loaders required without regard to the reach requirements In ANSI A117.1-19867 Are top loads" really Intended to be banned?

b. H. U. D.

The regulations of the Department of Housing and Urban Development are also based on ANSI A117.1-1986. The HUD regulations apply, in general, to dwell-

lings which house four or more families.

The H.U.D. regulations, contrary to ANSI A117.1-1986, permit top-loading laundry equipment to be placed in common laundry areas when the management of that facility, "provides assistive devices on request if necessary to permit a resident to use a top-loading washer." Must top loading laundry equipment also meet the reach requirements or are the reach requirements waived so long as assistive devices are provided upon request?

c. State and Local Government Choice of Regulation

Regulations adopted under Title II of ADA give state and local governmental entities, such as universities and public colleges, the opportunity to pick and choose between the ADA regulations and the UFAS standards. What products can be sold for use in university/college laundry facilities ---the foreign produced front-loading equipment only, any type of front-loading equipment, or a mix of front-loading and top-loading equipment?

II. BRAILLED INFORMATION ON EQUIPMENT

Another Issue that we are seeking to have clarified is the extent to which places of public accommodation are required to put brailled lettering on equipment. The regulations and Department of Justice commentary (excerpts attached) suggest that places of public accommodation may need to place brailled lettering on vending machines. However, there are no specific guidelines.

Do "vending machines" mean just pop can dispensers or do they include coin changers, soap dispensing equipment, and commercial laundry equipment? What types of information do you place in Braille?

I would be pleased to discuss these issues in more detail with you and(if necessary) appropriate personnel from Maytag Company and Dixie-Narco, Inc.

Feel free to call me if you have any questions.

Sincerely,
James M. Gran
Associate Counsel

cc: Randy Karn - Maytag Company
John O'Hare - Dixie-Narco, Inc.
Enclosures

Direct Line. 515-791-8505
Law Department FAX: 515-791-8102

01-02790
The Honorable Charles E. Grassley
united states Senate
135 Hart Senate office building
Washington, D.C. 20510-1501

Dear Senator Grassley:

This letter is in response to our inquiry on behalf of your constituent, the Maytag Company, which inquired about the application of the Americans with Disabilities Act (ADA) to washing machines. We apologize for any inconvenience caused by the delay in answering your constituents request for a policy interpretation.

Your constituent's letter asked several questions about the applicability of the ADA to washing machines. It asked whether washing machines must comply with reach range requirements found in the Standards for Accessible Design (the "Standards"), and, if so, how many washing machines must meet those requirements. It also asked whether requirements found in the Standards may be waived if assistive devices are provided on request. Third, it asked whether the Standards require Braille lettering on laundry and vending equipment. Finally, it asked which accessibility standards may be used by university dormitories. These questions raise complex issues under the ADA and necessitate this unusually long and detailed response.

I have enclosed five documents that are referred to in the discussion below: the Americans with Disabilities act Accessibility Guidelines (ADAAG) and its preamble, issued by the Architectural and Transportation Barriers Compliance Board (ATBCB) (these guidelines were adopted by the Department of Justice as the Standards); the regulation promulgated by the Department of Justice under title III of the ADA, which includes the Standards; the regulation promulgated by the Department of Justice under title II of the ADA; the Uniform Federal

Accessibility Standards (URAS) and proposed accessibility guidelines under title II of the ADA, issued by the ATBCB. After a period of notice and comment, final accessibility guidelines for title II facilities will be issued. Until the Department of Justice adopts final standards under title II, the current title 11 rule provides that either the Standards or the requirements found in UFAS may be used for title II facilities.

The extent to which the ADA requires washing machines to adhere to the Standards' reach range requirements depends on several factors: whether the facility in which they are located is covered by title III or title II of the ADA, whether such washing machines are necessary to the full and equal enjoyment of a facility's services by persons who use wheelchairs, whether a facility is being newly constructed or altered.

Title III of the ADA applies to places of public accommodation and commercial facilities. The Standards, which were developed as the accessibility requirements for new construction and alteration of title III facilities, contain requirements for the accessibility of washing machines, including the reach range requirements noted in your constituent's letter. Title II of the ADA applies to facilities owned or operated by state or local government entities. As noted above, entities covered by title II may apply either the Standards or UFAS to their facilities until final standards are adopted under title

For your convenience, Part I of this letter summarizes the way in which the ADA requirements apply to washing machines in covered facilities and programs. Parts II through V address in detail the requirements with respect to title III, title II, Braille controls, and university dormitories.

I. SUMMARY

The ADA does not impose an obligation on manufacturers of washing machines to produce machines of a particular design. However, the law may require that facilities and programs covered by the ADA ensure accessibility of washing machines, depending on several factors. First, in facilities covered by title III, sections 36.201 and 36.202 of the title III regulation require a place of public accommodation to make its services accessible to persons with disabilities. To do this, the public accommodation must either provide a sufficient number of accessible washing machines, or it may provide assistive devices, so that persons with disabilities may fully and equally enjoy the services offered. Second, also in facilities covered by title III, places of public accommodation and commercial facilities must follow the

requirements of the Standards, including reach range requirements, when installing fixed or built-in machines in-a newly constructed or an altered facility. In new construction and

alteration, the Standards must be followed, and assistive devices are not acceptable. In existing places of public accommodation that are not otherwise being altered, built-in or free-standing machines must be made accessible, using the Standards and its reach range requirements, if to do so would be readily achievable. If it would not be readily achievable, alternatives that are readily achievable, such as assistive devices, may be used.

In facilities covered by title III the Standards, which prescribe maximum reach ranges, or UFAs, which requires front-loading machines, must be followed in new construction or alterations, and assistive devices are insufficient for ADA compliance. In existing facilities, covered entities must provide access to washing machines that are part of an offered program, but they may do this by using assistive devices.

Braille controls are not required for equipment under the new construction or alteration Standards. However, Braille controls are required in places of public accommodation covered by title III, if necessary to provide effective communication with persons with disabilities, unless it would be an undue burden to provide them. They may also be required under sections 36.201 or 36.202. Under title II, Braille controls are required if necessary to provide communication to those with disabilities that is equally as effective as the communication provided to others, unless to do so would pose an undue burden.

Finally, privately owned university dormitories are covered by title III, which uses the Standards; State or locally owned university dormitories are covered by title II, which currently uses the Standards as adopted by title II or UFAS; and universities that receive Federal funds, which can fall into either of the other two categories, are covered by the Rehabilitation Act, and must follow UFAS.

III. Entities Covered By Title III

Title III of the ADA covered laundry facilities in two ways, First, sections 36.201 and 36.202 of the title III regulation obligate places of public accommodation to make their services fully and equally enjoyable by persons with disabilities. Second, the title III provisions for new construction and alteration, which are applicable to fixed machines only, and for

barrier removal, which are applicable to washing machines regardless of whether they are fixed or free-standing, require machines to be accessible to persons who use wheelchairs. This requirement is not related to the inquiry concerning whether accessible washing machines are necessary to the full and equal enjoyment of services.

A. Coverage Under Sections 36.201 and 36.202

Sections 36.201 and 36.202 of the title III regulation prohibit public accommodations from denying persons with disabilities "the full and equal enjoyment" of the services and facilities offered. "See title III regulation and preamble, SS 36.20l and 36.202, at pages 35595 and 35555-56. For example, a laundromat or hotel guest laundry room may need to provide some washing machines with lower controls in order to afford persons who use wheelchairs an equal opportunity to benefit from its services and facilities, if the lack of accessible washing machines effectively denies such persons a full and equal opportunity to benefit from the facilities services. See preamble to title III regulation, at page 35572. These sections do not require a specific number of accessible machines, only that enough machines be accessible for persons with disabilities to have a full and equal opportunity to enjoy a facility's services.

Sections 36.201 and 36.202 apply to all places of public accommodation, such as laundromats or homeless shelters, whether newly constructed, altered, or neither; but they do not apply to commercial facilities, such as corporate office buildings. Although these sections require that the service be made accessible, they do not require that washing machines meet the Standards. Therefore, a place of public accommodation may satisfy these sections' requirements through alternative means, such as assistance provided on request. Any alternative means, however, must afford persons with disabilities a full and equal opportunity to enjoy the service. Thus, if personal assistance is offered, it must be available at all times, and it must be as effective for persons with disabilities as the service is for other persons.

B. Coverage under new construction, alteration, and barrier removal provisions

In addition to any obligations under sections 36.201 and 36.202, all places of public accommodation and commercial

facilities must comply with ADA requirements for new construction of facilities and alterations to existing facilities. Places of public accommodation must also comply with ADA requirements for barrier removal from existing facilities not otherwise being altered. The Standards are the accessibility requirements applicable to this area of coverage, but they apply only to .equipment that is built into the structure of a building -- attached to a wall or floor -- not equipment that is free-standing. See preamble to ADAAG, at page 35415.

01-02797

The Standards include maximum allowable reach ranges in accessible areas and requirements for controls and operating mechanisms. Section 4.2 provides that an object over which a person must reach, such au a washing machine, may be no higher than 34" from the floor to be accessible. Section 4.27 addresses clear floor space, reach, and operation of controls. The Standards do not restrict the types of machines that can be used. However, ANSI A117.1-1980 and 1986, UFAS, and other accessibility standards require the use of front-loading machines; research has demonstrated that they can be used more readily by some people with disabilities, because the opening for loading and unloading clothes is visible and reachable from a wheelchair. Under the Standards, top-loading machines are permitted, as long as they can be operated within the requirements for reach and controls. This would include reach to load and unload clothes, as well as reach to the controls and/or coin mechanism.

The extent to which a covered entity may deviate from the Standards depends on whether the covered facility is being newly constructed, altered, or neither. In new construction of all facilities covered by title III, the Standards must be adhered to strictly, unless to do so would be structurally impracticable or equivalent facilitation is provided. See section 36-401(c) of the regulation (pages 35599 and 35600) and the preamble (pages 35557 and 35589); sections 2.2, A2.2, and 4.1.1(5)(a) of the Standards and title III regulation preamble, at pages 35607, 35611, 35674, and 35577. See also preamble to ADAAG at pages 35413 and 35415. The "structurally impracticable" exception is a narrow exception that would not apply to washing machines. When alterations are performed in covered facilities, the Standards must be followed, unless to do so would be technically infeasible. Compliance is technically infeasible only if it would require the removal of a load-bearing member of the essential structural frame of a building, or if other existing physical or site constraints prohibit compliance. See Standards

S 4.1.6(j) and title III regulation preamble, at pages 35617, 35600, and 35581; see also preamble to ADAAG at page 35428. Thus, in new construction and alteration of facilities, in most cases,. the accessibility requirements must be followed for built-in washing machines. While assistive devices may also be offered, they do not relieve the covered entity from compliance with these requirements.

In existing places of public accommodation covered by title III that are not otherwise being altered, the ADA requires that architectural barriers to access be removed where the removal is readily achievable. "See title III regulation and preamble S 36.304, at pages 35597 and 35568-70. This requirement does not apply to commercial facilities. Readily achievable means capable of being done without much difficulty or expense. See title Ill regulation and preamble, S 36.104, at pages 35594 and 35553-54. Thus, under barrier removal, washing machines must be modified if

it is readily achievable to do so. Even free-standing machines may need to be made accessible to persons who use wheelchairs because barrier removal obligations are not limited to built-in equipment.

If removing barriers from existing facilities is not readily achievable, the ADA requires that alternatives to removing barriers be undertaken, as long as those alternatives are readily achievable. See title III regulation and preamble, S 36.305, at pages 35596 and 35570-71. In such existing facilities then, controls on washing machines must be modified to be within an accessible reach range for persons who use wheelchairs, if such modification is readily achievable. Assistive devices that are provided on request may be sufficient for ADA compliance in this context only if modifying the machines is not readily achievable.

In new construction and alteration of facilities covered by title III, the number of fixed or built-in washing machines that must meet the reach range and other requirements of the Standards depends on the type of facility in which the machines are located. For transient lodging in hotels, motels, or dormitories, sections 9.1 and 9.2.2 of the Standards require all fixed or built-in facilities located in public and common use areas, and fixed or built-in facilities located within sleeping units that are required to be accessible, to comply with accessibility standards. In social service center establishments, such as shelters or group homes, section 9.5.1 requires at least one of each type or fixed or built-in machine in common areas to be accessible. As noted above, these standards apply strictly to new construction and alteration of covered facilities. In existing places of public accommodation

not covered by sections 36.201 and 36.202, these standards must be met if to do so would be readily achievable.

III. Entities covered by title II

Title II of the ADA applies to programs and facilities owned or operated by State or local government entities or instrumentalities. New construction and alteration of title II facilities must follow either the Standards or UFAS, until final standards are adopted Tender title II. In existing title 11 facilities, responsible entities must ensure that each program, when viewed as a whole, is accessible to persons with disabilities. Structural changes are not necessarily required under this standard, if programs can be made accessible in other ways. See title II regulation and preamble, S 35.150, at pages 35719-20 and 35708-09. Therefore, under the "program access" standard, use of assistive devices may result in compliance with the ADA as long as the assistive devices function to make that aspect of the program accessible to persons with disabilities.

IV. Braille controls

Under title III, the extent to which washing machines are required to have Braille controls depends on whether the facility in which they are located is a place of public accommodation or a commercial facility. Public accommodations are required by "Section 35.303 of the title III regulation to furnish auxiliary aids and services where necessary to ensure effective communication with persons with disabilities, unless doing so would pose an undue burden or would fundamentally alter the service offered. See title III regulation and preamble, S 36.303, at pages 35597 and 35565-68. Therefore, a place of public accommodation that offers washing machines with words on them must provide an effective way of communicating any words on the machine to persons with vision impairments. Braille lettering is one such method of communication. However, the Braille lettering need not be built into the equipment controls; equipment controls can be Brailled by templates or adhesive labels. Braille lettering may also be required under sections 36.201 or 36.202 of the rule, as discussed above in part II.A. Commercial facilities are not required to modify washing machines to have Braille lettering, because commercial facilities are not covered by the auxiliary aids and services requirements or by sections 36.201 and 36.202.

In facilities covered by title II, auxiliary aids and services must be provided to ensure communication with persons with disabilities that is equally as effective as communication

with others, unless to do so would pose an undue burden or a fundamental alteration to the service. See title II regulation and preamble, S 35.160, at pages 35721 and 35711-12.

V. University Dormitories

University dormitories, if privately owned, are covered by title III of the ADA. They therefore must comply with sections 36.201 and 36.202 of the title III regulation, if applicable and they must apply the Standards in new construction and alterations, and, if readily achievable, in existing facilities not being altered. Universities owned and operated by State or local governments are covered by title II of the ADA, and currently may choose between the Standards, which do not necessarily require front-loading washing machines, and UFAS, which specifically requires front-loading machines. (Whichever standard is chosen must be used throughout the facility.)

In addition, the proposed ADA guidelines for residential units covered by title II specify that at least one washing machine in any laundry facility must be front-loading, and must meet other requirements from the Standards for controls. See proposed title II guidelines and preamble, S 13.3.5, at pages 60663 and 60639 Moreover, any university, Public or private,

that receives Federal funds-is also covered by section 504 of the Rehabilitation Act of 1973; application of UFAS generally satisfies the new construction and alteration requirements of the section 504 regulations.

I hope this information is helpful to you in responding to your constituent. Please do not hesitate to contact me if we can provide additional assistance on this or any other matter.

Sincerely,

Sheila F. Anthony
Assistant Attorney General

Enclosures

4.2 Alarms

4.27.2 Clear Floor Space, clear floor space complying with 4.2.4 that allows a forward or a parallel approach by a person using a wheelchair shall be provided if controls, dispensers, receptacles, and other operable equipment.

4.27.3 Height. The highest operable part of controls, receptacles, and other operable equipment shall be placed within at least one of the reach ranges specified in 4.2.5 and 4.2.6. Electrical and communications system receptacles on walls shall be mounted no less than 15 in (380 mm) above the floor.

Exception: These requirements do not apply where the use of special equipment dictates otherwise or where electrical and communications system receptacles are not normally intended for use by building occupants.

4.27.4 Operation. Controls and operation mechanisms shall be operable with one

hand and shall not require tight grasping, pinching or twisting, of the wrist. The force required to activate controls shall be no greater than 5 lbs(22.2N).

4.28 Alarms

4.28.1 General Alarms systems required to be accessible by 4.1 shall comply with 4.28. At a minimum usual signal appliances shall be provided in buildings and facilities in each of the following area: restrooms and any other general usage areas (e.g. meeting rooms), hallways, lobbies, and any other areas for common use.

4.28.2 Audible Alarms if provided audible emergency alarms shall produce a sound that exceeds equivalent sound level in the room or space by at least 15 dh4 or exceeds any maximum sound level with a duration of 60 seconds by 5 dh4 whichever is louder Sound levels for alarm signals shall not exceed 120 dh4.

4.28.3 Visual Alarms Visual alarm signal appliances shall be integrated into the building or facility alarm system. If single station audible alarms shall be provided then single station visual alarm signals shall be provided. Visual alarm signals shall have the following minimum photometric and location features.

(1) the lamp shall be a xenom strobe type or equivalent.

(2) the color shall be clear or white (Unfiltered or clear filtered white bulb)

(3) The maximum pulse duration shall be five tenths if one second (0.2 sec with a maximum duty cycle of 40 percent. The pulse duration is defined as the time interval between and final points of 10 percent of maximum signal

(4) The intensity shall be a minimum of 75 candela.

(5) The flash rate shall be a minimum of 1 Hz and a maximum of 3 Hz.

(6) The appliance shall be placed 80 in (2030 mm)above the highest floor level within the space or space 6 in (152 mm) below the ceiling, whichever is lower.

(7) In general, no place in any room or space required to have a visual signal appliance shall be more than 50 ft (15m) from the signal (in the horizontal plane) in large rooms and spaces exceeding 100 ft(30m) across, without obstructions 6 ft (2m) above the finish floor such s auditoriums devices may be placed around the perimeter spaced a maximum 100 ft (30m) apart. In view of suspending appliances from the ceiling.

(8) No place in common corridors or hallways in which visual alarm signaling appliances are required shall be more than 50 ft (15m) from the signal.
4.28.4 Auxiliary Alarms Units and sleeping accommodations shall have a visual

alarm connected to the building emergency alarm system r shall have a standard 110-volt electrical receptacle into which such an alarm can be connected and a means by which a signal from the building emergency alarm system can trigger such an auxiliary alarm. When visual alarms are in place the signal shall be visible in all areas of the unit or room Instructions for use of the auxiliary alarm or the receptacle shall be provided.

01-02790

Federal Register / I Vol.56 No. 144 / Friday, JULY 25,1991/Rules and Regulations

4.26 Handrails, Grab Bars, and Tub and Shower Seats

4.26.4 Illuminating Hazards A handful or grab bar and any wall or other surface adjacent to it shall be free of any sharp or abrasive elements Edges shall have a minimum radius of 1/8 in (3.2 mm)

4.27 Controls and Operating Mechanics.

4.27.1 General Controls and operating mechanics required to be accessible by

4.1 shall comply with 4.27.

01-02791

Federal Register / I Vol.56 No. 144 / Friday, JULY 25,1991/Rules and Regulations

4.3.7 Slope

4.3.7 Slope An accessible route with a running slope greater than 1:20 is a ramp and shall comply with 4.8. Nowhere shall the cross slope of an accessible route exceed 1:50.

4.3.8 Changing in levels. Changes in levels along an accessible route shall comply with 4.5.2 If an accessible route has changes in level greater than 1/2 in (13 mm) then curb ramp, ramp, elevator, or platform lift (as permitted in 4.1.3 and 4.16) shall be provided that complies with 4.7 4.8 4.10 or 4.11 respectively. An accessible route does not include stairs, steps, or escalators. See definition of "egress" means of in 3.5. 4.3.9 Doors along an accessible route shall comply with 4.13.

4.3.9 Doors. Doors along an accessible route shall comply with 4.13.

01-02792

diameter (see Fig. 3(a)) or a T-shaped space (see Fig. 3(b)).

4.2.4 Clear floor or Ground Space for Wheelchairs

4.2.4.1 Size and Approach. The minimum clear floor or ground space required to accommodate a single stationary wheelchair and occupant is 30-in by 48 in (760 mm by 1220 mm) (see Fig 4(a)). The minimum clear floor or ground space for wheelchairs may be positioned for forward or parallel approach to an object (see Fig 4(b)and (c)). Clear floor or ground space for wheelchairs may be part of the knee space required under some objects.

4.2.4.2 Relationship of Maneuvering Clearance to Wheelchair Spaces. One full unobstructed side if the clear floor or ground space for a wheelchair shall adjoin or overlap an accessible route or adjoin another wheelchair clear floor space. If a clear floor space is located in an alcove or otherwise confined on all or part of three sides, additional maneuvering clearances shall be provided as shown in Fig 4(d)and (e).

4.2.5 Surfaces for Wheelchair Spaces clear floor or ground space for a wheelchair shall comply with 4.5.

4.2.5. Forward Reach If the clear floor space only allows forward approach to an object, the maximum high forward reach allowed shall be 48 in (1220 mm) (see Fig 5(a)). The minimum low forward reach is 15 in (580 mm) If the reach and clearances shall be as shown in Fig 5(b).

4.2.6 Slide Reach. If the clear floor space allows parallel approach by a person in a wheelchair, the maximum high side reach allowed shall be 54 in (1370 mm) and the low side reach shall be no less than 9 in (230 mm) above the floor (Fig 6(a) and (b)). If the side reach is over an obstruction, the reach and clearance shall be as shown in Fig 6(c).

4.3 Accessible Route.

4.3.1 General All walks, halls, corridors, aisles, skywalks, tunnels, and other spaces.

01-02793

XX
XX

DEC 6 1993

Mr. Thomas G. Daly
Corporate Director of Safety
Hilton Hotels Corporation
9336 Civic Center Drive
Beverly Hills, California 90210

Dear Tom:

I am writing in response to your letters regarding the Americans with Disabilities Act (ADA). I apologize for the delay in responding.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist you in understanding the ADA's requirements. However, it does not constitute a legal interpretation and it is not binding on the Department.

Your first letter asked a series of questions regarding the rental of hotel rooms to guests with disabilities. Your second letter inquired about alarm systems.

Regarding hotel obligations under the ADA, you ask first whether a hotel may decline to rent a guestroom that is not accessible to a guest with a mobility impairment if all accessible guestrooms are occupied and, if not, whether the hotel can require the guest to sign a waiver of liability.

Under title III of the ADA, no individual may be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, and accommodations of any place of public accommodation (28 C.F.R. S 36.202). A place of public accommodation may impose legitimate safety requirements, even if they tend to screen out persons with disabilities. However, these requirements must be based on actual risks and on facts about particular individuals, not on stereotypes or generalizations about individuals with disabilities or on the basis of presumptions as to a class of individuals with

cc: Records, Chrono, Wodatch, Magagna
udd\magagna\pl\ XX

disabilities can or cannot do. A policy that denies persons with mobility or hearing impairments the use of an inaccessible room on the basis of safety concerns may constitute the kind of prohibited generalization or presumption about what a class of individuals with disabilities can or cannot do. Note that any safety standard must be applied to all clients or customers of the place of accommodation, and inquiries about it must be limited to matters necessary to carrying out the specific standard. Hotel guests with disabilities assume the same ordinary safety risks as do guests without disabilities.

It is discriminatory to apply eligibility criteria or standards that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities from the full and equal enjoyment of any goods and services, unless such criteria can be shown to be necessary for the provision of the goods and services (28 CFR S 36.301). Therefore, singling out persons with disabilities to sign waivers of liability as a condition of becoming a hotel guest is likely an example of an eligibility criterion that tends to screen out persons with disabilities.

We presume under your scenario that a person with a disability is being offered a non-accessible room because all accessible guestrooms are occupied by persons with disabilities. If that is not the case, the hotel should move non disabled guests to another room and provide the accessible room to the person with a mobility impairment. This situation can be avoided by reserving the hotels accessible rooms until all the other rooms are booked, by renting accessible rooms to non disabled guests for one night only, or by notifying non disabled persons who rent accessible rooms that they may be asked to move to another room.

Furthermore, an existing hotel that has an insufficient number of accessible rooms, according to the ADA Standards for Accessible Design, Section 9.1.2, is obligated under the ADA to remove architectural barriers to access and make the requisite number of rooms accessible, to the extent it is readily achievable to do so. Please also remember that, in altering guest rooms or when constructing new hotels, a hotel must make a certain number of the guest rooms accessible. For the appropriate numbers of accessible rooms, please refer to Section 9 of the Standards for Accessible Design.

Your second question is whether a hotel must accede to a request to rent a non-accessible room to a guest with a mobility impairment when accessible rooms are available and, if so, whether the hotel can require the guest to sign a waiver of liability. Individuals with disabilities are not required to accept accessible accommodations. Section 501(d) of the ADA specifically provides:

> Nothing in this Act shall be construed to require an individual with a disability to accept an accommodation, aid, service, opportunity, or benefit which such individual chooses not accept.

Because an individual has a statutory right to decline the accessible room in the first instance, a penalty in the form of requiring a waiver of liability cannot be imposed for exercising that right.

Your third question is whether the hotel may deny a room to a guest who is deaf and who desires a room equipped for persons with hearing impairments. Again we presume that only persons with disabilities are occupying such rooms on that evening. If not, non-disabled persons should be moved to allow the person with a disability to occupy the room.

In order to provide equal access, a public accommodation is required to make available appropriate auxiliary aids and services where necessary to ensure effective communication (28 C.F.R. 36.303). The hotel maintains its responsibility to provide effective communication, even though a guest with a hearing impairment is placed in an inaccessible room. Therefore, if all the rooms equipped with visual alarms are occupied, the hotel is still responsible for providing effective communication by alternative methods, such as portable alarms, or other devices if it is not an undue burden. The hotel is strongly encouraged to consult with the individual with a disability to ensure the choice of an auxiliary aid or service that will result in effective communication.

Your second letter deals with the question of installation heights for visual alarm devices as provided in section 4.28.3(6) of the Standards. This provision requires that the visual appliances of the alarm system be located 80 inches above the highest floor level within the space or 6 inches below the ceiling, whichever is lower. This requirement was based on data indicating that 80 inches was the most effective height for a 75-candela lamp. The additional requirement that the lamp of

ceiling mounted devices be below the ceiling, rather than recessed into or flush with ceiling, was included because the reflection of the flash on the ceiling surface is an important factor affecting the visibility of the visual alarm device. This data and reasoning is explained in the enclosed technical bulletin on visual alarms that was developed by the Architectural and Transportation Barriers Compliance Board.

Section 2.2 of the Standards, Equivalent Facilitation, permits departures from particular technical requirements when alternative designs and technologies can be shown to provide equivalent or greater accessibility. The concept of equivalent facilitation allows for deviations from technical provisions of

the standards when it is necessary to meet the requirements of other applicable regulations. However, the Department does not certify or approve individual proposals of equivalent facilitation.

We hope that the information above is of help to you. Please feel free to contact the Public Access Section any time you have other questions or need further information. The Department maintains a telephone information line to provide technical assistance regarding the rights and obligations of individuals, businesses, agencies, and others covered or protected by the ADA. This technical assistance is available by calling 202-514-0301 (voice) or 202-514-0383 (TDD) between 1:00 p.m. and 5:00 p.m., Monday through Friday,

Sincerely,

John L. Wodatch
Chief
Public Access Section

Enclosure
Visual Alarms Bulletin

01-02802

XX

DEC 6 1993

Anthony C. Rodriguez
Attorney at Law
1300 Clay Street
Suite 600
Oakland, CA 94612

Dear Mr. Rodriguez:

This letter is in response to your request for information about the provisions of the Americans with Disabilities Act (ADA). We apologize for the delay in responding.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist you in understanding the ADA's requirements. However, it does not constitute a legal interpretation or legal advice, and it is not binding on the Department.

You have asked whether title III of the ADA applies to common areas of residential properties, including mobilehome parks.

Title III of the ADA applies to privately owned or operated facilities that are either commercial facilities or that fall within one of the twelve categories of "places of public accommodation" listed in that title. Strictly residential facilities are not included in the twelve public accommodation

categories and are expressly exempted from the definition of commercial facilities.

Although title III does not apply to strictly residential facilities, it does cover facilities, or portions of facilities, that have some residential features and that function as one of the twelve categories of places of public accommodations. For instance, common areas that are places of public accommodation located within private residences that are not intended for the exclusive use of tenants and their guests, are covered by title III. This coverage is provided for explicitly

cc: Records, Chrono, Wodatch, Magagna
udd\grant\policy\rodriguz.hsg

01-02806

in the preamble to the title III regulation on page 35552 of the enclosed volume. Additionally, section 36.207(a) of the regulation explains that when a place of public accommodation is located in a private residence, the areas of the home that are used for the operation of the public accommodation are covered by title III, while the other areas which are used exclusively as a residence are not.

In a mobilehome facility, common areas, such as recreational facilities, for example, that are restricted to the exclusive use of residents and their guests would be considered part of the residential facility and not a place of public accommodation even though places of recreation are listed among the categories of public accommodations under title III. However, where such facilities are available for use by persons other than residents and their guests, they are places of public accommodations within the meaning of title III. Thus, a mobilehome park rental office which serves persons other than residents and their guests would be considered a rental establishment or service establishment within the meaning of the ADA.

This interpretation is fully consistent with the excerpt of the Senate Report you rite which provides that "[o]nly nonresidential entities or portions of entities are covered by [title III]." Where "portions of an entity" are used by persons other than residents and guests, they lose their strictly residential character.

I have enclosed the regulation promulgated under title III, and title Technical Assistance Manual for that title. I hope this information is helpful to you.

Sincerely,

John L. Wodatch
Chief
Public Access Section

Enclosures
Title III regulation
Title III Technical Assistance Manual

01-02807

XX

DEC 9 1993

XX
XX (b)(6)
ICELAND

Dear XX

This is in response to your letter inquiring whether your daughter would be able to receive health and life insurance at a premium no higher than children who do not have disabilities. We apologize for the delay in responding.

Title III of the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. SS 12181-12189, authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist you in understanding the ADA's requirements. This technical assistance, however, does not constitute a determination by the Department of Justice of rights or responsibilities under the ADA, and it does not constitute a binding determination by the Justice Department.

Your letter inquires as to whether your daughter, who has a disability, is entitled to health and life insurance, and whether her premiums would be affected by her disability. With respect to the purchase of insurance, the ADA allows insurance companies to charge more for insurance, to deny health insurance to an individual with a pre-existing condition for that condition, or to offer policies that limit coverage for certain procedures or treatments, but only if the higher charges or limitations in coverage are based on sound actuarial data and principles. Thus, while the ADA does provide some protection for individuals with disabilities in their dealings with insurance companies, it does not prohibit the use of legitimate actuarial considerations. The laws of the State in which you reside may provide different or additional protections for your child, and you may want to inquire with the appropriate State officials.

Enclosed for your information is a copy of the Department of Justice's Technical Assistance Manual for title III of the ADA. It discusses the definition of disability on pages 9-13, and the requirements applicable to insurance companies on pages 19-20.

cc: Records, Chrono, Wodatch, Magagna
udd\magagna\pl\617

01-02808

I hope this letter adequately responds to your inquiry. If you have any other questions concerning the ADA, you may call our information line at (202) 514-0301 between 1 p.m. and 5 p.m. EST, Monday through Friday.

Sincerely,

John L. Wodatch
Chief
Public Access section

Enclosure
Title III Technical Assistance Manual

12-8-93

DJ XX

DEC 9 1993

Mr. James T. Moll, AIA
Assistant Vice President
T. Rogvoy Associates, Inc.
6735 Telegraph Road, Suite 300
Bloomfield Hills, Michigan 48301

Dear Mr. Moll:

I am responding to your letter asking if title III of the Americans with Disabilities Act (ADA) requires a newly constructed sales establishment to provide elevator access to a

mezzanine that houses employee offices and storage space.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities that have rights or responsibilities under the Act. This letter provides informal guidance to assist you in understanding the ADA and the Department's regulation. However, this technical assistance is not a legal interpretation of the statute, and it is not binding on the Department.

To determine if elevator access to a mezzanine in a specific building is required, you must look to the requirement that applies to the building in which the mezzanine is located. In new construction and alterations, title III generally requires that at least one accessible passenger elevator serve each level of a multistory building. However, there is an exception to this general rule. Elevators are not required in facilities that are less than three stories or have fewer than 3000 square feet per story, unless the building is a shopping center or mall; the professional office of a health care provider; a public transit station; or an airport passenger terminal.

Your letter specifies that the sales establishment in question is less than three stories in height but is located in a shopping center. Therefore, to determine if the elevator exemption applies, you must look to Section 3.5 of the ADA Standards for Accessible Design (Appendix A to the enclosed regulation) which defines a "story" as:

cc: Records, Chrono, Wodatch, Blizard, FOIA, Friedlander
n:\udd\blizard\adaltrs moll

> That portion of a building included between the upper surface of a floor and upper surface of the floor or roof next above. If such portion of a building does not include occupiable space, it is not considered a story for purposes of these guidelines. There may be more than one floor level within a story as in the case of a mezzanine or mezzanines.

A mezzanine, defined as "that portion of a story which is an intermediate floor level placed within the story and having

occupiable space above and below its floor," is not considered a "story" for the purpose of determining if an elevator is required.

A single-story building (with or without a mezzanine) is never required to install an elevator. A two-story building that is part of a shopping center or mall is required to install an elevator to provide access to each floor level occupied by a "sales establishment." The term "sales establishment" encompasses all aspects of the business operation, not merely the areas within the facility dedicated to the display or sale of goods. Therefore, the fact that a mezzanine within a sales establishment is not used to sell or display merchandise is not relevant to the application of the elevator requirements. If the sales facility is required to install an elevator, the elevator must connect all levels of the facility, including the mezzanine.

For your reference, I am enclosing a copy of this Department's regulation implementing title III of the ADA and the Title III Technical Assistance Manual. I hope that this information is helpful to you.

Sincerely,

John L. Wodatch
Chief
Public Access Section

Enclosures

01-02811

T. ROGVOY ASSOCIATES, INC. ARCHITECTS

6735 Telegraph Road, Suite 300
Bloomfield Hills, Michigan 48301

Telephone 313-540-7700
Facsimile 313-540-2710

BERNARD H. DRANE, AIA
CLARE D. IMHOFF, AIA
G. BRUCE MOORE, AIA
CHARLES M. LOOHIS, AIA
RICHARD L. WIDERSTEDT, AIA
JAMES T. MOLL, AIA

MARK DRAKE, AIA
DAVIS W. BOLLA, AIA
DONALD R SHELDON
CLAUDE E. OLESON, AIA

August 13, 1993

Mr. John L. Wodatch - Director
Office on the Americans with Disabilities Act
Civil Rights Division
Department of Justice
P.O. Box 66118
Washington, DC 20035-6118
Re: ADA Elevator Requirements

Dear Sir:

Please clarify ADA elevator requirements for a newly constructed Sales establishment less than three (3) stories in height and more than. 3,000 square feet in area, and:

1. contains a partial second floor or mezzanine to be used by employees only as office and/or storage areas,
2. shares a site with five or more other sales establishments with exterior access only from one establishment to another.

We might conclude from Part III, 28 CFR 36, Section 36.401 paragraphs d.1. and d.2., that an elevator is required because, as a shopping center, the elevator exemption would not apply. However, the example contained in paragraph d. 3. indicates an elevator would not be required, per the last four (4) words as paraphrased: "For example, in a facility that houses a shopping center ... the floors that are above or below an accessible ground floor and that do not house sales or rental establishments ...must meet the requirements of this section but for the elevator."

We understand the intent of paragraph d.3., but the example contained therein appears to contradict paragraph d.2. is the use of the mezzanine as a non-sales area a factor in determining if an elevator is required?

We would appreciate a timely response to this matter. If there are any questions, please call me.

Very truly yours,
T. ROGVOY ASSOCIATES, INC.
James T. Moll, A.I.A.
Assistant Vice President

REM:ADA.004
01-02812
T. 12-8-93 DEC 9 1993

Mr. John J. Philip

Supervisor of Field Operations
The State Library of Ohio
65 South Front Street
Columbus, Ohio 43266-0334

Dear Mr. Philip:

I am responding to your letter asking for clarification of the requirements of the Americans with Disabilities Act (ADA). You have asked if the ADA requires bookmobiles operated by public libraries to be equipped with wheelchair lifts.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities that have rights or responsibilities under the Act. This letter provides informal guidance to assist you in understanding the ADA and the Department's regulation. However, this technical assistance is not a legal interpretation of the statute, and it is not binding on the Department.

Title II of the ADA prohibits discrimination on the basis of disability in the programs, activities, and services of public entities. A public library is an entity subject to the requirements of title II. Therefore, a public library is required to ensure that each of its programs, including its bookmobile program, is accessible to individuals with disabilities. However, this obligation to provide access to each program does not necessarily require a public entity to make each of its facilities accessible.

Bookmobiles are "facilities" subject to title II; but there is no established design standard, for accessible mobile facilities such as bookmobiles. Therefore, a public library is not required to purchase new bookmobiles that meet specific design criteria or to retrofit existing bookmobiles to meet a specific standard. A library that operates a bookmobile may choose to meet its program accessibility obligations by installing a wheelchair lift on the vehicle, or it may choose to provide access to the program through other methods, such as the use of aides to locate and retrieve books for people with disabilities.

cc: Records, Chrono, Wodatch Blizard, FOIA, Friedlander
n:\Udd\blizard\adaltrs\philip

01-02813

For your information, I am enclosing a copy of the Department of Justice regulation implementing title II and the Title 11 Technical Assistance Manual. I hope that this information is helpful to you.

Sincerely,

John L. Wodatch
Chief
Public Access section

Enclosures

01-02813

The State Library of Ohio
65 South Front Street, Columbus, Ohio 43266-0334
614/462-7061

April 30, 1993

Mr. John Woodach, Director,
Office of Americans with Disabilities Act
U.S. Department of Justice
Civil Rights Division
P.O. Box 66738
Washington, DC 20035-9998

Dear Mr. Woodach:

This letter is being written to seek your guidance in the area of bookmobile construction. For eight years the State Library of Ohio has presented annual National Bookmobile Conferences. As a result we receive questions on bookmobile service from libraries throughout the country. Recently, questions regarding whether a wheelchair lift needs to be added to existing and/or new bookmobiles have surfaced. In this context, it would be greatly appreciated if you would clarify the requirements, if any, for a bookmobile wheelchair lift under the regulations for the Americans with Disabilities Act.

By way of background, I was unable to attend the American Library Association program in San Francisco during which you spoke on this issue However, various attendees have indicated to me that your comments seemed to indicate that you saw no requirement to install a wheelchair lift In a library bookmobile.

Although public libraries have embraced ADA as part of their commitment to service, my questions (see below) come from administrators who have tried to make their facilities accessible. Nonetheless, they have concerns about the utility of a wheelchair lift on the bookmobile which, by its nature, is extremely limited in usable space, particularly in busy hours.

Despite this limitation, many libraries (including this State Library) have added a wheelchair lift to bookmobiles. Regrettably, very little use of the wheelchair lift seems to have been recorded.

3. Would a chair lift be acceptable in place of a wheelchair lift if accessibility is required.

4. If new standard-length bookmobiles requiring a wheelchair lift, does this requirement also extend to smaller bookmobiles?

5. Do bookmobiles now in service need to be retrofitted with a wheelchair-lift?

I would appreciate your responses to these questions and permission to quote you in answering bookmobile wheelchair queries, At present, I know of at least five libraries in the process of planning new bookmobiles. Nationally if past experience is a guide, the questions in this letter are undoubtedly being pondered by at least one hundred other American libraries.

Your assistance is greatly appreciated.

Sincerely,

John J. Philip
Supervisor of Field Operations

JJP:sb

Encls.

DEC 14 1993

Zita Denkinger
565 N.W. Holly Street
Box 7003
Issaquah School District
Issaquah, WA 98027

Dear Ms. Denkinger:

This letter is response to your letter requesting information regarding the kinds of requirements being made of privately owned museums, parks, and recreational facilities under the Americans with Disabilities Act of 1990 ("ADA"). You also asked whether it is permissible under the ADA for a public school to pay for the use of a private facility that is not accessible to people with disabilities. We apologize for the delay in responding.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal' guidance to assist you in understanding the ADA's requirements. However, it does not constitute a legal interpretation or legal advice and it is not binding on the Department of Justice.

Generally, title III of the ADA prohibits the owners and operators of places of public accommodation from discriminating against people on the basis of their disabilities. Privately owned museums, parks, and recreational facilities are places of public accommodation. Please see the enclosed title III regulation at section 36.104 (pages 35,594 and 35,551-52) for further discussion.

Public accommodations have many obligations under the ADA. Four of these obligations may be of special concern to you. First, public accommodation must make reasonable modifications

cc: Records, Chrono, Wodatch, Magagna, Mobley
udd\mobley\pletters\denkinge

01-02817

to their policies, practices, and procedures to accommodate persons with disabilities. Second, they must provide appropriate auxiliary aids and services except under certain circumstances. Third, they must remove architectural barriers to access where such removal is readily achievable. Fourth, when it is not readily achievable to engage in barrier removal, they must apply readily achievable alternatives to provide access. Each of these obligations is discussed in the enclosed Technical Assistance Manual.

You also asked whether it is permissible for public schools to pay for the use of private facilities that are not accessible to individuals with disabilities. Title II prohibits public entities from discriminating against individuals with disabilities or from excluding them from participation in or denying them the benefits of governmental services, programs, or activities. Please refer to the discussion in the enclosed title II regulation (pages 35,718-19 and 35,702-06).

Sections 35.149 and 35.150 of title II require government institutions like public schools to operate their programs so that when the program is viewed as a whole it is readily accessible to and usable by individuals with disabilities. Program access must be achieved unless doing so would result in an undue burden. Please see the enclosed title II regulation for a discussion of program access (pages 35,719-20 and 35,708-09).

If a school arranges a field trip to a local museum, for example, the concept of program access requires the field trip to be made accessible to students with disabilities. To satisfy this requirement, the school may, for example, arrange with the

museum to provide an audio tape or slide show description of inaccessible areas of a museum.

I have enclosed this Department's Title II and III Technical Assistance Manuals that were written to guide individuals and entities having rights and obligations under the Act toward a fuller understanding of the law. Pertinent discussion is found in the Title III Technical Assistance Manual at pages 1-2 (definition of place of public accommodation), 22-25 (reasonable modifications of policies), 25-27 (auxiliary aids and services), 28-37 (removal of architectural barriers), and 37-38 (alternatives to barrier removal), and in the Title II Technical Assistance Manual at pages 9-13 (general prohibitions of discrimination), and 19-20 (program access).

01-02818

I hope this information is useful to you in understanding the requirements of the ADA.

Sincerely,

Joan A. Magagna
Deputy Chief
Public Access Section

Enclosures (4)

Title II Regulation
Title II Technical Assistance Manual
Title III Regulation
Title III Technical Assistance Manual

01-02819

12-10-93

202-PL-574

5 1993

Mary Pell, D.O.
INTEPMED
990 44th Street S.W.
Wyoming, Michigan 49509

Dear Dr. Pell:

I am responding to your letter asking for information about the requirements of title III of the Americans with Disabilities Act (ADA), and this Department's regulation implementing title 111. Specifically, you have asked if a health care provider is required to provide a sign language interpreter for a patient who is deaf or hard of hearing if effective communication can be achieved through other means.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities that are subject to the Act. This letter provides informal guidance about the obligation of a health care provider to provide auxiliary aids; however, this technical assistance does not constitute a legal

interpretation of the statute, and it is not binding on the Department.

The ADA requires public accommodations, including physicians, to furnish appropriate auxiliary aids and services where necessary to ensure effective communication with individuals with disabilities. In determining what constitutes an effective auxiliary aid or service, a physician must consider, among other things, the length and complexity of the communication involved. For instance, a notepad and written materials may be sufficient to permit effective communication when a physician is explaining possible symptoms resulting from a simple laceration. Where, however, the information to be conveyed is lengthy or complex, the use of handwritten notes may be extremely slow or cumbersome and the use of an interpreter may be the only effective form of communication.

Use of interpreter services is not necessarily limited to the most extreme situations -- for example, a discussion of whether to undergo surgery or to decide an treatment options for cancer. Further discussion of this point may be found on page

cc: Records, Chrono, Wodatch, Blizard, FOIA Friedlander
n:\udd\blizard\adaltrs\pell

01-02820

35567 of the preamble to the enclosed regulation. While the nature of medical services is considered one factor in determining what auxiliary aid is necessary for effective communication, the focus should be not only on the nature of the services, but also on-the type of communication between the physician and the patient.

Interpreters are not usually needed for routine office visits. However, an interpreter may be required for routine visits, if a note pad does not provide effective communication between the physician and the patient. For example, if your patient's routine care includes regular office visits at which-you record her blood pressure and weight, exchanging notes is likely to provide an effective means of communication. But, if your patient's routine visit involves a thorough examination and a battery of tests which should be discussed, you should be prepared to arrange for the services of a qualified interpreter, as an interpreter is likely to be necessary for effective .

communication with your patient, given the length and complexity of the communication involved.

I am enclosing a copy of this Department's regulation implementing title III and the Title III Technical Assistance Manual. I hope that this information is helpful to you.

Sincerely,

John L. Wodatch
Chief
Public Access Section

Enclosures

01-02821

Public Access Section
Correspondence Assignment Form

Correspondence Control Number 202-PL-574

Assigned to

Reviewer Bowen (6-23-93) handwritten

Date Assigned

Action Required (& Date)

Date Due to Reviewer

Date to be Sent

Date Reply Sent

Name of Correspondent Mary Pell handwritten

Make Signature For

Additional Instructions

PL1 PL2 (If PL2 send to Special Legal Counsel)

01-02822

INTERMED
West Michigan Osteopathic Doctors, P.C. Michael C. McCully, D.O.
Mary R. Pell, D.O.
Burr M. Rogers, D.O.
Paul W. Schneider, D.O.

Office on the Americans
with Disabilities Act
Civil Rights Division
U.S. Department of Justice
P.O. Box 66738

Washington, D.C. 20035-9998

To Whom It May Concern:

My name is Dr. Mary Pell and I am a family practitioner in Grand Rapids, Michigan and I wondered if you could please take some time to clarify a question that our office has. We presently have a patient who is deaf and who is under our care and is able to communicate with us through notes, however she informs us that this is not an acceptable form of communication as far as she is concerned. She is demanding that we hire an interpreter to be available with her during her office appointments.

We have sent for a copy of the Americans Disability Act, and if my understanding is correct, as long as there is some form of communication, then we have met our obligations, according to this Act.

If I misunderstood that interpretation and we do need someone here as an interpreter, could you please either just call our office at (616) 538-3300 or send us a note and let us know what our specific responsibilities are concerning that.

Thank you for your effort.

Sincerely,

Mary Pell, D.O.

MP/ts

990 44TH STREET SW; WYOMING, MI 49509. TELEPHONE (616) 538-3300 FAX LINE (616) 538-6353

01-02823
T. 12-10-93

XX (b)(6)

15 1996

Mr. Fred Burgess
Local Union No. 916 AFL-CIO
United Brotherhood of Carpenters

and Joiners of America
P.O. Box 1542
Aurora, Illinois 60507

Dear Mr. Burgess:

I am responding to your letter concerning the Americans with Disabilities Act (ADA). I apologize for the delay in responding.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities that have rights or responsibilities under the Act. Pursuant to that authority, this letter provides informal guidance to assist you in understanding the ADA. However, this technical assistance does not constitute a legal interpretation of the statute and it is not binding on the Department.

You have asked whether there are any procedures available to you to ensure that specifications and drawings for renovations are in compliance with title III of the ADA, 42 U.S.C. 12101 et seq., before the necessary permits are issued.

The first issue raised in your letter is the relationship between State or local law and Federal law in this area. State and local governments are not authorized to enforce the ADA, to monitor compliance therewith, or to grant waivers of the ADA's requirements. Therefore, as you noted, the City of Aurora Building and Inspection Department is not authorized to certify that your proposed specifications and drawings satisfy the requirements of the ADA. Note, however, that the ADA does not preempt State or local law and, therefore, such laws must be complied with in addition to the ADA.

As your letter implies, this overlap of State and local law and the Federal ADA can complicate the building process. To

cc: Records, Chrono, Wodatch, Hill, FOIA, Friedlander
n:\udd\hille\burgessl

01-02824

address this potential problem, the ADA has provided a process by which State and local governments may submit their building codes to the Department of Justice for certification that the

requirements of those codes meet or exceed the requirements of the ADA. If such certification is granted for a State or local code, an entity whose building is built in compliance with the certified code will be able to rely on the certified code as "rebuttable evidence" of compliance with the ADA. Thus, such certification, although not a guarantee against findings of noncompliance, would allow builders to rely on their State or local codes and on the local systems of preliminary investigation, approval, and enforcement, rather than having to do independent reviews of both the local and Federal laws. The process of certification may be initiated by a State or local official or entity who has principal authority for administration of the submitted code.

In the absence of such certification, however, the ADA does not create a Federal equivalent to the local code enforcement process. Neither the Department of Justice, nor any other Federal agency, functions as a "building department" to review plans, issue permits or certificates, or provide "interpretations" of the applicable standards. Rather, title III is generally enforced through compliance reviews, complaint investigations, and litigation. In short, the ADA is a civil rights law, rather than a building code, and, like other civil rights laws, it requires each covered entity to use its best professional judgment to comply with the statute and the implementing regulations.

There are, however, numerous sources available to assist you in understanding and fulfilling the requirements of the ADA. The primary source of guidance is the Department's title III - regulation, which includes the ADA Standards for Accessible Design. The ADA Standards establish minimum standards for the design and construction of new buildings and for alterations to existing buildings. These standards provide guidance to those in the building industry as to how to provide minimum levels of accessibility.

In addition, this Department has issued a title III Technical Assistance Manual designed to assist entities subject to the ADA to understand and satisfy their obligations. Finally, the Department has established a telephone information line to respond to any specific inquiries you may have during your implementation of the ADA requirements. The information line number is (202) 514-0301 (voice) , (202) 514-0381 (TDD) .

I am enclosing copies of both the regulation implementing title III of the ADA and the Department's Title III Technical

Assistance Manual. I hope that this information is helpful to you and that this letter fully responds to your inquiry.

Sincerely,

John L. Wodatch
Chief
Public Access Section

Enclosures

01-02826

UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA

Local Union No. 916 AFL-CIO
AMERICA WORKS BEST WHEN WE SAY. Mailing Address:
UNION YES P. O. Box 1542
Aurora, IL 60507
(708) 896-4635

Public Access Section Sep 30, 1993
Civil Rights Division 3:32 p.m.
U.S. Department of Justice
P.O. Box 66738
Washington, D.C. 200356738

Dear Sir:

The City of Aurora, Building and Inspection Department 65 S. Water St. Aurora II.60507 under the direction of xx (b)(6) xx claims they do not have enforcement jurisdiction for the American with Disabilities Act.

We have a lot of commercial rehabilitation work coming and underway in the City of Aurora and I believe that the specifications and drawings should be brought up the ADA when they do the renovation work and not wait until the buildings are occupied to find the owners, developers and builders are not in compliance.

Is there any thing that can be done at the preliminary stages before the permits are issued to make sure the buildings meet or exceed the ADA, please let me know.

Sincerely,

Fred Burgess

01-02827

T. 12-13-93

DEC 15 1993

Mr. Fred M. Farmer
R. Douglas Stone & Associates, P.A.
940 North Ferncreek Avenue
Orlando, Florida 32803-3378

Dear Mr. Farmer:

I am responding to your letter concerning the Americans with Disabilities Act (ADA). I apologize for the delay in responding.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities that have rights or responsibilities under the Act. Pursuant to that authority, this letter provides informal guidance to assist you in understanding the ADA. However, this technical assistance does not constitute a legal interpretation of the statute, and it is not binding on the Department.

Your letter raises several issues regarding the relationship between State and Federal law in the area of accessibility to persons with disabilities. First, the ADA is a Federal law and is enforced by Federal agencies, including the Department of Justice. State governments are not authorized to enforce the ADA, to monitor compliance therewith, or to grant waivers of the ADA's requirements.

Second, the ADA does not preempt all State regulation in the area of accessible design. States are free to enact and enforce code provisions that provide equal or greater access than the ADA standards. However, if the State code provisions differ from the ADA requirements in a way that results in less accessibility, then an entity subject to title III of the ADA is required to comply with the Federal standard. To the extent that the Federal standard is irreconcilable with the State standard, a covered entity must comply with the Federal standard.

Finally, your letter raises the specific issue of the

technical requirements that govern the height of accessible toilets. You correctly note that the ADA Standards for Accessible Design, section 4.16.3, requires that water closets be 17 to 19 inches in height, measured to the top of the toilet

Records, Chrono, Wodatch, Hill, FOIA, Friedlander
d\hille\policylt\farmerlt

01-02828

seat. In new construction, or when a water closet is being altered, this requirement must be followed strictly. Therefore, it would be impermissible to install water closets of 20 inches in height, even if permitted or required by State law. However, in your particular situation, as you correctly note, a 19-inch water closet would meet the requirements of both the ADA Standards and the Florida State code as you have described it.

I hope that this information is helpful to you and that this letter fully responds to your inquiry.

Sincerely,

John L. Wodatch
Chief
Public Access Section

01-02829

R. DOUGLAS STONE & ASSOCIATES, P.A.
CONSULTING ENGINEERS TEST AND BALANCE ENERGY MANAGEMENT
940 N. FERNCREEK AVE. ORLANDO, FLORIDA 32803-3378 407-895-5423 FAX407-895-4797
September 29, 1993
FAX: (202) 514-0381

Office of the Americans with Disabilities Act
Civil Rights Division
U. S. Department of Justice
Washington, DC 20530
Attn: Barbara S. Drake,
Deputy Assistant Attorney General

Re: Americans with Disabilities Act of 1990

Dear Ms. Drake:
We welcomed a uniform "handicapped" code as a national standard in lieu of the numerous conflicting local / state / national codes. However, we in Florida are facing a dilemma that needs your attention. On October 1, 1993, we will be faced with a conflicting code that will be issued by the State of Florida Department of Community Affairs, Board of Building Codes and Accessibility Requirements, (904) 487-1824, Ms. Mary Kathern Smith. We have been informed that they will not enforce the A.D.A. Code but will enforce their State of Florida Code. THIS IS NOT A GOOD SITUATION.

For example, the A.D.A. Code requires the top of the toilet seat to be from 17" to 19" while the State of Florida Code requires that height to be 19" to 20"! The water closet manufacturers are changing their standard toilet height from 18" down to 17", so when you add a standard 1-inch-thick seat, the top is perfectly even with the 18" envelope. The State of Florida situation will require

the extra cost of a special 2" thick seat to meet their 19" to 20" envelope.

Just recently, we had a nursing home project turned down because we had only 18" to the top of the seat, which did not meet the State of Florida codes, but did meet A.D.A. Code.

In addition to this problem, the State of Florida is rewriting many of the other requirements currently addressed by the A.D.A. Code which will effect many other items similarly.

Thank you for your time and consideration of this matter. I await your reply.
Sincerely
Fred M. Farmer
cc: American Society of Plumbing Engineers Gerber Plumbing
Universal-Rundle Corporation American Standard
Kohler Company Crane Plumbing
Eljer Plumbing Products
01-02830

U.S. Department of Justice
Civil Rights Division
Coordination and Review Section

P.O. Box 66118
Washington, D.C 20035-6118

DEC 16 1993

XX
XX
St. Louis, Missouri XX
(b)(60
Dear Ms. XX

This is in response to your letter to this office regarding respiratory disabilities and the Americans with Disabilities Act (ADA).

The ADA authorizes the Department of Justice to provide technical assistance to entities that are subject to the Act. This letter provides informal guidance to assist you in understanding how the ADA may apply to you. However, this technical assistance does not constitute a determination by the Department of Justice of your rights or responsibilities under the ADA and does not constitute a binding determination by the Department of Justice.

Under the ADA, the Department of Justice declined to state

categorically that allergy or sensitivity to cigarette smoke should be recognized as a disability because, in order to be viewed as a disability under the ADA, an impairment must substantially limit one or more major life activities. An individuals respiratory or neurological functioning may be so severely affected by allergies or sensitivity to cigarette smoke that he or she will be considered disabled. Such an individual would be entitled to all of the protections afforded by the ADA. In other cases, however, an individuals sensitivity to smoke or other environmental elements will not constitute a disability. If, for instance, an individuals major life activity of breathing is somewhat, but not substantially, impaired, the individual is not disabled and is not entitled to the protections of the statute. Thus, the determination as to whether allergies or sensitivity to smoke are disabilities covered by the regulation must be made using the same case-by-case analysis that is applied to all other physical or mental impairments. (See the enclosed title III regulation at page 35549.)

Because of the case-by-case nature of the determination, the Department of Justice ADA regulations do not mandate restrictions on smoking. It is important to note that section 501(b) of the statute merely states that the prohibition of, or the imposition of restrictions on, smoking in places of public accommodation is not precluded by the ADA. The statute does not mandate imposition of any restrictions. Furthermore, there is currently no Federal statute that absolutely bans smoking in public buildings.

If you believe that you are disabled as defined under the ADA and you can identify a particular facility in which you are denied access because of the presence of smoke, you may either file a private suit in Federal court or send a complaint to the Department of Justice for investigation. Complaints against State or local government facilities should be sent to this ' office. Complaints against privately owned places of public accommodation should be sent to the Public Access Section, Civil Rights Division, U.S. Department of Justice, P.O. Box 66738, Washington, D.C. 20035-6736.

I hope this information has been helpful to you.

Sincerely,

Stewart B. Oneglia
Chief
Coordination and Review Section
Civil Rights Division

Enclosure

01-02832

October 7, 1993

Department Of Justice
The Honorable Janet Reno
U.S. Attorney General
10th & Constitution Avenue NW, ROOM 5111
Washington, D.C. 20530

Dear Ms. Attorney General,
Please find enclosed a copy of a letter I recently sent to the Mayor of St. Louis. I have a respiratory disability in the fact that I have Asthma and that I have severe reactions to small amounts of cigarette smoke. I have been having a great deal of difficulty trying to get accommodation for my disability.

Why is it that the Americans With Disability Act of 1990 technical manual has absolutely no Federal Agencies and/or Federally Funded ADA Technical Assistance programs that deal specifically with respiratory disabilities? And why is it that Accessibility Guidelines and Uniform Accessibility Standards do not address air quality and/or accessibility

guidelines for respiratory disabilities? Isn't that discrimination?

If it has to do with your mouth, your ears, your eyes, your brain or your limbs you have and can find specific Federal assistance for that disability. Also receiving specific Federal assistance are those with Aids and Alcohol and Substance Abuse. I am not downgrading those disabilities, but it is discrimination against those of us who have a Chronic Lung Disease not to be included. We have essentially been left to fight for our own rights to gain access.

Those individuals who are considered to have a respiratory disability include those with asthma, emphysema, hay fever, sinusitis, allergies, Chronic Obstructive Pulmonary Disease (COPD) and many other conditions which are triggered or exacerbated by exposure to tobacco smoke to the extent that at least one major activity (e.g., breathing and working) are adversely affected.

When I called the Office For The Disabled for the City of St. Louis I asked what that office was supposed to do for disabled people. I was told that they were there to advocate for the disabled. Then I explained that I did not have access to most of St. Louis because of my respiratory disability and that I wanted them to help me. I was told that they were already in compliance with the ADA and that there was nothing that they could do for me.

XX (b)(6)

If you would like to get a real education as to what it is like for those of us with a respiratory disability try calling the St. Louis Housing and Urban Development Office and ask about housing people.

01-02833

with a respiratory disability who are sensitive to Environmental Tobacco Smoke (ETS). If you have any other disability they can accommodate you.

Those of us who have this disability need someone who has this same disability to advocate and help draft access guidelines that will be added to those already in place. When there is tobacco smoke in the lobby of a building or being recirculated from a smoking area that building is not accessible to me. For someone like myself, any amount of tobacco smoke in a lobby is like asking someone in a wheel chair to climb a flight of stairs to get to the elevator.

On August 18, 1993 I attended a media training session sponsored by the American Stop Smoking Intervention Study (ASSIST) a joint project of the Missouri Department of Health and the American Cancer Society. That meeting was held at the St. Louis Chapter of the American Heart Association building. Before attending that meeting I called and

asked if it was a smoke free building. I was told that no one was allowed to smoke in the building or on the premises. I was there for three and a half hours. Soon after I left I could taste cigarette smoke coming out of my lungs. Within about, an hour my lungs began to hurt and became very tired. I was ill for the next three days- This is the kind of situation that I continue to encounter. People do not understand that smoke free should mean just that, no smoke being re-circulated throughout the building. There are no Uniform Accessibility Standards that pertain to Chronic lung Disease and smoke-sensitive individuals.

If there is anything at all that you cart do it would be greatly appreciated by all of us with this disability. I have written letter after letter after letter trying to get access for my disability. if guidelines has been written for this disability then it wouldn't be such a tremendous fight to gain access. Please help us.

Truly Yours,

XX
XX

XX
St. Louis, MO XX
XX

cc: John F. Banshaf III, Esq.

01-02834

October 7, 1993

Mayor Freeman Bosley, Jr.,
City Hall Room 200
St. Louis, MO 63103

Dear Mayor Bosley,

I am writing to you in regards to The Rehabilitation Act of 1973, Section 504, the American With Disabilities Act of I090 and City Ordinance #62710 of 1992. I have a respiratory disability in the fact that I have Asthma and that

I have severe reactions to small amounts of cigarette smoke. The City of St. Louis is discriminating against me, my son and all persons with a respiratory disability by enacting and/or adhering to City Ordinance #62513 and the Missouri Clean Indoor Air Act.

As a member of this community and more importantly as a mother, I respectfully request and demand -- on behalf of myself and my child who have medical conditions (Asthma) making us especially sensitive to tobacco smoke -- that the City of St. Louis provide us with protection from the now-proven hazards of Environmental Tobacco Smoke (ETS) by prohibiting smoking in all public places except in separate (and separately-ventilated) areas.

It has been clear for at least ten years that persons who have conditions which make them especially sensitive to ETS as "handicapped persons," and are entitled to legal protection for their health and physical comfort. See, e.g., Vickers vs. The Veterans Administrations, 549 F,. Supp 85 (WD Wash. 1982); Brinson vs. Dept. of Environmental Regulation, (U.S. Dist Ct., Dist Fls., Tallahassee Div. 1984) Pletten vs. Department of the Army, U.S. Merit Systems Protection Board Nos. CH0752801009999, CH015202901 (1981); White vs. U.S. Postal Service, 2.8 TPLP 8.25, No. 01853426 (EEOC Appeal 1937); see also Parodi vs. Merits Systems Protection Board, 690 F. 2d 731 (CA 9 1982), as amended, 702 F. 2d 743 (1983) (smoke-sensitive employee "environmentally disabled."

Asthma is a respiratory disability and as such my child and I have a Civil right to be accommodated for our disability in all buildings and programs available through the City of St. Louis and with respect to the uses, services and enjoyment of all places of public accommodation.

Persons legally entitled to protection as handicapped include those adults who have asthma, emphysema, bronchitis, cystic fibrosis, sinusitis allergies, and many other conditions which are triggered or exacerbated by exposure to tobacco smoke to the extent that at least one major activity (e.g., breathing and working) area adversely affected. This category also includes those individuals forced to use oxygen and/or respirator.

01-02835

Also included in this category and protected by law, is a much larger number of children, including millions of infants and toddlers. The Environmental Protection Agency (EPA) has reported that very young children will suffer as many as one million asthmatic attacks, 300,000 unnecessary respiratory infections, and tens of thousands of unnecessary hospitalizations and inner ear infections as a result of exposure to ETC.

For all of the following reasons, it seems clear that the City of St.

Louis does not comply with the Federal Rehabilitation Act and Americans With Disabilities Act with regard to protecting me, my son, or any individual with a respiratory disability:

1. I do not have access to City Hall, the Civil Courts Building, the Cervantes Convention Center, the Fox Theatre, Kiel Auditorium, the Arena, the Lambert Airport facility, the Community Colleges, must grocery stores movie theatres and restaurants without a drive through.

2. On January 1, 1993 at least one person apparently suffered an asthma attack at the airport from exposure to ETS serious enough to require police and paramedics to be called.

3. Many young children --including infants and toddlers-- are routinely brought into areas of the airport, the Convention Center, the Arena, etc. where smoking is permitted arid where they subjected to concentration of ETS far higher that those upon which the EPA based its risk estimates. These children are no less entitled to protection under the law simply because the adults or teens who supervise them may have brought them into an area where they came into contact with these toxic chemicals.

4. Should a child suffer an allergic or asthmatic attack, respiratory disease, or middle ear infection while in or shortly after being in the area where smoking is permitted, the City of St. Louis would be liable in tort. In such an action, the negligence or "assumption of risk" by the person bringing the child into that area (e.g., thee "other parent", grandparent, teenager) is obviously not a defense to an action brought on behalf of that child - provided that the City of St. Louis was on notice of the danger. This letter and its attachments place you on notice of precisely these dangers.

5. The law requires, as a minimum, that the City provide a reasonable accommodation to persons especially susceptible to tobacco smoke. Since the EPA and many other agencies (e.g., National Academy of Sciences, U.S. Public Health Service, National Cancer Institute, World Health Organization) have all reported that ETS causes lung cancer and lung cancer deaths in nonsmokers, it is hard to argue that it is reasonable to require St. Louisians exercising their constitutional right to carry on government or other business to be exposed to any level of this toxic mix much less to be directly exposed by being forced to be near a smoker.

01-02836

6. Many of these same agencies have also reported that significant amounts of the toxic chemicals in tobacco smoke drift, and are recirculated even through the most advanced and sophisticated ventilating systems. They have therefore officially recommended that, if indoor smok-

ing is to be permitted at all, it must be restricted to separate rooms which are separately ventilated, and not part of the general ventilating system.

7. The ADA includes, as handicapped, any individual, who because of the negative reaction of others is substantially limited in the major life activity of working and that also qualifies me for protection under the ADA. Which means that the negative reaction that smokers have to banning smoking is displaced upon the individual with the respiratory disability Act contributes to the attitudinal barriers which exist for those of us with a Chronic Lung Disease.

It is within my rights to file a complaint of Civil Rights violation as well as to bring legal action against the City of St. Louis if I am exposed to Environmental Tobacco Smoke (ETS) whether it is in City Hall, the Civil Courts Building, the Cervantes Convention Center, the Arena, Kiel Auditorium, the Lambert Airport facility, etc. I might add that it is also possible to file criminal charges of child abuse and/or child endangerment when an asthmatic child is exposed to cigarette smoke. And cigarette smokers can be criminally charged with assault when they intentionally use that smoke to make someone else ill.

> "Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), provides in part that:
> No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from Federal financial assistance."

The City of St. Louis, the Missouri Botanical Garden, the Community Colleges, Harris Stowe Teachers College, any business, public or private which receives Federal financial assistance in the form of grant, loan, or contracts is obligated to comply with Section 504 and the ADA. Other businesses or organizations not receiving Federal financial assistance are obligated to comply with the Americans With Disabilities Act.

The ADA provides in part:

> "Section 1630.1 (b) and (c) Applicability and Construction.
> Unless expressly stated otherwise, the standards applied in the ADA are not intended to be lesser than the standards applied under the Rehabilitation Act of 1973.
> The ADA does not preempt any Federal law, or any state or local law, that grants to individuals with disabilities protec tion greater than or equivalent to that provided by the ADA. This means that the existence of a lesser standard of protec-

tion to individuals with disabilities under the ADA will not provide a defense to failing to meet a higher standard under another law.... On the other hand, the existence of a lesser standard under another law will not provide a defense to failing to meet a higher standard under the ADA...."

The Missouri Clean Air Act and City Ordinance #62523 which was recently passed and requires a smoking section to be established is unconstitutional and discriminatory and may not be used by organizations, businesses, state or local governments to discriminate against individuals with a respiratory disability. And..."will not provide a defense to failing to meet a higher standard under the ADA.."

Section 50A provides in part:

Inconsistent State Laws. "Section 104.10

(a) The obligation to comply with this part is not obviated or alleviated by the existence of any state or local law or other requirement that, on the basis of handicap, imposes prohibitions or limits upon the eligibility of qualified handicapped persons to receive services or to Practice any occupation or profession.

and

"104.11 (a)(4) A recipient may not participate in a contractual or other relationship that has the effect of subjecting qualified handicapped applicants or employees to discrimination prohibited by this subpart. The relationships referred to in this subparagraph include relationships with employment and referral agencies, with labor unions, with organizations providing or administering fringe benefits to employees of the recipient, and with organizations providing training and apprenticeship programs."

and

"(c) A recipient's obligation to comply with this subpart is not affected by any inconsistent terms of any collective bargaining agreement to which it is a party."

For all these reasons, I respectfully request and demand that the City of St. Louis provide me, my son and others with respiratory disabilities who are sensitive to tobacco smoke with protection from the now-pro,)'en hazards of Environmental Tobacco Smoke (ETS) as we are entitled to under law by prohibiting smoking except in separate (and separately-ventilated areas.

I am enclosing a copy of a report which shows that 861'0 of people with

asthma cite cigarette smoke as a major cause in provoking or aggravating existing asthma conditions. Also enclosed is a recent article from the Post that shows that asthma is a factor in morbidity.
01-02838
Last, but not least, I am enclosing a letter from a mother of child with asthma. I have run into this same problem concerning myself and my son. People seem to think that if you expose someone with asthma enough times to cigarette smoke that eventually they will get used to it. On the contrary, I have found and read that just the opposite is true. Also, my son and I have both experienced asthma attacks which were life threatening. These attacks were provoked by exposure to cigarette smoke (ETS).

I wish to see this issue resolved without having to take legal action but I want you to know that I am more than willing to use legal action, if that is necessary, to ensure the safety. of myself and my child and to achieve the public accommodation to which we are entitled. My tolerance concerning this issue is wearing very thin.

Yours Truly,
XX

XX
XX
ST. Louis, MO XX (b)(6)

cc: Janet Reno, Esq.
John F. Banzhaf III, Esq.
Jay Nixon, Esq.

01-02839

Rising Asthma Deaths Puzzle Doctor

Roger Signor

Most Victims Live In Inner City

"Nationwide, there were 5,000 deaths from asthma in 1992 - 5,000 deaths that should have been avoided..."
Dr. H. ALLEN WEDNER, of Washington University

Dispatch Science-Medicine Editor

Five years ago, Scott Cristal of St. Peters noticed that his lungs were working harder than usual.

An asthma sufferer since his teens, Cristal used an inhaler to make breathing easier. "But my breathing came more labored as the day wore on," he said. He was supposed to meet a doctor for dinner, so he decided to wait and ask his advice. He never made his super date.

Just before quitting time at the computer business that he owns, Cristal passed out from lack of oxygen. He survived only because paramedics responded quickly and forced oxygen into his lungs.

Cristal, now 37, never repeated his rush brush with death. Like most people with asthma, he's paying close attention to his symptoms.

Deaths from asthma - a treatable illness that shouldn't kill anyone have been climbing steadily in Missouri, Illinois and nationwide since the early 1980s. About 75 percent of deaths occur in those 55 and older. Here are a few sobering statistics:

* Missouri had confirmed reports 102 asthma deaths last year - since 1984's total.
* Illinois had 257 asthma deaths in 1991 - 32 more than in 1987.
* The number of children in the St. Louis metropolitan area given emergency room treatment for asthma jumped to 4,622 last year - 500 more than in 1984.

"Nationwide, there were 5,000 deaths from asthma in 1992 - 5,000 deaths that should have been avoided - we knew exactly why they occurred," says Dr. H. Allen Wedner, Chief of Washington University Medical School's division of allergy and clinical immunology.

Wedner's group and St. Louis University Medical School are collaborating in a nationwide, $2.5 million study of asthmatic children who live in inner cities.

"All we do know is that most of the deaths are occurring in the inner

cities," Wedner said. Poor residents of inner cities may not go to the doctor frequently as more affluent people, he said. "But asthma isn't an under diagnosed illness - and because its symptoms are so frightening, most people, who get them seek medical help."

The increase in deaths from asthma is puzzling because treatment has improved since the 1980s, said Rita Rooney, nurse and education specialist at the Asthma and Allergy Foundation in Washington. Asthma is caused by a spasm of the bronchial tubes or by swelling of their mucous membranes; sometimes the illness is related to an allergic reaction.

Often, people rely too heavily on inhalers that relax the lining of muscles in their bronchial tubes, Rooney said. "But over time, these broncho-dilators don't help patients who have chronic inflammation of the lungs," she said in a telephone interview Friday. Such inflammation is one root cause of asthma, she said.

"Today, more doctors prescribe differently for asthma treatment," she said. Now, doctors recommend less reliance on broncho-dilators and tend to be more aggressive in prescribing anti-inflammatory inhalants and medicines.

But some poor people may depend on broncho-dilators because they're cheaper than other medicines, said Dr. Ellen Garibaldi, an asthma expert at St. Louis University Medical School. Instead of using broncho-dilators sparingly, some people may use seven or eight puffs to get through an asthma crisis, she said.

"They may limp along fine during the day but then have a really bad attack in the evening when it's hardest to get care," she said.

Robert C. Strunk, professor of pediatrics and asthma specialist at Washington University Medical School, said dependence on broncho-dilators fell short of explaining the growing number of cases nationwide.

"There's no single trigger that accounts for all the intractable cases," he said. "The number of deaths from asthma among blacks is about four times greater than among whites, so inner city residents may have extra asthma factors placing them at higher risk for severe attacks. But no group is immune, young or old, rich or poor."

Strunk and Dr. Edwin B. Fisher of Washington University are studying asthma and the quality of life among young, inner city blacks. Strunk's studies show that stress exacerbates asthma attacks, but Strunk added, "No one has the answer."

Cristal said he is controlling his asthma with fewer medicines - plus exercise.

"I don't know why, but aerobic exercise in the pool helps a lot," he said. "Once, I was on three or four bronchial sprays to control my asthma, but now I'm down to one."

Allergies can shift over several years, he said.

"House dust used to give me asthma, but now it just makes me sneeze," Cristal said. "I can live with that."

ST. LOUIS POST-DISPATCH

01-02840

AIR CURRENTS

MARCH/APRIL 1983 Improving Communication About Respiratory Disease Vol. 4, No.2

The American Asthma Report II

Four years ago, Allen & Hanburys conducted a national survey on asthma and called it The American Asthma Report. It was the findings of this initial survey that highlighted the need for increased public and patient awareness about asthma and other respiratory conditions. As a result, the Allen & Hanburys Respiratory Institute (AHR) was formed, and The American Asthma Report became the cover story of the first Air Currents published by AHRI.

Last year, a follow-up survey was conducted. The findings are now published in The American Asthma Report II and will be the topic of articles to appear in Air Currents throughout 1993.

The survey was based on random telephone interviews with 1,200 adults in the general public and with 400 adult asthma patients from a geographically weighted sample. The 400 adult asthma patients were drawn from the data base for Air Currents.

Survey Highlights

Knowledge About Asthma

The American Asthma Report II finding confirmed National Center for Health Statistics (NCHS) data revealing that approximately 5% of all American adults have asthma. Although 61% of American adults know someone with asthma, misconceptions about the disease are prevalent.

According to the report, findings from the general public survey included the following:

* 28% believe "asthma is an emotional or psychological illness."
* 19% think "asthma patients need treatment only during an attack."
* 18% feel "people with asthma are usually weak and frail."
* 16% think "asthma is basically a children's disease."
* 57% believe "asthma leads to more serious diseases like emphysema."
* 51% think "people with asthma should avoid strenuous exercise."

Asthma Symptoms and Triggers

Both the general public and asthma patient respondents were asked to rate 15 possible items that provoke or trigger asthma symptoms. Cigarette smoke:" topped the list for both groups with 81% of the public and 88% of the asthma patients citing it as a major cause in provoking or aggravating existing asthma conditions. "Air pollution" was cited as the second overall trigger, followed by "pollen," "respiratory colds," "chemicals," and "animal dander/hair."

The next issue of Air Currents will feature a discussion of The American Asthma
Report II and its findings on the top five warning signs of asthma and attitudes about asthma.

Adapted from The American Asthma Report produced by Allen & Hanburys, Divisions of Glaxo Inc., 1992.

Asthma Symptom Triggers and Aggravating Factors
(Percent Citing as a "Major Cause")

Cigarette smoke 81%/86%
Air Pollution 79%/83%
Pollen 74%/83%
Respiratory Colds 67%/84%
Chemicals 61%/73%
Animal Dander/Hair 60%/76%
Prolonged stress 47%/56%
Emotional Upset 41%/48%
Damp Air 31%/47%
Cold Air 23%/56%
High Attitudes 32%/28%
Food Additives 18%/43%
Exercise 18%/36%
Dry Air 17%/17%
Dairy Products 14%/26% General Public
Asthma patients

01-02841

AIR
Currents

Readers' Forum

Dear Air Currents:

I continually hear from family members that the severity of asthma decreases if the child is left alone to "get used to it." I've been told countless times to let my child perform activities that will cause attacks, and after a while, she'll learn to overcome her asthma. My child is 3 and too young to understand certain activities make her sick.

My response to these people? I ask them if they would give lung cancer patients cigarettes in order to help them "get used to it."

Please help others to understand that this is a life-threatening disease and not something that can be overcome by continuing to expose people with asthma the things that make them sick in order for them to get used to it."

K.L., Fowlerville, Mich

6

01-02842

U.S. Department of Justice
Civil Rights Division
Coordination and Review Section

P.O. Box 66118
Washington, D.C. 20035-4118

DEC 16 1993

Ms. Yvonne Balagna
Michigan Senate Majority Policy
Office
Olds Plaza, 11th Floor
Lansing, Michigan 48909-7536

Dear Ms. Balagna:

This responds to your inquiry about the requirements of the Americans with Disabilities Act (ADA) for wheelchair accessibility in the Michigan Senate gallery.

The ADA authorizes the Department to provide technical assistance to individuals and entities that have rights and responsibilities under the Act. We are not, however, able to provide opinions on specific fact situations. This letter provides informal guidance to assist you in understanding how the ADA may apply to you. However, this technical assistance does not constitute a determination by the Department of Justice of your rights or responsibilities under the ADA and does not constitute a binding determination by the Department of Justice.

Title II of the ADA, which applies to public entities (State and local governments), prohibits discrimination against qualified individuals with disabilities in a public entity's services, programs, or activities and adopts strict architectural accessibility standards for facilities constructed or altered after the effective date of the statute. Section 35.150 of the Department of Justice's regulation implementing title II, 28 C. F. R. pt. 35 (copy enclosed) , requires "program access," rather than "facility access," for buildings and facilities existing on the effective date. It provides that services, programs, or activities operated by public entities must be readily accessible to and usable by individuals with disabilities (unless providing access would result in a fundamental alteration in the program or activity or in undue financial and administrative burdens), but

does not require that existing facilities be made accessible. Removal of architectural barriers is one method of providing access to programs and activities in existing facilities, but other methods are also permitted if they provide program access.1/

Section 35.150 (b)(1) of the regulation provides that, in making structural alterations to an existing facility, a public entity must meet the requirements of S 35.151 for alterations. Section 35.151 provides that portions of a facility altered by a public entity must be readily accessible to and useable by individuals with disabilities and provides that State and local governments can follow either the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (ADAAG)2

or the Uniform Federal Accessibility Standards (UFAS)3 in new construction and alterations.

Thus, title II of the ADA requires that individuals with disabilities, including individuals who use wheelchairs, are able to participate in and benefit from the programs and activities made available in the Senate gallery. If the Senate chooses to make structural alterations to the existing facility in order to provide program access, it should refer to the requirements for accessible routes and accessible assembly areas in ADAAG or UFAS, as well as the specific provisions for historic properties, if applicable.

_____

1 If structural alterations are necessary to provide program access, the regulation requires public entities to develop transition plans for completion of the necessary alterations within three years. Individuals with disabilities who are able to use a facility, however, may not be excluded on the basis of their disabilities merely because the facility is not fully accessible.

2 ADAAG is the standard for private buildings that was issued by the Architectural and Transportation Barriers Compliance Board (the Access Board) under title III of the ADA and was adopted by the Department of Justice as the standard for places of public accommodation and commercial facilities covered by the Department of Justice's regulation implementing title III of the ADA. The ADAAG is published as Appendix A to the Department's title III regulation, 28 CFR Part 36.

3 UFAS is the standard required for new construction and alterations under section 504 of the Rehabilitation Act of 1973, as amended.

01-02844

I am enclosing, for your information, copies of the Department's regulations implementing titles II and III (which includes a copy of ADAAG), our Technical Assistance Manuals for titles II and III, and UFAS. I hope this information is helpful.

Sincerely,

Stewart B. Oneglia
Chief

Coordination and Review Section
Civil Rights Division

Enclosures

01-02845

From: SENATE MAJORITY POLICY TO: 202-307-0595 NOV. 24, 1993 3:16 PM #127
P.02

November 24, 1993

Mr. Steven Harris
U.S. Department of Justice

Washington D.C.

Dear Mr. Harris,

As a member of the Michigan Senate American with Disabilities Act Committee, I have been asked to obtain the legal requirements for wheelchair accessibility in the Michigan Senate gallery, under the American with Disabilities Act.

No complaints have been filed against the Michigan Senate regarding access to the gallery. However, the Senate American with Disabilities Act Committee would like to ensure that the Michigan Senate's gallery is accessible to all. Accordingly, I would very much appreciate guidance from the U.S. Department of Justice concerning what the American with Disabilities Act requires for wheelchair accessibility in the Michigan Senate's gallery which is located in our State Capitol.

Please include in your response copies of the pertinent provisions found in the Title 2 regulations, Title 2 Technical Assistance Manual, and the ADAG. If you have any questions regarding this matter, please contact me at (517) 373-3330.

Thank you for your prompt attention to this matter.

Sincerely,

Yvonne Balagna
Michigan Senate Policy Office
Old Plaza, 11th Floor
Lansing, Michigan 48909-7536

01-02846

Ret. 12117/93
SBO:MAF:LMS:ca:rjc
XX (b)(6)

DEC 17 1993

The Honorable Doug Bereuter
Member, U. S. House of Representatives
P. 0. Box 377
Fremont, Nebraska 68025

Dear Congressman Bereuter:

This responds to your recent letter in which you raise a number of questions relating to the applicability of the Americans With Disabilities Act (ADA) to certain activities of religiously-controlled schools in the State of Nebraska and a local government's duty under the ADA to provide program access to its parks and other recreational services.

While title III of the ADA applies to private entities such as private educational institutions, it does not apply " ... to religious organizations or entities controlled by religious organizations .... " 42 U.S.C. S 12187. As you noted in your letter, this exemption includes religiously-controlled schools. Thus, all the activities of a religiously-controlled school are exempt under title III.

More specifically, however, your letter inquired about possible interscholastic events held at religiously-controlled schools in which students from both public schools and religiously-controlled schools may compete in academic, cultural, or athletic activities. In such situations, even though the religiously-controlled school has no obligation under the ADA to ensure that the events held at its facility are accessible to individuals with disabilities, the affected public school district does have such responsibilities.

Records, CRS, Chrono, Friedlander, FOIA, McDowney, Stewart
:UDD:Stewart.Bereuter.MOD

01-02847

Under title II of the ADA, a public school district must ensure that its programs are accessible to individuals with disabilities. As noted in our prior letter to you, the Department of Justice's title II regulation, 28 C.F.R. Part 35, adopts the concept of program accessibility for facilities existing on the effective date of the statute, January 26, 1992. See 28 C.F.R. S 35.149. In existing facilities, "[a] public entity shall operate each service, program, or activity so that the service, program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities." 28 C.F.R. S 35.150(a).

The regulation provides, however, that a public school district is not required "... to take any action that it can demonstrate would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens." 28 C.F.R. S 35.150(a)(3). The decision that the alterations would result in a fundamental alteration to the nature of a service, program, or activity or in undue financial and administrative burdens must be made by the head of the public school district or his or her designee after considering all the resources available for use in the funding and operation of the service, program, or activity. Id. The decision must be accompanied by a written statement of the reasons for reaching the conclusion that undue burdens would occur. Id.

Thus, absent proof that the limitations stated in section 35.150(a)(3) exist, a public school district that provides interscholastic academic, cultural, or athletic competitive events with other schools, whether public or religiously-controlled, must ensure that each of its interscholastic programs, services, and activities, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities. A public school district may not be meeting this obligation to the extent that these activities are held occasionally at inaccessible sites.

An illustration demonstrates this standard. A public school district's high schools have debate teams. The public high schools are part of a city-wide competitive debate league composed of the public high schools and religiously-controlled high schools in which the debate teams compete. Competitions between the debate teams are held on a rotational basis at all the member schools. some of the facilities at the religiously-controlled schools are inaccessible. Absent evidence that the limitations contained in section 35.150(a)(3) exist, if the debate teams from the public schools are required to compete at the inaccessible facilities of the religiously-controlled member

schools, the public school district may not be meeting its obligation of program access. Although the religious schools are totally exempt from coverage of the ADA, the effect of their
01-02848

inaccessibility on the public schools' obligation to provide program access may, in fact, require the religious schools to use an accessible location or risk the loss of public school participation in the league.

With respect to your inquiry concerning the obligation of a city to make each of its existing parks and recreational sites accessible, the same standard discussed above would apply. The duty under program access is to ensure that, when viewed in its entirety, the city's parks and recreational program is readily accessible to and usable by individuals with disabilities.

This obligation does not necessarily require a city to make each and every park or recreational facility accessible. "When viewed in its entirety" means that the location of the accessible facility (or facilities) is comparable in convenience to those facilities that are inaccessible, and the range of programs and services offered at both is equivalent. For example, in the situation described, if the area to be served is not so large as to make travel to the accessible park and community center very inconvenient for those individuals located on the outskirts of the city, then the program access requirement would be met.

I hope this information is helpful to you in responding to your constituents questions.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

01-02849

Congress of the United States
House of Representatives
Washington, DC 20515-2701

September 28, 1993

John R. Dunne
Assistant Attorney General
Civil Rights Division
U.S. Department of Justice
P.O. Box 66116
20035-6118
Washington, D.C.

Dear Mr. Dunne:

I am writing you today to ask for clarification about private and public school obligations regarding the Americans with Disabilities Act. Your previous correspondence (copy enclosed) was very helpful and I appreciate the telephone clarification that your staff provided to Lorelee Byrd of my Fremont Office regarding question number three of my previous correspondence. Many of my constituents use the terms "religious school" and "private school" interchangeably and your staff indicated that Title III provides a broad exemption from the ADA requirements for religious entities including religious private schools.

I am now requesting additional help in answering a complicated question regarding the activities of religious private schools. In Nebraska, as is the case in other states, our religious private high schools have athletic and academic teams that participate in various competitions. Religious private and public schools participate in activities thru the Nebraska School Activities Association. Schools participate and compete with other schools of the same size and both religious private and public schools compete with each other.

My question is this -- if a religious private school, which is exempted from the ADA, hosts an activity such as a basketball game at their facility with a public school does the religious private school have to meet ADA requirements? For example, I would like to know what

is expected in reference to the ADA in certain situations that are likely to occur when a religious private school hosts an event with a public school. If an individual who is disabled or needs some type of reasonable accommodation attends an event at the religious private school facility, who is responsible, if anyone, for providing reasonable accommodations to the public school patrons attending this event? Additionally, when a religious private school hosts a debate tournament that includes several public schools and the competition is being held on the third floor of the religious private school, who is

responsible, if anyone, for providing reasonable accommodations -- which could include entering the facility, getting to the third floor and/or auxillary aides in order to participate-- to public school participants and/or public school spectators?

Broadly speaking, how does the ADA affect activities that are hosted by an exempted religious private school when such events are attended by public school participants and/or public school spectators? According to the ADA Handbook (Title III, page 37), it seems quite clear that religious private schools and the activities of religious private schools are exempted from the ADA requirements. Does that exemption still apply when exempted religious private schools host activities that involve public schools and disabled public school participants and/or disabled public school spectators are planning to attend?

I also have additional questions for you about the ADA regarding local city governments. If a community evaluates its parks and community centers but determines that it would create an undue financial burden to provide accessibility and reasonable accommodations at each park and each community center, can a city government designate one city park as the handicapped accessible city park and one community center as the handicapped accessible community center in order to meet program accessibility standards as explained in Title II, page 57 of the ADA Handbook? In its evaluation the city in question determined it could provide program accessibility and avoid undue financial hardship by designating the most centrally located park with the most extensive playground and picnic facilities as its handicapped accessible park. This park has the largest swimming pool which is being made barrier free and the park is adjacent to the YMCA and the track and football stadium that is used by public schools, a religious private school and a private college. The same evaluation was used in designating the most centrally located community center as the handicapped accessible -community center. In

making these evaluations and determinations, the city formed an advisory committee, which included disabled individuals, to assist itself in making these decisions. Furthermore, when the city rents one of its parks or community centers to its citizens, the city informs them which city park and community center is handicapped accessible. Given the above described situation, is this city in compliance with or in violation of the ADA?

The city is also aware that all future improvements to any park must meet ADA requirements and in the city's long range ADA plan there are plans for upgrading other parks to provide for additional barrier free facilities.

01-02851

Thank you for your assistance. A very prompt response would be appreciated because I have had numerous constituents who have asked about these requirements. If you need additional information, please contact Lorelee Byrd at 402-727-0888. Please direct your reply to my Fremont Area District Office, P.O. Box 377, Fremont, Nebraska 68025.

Best wishes,

DOUG BEREUTER
Member of Congress

01-02852

U.S. Department of Justice
Civil Rights Division

Office of the Assistant Attorney General Washington, D.C. 20530

AUG 21 1992

The Honorable Doug Bereuter
U.S. House of Representatives
234B Rayburn House Office Building
Washington, D.C.20515-2701

Dear Congressman Bereuter:

This letter responds to your inquiry concerning compliance with the Americans With Disabilities Act (ADA) by public and private schools in the State of Nebraska.

The ADA authorizes the Department of Justice to provide technical assistance to entities subject to the Act. This letter provides informal guidance with regard to the questions you have posed, but does not constitute a determination by the Department of Justice of the rights or responsibilities under the ADA and does not constitute a binding determination by the Department of Justice.

Your specific questions and our responses are as follows:

1. Must every area of an existing school facility be made accessible to an individual with a disability?

Section 35.149 of the enclosed title II regulation requires accessibility to programs, services, and activities in facilities existing on the effective date of the statute, January 26, 1992. The principal focus of the program accessibility standard is access to programs, services, and activities, as opposed to access to physical structures. Therefore, not every area of an existing school facility would have to be made accessible, as long as there is access to a schools programs, services, or activities. You may refer to II-5.1000, pages 19-20, of the enclosed Title II Technical Assistance Manual for further discussion.

In addition, section 35.150(b)(1) of the title II regulation

does not require that a school district eliminate structural barriers if it provides access to its programs through alternative methods. You may refer to 11-5.2000, page 20, of the Manual for further discussion of alternatives for making a program accessible.

01-02853

Even if structural alterations are necessary to provide program accessibility, section 35.150(a)(3) states that a public entity is not required to alter its facilities if it can demonstrate that the alterations would cause a fundamental change to its program or that the cost of the alterations would result n undue financial and administrative burdens. These limitations are discussed in II-5.1000, pages 19-20, of the Manual.

As you may, know, many Nebraska public school districts have been required to comply with section 504 of the Rehabilitation Act, which prohibits discrimination on the basis of handicap, since 1973, because they receive Federal financial assistance. Since Title II of the ADA merely extended section 504's program accessibility requirements to all programs, services, and activities of a State or local government, title II should impose few added burdens on Nebraska public school districts subject to Question 504.

2. Does the term "qualified individual with a disability" apply to students only, or does it apply to visitors? For example, could a grandparent wishing to visit the school sue because of lack of access?

Section 35.104 defines a "qualified individual with a disability" as "an individual with a disability who . . . meets the essential eligibility requirements for the receipt of services or participation in programs or activities provided by the public entity." With respect to those qualified to participate in a school district's programs, the preamble to the title II regulation states at page 35696 that [p]ublic school systems must comply with the ADA in all of their services, programs, or activities, including those that are open to parents or to the public." Therefore, if a public schools programs are open to visitors, access must be provided to them if they are individuals with disabilities.

3. Do the regulations apply to private schools in the same manner as public schools?

As places of public accommodation, private schools are

subject to the requirements of title III of the ADA (not title II, which applies to public schools) and the Department's title III regulation. Different standards apply under title III than under title II. For example, under the title III regulation, a private school must remove barriers to accessibility where such removal is "readily achievable."

4. At what point must a school district without a disabled student comply? When a disabled student enters the district or within a certain time frame after the January 26, 1992, date when structural barriers regulations went into effect?

Under title II, a school district must provide access to its programs, services, and activities after January 26, 1992. Under section 35.150(d) of the title II regulation, a school district with fifty or more employees that identifies structural barriers to program access must develop a transition plan by July 26, 1992. Please refer to S II-8.3000, page 43-44, of the Manual for further discussion of the requirements for a transition plan. In addition, section 35.105 requires a school district to conduct an addition, section 35.105 requires a school district to conduct a self-evaluation of its current services, policies, and practices and modify those services, policies, and practices that do not comply with the Department's title II regulation. The self-evaluation requirements are discussed in II-8.2000, pages 40-43, of the Manual.

5. Nebraska has many school districts which contain, only a one-room elementary school house. Many of these are not accessible to individuals with disabilities; however, there are no disabled students in those districts. How far must these schools go to comply with the ADA? Must they install chair lifts? Must they discontinue classes in their basements? Again, would the level of compliance be different for students and visitors?

Consistent with a longstanding interpretation of section 504 of the Rehabilitation Act by the former Department of Health, Education, and Welfare, (copy enclosed) the apparent lack of individuals with disabilities in a school district's service area does not excuse the school district from taking whatever appropriate steps are necessary to ensure that its programs, services, and activities are accessible to qualified individuals with disabilities. Section 501(a) of the ADA states that the ADA is not to be interpreted as providing a lesser standard than that

provided under the Rehabilitation Act. Thus, title II would require that steps be taken even if there are no disabled students in a district.

I hope this information is responsive to your inquiry.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

Enclosures (3)

01-02855

(STAMP) FEB 20 1993

DJ 202-PL-553

Ms. Helen S. Found
Board of Trustees
Pavilion Public Library
7925 Telephone Road
Le Roy, New York 14482

Dear Ms. Found:

This letter is in response to your inquiry into the applicability of the Americans with Disabilities Act (ADA) to your new library.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist you in understanding the ADA's requirements. However, it does not constitute a legal interpretation or legal advice and it is not binding on the Department of Justice.

Entities that are part of a State or local government program, such as public libraries, may choose from two architectural standards when engaging in new construction: Uniform Federal Accessibility Standards ("UFAS"), or the ADA's Standards for Accessible Design ("Design Standards" or "ADAAG"). See discussion in the enclosed title II regulation at section

35.151(c) on pages 35,720 and 35,710. These standards are generally quite similar, but with respect to signage there are some differences. Once a standard has been chosen as the guiding standard for a particular architectural project, that standard must be followed throughout the entire project. For example, an entity cannot design its ramps according to the Design Standards and then install signage that only meets the requirements of UFAS.

Private foundations that build or operate public libraries must follow the Design Standards. They cannot choose UFAS as the governing architectural standard. Please see the enclosed title III regulation at section 36.401 on pages 35,599-600 and 35,574-75.

cc: Records, Chrono, Wodatch, Breen, Mobley, MAF, FOIA
udd\mobley\pletters\found

You have asked whether there is a height restriction on book shelves or stacks in libraries. Neither UFAS nor the Design Standards restricts maximum shelf height under these circumstances. Please refer to Design Standard section 8.5 at page 35,668, and UFAS section 8.5 at page 58.

You have also asked whether signs such as exit signs need to be in Braille as well as print. Under the Design Standards, signs that designate permanent rooms and spaces, including exit signs, must be in Grade 2 Braille and meet other specific design standards. Informational signs and signs that provide direction to functional spaces of the building do not have to be in Braille but have to meet other requirements. Please refer to Design Standard section 4.1.2.(7) at page 35,612 (scoping provisions for new construction), and section 4.30 at page 35,659 (design standards for signage) for more detailed information. UFAS does not require signage to be in Braille. Please refer to UFAS sections 4.1.2(15) and 4.30 (signage) at pages 6 and 47, respectively.

I have also enclosed the Technical Assistance Manuals for Titles II and III. The manual for title II discusses obligations applicable to public libraries that are part of a State or local government program. The manual for title III applies to private library foundations. The Department of Justice publishes these manuals to help entities and citizens understand their

responsibilities under the ADA. Please refer especially to the comparison of UFAS and the Design Standards (referred to therein as "ADAAG") in the Title II Manual at pages 23-32.

If you wish to subscribe to these manuals which will be supplemented annually, please complete the enclosed order form.

If you have additional questions, you may call Mary Lou Mobley, one of our staff attorneys, at (202) 307-0816. I hope this information is useful to you in understanding the requirements of the ADA.

Sincerely,

Philip L. Breen
Special Legal Counsel
Public Access Section

Enclosures:
Technical Assistance Manuals for Titles II and III
Regulations for Titles II and III
UFAS
Technical Assistance Manual Order Form
01-02857

(STAMP)
CIVIL RIGHTS DIVISION
PUBLIC ACCESS S
93 MAY 28 PM 2:46

7925 Telephone Road
Le Roy, New York 14482
May 26, 1993

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

Dear Sir or Madam:

I have searched your most recent publications dealing with disabilities requirements, but cannot really find a specific answer to this question. Perhaps you could give me that answer. When building a new public library, is there a maximum height requirement for shelves or stacks?

This is our situation. We are a very small, rural library in

Pavilion, New York. We are building a new facility which will be handicapped accessible in regard to entrances, toilet facilities, drinking fountain, desk area, and aisles between shelving. We are hoping that the shelves themselves must not be lowered to a certain height. There would always be one, and sometimes two, aides in the library available to assist a person with any king of disability. Also, would the signs (exit,etc.) need to be in braille as well as print?

Any assistance you can give us in this matter would be greatly appreciated.

Sincerely,

Helen S. Found
Pavilion Public Library
Board of Trustees

01-02858

DEC 20 1993 (STAMP)

The Honorable Bob Dole
United States Senator
444 S.E. Quincy
Suite 392
Topeka, Kansas 66683

Dear Senator Dole:

This is in response to your recent inquiry in behalf of your constituent, XX , regarding the Americans With Disabilities Act (ADA). XX owns a small business and has inquired whether the business must gross a certain dollar amount in order to be covered by the ADA.

Your letter does not describe the nature of XX (b)(6) business. However, the scope of a business's obligation under

title III of the ADA depends on whether it is a "commercial facility" or "public accommodation" within the meaning of title III. All nonresidential facilities that affect commerce, regardless of their size or income, are "commercial facilities" within the meaning of title III of the ADA. Certain categories of private businesses, regardless of their size or income, are considered "public accommodations" within the meaning of title III. See Section 36.104 of the title III regulations.

Both commercial facilities and public accommodations are obligated under title III to perform new construction and alterations of facilities in compliance with the accessibility standards of the ADA. Public accommodations have additional obligations to implement nondiscriminatory policies and procedures in providing their goods and services, to provide appropriate auxiliary aids and services where necessary for effective communication with persons with disabilities, and to remove architectural barriers to access in their facilities where such removal is readily achievable. Title III provides that a business with ten or fewer employees and gross receipts of $500,000 or less cannot be sued for a failure to comply with these obligations that occurs prior to January 26, 1993.

cc: Recds, Chrono, Wodatch, Magagna, Johansen, McDowney, MAF, FOIA
udd\johansen\dole2

01-02859

Failure to comply with these obligations subsequent to that date will render the business vulnerable to suit.

Businesses may also have nondiscrimination obligations under title I of the ADA which deals with employment. For purposes of title I, the term "employer" is defined as a person engaged in an industry affecting commerce who has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, except that from July 26, 1992, through July 25, 1994, an employer means a person engaged in industry affecting commerce who has 25 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding year and any agent of such person. For further information about title I, XX (b)(6) should consult with the

Equal Employment Opportunity Commission (EEOC).

We are enclosing a copy of our ADA Handbook, published jointly with the EEOC, which contains the statute and the regulations under titles I and III of the ADA. We hope this information is helpful to you in responding to your constituent.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

Enclosure

01-02860

BOB DOLE
KANSAS
141 SENATE HART BUILDING
(202)224-6521

COMMITTEES
AGRICULTURE, NUTRITION, AND FORESTRY
FINANCE
RULES

United States Senate
Washington, DC 20510-1801

September 29, 1993

Office of Legislative Affairs
Department of Justice

Main Justice Building, Room 1603
Washington, DC 20530

Dear Sir/Madam:

Because of the desire of this office to be responsible to all inquiries and communications, your consideration of the following matter regarding XX is respectfully requested. Your findings and views will be greatly appreciated.

(b)(6) XX phoned my office in Topeka and indicated he would like information on the Americans with Disabilities Act. Specifically, he needs to know who must comply. He is a small business owner and is under the impression that his business must gross a certain amount before he must comply. Any information you have that I could supply my constituent would be greatly appreciated.

Please direct any correspondence regarding this matter to my Topeka Senate Office, 444 S.E. Quincy, Suite 392, Topeka, Kansas 66683, phone 913/ 295-2745.

Thank you in advance for your assistance and cooperation.

Sincerely yours,

BOB DOLE
United States Senate

BD:sh

01-02861

T. 11-29-93

DEC 20 1993

The Honorable John C. Danforth
United States Senator
8000 Maryland Avenue, Suite 440

Clayton, Missouri 63105

Dear Senator Danforth:

This letter is in response to your inquiry on behalf of your constituent, William A. Bandle, Jr., which was referred to the Department of Justice by the Equal Employment Opportunity commission. Mr. Bandle inquired about the requirements of the Americans with Disabilities Act (ADA) that pertain to the installation of visual alarm devices.

The ADA requirements that apply to the installation of alarm systems in new construction and alterations in retail facilities are contained in the ADA Standards for Accessible Design (Standards) that are published as Appendix A to the Department of Justice regulation implementing title III. Section 4.28 of the Standards establishes the technical requirements for visual alarms.

The ADA Standards establish minimum requirements for the design and construction of new buildings and for alterations to existing buildings. They do not constitute a strict formula for design, nor are they intended to constrain design innovations that provide equal or greater access. The Department's regulation expressly recognizes that there may be other ways to provide access. Section 2.2 of the ADA Standards provides that "[d]epartures from particular technical and scoping requirements of this guideline by the use of other designs and technologies are permitted where the alternative designs and technologies used will provide substantially equivalent or greater access to and usability of the facility."

Determinations of equivalent facilitation must be made on a case-by-case basis taking into consideration whether the building element in question, as installed in a specific site, actually provides equal or greater accessibility. Neither the Department of Justice nor any other entity will certify that a specific design alternative that varies from the technical requirements of

cc: Records, Chrono, Wodatch, Blizard, McDowney, FOIA, Friedlander
n:\udd\blizard\control\danforth

01-02862

the ADA Standards is "equivalent." In any ADA enforcement

action, the covered entity will bear the burden of proving that a challenged alternative design provides equivalent access.

For your information, I am enclosing a copy of this Department's regulation implementing title III of the ADA, the Title III Technical Assistance Manual, and a recent technical assistance bulletin on visual alarms published by the U.S. Architectural and Transportation Barriers compliance Board. I hope that this information is helpful to you in responding to Mr. Bandle.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

Enclosures

01-02863

CASCO
of CASCO Ltd.

September 3, 1993

TO: Senator John C. Danforth
Senate Office Building
Washington, DC 20510

RE: Americans with Disability Act
Compliance Application

Dear Senator Danforth,

The CASCO Corporation is a St. Louis based, national Architectural/Engineering firm. The Americans with Disabilities Act has impacted the entire scope of our profession, so CASCO is sensitive to the goals of this legislation. The purpose of this letter is that, based on the recommendation of our regional A.D.A. information center, your office was identified as the source to contact for investigation of specific circumstances and interpretations of the A.D.A. intent.

As you may know, a "Strobe-Like" visual system is required to be combined with an audio warning system for those who are visually and/or hearing impaired. Our national retail client's response to this requirement is to have one half of the sales floor lights flash on and off at .8 second intervals. These are strip fluorescents hung approximately 14"-O" to 16"-O" above the sales floor. No emergency lighting or specific audio systems are planned for the storage or employee areas. Due to the newness of A.D.A., many sections and requirements are being challenged, re-evaluated and revised by the Justice Department and the handicapped community. We respectfully request your office to provide an official interpretation regarding the appropriateness of our client's system.

Thank you for your time and concern, as we await your response.

Sincerely,

William A. Bandle, Jr.
Associate

CASCO Corporation
10877 Watson Road, Suite 200
St Louis, MO 63127

/nr

cc: PJH, JLH, TMG, RMT
JCA/File

L:\Exchange\Linda\0902.wp

10877 Watson Road St. Louis, Missouri 63127 (314) 821-1100 FAX (314)821-4162

01-02864
T. 12-1

XX

DEC 22

XX
XX
Lake Charles, Louisiana 70601

Dear XX

The Architectural and Transportation Barriers compliance Board (Access Board) has asked us to respond to your letter asking about the application of the Americans with Disabilities Act (ADA) to places of public accommodation that have exterior doors that are heavy and difficult to open. I apologize for our delay in responding to you.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities that have rights or responsibilities under the Act. This letter provides informal guidance to assist you in understanding the ADA and the Department's regulation. However, this technical assistance does not constitute a legal interpretation of the ADA, and it is not binding on the Department.

Your letter addresses several issues pertaining to building entrances, but your primary concern appears to be that certain places of public accommodation have not installed automatic doors at the entrances to their facilities. Places of public accommodation have an obligation under title III to remove architectural barriers to access where such removal is readily achievable. However, where the ADA Standards for Accessible Design for new construction specify requirements for a particular element, the barrier removal obligation does not require existing facilities to exceed the Standards. The ADA Standards for Accessible Design applicable to new construction do not require electric doors, nor do they set a limit for the maximum door opening force for exterior hinged doors. See the ADA Standards for Accessible Design sections 4.13.11 and 4.13.12 (Appendix A to the enclosed regulation). Therefore, because the ADA Standards specifically do not require the installation of electric doors in new buildings, their installation is not required under the ADA's barrier removal requirements for existing buildings.

cc: Records, Chrono, Wodatch, Blizard, FOIA, Friedlander
n:\Udd\blizard\adaltrs\ XX (b)(6)

01-02865

For your information, I am enclosing a copy of this Department's regulation implementing title III of the ADA and the Title III Technical Assistance Manual. These documents further explain the requirements of the ADA that apply to places of public accommodation.

I hope that this information is helpful to you.

Sincerely,

John L. Wodatch
Chief
Public Access Section

Enclosures

01-02866

(Handwritten)

March 12, 1993

Dear Sirs,

I am a Physical therapist in Lake Charles, LA, & have several pts. & a family member who are w/c bound & unable to independently negotiate a swinging door into a business or Doctor's office.

I have personally contacted KMart & Walmart locally & questioned them regarding installation of electric-eye entrance doors. Currently Walmart has automatic Exit doors, manual double-swinging entrance doors & a sign stating...Disabled persons, please let us know if we can help you ..... How can you tell them if you can't get in? The Kmart has manual swinging Entrance & Exit doors & one door width is too small to accommodate a w/c. Both stores stated their "courtesy" person is constantly watching the door. No one has come out to help me yet. Usually another shopper holds the door(s).

The entrance to my Orthopedic MD has 2 sets of extremely heavy double doors. The staff has said if I ever need help to come in & get one of them. A disabled person would not be able to go in & tell them he needed help to get in!

Any suggestions? I'm sure there are numerous examples of landlords & businesses dragging their feet to comply with ADA. Is there any way to speed them along?

Thank you for your time.

XX
XX (b)(6)
Lake Charles, LA XX

XX

DEC 29 1993

Mark S. Rabinowitz
Paul Rabinowitz Glass Company, Inc.
1421 S. 2nd Street
Philadelphia, Pennsylvania 19147

Dear Mr. Rabinowitz:

This is in response to your letter dated June 8, 1993, and your telephone conversations with Ms. Johansen of our staff on June 8, and June 14, 1993, regarding exterior doors at banks.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities that are subject to the Act. This letter provides informal guidance to assist you in understanding the ADA accessibility standards. However, this technical assistance does not constitute a legal interpretation of the application of the statute and it is not binding on the Department.

Your initial question when you called the information line dealt with exterior doors at existing banks that may be too heavy for some people with disabilities to open. You asked if it would be permissible to put a sign on the door with a bell for assistance. This is permissible. Existing facilities of this type have an obligation under title III of the ADA to remove architectural barriers to access where such removal is readily achievable. However, where the ADA Design Standards for new construction specify requirements for a particular element, the barrier removal obligation does not require existing facilities

to exceed the Design Standards. The ADA Standards for Accessible Design applicable to new construction do not set a limit for the maximum door opening force for exterior hinged doors. See the ADA Standards for Accessible Design Section 4.13.11 and 4.13.12, Appendix A to the enclosed title III regulation.

In your letter you state that you also want to provide a sign with a bell to ring for assistance on doors that are double leaf and do not meet the width requirements and on doors on which the hardware does not meet the Standards. As Ms. Johansen explained, title III obligates bank to remove architectural

cc: Records, Chrono, Wodatch, Magagna, Johansen, MAF, FOIA
udd\johansen\rabinowi.ltr

01-02868

barriers to access where it is readily achievable to do so. Readily achievable means easy to accomplish without much difficulty or expense. The factors that determine whether a particular action is readily achievable are discusses at pp. 35568-35570 and 35597-35598 of the enclosed Federal Register document and Section III -4.4000 of the enclosed Title III Technical Assistance Manual. Taking into account these factors, if it is readily achievable for the bank to install the appropriate hardware and to alter the doors to meet the width requirements, it must do so. Alternatives to barrier removal such as the bell arrangement you describe are appropriate, and indeed required, only if barrier removal is not readily achievable.

We hope this information is helpful to you.

Sincerely,

Joan A. Magagna
Deputy Chief
Public Access Section

Enclosures
Title III Regulation
Title III Technical Assistance Manual

01-02869

JAN 4 1994

Mr. Thomas J. Camacho
Office of the Governor
Commonwealth of the Northern Mariana Islands
Developmental Disabilities Planning Office
P.O. Box 2565
Saipan, MP 96950

Dear Mr. Camacho:

This is in response to your inquiry regarding the Americans With Disabilities Act (ADA).

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities that are subject to the Act. This letter provides informal guidance to assist you in understanding the ADA accessibility standards. However, this technical assistance does not constitute a legal interpretation of the application of the statute and it is not binding on the Department.

Your first two inquiries concern whether it is appropriate

for an advocacy agency of a local government that is funded entirely by federal funds through the Administration on Developmental Disabilities Act to write a "premonition" letter on behalf of a complainant. We presume this type of letter would be one in which you advise the owner or operator of a facility that he is possibly in violation of the ADA. Your federal funding agency should be consulted to determine whether activities of this type are permitted.

Even if the funding agency permits this type of activity, the ADA itself does not authorize the State or Commonwealth officials to enforce the ADA. However, if the Commonwealth agency is simply representing complainants in the same manner in which a private attorney might do so, the ADA does permit such activity. Individuals have the right to enforce both titles II and III of the ADA through private civil actions.

The complainants directly or through your agency may also file complaints with the Department of Justice. Complaints

cc: Records, Chrono, Wodatch, Magagna, Johansen, MAF, FOIA
udd\johansen\camacho.ltr

01-02870

regarding title III entities should be forwarded to this office at the address on the letterhead. Complaints regarding title II entities should be submitted on the enclosed form and mailed to the address indicated. ADA enforcement is handled by the Civil Rights Division in Washington rather than by the local United States Attorneys.

Your third question seeks information on how to deal with a telephone company's failure to implement a relay service operation as required by title IV of the ADA. The Federal Communications Commission (FCC) is the agency responsible for enforcing title IV. You should write to the FCC at 1919 M Street, N.W., Washington, D.C. 20554, or call at (202) 632-7260.

Finally, you inquire whether a telephone company is a place of public accommodation providing sales and services and, consequently, whether the phone company must provide TDD/TTY equipment in the same circumstances in which it makes voice

equipment available to other users. Public utility companies, including telephone companies, are not generally considered to be places of public accommodations within the meaning of title III. However, if the utility maintains a customer service office which customers visit to open accounts or pay bills, this office would be a "service establishment" that is covered as a "place of public accommodation" under title III.

Similarly, if the telephone company operates a retail establishment where it sells telephone equipment, such a facility would be a "sales or rental establishment" that is covered by title III as a place of public accommodation. Title III, however, does not require public accommodations to alter their inventory to include accessible or special goods designed for individuals with disabilities. A public accommodation must special order accessible goods if, in the normal course of its operation, it makes special orders for unstocked goods and the special goods can be obtained from a supplier with whom the public accommodation customarily does business.

I have enclosed copies of the Department's Technical Assistance Manuals for titles II and III. We hope this information is helpful to you.

Sincerely,

John L. Wodatch
Chief
Public Access Section

Enclosures
01-02871
T. 12-22-93

JAN 3 1994

Mr. Richard W. Church
President
Plumbing Manufacturers Institute
800 Roosevelt Road
Building C, Suite 20
Glen Ellyn, Illinois 60137-5833

Dear Mr. Church:

This letter responds to your correspondence regarding the application of the Americans with Disabilities Act (ADA) to

drinking fountains.

The ADA authorizes the Department of Justice to provide technical assistance and information to individuals and entities who have questions about the Act or the Department's Standards for Accessible Design (Standards). This letter provides informal guidance to assist you in understanding and complying with the ADA accessibility standards. However, this technical assistance should not be viewed as legal advice or a legal opinion about your rights or responsibilities under the ADA.

The answers to the questions in your letter of September 2, 1993, appear below in like order. In the interest of conciseness, rather than repeat each question, we enclose a copy of your letter for your reference.

A. You asked for an explanation of the requirement that the water flow be within three inches of the front edge of a fountain with a round or oval bowl. Recent innovations in the design of drinking fountains forced the inclusion of this requirement because many individuals who use wheelchairs found it impossible to lean far enough over the projecting rim of large bowl fountains to take a drink even when the fountain was otherwise in compliance with the requirements in the Uniform Federal Accessibility Standards or the ANSI A117.1 Standard. This problem is alleviated when the water stream can be reached within three inches of the projecting rim.

cc: Records, Chrono, Wodatch, Harland, FOIA, Friedlander
n:\udd\harland\pmi.646

01-02872

B. A drinking fountain that provides for a front approach and is mounted 27 inches above the floor or ground surface meets the minimum knee space height requirement of Section 4.15.5 and also satisfies the provision of Section 4.4.1 that when the bottom edge of an object is at or below 27 inches above the floor, it may project any amount.

C. When considering the direction of approach and the requirements of Section 4.4.1, if the "hi" section of a "hi-lo" fountain presents a hazard as a protruding object, it

may be necessary to install the fixture in an alcove or to provide a cane-detectable element.

D. In the Standards, the words "maximum" or "minimum" are never specified when there is an allowable range of dimensions. This practice does not appear to cause any confusion in applying the standard for the height of grab bars or the diameter of handrails. We believe that "maximum" and "minimum" are implicit in this convention. For example, a range of "17 in to 19 in" means a minimum of 17 inches and a maximum of 19 inches.

E. The requirement for a fountain "at a standard height convenient for those who have difficulty bending," can be satisfied by applying conventional industry standards such as you cite.

Please feel free to contact the Public Access Section any time you have questions or need information. The Department maintains a telephone information line to provide technical assistance regarding the rights and obligations of individuals, businesses, agencies, and others covered or protected by the ADA. This technical assistance is available by calling 202-514-0301 (voice) or 202-514-0383 (TDD) between 1:00 p.m. and 5:00 p.m., Monday through Friday.

Sincerely,

John L. Wodatch
Chief
Public Access Section

01-02873

Pmi
Pluming
Manufacturers
Institute

Headquarters
800 Roosevelt Rd., Bldg. C, Suite 20
Glen Ellyn, IL
60137-5833

708/858-9172
Facsimile 708/790-3095

Government Affairs

1655 North Fort Myer Drive, Suite 700
Arlington, VA 22209
703/351-5295

September 2, 1993

Ms. Irene Bowen, Deputy Director
Civil Rights Division
U.S. Department of Justice
1425 New York Ave. N.W.
Room 4053
Washington, D.C. 20530

Dear Ms. Bowen:

In remarks before our organization last fall you suggested we identify field enforcement problems associated with regulations promulgated under the ADA. We have tried to isolate some major concerns. Following are those problems associated with regulations affecting water coolers and fountains. We may be sending other concerns at a later date. The purpose is to ask for clarification and/or a specific interpretation on these issues.

Following is a description of those items which have caused the greatest confusion with respect to interpretation of the regulations directed at water fountains and coolers:

A. The purpose of Section 4.15.3 Spout Locations appears to be to make the water flowing from a drinking, fountain or water cooler accessible to the user. The last sentence of the section states: "On an accessible drinking fountain with a round or oval bowl, the spout must be positioned so the flow of water is within 3 in (75 mm) of the front edge of the fountain.

The language of the section is taken directly from ANSI A117.1 with the last sentence added. This sentence is creating, confusion. Some of the field interpretations encountered are:

1.) The language of the entire section has been interpreted to apply to round or oval bowls only.
2.) The language has been interpreted to apply only to round or oval "dish" receptors set on an arm extending out from the wall or pedestal.
3.) It has also been interpreted to apply to a receptor of any exterior shape, if a depression in the receptor were round or oval.

4.) It is also being interpreted to apply in every instance whether the bowls are round, oval or otherwise.

The last sentence of the regulation is not necessary and merely adds confusion. We request deletion of the last sentence of Section 4.15.3. If this is not possible, we request an interpretation of the last sentence.

B. Section 4.15.5 Clearances deals with minimum clearance for knee space and accessible floor space of water cooler installations. Section 4.4.1 Protruding Objects - General provides general requirements for protruding objects. The language and drawings of 4.15.5 seem to be straightforward. The sentence in section 4.4.1 which states: "Objects mounted with their leading edges at or below 27 in (685 mm) above the finished floor may protrude any amount..." also appears to be compatible with 4.15.5.

Yet, inspectors in the field are having a difficult time interpreting between the two sections. We very much need an interpretation clearly stating that accessible drinking fountains and coolers installed in accordance with Section 4.15.5 also meet the requirements of Section 4.4.1.

C. Section 4.1.3 (10) (a) specifically allows "hi-lo" fountains to accommodate those in wheelchairs and those who have trouble bending or stooping. These "hi-lo" fountains appear to be considered one unit for the purposes of Section 4.1.3. The "hi" section of the fixture (fountain) could protrude more than 4 inches from the wall and would be higher than 27 inches above the floor.

This appears to create a direct conflict with Section 4.4.1. We believe the intent of Section 4.1.3 (10) (a) should, in this case, negate the literal requirements of Section 4.4.1. Could we please have a specific interpretation on this issue?

D. Section 4.15.5 (1) Clearances (of drinking fountains and water coolers) and the associated drawings 27 (a) and (b) are creating confusion in the field because of the use (or lack of use) of the words "maximum" and "minimum." Is the intent to hold designers to a range of 17-19 inches, or is the intent to have at least (minimum) 17 inches clearance for accessibility?

We would request an interpretation on this issue. We believe that the intent would be best served by adding the word "minimum" to the range of 17-19 inches and to the drawings, 27 (a) and (b).

E. Section 4.1.3 (10) (a) mentions, "providing one fountain at a standard height for those who have difficulty bending;" but we cannot find dimensions or recommendations on the height for these higher fountains. Our own recommendation is 37 inches minimum to 43 inches maximum. Is there something else in the regulations relating to this issue we have missed? What process is available to add the height requirements for the higher fountains?
h:\...\pmi\stand\adaag.902

We appreciate the opportunity to submit these concerns for your review. We are not specifically familiar with interpretation procedures. Could you supply us with specific information on the procedure? Similarly, could you tell us what avenue(s) are open to requesting specific changes in the language of the regulations? If any of the above issues are unclear to your staff, we would be happy to supply them with more detailed information and drawings to illustrate the concerns. Also, we would be pleased to meet with you or your staff to further explain these issues.

Sincerely,

Richard W. Church, President

File: 93 IR-ADAAG

h:\...\pmi\stand\adaag.9023

01-02876

JAN 4 1994

Ms. Carol Hunter
Carol Hunter Consulting, Inc.
P.O. Box 668
Empire, Colorado 80438

Dear Ms. Hunter:

Your inquiry of June 1, 1993, to the Access Board regarding which standards, UFAS or ADAAG, should be used when a federal agency and a state agency are equal partners in building a facility or conducting a program, was referred to us for reply. We apologize for the delay in responding.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities that are subject to the Act. This letter provides informal guidance to assist you in understanding the ADA accessibility standards. However, this technical assistance does not constitute a legal interpretation of the application of the statute and it is not binding on the Department.

Facilities built with Federal funds and subject to the Architectural Barriers Act of 1968 are covered by the Uniform Federal Accessibility Standards (UFAS). Many public entities that are recipients of Federal program funds also are subject to UFAS, which is the accessibility standard referenced in most section 504 regulations. Title II of the ADA 35.151(c) permits state and local governments to choose between two standards for accessible new construction and alteration, UFAS and ADA Standards for Accessible Design.

In instances where Federal and state agencies are equal partners in conducting a program, the Federal agency must use UFAS and the state may choose either UFAS or ADAAG. If the state agency chooses UFAS, then just one accessibility code would apply to the facility. If, however, the state agency selects ADAAG, then, a facility would be subject to both UFAS and ADAAG. In this

cc: Records, Chronc, Wodatch, Magagna, Johansen, MAF, FOIA

circumstance, if the standard for a particular element is more stringent in one standard than the other, the more stringent standard would apply.

We hope this information is helpful to you.

Sincerely,

John L. Wodatch
Section Chief
Public Access Section

cc: Marsha Mazz

01-02878

JAN 6 1994 (STAMP)

The Honorable Daniel Patrick Moynihan
United States Senate
464 Russell Senate Office Building
Washington, D.C. 20510

Dear Senator Moynihan:

This letter is in response to your inquiry on behalf of your constituent XX , who raises concerns about accessibility problems at a shopping mall, a school facility, and a doctor's office in his community. He also inquires about tax advantages for persons who are blind.

(b)(6)

With respect to the shopping mall, XX states that the Hudson Valley Mall in Ulster, New York, has heavy doors that are difficult to open. The Mall management has apparently denied requests to install electric doors that would be easier for persons with disabilities to use. Existing facilities of this type have an obligation under title III of the ADA to remove architectural barriers to access where such removal is readily achievable. However, where the ADA Design Standards for new construction specify requirements for a particular element, the barrier removal obligation does not require existing facilities to exceed the Design Standards. The ADA Standards for Accessible Design applicable to new construction do not require electric doors, nor do they set a limit for the maximum door opening force for exterior hinged doors. See the ADA Standards for Accessible Design Section 4.13.11 and 4.13.12, Appendix A to the enclosed title III regulation. Therefore, because the ADA Design Standards specifically do not require the installation of electric doors in new buildings, their installation is not required under the ADA's barrier removal requirements for existing buildings.

cc: Records; Chrono; Wodatch; McDowney; Magagna; Murrell; FOIA
MAF.
\udd\magagna\congress\moynihan

01-02879

(b)(6)
XX next complains about a two-story building operated by the public school district. State and local government entities are obligated under title II of the ADA to make all of their programs and activities accessible to persons with disabilities. Although a school district is not necessarily required to make every existing building accessible, it may have to relocate various services or programs if necessary to provide program accessibility. All State and local government buildings constructed after January 26, 1992, must be readily accessible to and usable by individuals with disabilities. The elevator exemption for newly constructed small buildings that XX discusses applies only to privately owned buildings, not State and local government facilities. See the enclosed title II regulation at Sections 35.150 and 35.151. if XX wishes to file a complaint under title II against the school district, he should write to the U.S. Department of Education, 330 C St., Rm 5000, S.W., Washington, 20202-1100. He also has the right under title II to file suit in federal court and he may wish to consult an attorney for that purpose.

Finally, XX complains about a doctor who has not made his office accessible but advises patients with disabilities that he will see them at the hospital. Existing places of public accommodations, such as doctor's offices, are required to remove architectural barriers to access to the extent such removal is readily achievable. Providing service at a different accessible location is an appropriate alternative to barrier removal, but only if barrier removal is not readily achievable. The determination of whether barrier removal is readily achievable requires inquiry into the specific facts of each case -- the size

and resources of the entity involved and the nature and cost of architectural changes required. See the enclosed title III regulation at Sections 26.304 and 36.305. If XX wishes to file a complaint under title III against the doctor, he may write to John L. Wodatch, Chief of the Public Access Section, Civil Rights Division, U.S. Department of Justice, P.O. Box 66738, Washington, D.C. 20035-6738.

We are enclosing copies of our title II and title III Technical Assistance Manuals as well as the regulations. If your constituent has further questions concerning the Americans with Disabilities Act, he may call our information line at (202) 514-0301 between 1 p.m. and 5 p.m. EST, Monday through Friday.

(b)(6) XX inquiry regarding tax advantages for persons with disabilities should be directed to the Internal Revenue Service.

01-02880

I hope this information will assist you in responding to your constituent.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

Enclosures

01-02881

XX (b)(6)
Kingston, NY XX
June 8, 1993
XX

The Honorable Daniel Patrick Moynihan
The Russel Building Room 464
Washington D.C. 20510

Dear Sir,

It has come to my attention that although there laws on the books that require public buildings to be accessible for persons with disabilities, the enforcement of these laws leaves much to be desired. In fact, it leaves everything to be desired as they are hardly enforced at all. Having XX who must use a wheelchair which makes it difficult if not impossible to gain access to many public buildings, I feel very strongly that something must be done to increase enforcement of these laws.

According to the Americans With Disabilities Act: Title III Sec 12182. Prohibition of discrimination by public accommodations subsection a) General rule, "No individual shall be discriminated against on the basis of disability in the full and equal enjoyment

of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation." Apparently, the owners of many public facilities, especially in the greater Kingston, N.Y area have not been informed of this fact. Sadly, I can speak from first-hand experience of many public buildings which are completely inaccessible by disabled persons, and the owners of these facilities have no intention of coming up to par on this law, because the authorities seem to let this behavior slide. It is a sad time in America when a business will knowingly discriminate against individuals with disabilities because they know that they won't lose enough money due to boycotts, and that the authorities will do nothing to remedy the situation.

For example. The Hudson Valley Mall, in Ulster, NY, has doors that are so heavy that "normal" people have trouble opening them. Imagine trying to open such a door while confined to a wheelchair with the limitations in movement that come with this. True, a person in a wheelchair could get someone else to open said door, but the word "accessible" implies that an individual can use or operate a device without outside help. Remarkably, these doors passed inspection and were allowed. When the mall added a new section, these same doors were again installed. The mall authorities were asked by the Resource Center for Accessible Living if they would consider installing electric doors that would he much easier for disabled persons to use. The answer was a resounding Is no". The rationale used was that teenagers who frequent the mall would use these doors as a source of entertainment by continually opening and closing these doors. Speaking as a teen, I must say

that neither myself nor my friends would do anything of the sort, despite the obvious temptation. True, electric doors are much more fun than a video arcade any day, but I think that we would be able to control ourselves. The I.B.M. plant in Kingston as well as other retail stores such as Caldor and various supermarkets have installed these doors, and I can't recall often hearing teenagers discussing hanging out at these locations in order to play with the doors.

Another example is the Kingston High School's MJM Building. A few years back, the school board was allotted money by the district to make the building accessible for the disabled. However, the district decided to spend the money elsewhere. I am aware of the regulation in the ADA Guidelines that states that all buildings under three stories do not have to modify themselves to meet the standards of the law, but isn't it ridiculous when a

disabled child can't be mainstreamed into society because the school would rather build a baseball field? This kind of thinking keeps the stereotypes about the disabled alive, that they can't be active members of society because their bodies cannot always respond to their brains, which happen to work as well as anyone (b)(6) else's. As an example, my XX has had XX hip revisions XX is currently serving as a XX and XX for the Town of Kingston. I can understand that smaller businesses cannot afford modifications, but what's to stop larger companies from simply renting smaller office buildings so that they don't have to spend money to flaunt the law? Perhaps this law should use income, and not building size as a cutoff for determining accessibility. Also, the school board itself meets on the second floor of it's office building. Since there is no elevator in this building (as it's under three stories tall), this seems to me to be a convenient way for the board to not have to deal with the problem, as no one confined to a wheelchair or walker can complain about conditions since they can't attend school board meetings anyway.

A third, and particularly sad, example is the case of a local doctor in Kingston. This man (who will remain nameless) refuses to build a ramp to his office although most of his patients have physical disabilities, as he is a practicing neurologist. He has told his patients that he will meet them at the hospital if they can't get in to the building, but this goes against the ADA on two counts. First, it is discriminatory against people confined to wheelchairs or walkers, and secondly, it is extremely difficult to find parking in the middle of the city that a disabled person can use which is close to the doors so that it is easier for the disabled person to get inside. Is money so important now to the medical profession that they won't spend money to make life a little easier for the people who not only are the ones they are supposed to help, but pay the doctors' salaries as well? According to section 12181 of the ADA, paragraph 7, such an office is considered "a professional health office of a health care provider" and therefore must be accessible. Why is he allowed to get away with this?

One final question. Why on tax forms do the blind receive tax breaks while other disabled persons do not. Who decided that the blind are always the worst off? I believe that the tax break should be based on the severity of the disease, and not a simple "he deserves it for being blind" decision.

People often wonder why disabled-rights groups such as the aforementioned RCAL become militant and stage boycotts of local businesses. Unfortunately, these people don't understand what it's like to not be able to enter a building because a physical malady

prevents one from entering the front door. These people will never understand until it happens to them or someone they care about. It's like the person who always parks in a disabled parking spot because they'll "only be a minute." As soon as they are injured and need this spot, they suddenly understand the frustration of not being as free as other members of society because of careless citizens and a disability. I always thought that America was a better country than that. I hope that I won't be proven wrong, and I hope something can he done to remedy this situation. Hopefully, some money can be appropriated to increase enforcement of the laws already on the books if new laws can't he passed or new committees created to prevent these problems before they occur. I don't think it much matters how the problem is solved as long as we can be assured that someone is at least making an attempt at trying to solve it.

Sincerely,

XX
XX
(b)(6)

01-02884

U.S. Department of Justice
Civil Rights Division
Coordination and Review Section

DJ 204-45-0 P.O. Box 66118
Washington, D.C. 20035-6118

Sheri E. Long, Esquire
Assistant City Attorney
City of Omaha
Omaha/Douglas Civic Center
1819 Farnam Street

Suite 804
Omaha, Nebraska 68183-0804

Dear Ms. Long:

This letter responds to the issues you raised in your letter of August 2, 1993, and in your December 14, 1993, phone conversation with Anne Marie Pecht, of my staff. In your letter you requested our opinion as to whether certain renovations that the City of Omaha is planning to make in a number of its firehouses will comply with the requirements of the Americans with Disabilities Act of 1990 (ADA). After Ms. Pecht spoke with you she discovered that you had also raised these issues in a letter to Senator Kerrey, which was recently forwarded to this office for our assistance in responding. You may already have received a response through Senator Kerrey's office. Because Ms. Pecht spoke directly with you she was able to provide the additional, more specific, information included in this letter.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities with rights or obligations under the Act. This letter provides informal guidance to assist you in understanding the requirements of the ADA. It does not, however, constitute a legal interpretation and is not binding on the Department of Justice.

As you discussed with Ms. Pecht, you are aware that the ADA does not require the City of Omaha to renovate its firehouses, unless renovations are necessary to provide program access. We understand, however, that you are making these renovations for other purposes. Section 35.151 of the enclosed title II regulation covers new construction and alterations by entities subject to title II of the ADA, that is, State and local governmental entities such as the City of Omaha. Section 35.151(b) of the title II regulation requires that any

cc: Records CRS Chrono Friedlander Breen FOIA LOF Payne
Keenan Pecht.techasst.ltr.long.ltr

01-02885

alteration to a title II facility that affects or could affect the usability of the facility must, to the maximum extent feasible, be made in such a manner that the altered portion of the facility is "readily accessible to and usable by individuals with disabilities." Section 35.151(c) of the title II regulation currently allows title II entities to meet this requirement by following either the Uniform Federal Accessibility Standards

(UFAS) or the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (ADAAG), except that the elevator exception contained in sections 4.1.3(5) and 4.1.6(1)(k) of ADAAG is not available for title II facilities.

We understand that the City of Omaha has selected ADAAG as its accessibility standard. Therefore, the balance of this discussion will refer to the applicable sections of ADAAG. (As you discussed with Ms. Pecht, the U.S. Architectural and Transportation Barriers Compliance Board (Access Board) and the Department of Justice are in the process of amending ADAAG to include provisions directly applicable to title II facilities. After the revised Accessibility Guidelines are adopted by the Department of Justice, title II entities will be required to follow ADAAG and will no longer have the option of following UFAS. (We look forward to receiving any comments you may have on the proposed title II Guidelines when they are published by the Department of Justice.)

Your letter attempts to distinguish between renovations to bathroom and shower facilities in fire stations that are used solely by fire fighters (and not open in any way to members of the public) and renovations to those same facilities in fire stations that you plan to use for civil defense purposes. Under title II, however, restrooms and shower facilities (along with employee lounges, cafeterias, health units, and exercise facilities) are considered common use areas, and must be constructed or altered in full compliance with ADAAG, whether they are open to the public or are planned to be used solely by employees (such as fire fighters) who must meet rigorous physical qualification standards in order to perform the essential functions of their jobs.

Note, however, that areas used only by employees as work areas are subject to a more limited requirement. section 4.1.1(3) of ADAAG provides that employee work areas must be designed and constructed so that employees with disabilities can approach, enter, and exit such areas. The adaptations required by an individual employee with disabilities to permit that individual to work within the work area would, as you pointed out, be treated on a case-by-case basis as a reasonable accommodation under the standards established under title I of the ADA. The requirements applicable to employee work and common

use areas are discussed in section III-7.3110 of the enclosed title III Technical Assistance Manual. For your convenience, we have also enclosed a copy of the title II Manual.

The basic rule for alterations under ADAAG is that, when existing elements, spaces, or common areas are altered, each altered element, space, feature, or area shall comply with the applicable ADAAG requirements for new construction. See section 4.1.6(1)(b). The requirements for accessible toilet rooms (i.e., rooms that include fixtures such as water closets, toilet stalls, urinals, and lavatories) are located in section 4.22 of ADAAG. The requirements for accessible bathrooms, bathing facilities, and shower rooms are located in section 4.23.

An exception to full compliance with the standards for new construction is made when compliance would be "technically infeasible", as that term is defined under section 4.1.6(l)(j) of ADAAG. If it is technically infeasible to comply with 4.22 or 4.23 when altering toilet or bathing facilities, section 4.1.6(3)(e)(i) permits the installation of one unisex facility located in the same area as the existing facilities, in lieu of modifying the existing facilities to be accessible. If stalls are provided, section 4.1.6(3)(e)(ii) permits the use of one of the smaller alternate stalls where it is technically infeasible to install a standard stall.

As we understand it, there are three possible situations you may encounter in undertaking this renovation project, as follows: (i) an existing men's toilet room and/or shower room will be renovated and comparable women's facilities will be added; (ii) an existing men's toilet and/or shower room will be converted to unisex use; or (iii) a completely new unisex toilet and/or shower room will be added.

With respect to situation (i) above, the renovated men's facilities and the new women's facilities must comply with ADAAG standards for new construction, unless compliance is technically infeasible, in which case you may either install a unisex toilet and/or shower room as provided in section 4.1.6(3)(e)(i), or reduce the stall size as permitted by section 4.1.6(3)(e)(ii) Please note, however, that the technical infeasibility exception is meant to be a very limited exception to the requirement for accessibility in alterations. When entirely new facilities (such as the planned women's facilities) are located within an existing building, the exception for technical infeasibility will be very strictly interpreted. With respect to the situation described in (ii) above, it is permissible to convert an existing men's toilet and/or shower room to a unisex room. In the situation described in (iii) above, it is permissible to create a single new unisex toilet and/or shower room. In both cases the new unisex rooms must comply with the ADA Guidelines.
01-02887

For assistance in complying with technical aspects of the ADA Accessibility Guidelines, you may wish to contact an accessibility specialist at the Access Board by telephone at 800-USA-ABLE or 202-272-5434, or by TDD at 202-272-5449.

I hope this information has been helpful to you.

Sincerely,

Stewart B. Oneglia
Chief
Coordination and Review Section
Civil Rights Division

Enclosures (3)

01-02888

T. 11/22/93 JAN 11 1994

DJ XX

XX
XX
Dallas, Texas XX

Dear XX

This is in response to your letter to this office regarding the ratification of House Bill 957 by the General Assembly of North Carolina.

The Americans with Disabilities Act (ADA) authorizes the Department of Justice to provide technical assistance to entities that are subject to the Act. This letter provides informal guidance to assist you in understanding how the ADA may apply to you. However, this technical assistance does not constitute a determination by the Department of Justice of your rights or responsibilities under the ADA and does not constitute a binding determination by the Department of Justice.

In considering the reach of the ADA, the Department of Justice has declined to state categorically that allergy or sensitivity to cigarette smoke should be recognized as a disability because, in order to be viewed as a disability under the ADA, an impairment must substantially limit one or more major life activities. An individual's respiratory or neurological functioning may be so severely affected by allergies or sensitivity to cigarette smoke that he or she will be considered disabled. Such an individual would be entitled to all of the protections afforded by the ADA. In other cases, however, an individual's sensitivity to smoke or other environmental elements will not constitute a disability. If, for instance, an individual's major life activity of breathing is somewhat, but not substantially, impaired, the individual is not disabled and is not entitled to the protections of the statute. Thus, the determination as to whether allergies or sensitivity to smoke are disabilities covered by the regulation must be made using the same case-by-case analysis that is applied to all other physical or mental impairments. (see the enclosed title III regulation at page 3554.9.)

cc: Records CRS Chrono Friedlander Breen
Milton.letterssmoking.you

01-02889

Because of the case-by-case nature of the determination, the Department of Justice ADA regulations do not mandate restrictions on smoking. In that regard, it is important to note that even though section 501(b) of the statute merely states that the prohibition of, or the imposition of restrictions on, smoking in places of public accommodation is not precluded by the ADA, the statute does not mandate imposition of any restrictions. Furthermore, there is currently no Federal statute that absolutely bans smoking in public buildings.

Because the ADA does not mandate restrictions on smoking, the North Carolina bill about which you are complaining does not, in itself, violate the ADA. However, if the effect of the law is to create barriers to access for a particular individual who is substantially impaired because of his or her sensitivity to cigarette smoke, then there may be a violation of the ADA as regards that individual. For instance, it may be necessary to modify the policy of allowing smoking in a designated smoking area if it affects a particular disabled individual.

If you believe that you are disabled as defined under the ADA and you can identify a particular State or local government facility in which you are denied access because of the presence of smoke, you may either file a private suit in Federal court or send a complaint to this office for investigation.

I hope this information has been helpful to you.

Sincerely,

Stewart B. Oneglia
Chief
Coordination and Review Section

Civil Rights Division

Enclosure

01-02890

U.S. Department of Justice
Civil Rights Division
Coordination and Review Section

DJ 171-32-0 P.O. Box 66118
Washington, D.C. 20035-6118

JAN 21 1994

Mr. Roger T. Boes
Boes Iron Works, Inc.
2321 Perdido Street
New Orleans, Louisiana 70119-7538

Dear Mr. Boes:

This responds to your letter to President Clinton concerning eligibility of individuals with disabilities for "minority status classification" under the Americans with Disabilities Act (ADA).

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This response provides informal guidance to assist you in understanding the ADA's requirements. It does not, however, constitute a legal interpretation and is not binding on the Department.

Your inquiry appears to concern the exclusion of individuals with disabilities from the classes of individuals eligible for minority set aside programs. This exclusion would not necessarily constitute a violation of the ADA or of section 504 of the Rehabilitation Act of 1973, as amended, which applies to federally assisted as well as federally conducted programs and activities.

Title II of the ADA and the Department of Justice implementing regulation, 28 C.F.R. pt. 35 (copy enclosed), prohibit a public entity from discriminating on the basis of disability against a qualified individual with a disability in the benefits and services it provides. 28 C.F.R. 35.130 (a). A "qualified individual with a disability" is one who meets the essential eligibility requirements for the receipt of services or participation in the program or activity provided by the public entity. The ADA does not limit the authority of a public entity to establish eligibility requirements that are unrelated to disability, so long as those requirements do not exclude qualified individuals with disabilities. The exclusion of individuals with disabilities from a "set aside" established for

particular classes of individuals, such as racial, ethnic, or other minority groups, would not be discriminatory, unless individuals with disabilities who are also members of the particular classes covered by the set aside are excluded because of their disabilities. (Such an exclusion of an individual who is "qualified" because he or she meets the eligibility requirement of membership in a covered group could violate the ADA.)

We understand your position to be that the failure to include business owners with disabilities is discriminatory because those business owners are "disadvantaged" by their disabilities in the same way as others are disadvantaged by their membership in the covered groups. This argument is premised on the assumption that, in establishing a preference for particular classes of "disadvantaged" business owners, the State is obligated to include all categories of business owners that are similarly "disadvantaged." The ADA does not establish such an obligation. It does not prohibit State and local governments from establishing eligibility criteria that target specific groups as intended beneficiaries, based on the goals and purpose of authorizing legislation, so long as the program does not exclude or discriminate against persons with disabilities because of their disability.

Of course, if you seek to have the programs in question amended or revised to include the specific groups you represent as eligible for services or benefits, you should contact the agencies administering these programs and the appropriate legislative bodies that authorize them.

I hope this information is helpful.

Sincerely,

Stewart B. Oneglia
Chief
Coordination and Review Section
Civil Rights Division

Enclosure

01-02897

U.S. Department of Justice
Civil Rights Division
Coordination and Review Section

DJ 204-012-00034 P.O. Box 66118
Washington, D.C. 20035-6118

JAN 27 1994

Mr. Barry M. Vuletich
Manager of Consumer Affairs
Division of Rehabilitation Services
Department of Human Services
P.O. Box 3781
Little Rock, Arkansas 72203

Dear Mr. Vuletich:

This letter is in response to your letter of May 25, 1993, requesting our formal opinion on various issues that arise under the Americans with Disabilities Act of 1990 (ADA) when a State agency leases a building or facility from a private entity.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities with rights or obligations under the Act. This letter does not, however, constitute a legal interpretation or a formal legal opinion, and

is not binding on the Department of Justice.

Although your letter is not completely clear, we assume you are referring to the issues that arise when a State agency, subject to title II of the ADA, leases a building or facility from a private landlord. These issues are discussed, in some detail, in the preamble to section 35.151 of Department's regulation implementing title II of the ADA (the Preamble). See page 35711 of the enclosed copy of the title II regulation.

As noted in the Preamble, existing buildings leased by a public entity are not required to meet accessibility standards simply by virtue of being leased. The activities that the State conducts within such buildings are, however, like all services, programs, and activities conducted by the State, subject to the "program access" requirement set forth in section 35.150 of the title II regulation and further discussed in section II-5.0000 of the Department's title II Technical Assistance Manual, a copy of which has been enclosed for your convenience.

Under the "program access" requirement, a public entity, such as the State of Arkansas, must operate each of its services, programs, and activities, so that when viewed in its entirety, that service, program, or activity is readily accessible to and usable by individuals with disabilities. See section 35.150(a) of the title II regulation.

Although it is not necessary for a public entity to make each of its existing facilities accessible, and the regulations provide other methods by which the entity may comply with the "program access" requirement, see section 35.150(b)(1), the Department encourages public entities to lease the most accessible space available.

At a minimum, public entities are encouraged to lease space that complies with the minimum standard applicable to the Federal government when it leases space. That standard is discussed in the Preamble to section 35.151, cited above. The three elements of the standard are: (i) an accessible route from an accessible entrance to the areas where the primary activities for which the building was leased take place; (ii) accessible toilet facilities; and (iii) accessible parking facilities. Leasing space that complies with this minimum standard, while not

required, will greatly facilitate the State's obligation to provide program access.

Thus, in response to your first question, the State retains all of its title II responsibilities for providing program access, and for otherwise complying with title II, when it leases a building or facility from a private entity. In response to your second question, this would, of course, include its responsibility for identifying barriers to program access as part of the process of preparing the State's transition plan. Finally, even if the State's landlord is "not agreeable" to making the necessary changes, the State continues to be the party responsible for complying with all aspects of title II.

We assume that by the phrase "agreeable to" making changes, you are referring to the landlord's willingness to pay for such changes. Whether a private landlord is willing to make changes (or to permit changes to be made) to its buildings or facilities that would assist a State in complying with its obligations under title II is likely to be largely determined by the provisions of the lease. By virtue of the definition of "public accommodation" under the regulation implementing title III of the ADA (ie., a private entity that owns, leases (or leases to), or operates a place of public accommodation), a private landlord leasing to a public entity does not have any independent obligation to modify (or to permit the public entity to modify) buildings or facilities owned by the private entity.
01-02899

If the landlord refuses to pay for, or even to allow the State to make the modifications needed for compliance with the ADA, whether or not its refusal violates the terms of its lease with the State, the State retains an independent obligation to provide program access by some other method. (The State would, however, retain any rights against the landlord provided by the lease.)

I hope this information has been of assistance to you. If you require further assistance or advice, please do not hesitate to write. The Department can also be reached through its ADA Information Line at (202) 514-0301 (Voice) and (202) 514-0383 (TDD) 1:00 p.m. to 5:00 p.m., Monday through Friday.

Sincerely,

Stewart B. Oneglia
Chief
Coordination and Review Section
Civil Rights Division

Enclosures (2)

01-02900

FEB 1 l994

Mr. Warren T. Hanna
Director
Hard of Hearing Advocates
245 Prospect Street
Framingham, Massachusetts 01701

Dear Mr. Hanna:

This is in response to your letter to Attorney General Reno seeking advice on what can be done to educate the hard of hearing community about the availability of hearing aids with telecoil wires.

Although the ADA does not require manufacturers to educate consumers about products they manufacture, there are a number of Federal agencies that may be able to provide information that will assist you in educating consumers who are hard of hearing about hearing aid products that are available on the market:

* In addition to this Department, the Architectural and Transportation Barriers Compliance Board and the Equal Employment Opportunity Commission can provide information and technical assistance to assist the public in understanding the types of assistive listening systems that are appropriate for different applications; the circumstances under which an employer is required by the ADA to provide an assistive listening system to communicate with an employee; and the circumstances under which businesses or State or local government agencies that serve the public are required to provide an assistive listening system to communicate with consumers.

* The U.S. Department of Education's National Institute on Disability and Rehabilitation Research does research on a variety of disability issues and may have information about assistive listening systems that work better for consumers who use hearing aids with telecoil wires than for consumers who use hearing aids without telecoil wires or consumers who

cc: Records; Chrono; Wodatch; Magagna; Willis; McDowney; FOIA; MAF. \UDD\WILLIS\CTHANNA

01-02901

are hard of hearing but cannot benefit from any hearing aids currently on the market, along with the research it has done on the types of assistive listening systems (FM, infra-red, and loup) that are appropriate for different applications.

* The Federal Communications Commission regulates under the Hearing Aid Compatibility Act and may have information about telephone models that work better for consumers who use

hearing aids with telecoil wires than for consumers who use hearing aids without telecoil wires or consumers who are hard of hearing but cannot benefit from any hearing aids currently on the market.

* The U.S. Department of Health and Human Services, Public Health Service, Food and Drug Administration regulates under the Federal Food, Drug, and Cosmetic Act and may have information about manufacturers or distributors of hearing aids suspected of "overselling" their products, claiming them to be more effective than they really are.

Enclosed is a booklet that provides information about the ADA and lists the telephone numbers for ADA information lines operated by the Architectural and Transportation Barriers Compliance Board and the Equal Employment Opportunity Commission. The Department of Justice operates an ADA information line at (202) 514-0301.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

Enclosure

01-02902

HOHA HARD OF HEARING ADVOCATES
Director Finding and Implementing Solutions)
Warren T. Hanna
245 Prospect Street Framingham MA 01701 USA Phone(308)875-88662
FAX(508)875-0145

The Honorable Janet Reno
Attorney General of the United States

Main Justice Building
Constitution Avenue between 9th & 10th Streets
Washington, D.C. 20530

August 20, 1993

Dear Honorable Janet Reno:

The following describes a relatively widespread problem in which your input would be appreciated.

This relates to hearing aids and the uniqueness of the problem in which consumers, as a result of their affliction, tend to become passive. They lose their willingness to assert themselves verbally. This results in a high rate of dissatisfaction, as well as high prices for hearing aids.

Another factor: The American Disability Act. Many hearing aid wearers are being denied access to social environments in which they could hear, if only they were educated properly. To explain: all but the smallest hearing aids have the potential of having a small coiled wire (called a telecoil) installed in it. This telecoil allows a person not only to hear better on the telephone, but it serves as a receiver to pick up sound from other sources. These other sources include receivers that can be connected to FM, Infra-red and/or Loop systems. A hearing aid wearer using such a system can literally hear better than a normal hearing person under certain conditions.

Industry people give many reasons for their failure to educate consumers, though it appears clear that they just do not want to take the time to demonstrate and explain the procedure. This technology is something that has been used in Scandinavian countries for 40 years, allowing people to go to churches, to theaters, etc. and to be able to function as normal hearing people do.

Many businesses today are willing to put in what are called assistive listening systems (FM), Infra-red and Loop systems), but the hard of hearing consumer without a telecoil is very limited in his ability to use such a system.

I realize this is a brief description of a somewhat complex problem and that you may need more information. Should you have any questions, I would be happy to get into them with you. The end result is, "What can the splintered hard of hearing community do in such a case?" It seems logical to seek help via litigation, possibly to create a small claims procedure to help in individual cases, or is a class action apt to prove more effective?

Input from you would be sincerely appreciated.

Sincerely,
Warren T. Hanna, Director

WTH/jk
01-02903

T. 12-22-93
Control No. 3121628888

FEB 2

The Honorable Paul D. Wellstone
United States Senator
2550 University Avenue West, #100N
St. Paul, Minnesota 55114

Dear Senator Wellstone:

This letter is in response to your inquiry on behalf of your constituent, XX who is concerned that airline policies regarding the use of oxygen on commercial airline flights discriminates against individuals with disabilities in violation of the Americans with Disabilities Act (ADA).

Airlines are not subject to the ADA; however, they are subject to the Air Carrier Access Act of 1986, which prohibits discriminatory treatment of people with disabilities when travelling by air. The Air Carrier Access Act is enforced by the U.S. Department of Transportation.

Because the issues raised by XX are not within the jurisdiction of the Department of Justice, we have referred this matter to the Department of Transportation for appropriate action. I have enclosed a copy of the referral.

I hope this information will be helpful to you in responding to your constituent.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

Enclosure

cc: Records, Chrono, Wadatch, Blizard, McDowney, FOIA, Friedlander
n:\udd\blizard\control\wellston

01-02904

T. 12-22-93
Control No. 3121628888

FEB 2

The Honorable Paul D. Wellstone
United States Senator
2550 University Avenue West, #100N
St. Paul, Minnesota 55114

Dear Senator Wellstone:

This letter is in response to your inquiry on behalf of your constituent, XX who is concerned that airline policies regarding the use of oxygen on commercial airline flights discriminates against individuals with disabilities in violation of the Americans with Disabilities Act (ADA).

Airlines are not subject to the ADA; however, they are subject to the Air Carrier Access Act of 1986, which prohibits discriminatory treatment of people with disabilities when travelling by air. The Air Carrier Access Act is enforced by the U.S. Department of Transportation.

Because the issues raised by XX are not within the jurisdiction of the Department of Justice, we have referred this matter to the Department of Transportation for appropriate action. I have enclosed a copy of the referral.

I hope this information will be helpful to you in responding to your constituent.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

Enclosure

cc: Records, Chrono, Wadatch, Blizard, McDowney, FOIA, Friedlander
n:\udd\blizard\control\wellston

01-02904

FEB 9 1994

The Honorable Robert S. Walker
U.S. House of Representatives
2369 Rayburn House Office Building
Washington, D.C. 20515-3816

Dear Congressman Walker:

This letter is in response to your inquiries an behalf of your constituent, XX (B)(6)

Your letter indicates that XX has recently purchased a three story bed and breakfast inn. She wishes to obtain information regarding the requirements of the Americans with Disabilities Act ("ADA") applicable to the two floors of bedrooms in the inn. XX also inquired as to a deadline to meet the requirements, particularly for work on the entrance door and bathrooms.

Title III of the ADA applies to all privately owned places of public accommodation. Title III sets forth twelve categories of entities that are places of public accommodation having obligations under the Act. One of these categories is "an inn, hotel, motel, or other place of lodging, except for an establishment located within a building that contains not more than five rooms for rent or hire and that is actually occupied by the proprietor of the establishment as the residence of the proprietor." Unless XX inn is an owner-occupied establishment renting fewer than six rooms, the inn is subject to the ADA requirements to have nondiscriminatory policies and procedures, to provide effective communication to persons with disabilities, and to remove architectural barriers in the facility where it is readily achievable. These obligations are described in more detail in the enclosed Technical Assistance Manual published by the Department of Justice. See Part III-3.0000 (pp. 14-21) and Part III-4.0000 (pp. 22-39).

cc: Records; Chrono; Wodatch; McDowney; Pestaina; Magagna; FOIA; MAF. \udd\pestaina\cgl\walker

01-02906

(b)(6)

The effective date for compliance with the ADA requirements was January 26, 1992. Thus, if XX inn contains any architectural barriers whose removal is "readily achievable," including any work on the entrance door or bathrooms, work to remove those barriers should have been completed.

I have also enclosed for your information a copy of the title III regulation promulgated by the Department of Justice. The provisions regarding the effective date of the Act and the obligation to remove architectural barriers may be found in sections 36.304 and 36.508 of the regulation, and are discussed in the Technical Assistance manual on pages 30 through 39 (barrier removal), and page 71 (effective date). The penalties provided for a violation of the Act are set out in sections 36.501 and 36.504. They are discussed in the Technical Assistance Manual on pages 68 through 71.

(b)(6)

For further information about the ADA, XX may call our ADA information line at (202)514-0301 from 1 p.m. to 5 p.m. EST.

I hope this information is useful to you in responding to XX (b)(6)

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

Enclosures

01-02907

Congress of the United States
House of Representatives
Washington, DC 20515-3816
November 19, 1993

M. Faith Burton, Esquire
Acting Attorney General for Legis. Affairs
U.S. Department of Justice
Main Justice Building
Pennsylvania and Constitution Avenues, N.W.
Washington, D.C. 20530

Dear Ms. Burton:

I am writing to you on behalf of my constituent, XX of Oxford, PA, who has enlisted my assistance. (b)(6)

It is my understanding that XX recently purchased a three story bed and breakfast inn, which has a restaurant on the first floor. She would like to learn of the regulations of the ADA for the two floors of bedrooms, and if there is a deadline to complete the work, particularly relative to the entrance door and access to bathrooms. Accordingly, I would like to take this opportunity to express my interest on behalf of my constituent and to request that this case be reviewed as expeditiously as possible.

Thank you for your cooperation in this regard. I will look forward to hearing from you at your earliest opportunity.

Cordially,

Robert S. Walker

nw

(b)(6)
XX

01-02908

T. 2-7-94

DJ 202-PL-593

FEB 9, 1994

Mr. Mario Pimenta
Product Manager
Auditorium/Theater Seating
JG Furniture Systems, Inc.
121 Park Avenue, Box 9002
Quakertown, Pennsylvania 18951-9002

Dear Mr. Pimenta:

I am responding to your letter concerning the Americans with Disabilities Act (ADA).

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities that have rights or responsibilities under the Act. Pursuant to that authority, this letter provides informal guidance to assist you in understanding the ADA. However, this technical assistance does not constitute a legal interpretation of the statute and it is not binding on the Department.

Your letter asks what the specifications are for signs at accessible fixed seating in assembly areas. As you noted in your letter, section 4. 1. 3 (19) (a) of the ADA Standards for Accessible Design (28 C.F.R. pt. 36, Appendix A) requires each such seat to be "identified by a sign or marker." Section 4.30.7 provides: "Facilities and elements required to be identified as accessible by 4.1 shall use the international symbol of accessibility. The

symbol shall be displayed as shown in Fig. 43 (a) and (b) ."

Signage on accessible fixed seating such as that described in your letter falls within the requirements of section 4.30.7 and should comply with Figure 43(a) and (b) of the ADA Standards. For your reference, I have enclosed a copy of the Department of Justice regulations containing the ADA Standards.

cc: Records, Chrono, Wodatch, Hill, FOIA, Library
a:\udd\hille\policylt\pimenta

I hope that this information is helpful to you and that this letter fully responds to your inquiry.

Sincerely,

Janet L. Blizard
Supervisory Attorney

Enclosure

JG Furniture Systems, Inc.
121 Park Ave Box 9002
Quakertown PA 18951.9002

January 4, 1994

215.538.5800

Telefax 215.536.7365

Department of Justice
Office on the Americans with Disabilities Act
Civil Rights Division
P.O. Box 66118
Washington, DC 20035-6118

RE: JG Auditorium Seating
ADA Signage Compliance

Good Morning:

JG FURNITURE SYSTEMS, INC. is a manufacturer of the highest quality auditorium and theater seating.

As required by the Americans with Disabilities Act 4.1.3 Accessible Buildings: New Construction, (19)(a) - we equip

our seating with folding armrest as necessary, on the aisle side.

Historically, the signage to identify these chairs has been provided by others, under the architectural Specification Section 10426. However, JG would like to seriously consider the possibility of providing the signs to identify our own chairs.

Please let me know at your earliest convenience, if specifications for these signs have been developed.

Sincerely,
JG FURNITURE SYSTEM, INC.

Mario Pimenta, Product Manager
Auditorium/Theater Seating

MP/sgy

Direct Phone: 215-538-5905
Direct Fax: 215-536-7365

cc: B. Hill
S. Teed

FEB 9 1994

The Honorable Sonny Callahan
Member, U.S. House of Representatives
2970 Cottage Hill Road
Suite 126
Mobile, Alabama 36606

Dear Congressman Callahan:

This letter is in response to your inquiry on behalf of your constituent, XX (b)(6) concerning the applicability of the Americans with Disabilities Act ("ADA") to persons with HIV.

Your constituent inquired as to whether and why the Department of Justice filed lawsuits against two dentists who refused to treat HIV-positive persons. Specifically, your constituent asked whether HIV-positive persons are protected by the ADA, and whether dentists are required to treat such persons.

The Department of Justice did, in fact, file such lawsuits. See United States v. Morvant, Civ. Act. No. 93-3251 (E.D.La.), and United States v. Castle Dental Center, Civ. Act. No. H-93-3140 (So.D.Tx.). The complaints allege that dentists in New Orleans and Houston violated the ADA by refusing to treat HIV-positive individuals, solely on the basis of their HIV-positive status.

Title III of the ADA prohibits discrimination on the basis of disability by places of public accommodation, including dental offices. See 36.104 and 36.201(a) of the enclosed regulation. HIV infection meets the definition of "disability" because it is a physical impairment that substantially limits one or more major life activities, e.g. reproduction. 28 C.F.R. 36.104. In fact, HIV disease, both symptomatic and asymptomatic, is specifically listed as a covered disability in the title III regulation. See 28 C.F.R. 36-104.

Accordingly, dentists are prohibited from discriminating against HIV-positive persons under the ADA. Dentists may not refuse to treat such persons solely on the basis of their HIV-

cc: Records, Chrono, Wodatch, Bowen, Perley, McDowney, MAF, FOIA
udd\gloriamc\callahan

01-02912

positive status. While it is true that a dentist is not required to treat someone who would pose a significant risk to the health or safety of others (see 28 C.F.R. 36.208), treating individuals who have tested positive for HIV does not pose such a risk.

According to the federal Centers for Disease Control and Prevention ("CDC"), the risk of transmitting viruses like HIV in the health-care setting is minimal, and can be severely lessened by the use of infection control procedures, often described as "Universal Precautions." These protective measures -- which include the use of gloves, surgical masks, and protective eyewear, the sterilization of medical instruments, the disinfection of exposed environmental surfaces, and proper waste

disposal methods -- prevent the spread of almost all bloodborne diseases, including HIV. The CDC recommends that dentists use Universal Precautions with all patients and has not suggested that additional precautions, such as "space suits," are warranted. Moreover, the American Dental Association has taken the position that Universal Precautions are an effective and adequate means of preventing the transmission of HIV from dental health care worker to patient and from patient to dental health care worker.

Indeed, to date, there have been no documented cases of HIV transmission from patient to dental health care worker. In light of this information, and the information provided by the CDC and the American Dental Association, the Department of Justice has taken the position that, so long as the dental team follows Universal Precautions, treating HIV-positive persons does not pose a significant risk to the health or safety of the dentist, the dental staff, or other patients. Accordingly, a dentist may not refuse to treat an HIV-positive person, solely on the basis of that patient's HIV-positive status.

I hope this information is helpful to you in responding to your constituent. You may wish to inform your constituent that further information is available through our Americans with Disabilities Act information Line at (202) 514-0301.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

Enclosure
01-02913

October 5, 1993
XX (b)(6)
Mobile, AL 36608

Congressman Sonny Callahan
United States House of Representatives
2418 Longworth Bldg.
Washington, D.C. 20515

Dear Representative Callahan:

National Public Radio reported this morning that the U.S.. Justice Department had filed its first lawsuit against discrimination relative to people who are HIV positive. The report said the lawsuit was against two dentists who refused to provide care to an AIDS infected person.

Please provide me with information about what our "Justice Department is doing here. Is the population of HIV people "protected class" under "civil rights" laws? How is this case framed?

If seems to me that the dentists acted prudently. Do you remember Kimberly Bergalis?

If care were to be administered to an HIV positive person, the dentist should be wearing a space suit. Shall we require all dentists to equip themselves with space suits to prevent descrimnation?

I believe that I see the light at the end of the Hillary tunnel, and it is an oncoming train. What she intends to do is provide one mandatory healthcare for all, and don't ask, don't tell, and don't pursue HIV. That will solve it. We will a11 be infected!

Sincerely,
XX

(b)(6)

XX

01-02914

T 2-7-94

DJ 202-PL-133 FEB 10 1994

Mr. Marc N. Katz
Manager, Congressional Affairs

National Association of Convenience Stores
1605 King Street
Alexandria, Virginia 22314-2792

Dear Mr. Katz:

This letter is in response to your request for guidance on the requirements for barrier removal applicable under title III of the Americans with Disabilities Act (ADA). I apologize for the delay in responding to your inquiry.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities that are subject to the Act. This letter provides informal guidance to assist you in understanding the ADA accessibility standards. However, this technical assistance does not constitute a legal interpretation of the application of the statute and it is not binding on the Department.

In existing facilities that are not otherwise being altered, a public accommodation is required to remove architectural barriers to the extent that it is readily achievable, i.e., easily accomplishable and able to be carried out without much difficulty or expense. Measures taken to remove barriers should comply with the Standards for Accessible Design (Standards). contained in the appendix to the Department's rule. (Barrier removal in existing facilities does not, however, trigger the accessible path of travel requirement.) Deviations from the Standards are acceptable only when full compliance with those requirements is not readily achievable. In such cases, barrier removal measures may be taken that do not fully comply with the Standards, so long as the measures do not pose a significant risk to the health or safety of individuals with disabilities or others.

For example, in the situation described in your letter, if widening a continuous aisle to 32 inches is readily achievable, such widening would be required. However, if this change would require the removal of shelves and result in a significant loss

cc: Records, Chrono, Wodatch, Lusher, FOIA
n:\udd\mercado\policy\katz.rhl

01-02915

of selling space, the change would not be considered readily achievable (see 36.304(f) of the Department's regulations for

title III at 28 CFR Part 36). If in a convenience store it is not readily achievable to widen all the aisles, it may be appropriate to widen the most frequently used aisle to 36 inches and to widen the other auxiliary aisles to widths below 36 inches.

The requirements for barrier removal are not to be interpreted to exceed the title III rule's alteration standards. For elements not specifically covered under the alteration standards, the requirements for barrier removal are not to be interpreted to exceed the requirements for new construction (see 36.304(g)(1) and (2) of 28 CFR Part 36). The Standards specifically refrain from applying the requirements for accessible reach ranges to fixed shelves or display units (4.1.3(12)). Therefore, convenience stores are not required to adjust the height of existing shelves or display units. They are, however, required by title III to provide assistance to patrons who use wheelchairs or others who, because of a disability, cannot independently retrieve items from store shelves.

For your information I am enclosing a copy of the Department's Title III Technical Assistance Manual. Readily achievable barrier removal is specifically addressed on pages 29 through 35. However, further information on the differences between readily achievable barrier removal and other provisions, such as requirements for new construction and alterations, are discussed throughout the text.

I hope that the above information is helpful to you and the members of the National Association of Convenience Stores.

Sincerely,

John L. Wodatch
Chief
Public Access Section

Enclosure

01-02916

National Association of Convenience Stores
NACS
30
years of service
1961-1991

April 17, 1992

Mr. John L Wodatch, Director
Office of the Americans with Disabilities Act
Civil Rights Division
U.S. Department of Justice
P.O. Box 66118
Washington, D.C. 20035-6118

Dear Mr. Wodatch:

The National Association of Convenience Stores respectfully requests guidance on the interpretation and application to the convenience store industry of certain provisions of the final regulations implementing the Americans with Disabilities Act ("ADA"), which the Department of Justice issued on July 26, 1991. 56 Fed. Reg. 35,543 (1992).

NACS is a national trade association representing over 1,400 retail members that operate more than 64,000 convenience stores. A typical convenience store ranges from only 1,500 to 5,000 square feet in size with a majority between only 2,000 and 3,000 square feet. Convenience stores are usually densely stocked with 2,000 to 3,500 units of merchandise, including grocery items, tobacco products, health and beauty aids, and confectionery items. Many convenience stores also offer prepared foods to go, frozen foods, beer and wine, general merchandise, and gasoline. Convenience stores generally offer extended hours of operation. In 1989, the most recent year for which statistics are available, the average convenience store had 5.9 employees. However, on average, only one to two employees were generally on duty at any given time.

Specifically, NACS seeks guidance concerning the requirements for barrier removal under section 36.304 of the final regulations. 56 Fed. Reg. at 35,597-8. First, NACS is concerned about the extent of its obligation to remove barriers under subsection 36.304(d)(2). That part states:

> If as a result of compliance with the alteration requirements specified in paragraph (d)(1) of this section, the measures required to remove a barrier would not be readily achievable, a public

> accommodation may take other readily achievable measures to remove the barrier that do not fully comply with the specified requirements. Such measures include, for example, providing a ramp with a steeper slope or widening a doorway to a narrower width than those mandated by the alterations requirements.

The requirements specified in paragraph (d)(1) are the requirements applicable to alterations under sections 36.402 and sections 36.404-36.406 of the final regulations. 56 Fed. Reg. at 35,559-35,602. Subsection 36.406(a) specifically requires that alterations meet the ADA Accessibility Guidelines ("ADAAG") that were published by the Attorney General as an appendix to the final rules. 56 Fed. Reg. at 35,605. Thus, it appears that places of public accommodations must remove barriers only if removal of those barriers results in reaching or exceeding the ADAAG standards.

However, NACS is concerned that the final regulations may be interpreted to require barrier removal even if such removal would not result in reaching or exceeding the ADAAG accessibility standards. Thus, if widening, a continuous aisle to 32 inches is readily achievable, such widening could be required even though the ADAAG accessibility standard for continuous aisle width for a single wheelchair is 36 inches. See 56 Fed. Reg. at 35,620. NACS seeks the Justice Department's guidance on this issue.

Second, NACS seeks guidance on whether the reach range requirements of sections 4.2.5 and 4.2.6 of the ADAAG are relevant to the barrier removal requirements for convenience store operators. See 56 Fed. Reg. at 35,620-35,625. The ADAAG accessibility standards for new construction do not require "[s]helves or display units allowing self-service by customers in mercantile occupancies" to comply with requirements for accessible reach range. ADAAG 4.1.3(12)(b); 56 Fed. Reg. at 35,615. Thus, it appears that while newly constructed convenience stores need not comply with the reach requirements, existing convenience stores must remove barriers to satisfy those requirements if doing so would be readily achievable. NACS requests your assistance in resolving this apparently anomalous situation.

NACS looks forward to working with the Justice Department to assist its members in complying with the ADA. Thank you very much for your assistance with these requests.

Sincerely,

Marc N. Katz
Manager, Congressional Affairs

01-02918
T. 2-10-94

XX
(b)(6) FEB 10 1994

XX
XX
XX

Dear XX

I am writing in response to your inquiry about the responsibility of a church to comply with title III of the Americans with Disabilities Act (ADA).

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities that have rights or responsibilities under the Act. Pursuant to that authority, this letter provides informal guidance to assist you in understanding the ADA. However, this technical assistance does not constitute a legal interpretation of the statute and it is not binding on the Department.

Section 36.102 (e) of the Department's implementing regulation for the title III of the ADA states that title III, which prohibits discrimination on the basis of disability by public accommodations and in the construction or alteration of commercial facilities, "does not apply to ... any religious entity." The Department's Title III Technical Assistance Manual clarifies the definition of "religious entity" and explains the scope of the exemption. I have enclosed a copy of the Technical Assistance Manual. Sections III-1.5000 to III-1.5200 address the exemption of religious entities.

I hope that this information is helpful to you.

Sincerely,

Janet L. Blizard
Supervisory Attorney

Enclosure

cc: Records, Chrono, Wodatch, Blizard, FOIA, Library
n:udd\blizard\adaltrs\ XX

01-02919

T. 2-10-94

XX
(b)(6) FEB 10 1994

XX
XX
XX

Dear XX

I am writing in response to your inquiry about the responsibility of a church to comply with title III of the Americans with Disabilities Act (ADA).

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities that have rights or responsibilities under the Act. Pursuant to that authority, this letter provides informal guidance to assist you in understanding the ADA. However, this technical assistance does not constitute a legal interpretation of the statute and it is not binding on the Department.

Section 36.102 (e) of the Department's implementing regulation for the title III of the ADA states that title III, which prohibits discrimination on the basis of disability by public accommodations and in the construction or alteration of commercial facilities, "does not apply to ... any religious entity." The Department's Title III Technical Assistance Manual clarifies the definition of "religious entity" and explains the scope of the exemption. I have enclosed a copy of the Technical Assistance Manual. Sections III-1.5000 to III-1.5200 address the exemption of religious entities.

I hope that this information is helpful to you.

Sincerely,

Janet L. Blizard
Supervisory Attorney

Enclosure

cc: Records, Chrono, Wodatch, Blizard, FOIA, Library
n:udd\blizard\adaltrs\ XX

01-02919

T. 2-10-94

XX FEB 1994

(b)(6)

XX
XX
Orchard, Texas 77464

Dear XX

I am writing in response to your inquiry about the application of title III of the Americans with Disabilities Act (ADA) to the construction of a building owned by a religious organization.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities that have rights or responsibilities under the Act. Pursuant to that authority, this letter provides informal guidance to assist you in understanding the ADA. However, this technical assistance does not constitute a legal interpretation of the statute and it is not binding on the Department.

Section 36.102 (e) of the Department's implementing regulation for the title III of the ADA states that title III, which prohibits discrimination on the basis of disability by public accommodations and in the construction of commercial facilities, "does not apply to ... any religious entity." The

Department's Title III Technical Assistance Manual clarifies the definition of "religious entity" and explains the scope of the exemption. I have enclosed a copy of the Technical Assistance Manual. Sections III-1.5000 to III-1.5200 address the exemption of religious entities.

I hope that this information is helpful to you.

Sincerely,

Janet L. Blizard
Supervisory Attorney

Enclosure

cc: Records, Chrono, Wodatch, Blizard, FOIA, Library
n:\udd\blizard\adaltrs\ XX
(b)(6)

01-02921
2-7-94

XX (b)(6)

FEB 14 1994

XX
XX
Houston, Texas XX (b)(6)

Dear Mr. XX

I am writing in response to your inquiry regarding accessibility requirements under the Americans With Disabilities Act (ADA) and the Department of Justice regulations implementing the ADA. Specifically, your letter asks about the applicability of the ADA parking facility requirements to St. Vincent de Paul Church in Houston, Texas.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and institutions that may have rights or duties under the act. This letter provides informal guidance and information to help you understand your rights under the act. However, this technical assistance does not constitute a determination by the Department of Justice of your rights or of the responsibilities of St. Vincent de Paul Church under the ADA and does not constitute a binding determination by the Department of Justice.

Section 36.102 (e) of the Department's implementing regulations for the ADA state that title III of the ADA, which prohibits discrimination on the basis of disability by public accommodations and in commercial facilities, "does not apply to ... any religious entity." The Department's "Title III Technical Assistance Manual" explains the definition of "religious entities" and the scope of the exemption. I have enclosed a copy of the technical assistance manual. Sections III-1.5000 to III-1.5200 address the exemption of religious entities from coverage.

: Records, chrono, Wodatch, Prieto, FOIA, Library
\udd\prieto\policy\religio2

01-02923

I hope that this information is helpful to you in understanding your rights under the ADA.

Sincerely,

Janet Blizard
Supervisory Attorney
Public Access Section

Enclosure

01-02924

XX (b)(6)

March 31, 1993

Civil Rights Division
Office of the Americans with Disabilities Act
U. S. Department of Justice
P. 0. Box 66118
Washington, D.C. 20035-6118

Dear People:

My problem is that parking spaces allotted to handicapped parishioners of XX church are only 8 feet wide.- To date I have XX to church functionaries, XX before parking spaces were marked and XX afterward. XX (b)(6) XX pointed out problems with inadequate spaces but no attempt has been made by these religious to correct

this fault.

Please provide me with information that will help to force this organization to conform with Federal regulations that pertain to parking for handicapped. This is carrying separation of Church and State too far! If it is germane to this inquiry, I am over XX years of age and have been XX for more than half of my life.

The Catholic church that has defied my requests for proper parking facilities is:

St. Vincent de Paul Church
6800 Buffalo Speedway
Houston, TX 77025.

My name and address are as follows:

XX
XX (b)(6)
Houston, TX XX

My understanding is that another organization may be helpful in obtaining assistance in my quest for parking changes is:

Architectural and Transportation Barriers Compliance Board

XX (b)(6)

1111 18th Street NW, Suite 501
Washington, D.C. 20036.

With this in mind, similar information will be sent to this agency hoping that one of you will be able to bring my campaign for suitable parking spaces to a successful end. Or advise me on how to press this matter further.

Gratefully yours,

XX

(b)(6)

1-21-94

FEB 14 1994

XX
(b)(6)

XX
Princeton, Texas XX

Dear XX

This is in response to your letter to the Civil Rights Division regarding respiratory disabilities and the Americans with Disabilities Act (ADA).

The ADA authorizes the Department of Justice to provide technical assistance to entities that are subject to the Act. This letter provides informal guidance to assist you in understanding how the ADA may apply to you. However, this technical assistance does not constitute a legal interpretation of the statute, and it is not binding on the Department.

In publishing regulations to implement the ADA, the Department of Justice has declined to state categorically that sensitivity to cigarette smoke should be recognized as a disability because, in order to be viewed as a disability under the ADA, an impairment must substantially limit one or more major life activities. An individual's respiratory or neurological functioning may be so severely affected by sensitivity to cigarette smoke that he or she will be considered disabled. Such an individual would be entitled to all of the protections afforded by the ADA. In other cases, however, an individual's sensitivity to smoke or other environmental elements will not constitute a disability. If, for instance, an individual's major life activity of breathing is somewhat, but not substantially, impaired, the individual is not disabled and is not entitled to the protections of the statute. Thus, the determination as to whether sensitivity to smoke is a disability covered by the regulation must be made using the same case-by-case analysis that is applied to all other physical or mental impairments. (See the enclosed title III regulation at page 35549.)

Because of the case-by-case nature of the determination, the Department of Justice ADA regulations do not mandate restrictions on smoking. It is important to note that section 501(b) of the statute merely states that the prohibition of, or the imposition

Records, Chrono, Wadatch, Blizard, FOIA, Friedlander
\udd\blizard\adaltrs\ XX
(b)(6)

01-02927

of restrictions on, smoking in places of public accommodation is not precluded by the ADA. The statute does not mandate imposition of any restrictions. Furthermore, there is currently no Federal statute that absolutely bans smoking in public buildings.

An individual who has a disability (as defined under the ADA) and who is excluded from specific facilities because of the presence of smoke, may either file a private suit in Federal court or send a complaint to the Department of Justice for investigation. Complaints against State or local government facilities may be sent to the:

Coordination and Review section
Civil Rights Division
U.S. Department of Justice
P.O. Box 66118
Washington, DC 20035-6118

Complaints against privately owned places of public accommodation should be sent to this Section at the address listed above.

I hope this information is helpful to you.

Sincerely,

John L. Wodatch
Chief
Public Access Section

Enclosure

01-02928

T. 1/25/94

DJ 202-41-0

FEB 15 1994

The Honorable Thad Cochran
United States Senate
Washington, D. C. 20510

Dear Senator Cochran:

This letter responds to your inquiry on behalf of the Coalition of Citizens with Disabilities, which requested clarification regarding a perceived conflict between the requirements of Mississippi State law and those of the Americans with Disabilities Act of 1990.

As you requested, we have responded directly to your constituent. Enclosed is a copy of our response.

Please let me know if we can be of any further assistance.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

Enclosure

cc: Records CRS Chrono MAF Pecht.congress.93.cochran.sen
McDowney FOIA

01-02930

T. 1/25/94
SBO:AMP:ca
DJ 204-41-0

Mr. Mark Smith
Executive Director
Coalition of Citizens with Disabilities
3111 North State Street, Suite 2
Jackson, Mississippi 39216

Dear Mr. Smith:

This letter responds to your inquiry to Senator Thad Cochran requesting clarification regarding a perceived conflict between the requirements of Mississippi State law and those of the regulations implementing title III of the Americans with Disabilities Act of 1990 (ADA). Senator Cochran has requested our assistance in responding to your inquiry.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities with rights or obligations under the Act. This letter provide informal guidance to assist you in understanding the requirements of the ADA. It does not, however, constitute a legal interpretation and is not binding on the Department of Justice.

We understand from you letter that Mississippi State law requires that the curbs and striping of handicapped parking spaces be painted blue and that, because the ADA Accessibility Guidelines (ADAAG) do not specify a paint color for such spaces, certain businesses have asserted that they are not required to use blue paint in designating handicapped parking. Further, you report that, in some localities, restrictions on the use of such spaces are not enforced because they are not painted blue in compliance with State law.

Your understanding that State laws that provide greater or equal protection for the rights of individuals with disabilities than are afforded by the ADA are not invalidated or limited by the ADA is correct. See Section 501 (b) of the ADA. If a particular building or facility is covered by both the ADA and a State statute, an entity covered by the ADA should comply with those technical requirements of each law that provide the greatest degree of access. If there is no conflict between the ADA and State law, the requirements of both should be met.

cc: Records CRS Chrono MAF Pecht.congress.93.cochran.con
McDowney FOIA
01-02931

In this instance, the Mississippi State law requiring parking spaces to be painted blue does not conflict with ADAAG (and, may even provide greater access). Under such circumstances, parking spaces should be painted blue in accordance with State law and should be designed and constructed so as to otherwise follow the law providing the greatest degree of access. For example, if ADAAG requires that such spaces be of a greater width than State law requires, then ADAAG would apply.

I hope this information is helpful to you.

Sincerely,

Stewart B. Oneglia
Chief
Coordination and Review Section
Civil Rights Division

cc: The Honorable Thad Cochran

01-02932

Opening Doors Together

Coalition for Citizens with Disabilities
3111 North State Street Suite 2,Jackson,MS 39216,Telephone601-362-9599/1-800-748-9420 (Voice or TDD

November 30, 1993

Honorable Thad Cochran
U.S. Senate
326 Russell Senate Office Building
Washington, D.C. 20510

Dear Senator Cochran:

We are in need of your assistance regarding a matter of great interest to a significant sector of the disability community in Mississippi. I have been advised that a determination is needed from the U.S. Department of Justice related to an apparent conflict between state and federal law. Specifically, we need a determination pertaining to the color used to designate handicapped parking spaces.

State Law -- Section 27-19-56, Mississippi Code of 1972 as amended -- (see attached) specifies that, in order to enforce the handicapped parking restrictions, the curb and striping of such parking spaces "shall be blue for easy identification." Unfortunately, the Americans with Disabilities Act Accessibility Guidelines (ADAAG) do not specify the color of the spaces. Consequently, many businesses assert that since they are in compliance with the requirements outlined in the ADAAG, they do not feel compelled to, in accordance with state law, paint the spaces blue.

As a result, in some localities, law enforcement officials are unwilling to write tickets on vehicles misusing handicapped parking spaces if the markings aren't blue. Furthermore, some judges have even thrown out tickets that were written in such circumstances.

It is our understanding that, regarding the A.D.A., if state law is deemed to be strenghening or furthering the impact of the provisions of that federal law, the state law would supersede the federal requirements Certainly, it is our opinion that the state law should take precedence since we feel it "strenghens" the impact of the handicapped parking requirements by making the spaces more visible and definable.

01-02933

To begin addressing this quandary, we consulted representatives of relevant state and federal entities and were apprised that we need a written determination from the U.S. Department of Justice to resolve the question. Due to the fact that, if the state law would have to be changed, it could most expediently be addressed In the upcoming session of our Legislature, a timely decision on this issue is needed.

Therefore, we would appreciate your assistance in procuring a formal determination in this matter from the proper official within the U.S. Department of Justice. If that federal agency concurs with the dictates of the state law, and, thus, issues a statement that the blue colored markings would supercede the ADAAG, or otherwise be an addendum to those requirements, we would then use that statement in notifying relevant businesses about the need to paint the spaces blue. If the agency does not concur, we will inform the Legislature and advocate for suitable changes to the state law to eliminate the conflict.

As always, if you have questions at need additional information regarding this request, please do not hesitate to contact me by calling 601-362-9599.

Thank you for your cooperation and assistance in this matter.

Sincerely,

Mark Smith
Executive Director

cc: Michele Bahret, President
Donald Sykes
Caryn Quilter
Christene Woodell

01-02934

2-9-94

XX FEB 16 1994

(b)(6)

XX
XX
Newport News, Virginia 23607

Dear XX

Your letter to the Attorney General regarding the application and enforcement of the Americans with Disabilities Act (ADA) to restaurants, new buildings, and parks throughout Newport News has been referred to this office for response.

The ADA authorizes the Department of Justice to provide technical assistance and information to individuals and entities who have questions about the Act or the Department's ADA Standards for Accessible Design. This letter provides informal guidance to assist you in understanding and complying with the ADA accessibility standards. However, this technical assistance should not be viewed as legal advice or a legal opinion about your rights or responsibilities under the ADA.

New buildings such as restaurants or office buildings, built by private entities, must be designed and constructed in compliance with the ADA Standards for Accessible Design. These standards appear as Appendix A in the Department of Justice's Final Rule for Title III of the ADA, a copy of which is enclosed. Places of public accommodation, including restaurants, retail stores, and theaters, in existing buildings must remove barriers

insofar as it is readily achievable to do so.

The Newport News Building Department enforces State and local building regulations (and Virginia does indeed have accessibility requirements similar to those of the ADA) but cannot enforce the Federal ADA. If you believe that there has been discrimination on the basis of disability because someone has failed to remove barriers or failed to build an accessible building as required in the ADA regulations, you may file a complaint with the Department of Justice or you may file suit in court.

Please contact the Public Access Section any time you have questions or need information about the ADA. The Department

c: Records, Chrono, Wodatch, Harland, FOIA, Library
:\udd\harland\ XX 718
(b)(6)
01-02935

maintains a telephone information line to provide technical assistance regarding the rights and obligations of individuals, businesses, agencies, and others covered or protected by the ADA. This technical assistance is available by calling 202-514-0301 (voice) or 202-514-0383 (TDD) between 1:00 p.m. and 5:00 p.m., Monday through Friday.

Sincerely,

John L. Wodatch
Chief
Public Access Section

Enclosure

01-02936

XX
XX
Newport News, VA (b)(6)

XX
XX

The Honorable Janet Reno
Attorney General of the United States
Tenth and Constitution Ave. NW
Washington D.C. 20530

July 24, 1993

Dear Madam Attorney General,

Its with aching heart that I come to you with this letter today. I hope that I can express myself and you can see what I mean with these letters enclosed in this envelope. The City of Newport News has no one checking compliance with the Americans Disabilities Act (ADA) on restaurants, new buildings, parks and etc. throughout the city. Mr. Bill Ritter of Building Permits says they stamp every new building with a disclaimer; Attorney General how much longer would it take for them to check to see that they are

in code? 15 or 20 minutes more? IHOP restaurant opened last year and where open one month before they installed a wheelchair ramp. The handicap parking is located six spaces from this ramp where you travel through the parking lot and not on the sidewalk. IS THIS WHAT THE LAW SAYS?

Miss Reno our City Assessor has houses appraised so high that we are paying more on taxes now than what we originally paid for the house. EVERY DAY PEOPLE ARE BEING EVICTED OUT OF THEIR HOUSES BECAUSE OF THIS. AND LAST WEEK THREE PEOPLE COMMITTED SUICIDE. ONE MAN ALSO DID TWENTY-ONE YEARS IN THE ARMY: IS THIS THE THANKS HE GETS? Mr. Larry Trent our City Assessor is going up on houses that the City condemned. Please explain this to me; I'm rather dumb.

XX

(b)(6)

XX

01-02937

Attorney General, our schools are integrated here, but in ward XX (b)(6) XX Our neighborhood school is named XX nd its 10 miles from where we live. It sure seems funny we can spend millions of dollars on parks and nothing on education. Your position requires you to help us. They have closed two schools, but in the last 12 years no new school has been built in this part of town. I bring this to your attention because Hilton claims there school is a neighborhood only school, yet my taxes are paying. Why is the rich can do what they want and the poor Black and White working man can not do anything right?

Honorable Janet Reno you have a tremendous job; my heart goes out for your job, but these are some of the answers we need in Newport News, Va. I hope you or one of your staff members can answer this; as I'm getting ashamed of being a part of this United States. All these folk thats not living within this city shouldn't be telling the city citizens how to do things. WHITE FLIGHT NEVER PROVED ANYTHING.

I thank you for these few moments that you have given me and my neighbors in East End of Newport News.

Yours Truly,

XX
XX

(b)(6)

01-02938

U.S. Department of Justice
Civil Rights Division
Coordination and Review Section

DJ #204-012-00042 P.O. Box 66118
Washington, D.C. 20035-6118

FEB 26 1994

Mr. Richard B. Engelman
Chief
Technical Standards Branch
Office of Engineering and Technology
Federal Communications Commission

Washington, D.C. 20554

Dear Mr. Engelman:

This letter is in response to your request for information about Federal laws pertaining to closed captioning of television programs and films. We apologize for the delay in responding.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights and obligations under the Act. This letter provides informal guidance to assist your agency in understanding the ADA's requirements. However, it does not constitute a legal opinion or legal advice and it is not binding on the Department.

You state that you are aware of the FCC requirements that television public service announcements that are funded by the Federal government be closed captioned (47 U.S.C. 611) and that television stations transmit information during emergencies both aurally and visually (47 C.F.R. 73.1250(h)). You also state you are unaware of any other requirements.

In addition to those requirements you mentioned, at least three Federal requirements deal with the provision of closed captioning: title II of the Americans with Disabilities Act (ADA) , title III of the ADA, and section 504 of the Rehabilitation Act of 1973, as amended.

Title II of the ADA prohibits discrimination on the basis of disability in all programs, activities, and services provided or made available by State and local governments, instrumentalities,

or agencies, regardless of the receipt of Federal funds. Title III of the ADA covers public accommodations such as shopping centers, doctors' offices, museums, zoos, private schools, and other private establishments. Copies of the title II and III regulations and manuals explaining the regulations are enclosed.

Regulations implementing titles II and III require the provision of auxiliary aids and services by public and private entities where necessary to ensure effective communication with an individual who is deaf or hard of hearing (section 35.160, p.

35721, of the title II rule; and section 36.303, p. 35597, of the title III rule, respectively). For individuals with hearing impairments, auxiliary aids and services include, but are not limited to, qualified interpreters, closed captioning, and transcription services such as computer aided real-time transcription (section 35.104, p. 35717, of the title II regulation; and section 36.303(b)(1), p. 35597, of the title III regulation).

The title II regulation covers television and videotape programming produced by public entities. Access to audio portions of such programming may be provided through the use of closed captioning. Page 35712 of the title II regulation explains this concept.

The title III regulation, section 36.307, p. 35598, does not require that video-tape rental establishments stock closed-captioned video tapes, although the most recent titles in the establishments are, in fact, closed-captioned. Further discussion of this point can be found on p. 35571 of the title III regulation. Movie theaters are not required by title III to present open-captioned films. However, other public accommodations that impart verbal information through soundtracks an films, video tapes, or slide shows are required to make such information accessible to persons with hearing impairments. Captioning is one means to make the information accessible to individuals with disabilities. Page 35567 of the title III regulation explains this concept.

Section 504 of the Rehabilitation Act prohibits discrimination on the basis of handicap in federally conducted and assisted programs. Like the title II regulation, regulations implementing section 504 require that Federal agencies and recipients provide auxiliary aids and services whenever necessary to ensure effective communications with members of the public. Services include the provision of closed captioning. Thus, audio-visual materials produced by the Federal government should be captioned.

01-02940

I hope this information is helpful to you.

Sincerely,

Stewart B. Oneglia
Chief
Coordination and Review Section
Civil Rights Division

Enclosures (3)

01-02941

T. 2-16-94

DJ 202-PL-727

MAR 10 1994

Mr. Richard K. Abraham
Law Offices of Arthur L. Drager
Five Light Street, Suite 510
Baltimore, Maryland 21202

Dear Mr. Abraham:

I am responding to your letter concerning the Americans with Disabilities Act (ADA). I apologize for the delay in responding.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities that have rights or responsibilities under the Act. Pursuant to that authority, this letter provides informal guidance to assist you in understanding the ADA. However, this technical assistance does not constitute a legal interpretation of the statute, and it is not binding on the Department.

Your letter asks whether Maryland National Bank's form contract for rental of safe deposit boxes violates the ADA. The contract provides that, in the event of incompetency "or other disability" of a lessee, a legal representative of a lessee may open the safe deposit box only if all lessees of the box are present or have consented in writing. According to your letter, any non-disabled lessee may open the box without the presence of the other lessees.

Title III of the ADA imposes obligations on private entities that operate "places of public accommodation." Banks are places of public accommodation covered by the ADA. 42 U.S.C. 12181(7)(F); 28 C.F.R. 36.104. Title III protects persons with disabilities. The ADA defines disability as "a physical or mental impairment that substantially limits one or more of the major life activities of [an] individual." 42 U.S.C. 12102(2); 28 C.F.R. 36.104. A person who has been found legally incompetent is most likely an individual with a disability within the meaning of the ADA (unless the incompetency is due solely to youth). Whether a lessee who has a condition that falls within the category of "other disability" under the bank's contract is protected by the ADA would depend on whether the person has a

physical or mental impairment that substantially limits a major life activity.

The ADA requires that the bank provide individuals with disabilities an equal opportunity to participate in and benefit from the goods and services it offers. 42 U.S.C. 12182(b)(1)(A); 28 C.F.R. 36.202. Clearly, by imposing requirements on persons with disabilities that are not imposed on others, the bank is treating persons differently on the basis of disability. This action (imposing additional eligibility criteria on persons with disabilities) is not permitted by the ADA unless the bank can show that it is necessary for the provision of its services to the persons with disabilities. 42 U.S.C. 12182(b)(2)(A)(i); 28 C.F.R. 36.202.

I am enclosing copies of the regulation implementing title III of the ADA and the Department's Title III Technical Assistance Manual. I hope that this information is helpful to you and that this letter fully responds to your inquiry.

Sincerely,

John L. Wodatch
Chief
Public Access Section

Enclosures

LAW OFFICES
ARTHUR L. DRAGER
5 LIGHT STREET
SUITE 510
BALTIMORE, MARYLAND 21202

(410) 683-0012

November 17, 1992

Department of Justice
VIA FAX (202) 307-1198

RE: The Americans with Disabilities Act

Dear Sir/Madam:

I am a staff attorney with the above-named firm. Mr. Drager is frequently appointed Guardian of the Property of disabled persons in Maryland. Mr. Drager, in his capacity as Court Appointed Guardian, has an absolute duty to safeguard his ward's assets and interests. On occasion he is prevented from doing so. Attached hereto please find a copy of Maryland National Bank's safe deposit box contract, which is used by said institution to prevent Mr. Drager from performing the above-referenced duties.

In particular, please reference paragraph 21. Paragraph 21 states that "a legal representative of one of the lessees of the box, appointed in the event of death, incompetency, insolvency, or other disabilities shall be permitted access to the box only is accompanied by all other lessees or if all such lessees shall have consented by writing filed with the lessor to permit the legal representative access alone to the box." It should be noted that prior to declaration of disability, the owner is allowed access to his or her box. Subsequent to a finding of disability, a Guardian is prevented from obtaining access, while the other joint tenant(s) can access the box without notice to the Guardian. Accordingly, once the person is disabled their rights are diminished. This has resulted in several safe deposit boxes being emptied of their contents by the co-owners, and appears to be a discriminating contract under the Americans with Disabilities Act.

I would appreciate a call from someone on your legal staff in

order that we may discuss this matter.

Very truly yours,
Richard K. Abraham

RKA/mrw

01-02944

MAR 11 1994

The Honorable Bob Graham
United States Senator
Post Office Box 3050
Tallahassee, Florida 32315

Dear Senator Graham:

This is in response to your inquiry on behalf of your constituent, E. Denise Lee, who seeks information about the Americans with Disabilities Act (ADA). We apologize for the delay in responding.

Your constituent asks whether the ADA requires Regency Square Mall to permit buses operated by the Jacksonville Transportation Authority (JTA) to discharge passengers with mobility impairments at mall entrances. She states that currently JTA buses must discharge all passengers on "service roads and major thoroughfares."

Title III of the ADA, which applies to public accommodations, such as shopping malls, requires that such facilities reasonably modify their policies, practices, and procedures, if such modifications are necessary to afford those facilities, services to persons with disabilities. Therefore, if permitting JTA passengers with mobility impairments to be discharged at mall entrances is necessary for those Passengers to enjoy Regency Square Mall's services, and if such a modification to policy is reasonable, it would be required by title III.

Whether such a modification is necessary for persons with mobility impairments to enjoy Regency Square Mall's services would depend at least in part on the proximity of the current discharge areas on the "service road and major thoroughfares" to the mall entrances, a fact that your constituent's letter does not make clear.

Moreover, title III requires only modifications that are reasonable. The reasonableness of a -modification may depend on a

number of factors in any particular situation, including any adverse effects of allowing discharge at mall entrances and the existence of any alternative discharge areas that would effectively serve persons with mobility impairments.

01-02945

I hope this information is helpful to your constituent in understanding the requirements of the ADA.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

Enclosures

01-02946

METROPOLITAN PLANNING ORGANIZATION
Jacksonville Urbanized Area

November 1, 1993

The Honorable Senator Bob Graham
U. S. Senator
524 Hart Senate Office Building
Washington, D. C. 20510

Dear Senator Graham:

As a friend and supporter of transportation for the transportation disadvantaged I am sure that you share my concern, and the concern of the Duval County Transportation Disadvantaged Coordinating Board for the safety and convenience of the elderly and disabled at area shopping malls. In April of this year, it was brought to the Board's attention that the management of The Avenues Mall and Regency Square Mall do not permit buses operated by the Jacksonville Transportation Authority (JTA) to discharge passengers at entrances to the facilities. Bus stops are relegated to service roads and major thoroughfares. The location of these bus stops create obvious difficulties for the disabled, who with the addition of wheelchair lifts as standard features on buses, are being encouraged to utilize this service. In April the Board corresponded with he management of both malls, and was pleased to receive a positive response from he management of The Avenues Mall. As of October 1, 1993, JTA buses are allowed direct access to a mall entrance. Unfortunately, no response was forthcoming from the management of Regency Square Mall. A second letter was sent in July, and as yet there has been no response.

Denying the disabled users of fixed route bus service in this County full

access to the Regency Square Mall is a violation of Section 302 of the Americans With Disabilities Act of 1990 which mandates "full and equal enjoyment of goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodations..." including shopping, centers and shopping malls.

On behalf of the Duval County Transportation Disadvantaged Coordinating Board and the elderly and disabled users of JTA fixed-route bus service, I am requesting your assistance in persuading

Duval County and Portions of Clay and St. Johns Counties

01-02947

the management of the Regency Square Mall to allow JTA buses direct access to at least one mall entrance on a regular basis. This is no small matter to the transportation disadvantaged of Duval County and I trust you will give it the attention it deserves.

If you have any questions, please do not hesitate to contact me.

Sincerely,

E. Denise Lee
Chairman, Duval County Transportation
Disadvantaged Coordinating Board

EDL\clb

cc: Mr. Martin Petrie, Manager

Regency Square Mall

01-02948

Retyped 3/8/94
SBC:LMS:ca
DJ 204-51-0 MAR 11 1994

The Honorable Benjamin A. Gilman
U. S. House of Representatives
2185 Rayburn Building
Washington, D.C. 20515-3220

Dear Congressman Gilman:

This letter responds to your recent inquiry on behalf of your constituent, Ronald Scott, the Mayor of the Village of Bloomingburg, New York. Mayor Scott states that the Village of Bloomingburg has recently purchased an existing building and will be moving the Village's office, the Justice of the Peace Court, and the Village's public library to the newly purchased facility. Mayor Scott seeks suggestions concerning accessibility by individuals with disabilities to the newly purchased facility. We apologize for the delay in responding.

To clarify Mayor Scott's request, an attorney from our Division called and discussed the matter with an employee of the Village. We were informed that the newly purchased facility has

two stories. The Village will occupy the first floor with the second floor being used for storage. There is an existing ramp at a side entrance to the building.

The Village will be doing significant alterations to the first floor of the building including electrical wiring, plumbing, and the construction of walls or dividers for the different offices of the Village government. Also, the Village employee stated since there are no restrooms on the first floor, the Village plans on installing restrooms on that level.

Title II of the Americans with Disabilities Act (ADA) prohibits discrimination against qualified individuals with disabilities by state and local governments such as the Village of Bloomingburg. For your information we are enclosing a copy of the Department of Justice's title II regulation, 28 C.F.R. Part 35, that implements title II of the ADA and a copy of our Title II Technical Assistance Manual that provides additional information on title IIs requirements.

cc: Records CRS Chrono MAF Stewart.gilman.con McDowney
FOIA

01-02949

Under title II, all facilities designed, constructed, or altered by, on behalf of, or for the use of a public entity must be readily accessible and usable by individuals with disabilities, if the construction or alteration is begun after January 26, 1992. 28 C.F.R. 35.151. To be "readily accessible and usable," a facility must be altered in strict compliance with a design standard.

Under the regulation, the Village of Bloomingburg may choose from two design standards for alterations. The Village can choose either the Uniform Federal Accessibility Standards (UFAS) or the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (ADAAG), which is the standard that must be used for public accommodations and commercial facilities under title III of the ADA. For a discussion of the major differences between UFAS and ADAAG, see the enclosed technical assistance manual at pages 23-32. We have enclosed copies of UFAS and ADAAG to assist the Village. Therefore, the alterations made to the Village's newly purchased building should comply with

either UFAS or ADAAG.

We hope that this information is helpful to you in responding to Mayor Scott's request for assistance.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

Enclosures (4)

01-02950

MAR 11 1994

The Honorable Christopher Shays
Member, U.S. House of Representatives
10 Middle Street, 11th Floor
Bridgeport, Connecticut 06604

Dear Congressman Shays:

This letter is in response to your inquiry on behalf of your constituent, XX (b)(6)

Your letter indicates that XX uses a wheelchair and

must use the full-service pumps at gasoline stations. XX asked whether the Americans with Disabilities Act ("ADA") requires gasoline stations to offer self-service prices to individuals with disabilities who must use full-service pumps.

Title III of the ADA applies to all privately owned places of public accommodation. Title III sets forth twelve categories of entities that are places of public accommodations having obligations under the Act. One of these categories is "service establishments," which includes gasoline stations.

Under title III existing facilities must remove all architectural barriers to access if such removal is readily achievable. Removal is "readily achievable" if it is easily accomplishable and able to be carried out without much difficulty or expense. Accordingly, a gasoline station with self-service pumps must remove any barriers that prevent individuals with disabilities from using the self-service pumps, as long as the removal is readily achievable.

If it is not readily achievable for a gasoline station to remove these barriers, then the service station must use an alternative method to provide its services to individuals with disabilities, such as providing refueling services upon request to an individual with a disability, if the alternative is readily

achievable. In certain situations some alternative methods are not required because of security considerations. For example, a cashier at a gasoline station is not required to leave his or her post to provide refueling services for an individual with a disability when there are no other employees on duty. If, however, a gasoline station provides its services through alternative measures, it cannot place a surcharge on individuals with disabilities for the costs associated with that alternative method.

Thus, if a person with a disability is provided full-

service refueling because the self-service island is inaccessible, the gasoline station must provide the refueling service at the self-service price. These obligations are described in more detail in the enclosed Technical Assistance Manual published by the Department of Justice. See sections III-4.4000 and III-4.5000. If you would like to obtain a subscription to the Technical Assistance Manual and annual supplements, please see the enclosed subscription form for further information.

If XX believes that the gasoline station in question has violated title III, he may file a complaint in Federal court to enforce the Act, or he may file a complaint with the Department of Justice, which is authorized to investigate allegations of violations of title III in cases of general public importance or a pattern and practice of discrimination. If (b)(6) XX wishes to file a complaint with the Department of Justice under title III, he may address it to the Public Access Section, Civil Rights Division, U.S. Department of Justice, Post Office Box 66738, Washington, D.C. 20035-6738.

I hope this information is useful to you in responding to XX . For further information about the ADA, XX may call our ADA hotline at (202) 514-0301 from 1:00 p.m. to 5:00 p.m. EST.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

Enclosure

01-02952

CONGRESS OF THE UNITED STATES

December 29, 1993

Mr. Bruce C. Navarro
Deputy Assistant Attorney General for Legislative Affairs
Department of Justice
Main Justice Building, Room 1603

Penn. and Constitution Ave., N.W.
Washington, D.C. 20530

Dear Mr. Navarro:

RE: XX (b)(6)
XX
South Norwalk, Connecticut 06854

XX has contacted my office concerning his cost for gasoline.

XX states because he is wheelchair bound, he must use the full-service pumps at gas stations. However, he feels he is being penalized for being handicapped by having to pay the full-service price for gasoline.

I would appreciate knowing, on behalf of XX , (b)(6) whether the Americans with Disabilities Act requires service stations to offer self-service prices to handicapped individuals.

Please direct your reply to my district office at 10 Middle Street, Bridgeport, Connecticut 06604, to the attention of Jonathan Murray.

Thank you for your time and attention to this matter.

Sincerely,

Christopher Shays
Member of Congress

CS:jm

01-02953

Retyped
2/17194
3/8/94
SBO:AMP:ca

XX

MAR 15 1994

The Honorable Harris Wofford
United States Senate
Washington, D.C. 20510-3803

Dear Senator Wofford:

This is in response to your recent letter on behalf of your constituent, XX of Richland, Pennsylvania. (b)(6) XX has requested your assistance in determining whether or not it is appropriate, under the Americans with Disabilities Act of 1990 (ADA), for Richland to charge him for a ramp that the town is planning to install in front of his house. We apologize for the delay in responding to your letter.

As you know, this Department's title II regulation requires state and local governmental entities with authority over streets, roads, or walkways (including sidewalks) to construct certain curb ramps or similar structures in order to provide access to sidewalks for individuals with mobility impairments. In responding to your inquiry, we have assumed that Richland is installing a curb ramp in front of XX home as part of its overall effort to comply with the ADA. If so, the town should be commended for such compliance efforts.

The ADA does not regulate the manner in which a covered entity, such as Richland, should finance changes it must make in order to bring itself into compliance with the ADA. It does, however, prohibit such an entity from placing a surcharge on any particular individual with a disability or group of individuals with disabilities in order to cover the cost of complying with the Act. See section 35.130(b)(8)(f) of the title II regulation (copy enclosed).

Although the ADA does not mandate any particular method of financing required changes, it has generally been assumed that such changes would be financed through the covered entity's general revenues, not by imposing special costs on any individual resident of a town or city. In this instance, however, it appears that XX may be being billed for the cost of (b)(6)

cc: Records CRS Chrono MAF Pecht.congress.93wofford
McDowney FOIA

01-02954

the curb ramp under Richland's general system for financing sidewalk improvements. While it is common for municipalities to bill abutting property owners for the cost of sidewalk improvements (typically, based on the cost per linear foot of the improvements abutting the property), these charges are usually allocated to such owners an the theory that their abutting property is benefitted or enhanced by the installation of the improvements. In our view, curb ramps that are installed to meet the town's overall obligations under the ADA do not provide a particular benefit to the adjacent property owner and are more properly paid for through general revenues or other funds available for street and sidewalk improvements.

Again, we must stress that, other than prohibiting a surcharge against a particular individual or group of individuals with disabilities, the ADA and its implementing regulations do not address this issue. Thus, unless a covered entity attempts to place a direct change on such an individual or group of individuals, the final determination with respect to payment for any improvements undertaken to comply with the ADA falls within the discretion of the taxing entity.

I hope the information provided above will assist you in responding to XX concerns.

(b)(6)

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

Enclosure

HARRIS WOFFORD
PENSYLVANIA

ENERGY AND NATURAL RESOURCES
LABOR AND HUMAN RESOURCES
FOREIGN RELATIONS
SMALL BUSINESS

United States Senate
WASHINGTON, DC 20510-3803

December 30, 1993

Assistant Attorney General Sheila F. Anthony
U.S. Department of Justice
Department of Congressional Affairs
Room 1145
10th and Constitution Avenue NW
Washington, D.C. 20530

Dear Ms. Anthony,

I write today regarding the Americans with Disabilities Act.

(b)(6)

A curb in front of the house of XX of Richland, Pennsylvania, is being cut so that the town may build a ramp for the handicapped. Richland proposes to bill XX XX directly for the expense of installing this ramp.

Under the Americans with Disabilities Act, should the town of Richland pay for the ramp out of its general revenues, or should the town bill XX XX does not use a wheelchair; he does not need the ramp personally. Under the ADA, should he pay directly for the ramp in question, or should the town?

Please advise me of the answer to this question in writing, so that I might reply to XX

Sincerely,

Harris Wofford

01-02956

T. 2/15/94
SBO:NM:ca
DJ 204-17M-0

MAR 15 1994

The Honorable Tillie K. Fowler
U.S. House of Representatives
413 Cannon Building
Washington, D. C. 20515-0904

Dear Congresswoman Fowler:

This is in response to your letter on behalf of your constituent, Ms. Sharon L. Hartsell, who is concerned about the costs of complying with the Americans with Disabilities Act of 1990 (ADA).

Title II of the Americans with Disabilities Act (ADA) prohibits discrimination on the basis of disability in State and local government services. This prohibition includes a requirement that all State and local government programs, including schools, be made accessible. For existing facilities, however, every building does not necessarily have to be made accessible if all of the programs located inside that building can be made accessible by alternative means, such as relocating them to an accessible ground floor. (28 CFR 35.150). Structural modifications are required only if no other means are available to make the program accessible. Moreover, existing facilities do not have to be retrofitted to comply with the ADA Accessibility standards, which apply only to new construction and alterations. Thus, for example, if the current water fountains are usable by individuals in wheelchairs, provision of water fountains at two heights (as is required for new construction and alterations) would not be mandated.

Furthermore, section 35.150(a)(3) of the title II regulation states that a public entity is not required to take an action that it can demonstrate would result in undue financial and administrative burdens. The Department of Justice's title II

cc: Records CRS Chrono MAF Milton.congress.exitfac.fow
McDowney FOIA

01-02957

regulation and technical assistance manual give further information regarding the ADA's requirements. Copies of that regulation and manual are enclosed.

Finally, while there are no Federal funds specifically available for the purpose of complying with the ADA, the Department of Housing and Urban Development makes community development block grants available to communities in need of funds for a number of reasons, one of which is to provide accessibility for disabled individuals. Requests for grants may be sent to: Andrew Cuomo, Assistant Secretary, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street, S.W., Room 7100, Washington, D.C. 20410.

I hope this information assists you in responding to your constituent.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

Enclosures (2)

01-02958

T. 3-7-94
Control No. 4012502345

MAR 16 1994

The Honorable Michael Bilirakis
Member, U.S. House of Representatives
1100 Cleveland Street, Suite 1600
Clearwater, Florida 34615

Dear Congressman Bilirakis:

This is in response to your inquiry on behalf of your constituent, XX , regarding her complaint that Smith Barney Shearson, Inc. refuses to provide financial statements in large print.

Title III of the Americans with Disabilities Act (ADA) prohibits discrimination against individuals with disabilities by places of public accommodation. Places of public accommodation include service establishments such as banks and brokers. Smith Barney Shearson appears to be such a service establishment and, therefore, to be a covered entity under the ADA.

The ADA requires a public accommodation to take whatever steps are necessary to ensure that individuals with disabilities are not denied its services because of the absence of auxiliary aids, unless providing the auxiliary aids would fundamentally alter the goods and services offered by the public accommodation or would result in an undue burden. A public accommodation is required to furnish appropriate auxiliary aids where they are necessary to ensure effective communication with persons with

disabilities. The provision of large print materials to persons who have a vision impairment is one type of auxiliary aid. Therefore, Smith Barney Shearson has an obligation to provide appropriate auxiliary aids, such as materials in large print, unless it can show that providing its materials in large print would fundamentally alter its services or would cause significant difficulty or expense. The requirement to provide auxiliary aids is discussed in the enclosed title III regulation at p. 35597 and in the enclosed Technical Assistance Manual at Section III-4.3000.

(b)(6)

If XX wishes to have further information about the requirements of the ADA, she may contact our ADA information line at (800) 514-0301 (voice) or (800) 514-0383 (TDD)

01-02960

I hope this information will be useful to you in responding to your constituent.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

Enclosures

01-02961

MAR 16 1994

The Honorable Terry Everett
U.S. House of Representatives
208 Cannon House Office Building
Washington D.C. 20515

Dear Congressman Everett:

This letter is in response to your inquiry on behalf of your constituent, Dr. Larry T. Howell, concerning the provision of auxiliary aids or services for persons with disabilities. We apologize for the delay in responding to your inquiry.

The ADA requires public accommodations, including dentist's offices, to furnish appropriate auxiliary aids and services where necessary to ensure effective communication with individuals with disabilities. In determining what constitutes an effective auxiliary aid or service, a dentist must consider, among other things, the length and complexity of the communication involved. For instance, a notepad and written materials may be sufficient to permit effective communication when a dentist is explaining routine dental procedures. Where the information to be conveyed

is lengthy or complex, however, handwritten notes may be ineffective and the use of an interpreter may be the only effective form of communication.

Use of interpreter services is not necessarily limited to the most extreme situations -- for example, a discussion of whether to undergo surgery. Further discussion of this point may be found on page 35567 of the preamble to the enclosed regulation. While the nature of the dental services is considered one factor in determining what auxiliary aid is necessary for effective communication, the focus should be not only on the nature of the services, but also on the type of communication between the dentist and the patient. Generally, interpreters are not needed for routine office visits. However, the fact that an office visit is characterized as routine does not necessarily negate the need for interpreting services. For instance, an interpreter may be required if a notepad does not

facilitate effective communication between the dentist and an individual who is undergoing a complete dental examination and related testing procedures.

Under section 36.301(c) of the regulation, when an interpreter or other auxiliary aid or service is necessary to ensure effective communication, the dentist 'must absorb the cost for this aid or service. As provided in section 36.303(f), however, the dentist is not required to provide any auxiliary aid that would result in an undue burden. The term "undue burden" means "significant difficulty or expense." Undue burden must be determined on a case-by-case basis in light of factors such as the nature and cost of the aid or service, and the overall financial resources of the practice. Further discussion of the meaning and application of the term undue burden may be found in the preamble discussion of section 36.303, on pages 35567-35568.

In determining whether the provision of an interpreter would result in an undue burden, the dentist should consider not only

the fees paid for providing the dental service or procedure, but also the overall financial resources of the practice. The dentist should consider other factors that would minimize the degree of burden on the practice, such as the ability to spread costs throughout the general clientele and the provision of tax credits for costs of providing auxiliary aids (which is available for eligible small businesses).

The Department's Technical Assistance Manual for title III (copy enclosed) at page 26, and the ADA's legislative history, as described in the regulation's preamble, at pages 35566-35567, strongly encourage consultation with persons with disabilities in order to determine which particular auxiliary aid or service will ensure effective communication. Not only will consultation ensure that equal services are provided to individuals with disabilities, it may also significantly reduce the costs of providing such auxiliary aids or services.

Dr. Howell's letter also raises the issue of whether an outside agency such as the Alabama Institute for the Deaf and Blind may charge a public accommodation for the use of an interpreter that was not discussed with or authorized by that public accommodation. Clearly, the auxiliary aid provisions of the ADA (cited above) do not contemplate that a person with a disability can unilaterally decide on the appropriate type of auxiliary aid. Further discussion on this point can be found in the enclosed January 1993 update to the Department's Title III Technical Assistance Manual (copy enclosed) at page 5.

I hope this information will be helpful to you in responding to your constituent.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

Enclosures

01-02964

LARRY T. HOWELL, D.M.D., P.C.

December 29, 1993

Congressman Terry Everett
208 Cannon Blvd.
Washington DC 20515

Dear Congressman Everett,

I am a dentist practicing in Enterprise and have some questions concerning the "Americans with Disabilities Act" after a recent experience

in my office with this law. A young girl age 9 recently came to my office for an appointment and without my knowledge or consent brought an interpreter from the Alabama Institute for the Deaf and Blind. I was never informed as to who the interpreter was until after the second appointment with the girl. I received a bill for $80.00 from the Alabama Institute for the Deaf and Blind. My problem with what happened was that no one asked me if I thought an interpreter would be needed and if necessary, how much I would be expected to pay. I think it's a dangerous position to be placed in when someone thinks that they can show up at my office and be provided a service that I did not think was necessary and expect me to pay for it.

In a dental setting only a parent or guardian can gave consent for treatment. When treating a child I always discuss treatment options or possible outcomes with the parent rather than the child because the child is not capable of making decisions related to treatment. The above is true regardless of whether or not a child is hearing impaired. The only situation in which I can see needing an outside interpreter other than the parent would be when both parents would need an interpreter themselves because they both were hearing impaired. Another point of concern to me was that the $80.00 billed me by the Alabama Institute for the Deaf and Blind amounted to two-thirds of my total fee charged the patient for these two appointments.

508 North Main Street
nterprise, Alabama 36330
(205) 347-9564

01-02965

MAR 17 1994

The Honorable Howard P. "Buck" McKeon
U.S. House of Representatives
307 Cannon House Office Building
Washington, D.C. 20515

Dear Congressman McKeon:

This letter is in response to your inquiry on behalf of your constituent, XX , concerning the applicability of the Americans with Disabilities Act ("ADA") to funeral homes and persons who died from the AIDS virus.

Title III of the ADA prohibits discrimination by "public accommodations" on the basis of disability. See 28 C.F.R. 36.201(a). A funeral home is specifically defined as a "place of public accommodation" by the title III implementing regulation, 28 C.F.R. 36.104 (copy enclosed), and is, therefore, subject to the non-discrimination provisions of the ADA.

Title III prohibits discrimination against persons with disabilities, as well as those individuals who have a "relationship or association" with a person with a disability. 28 C.F.R. 36.205. The AIDS virus (HIV) specifically meets the definition of "disability" within the meaning of title III, as it is a physical impairment that substantially limits one or more major life activities. 42 U.S.C. 12102(2) (definition of disability); see also 28 C.F.R. 36.104 ("HIV disease (whether symptomatic or asymptomatic)" is a physical impairment).

Accordingly, the ADA requires funeral homes to provide their services on a non-discriminatory basis to persons who have AIDS and seek to make funeral arrangements prior to their death, as well as to family members and loved ones who have "an association" or "relationship" with persons infected with the AIDS virus and who seek funeral home services after the individual with AIDS has died. It is the Department's position that the death of the person with the disability in no way affects the reach of the association provision when the discrimination is based on the known disability of the decedent. Refusal to provide funeral services for and/or to embalm the body

cc: Records, Chrono, Wodatch, Magagna, Perley, McDowney, MAF,
FOIA
udd\perley\congress\ XX
(b)(6)

01-02966

of a person who died from AIDS is, therefore, a violation of the ADA.

Your constituent's position appears to be that handling

bodies that once harbored the AIDS virus would put him at great risk of contracting the virus, and that he should not be required to do so under the ADA. The ADA does not require a public accommodation to engage in any activity that would pose a "direct threat" to the health or safety of others. 28 C.F.R. 36.208(a).

Under title III, the term "direct threat" is defined as "a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures . . . " 42 U.S.C. 12182(b)(3) (emphasis added); see also 28 C.F.R. 36.208. The title III regulation clarifies the direct threat exception:

> In determining whether an individual poses a direct threat to the health or safety of others, a public accommodation must make an individualized assessment, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence, to ascertain: the nature, duration, and severity of the risk; the probability that the potential injury will actually occur; and whether reasonable modifications of policies, practices, and procedures will mitigate the risk.

28 C.F.R. 36.208(c).

According to the Federal Centers for Disease Control and Prevention ("CDC"), the risk of transmitting viruses like HIV in the health-care setting and similar settings is minimal, and can be severely lessened by the use of infection control procedures, often described as ''universal precautions.'' These protective measures -- which include the use of gloves, surgical masks, and protective eyewear, the sterilization of instruments, the disinfection of exposed environmental surfaces, and proper waste disposal methods -- prevent the spread of almost all bloodborne diseases, including HIV.

Indeed, the CDC specifically recommends the use of universal precautions when handling the body of a deceased person, Guidelines for Prevention of Transmission of HIV and HBV in Health-Care and Public-Safety Workers, U.S. Department of Health and Human Services, Centers for Disease Control, February 1989, at 18, as does the National Funeral Directors Association. National Funeral Directors Association Policy on Contagious, Communicable and Infectious Disease, at 1. Moreover, the Occupational Safety and Health Administration ("OSHA") has adopted most of the protective measures outlined by the CDC in

its Bloodborne Pathogen Rule. See 29 C.F.R. Ch. XVIII 1910.1030. The theory underlying these requirements is that funeral home workers often do not know whether the bodies they are handling once harbored an infectious disease. Persons who are HIV-positive or have other infectious diseases, such as Hepatitis B, often die from other causes, such as car accidents and heart attacks. Accordingly, universal precautions should be utilized when handling all human remains.

To date, there is not one documented case of occupational HIV transmission to either an embalmer or a morgue technician. HIV/AIDS Surveillance Report, Centers for Disease Control, October 1993, at 13. Indeed, in the approximately 10 years that the CDC has been monitoring occupationally acquired AIDS/HIV infection, only 3 possible cases of occupational transmission to embalmers or morgue technicians have even been identified. In light of the fact that funeral home workers may be routinely exposed to the AIDS virus, whether or not they know it, and that the scientific evidence has strongly demonstrated the efficacy of universal precautions, we believe that the use of universal precautions make the direct threat defense inapposite in the funeral home setting. The outright refusal to handle an AIDS case is, therefore, discriminatory and thus violates the ADA.

I hope this information is useful to you in addressing your constituent's concerns. Please inform him that if he has any further questions, he may contact our information line at (202) 514-0301.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

Enclosure

1 These workers were without identifiable behavioral or transfusion risks. However, HIV seroconversion specifically resulting from an occupational exposure to the virus was not documented.

01-02968

President Bill Clinton November 24, 1993
The White House
Washington, D.C. -20500

Dear Mr. President, (b)(6)
My name is XX and I am a single parent of two children, ages ten and eight years. I am writing to you on behalf of these children and a law that I believe actually endangers my ability to provide for those children.
The law in question is the Americans with Disabilities Act. As I understand it, the ADA is a blanket type of law. I have a unique circumstance for which, I believe, the law can be made more definite for.
I am a funeral director and embalmer who owns a small (two employees besides myself) funeral home XX I have been under fire by local AIDS activists for helping refer families of people passing away who have the AIDS virus to funeral homes in my community who have no problem with the HIV virus. My decision was based upon three main criteria. First, and foremost, I do not believe that I should have the right as a parent and small business operator to be able to choose what risks I should take in my profession. I need to be around this world to be able to take care of my children and I do not relish the fact that I may become even a tenth of a percentage point in some statistic.
My second reason was that my own state board of funeral directors and embalmers told me that they (the board) had no law which forced me to handle such a risk as the HIV virus presents. Thirdly, the other funeral establishments in our community do accept cases involving HIV virus and I believed that I could help families by working with them in finding another establishment of their choice and in any other way possible.
A local physician who is also head of her own local AIDS activist group asked me if I would like to be on the list of funeral homes in the area who extend services to persons passing away from AIDS. She had held a seminar at a competitor's business that I was unable to attend as it coincided with my children's open house at school. When I tried to explain my reasoning for declining her invitation to be an the list, she launched into a tirade and threatened that if I did not bend to her opinion she would ruin my and my families reputation by going to the media, have my state board revoke my license (thus removing my ability to support my children) and have me investigated by the Federal Government.
Knowing that she was not well informed about the state law regarding my circumstances, I doubted how valid the rest of her argument was. She never offered to how me any of these laws. Shortly thereafter, a press conference was held and I was blasted along with a large local hospital and a large insurance company. After that, I found that it was basically me, the little fellow with the kids who, having the most to lose, was singled out for a vendetta of attacks by the physician and some of the media.

I always held by the principle that unless there was a law, I should not be threatened or bullied because I failed to be "politically correct" and instead put the welfare of my children first. After much press, I found, in a news story the name of a spokesperson from the United States Department of Justice. As everybody else was so busy going after me with such terms as "bigotry" and "ignorance", I searched for the very part of the law that could even be in direct opposition to my position. As I told my children, if here is a law, one must obey that law whether you do or do not agree with it. I did, through the ADA folks, find that portion of the law which covered the argument against my concerns for my children. Yes, as the law is written, though not specifying embalmers or funeral homes specifically, I must accept the risk of handling persons passing away from the HIV virus as those people are covered under that law as having a disability and that the protection of the law extends to their families.

I was told by some, the morning that I found this out that it would be best to "wait" until I needed to make it public. Well, that didn't set well with me as I figured since nobody cared enough to find the answer to all of the arguing and fighting but me, I should make public what I found out and my

what it meant for me. To wait would only hurt everyone involved. So I did notify the media as to the law and the fact that, I had always maintained, given the law, I must abide by that law. We are a society of laws and must obey them, but we do not need to agree with all of them. That is why, laying the circumstances that I am now in, I come to you for counsel and help.

I do not have powerful, if any, political connections. I am not a large company with dozens of attorneys. I am Mr. President, just one single voice who is trying to speak up for the rights of his children. My children have a right to have me around to love and guide and raise them. No law, I believe should force any man or woman to take any risk, albeit one which is not yet fully understood as the large gulf between statistics that I have been given reflects, that would imperil their right to be around for their children.

To me a blanket-type law has the ability to be changed or modified for special circumstances. I believe that this applies to the ADA. What can I, as a single voice who so deeply loves his Children, do to get changes made? What can you do to help insure the future of a ten-year-old girl who's sole ambition in life is to serve her country as a fighter pilot and an astronaut and of her eight-year-old brother who sees law enforcement as a possible goal?

Mr. President, I ask you to consider this matter from both your position as head of the Nation and also as parent yourself.

This matter is, I admit, small when put against the situation in the world today, but my children and the world to me.

Respectfully,

XX
(b)(6)

cc: Congressman Howard McKeon (U.S. Congress)

01-02970

MAR 17 1994

The Honorable Porter Goss
Member, U. S. House of Representatives
2000 Main Street
Suite 303
Ft. Myers, Florida 33901

Dear Congressman Goss:

(b)(6)

This is in response to your inquiry on behalf of your constituent, XX , who asks about Federal laws regarding accessibility in apartment buildings.

Your constituent states that he lives in a "fairly new" 64-unit apartment building in which persons with disabilities "have no access to [the] lobby because of the lack of doors allowing opening without assistance by another person." He asks for information on Federal laws that might apply to this situation.

The Federal Fair Housing Act contains standards for accessibility to persons with disabilities in residential facilities. For more information on the Fair Housing Act, your constituent may contact the U.S. Department of Housing and Urban Development.

The Department of Justice enforces title III of the Americans with Disabilities Act (ADA), which applies to certain privately owned and operated facilities. Title III does not apply to strictly residential dwellings, but it does apply to common areas in residential buildings, such as rental offices, that function as one of title III's twelve categories of places of public accommodation and that are not intended for the exclusive use of tenants and their guests. The twelve categories of places of public accommodation are listed in section 36.104 of the enclosed title III implementing regulation, at pages 35593-94. Parking, entrances, access routes, and restrooms serving the areas covered by the ADA would also be covered.

Therefore, the lobby of your constituent's building is covered by title III only if it serves as the access route to a rental office, or other common area that functions as a place of public accommodation and is open to persons other than the tenants and their guests. In new construction and alterations covered by title III, the ADA Accessibility Standards (the "Standards") prohibit interior hinged, sliding, or folding doors that require more than 5 pounds of force to open, but the Standards do not require doors to have automatic opening mechanisms. This provision appears in section 4.13.11 of the Standards, on page 35463 of the title III regulation. The opening force requirement does not apply to exterior hinged doors, because requirements for exterior doors have been reserved for further study.

In existing places of public accommodation the ADA requires that architectural barriers to access, such as interior doors that exceed ADA door opening force requirements, be removed if the removal is readily achievable. See title III regulation and preamble, 36.304, at pages 35597 and 35568-70. Readily achievable means capable of being done without much difficulty or expense. See title III regulation and preamble, 36.104, at pages 35594 and 35553-54.

I hope this information is useful to your constituent in understanding the requirements of the ADA.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

Enclosures

01-02972

JAN 10 1994

XX (b)(6)
Fort Myers, FL XX

December 3, 1993

Honorable Porter Goss
House of Representatives
224 Cannon House Office Building
Washington, D.C. 20515

Dear Congressman Goss:

I am writing as a representative of the residents of a fairly new 64 unit apartment building regarding access of the handicapped to our building. The handicapped have no access to our lobby because of the lack of doors allowing opening without assistance by another person. In lieu of adequate access through the lobby, the handicapped residents and guests must use the freight elevator.

It is requested that we be furnished the applicable federal statutes regarding access of the handicapped and any implementing regulations of HUD or other implementing agencies. While we understand that some of these statutes and regulations may only be applicable to public buildings, we believe they will assist us in using public policy and/or moral suasion to convince management to remedy the present situation.

Thank you for any assistance you may be able to give regarding this matter.

Very truly yours,
(b)(6)

XX

01-02973

T. 3/7/94
SBO:SHK:ca
XX

MAR 18 1994

The Honorable Robert C. Byrd
United States Senate
Washington, D. C. 20510-6025

Dear Senator Byrd:

This responds to your inquiry on behalf of your constituent (b)(6) XX . XX wanted information about the policies of various government agencies concerning multiple chemical sensitivities (MCS). We have forwarded your letter to the Architectural and Transportation Barriers Compliance Board, the Environmental Protection Agency, and the Department of Labor for response to the questions concerning the policies of those agencies. The National Academy of Sciences is not an agency of the federal government.

XX requested information about actions by the Department of Justice since its issuance of regulations to implement the Americans with Disabilities Act (ADA) in July 1991. Although the Department has taken no regulatory actions, it did issue one Letter of Findings with respect to an individual with environmental illness. The complainant alleged the City of San Francisco violated title II of the ADA when he was denied access to municipal buildings because of the perfume used by municipal employees.

Our September 8, 1993, Letter of Findings assumed that the

complainant's factual allegations were accurate, but concluded that a public entity is not required to prohibit use of perfume or other scented products by employees who come into contact with the public because such a requirement would not be a "reasonable" modification to its personnel policies, as is required by title II. Furthermore, nothing in the ADA or its legislative history indicates that Congress intended to require public entities to regulate use of such products by its employees. The failure of a public entity to adopt such a policy, therefore, does not violate title II of the ADA.

The complaint also alleged generally that the city and County of San Francisco had not adopted a public access policy for individuals with environmental illness. Although formal

cc: Records CRS Chrono MAF Kaltenbo.byrd.2 McDowney FOIA

adoption of nondiscrimination policies may be helpful in ensuring that a public entity meets its obligations under the statute and regulation, our letter concluded that the regulation does not require public entities to adopt such policies with respect to individuals with disabilities or any particular class of individuals with disabilities. Also, after the complaint was filed, the City adopted an accessible meeting policy that included a requirement that all public meeting notices and agendas must include a notice asking individuals attending the meeting to refrain from wearing perfume or other scented products in order to allow individuals with environmental illness or multiple chemical sensitivity to attend the meeting. We therefore determined that the allegations in the complaint did not state a violation of title II of the ADA.

We hope that this information will assist you in responding to your constituent.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

01-02975

XX (b)(6)
Welch, West Virginia 24801

Honorable Robert C. Byrd
United States Senate
311 Hart Senate Office Building
Washington, DC

Dear Senator Byrd:

I would appreciate if your staff could research some issues on a health topic, MCS (multiple chemical sensitivities). From the enclosed two pages from a magazine "The Delicate Balance", there is a discussion of how various government agencies treated this issue in 1991, a year after the Americans With Disabilities Act became law on July 26, 1990.

As noted in the enclosure, the Department of Justice said that specific regulations about environmental illness would be omitted until several government agencies considered this topic further. Could you please let me know the current position of the agencies noted: Architectural and Transportation Barriers Compliance Board; the Environmental Protection Agency;

and OSHA; as well as any update by the Department of Justice.

On a related issue, the National Academy of Sciences has considered this topic. From my own independent reading, I learned that the NAS wrote some sort of journal or book called "Multiple Chemical Sensitivities" in 1992. Would it be possible for your staff to secure a copy for me? In addition, there was a workshop held in March 1991 in Irvine, California on this topic. If the proceedings of this workshop are available, I would like to have them. I tried to contact NAS on my own, but they were uncooperative about stating their position on MCS and shifted me from one employee to another, but I hope that due to your eminence, that this agency will cooperate with you.

Thank you,
XX
(b)(6)

p.s. Since typing the main body of this letter, I read that the Environmental Protection Agency has acknowledged MCS, as noted in the enclosure, p. xvi from "Chemical Exposures". Could you also send me the document on this? Thank you.

01-02976

xvi Introduction

health can assist the chemically sensitive person and disengage the patient from the medical cross fire and its attendant conflict. In this book We argue that both federal and state initiatives are needed. In undertaking this task, wee reviewed much of the available scientific and medical Literature relating to low-level chemical exposure and resulting disease. We interviewed key individuals in various medical disciplines including allergy, clinical ecology, and occupational, medicine. This effort was facilitated by the fortuitous scheduling of national conferences by the allergists and by the clinical ecologists in the same 7-day period in Texas in February 1989. Physicians involved with the chemically sensitive patient are concerned about being drawn into a legal and political struggle that ultimately may not help the patient. Through our interviews we were able to identify not only ears of conflict between the allergists and clinical ecologists but also unexpected areas of common ground.

This book comes at a critical time. Since the government of Ontario completed a report on "environmental hypersensitivity disorders" (Thomson 1985) in 1985, sensitivity to chemicals has received unprece-

dented attention from many quarters in the United States. A "Workshop on Health Risks from Exposure to Common Indoor Household Products in Allergic or Chemically Diseased Persons" held by the National Academy of Sciences (NAS) on July 1, 1987, recommended on 18-month Study to address the "15 percent of the U.S. population (who) have an Increased allergic sensitivity to chemicals commonly found in household Products, such as detergents, solvents, pesticides, metals and rubber, Thus pacing them at increased risk (of) disease" (National Research Council 1987). Although that study has not yet been funded, in 1989 The NAS convened a panel to examine the interrelationships of toxic Exposures and immune response. Later the same year, the U.S. office of Technology Assessment (OTA) began a study of noncancer risks of Chemicals, including immunotoxicity. OTA completed a neurotoxicity Study in 1990 [OTA 1990]. Scheduled for 1990 is a Canadian federal Advisory committee on multiple chemical sensitivity. The NAS, in response to request from the EPA's office of Indoor Air, will be conducting a multiple chemical sensitivity workshop in early 1991.

The U.S. Congressional Research Service has issued a report on in-Door air pollution in which chemical sensitivity is explicitly recognized (Courpas 1988, p. CRS-9). The Environmental Protection Agency (EPA) acknowledges that health problems exist with low-level exposures well below those allowed by existing regulations (Clauseen 1988); in its Report to Congress on Indoor Air Quality, EPA identifies multiple chemical sensitivities as a health concern (EPA 1989, p. 16). The Superfund Amendments, SARA, Title IV mandate a vigorous investigation of the problems of indoor air pollution by EPA. John D. Spengler of Harvard's School

01-02977

National Center for Environmental Health Strategies

ISABLITY RIGHTS
DA ON MCS

Regulations to implement the Americans With sabilities Act. PL101-336 were published in the ederal Register on July 25, 1991.

The Architectural and Transportation Barriers Compliance Board, also known as the "access board," d two dockets at the Department of Justice, received ousands of NCEHS preprinted postcards encouraging clusion of policies to address the needs of the emically sensitive in ADA regulations. And we were ccessful-to a degree.

NCEHS began distributing postcards approximately

o weeks before the March 25, 1991 closing date for e Architectural and Transportation Barriers Compliance ard. The '400 comments' mentioned in the excerpt n the access board regulations include those ceived during that two-week period. (See "Excerpts m ADA Regulations on MCS" below.) Postcards and comments are still being received and filed. They have d a significant impact on the agency.

Take a look at the statements on MCS from the Architectural and Transportation Barriers Compliance Board and the Department of Justice. While the Justice Department "declines to state categorically that these types of allergies or sensitivities are disabilities," the Department does note that individuals with severe sensitivities that limit one or more major life activities may meet the ADA definition of disabled. "Sometimes respiratory or neurological functional is so severely affected that an individual will satisfy the requirements to be considered disabled under the regulation."

The Justice Department, however, failed to announce specific regulations related to environmental illness "pending future consideration of the issue by the Architectural and Transportation Barriers Compliance Board, the Environmental Protection Agency, and the Occupational Safety and Health Administration of the Department of Labor.

Comments from the Architectural and Transportation Barriers compliance Board does acknowledge the access plight of the chemically sensitive; however, the regulations do not address policy issues related to those with chemical and environmental sensitivities.

XCERPTS FROM ADA REGULATNS ON CS

CHITECTURAL AND TRANSPORTATION BARRIERS OMPLIANCE BOARD:

mericans With Disabilities Act (ADA) Accessibility uidelines for Buildings and Facilities: Final Guidelines.

Chemical and Environmental Sensitivities

The Board received over 400 comments from individuals who identified themselves as

chemically sensitive. Many of the comments were sent in on preprinted postcards distributed by the National Center for Environmental Health Strategies (NCEHS). The commenters described the health problems that they have experienced due to exposure to chemical substances and indoor contaminants in buildings, including certain building materials, furnishings, cleaning products and fragrances, and tobacco smoke. They requested that the Board address their need for access to place of public accomodation and commercial facilities. Acting on Smoking and Health (ASH) also requested the Board to address tobacco smoke in buildings. NCFEHS and Environmental Health Network provided additional background materials on chemical sensitivities. Among the suggestions made to lessen exposure to chemical substances and indoor contaminants in buildings were providing windows that open; improving the design and requirements for heating, cooling, and ventilation systems; and selecting building materials and furnishings that do not contain certain chemical substances.

Chemical and environmental sensitivities present some complex issues which require coordination and cooperation with other Federal agencies. Pending further study of these issues, the Board does not believe it is appropriate to address them at this time. 36 CFR Part 1191, Friday, July 26, 1991. Federal Register. Vol. 56, No 144, p. 35412.

DEPARTMENT OF JUSTICE

Nondiscrimination on the Basis of Disability by Public Accomodations and in Commercial Facilities. Final Rule;

Nondiscrimination on the Basis of Disability in State

and Local Government Service: Final Rule

Many commenters asked that environmental illness (also known as multiple chemical sensitivity) as well as allergy to cigarette smoke by recognized as disabilities. The Department, however, declines to state categorically that these types of allergies or sensitivities are disabilities, because the determination as to whether an impairment is a disability depends on whether, given the particular circumstances at issue, the impairment substantially limits one or more major life activities (or has a history of, or is regarded as having such an effect).

Sometimes respiratory or neurological functioning is so severely affected that an

IV, Nos. 3-4, 1991/Pg.20 (606) 429-5358 The Delicate Balance.

01-02978

XX

(b)(6)

XX
XX MAR 21 1994
San Jose, CA XX

Dear XX

This is in response to your letter to the Department of Justice dated January 3, 1994 concerning the inaccessibility of a local movie theater. The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist you in understanding the ADA's requirements; however, it does not constitute a legal interpretation and it is not binding on the Department.

Under Title III of the Americans with Disabilities Act (ADA), the theater is a place of public accommodation and must remove all architectural barriers to the degree such removal is "readily achievable." The term "readily achievable" is a legal term used in the ADA, and is defined as "easily accomplishable and able to be carried out without much difficulty or expense."

Where a public accommodation can demonstrate that barrier removal is not readily achievable, the public accommodation must make its goods, services, facilities, privileges, advantages, or accommodations available through alternative methods, if those methods are readily achievable. If it is not readily achievable to remove barriers to provide access by persons with mobility impairments to all of the theaters of a multiscreen cinema, the cinema must establish a film rotation schedule that provides reasonable access for individuals who use wheelchairs to all films. Reasonable notice must be provided to the public as to the location and time of accessible showings.

It should also be noted that the ADA provides that the landlord of the theater may also be held responsible for violations of the Act, and therefore, you may want to consider communicating your concerns to the landlord as well.

The ADA may be enforced by the Justice Department or by private counsel. Should you wish to file a formal complaint with our office, you should address the complaint to:

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

I hope this information is of assistance to you.

Sincerely,

Philip L. Breen
Special Legal Counsel
Public Access Section

01-02980

(handwritten)

Jan. 3, 1994

Dear Sir,
There is a local service theater that is not wheelchair accessible. Can you tell me what legal actions I may take to encourage the theater management to make it accessible.

Thank you.

XX

San Jose, Ca. XX
(b)(6)
XX

01-02981

Retyped 2/18/94
SBO:NM:ca MAR 24 1994

DJ 204-11-0

Ms. Phyllis Cangemi
Executive Director
Whole Access
517 Lincoln Avenue
Redwood City, California 94061

Dear Ms. Cangemi:

Your letter to Attorney General Reno concerning enforcement of requirements for parks and trails under section 504 of the Rehabilitation Act of 1973 was referred to this office for response.

Under section 504, all entities receiving federal financial assistance must design facilities in accordance with the Uniform Federal Accessibility Standards (UFAS). Parks and trails that are operated or owned by a State or local government are also covered by title II of the Americans with Disabilities Act (ADA). Under title II, public entities can choose to design facilities either in accordance with the Americans with Disabilities Act Accessibility Guidelines CADAAG) or in accordance with UFAS. Finally, parks and trails that are designed, constructed, or altered by the federal government are covered by the Architectural Barriers Act, which is implemented by UFAS. Neither UFAS nor ADAAG, however, contains specific sections on recreational facilities such as parks and trails.

The Architectural and Transportation Barriers compliance Board (Access Board) is currently in the process of developing guidelines for recreational facilities under the ADA. In June 1993, the Access Board established a Recreation Access Advisory committee to provide advice on issues related to making recreational facilities and outdoor developed areas readily accessible to and usable by individuals with disabilities. The

Advisory Committee has formed several subcommittees to assist in its work, including a Subcommittee on Developed Outdoor Recreation Facilities and Areas. Once the Access Board has completed developing its recreational guidelines for ADAAG, the agencies responsible for issuing UFAS intend to amend UFAS to be consistent with ADAAG. Eventually, then, UFAS will contain

cc: Records CRS Chrono MAF Milton.letters.recreatn.can
McDowney Breen FOIA

01-02982

standards for recreational facilities. However, parks and trails need not be built in compliance with any specific design standards until those standards are finalized.

Nevertheless, State and local recreational facilities are not exempt from either section 504 or the ADA. Both section 504 and title II of the ADA require that qualified individuals with disabilities be given an equal opportunity to participate in the programs of covered entities. Providing an equal opportunity may entail provision of such things as accessible equipment and an accessible surface in a public park or trail.

If you wish to file a complaint against a specific entity that maintains inaccessible parks or trails, you should send your complaint to: Ms. Carmen R. Maymi, Director, Office of Equal Opportunity, Department of the Interior, Room 1324, 18th and C Streets, N.W., Washington, DC 20240.

I hope this information has been helpful to you.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

01-02983

Dick Busch, Inc.
Dick Busch
40 Stony Brook Lane
Princenton, NJ 08540
(609) 921-7763

J.P. Media, Inc.
Jeanne McConnell
Kevin S. Lapham
1415 N. Dayton Street
Chicago, IL 60622
(312) 787-0618

NRPA REGIONAL SERVICE
CENTERS:
Pacific Service Center
Pam Earle, CLP, Regional Director
1600 Sacramento Inn Way, Suite 217
Sacramento, California 95815
(916) 646-9050 FAX: (916) 646-1950

Southeast Regional Office
Tom Martin, CLP, Regional Director
1285 Parker Road
Conyers, GA 30207-5957
(404) 760-1668 FAX: (404) 760-9427

Northeast Service Center
Kathy J. Bartlett, CLP, Regional Director
1800 Silas Deane Hwy. Suite 1
Rocky Hill, Connecticut 06067
(203) 721-1055 FAX: (203) 529-7518

Western Service Center
Kent Ehmenthal
Ph.D., CLP, Regional Director
Garden of the God's Visitor Center,
P.O. Box 6900
Colorado Springs, Colorado 80934
(719) 632-7031 FAX: (719) 632-0709

Great Lakes Service Center
Walter C. Johnson,
CLP, Regional Director
650 W. Higgins
Hoffman Estates, IL 60195
(708) 843-7529 FAX: (708) 843-3058

P&R
THIS MONTH

With the Americans With Disabilities Act now signed into law, Park and recreation providers have clear cut guidelines for making their facilities accessible to all. The process can be confusing, however-it isn't always easy to figure out the regulations, or the best way to make your area accessible. Phyllis Cangemi, founder and executive director of Whole Access consultants, and Wayne Williams and Paul Gaskell associate professors in the Department of Health, Leisure and Exercise Science at Appalachian State University, address this issue in "Going to the Sources for Accessibility Assessment," page 66.

In the past, military recreation was designed primarily for single men. The trend has changed out of necessity, as our armed forces "downsize" and as more women and families take advantage of Morale, Welfare and Recreation (MWR) services, James A. Wilgus, civil engineer and aquatics specialist for Heery International, Inc, describes the "Military Communities for Excellence" program, specifically the family aquatic center concept, in "Recreation for the Military Family," page 46.

Summer is over, but it's never too early to plan for next year What do you do on a military

base when school gets out? In "Willie Wildcat's Day Camp In Japan," page 50, Dr. Al Jackson, Program director for Willie Wildcat Summer Day Camp program and associate professor at California State University-Chico, describes this popular day camp,

CANGEMI BAKER

(pictures)

01-02984

Whole Access
Phyllis Cangemi
Executive Director
17 Lincoln Avenue
Redwood City, CA
94061
415-363-2647
voice or TDD

(picture)

Military
Recreation
Indoor Sports

01-02985

(handwritten)

1/21/94

Dear Attorney General Reno,

My name is Phyllis Congemi. My organization, Whole Access works with park agency officials to help make parks and trails accessible to all people.

A major concern we have is that park agencies and cities and counties continue to receive federal funding - with little to no fear of loss of those funds, - inspite of the fact that they routinely (for 20 yrs.) ignore the requirements of Sect. 504 of the Rehab. Act.

In short, there is little to no enforcement of the federal funding link to the Nat. Rehab. Act.

What can you do to see that the federal gov't enforces it's own laws in its own house?

Thank you for the wonderful work you have begun.

Sincerely,

Whole Access

01-02986

MAR 25 1994

T. 2/23/94
SBO:RM:ca
DJ 204-16-0

The Honorable Joe Skeen
U.S. House of Representatives
Washington, D.C. 20515-3102

Dear Congressman Skeen:

This letter responds to your inquiry concerning whether the Americans with Disabilities Act (ADA) applies to the U.S. House of Representatives. Specifically, you requested a legal opinion on whether the ADA requires a member of Congress to provide a sign language interpreter at a public meeting held by the member, and whether the ADA provides remedies for a private individual against the House of Representatives.

The Attorney General is authorized by law to render legal opinions only to the President and heads of the executive departments. However, under the ADA, the Department of Justice is authorized to provide technical assistance to individuals and entities having rights or obligations under Titles II and III of the ADA. In that regard, Titles II and III do not apply to Congress, since Title II pertains to State and local government entities and Title III applies to public accommodations and commercial facilities.

Section 509 of the ADA, however, does cover Congress and other entities in the legislative branch of the Federal Government. 42 U.S.C. 12209. With respect to matters other than employment, section 509 mandates that the Architect of the Capitol, after approval by the Speaker of the House, establish remedies and procedures to be utilized in the House of Representatives regarding rights and protections provided under the ADA. For more information on these procedures and remedies, we suggest that you contact Ms. Peggy Lambert, Attorney, the Office of the Architect of the Capitol, at (202) 225-1200.

Sincerely,

Sheila F. Anthony
Assistant Attorney General

cc: Ms. Peggy Lambert

cc: Records CRS Chrono MAF Mather.skeen.ltr McDowney FOIA

01-02987

Congress of the United States
House of Representatives

JOE SKEEN
2D DISTRICT, NEW MEXICO

November 18, 1993

Mr. John Wadatech
Chief, Public Access Section
Civil Rights Division
U.S. Department of Justice
PO Box 66738
Washington, DC 20035

Dear Mr. Wadatech:

I respectfully request that your office evaluate and issue a legal opinion to me on the following questions:

> Does the Americans With Disabilities Act require me or my office to provide a sign language interpreter for hearing impaired individuals at any public meetings which I may hold, and if so, under what circumstances? Further, what remedies does the ADA provide for a private individual against myself or against the U.S. House of Representatives?

Thank you very much for your prompt attention to my request, and please contact me if you require any further information.

Sincerely,

JOE SKEEN
Member of Congress

JS:qd

01-02988

Retyped 3/22/94
MAF:AMP:rjc
DJ 204-59N-0

MAR 25 1994

The Honorable David L. Boren
United States Senate
Russell Senate Office Building
Room 453
Washington, D.C. 20510

Dear Senator Boren:

This is in response to your recent letter on behalf of your constituent, Ms. Susan L. Bello, the Executive Director of Therapetics, Service Dogs of Oklahoma, who has requested your advice on how to change the language of the regulation implementing title III of the Americans with Disabilities Act of 1990 (ADA). Specifically, Ms. Bello would like to change the language of section 36.302(c) of the title III regulation, which requires a public accommodation to modify its programs, practices, or procedures to permit the use of a service animal (emphasis added) by an individual with a disability. Instead, Ms. Bello would prefer that the regulation refer to "assistance animals." We apologize for the delay in responding to your letter.

The ADA regulations were adopted only after an extensive opportunity for review and comment by affected parties. On February 22, 1991, the Department published a notice of proposed rulemaking (NPRM) for the title III regulation in the Federal Register (56 FR 7452). (An NPRM for the title II regulation, which covers State and local governmental entities, was published on February 28, 1991). The Department read and analyzed each of the over 2,718 public comments that were submitted within the official comment periods. The vast majority of those comments addressed the issues raised in the title III regulation. In an effort to encourage broad public participation, the Department also held four public hearings at sites across the country. The comments from those hearings were also carefully analyzed by the Department during the process of drafting the final ADA regulations. Thus, the Department made an extensive effort to give individuals and groups interested in commenting on the provisions of concern to Ms. Bello every opportunity to do so. This process is described in the preamble to the title III regulation at 56 FR 35544. A copy of the regulation has been enclosed for your convenience.

Records, CRS, Chrono, MAF, Pecht, McDowney, FOIA
:UDD\PECHT\CONGRESS.93\BOREN

01-02989

You may wish to explain to Ms. Bello that the fact that the Department has adopted the generic term "service animal" to refer to any animal that fits the definition set forth in the title III regulation, does not mean that the Department is attempting to regulate the terminology used by any particular subgroup within that broad category, such as the "assistance dog industry." Far example, if Therapetics changed its name from "Assistance Dogs of Oklahoma" to "Service Dogs of Oklahoma" because of the terminology used in the title III regulation, it was not required to do so by the ADA, and may return to its original name. If Therapetics provides animals "individually trained to do work or perform tasks for the benefit of an individual with a disability," those animals are covered by the ADA regardless of what they are called. The same is true of other types of animals that may be trained by groups that prefer to use terminology different from that used by the "assistance dog industry."

I hope the information provided above will assist you in responding to Ms. Bello's concerns.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

Enclosure

01-02990

Therapetics
Service Dogs of Oklahoma
P.O. Box 701707
Tulsa, Oklahoma 74170-1707
(918) 827-6051

Senator David Boren
453 Russell
Washington D.C. 20510

December 2,1993

Dear Senator Boren,

How do I go about changing the terminology of a CFR? CFR Part 36 covers the rules and regulations regarding service animals. TheraPetics and many other assistance dog organizations want the terminology changed from "service animals" to "assistance animals".

I have no idea why they used this terminology in the first place, since the industry has used the term 'assistance dogs' for twenty years. It would be silly to allow bureaucrats to tell us what terminology we should use in our own industry.

For your information, I've enclosed one of our brochures, a summary of CFR Part 36, and a copy of the Model State Law, which gives the definitions that the industry uses. Even the law in Oklahoma uses the correct terminology!

Please let me know how we can proceed with accomplishing this goal.

Sincerely,

Susan L. Bello
Executive Director

01-02991

AMERICANS WITH DISABILITIES ACT

RULES AND REGULATIONS REGARDING SERVICE ANIMALS

28 Code of Federal Regulations (CFR) Part 36

Subpart A - General

36.104 Definitions.

Service animal means any guide dog, signal dog, or other animal individually trained to do work or perform tasks for the benefit of an individual with a disability, including but not limited to guiding individuals with impaired vision, alerting individuals with impaired hearing to intruders or sounds, providing minimal protection or rescue work, pulling a wheelchair, or fetching dropped items.

Subpart C - Specific Requirements

36.302 Modifications in policies, practices, or procedures.

(a) General. A public accommodation shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to afford goods, services, facilities, privileges, advantages or accommodations to individuals with disabilities unless the public accommodation can demonstrate that making the modifications would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations.

(c) Service animals.
(1) Areas open to the general public. A Public accommodation shall modify policies practices, or procedures to permit the use of a service animal by an individual with a disability in any area open to the general public.
(2) Areas not open to the general public. In areas not open to the general public, a public accommodation shall modify policies, practices, or procedures to permit the use of a service animal by an individual with a disability. If the modification would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodation, offered or provided by the

public accommodation, or if the policies, practices, or procedures are necessary for safe operation, the use of a service animal may be denied.
(3) Care or supervision of service animals. Nothing in this part requires a public accommodation to supervise or care for a service animal.

01-02992

MODEL STATE LAW

010 Declaration - Policy. The legislature declares:

(1) As citizens, persons who are blind, visually impaired, deaf, hard of hearing, or otherwise physically disabled have the same rights as the able-bodied to the full and free use of the streets, highways, walk-ways, public buildings, public facilities, and other public places.
(2) Persons who are blind, visually impaired, deaf, hard of hearing, or otherwise physically disabled are entitled to full and equal accommodations, advantages, facilities, and privileges on any public conveyance operated on land or water, or in the air, or any stations and terminals thereof, not limited to, taxis, airplanes, motor vehicles, railroad trains, motor buses, street cars, boats, and in; any educational institution, not limited to, any kindergarten, primary and secondary school, trade or business school, high school, academy, college and university, and in; places of public resort, accommodation, assemblage or amusement, not limited to, hotels, lodging places, restaurants, theaters, and in all other places to which the general public is invited, subject only to the conditions and limitations established by law and applicable alike to all persons.
(3) Persons who are blind, visually impaired, deaf, hard of hearing, or otherwise physically disabled persons shall be entitled to rent, lease, or purchase, as other members of the general public, any housing accommodations offered for rent, lease, or other compensation in this state, subject to the conditions and limitations established by law and applicable alike to all persons.
(a) "Housing accommodations" means any real property or portion thereof that is used or occupied, or intended, arranged, or designed to be used or occupied, as the home, residence, or sleeping place of one or more human beings, but does not include any single-family residence the occupants of which rent, lease, or furnish for compensation to more than one room therein.

030 "Guide Dog" defined.

Guide Dog, means a dog that has been or is being specially trained to aid a particular blind or visually impaired person.

032 "Hearing Dog" defined.

Hearing Dog, means a dog that has been or is being specially trained to aid a particular deaf or the hard of hearing person.

034 "Service Dog" defined.

Service dog, means a dog that has been or is being specially trained to aid a particular physically disabled person with a physical disability other than sight or hearing.

040 "Assistance Dog" defined.

Assistance Dog means a dog that has been or is being trained as a Guide Dog, Hearing Dog or Service Dog.

050 Assistance dog - Extra charge or refusing service because of dog is prohibited. Every disabled person has the right to be accompanied by an Assistance Dog, specially trained for that person, in any places listed in 010 (2) and (3) without being required to pay an extra charge for the Assistance Dog. Each disabled person using an Assistance Dog is solely liable for any damage done to persons, premises or facilities by the Assistance Dog.

055 Trainers and dogs in training.

Every trainer or puppy raiser of an Assistance Dog shall have the same rights and privileges as stated in 050 for every person with a disability. Each trainer or puppy raiser, during the training of an Assistance Dog is liable for any damage done to persons, premises or facilities by that Assistance Dog.

060 Penalty for injuring, or interfering with an Assistance Dog. Civil actions; damages; cost and attorney's fees.

1. It is unlawful for any person, corporation or the agent of any corporation who:

(a) Withholds, denies, deprives or attempts to withhold, deny or deprive any other person of any right or privilege secured by 050 and 055;

(b) Intimidates, threatens, coerces or attempts to threaten, intimidate or coerce any other person to interfere with any right or privilege secured by 050 and 055; or

(c) Punishes or attempts to punish any person for exercising or attempting to exercise any right or privilege secured by 050 and 055.

2. It is unlawful for any person to injure an Assistance Dog and shall be liable for the injuries to the Assistance Dog and if necessary the replacement and compensation for the loss of the Assistance Dog.

3. It is unlawful for the owner of a dog to allow that dog to injure an Assistance Dog, because the owner failed to control or leash the dog. The owner shall also be liable for the injuries to the Assistance Dog and if necessary the replacement and compensation for the loss of the Assistance Dog.

4. Any person who violates subsection 1, is guilty of a misdemeanor. Any person who purposely or negligently violates subsections 2 or 3, is guilty of a misdemeanor. Violations shall be punished by imprisonment in the county jail for not more than 6 months, or by a fine of not less than $100.00, or by both fine and imprisonment. Any person or corporation who violates subsections 1, 2, or 3 is also liable to the person whose rights under 050 and 055 were violated, for actual damages for any economic loss and/or punitive damages, to be recovered by a civil action in a court in and for the county in which the infringement of civil rights occurred or in which the defendant lives.

5. In an action brought under this section, the court shall award costs and reasonable attorney's fees to the prevailing party.

070 Precautions for drivers of motor vehicles approaching pedestrian who is carrying white cane or using an Assistance Dog.

The driver of a vehicle approaching a totally or partially blind pedestrian who is carrying a cane predominantly white in color (with or without a red tip) or a blind, visually impaired, deaf, hard of hearing, or otherwise physically disabled person using an Assistance Dog shall take all necessary precautions to avoid injury to such pedestrian. Any driver who fails to take such precaution shall be liable in damages for any injury caused to such a pedestrian and/or any injury caused to the pedestrian's Assistance Dog. It shall be unlawful for the operator of any vehicle to drive into or upon any crosswalk while there is on such crosswalk, such pedestrian, crossing or attempting to cross the roadway, if such pedestrian indicates his intention to cross or to continue. The failure of any such pedestrian so to signal shall not deprive him of the right of way accorded him by other laws.

090 Exemption from license fees.

Assistance Dogs shall be exempt from any state or local fees for licenses.

01-02994

APR 15 1994

The Honorable Charles Grassley
United States Senate
Washington, D.C. 20510-1502

Dear Senator Grassley:

This letter is in response to your inquiry on behalf of your constituent, John H. Roberts, M.D., regarding the provision of interpreters during office visits to his patients with hearing impairments. Specifically, your constituent was concerned about the costs of providing such interpreters.

Title III of the Americans with Disabilities Act (ADA), 42 U.S.C. 12181-12189, prohibits discrimination on the basis of disability by places of public accommodation. The professional office of a health care provider is a place of public accommodation subject to the requirements established in this Department's regulation implementing title III, 56 Fed. Req.

35544 (July 26, 1991).

Title III of the ADA requires physicians to furnish appropriate auxiliary aids and services where necessary to ensure effective communication with individuals with disabilities, unless doing so would result in an undue burden, or would fundamentally alter the nature of the service provided. What constitutes an effective auxiliary aid or service will vary depending on the unique facts of each situation. The particular communication needs of the individual and the nature of the communication involved, including features such as length and complexity, will determine which auxiliary aid or service is required.

An interpreter is not, therefore, mandated in every office visit situation. In some circumstances involving short, simple communication, a health care provider may satisfy the auxiliary aid or service requirement by using a note pad and written

materials. At the other extreme, discussion of whether to undergo major surgery is a prototypical situation in which an interpreter will be required for someone who needs one. The regulation envisions a wide range of situations involving health matters that may be sufficiently lengthy or complex to require the provision of an interpreter. Because effective communication of symptoms or case history is an important diagnostic tool in medical treatment, many office visits might require the provision of an interpreter for someone who needs one.

A doctor is not, however, required to provide an auxiliary aid that would result in an undue burden. In determining whether the provision of an interpreter would result in an undue burden, the physician should consider not only the fees paid for providing the medical service or procedure, but also the overall financial resources of the practice. The physician should consider other factors that would minimize the degree of burden

on the practice, such as the ability to spread costs throughout the general clientele and the provision of tax credits for costs of providing auxiliary aids (which is available for eligible small businesses).

We hope that this information is useful to you in addressing the concerns of your constituents The flexibility of the auxiliary aids requirement, the undue burden limitation, and the ability to spread costs over all patients should minimize any burden on the medical profession.

For your information I have enclosed a copy of the Department's regulation implementing title III and our Title III Technical Assistance Manual. A public accommodation's obligation to provide auxiliary aids is addressed in section 36.303 of the regulation, in the preamble to section 36.303 (pages 35565-35568), and in section III-4.3000 (pages 26-30) of the technical assistance manual.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

Enclosures
01-02996

SIOUX CITY FAMILY PHYSICIANS, P.C.
4230 HAMILTON BLVD.
SIOUX CITY, IOWA 51104

TELEPHONE: (712) 239-4300
JOHN H. ROBERTS, M.D. TERRY H. MITCHELL, M.D.
F. JOHN KISSEL, M.D. THOMAS E. SCHRYVER, M.D.

January 10, 1994

The Honorable Senator Charles Grassley

135 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Grassley,

Enclosed please find a copy of a letter I directed to Senator Harkin about the problems related to the Americans with Disabilities Act that was recently passed. We are finding that mandates of the law difficult to live up to. We are accustomed to giving away care with charity work and with reimbursements from Medicare and Medicaid running around 50%. The problem here, however, is that we are not only giving away all of our care and the use of our facility but we are actually having to come with out of pocket money to pay for the interpreter services.

This is grossly unfair and needs to be remedied quickly. With overhead running at 60% we simply cannot afford to take on this additional burden.

Please direct your attention to this problem. Your consideration will be greatly appreciated.

Sincerely,

John H. Roberts, M.D.

JHR/rjr

01-02997

SIOUX CITY FAMILY PHYSICIANS, P.C.
4230 HAMILTON BLVD.
SIOUX CITY, IOWA 51104
TELEPHONE: (712) 239-4300

JOHN H. ROBERTS, M.D. TERRY H. MITCHELL, M.D.
F. JOHN KISSEL, M.D. THOMAS E. SCHRYVER, M.D.

January 6, 1994
The Honorable Senator Tom Harkin
531 Hart Senate office Building
Washington, D.C. 20510
Dear Senator Harkin,
We are writing to express our concern with the situation in which

we find ourselves relative to the Americans With Disabilities Act that you sponsored.

We have several deaf patients for which we have been caring for years, utilizing note pad messages or family member interpreters. We now find we are mandated to provide interpreter service to deaf patients. Apparently this is supposed to improve the quality of medical care.

Our charge for a Medicare patient for a 99213 office visit is $24.54. Medicare will pay $14.72. We try to collect $4.09 from the patient if we accept assignment or $9.82 if we don't accept assignment.

The interpreter charges $15 per hour with a two-hour minimum for her services. For each visit we are either $5.46 in the hole or $11.19 in the hole, depending on whether we accept assignment or not. That is assuming we are able to collect from the patient what is supposed to be their obligation to pay. We lose money on every visit.

We never discriminated against deaf people in the past and we saw them willingly for usual fees. It frequently took us longer to see these patients because of the extra time required for waiting notes back and forth but did not increase our fees because of that.

The squeeze is on in primary care because of Medicare fees being frozen in 1984 with minimal increases since then and because of diminishing opportunity to cost shift to other payors. This kind of mandate by the federal government is grossly unfair. To require us to bear the burden of the noble idea of having no discrimination against disabled people makes no sense to us. We were doing our share before the law was passed. You have now made it onerous to provide the care that we gladly did before.

Please direct your attention to providing some sort of relief for this problem. Thank you for your consideration.
Sincerely,
John H. Roberts, MD, F. John Kissel, MD Terry H. Mitchell, MD
01-02998

APR 20 1994

The Honorable Bob Kerrey
United States Senator
7602 Pacific Street

Suite 205
Omaha, Nebraska 68114

Dear Senator Kerrey:

This letter is in response to your inquiry on behalf of your constituent, (b)(6) XX concerning the purchase of a touch tone telephone from AT&T. Your letter, which was originally directed to the Federal Trade Commission, was forwarded to the Department of Justice, which has the responsibility of enforcing and providing technical assistance concerning the Americans with Disabilities Act (ADA).

Title III of the ADA prohibits discrimination on the basis of disability by places of public accommodation, including sales or rental establishments. To the extent that AT&T operates places of public accommodations that sell or rent telephones to the public, it is subject to the full range of ADA obligations, including the obligation to make reasonable modifications in policies, practices, or procedures, when the modifications are necessary to afford goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless making the modification would fundamentally alter the nature of the goods, services, facilities, privileges, advantage, or accommodations.

However, the ADA does not require a public accommodation to alter its inventory to include accessible or special goods that are designed for, or facilitate use by, individuals with disabilities. Further discussion of this point may be found in 36.307 of the enclosed regulation, in the preamble to that section on page 35571, and in section III-4.2500 of the Department's Title III Technical Assistance Manual.

If XX wishes to file a formal complaint with the Civil Rights Division, he may send any relevant information to the Public Access Section, Civil Rights Division, U.S. Department of Justice, Post Office Box 66738, Washington, D.C. 20035-6738.

I hope this information will be helpful to you in responding to your constituent.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

Enclosures

01-03000

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580
OFFICE OF THE SECRETARY

December 23, 1993

The Honorable Bob Kerrey
United States Senate
7602 Pacific Street, Suite 205
Omaha, Nebraska 68114

Dear Senator Kerrey:

Thank you for your letter on behalf of XX (b)(6) of Omaha, who has encountered difficulty acquiring a touch tone telephone from AT&T. As you may know, the Federal Trade Commission has been directed by Congress to act in the interest of all consumers to prevent deceptive or unfair practices and unfair methods of competition, pursuant to the Federal Trade Commission Act, 15 U.S.C. 41 et seq. In determining whether to take enforcement or other action in any particular situation, the Commission may consider a number of factors, including the type of violation alleged; the nature and amount of consumer injury at issue and the number of consumers affected; and the likelihood of preventing future unlawful conduct and securing redress or other relief.

I would like to emphasize that letters from your constituents provide valuable information that is frequently used to develop or support Commission enforcement initiatives. I should not, however, that the practices to which XX refer fall within the jurisdiction of the U.S. Department of Justice. I have therefore taken the liberty of forwarding your correspondence to the Department for their review. Please let us know whenever we can be of service.

Sincerely

Donald S. C1ark
Secretary

cc: Office of Congressional Liaison
U.S. Department of Justice

Constitution and 10th Street, NW.
Washington, D.C. 20530

01-03001
(handwritten)

11-13-93

Senator Kerrey,

Dear Sir:

NOV 16 1993

I am hard of hearing.
I asked AT&T if they had a touch-tone Phone that I could buy that rings as loud as the dial phone that I now own.
AT&T said they would lease me a touch-tone phone that rings as loud but they would not sell it.
I think I have a complaint.
To whom do I complain?

Thank you,
XX

(b)(6)
XX

01-03002

APR 20 1994

The Honorable John Breaux
United States Senate
Washington, D.C. 20510

Dear Senator Breaux:

This letter is in response to your inquiry on behalf of your constituent, XX who seeks information about the transportation provisions of the Americans with Disabilities Act (ADA). According to XX he uses a wheelchair and is required to get to a deviated fixed route in order to receive bus service. Because the distance to the fixed route pick-up points is too great for him to negotiate, he inquiries about the requirements under the ADA for at-home pick up and return service for persons with disabilities.

Subtitle B of title II of the ADA establishes standards for the operation of public transportation systems, including fixed route bus transportation. Under the subtitle, every public entity operating a fixed route system must provide paratransit or other special service to individuals with disabilities that is comparable to the level of service provided to individuals without disabilities who use the fixed route system. This paratransit requirement applies to all public fixed route transportation, with the exception of commuter bus, commuter rail, and intercity rail systems.

The Department of Transportation is responsible for the implementation of subtitle B of title II and its regulations and that Department will be able to provide more specific information regarding standards for eligibility for paratransit service. Accordingly, we have taken the liberty of forwarding a copy of your inquiry to that agency and have requested that they reply directly to you.

01-03003

I hope that this information is helpful to you in responding to XX (b)(6).

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

01-03004

[hand written barely legible]

(b)(6) XX
Arabi, La. 70032
XX

Hon. John B. Breaux
U.S. Senate
Washington, D.C. 20510

March 2, 1944

XX

Dear Senator Breaux:

As a victim of multiple sclerosis, I am permanently confined to a wheelchair. As such am very interested in the "Americans With Disabilities Act". If properly implemented, this Act is the most significant legislation enacted to assist disabled persons.

With regard to the transportation provision of this Act, we in St. Bernard [illegible] of Louisiana are required to get to a deviated fixed route in order to [illegible] [illegible] service. The distances to the deviated fixed pick-up points are too great for a disabled person to negotiate and I feel this is a violation of the transportation provision of the Act. It is my understanding that this Act requires at-home pick up and return to home service for the handicapped. This type of service is available in the neighboring [illegible] of Orleans and

Jefferson.

01-03005

[Hand written]

It is my understanding that Federal funds subsidize local transit systems. If this is so, why did the Federal Government approve an exception to policy which incumbents the intended mandate of this Act?

I would appreciate your comments regarding this situation. Hopefully, through your efforts, this problem can be resolved.

Sincerely,
XX (b)(6)

01-03006

MAY 2

The Honorable Peter A. DeFazio
Member, U.S. House of Representatives
211 East Seventh Avenue
Eugene, Oregon 97401

Dear Congressman DeFazio:

This letter is in response to your inquiry on behalf of your constituent, William Doerr, which you sent to the United States Commission on Civil Rights and was by that agency forwarded to the Department of Justice. According to Mr. Doerr, he has attempted to establish a vocational program for persons with developmental disabilities in downtown Coos Bay, Oregon, but has met with opposition from at least one member of the city's Downtown Association, who allegedly has encouraged building owners not to rent space to Mr. Doerr because persons with developmental disabilities do not belong in the downtown area.

Mr. Doerr inquires whether he has any recourse in this situation.

A vocational rehabilitation program, such as a social service center establishment, would likely be considered a place of public accommodation within the meaning of title III of the Americans with Disabilities Act (ADA) and the title III regulation, 42 U.S.C. 12181(7); 28 C.F.R. 36.104. Private entities that lease to places of public accommodation are also considered public accommodations under title Ill. 42 U.S.C. 12182(a); 28 C.F.R. 36.104. Under title III, public accommodations are prohibited from discriminating on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation. 42 U.S.C. 12182(a); 28 C.F.R. 36.201(a). It is also a violation of title III for a public accommodation to discriminate against any individual or

FOIA

01-03007

entity based upon that individual's or entity's known relationship with a person who has a disability. 42 U.S.C. 12182(b)(2)(E); 28 C.F.R. 36-205. Thus, the ADA does not permit a commercial landlord to refuse to lease space for the operation of a place of public accommodation because of the disabilities of the anticipated clientele of the place of public accommodation.

While it does not appear that the Downtown Association, as a group, operates a place of public accommodation, interference with an individual's attempt to exercise or enjoy any rights under the Act is also prohibited, see 42 U.S.C. 12203; 28 C.F.R. 36.206, even if the person responsible for the interference does not operate a place of public accommodation. Thus, Mr. Doerr and persons with developmental disabilities who might use the vocational program may be able to seek redress under this portion of the ADA.

Mr. Doerr may seek enforcement of his rights under the ADA

by filing a suit in Federal court. He may also file a complaint with the Department of Justice by writing to the address below outlining in detail the facts giving rise to the alleged discrimination and, to the extent he knows them, providing the names and addresses of individuals and entities responsible for the discrimination.

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

The Department is authorized to investigate complaints of discrimination and to file suits where there is a pattern or practice of discrimination or discrimination that involves an issue of general public importance. Mr. Doerr should be advised, however, that the Department is not able to investigate every complaint that it receives but, in the event he does file a complaint with us, he will be notified as soon as possible concerning the action the Department intends to take on his complaint.

I have also enclosed a list of organizations in Oregon that may be of some assistance to Mr. Doerr in pursuing his claim, as well as copies of the Department of Justice title III implementing regulation and the ADA Title III Technical Assistance Manual.

01-03008

I hope this information will be helpful to you in responding to your constituent.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

Enclosures

Congressman DeFazio
Coos Bay Office
Coos Bay Oregon

Dear Congressman;

Recently we started a Coos County Vocational Program for Developmentally Disabled Adults. The intent of the program is to develop and blend employment opportunities and community integration activities. To facilitate this goal we decided to locate in the downtown area of Coos Bay. We have received many favorable reactions to this endeavor.

However, one person seems adamant that "these kinds of persons do not belong in the downtown area". Following up the first phone call, this person said he would work with the Downtown Association to find us an "appropriate place:. The person creating this problem is a property owner of several buildings and an influence in the downtown areas being the president of the Downtown Association.

We feel that this is an infringement on the rights of our clients. Our understanding is that the American Disabilities Act was enacted partially to stymie this kind of discrimination. How do we proceed to address this problem? To whom do we talk?

Any assistance you can give us will be appreciated.

Sincerely,

William A. Doerr
Chief Executive Officer

01-03010

Coos Curry Transitional House

6/2/93

Re: Telephone conversation with XX re storefront for rent on Commercial St.

5/24/93 Visited storefront, left business card at XX Enterprises, requested call re storefront

5/25/93 Called XX Enterprises re storefront.

5/27/93 received call from D. Fletcher. Was grilled re nature of Coos Bay Vocational Services. Was told it was inappropriate in "mixed retail" ... beside a "fine jewelry store." Was questioned about being in the downtown core area. I regretted it appeared we couldn't do business and cautioned XX re civil rights of the Developmentally Disabled.

5/27/93 received call back from XX re concern for giving wrong impression. He reiterated his feelings that I didn't understand the requirements of "mixed retail". I responded that apparently "mixed retail" did not understand the requirements of the Developmentally Disabled. He wanted to know why we had to be in the downtown core area at all. I responded that we were committed to integrating our clients into the community. that we were already there.

5/28/93 XX calls again, extremely concerned about sounding biased, told story about his two small children once in a public school which had a DD person enrolled. I commented "How broadening for them." XX claims that as president of the Downtown Business Ass. he will direct it to aggressively assist us in locating a storefront in the core. He asks us if we would be interested in renting the A.S.I. Voc. building on Virginia in North Bend. I indicate that its location does not meet our needs. he says the Association will help "place us".

6/1/93. Follow-up at Coos County Mental Health, Ginger Swan tells of receiving several agitated calls from XX who is unsettled that the Developmentally Disabled will be/are in the downtown area. . .given that the Downtown business Ass. is interested in "mixed retail" and attracting tourism. Ms. Swan suggests he discus his position with a lawyer before he acts precipitously, and that his first question concern the civil rights of the disabled.

Gary Ostrom,
Program Manager
01-03011

MAY 2 1994

The Honorable Ted Stevens
United States Senate
Washington, D.C. 20510-6025

Dear Senator Stevens:

This is in response to your inquiry on behalf of a constituent regarding the requirements of the Americans with Disabilities Act (ADA) for businesses to accommodate persons with hearing impairments.

Most privately owned businesses offering goods and services to the public are places of public accommodations within the meaning of title III of the ADA. Title III requires places of public accommodations to provide appropriate auxiliary aids and services to persons with hearing impairments where necessary to ensure effective communication, unless doing so would cause an undue burden or a fundamental alteration to the nature of the goods or services offered by the public accommodation. The Department of Justice's title III regulation lists some examples of auxiliary aids and services for persons with hearing impairments: qualified interpreters, notetakers, computer-aided transcription services, written materials, telephone handset amplifiers, assistive listening devices, assistive listening systems, telephones compatible with hearing aids, closed caption decoders, open and closed captioning, telecommunications devices for deaf persons (TDD's), and videotext displays.

The public accommodation should consult with individuals with disabilities in determining what auxiliary aids or services are necessary to provide effective communication in a particular circumstance, depending on the nature of the communication involved and the needs of the particular individual with a hearing impairment. If providing a particular auxiliary aid or service would cause an undue burden, i.e., significant difficulty or expense, the public accommodation must provide an alternative aid or service that does not cause such a burden and that provides effective communication to the maximum extent possible.

FOIA

01-03012

In addition to the general requirements for providing appropriate auxiliary aids and services, there are specific requirements for particular types of businesses. For example, public accommodations, such as hotels and hospitals which offer customers or patients the opportunity to make outgoing telephone calls on more than an incidental convenience basis, must provide TDD's upon request to individuals with hearing impairments. Similarly, hotels and hospitals that provide televisions must provide caption decoders upon request.

In new construction and alterations of places of public accommodations, the ADA requires strict compliance with the ADA Standards for Accessible Design (ADA Standards). The Standards require certain design features to meet the needs of persons with hearing impairments. Such features include visual alarm systems, TDD's and hearing aid compatible telephones, and assistive listening systems in assembly areas.

I have enclosed copies of the title III regulation, which includes the ADA Standards, and the title III Technical Assistance Manual. I hope this information is helpful to you in responding to your constituent.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

Enclosures

01-03013

United States Senate
COMMITTEE ON APPROPRIATIONS
WASHINGTON, DC 20510-6025

April 6, 1994

Sheila F. Anthony
Assistant Attorney General
Office of Legislative Affairs
U.S. Department of Justice
Tenth Street and Constitution Ave. NW
Washington, DC 20530

Dear Ms. Anthony

I have been contacted by a hearing-impaired constituent that is interested in the kinds of measures that businesses must take under the Americans With Disabilities Act in order to accommodate the hearing-impaired. Any information you have on this subject that you could send me would be appreciated. Thank you for your time and attention to this matter.

With best wishes,

Cordially,

TED STEVENS

01-03014

MAY 2 1994

The Honorable Trent Lott
United States Senator
3100 South Pascagoula Street
Pascagoula, Mississippi 39567

Dear Senator Lott:

This letter is in response to your inquiry on behalf of your constituent, Richard Wilkinson, who asks about the applicability of the Americans with Disabilities Act (ADA) to the new construction of a fraternity house on land owned by a university. Mr. Wilkinson's letter states that his fraternity intends to build a two-story building to house 27 occupants, plus an attic, which might be used for study hall and meetings. We have learned from a telephone conversation with Mr. Wilkinson that the university is privately owned.

Under title III of the ADA, an entity that owns, operates, or leases a place of public accommodation, must ensure that ADA standards are met in all of its activities, including the new construction of its facilities. Universities are places of public accommodation. Therefore, if the university owns or operates the fraternity house, or if it has contracted to or intends to own or operate the house in the future, the university is obligated to ensure that the construction of the house meets ADA new construction standards. University-owned fraternity houses, like all other aspects of a university experience, are part of the place of education, and are covered by title III.

If the fraternity house is not owned or operated by the university, and will not be owned or operated by it in the foreseeable future, the house may be exempt from ADA coverage. Even if the house would otherwise fit into one of the categories of places of public accommodation, it is exempt from title III's coverage if it is a private club. Whether a particular facility is a private club is a case-by-case determination, based on a

variety of factors that have been recognized by courts. We cannot make a particular determination of whether Mr. Wilkinson's fraternity house will constitute a private club, but some of the factors to be considered in such a determination are the following:

(1) whether the club is highly selective in choosing members;
(2) whether the club membership exercises a high degree of control over the establishment's operations;
(3) whether the organization has historically been intended to be a private club;
(4) the degree to which the establishment is opened up to non-members;
(5) the purpose of the club's existence;
(6) the breadth of the club's advertising for members;
(7) whether the club is non-profit;
(8) the degree to which the club observes formalities;
(9) whether substantial membership fees are charged;
(10) the degree to which the club receives public funding; and
(11) whether the club was created or is being used to avoid compliance with a civil rights act.

Nonetheless, private clubs are still covered by title III to the extent that they open up their establishments to the general public for a purpose that falls within one of the categories of places of public accommodation. Thus, if the fraternity hosts events that are open to persons other than the fraternity members and their guests, the fraternity must make accessible the public areas during those events. The more often such public events occur, the higher the obligation to make the publicly used areas accessible. If, for example, only one event in several years is open to the general public, a temporary ramp may be sufficient to make the area accessible, while, if the fraternity hosts several such events during the course of a year, it may be obligated to construct a permanent ramp.

I hope this information is useful to your constituent.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

Enclosures

01-03016

Morgan Keegan & Company, Inc.
One Jackson Place, Suite 1010
188 East Capitol Street
Jackson, Mississippi 39201
601/969-0717
WATS 800/967-5650
Members New York Stock Exchange, Inc.

February 18, 1994

Senator Trent Lott
487 Russell Senate Office Building
Washington, D.C. 20510

Dear Senator Lott:

Please refer the attached request for information on the American Disabilities Act of 1990 to the proper governmental office.

Your assistance is being requested in an effort to expedite a reply.

Cordially,

Richard G. Wilkinsons

RGW/ddb

I am the President of a fraternity house corporation planning the immediate construction of a house (not a public facility) for a chapter of this fraternity. This house will be built on college campus land owned by the college.

Differing opinions as to the required compliance with handicap laws have been received. Your prompt ruling would be appreciated as there are no local federal or state agencies to contact.

A two-story house for 27 male occupants is planned with a roof support configuration that would permit possible future use for a study hall and weekly chapter meetings - no bedrooms or restrooms - in the attic area. Handicap requirements (ramp, door and corridor widths, and restroom facilities for residents and female guests at social functions) will be met on the first floor. Currently there are no handicapped members, but there may be in the future. Meetings will be held on the first floor and occupants will study in their rooms.

Local opinions range as follows:

1. Fraternity houses are not public accommodations and are therefore exempt from handicap requirements regardless of possible future handicap membership (none now).

2. If the attic area is finished in the future for use

as a study hall and for chapter meetings, and IF there is a hadicapped member, chapter meetings would have to be held on the first floor, but the attic area could still be used as a study hall and the handicapped member (if a resident) could study in his room as is the case initially.

3. Regardless of handicapped membership, handicap access to the attic area is required if this area is utilized as a study hall or meeting room.

I may be contacted by phone (office):1-800-967-5650 or 601/969-0717 or by mail: P.O. Box 445, Jackson, MS 39205 or FAX 601-961-5958 should further information or discussion be required.

Sincerely,

Richard G. Wilkinson

01-03018

DJ 202-PL-790

MAY 3 1994

Craig Nishimura
Building Department
City and County of Honolulu
650 South King Street
Honolulu, HI 96813

Dear Mr. Nishimura:

I am writing in response to your letter regarding the new construction of the Campbell Industrial Park Fire Station and Aikahi Fire Station projects.

The Americans with Disabilities Act (ADA) authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. The Department does not review designs or drawings for compliance with the ADA. This letter provides informal guidance to assist you in understanding the ADA's requirements. However,

it does not constitute a legal interpretation, and it is not binding on the Department.

Title II of the ADA requires all new facilities constructed by, on behalf of, or for the use of a public entity to be designed and constructed to be "readily accessible to and usable by individuals with disabilities." Title II permits public entities to choose either of two design standards -- the Uniform Federal Accessibility Standards (UFAS) or the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (ADAAG). Your letter indicates that the Honolulu Fire Department has selected UFAS as it design standard for the facilities in question.

In a new facility, UFAS must be met in all areas for which the intended use will require public access or which "may result in employment ... of physically handicapped persons" UFAS 4.1.4(7). Your letter states that "all operational areas of the station are intended for fire fighters use only and will be restricted." Your letter further states that persons with disabilities "obviously cannot be hired for fire fighting positions." The letter describes the restricted areas, not open

cc: Records, Chrono, Wodatch, Magagna, Justesen, MAF, FOIA
udd\justesen\nishimur

01-03019

to public access, to include "kitchens, dorms, fire fighters and officers bathroom/shower facilities, storage areas, laundry, decontamination room, library, physical training areas, work room, meeting room, generator room, etc." Accordingly, you believe that UFAS Section 4.1.4(7) authorizes the exemption of the "restricted areas" from the accessibility standards.

This analysis is not necessarily correct for all of the areas mentioned, even if the fire department could establish that it is lawful under the employment requirements of titles I and II of the ADA to exclude persons with certain types of physical disabilities from firefighter positions. For example, other employees, such as those responsible for cooking, cleaning, laundry, maintenance, and clerical tasks, may be permitted in some or all of the areas in question and it is not likely that the department could demonstrate that persons with physical disabilities are lawfully excluded from those types of positions.

Supervisory personnel and city officials may also have access to such areas. Accordingly, such areas of a new facility should be constructed to meet UFAS.

I hope this information is of help to you. In the future if you need assistance, the Department maintains a telephone information line to provide technical assistance regarding the rights and obligations of individuals, businesses, agencies, and others covered or protected by the ADA. This technical assistance is available by calling 800-514-0301 (voice) or 800-514-0383 (TDD). Use of the information line will ensure a more timely response to questions.

Sincerely,

John L. Wodatch
Chief
Public Access Section

01-03020

(b)(6)

XX

Ms. Elena Wahbeh-Foster
President
American Rehabilitation Centers, Inc.
6724 Troost, Suite 310
Kansas City, Missouri 64131

MAY 3 1994

Dear Ms. Wahbeh-Foster:

This letter is in response to your request for information regarding the obligations under the Americans with Disabilities

Act ("ADA") for private entities that sponsor educational seminars to provide sign language interpreters for hearing impaired persons who attend their seminars.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist you in understanding the ADA requirements. However, it does not constitute a legal interpretation or legal advice, and is not binding on the Department.

Title III of the ADA requires all public accommodations to furnish appropriate auxiliary aids and services where necessary to ensure effective communication with individuals with disabilities. A public accommodation must provide the necessary auxiliary aids unless it can demonstrate that providing the auxiliary aids would fundamentally alter the nature of the public accommodation's services or would result in an undue burden to the public accommodation. Places of education, such as educational seminars, are considered places of public accommodation under the ADA.

Your correspondence indicates that two companies that sponsor educational seminars failed to provide interpreters for your hearing impaired employee. These entities, as public accommodations, are required to provide qualified interpreters only when such interpreters are necessary for effective communication with an individual with disabilities. If, for example, the. information being conveyed at a particular seminar

FOIA

01-03021

is lengthy and complex then the use of a interpreter may be necessary. If the provision of an interpreter by a public accommodation results in a fundamental alteration of the nature of the services provided by the public accommodation or creates an undue burden on the public accommodation, then the public accommodation still must provide an alternative auxiliary aid to ensure effective communication to the maximum extent possible.

I have enclosed for your information a copy of the title III regulation promulgated by the Department of Justice. The provisions regarding auxiliary aids are found in section 36.303

(pp. 35597) of these regulations, and are discussed in the enclosed Technical Assistance Manual in section III-4.3000 (pp. 26-30).

If you feel that an interpreter was necessary to provide effective communication for your employee at the two seminars in question, then you or your employee may file a complaint in Federal court to enforce the Act, or may file a complaint with the Department of justice, which is authorized to investigate allegations of violations of title III in cases of general public importance or a pattern and practice of discrimination. If you or your employee wish to file a complaint with the Department of Justice under title III, you may address it to the Public Access Section, Civil Rights Division, U.S. Department of Justice, P.O. Box 66738, Washington, D.C. 20035-6738.

You also asked what your responsibilities are as an employer to make sure that seminars are handled properly for your employees with disabilities. Title I of the ADA governs the application of the ADA in the employment relationship. Under that title an employer must provide reasonable accommodation for the physical or mental limitations of its otherwise qualified employees with disabilities. For questions regarding the scope of the reasonable accommodation requirement and other requirements of title I, you can contact the U.S. Equal Employment Opportunity Commission, the Federal agency that enforces title I.

I hope this information is useful to you in understanding the requirements of the ADA.

Sincerely,

John L. Wodatch
Chief
Public Access Section

Enclosures

01-03022

AMERICAN
November 22, 1993
REHABILITATION

CENTERS

Attn: John Wodatch

American Disability Act
Civil Rights Division
United States Department of Justice
P.O. Box 66738
Washington D.C. 20035-9998

Dear Sir:

Accept this letter as an expression of concern, placing of a formal complaint and the need for me to receive further direction regarding my obligations and responsibilities, if any are applicable.

I am a Physical Therapist and owner of a company providing rehabilitation services by physician referral. My company is located in the State of Missouri and the company employs approximately 30 individuals, one of whom is deaf.

My therapist who is deaf had requested to travel out of state to an educational seminar--in fact on two occasions. The first occasion was a total disaster and the company sponsoring the seminar did not produce an interpreter. The second seminar, again, was a disaster and frankly embarrassing to both me and my employee. We requested an interpreter in August, 1993 for a seminar to be held in October, 1993. The company failed to provide the interpreter and failed to notify us of this until the evening before. Travel had already been scheduled and my employee was on her way. Obviously, she did not actually "go in" into the seminar as she could not read lips for 16 hours and aspects of the seminar were with slides and in a dark room. She requested the written material so she may at least read it and was denied. It was not until a formal letter of complaint was made that the written material was submitted. The company sponsoring the seminar did refund the registration fee, but no other expenses.

My point of concern is now focused for future rather than the past. My questions are:
1. who is responsible for the interpreter when out of state seminars are scheduled?
2. what can be done to assure that my employee is not faced with another situation such as these?
3. what responsibilities do I have as the employer to assure that out of state functions such as seminars are handled properly for my staff? Currently, on premises any formal meetings will have an interpreter for my employee and a TDD on premises for my employee's use.
01-03023

Page Two
November 122, 1993

The two companies that have sponsored seminars and not produced availability of interpreter
services for my staff are listed:

XX

(b)(6)

XX

Should you need further information from me, do not hesitate to call on me directly. I may be reached at the following address and phone number:

Elena Wahbeh-Foster, PT MS
President
American Rehabilitation Centers, Inc.
6724 Troost Suite 310
Kansas City, Missouri 64131
(816) 361-3135

Thank you for your time and attention to this matter. I look forward to a response soon and if I may expedite the process for you in any way, do not hesitate to contact me.

Sincerely,

Elena Wahbeh-Foster, PT, MS
President

01-03024

June 2, 1993

AMERICAN
XX
REHABILITATION

CENTERS
(b)(6)

Dear XX

We have been making great efforts to touch base with you for the past several weeks and regret that I personally was not able to speak with you on one previous occasions. I am,however, happy to have finally gotten to speak to you on this day. As you will recall, our Facility Coordinator, Dawn Meyer, touched base with you earlier and had a conversation regarding, your seminar in XX
, Missouri which will take place XX In specific, Dawn was interested in obtaining, information regarding your policy with regard to an interpreter for your seminar and/or some sort of "close-caption" for the hearing impaired. At the time of your phone call with Dawn, the information was relayed that you did not feel it to be your obligation to provide this accommodation.

In an effort to pursue the attendance of our staff member, we were making ourselves ready to make the investment and began researching the availability of an interpreter. As our conversations progressed, we were advised by various agencies for the hearing impaired as well as government offices that although our efforts were benevolent, they were not necessary. Evidently, our resources advise that when and if a company presents itself to the public, then this company must abide by ADA regulations and provide access to the impaired and/or handicapped. Thus, "every road leads us back to you" the company sponsoring, the seminar.

We are still interested in having our staff attend and along with our staff, we have one individual who is deaf and will need an interpreter. Our agencies advise that actually two will be needed as one person is only able to "sign" for 30-40 minutes and then rest to avoid repetitive motion disorders.

Please respond to my letter as soon as you are able to and prior to the seminar. I do regret that I was unable to personally speak with you prior to the registration deadline of May 10, but feel since we made efforts as early as May 1 to reach you that an extension is more than appropriate.

Thank you for your time and attention to this matter.

Sincerely,

01-03025

August 26, 1993

AMERICAN

REHABILITATION

CENTERS
XX (b)(6)

To Whom it May Concern:

American Rehabilitation, Inc., is a certified rehabilitation agency, employing 25 professionals to include physical therapists, physical therapy assistants, occupational therapists, occupational therapy assistants and speech pathologists.

We encourage all of our employees to attend educational seminars, for the betterment of self and company.

One of our employees has requested to attend your seminar "Lower-Limb Prosthetics Update" in xx on xx (b)(6)
This individual is deaf and will require an interpreter. When I talked with your organization last week, I was informed that you do not have a list of interpreters, nor do you provide this type of service.

I have been informed by the Association for the Hearing Impaired that the ADA (American Disabilities Act) provisions must be made available by the provider of services/products, for the disabled.

Therefore, we are requesting your organization to be prepared for this therapist's attendance by providing an interpreter.

I would appreciate a response from your company regarding this provision so that I can proceed with scheduling educational programs for our employees.

Yours truly,

Dawn E. Meyer, RN
Facility Coordinator

01-03026

ARC, Inc.
[American Rehabilitation]

Travel/Seminar Request & Expense Report

[FORM]

Employee Name: XX Position: P.T. Assistant
Seminar Name: LOWER LIMB PROSTHETICS UPDATE Date(s):

Location of Seminar: XX (b)(6)
Subject/Objective of Your Attendance (benefits to ARC, Inc.):

There are many new components are available for kids and adults with lower Limb amputations.
Learning how to distinguish among the new energy storing/releasing prosthetic feet. It will be benefitted for geriatric at Swope Ridge Geratric Center.

Estimated Expense of Request: Actual Expense Incurred:
Registration: $215
Travel*: $179 round trip airfare
Meals: 0
Lodging: 0
Other:
Total: $394 Total:
Advance Requested: Date Required:
Desired Itinerary: Date Departure: Time of Departure:
From: K.C. XX 5:10 PM
To: XX (b)(6)
From: XX XX 6:01 PM
To: K.C.
Employee Signature: XX (b)(6) Date: 8/27/93
Approved/Disapproved: Date:
Supervisor's Signature:
Comments:

*Facility will arrange air travel as requested in itinerary. Please note, lesser of air coach or mileage will be reimbursed.

Revised 1/93

01-03028

LOWER-LIMB PROSTHETICS UPDATE - REGISTRATION FORM

Name XX (b)(6) Profession: PT PTA xx CPO
LAST FIRST

Home Address XX
STREET CITY STATE ZIP

Employer/Office AMERICAN REHABILITATION CENTER, INC.

Home Phone ( ) Business Phone ( )

Check Date And Location You Will Be Attending: Make check payable to
XX XX
(b)(6)

01-03027

LOCATIONS AND ACCOMMODATIONS

XX

Room Rates: $85.00 Single or Double Deadline: XX

XX

Room Rates: $130.00 Single or Double Deadline: XX

XX

Room Rates: $98.00 Single or Double Deadline: XX

BLock of rooms has been reserved for each location above. Contact the hotel directly Advanced Educational Seminars, Inc. to receive the group rates listed.
After the servatons and group rates will be confirmed on a space available basis.

EDUCATIONAL CREDIT:

REGISTRATION

FEES:
XX
$215 postmarked on/before XX
$245 postmarked after XX
XX
$215 postmarked on/before XX
$245 postmarked after XX
XX
$215 postmarked on/before XX
$245 postmarked after XX

The registration fee includes all course sessions breaks, continental breakfasts and a comprehensive course handbook.

All requests for refunds must be submitted in writing and postmarked 2 weeks prior to the seminar date. Requests for refunds made 2 weeks before the seminar date will be subject to a $50 administrative fee. NO refunds will be made during the 2 weeks immediately prior to each seminar.

A confirmation letter, map of the area and information regarding ground transportation will be sent

upon receipt of your registration form and fee.

XX
FOR ADDITIONAL INFORMATION

Please Contact: XX
Seminars for therapists, sponsored by a therapist

XX XX

01-03029

XX (b)(6)

November 2, 1993

XX PTA
XX
Kansas City, MO 64113

Dear XX

Enclosed please find the company check from American Rehab-
ilitation Center, Inc. for your registration fee for the
seminar "LOWER-LIMB PROSTHETICS UPDATE" held in XX (b)(6)
XX I have also enclosed a copy of the
handout from the seminar which I hope you find of some use
to you.

I truly apologize for all the problems that arose with our
registration for this seminar. I realize that although I
made numerous attempts to find an interpreter for you, none
of these materialized, and hope that at least your time spent
with your sister helped to make your weekend an enjoyable one.

Please accept my sincere apologies for your inconvenience.

Sincerely,

XX

XX
Enc.

(b)(6)

XX
01-03030

DJ 202-PL-786

MAY 3 1994

Mr. Warren T. Hanna
Executive Director
Hard of Hearing Advocates
245 Prospect Street
Framingham, Massachusetts 01701

Dear Mr. Hanna:

This letter is in response to your recent letter inquiring whether individuals who sell hearing aids have an obligation under the Americans with Disabilities Act (ADA) to advise customers about the option of installing a telecoil device in the hearing aids. You indicate that such devices can offer advantages to the user where assistive listening systems are available and in other circumstances.

The Americans with Disabilities Act (ADA) authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informational guidance to assist you in understanding the ADA's requirements. However, it does not constitute a legal interpretation, and is not binding on the Department.

Title III of the ADA does not require sales establishments to alter their inventory to carry accessible or special products that are designed for persons with disabilities. When such

goods, such as hearing aids, are offered, the ADA does not require the sales establishment to educate consumers about all the use options or other products that might be of benefit.

The ADA is a civil rights statue that is intended to prohibit discrimination against persons with disabilities in many aspects of their lives. It is not structured to guarantee that the most desirable or beneficial services and products possible will be made available to persons with disabilities. The circumstance you describe where salespersons fail to notify

cc: Records, Chrono, Wodatch, Magagna, MAF, FOIA
udd\bwms\hanna.jam

hearing aid purchases that telecoil devices will be very useful to them does not constitutee discriminatory conduct in violation of title III.

I hope that this information is responsive to your question.

Sincerely,

John L. Wodatch
Chief
Pubic Access Section

T. 5-3-94
DJ 202-PL-754

May 4 1994

Mr. Curt Wiehle
Accessibility Specialist
Minnesota State Council on Disability
121 East Seventh Place, Suite 107
St. Paul, Minnesota 55101

Dear Mr. Wiehle:

I am responding to your letter concerning the Americans with Disabilities Act (ADA).

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities that have rights or responsibilities under the Act. Pursuant to that authority, this letter provides informal guidance to assist you in understanding the ADA. However, this technical assistance does not constitute a legal interpretation of the statute and it is not binding on the Department.

Your letter asks whether the State of Minnesota's building

code complies with the ADA Standards for Accessible Design (28 C.F.R. part 36, Appendix A) regarding grab bars in toilet stalls. The Minnesota code requires accessible toilet stalls to include horizontal grab bars 27-29 inches above the floor and vertical grab bars 3 inches above the horizontal bars. The ADA Standards, by contrast, require horizontal grab bars 33-36 inches above the floor and do not address vertical bars. See ADA Standards for Accessible Design, section 4.17 and figure 30.2

The ADA Standards are supported by substantial research regarding the best placement for grab bars. For example, research conducted on behalf of the United States Department of Housing and Urban Development indicates that both walking aid users and wheelchair users preferred horizontal grab bars at heights of 33-36 inches rather than lower bars. See Steinfeld, Schroeder, and Bishop, Accessible Buildings for People with Walking and Reaching Limitations, HUD-PDR-397, prepared by Syracuse University for the U.S. Department of Housing and Urban Development, Office of Policy Development and Research (April 1979) (excerpt attached). Therefore, it appears that Minnesota's lower horizontal grab bars may provide less accessibility than the ADA Standards.

cc: Records, chrono, Wodatch, Blizard, Hill, FOIA, Friedlander
n:\udd\hille\policylt\wiehle.ltr

01-03033

The ADA Standards, however, provide only minimum guidelines for achieving accessible building design. Jurisdictions are, of course, free to exceed these minimum standards, and I applaud your desire to do so. In addition, the Standards allow some flexibility. Section 2.2 provides: "Departures from particular technical and scoping requirements of this guideline by the use of other designs and technologies are permitted where the alternative designs and technologies used will provide substantially equivalent or greater access to and usability of the facility." Therefore, the grab bar configuration proposed by the Minnesota code will be acceptable only if it provides access and usability substantially equivalent to or greater than that provided by the configuration in the ADA Standards.

The Department of Justice will not certify any specific variation from the Standards as being equivalent, except in the context of a formal request for code certification pursuant to 28 C.F.R. 36.602. However, the use of alternate designs is not

prohibited if the available data shows that such alternate designs are, in fact, substantially equivalent to the Standards. In any ADA enforcement action, the covered entity would bear the burden of proving the equivalency of any alternate design.

I hope this information is helpful, and I hope this letter fully responds to your questions.

Sincerely,

John L. Wodatch
Chief
Public Access Section

Enclosure

01-03034

Minnesota State Council on Disability

December 8, 1993

Mr. John Wodatch
Department of Justice
Public Access Section
Civil Rights Division
P.O. Box 66738
Washington, D.C. 20035-6738

RE: Grab Bar Configuration - State of Minnesota

Dear Mr. Wodatch:

The State of Minnesota is currently involved in the process of revising its building code requirements as they relate to accessibility. Of

particular concern, and an item which has developed into a major stumbling block, is the State's requirement for grab bar location at the toilet. The State of Minnesota has, for a period of 15 years or more, required both a horizontal and vertical grab bar at the toilet. Since this requirement differs from ADAAG guidelines, the question has arose as to how our guidelines will be received by the Department of Justice. It is very difficult for the State of Minnesota to continue in this process without some indication or clarification from Justice.

A diagram of our proposed guideline is enclosed. Essentially, we have lowered the horizontal grab bar from 33"-36" to 27"-29" and added a vertical grab bar component. The State Council on Disability strongly feels that this configuration provides equivalent facilitation and is in fact more restrictive than ADAAG. Our argument is that the two bars serve two different populations of individuals with disabilities.

The horizontal bar is used primarily by persons who use wheelchairs. This population requires that the point of leverage be just above the seat height of the wheelchair. We also recognize the need for the toilet paper dispenser to be located below the horizontal grab bar,so that it does not interfere with usage of the grab bar. Therefore, the 27"-29" range in mounting height of the horizontal grab bar.

To compensate for lowering the horizontal grab bar, and to facilitate ambulatory individuals, a vertical bar is used in conjunction with the horizontal bar. The vertical grab bar is mounted approximately 12" in front of the toilet bowl with a minimum of 3" clearance between the horizontal bar and the lower end of the vertical bar (this is to allow someone to slide their

121 E. 7th Place; Suite 107; St. Paul, MN 55101; (612) 296-6785; 1-800-945-8913 (V/TDD); Fax (612) 296-5935

hand along the horizontal bar without interruption). The vertical bar is used primarily by ambulatory individuals who require assistance going from a standing position to a sitting position, and vice versa. With the wrist in a vertical position on the vertical grab bar, an individual has much more strength and leverage to raise or lower oneself.

We feel that this combination grab bar configuration serves an expanded population of individuals with disabilities. If the horizontal bar is raised to the 33"-36" ADAAG range, many wheelchair users will not be able to benefit from its provision because the raised leverage point will require too much strength. Likewise, ambulatory individuals have a

more difficult time raising or lowering themselves with their wrists in a horizontal position.

The State of Minnesota has held 12 informational sessions on its proposed building code. Much discussion has occurred regarding the grab bar configuration. There are legitimate liability concerns involved in deviating from ADAAG without comment from your office. Although builders, architects and building officials concur with the logic of the grab bar configuration, the liability concerns remain.

We are basically at a stand still in this process. It will be very difficult for the State of Minnesota to continue with its efforts to develop a building code that is in compliance with ADAAG without resolving this grab bar issue. In order to proceed with the code change without comment from the Department of Justice, we would have to concede our grab bar configuration and follow ADAAG. A significant number of individuals with disabilities would be greatly disadvantaged if they had to loose their grab bar configuration. The Council on Disability has received many letters of support from the disability community regarding this issue. Comment from your office would be greatly appreciated and is urgently needed.

We do not feel that the inclusion of the vertical grab bar is in question as it clearly exceeds ADAAG in that it is not required. What we must have answered is whether lowering the horizontal grab bar and including the vertical component would be considered equivalent facilitation by the Department of Justice.

Thank you in advance for your consideration in this matter. Please contact me as soon as possible with any comments, questions or concerns.

Sincerely,

Curt Wiehle
Accessibility Specialist

enclosure

01-03036

DIVISION AND MN STATE COUNCIL ON DISABILITY

Dimension to centerline of grab bar

(full page diagram)

01-03037

T. 5-3-94
DJ 202-PL-596

MAY 4 1994

Ms. Linda A. Bowlby
President
The World Sidesaddle Federation, Inc.
P.O. Box 1104
Bucyrus, Ohio 44820

Dear Ms. Bowlby:

Your letter, on behalf of the World Sidesaddle Federation, Inc., regarding the Americans with Disabilities Act (ADA) was referred to me by the United States Commission on Civil Rights. I apologize for the delay in responding.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities that have rights or responsibilities under the Act.. Pursuant to that authority, this letter provides informal guidance to assist you in understanding the ADA. However, this technical assistance does not constitute a legal interpretation of the statute, and it is not binding on the Department.

Your letter asks about the application of the ADA to events sponsored by horse show and horse breed associations. Title III of the ADA prohibits discrimination on the basis of disability by private entities that own, operate, lease, or lease to places of public accommodation. Horse showing events, if they are open to public participation, may be considered to be places of exercise or recreation covered by the Act.

To the extent that participation in horse showing events is covered by title III, the operator of the event is required to ensure that individuals with disabilities have an opportunity to participate in, and benefit from, the event that is equal to the opportunity afforded to people without disabilities. In order to fulfill this obligation, the operator may be required to make reasonable modifications in its policies if such modifications are necessary to afford an individual with a disability the opportunity to participate in the event, unless such modifications would fundamentally alter the nature of the event.

cc: Records, Chrono, Wodatch, Blizard, Hill, FOIA, Friedlander
n:\udd\hille\policylt\bowlby.ltr

01-03038

For your further information, I am sending under separate cover, a copy of the ADA Handbook, which contains a copy of the ADA and the regulations implementing title III of the ADA, and the Department of Justice Title III Technical Assistance Manual. I hope this information is helpful to you and that this letter fully responds to your inquiry.

Sincerely,

John L. Wodatch
Chief
Public Access Section

01-03039

THE WORLD SIDESADDLE FEDERATION, INC.
Formerly Mid-West Sidesaddle Association

Civil Rights Commission
1121 Vermont Ave., NW.
Washington, D.C. 20425

Dear Sirs:

We are seeking information about the Federal Rehabilitation Act particularly section 504, and the recently passed Americans with Disabilities Act. Our association, The World Sidesaddle Federation, Inc., has been working with several horse show and horse breed associations to change various rulings that they currently have that will not allow the use of the sidesaddle at their sponsored events. Rules that disallow the use of the sidesaddle prevent those that have to ride aside because of some physical limitation to participate in approved events. Thus the disabled rider can not earn points or awards that are offered by these show and breed associations.

WSFI needs to know if these federal acts cover this type of discrimination. We have not been able to obtain copies of these acts and are not familiar with the wording. Could you provide us with copies of the necessary sections that would apply to our particular situation or advise us on how these or similar federal regulations might affect the disable rider that requires the use of the sidesaddle

Thank you for your time and assistance

Sincerely yours,

Linda A. Bowlby
President/WSFI

P.O. Box 1104 Bucyrus, Ohio 44820 419-284-3176

01-03040

T. 4/26/94
MAF:AMP:ca
DJ 204-50-0

MAY 5, 1994

The Honorable Alfonse M. D'Amato
United States Senate
Washington, D.C. 20515-3202

Dear Senator D'Amato:

This letter responds to your recent inquiry on behalf of your constituent, the Honorable Robert J. Valachovic, the Mayor of the City of Johnstown, New York (the City). On behalf of the City, Mayor Valachavic is seeking relief from meeting certain requirements set forth in the regulations that implement title II of the Americans with Disabilities Act of 1990 (ADA). The Mayor also requests assistance in obtaining funding to comply with the ADA.

Title II of the ADA prohibits discrimination against qualified individuals with disabilities on the basis of their disability in services, programs, or activities conducted by a State or local governmental entity such as the City of Johnstown. A copy of the regulation implementing title II is enclosed for your convenience.

In recognition of the fact that covered entities might require some time to come into compliance with any structural alterations required by the ADA, the Department's title II regulation requires covered entities to make such changes as expeditiously as possible, but in no event later than January 26, 1995, three full years after the effective date of title II. The Department of Justice does not have the authority to waive any applicable requirements imposed by the ADA or to extend the time frames for meeting such requirements.

According to the information provided to you by Mayor Valachovic, the city has been advised that it will need to spend approximately $640,000 to meet ADA requirements, funds that it does not have in its budget. We assume that this estimate relates to physical alterations that the city believes necessary to make its existing facilities accessible.

cc: Records CRS Chrono MAF Pecht.congress.93.d'amato
McDowney FOIA
01-03041

With respect to existing facilities, the focus of title II of the ADA and its implementing regulation is to ensure that, to the extent the City provides programs, services, and activities to the public, they are readily accessible to and usable by individuals with disabilities. The concept of program access is discussed on pages 19-22 of the enclosed title II Technical Assistance Manual.

Providing access to its programs, services, and activities does not mean, however, that the City is necessarily required to make each of its existing facilities accessible. In some situations, providing access to facilities through structural methods, such as the alteration of existing facilities and the acquisition or construction of additional facilities, may be the most efficient method of providing program accessibility. Can the other hand, nonstructural methods, such as the acquisition or redesign of equipment, the assignment of aides to beneficiaries, and the provision of services at alternate accessible sites, may be acceptable alternatives. Thus, the City may wish to reevaluate its planned structural alterations to determine whether they are, in fact, necessary to achieve program access.

With respect to the costs of complying with the ADA, the City of Johnstown is not required to make alterations to its existing facilities, if the City can demonstrate that the expense of making the facilities accessible would result in undue financial and administrative burdens. See 35.150(a)(3) of the enclosed title II regulation. Of course, in those circumstances where a public entity believes that proposed physical alterations to its facilities would result in undue financial and administrative burdens, the public entity has the burden of proving that compliance with title II's program accessibility requirements would result in such burdens.

The decision that any proposed alterations would result in undue financial and administrative burdens must be made by the head of the public entity or his or her designee after

considering all the resources available for use in the funding and operation of the service, program, or activity. The decision must be accompanied by a written statement of the reasons for reaching the conclusion that undue burdens would occur. If alterations to facilities would result in such burdens, the public entity must take other actions that would not result in such hardships but that would, nevertheless, ensure that individuals with disabilities receive the benefits or services provided by the public entity to other individuals. These requirements are also explained in 35.150(a)(3) of the title II regulation.

Finally, we note that limited federal funding for barrier removal may be available in some instances. The Department of Housing and Urban Development (HUD) provides community

development block grants designed to assist low and moderate income households and communities. These grants may be used to remove architectural barriers that restrict accessibility to publicly owned and privately owned buildings, facilities, and improvements. For information on applying for a community development block grant, Mayor Valachovic should contact HUD's Office of Block Grant Assistance at (202) 708-3587.

We hope this information is helpful in responding to your constituent.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

Enclosures (2)

JOHNSTOWN PUBLIC LIBRARY
38 South Market Street
Johnstown, New York 12095
(518) 762-8317

February 28, 1994

To: Mayor Dr. Robert Valacnovic
Alderman-at-Large Jack Pape
Alderman Nicholas Cannizzo
Alderman John DiSpirito
Alderman Robert Kumoan
Alderman Sam Greco

FROM: Barbara Germain

RE: Legislative Grant

On February 14, 1994 Board Member Gerry Christman and I met with Senator Farley to discuss the Library renovation and expansion plans. The Senator invited us to submit a proposal for a legislative grant by March 1, 1994. Enclosed is a copy of our proposal with letters of support from ten members of the community. We are very, proud of the response that we received from Patrons and community leaders which demonstrates the value

of the Library to the citizens of Johnstown.

We are hopeful that Senator Farley will be able to direct funds to the Library project. While we cannot guarantee that a grant will be forthcoming. We are this avenue in a continuing, effort to seek additional funds for renovation and expansion of the Library.

ENC.
CC: Frank Kovarik
Susan Palmer Johnson
Board of Trustees

01-03044

JOHNSTOWN PUBLIC LIBRARY
38 South Market Street
Johnstown, New York 12095
(518) 762-8317

February 24, 1994

Honorable Hugh Farley
Legislative office Building
Room 412
Albany, New York 12247

Dear Senator Farley:

Thank you for the opportunity to submit a proposal for a legislative grant. As Chairman of the Subcommittee on Libraries you are well aware of the challenges that public libraries face, particularly in the area of facilities management. Our community has made it clear that they would like us to remain in our 1902 Carnegie building which is a rich resource in the downtown environment. We therefore are undertaking an estimated $2,000,000 renovation and expansion long range program.

The Board of Trustees with the assistance of Architecture + of

Troy. New York has divided the initial Phase into two components. Phase 1, Part I addresses compliance with the Americans with Disabilities Act and is estimated to cost $500 - $600,000. The following elements of new construction and renovation to the existing facility will be included in Part 1:

1. New handicap entrance
2. New elevator to provide 3-floor access
3. New accessible reference shelving
4. New accessible circulation desk
5. New accessible bathrooms.

Phase 1, Part 2 addresses the correction of deficiencies in the existing building which are considered high priority. They are estimated to cost $225,000 and include exterior and interior tasks such as:

1. Window replacement
2. Foundation repair
3. Masonry repointing
4. Interior wall repair and/or replacement
5. Lighting system update
6. Installation of new heating system

01-03045

JOHNSTOWN PUBLIC LIBRARY
38 South Market Street
Johnstown, New York 12095
(518) 762-8317

The Mayor and Common Council recognize the worthiness of Library renovation and expansion, but face numerous State and Federal mandates which stretch the community's tax base to the limit. We therefore respectfully request a legislative grant of $100,000 to assist us in the funding of our project. Other avenues of funding are being explored, including an application for a Library Services and Construction Act grant. Enclosed are letters of support written by a representative sampling of community leaders and library users.

Thank you again for the opportunity to present our proposal. We are confident that you will assist us whenever possible. If you have any questions, please do not hesitate to telephone me at 762-9776. Also, we would be pleased to offer you a tour of the facility in order to more clearly illustrate the renovation and expansion needs. We look forward to hearing from you.

Sincerely yours,

Barbara Germain
Director

Enc.
CC: Assemblyman Anthony Casale

01-03046

JOHNSTOWN PUBLIC LIBRARY
38 South Market Street
Johnstown, New York 12095
(518) 762-8317

February 7, 1994

TO: Mayor Dr. Robert Valachovic
Alderman-at-Large Jack Papa
Alderman Nicholas Cannizzo
Alderman John DiSpirito
Alderman Robert Kumpan
Alderman Sam Greco

From: Barbara Germain, Director

RE: Additional Phase I Repairs

As a follow-up to our January 31, 1994 meeting, please find attached a listing of both interior and exterior renovation work Architecture + has identified as needing to be completed at the Library. The Library Board believes that each of these Projects are necessary and should be completed. However, they were not included in the proposed Phase 1 project in order to keep the project cost down.

The Library Board would support a decision by the Common Council to include any of these work tasks into the Phase I project.

If you would like additional information regarding any of these proposed work tasks, please contact me and I will provide it for you.

ENC.
CC: Library Board of Trustees
Frank Kovarik
Charles Ackerbauer
Architecture +

01-03047

JOHNSTOWN PUBLIC LIBRARY
38 South Market Street
Johnstown, New York 12095
(518) 762-8317

February 11, 1994

TO: Mayor Dr. Robert Valachovic
Alderman-at-Large Jack Papa
Alderman Nicholas Cannizzo
Alderman John DiSpirito
Alderman Robert Kumpan
Alderman Sam Greco

From: Barbara Germain, Director

RE: Phase I - ADA Compliance

I would like to take the opportunity to follow-up on my memorandum of February 7, 1994. As you know, our presentation of the Phase I proposal on January 31, 1994 emphasized compliance with the Americans with Disabilities Act. During the course of the meeting several additional interior and exterior deficiencies were outlined. As a result of your request, Architecture + transmitted a list of deficiencies with corresponding cost estimates. As stated previously, the Library Board of Trustees would support a decision to include any or all of the itemizes renovation tasks into the Phase 1 project. A review of the deficiencies with Architecture + may assist you in placing renovation tasks in priority order.

Based upon radio and newspaper reports, a special Council meeting may be called to focus on the Library. As always, I and Library officials stand ready to meet with you or answer any additional questions that you may have. Thank you again for your consideration in this matter.

CC: Library Board of Trustees
Frank Kovarik
Charles Ackerbauer
Architecture +

01-03048

JOHNSTOWN PUBLIC LIBRARY
38 South Market Street
Johnstown, New York 12095
(518) 762-8317

February 1, 1994

TO: Mayor Dr. Robert Valachovic
Alderman-at-Large Jack Papa
Alderman Nicholas Cannizzo
Alderman John DiSpirito
Alderman Robert Kumpan
Alderman Sam Greco
From: Barbara Germain, Director
RE: Phase I Project

On behalf of the Board of Trustees I would like to thank you for taking the time to meet with us and discuss the proposed plan to bring the Library into compliance with the Federal mandate known as the Americans with Disabilities Act (ADA). The plan presented represents the outcome of 6 months of diligent reviews and evaluations by Library Trustees and Staff and Architecture +. It is the most cost effective option for addressing ADA and building code deficiencies.

The next steps in the decision making process are for the Common Council to:

1. Determine what work you would like to be included in the Project. To that end, I will be sending you shortly a listing of all other building deficiencies that are known to exist but were not included by the Board of Trustees in the proposed Phase I

plan. We ask that the Common Council review the listing and determine which of these work tasks you may want to include in the Project. The Library Board encourages the Council to include these items in the Project because they represent serious deficiencies that need to be addressed.

Once the exact scope of the Project is defined, an asbestos survey could be completed. As was explained at the meeting, the Library

Board does not want to proceed with conducting an asbestos survey until the specific areas of the building to be renovated are defined. This will allow the survey to focus only on those areas. This will help to hold down the cost of the survey. The cost estimates presented on January 31 did not include any funds for an asbestos survey or asbestos removal work.

2. Pass a resolution endorsing the Project, which will authorize Architecture + to proceed with the final design, and authorize the financing for the Project.

3. Determine what work, such as site work, could be completed in-house by the City's Department of Public Works and to project a schedule to have the work completed.

The timeline in which these decisions are made is important. As was presented to you at the meeting, it will take approximately 7 months to proceed from the final decision to the start up of construction. If the desire is to start construction in 1994 and have it proceed through the winter of 1994/95, construction should start by October 1, 1994. This would allow the addition to be enclosed in time to allow interim work to continue through the winter. In order for this timeline to occur, a decision to proceed to final design should be made around March 1, 1994. The longer it takes beyond March 1, 1994 to make a decision, we are jeopardizing the ability to allow the project to proceed through the 1994/95 winter without higher construction costs being

incurred to pay for winter protection measures.

The Library Board of Trustees and Staff are prepared and ready to provide any additional information you may need or desire to help in your decision making process. Please feel free to contact me at any time for any information. Thank you for your continued interest and commitment to the Library. I look forward to working with you on finalizing the scope of the Phase I Project.

CC: Frank Kovarik
Charles Ackerbauer
Board of Trustees
Architecture +

01-03050

MAY 11 1994

The Honorable Paul D. Wellstone
United States Senator
2550 University Ave. West
Suite 100 North
St. Paul, Minnesota 55114

Dear Senator Wellstone:

This letter is in response to your inquiry on behalf of the Center for Learning and Adaptive Student Services ("CLASS") at Augsburg College in Minneapolis, Minnesota, regarding the Americans with Disabilities Act of 1990 ("ADA"). CLASS representatives expressed concern over documentation required by the Educational Testing Service's ("ETS") for students with disabilities registering to take the Pre-professional Skills Test ("PPST") and the Graduate Records Examination ("GRE").

In its administration of the PPST and the GRE to students with disabilities, ETS is subject to two civil rights statutes: the Americans with Disabilities Act of 1990, 42 U.S.C. 12101 et seq., and the Rehabilitation Act of 1973, 29 U.S.C. 794, as amended. The Department of Education and the Department of

Justice share the responsibility of enforcing these statutes.

It is our understanding that the Office for Civil Rights at the Department of Education has investigated ETS' documentation requirements regarding the PPST. The changes in ETS' documentation policies and procedures for the PPST referenced in your letter may have been influenced by these enforcement efforts. All inquiries into ETS' documentation requirements for the PPST should be directed to:

Norma V. Cantu
Assistant Secretary for Civil Rights
U.S. Department of Education
400 Maryland Avenue, SW.
Washington, D.C. 20202

cc: Records, Chrono, Wodatch, Magagna, Mobley, McDowney, MAF, FOIA
udd\mobley\congress\wellston

01-03051

Based on your inquiry and other complaints, we have opened an investigation into ETS' documentation requirements with respect to the GRE and other examinations it administers such as the Scholastic Assessment Tests. Please refer specific inquiries to:

Mary Lou Mobley
Attorney, Public Access Section
Civil Rights Division
United States Department of Justice
P.O. Box 66738
Washington, D.C. 20035-5738

I hope this information will be helpful to you in responding to your constituents.

Sincerely,

Sheila F. Anthony
Assistant Attorney General

01-03052

United States Senate
WASHINGTON, DC 20510-2303

March 4, 1994

Attorney General Janet Reno
Department of Justice
Tenth & Constitution Avenue NW
Washington, DC 20585

Dear Ms. Reno:

I am writing to you in regard to a matter that has been brought to my attention by the Center for Learning and Adaptive Student Services (C.L.A.S.S.) at Augsburg College in Minneapolis, Minnesota.

The coordinator of the C.L.A.S.S. program has grave concerns about the treatment of students with disabilities who have asked for special testing accommodations from the Educational Testing

Services in Princeton, New Jersey. The specific tests in question are the PPST (Pre Professional Skills Test for individuals who want to be licensed as teachers) and the CRE (Graduate Record Examination for students planning to pursue graduate studies). The students with disabilities who have applied to ETS to take these tests by special arrangement have had to meet requirements that appear to be unduly difficult and perhaps discriminatory.

In the past, ETS has required students with disabilities who wished to use special accommodations to submit the same application as non-disabled students. They also required a statement from a professional in the field attesting that the claimed disability had been diagnosed and documented and that the student had utilized similar accommodations in her or his current educational setting. This information was usually readily available in the student's file. Once the student followed these procedures, permission to test was generally granted in a timely manner, and the student was allowed the accommodations requested.

Students with disabilities from Augsburg College who have attempted to take the test recently have encountered new and onerous obstacles. ETS has told them that they must provide newer and additional documentation before being granted special accommodations. When C.L.A.S.S. contacted ETS for clarification, they were told that ETS was changing its policies and now wanted copies of original documentation of the student's disability, which should include a list of specific accommodations needed for the test. These requirements are not stated in the PPST (now PRAXIS) application materials which ostensibly cover registration

procedures through August 6, 1994. They also appear to be unnecessary and illogical: original diagnostic reports and documentation, typically completed several years ago and under vastly different circumstances, would be unlikely to contain a list of special testing accommodations needed by the student several years in the future, and quite probably would not accurately reflect the student's present needs.

These new requirements, which are contrary to the requirements delineated in ETS application materials, have proved to be considerable obstacles to students with disabilities from Augsburg College who have been attempting to secure the accommodations to which they are entitled under Section 504 of

the Americans with Disabilities Act. Apparently, students from other states have encountered similar difficulties. Dr. Jane Jarrow of the Association on Higher Education and Disability, a national organization, has written a letter to Ms. Jeanette Lim of the Department of Education's Office of Civil Rights. Dr. Jarrow details the consequences of ETS's unclear and difficult requirements for students with disabilities and questions their usefulness. I would like to add my voice to hers.

I would appreciate it if you would review this matter and apprise me of your findings. I fear that students with disabilities, as a consequence of these new requirements, are being denied access to tests that are crucial for their future academic and professional prospects. You may direct your response to Sue Abderhlden, a member of my staff, at:

2550 University Ave. West
Suite 100 North
St. Paul, MN 55114
612/645-0323

Thank you for your assistance.

Sincerely,

David Wellstone
United States Senator

PDW:sa:jw

01-03054

MAY 12 1994

The Honorable Pete V. Domenici
United States Senator
Room 302
New Post Office Building
120 South Federal Place
Santa Fe, New Mexico 87501

Dear Senator Domenici:

This letter is in response to your inquiry on behalf of your constituent, (b)(6) XX who is asking for assistance in her efforts to get captioning or films in Santa Fe movie theaters.

Movie theaters are "places of public accommodation," and, therefore, are covered by the Americans with Disabilities Act (ADA) and 36.104 of the title III regulation. Public accommodations are required to provide appropriate auxiliary aids and services to persons who are deaf or who have hearing impairments. However, the legislative history of the ADA indicates that this requirement does not mandate open captioning of films shown in movie theaters. Moreover, at present there is no proven technology available for providing closed captions (i.e. captions visible only to individuals who need them) in this setting. Accordingly, captioning in movie theaters is currently not required by the ADA.

We hope this information is helpful to you in responding to your constituent.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

Enclosure
Title III regulation

cc: Records, Chrono, Wodatch, Magagna, Johansen, McDowney, KAF, FOIA,
udd\johansen\cong\domenici.ltr

01-03055

NEW MEXICO SCHOOL FOR THE DEAF
1060 Cerrillos Road Santa Fe New Mexico 87503 (505) 827-6715

March 8, 1994

XX (b)(6)
New Mexico School for the Deaf
1060 Cerrillos Rd. MAR 14 1994

Santa Fe, New Mexico 87503

Pete V. Domenici
625 Silver Avenue S.W.
Room 125
Albuquerque, New Mexico 87102

Mr. Domenici,

Hi, my name is (b)(6) XX I am attending New Mexico School for the Deaf and I am a Senior. I am writing a letter to you to let you know that I am trying to get closed caption in Santa Fe Movie Theaters. I have written letters to different places trying to get closed captioning but I have been unsuccessful. I am asking for your help. I know because of The American with Disabilities Act, closed captioning should be available for the Hearing Impaired and Deaf. I hope that you can help us to get the closed captioning in Santa Fe Movie Theatres.

I have enclosed a copy of a letter from the company of Closed Captions Inc. and they have given many ideas about how closed captioning can be done in the theatres.

If you have any questions, please contact me through NM relay the number is 1-800-659-1779 and/or use the school phone number is 827-6739 or 827-6741.

Thank you,

XX
(b)(6)

WE ARE AN EQUAL OPPORTUNITY EMPLOYER

01-03056

MAY 12 l994

The Honorable Lauch Faircloth

United States Senate
Washington, D.C. 20510-3305

Dear Senator Faircloth:

This letter is in response to your inquiry on behalf of your constituents, regarding detectable warnings under the Americans with Disabilities Act (ADA).

On April 12, 1994, the Access Board, the Department of Justice, and the Department of Transportation published a joint final rule in the Federal Register suspending the requirements of the ADA Standards for Accessible Design for detectable warnings at curb ramps, hazardous vehicular areas, and reflecting pools until July 26, 1996. This suspension was in response to the safety concerns that have been raised about the use of the warnings and gives the Access Board time to research the question of whether the warnings are needed. The suspension does not apply to the requirement for detectable warnings on transit platforms.

We hope this information is helpful to you in responding to your constituents' concerns.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

01-03057

United States Senate
WASHINGTON, DC 20510-3305

March 21, 1994

Mr. John Wodatch
Chief, Public Access Section
Civil Rights Division
U.S. Department of Justice
Post Office Box 66738
Washington, D.C. 20035

Dear Mr. Wodatch:

I have been informed by several of my constituents that the Architectural and Transportation Barriers Compliance Board has voted to suspend regulations regarding detectable warning surfaces under the Americans with Disabilities Act until July 26, 1996.

I have constituents who believe that these rules concerning detectable warning surfaces are currently being suspended, although the ruling has not been agreed to by the Department of Justice nor the Department of Transportation, nor have these new regulations appeared in the Federal Register.

The confusion created by the board's actions penalizes the very disabled people whom these laws are intended to protect. I simply want to know if these laws are legally suspended and why they have not appeared in the Federal register if they are?

I look forward to hearing from you concerning this matter at you earliest possible convenience. I appreciate your assistance to this matter.

Sincerely,

Lauch Faircloth
United States Senator

LF:cg

01-03058

MAY 12 1994

The Honorable Sam Farr
Member, U.S. House of Representatives
701 Ocean Street, Room 318
Santa Cruz, California 95060

Dear Congressman Farr:

This is in response to your inquiry on behalf of your constituent, John Jones, regarding the requirements of the Americans with Disabilities Act (ADA). Mr. Jones an architect, asks whether city and county governments must enforce the ADA by insuring that local building projects comply with the ADA Standards for Accessible Design (ADA Standards).

The ADA requires all renovated and newly constructed commercial facilities and places of public accommodations to be built in accordance with the ADA Standards. The ADA is not enforced by county or city officials but by the Department of Justice and private individuals who may bring suits in federal court.

Under the ADA, local building codes remain in effect. However, if elements of a local code provide a lesser standard of access than the ADA requires, a public accommodation or commercial facility is still required to comply with the applicable provision of the ADA Standards. The ADA further provides that local accessibility codes can be submitted to the Department of Justice for certification that they meet or exceed the ADA requirements. Compliance with a certified State or local code will constitute rebuttable evidence of compliance with the ADA in any enforcement proceeding.

You may advise your constituent that further information about the APA is available by contacting the Department's ADA Information Line at 800-514-0301 between 11:00 a.m. and 5:00 p.m. E.S.T.

I hope this will be helpful to you in responding to your constituent.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

CONSTITUENT REQUEST

DATE: April 4, 1994

STAFF: JU

CONSTITUENT NAME: John Jones

ADDRESS: P.O. Box 371
Salinas, Ca. 93902

PHONE: (408) 753-0764

POSITION/_ INFORMATION/XX BILL STATUS/- DOCUMENT/_

VIEWPOINT OR REQUEST

Mr. Jones, a local architect, wants to know whether the City of Salinas and the County of Monterey must enforce the Americans With Disabilities Act (ADA). Specifically, Mr. Jones asks whether local governments must assure that building projects honor those ADA sections which establish building and building access standards.

01-03061

The Honorable Porter Goss
Member, U.S. House of Representatives
2000 Main Street
Suite 303
Fort Myers, Florida 33901

Dear Congressman Goss:

This letter is in response to your inquiry on behalf of your constituent, (b)(6) XX regarding her inability to find parking spaces large enough to accommodate her lift-equipped van.

The Americans with Disabilities Act of 1990 ("ADA") authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist your constituent in understanding the ADA's requirements. However, it does not constitute a legal interpretation, and it is not binding on the Department.

(b)(6) XX should be pleased to know that under title III of the ADA, a new commercial facilities must provide accessible parking spaces with adjacent access aisles that are designed to be wide enough to accommodate lift-equipped vans. In general, title III of the ADA requires that any new commercial facility be constructed to commonly with the Standards for Accessible Design, 28 C.F.R. Part 36, Appendix A ("the Standards"). A copy of these Standards, which are sometimes referred to as the ADA Accessibility Guidelines, is enclosed.

The Standards require that every new facility have a certain number of accessible parking spaces, including what are called

"van accessible" spaces. An ordinary accessible parking space includes a demarcated access aisle 60" wide, where no cars can park. Van accessible spaces must have an access aisle 96" wide. The total number of accessible parking spaces and access aisles that must be provided depends on the total number of spaces in

cc: Records, Chrono, Wodatch, McDowney, Breen, Contois, OIA
MAF
Udd:Contois:CGL:Goss

01-03062

the parking lot, but even in the smallest parking lots, there must be at least one accessible parking space with a 96" wide access aisle, marked by a sign designating it as "van accessible." These same requirements for accessible parking spaces also apply when a commercial facility is renovated, remodeled, or otherwise altered.

In addition, many existing facilities may be required to provide accessible parking spaces, including van accessible spaces. Among other things, title III of the Americans with Disabilities Act requires anyone who owns, operates, or leases a place of public accommodation -- including grocery stores, shopping centers, restaurants, movie theaters, banks, barber and beauty shops, -medical offices and facilities, and so on -- to remove architectural barriers to access for individuals with disabilities wherever it is readily achievable to do so. A lack of accessible parking spaces (and the accompanying access aisles) constitutes a barrier to access that must be removed if it is readily achievable to do so. Title III defines readily achievable to mean "easily accomplishable and able to carried out without much difficulty or expense." For most public accommodations, it is readily achievable to provide accessible parking spaces, with the-accompanying access aisles, including van accessible spaces.

If (b)(6) XX believes that particular places of public accommodation in her area have failed to comply with the ADA, she

may either file a complaint in federal court to enforce the Act, or file a complaint with the Department of Justice, which is authorized to investigate allegations of violations of title III. If XX(b)(6) wishes to file a complaint with this Department, she should address it to the Public Access Section, Civil Rights Division, Department of Justice, Post Office Box 66738, Washington, D.C. 20035-6738. She should be aware, however, that due to our limited resources and the great volume of complaints we receive, the Department is not able to investigate every complaint.

For your information, I am enclosing a copy of this Department's regulation implementing title III of the ADA and the Technical Assistance Manual that was developed to assist individuals and entities subject to the ADA to understand the requirements of title III. The requirements for new construction and alterations to commercial facilities can be found in sections 36.401 through 36.403 of the Department's title III regulation (pages 35599 through 35601), and are discussed in the preamble to the regulation on pages 35574 through 35583. Section 4.1.2(5) and 4.6 of the Standards contain the specific provisions governing provision of accessible parking spaces and access aisles.

The requirement to remove barriers to access in existing facilities can be found in section 36.304 of the regulation (page 35597), and is discussed on pages 35568 through 35570 of the preamble.

The Technical Assistance Manual for title III contains sections on the requirements for new construction (pages 45-50); alterations (51-56); the Standards for Accessible Design (referred to in the TA Manual as the ADA Accessibility Guidelines), including their requirements for accessible parking (pages 60-61); and the requirements for removal of barriers in existing facilities (pages 30-37).

I hope this information is useful to you in responding to XX (b)(6).

Sincerely,

Deval L. Patrick

Assistant Attorney General
Civil Rights Division

Enclosures

01-03064

3-15-94

MAR 16 1994

Congressman Porter Goss,

This is a request for help in solving a problem I have with handicap parking.

I have multiple sclerosis and am in a wheelchair. I have a handicap equipped van with a lift. My problem is finding handicap parking spaces wide enough to accommodate a vehicle with a lift.

Even though my van has a sign on it saying the vehicle has a lift and requires extra space and asking others not to park within eight feet, cars still park too close so that I can't get back into my van when I return.

There seem to be several handicap parking

spaces around but very few wide enough for a vehicle with a lift.

I have contacted the Sheriff, DOT, Code and Regulation and have found no help. Even the sheriff's department isn't certain if I can legally park in two spaces.

Is there some way to get more extra wide handicap parking spaces required by law, not

01-03065

only for new facilities but also for existing ones as well?

Thank you,
XX
(b)(6)
XX

01-03066

MAY 12 1994

The Honorable Larry LaRocco
Member, U.S. House of Representatives
621 Main Street
Lewiston, Idaho 83501

Dear Congressman LaRocco:

This letter is in response to your inquiry on behalf of your constituent, XX who seeks information about the requirements, of the Americans with Disabilities Act (ADA).

(b)(6)
XX writes that she leases office space to a bookkeeping business. She inquires whether the ADA requires her

to provide toilet facilities and whether there are exceptions to toilet specifications.

Title III of the ADA would be applicable to XX (b)(6) because she leases to a business that would appear to be a place of public accommodation. Title III does not require a landlord in this circumstance to install toilet facilities where there previously were none. However, if toilet facilities are provided, title III imposes certain requirements to make the toilet rooms accessible to and usable by persons with disabilities.

For existing buildings not undergoing alteration, architectural barriers to access must be removed where it is readily achievable to do so. Readily achievable is defined to mean easily accomplishable and without much difficulty or expense. The ADA makes both the landlord and tenant responsible for such changes, but the obligations can be allocated between them by contractual arrangement.

01-03067

If toilet rooms are being altered, they must be altered to meet the ADA Standards for Accessible Design (ADA Standards) unless doing so would be technically infeasible. If toilet rooms serve other parts of a building that are being altered, the toilet rooms may also have to be altered to meet the ADA standards if the cost of doing so would not be disproportionate to the cost of the overall alteration. In a newly constructed building, all parts of the facility, including toilet rooms, must be built according to the ADA Standards.

I am enclosing copies of the title III regulation which include the ADA Standards and the Department's title III Technical Assistance Manual. The Department also provides information about the ADA by telephone at 1-800-514-0301. The information line is staffed Monday through Friday from 11:00 a.m. to 5:00 p.m. EST.

I hope this information will assist you in responding to your constituent.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

Enclosures

01-03068

Congressman Larry LaRocco

Constituent Service Form

Name: (b)(6) XX Phone: XX

Address: XX XX

Social Security Number:

Regarding: Please help me determine if there are any exceptions to the requirements in the American With Disabilities Act. I lease out office space to a bookkeeping business. Are there exceptions to toilet specification? Must it I provide toilet facilities.

Under the Privacy Act of 1978 (Public Law 93-579) Federal and State government agencies are prohibited from discussing anything regarding another individual without that person's written permission. Your signature on this page authorizes me, as your Congressman, to contact the proper officials on your behalf, discuss the matter and receive any pertinent information.

Date: 3/17/94 Signature: XX (b)(6)

Please return this form to:

Congressman Larry LaRocco
621 Main Street, Suite G
Lewiston, Idaho 83501

01-03069

MAY 12 1994

The Honorable William V. Roth, Jr.

United States Senator
12 The Circle
Georgetown, Delaware 19947-1502

Dear Senator Roth:

This letter is in response to your inquiry on behalf of your constituent, Steven D. Beaston, Town Manager of the Town of South Bethany, who seeks information about the application of the Americans With Disabilities Act (ADA) to local zoning enforcement activities. We have no record of having received Mr. Beaston's letter.

All state and local governmental entities and instrumentalities are public entities within the meaning of title II of the ADA, which provides that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." See 42 U.S.C. 12132. By this language, Title II prohibits local governments from discriminating on the basis of disability in all actions they take, including zoning enforcement activities.

There is nothing in title II or the implementing regulation that prescribes a particular type of zoning scheme. Set-back requirements are not prohibited. However, title II requires public entities, including zoning authorities, to make reasonable modifications to their policies, practices, or procedures, if such modifications are necessary to avoid discrimination against individuals with disabilities. 28 C.F.R. 35.130(b)(7). For example, if a zoning ordinance requires a certain set-back between a business entrance and a curb, but the business must encroach on the set-back to ramp its entrance, the zoning authority may be required to issue a variance as a reasonable modification to that ordinance. See example in Title II Technical Assistance Manual, Part II-3.6100, Illustration 1. Thus, the zoning procedures must allow for some process whereby requests for exemptions or special permits for such purposes may be considered. Such requests must be granted where reasonable.

cc: Records, chrono, Wodatch, McDowney, Magagna, Novich, FOIA
MAF
Udd:Novich:Congress:Roth

01-03070

Your constituent should also be aware of the other prohibitions and regulations in the title II regulation, which may apply to his town's zoning activities. See 28 C.F.R. pt 35. Copies of the title II regulation and title II Technical Assistance manual are enclosed

I hope this information is useful to your constituent.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

Enclosures

01-03071

March 7, 1994

The Honorable William V. Roth, Jr.
Senator, United States Congress
12 The Circle
Georgetown, DE 19947

Dear Senator Roth:

We have attempted to obtain some information on the American's with Disabilities Act. As you can see by the letter attached, I spoke with the Department of Justice, and they informed me that they do have the information we requested.

We have not received a written reply to our letter as of this date with this information. We need to put it into our Zoning Ordinance, which we are presently updating.

We would appreciate any assistance you could provide in either obtaining a response to our letter or providing the information we need as indicated in the letter. Thank you for your attention in the matter.

Sincerely

TOWN OF BETHANY

Steven D. Beaston
Town Manager

SDB/tlb
Attachment

01-03072

January 12, 1994

Mr. John Wodatch, Chief
Public Access Section
Civil Rights Division
U.S. Department of Justice
P.O. Box 66378
Washington, DC 20035

Dear Mr. Wodatch:

The Town of South Bethany is in the process of revising it's zoning ordinance. We want to assure adequate provision for handicap access. We are particularly concerned with making provisions in setback requirements that meet requirements of the Americans with Disabilities Act but still permit us some control.

I spoke on the phone with Ms. Lucille Johanson of your staff, and she was very helpful. She cited a case where a ramp had to be permitted even thought it encroached into a required setback. I would appreciate this and other information I could use in ensuring our zoning ordinance meets ADA requirements.

Sincerely yours,

TOWN OF BETHANY

Steven D. Beaston
Town Manager

SDB/tlb

01-03073

MAY 12 1994

The Honorable Richard Shelby
United States Senator
U.S. Courthouse, Room B-28
15 Lee Street
Montgomery, Alabama 36104

Dear Senator Shelby:

This letter is in response to your inquiry on behalf of your constituent. XX who seeks information regarding Federal laws that may require modification of the sidewalks in his apartment complex to be accessible to individuals who use wheelchairs.

The Federal Fair Housing Act is the principal civil rights statute that applies to private residential property. The Fair Housing Act contains guidelines for accessibility to persons with disabilities in residential facilities. For information about the requirements of that Act and information an how to file a complaint under the Fair Housing Act, XX may contact: B6

U.S. Department of Housing and
Urban Development
Office of Fair Housing
451 Seventh St., S.W.
Washington, D.C. 20410-2000
(202) 708-8041

Another potentially applicable Federal law is the Americans with Disabilities Act (ADA), which applies to certain privately owned and operated facilities. The Public Access Section of the Civil Rights Division of the Department of Justice enforces title III of the ADA, which covers places of public accommodation and

commercial facilities. However, it does apply to common areas in residential buildings, such as rental offices, that function as a place of public accommodation and that are not intended for the exclusive use of tenants and their guests. The twelve categories of places of public accommodation are listed in section 36.104 of the enclosed title III implementing regulation,

cc: Records, Chrono, Wodatch, McDowney, Blizard, Novich, FOIA, MAF
Udd:Novich:Congress:Shelby

01-03074

at pages 35593-94. Parking, entrances, access routes, and restrooms serving the areas covered by the ADA would also be covered. Thus, if the sidewalks about which XXXX is concerned serve as routes to a place of public accommodation within his apartment complex, they would be covered by title III of the ADA. However, areas and routes that serve only the residential areas of the facility are not covered by title III.

Title III can be enforced by private litigation or by filing a complaint with the Department of Justice. If the sidewalks are covered by title III, and if XXXX would like to file a complaint regarding the sidewalks, XX should send any relevant information, including the names and addresses of the businesses he alleges to be in violation of the ADA, to:

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

All complaints should be in writing and should set forth, in as complete a manner as possible, the factual circumstances surrounding the complaint.

I hope this information is useful to your constituent in understanding the requirements of the ADA.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

Enclosures

01-03075

(Handwritten)

4-15-94

Dear Senator Shelby:
I live at XX
XX
XX Monty. Ala XX
We do not have
wheel chair access
to the sidewalks here.

We have several
people here who need
this access. I have
a son in a wheel
chair, who lives in
Monty. but without

01-03076

wheel chair access.
Here I'm unable
to bring him over
to my apartment.
Will you write Civil
Rights Division, Justice
Dept. Washington
D.C. and find out
how we can get
wheel chair access
to these apartments
Sincerely
XX

XX telephone

Montgomery, AL
XX
B6

01-03077

T. 5-3-94

DJ 202-PL-615

Mr. William F. Carroll
Executive Director
Portable Sanitation Association
International
7800 Metro Parkway, Suite 104
Bloomington, Minnesota 55425

MAY 13 1994

Dear Mr. Carroll:

I am responding to your letter on behalf of the Portable Sanitation Association International regarding the Americans with Disabilities Act (ADA). I apologize for the delay in responding.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities that have rights

or responsibilities under the Act. Pursuant to that authority, this letter provides informal guidance to assist you in understanding the ADA. However, this technical assistance does not constitute a legal interpretation of the statute, and it is not binding on the Department.

Your letter requests that manufacturers of portable restroom facilities be granted a 2-year exemption from the ADA requirements regarding such facilities. Your letter further requests that portable restroom service companies be allowed to continue to use existing facilities that do not comply with the ADA requirements until they are replaced with complying facilities through normal attrition.

The ADA is a comprehensive civil rights law that prohibits discrimination on the basis of disability by a wide range of covered entities. Accessibility requirements are established by title II, which prohibits discrimination in the programs, activities, and services of public entities, and title III, which covers private entities that own, operate, lease, or lease to places of public accommodation and commercial facilities. Title III provides narrow exemptions for private clubs and religious entities. The Department of Justice is not authorized to grant exemptions from the requirements of the ADA.

cc: Records, Chrono, Wodatch, Blizard, Hill, FOIA, Friedlander
n:\Udd\hille\policylt\carroll.ltr

01-03078

The ADA does not directly regulate the manufacture or distribution of portable restroom facilities. Therefore, the manufacture and sale of inaccessible facilities are not prohibited by the ADA. However, the ADA does regulate the use of inaccessible portable toilet facilities by entities subject to title II or title III of the Act.

When a covered entity provides common use restroom facilities (including portable facilities) in a new or altered facility, the ADA generally requires every public toilet facility to be accessible, unless a number of single user portable toilet facilities are clustered together. 28 C.F.R. part 36, Appendix A, Standard 4.1.2(6); 41 C.F.R. part 101-19.6, Appendix A, Standards 4.1.1(6), 4.1.2(10). At existing facilities that now

use portable restroom facilities, a public entity must ensure that there are sufficient accessible restrooms to meet the entity's obligation to provide "program access;" a place of public accommodation must remove barriers to access to the extent that it is readily achievable to do so.

I hope that this information is helpful to you and that it fully responds to your inquiry.

Sincerely,

John L. Wodatch
Chief
Public Access Section

01-03079

T. 5-3-94

PORTABLE SANITATION ASSOCIATION INTERNATIONAL
7800 METRO PARKWAY, SUITE 104
BLOOMINGTON, MINNESOTA 55425
1-800-822-3020 (612) 854-8300
FAX: (612) 854-7560

June 16, 1993

Mr. John Wodatch
Chief, Public Access Division
Civil Rights Division
U.S. Department of Justice

PO Box 66738
Washington, DC 20035-6738

Dear Sir,
The mission of the Portable Sanitation Association International (PSAI) is "To expand and improve portable sanitation services and facilities worldwide and to be recognized as the preeminent authority within our industry."

In the spirit of our mission statement, members of our industry have been providing the disabled with accessible portable restroom facilities prior to the enactment of the Americans with Disabilities Act of July 26, 1990.

On May 21, 1993 a delegation of members from our industry, including manufacturers of portable restrooms and portable sanitation service company operators, met with representatives of the Access Board in Washington, DC.

Based on the outcome of this meeting there are no portable restrooms currently being utilized by the disabled community that are in compliance with Title III of the ADA. This is not to say that, in the opinion of the Portable Sanitation Association International, portable sanitation facilities currently in use by the disabled are not adequate to meet their needs.

Portability, clear floor/ground space, transportation and set-up are the reasons existing accessible portable restroom facilities were designed and why they have been used for twenty years without objection. However, based on the ADA requirements and recommendations from the Access Board, the manufacturers are in the process of reviewing the ADA standards to develop portable sanitation facilities that will meet the requirements of the ADA.

The problem in existence now is when the portable sanitation service companies are asked to provide a portable accessible restroom that meets the ADA requirements they are unable to do so, because they do not exist.

The Portable Sanitation Association International requests that the manufacturers of portable restroom facilities be granted a 24 month research and development period to provide the disabled accessible portable restrooms that meet the requirements of the ADA.

In addition we request that the portable restroom service companies

receive grandfathering to allow continued use of the accessible portable restrooms currently being used in their rental fleet. This period of time should be long enough to allow these companies to change their existing equipment to the new equipment through normal attrition of their current fleet.

As you can understand, this issue is time sensitive and needs to be resolved as quickly as possible. Please do not hesitate to contact me regarding this matter.

Sincerely,

William F. Carroll
Executive Director

WC/sw

01-03081

PORTABLE SANITATION ASSOCIATION INTERNATIONAL
7800 METRO PARKWAY, SUITE 104
BLOOMINGTON, MINNESOTA 55425
1-800-822-3020 (612) 854-8300

FAX: (612) 854-7560

June 16, 1993

Mr. John Wodatch
Chief, Public Access Division
Civil Rights Division
U.S. Department of Justice
PO Box 66738
Washington, DC 20035-6738

Dear Sir,

The mission of the Portable Sanitation Association International (PSAI) is "To expand and improve portable sanitation services and facilities worldwide and to be recognized as the preeminent authority within our industry."

In the spirit of our mission statement, members of our industry have been providing the disabled with accessible portable restroom facilities prior to the enactment of the Americans with Disabilities Act of July 26, 1990.

On May 21, 1993 a delegation of members from our industry, including manufacturers of portable restrooms and portable sanitation service company operators, met with representatives of the Access Board in Washington, DC.

Based on the outcome of this meeting there are no portable restrooms currently being utilized by the disabled community that are in compliance with Title III of the ADA. This is not to say that, in the opinion of the Portable Sanitation Association International, portable sanitation facilities currently in use by the disabled are not adequate to meet their needs.

Portability, clear floor/ground space, transportation and set-up are the reasons existing accessible portable restroom facilities were designed and why they have been used for twenty years without objection. However, based on the ADA requirements and recommendations from the Access Board, the manufacturers are in the process of reviewing the ADA standards to develop portable sanitation facilities that will meet the requirements of the ADA.

The problem in existence now is when the portable sanitation service companies are asked to provide a portable accessible restroom that meets the ADA requirements they are unable to do so, because they do not exist.

01-03080

The Portable Sanitation Association International requests that the manufacturers of portable restroom facilities be granted a 24 month research and development period to provide the disabled accessible portable restrooms that meet the requirements of the ADA.

In addition we request that the portable restroom service companies receive grandfathering to allow continued use of the accessible portable restrooms currently being used in their rental fleet. This period of time should be long enough to allow these companies to change their existing equipment to the new equipment through normal attrition of their current fleet.

As you can understand, this issue is time sensitive and needs to be resolved as quickly as possible. Please do not hesitate to contact me regarding this matter.

Sincerely,

William F. Carroll
Executive Director

WC/sw

01-03081

5-12-94

MAY 13 1994

DJ 202-PL-764

Mr. Kenneth Conaway
Adaptive Mobility, Inc.
1233 Country Club Road
Indianapolis, Indiana 46234

Dear Mr. Conaway:

This is in response to your letter about vehicle accessibility requirements under the Americans with Disabilities Act (ADA) for a private nursing home and/or retirement center. I apologize for the delay in responding.

The ADA authorizes the Department to provide technical assistance to entities that are subject to the Act. This letter provides informal guidance to assist you in understanding how the ADA may apply to private entities. This technical assistance, however, does not constitute a determination by the Department of Justice of any entity's rights or responsibilities under the ADA and does not constitute a binding determination by the Department of Justice.

The Department of Justice regulation implementing title III provides that a public accommodation that provides transportation services, but that is not primarily engaged in the business of providing transportation, must comply with all the applicable nondiscrimination requirements of the Department's regulation, including the obligation to remove transportation barriers to the extent that it is readily achievable to do so. 28 C.F.R. 36.310. However, a public accommodation is not required to retrofit an existing vehicle with a lift.

In addition, a public accommodation is required to comply with the applicable provisions of the Department of Transportation's regulation implementing titles II and III of the ADA. Under the ADA, and the DOT implementing regulation, key elements in determining an entity's obligation is whether the public accommodation provides transportation through a fixed-route or demand responsive system, and whether the entity is

purchasing new vehicles or operating a system with existing vehicles.

cc: Records, Chrono, Wodatch, Blizard, Alfaro, FOIA, Friedlander
n:\udd\alfaro\conway.ltr

01-03082

If the private nursing home and/or retirement center acquires a new vehicle with a capacity of 16 or less for the residents on a fixed route, then the vehicle must be readily accessible to and usable by individuals with disabilities, including those who use wheelchairs unless the vehicle is part of the system that already meets the "equivalent service" standard.

When the private entity purchases or leases a new vehicle that is to be used in a demand responsive system, the new vehicle need not be accessible if the transit provider can show that the system, when viewed in its entirety, provides a level of service to individuals with disabilities equivalent to the level of service provided to the general public.

The standard of the system when viewed in its entirety providing an equivalent level of service is met when a private entity has, or has access to, a vehicle (including a vehicle operated in conjunction with a portable boarding assistance device) that is readily accessible to and usable by individuals with disabilities to meet the needs of such individuals on an "on call" basis.

For further information, you may contact the Department of Transportation at 1-800-366-1656. I am enclosing copies of the Department of Justice regulation implementing title III of the ADA and the Department's Title III Technical Assistance Manual. I hope that this information is helpful to you and that this letter fully responds to your inquiry.

Sincerely,

Janet L. Blizard
Supervisory Attorney

Enclosures

01-03083

February 8, 1994

Coordination and Review Section
Civil Rights Division
U. S. Department of Justice
PO Box 66118
Washington, D.C. 20035-6118

Dear Sir:

Regarding: a. Public Law 101-336, July 25, 1990 - Americans with Disabilities Act of 1990

b. Part 38 - Americans with Disabilities Act (ADA), Accessibility Specifications for Transportation Vehicles, Subparts A and B, Federal Register, Vol 56, No. 173, Part IV, Department of Transportation, 49 CFR

Question - If a private nursing home and/or retirement center operates an existing and/or purchases a new standard, automotive van, less than 22 feet in length and capacity of 8-15 passengers or less including the driver, to transport only the residents of their specific organization at no charge to the residents:

a. Must the vehicle be accessible to wheelchair individuals?

b. If so, must the vehicle comply with the guidelines and requirements for accessibility standards as specified in Part 38, subpart B?

c. If the answer to a and/or b above are yes, what parts of Public Law 101 336 require this compliance?

d. If the answer to a and/or b above are yes, what parts of 28 CFR Part 36 require this compliance?

e. If the answer to a and/or b above are yes, what parts of 49 CFR Parts 27,

37, and 38 require this compliance?

01-03084

Our interpretation of 28 CFR Part 36.310 and 49 CFR Part 37.101 - Since the vehicle has seating capacity of 16 or less, is operated by a private entity not primarily engaged in the business of transporting people, and is not operated on a fixed route, it is our interpretation that: 1) Existing vehicles do not have to be retrofitted to comply and 2) that new vehicles purchased do not have to comply with 49CFR Part 38, Subpart A and B.

Your assistance is greatly appreciated.

Sincerely,

KENNETH CONAWAY

T 5-9-94

DJ 202-PL-590

May 13 1994

James R. Judge, Esquire
Foley Maehara Judge Nip & Chang
2233 Vineyard Street, Suite B
Wailuku, Maui, Hawaii 96793

Dear Mr. Judge:

I am responding to your letter asking for clarification of the requirements of title III of the Americans with Disabilities Act (ADA), and this Department's regulation implementing title III. Specifically, you have asked for an interpretive opinion about the application of the ADA to XXX, which you have identified as an Episcopal School in XXX, XXX, XXX.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities that have rights or responsibilities under the Act. This letter provides informal guidance to assist you in understanding the ADA and the Department's regulation. However, this technical assistance does not constitute a legal interpretation of the statute, and it is not binding on the Department.

Title III of the ADA prohibits discrimination on the basis of disability by any private entity that owns, leases, leases to, or operates a place of public accommodation. A private school, as a place of education, would ordinarily be regarded as a place of public accommodation subject to title III. However, a religious entity, i.e., a religious organization or an entity controlled by a religious organization, is exempt from the requirements of title III. The exemption is intended to have broad application; it applies to both religious and secular activities of a religious entity. Therefore, a private school controlled by a religious entity is exempt from coverage under title III.

Please note, however, that the ADA establishes no procedure through which a religious entity may be "certified" eligible to claim this exemption. The ADA, like all other Federal civil rights laws, requires each covered entity to use its best

cc: Records, Chrono, Wodatch, Breen, Blizard, FOIA, Friedlander
n:\udd\blizard\adaltrs\judge

01-03086

judgment to comply with the statute and the implementing regulations.

For your information, I am enclosing a copy of the regulation implementing title III of the ADA and the Department's Title III Technical Assistance Manual, which was developed to assist individuals and entities subject to the ADA to understand the requirements of title III. I hope that this information is helpful to you.

Sincerely,

John L. Wodatch
Chief
Public Access Section

Enclosures

October 6, 1992

Mr. John Wodatch, Director
American's With Disabilities Act
Civil Rights Division
Washington, DC

Dear Mr. Wodatch,

This office has been retained by XXX, an Episcopalian School, who would like to build a gymnasium on its campus in XXX, XXX, XXX.

It is my understanding that if an organization has a religious affiliation, it is exempt from certain ADA requirements.

I would like to obtain an interpretative opinion from you as to whether or not XXX would qualify for such an exemption.

In that regard, enclosed you will please find a copy of a Deed dated September 14, 1992 from the Episcopal Church to XXX, a Hawaii nonprofit corporation. You can see from the restrictive covenants contained therein that the property can only be used for an Episcopal School. Further, the property cannot be conveyed or encumbered without the prior written consent of the Diocesan Council, the Standing Committee and the Bishop of The Diocese of Hawaii, which consent may be withheld. Any breach of the restrictive covenants causes the property to revert to the Grantor, the Episcopal Church.

It is my further understanding that the Episcopal Church maintains insurance coverage on the property, enclosed is a copy of the Schedule of Insurance indicating the same.

Please advise if you require any further information in order to render your opinion.

Thank you very much for your immediate attention to this matter.

Very truly yours,

JAMES R. JUDGE
of Foley Maehara Judge
Nip & Chang

JRJ:ec86
Enclosures

cc: Mr. Tom Olverson
Dr. Barclay Johnson
Mr. Frank Skowronski

5-3-94

DJ 202-PL-750

May 13 1994

Mr. Belk Null
Production Manager
Berger Iron Works, Inc.
P.O. Box 7628
Houston, Texas 77270

Dear Mr. Null:

I am responding to your letter concerning the Americans with Disabilities Act (ADA).

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities that have rights or responsibilities under the Act. Pursuant to that authority, this letter provides informal guidance to assist you in understanding the ADA. However, this technical assistance does not constitute a legal interpretation of the statute, and it is not binding on the Department.

Your letter requests a clarification of Section 4.26.2 of the ADA Standards for Accessible Design (ADA Standards), which provides: "The diameter or width of the gripping surfaces of a handrail or grab bar shall be 1-1/4 in to 1-1/2 in (32 mm to 38 mm) or the shape shall provide an equivalent gripping surface." As Figure 39 of the Standards illustrates, this measurement applies to the outer diameter of the handrail. Section 4.26.2 does not, however, purport to establish the only acceptable design for accessible handrails.

The ADA is a civil rights law, not a building code. This Department established the ADA Standards in order to eliminate discrimination in the built environment. Those Standards establish minimum guidelines for achieving accessible building design. They do not constitute a strict formula for design and they are not intended to prohibit alternative designs that provide equal or greater access. Section 2.2 of the Standards specifically provides that "[d]epartures from particular technical and scoping requirements of this guideline by the use of other designs and technologies are permitted where the alternative designs and technologies used will provide substantially equivalent or greater access to and usability of

cc: Records, Chrono, Wodatch, Blizard, Hill, FOIA, Friedlander
n:\udd\hille\policylt\null.1tr

the facility." Therefore, alternate designs are not prohibited if the available data shows that such alternate designs are, in fact, substantially equivalent to the Standards. However, in any ADA enforcement action, the covered entity would bear the burden of proving the equivalency of any alternate design.

I hope this information is helpful to you.

Sincerely,

John L. Wodatch
Chief
Public Access Section

01-03090

December 10, 1993

Mr. John Wodatch
Chief- Public Access Section
Civil Rights Division
Department of Justice
P.O. Box 66738

Washington, D.C. 20035

Ref: A.D.A.- Title III- Section 4.26.2- Size of Handrails

Dear Mr. Wodatch,

As a custom metals fabricator, our company builds miles of handrails each year. The size limitations restricting the outside diameter of handrails to 1.5 inches is a major concern to us and others in our industry.

We recently contacted the Access Board regarding this, and they were very quick to respond with a clarification(see enclosed responses). The problem with their clarification is the disclaimer at the end that states that their advisory is not a determination of our responsibility under the A.D.A..

Since you are the enforcing body of the A.D.A., we would like to know what interpretation you have been using in the enforcement of the handrail size restrictions.

As the enforcing body, your input would be of great assistance in solving this matter.

If you have any questions, please call me at 1-800-635-3457.

We look forward to your response.

Thank you very much for your assistance,

Belk Null
Production Manager

01-03091

NOV 24 1993

Mr. Belk Null

Berger Iron Works, Inc.
P.O. Box 7628
Houston, Texas 77270

Dear Mr. Null:

In response to your fax of November 17, 1993 requesting a clarification of ADAAG paragraph 4.26.2 Size and Spacing of Grab Bars and Handrails, the Access Board confirms the advisory that standard IPS pipe sizes designated as 1-1/4 in and 1-1/2 In (nominal) diameter are considered to fall within conventional building Industry tolerances for the purposes of this application.

The Americans with Disabilities Act authorize the Access Board to provide technical assistance to individuals and entities subject to title III of the Act in the application of the ADA Accessibility Guidelines. Please note, however, that the Department of Justice--not the Access Board--is responsible for the enforcement of title III. Thus, this advisory can provide informal guidance only; it is not a determination of your legal rights or responsibilities under the ADA, or any State or local government building code, and is not binding on the Access Board or on the Department of Justice.

Sincerely,

Jim Pecht
Accessibility Specialist
Office of Technical and
Information Services

01-03092

NOV 18 1993

Mr. Belk Null
1414 Bonner Street
Houston, Texas 77007

Dear Mr. Null:

This letter is in response to your inquiry concerning the Americans with Disabilities Act Accessibility Guidelines (ADAAG) and the specified diameter for handrails and grab bars. ADAAG section 4.26.2 specifies a diameter between 1 1/4 to 1 1/2 Inches. This specification applies to the outer diameter, as is shown in Figure 39. However, building industry practice typically specifies pipe size according to the inside diameter, so that a 1 1/2 inch pipe handrail may actually have an outer diameter closer to 2 inches. Such handrails have not posed any known problem. Thus, according to the Access Board, standard pipe sizes designated by the industry as 1-1/4 inch to 1-1/2 inch are acceptable for purposes of section 4.26.2.

You should be aware that although the Americans With Disabilities Act (ADA) authorizes the Access Board to provide technical assistance with respect to ADAAG, the Department of Justice is responsible for enforcement of certain titles of the Act. This letter provides informal guidance only. It is not a determination of your legal rights or responsibilities under the ADA and is not binding on the Access Board or the Department of Justice.

Sincerely,

Dave Yanchulis

Accessibility Specialist

T. 5-13-94

MAY 13 1994

DJ 202-PL-520

Robert Wilkinson
Village Administrator
Village of Canal Fulton
155 East Market Street
P.O. Box 607
Canal Fulton, Ohio 44614-0607

Dear Mr. Wilkinson:

This letter responds to your inquiry on behalf of the Village of Canal Fulton, Ohio. You requested an opinion from the Department of Justice regarding the Village's responsibilities under the Americans with Disabilities Act (ADA).

The ADA authorizes the Department of Justice to provide technical assistance to entities that are subject to the Act. This letter provides informal guidance to assist you in understanding the responsibilities of the Village under the ADA. However, this technical assistance does not constitute a determination by the Department of Justice of the Village's rights or responsibilities under the ADA and does not constitute a binding determination by the Department of Justice.

You have raised a number of questions regarding the use of the basement of the Village Hall for Village programs or activities. Under title II of the ADA, a State or local governmental entity must operate its programs and activities so that, when viewed in their entirety, such programs and activities are readily accessible to and usable by individuals with disabilities. A public entity may not deny the benefits of its programs, activities, and services to individuals with disabilities because its facilities are inaccessible. This standard, known as "program accessibility," applies to all existing facilities of a public entity. Public entities, however, are not necessarily required to make each of their existing facilities accessible.

cc: Records, Chrono, Wodatch, Blizard, Prieto, FOIA, Friedlander
n:\udd\prieto\policy\localgov

01-03094

The concept of "program accessibility" is discussed in sections 35.149 and 35-150 of this Department's title II regulation, 28 C.F.R. Part 35, and section II-5.000 of the title II Technical Assistance Manual (copies enclosed). As stated in section 35.150(a)(3) of the title II regulation, a title II entity is not required to take any actions that it can demonstrate would result in a fundamental alteration of its services, programs, or activities, or in undue financial and administrative burdens. If an action would result in such an alteration or such burdens, the public entity must take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with disabilities receive the benefits and services of the program or activity.

Public entities may achieve program accessibility by a number of methods. In many situations, providing access to facilities through structural methods, such as alteration of existing facilities and acquisition or construction of additional facilities, may be the most efficient method of providing program accessibility. The public entity may, however, pursue alternatives to structural changes in order to achieve program accessibility. Nonstructural methods may include the provision of services at alternate accessible sites. When choosing a method of providing program access, a public entity must give priority to the one that results in the most integrated setting appropriate to encourage interaction among all users, including individuals with disabilities.

As a general matter, it is preferable to locate offices serving the public, such as a police department, in an accessible location. Where such space is not available, or where relocation or structural modifications to the site would pose undue financial and administration burdens, individuals who are unable to climb stairs may be served in an alternative accessible location. However, care should be taken to ensure that an equivalent level of service is provided.

To the extent that the Village Hall basement space (or any other existing space owned or operated by the village) is used by employees of the police and other departments, such use is governed by the employment provisions of title II, which adopt

the employment standards promulgated by the Equal Employment Opportunity Commission in its title I regulation. Under title I standards, an employer is not required to make all work areas accessible. Instead the requirement is for "reasonable accommodation" of qualified individuals with disabilities, which is decided on a case-by-case basis. One example of such a reasonable accommodation could be the restructuring of a job by reallocating or redistributing marginal job functions; another example could be offering part-time or modified work schedules. For further discussion of this and other employment issues, we

suggest that you contact the EEOC and request a copy of their title I Technical Assistance Manual. The EEOC can be reached at 1-800-663-EEOC (Voice) or 1-800-800-3302 (TDD).

I hope this information is helpful to you.

Sincerely,

Janet L. Blizard
Supervisory Attorney

Enclosures

01-03096

April 16, 1993

Department of Justice
Office on the Americans with Disabilities Act
Civil Rights Division

P.O. BOX 66118
Washington, D.C. 20035-6118

Gentlemen/Ladies:

The Village of Canal Fulton (population 4,157) currently is assessing what structural changes should be made in its public accommodations to comply with the Americans with Disabilities Act (ADA). The Village respectfully requests an opinion from the Department of Justice regarding compliance with ADA requirements in this area.

Village Hall is a one-story structure containing administrative offices and Council Chambers on a first floor which is accessible to the disabled. The Police Department and an office used by utility, payroll and zoning/engineering personnel are located in the basement. The basement level currently is not accessible to the disabled. (Please note there are no detention facilities in the Police Department; prisoners are taken to a jail in a neighboring community.)

In our review of operations, we cannot identify any services which are provided in the basement that could not be provided on the first floor. For example, inquiries regarding utility bills can

and often are handled on the first floor. The same applies for a disabled person who desires to meet with the Village Engineer or Zoning Inspector. A disabled person wishing to meet a police officer or fill out or review a report could easily do so on the first floor.

Based on the foregoing, is the Village still required to install an elevator or chair lift to the basement to comply with the ADA? A related question is whether the Village needs to provide access as part of its employment practices. None of our current employees

01-03097

is disabled. Does the Village have to provide access in anticipation of the possibility that a disabled person might some day be hired?

The Village currently has 23 full-time employees, the majority of which work outside of Village Hall (street and utility employees and police officers). There are 56 part-time employees, 37 of which are volunteer firefighters working from facilities next door to Village Hall.

The Administration and Village Council are committed to complying with the requirements of the ADA. We feel, however, that we can continue to provide services to the disabled without costly structural modifications.

We look forward to receiving direction from the Department of Justice on this issue.

Very truly yours,

Robert Wilkinson
Village Administrator

cc: Mayor Thomas E. Cihon
Village Council
Law Director Shawn E. Kenney

01-03098

May 20 1994

5-19-94

DJ 202-PL-770

Mr. Alan Gugenheim
ISI Houston
ADA Compliance Specialists
5005 Riverway, Suite 160
Houston, TX 77056

Dear Mr. Gugenheim:

This letter is in response to your inquiry about the jurisdiction of the Department of Justice under the Americans with Disabilities Act (ADA). I apologize for the delay in our response.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist you in understanding the ADA's requirements. However, it does not constitute a legal interpretation or legal

advice, and it is not binding on the Department of Justice.

Your letter inquires first about whether the Department's authority extends to title III as well as title II. The Department is responsible for the implementation of both title II and title III. On July 26, 1991, the Department published regulations implementing both titles. Copies of these regulations are enclosed for your information.

You have also asked if the termination of Federal funds is an available remedy under ADA. Fund termination is not a remedy that is available under the ADA; it is an available remedy under section 504 of the Rehabilitation Act of 1973. The Department's regulation implementing title II recognizes that in some situations, both title II and section 504 may be applicable to a single complaint; therefore, the regulation provides that title II complaints may be filed with any Federal agency that would have jurisdiction under section 504. An agency that has section 504 jurisdiction over a complaint will process that complaint according to its procedures for enforcing section 504.

cc: Records, Chrono, Wodatch, Blizard, Alfaro, FOIA, Friedlander
n:\udd\Alfaro\pol.L89

01-03099

Finally, you asked how to file a complaint with the Department of Justice. In the case of a title II complaint, a complaint must be filed in writing within 180 days of the alleged act(s) of discrimination. Complaints should be sent to:

Coordination and Review Section
P.O. Box 66118
Civil Rights Division
U.S. Department of Justice
Washington, D.C. 20035-6118

In the case of a title III complaint, a complaint must be filed in writing and sent to:

Public Access Section
Civil Rights Division

U.S. Department of Justice
P.O. Box 66738
Washington, D.C. 20035-9998

I hope this information is useful to you in understanding the requirements of the ADA.

Sincerely,

Janet L. Blizard
Public Access Section

Enclosures

01-03100

February 11, 1994

Civil Rights Division
U.S. Department of Justice
Public Access Section
Box #66738
Washington, D.C., 20035

Civil:

This letter is directed to your agency to attempt to clarify the ADA law and your authority to resolve entities who do not comply with Title II and III of the law in the list of twenty-one (21) readily achievable modifications that are enumerated in Title III of the DOJ Technical Assistance Manual.

* Does your authority extend into Title III as well as Title II?

* Are you able and willing, if your finding of the facts substantiate such decision, to withhold or terminate federal funding to those entities who ignore their compliance to the ADA Title II or III equirements?

* To accomplish such consideration by your office, what type of form and information should be forwarded to your agency and to whom should it be directed?

Thank you for your prompt attention.

Sincerely,

Alan Gugenheim
President

/ba

MAY 23

The Honorable Tim Holden
U.S. House of Representatives
1421 Longworth House office Building
Washington, D.C. 20515

Dear Congressman Holden:

This letter is in response to your inquiry on behalf of communities in your District seeking guidance concerning their

obligations under the Americans with Disabilities Act (ADA), specifically, their obligations to provide curb cuts or ramps where pedestrian walks cross curbs.

State and local governments are subject to title II of the ADA which requires them to make their services, programs, and activities, when viewed in their entirety, readily accessible to and usable by persons with disabilities. To implement this requirement, the title II regulation explicitly requires newly constructed and altered streets to have curb ramps or other sloped areas at any intersection having curbs or other barriers to entry from a street level pedestrian walkway. The United States Court of Appeals for the Third Circuit recently held that street resurfacing constitutes an alteration within the meaning of title II triggering this obligation to provide curb ramps at every intersection.

With respect to unaltered existing streets and walkways, State and local governments were required by title II to assess whether and to what extent structural modifications were required to meet the title II program accessibility requirement. A transition plan for completion of necessary structural modifications was to have been developed by July 26, 1992, with completion of all work scheduled for no later than January 26, 1995. The title II regulation required transition plans to include a schedule for providing curb ramps and also specified priorities for installing them at walkways serving entities covered by the ADA -- i.e., State and local government

facilities, transportation, places of public accommodations, and employers, followed by walkways serving other areas. The title II regulation does not necessarily require construction of curb ramps at every intersection. Alternative routes to buildings that make use of existing curb cuts may be acceptable under the concept of program accessibility in the limited circumstances where individuals with disabilities need only travel a

marginally longer route.

The number of curb ramps required in a given community may also be limited by the fundamental alteration and undue burden limitations in title II. A State or local government must meet the program accessibility requirements described above unless it can demonstrate that meeting it would result in a fundamental alteration in the nature of the service, program, or activity or undue financial and administrative burdens. The decision that compliance would result in such alteration or burdens must be made by the head of the covered public entity after considering all resources available for use in the funding and operation of the service, program, or activity, and must be accompanied by a written statement of the reasons for reaching such a conclusion.

I hope this information will be useful to you in advising communities in your District.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

01-03103

DJ 202-PL-757

MAY 23 1994

Ms. Sue Maxwell
Alpena Civic Theatre
10039 U.S. 23 South
Ossineke, Michigan 49766

Dear Ms. Maxwell:

I am responding to your letter to Ms. Sheila Foran regarding the Americans with Disabilities Act (ADA).

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities that have rights or responsibilities under the Act. Pursuant to that authority, this letter provides informal guidance to assist you in understanding the ADA. However, this technical assistance does not constitute a legal interpretation of the statute, and it is not binding on the Department.

You have asked about the requirements of the ADA in regard to providing access to persons with disabilities in an existing city-owned building that is leased to a volunteer theater group. According to your letter, the building has three stories, all of which are accessible only by use of stairs. Your letter expresses concern that an elevator may have to be installed between the stories.

The first issue raised by your letter is whether the building is covered by title II, which prohibits discrimination on the basis of disability in programs offered by public entities, or title III, which prohibits discrimination on the basis of disability by private entities that own, operate, lease, or lease to places of public accommodation, including theaters, or both. The factors to consider in determining if a private entity such as your theater group is operating a program subject to title II are discussed in section II-1.2000 of the enclosed Title II Technical Assistance Manual.

It is possible that both title II and title III may apply to this building, because the theater group may be seen as providing its program on behalf of the city. In that case, each covered entity would be responsible for ensuring compliance with the title to which that entity is subject. Thus, the city would be responsible for ensuring program accessibility under title II

its program on behalf of the city. In that case, each covered entity would be responsible for ensuring compliance with the which that entity is subject. Thus, the city would be responsible for ensuring program accessibility under title II and, at the same time, the theater group would be responsible for ensuring accomplishment of readily achievable barrier removal under title III.

If the theater group is operating a city program, the city must ensure that the program, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities, but it is not required to take any action that it can demonstrate would result in a fundamental alteration in the nature of the program or in undue financial and administrative burdens. 28 C.F.R. 35.150. If the installation of ramps or elevators in the theater at issue would create such undue burdens, the ramps or elevators need not be installed, but the city would be required to find other ways to provide access to its program, including, for example, moving some performances to an accessible location and advertising such performances as being accessible.

Under title III, if applicable, the theater group, as the operator of a place of public accommodation located in an existing building, would be required to remove architectural barriers to the extent such removal is readily achievable, i.e., easily accomplishable and able to be carried out without much difficulty or expense. 28 C.F.R. 36.304. Replacing stairs with a ramp or elevator would constitute barrier removal. Whether removal of any particular barrier is readily achievable is determined on a case-by-case basis and will depend on a number of factors that are discussed in section III-4.4200 of the enclosed Title III Technical Assistance Manual.

A public accommodation generally would not be required to remove a long flight of stairs if such barrier removal would require extensive ramping or installation of an elevator. Therefore, if removal of the stairs in your theater would require installation of an elevator and such installation would be very difficult and expensive in comparison to the theater's size and financial resources, the theater would not be required to install the elevator. If only a few stairs at the entrance needed to be ramped in order to provide an accessible entrance, on the other hand, the balance might shift to the point where, in light of the theater's resources, that form of barrier removal would be required.

If removal of stairs were found not to be readily achievable, the theater would not have to be demolished or closed. Nor, however, would it be completely exempted from the ADA. The theater would still be required to perform whatever

barrier removal was readily achievable. For example, the lack of

an accessible entrance would not excuse the theater from providing accessible seating or accessible restrooms to the extent such measures are readily achievable. In addition, the lack of an accessible route to the upper floor would not excuse the theater from providing an accessible entrance or making the facilities on the upper floor accessible, to the extent those measures are readily achievable.

The distinction between title II and title III may also affect the elevator requirement in other ways. Under title III, an elevator will generally not be required in a building that has fewer than three stories or less than 3,000 square feet per story. Therefore, if your theater building had less than 3,000 square feet per story, it would be exempt from the requirement to provide an elevator between floors under title III (although all other accessibility requirements would still apply), even if installation of an elevator were readily achievable. This elevator exemption is not provided under title II.

More stringent requirements may apply to your building under either title II or title III if any alterations have been undertaken since the effective date of the Act, January 26, 1992.

Your letter also asks whether the city could obtain a determination of ADA compliance in advance of the filing of a formal complaint. The ADA does not provide such a procedure. Finally, your letter asks what the enforcement procedures are under title II and what the deadlines are for compliance with title II. The applicable procedures under title II depend, to a certain extent, on the size of the covered entity. The final deadline for making structural changes to achieve program access is January 26, 1995. However, such structural changes must be completed as expeditiously as possible. The procedures and deadlines under title II are described in detail in the enclosed regulations at pp. 35718-35721.

I am enclosing the Department's regulations implementing title II and title III, and the Department's Technical Assistance Manuals for your further reference. I hope that this information is helpful to you.

Sincerely,

John L. Wodatch
Chief
Public Access Section

Enclosures

01-03107

January 26, 1994

Civil Rights Division
Office on the Americans with Disabilities Act
U.S. Dep't. of Justice
P.O. Box 66118
Washington, D.C. 20035-6118

Atten: Ms. Sheila Foran

Dear Ms. Foran:

I spoke to you by telephone on January 12 regarding our theater's situation with regard to the ADA. The advisory information you gave was very helpful, as were the publications you forwarded. Thanks so much for your assistance.

While members of our theater group are less concerned now, we find that the Council and staff of the City of Alpena, owners of the building, continue to be worried about possible suit. They cannot afford to install an elevator, even if that were possible, and they are investigating terminating our lease or, possibly, razing the building. I'm writing for more help. I've tried to call you again, but, as I'm sure you know well, it's difficult and expensive to get through.

To refresh your memory: we're an all-volunteer group with no paid staff, occupying a City-owned building which is not accessible. We are the sole occupants of the building and have been there for 30 years. The building has a basement (down nine steps from the lobby), an office and lobby in the front of the building (up three steps from ground level), and an upstairs auditorium (up 15 steps from the lobby). When you asked us the test questions from the Supplement to the Title II Technical Assistance Manual, our answers were: the City pays approx. $2,000 per year, half of the building's heating costs; we have no employees; the $1.00 per year leased building is critical to our existence; we are governed by a board made up of our officers and the directors of our plays. This board has no connection of any kind to City government and the City is not involved in our operation in

any way.

01-03108

Your interpretation, as I understood it, was that the building in question would fall under Title III, even though the City owns the building, because the nexus between the City and the occupant is not close enough for us to be considered to be part of a City program or service. Thus, barrier removal work that is not "readily achievable" would not be required by the ADA.

In addition, as I understood you, even if it should be determined that ACT is part of a City program and therefore under Title II, the City could successfully defend itself against a Complaint, if one were filed, by arguing that it would be an "undue burden" to the City to provide accessibility because of the City's size (13,000) and especially because of its previous expenditures to provide access in other City buildings.

If the above is a valid statement of your advisory opinion, could you please either initial this letter and return it to us, or write one of your own saying so? We need to have some documentation, even though we know that the opinion is not legally binding.

Also, we need further information. If a Complaint were filed against the City, what would happen? What process would be followed" Is a predetermination or waiver of some sort in advance of a Complaint possible or is determination and enforcement dependent upon a Complaint?

Is the City required to do anything now if the building would fall under Title II? What deadlines for compliance do they face?

Again, thanks so much for your help.

Sincerely,

ALPENA CIVIC THEATRE

Sue Maxwell
10039 U.S. 23 S.
Ossineke, MI 49766
(517) 471-2235

01-03109

T 5-18-94

MAY 23 1994

DJ 202-PL-771

Mr XX (b)(7) (c)
XX
SIUC
Carbondale, Illinois 62901

Dear Mr. XX (b)(7)(c)

I am responding to your letter concerning the Americans with Disabilities Act (ADA).

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities that have rights or responsibilities under the Act. Pursuant to that authority, this letter provides informal guidance to assist you in understanding the ADA. However, this technical assistance does not constitute a legal interpretation of the statute, and it is not binding on the Department.

You have asked whether the Southern Illinois University at Carbondale (SIUC) is required by the ADA to clear snow from the sidewalks on its campus. SIUC is a covered entity under title II, which prohibits discrimination on the basis of disability in programs offered by public entities.

A public entity is required to provide "program access", that is, the entity is required to operate each service, program, or activity it provides so that, when viewed in its entirety, the service, program, or activity is readily accessible to and

usable by individuals with disabilities. 28 C.F.R. 35.150. See also section II-5.000 of the enclosed Title II Technical Assistance Manual. Providing program access does not necessarily require a public entity to make each of its facilities fully accessible. For example, program access can be achieved by the relocation of services from inaccessible to accessible buildings or by the assignment of aids to program beneficiaries. A public entity is not required to take any action that it can demonstrate would result in a fundamental alteration in the nature of its services, programs, or activities or in undue financial and administrative burdens. 28 C.F.R. 35.150(a)(3).

cc: Records, Chrono, Wodatch, Blizard, Hill, FOIA, Friedlander
n:\udd\hill\policylt\ XX 2.ltr

01-03110

With respect to the situation you describe, if SIUC has responsibility for, or authority over, sidewalks or other public walkways, it must ensure that any such sidewalks and walkways that are necessary to meet the program access requirement are readily accessible to and usable by individuals with disabilities. To meet the program access requirement, a public entity may be required to remove obstacles blocking the passage of persons using wheelchairs or other devices to assist mobility.

The title II regulation also requires covered entities to "maintain in operable condition those features of facilities and equipment that are required to be readily accessible to and usable by persons with disabilities by the Act or this part." 28 C.F.R. 35.133. Therefore, to the extent SIUC is required by the Act to provide accessible sidewalks, the Act also requires maintenance of those sidewalks in accessible condition. Such required maintenance could include reasonable snow removal efforts.

Title 11 specifically provides that "isolated or temporary interruptions" are permitted. 28 C.F.R. 35.133. Therefore, the Act would be violated only to the extent the interruptions in accessibility "persist beyond a reasonable period of time" or are "due to improper or inadequate maintenance." See enclosed title II regulations, p. 35707.

The title II regulation also requires a public entity to

make reasonable modifications in its policies, practices, or procedures when "... necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity." 28 C.F.R. 35.130(b)(7). Under this provision, title II might require SIUC to modify its snow removal procedures if such modification is necessary to ensure that, aside from temporary and unavoidable situations, its sidewalks are not blocked by impediments to travel by wheelchair.

I am enclosing copies of the regulations implementing Title II and the Department's Title II Technical Assistance Manual. I hope that this information is helpful to you.

Sincerely,

John L. Wodatch
Chief
Public Access Section

Enclosures

01-03111
The Honorable Janet Reno 24 January 1994
United States Attorney General

Dear General Reno:
(b)(7)(c)
My name is XX I am a 100% disabled person and I live in a wheelchair. I attend Southern Illinois University at Carbondale and I have a question regarding the new requirements that places be accessible to disabled persons like myself.

It is and has been for the five years I've attend SIUC, the policy of my institution, not to properly and timely clear the sidewalks and access ways after a snow storm. The school receives ever year, un-total'd complaints from students about how the school takes its time about clearing away the snow from the walk ways. Most of the time, they just don't bother to clear the snow at all. When they do, they fail to lay down salt or sand, and even when they do make some effort the work quality is always unusually poor. Often these complaints wind up in the newspaper.

I'm sure that you are aware of the usually bad weather we've had here in the Midwest. Despite the dangerous conditions, the closing of almost every public institution in the county, Southern Illinois University was open. Even if one is a fully functional human, the conditions here were as bad as I've ever seen them. But again, like every other year, I and the rest

of the people who get around in wheelchairs,[and there are quite a few of us at SIUC] were denied access to classrooms. The reason being, that even if a normal human can navigate through the uncleared snow and ice, those of us in wheelchairs cannot. I've missed a weeks worth of school. As an educated person I'm sure you understand the difficult situation one is in when one fails to show up at the opening class. I'm quite sure that like in years gone by, the administration will fail to change anything to make a permanent difference as to how bad weather is dealt with here at SIUC. The administration really doesn't care one little bit, and if they do, I

(b)(7)(c)
XX

01-03112

certainly haven't notice any significant changes in the last five years.

My question to you is if the new law requiring access to the schools for disabled persons applies. Clearly, I believe that the school has a lawfully duty to completely clear away all the snow and ice from around the living halls, school buildings, and the pathways between. This is the only way people with disabilities can access the campus. Most institutions that can't adequately clear away snow and ice close. Most schools and public buildings that can't do this in this county close. With good reasons too, the conditions are very dangerous, and people can get hurt. Most that is, except SIUC. Here at SIUC we are willfully denied access. I believe the clearing, should be timely. Maybe 24 hours after the end of a storm. If you agree, that the failure of the university to timely remove ice and snow does willfully denied access to disabled persons, then please accept this letter as my complaint to you that the disabilities act is being violated here at SIUC.

I will be most grateful for any assistance that you can provide those of us with disabilities here at SIUC. Like every other year since I've been here the university is ignoring the problem. They are waiting for it to melt away

while I am trapped in my room for days. It is not right and it is exactly what Congress wanted to bring to an end when they required access for those of us who are disabled. I hope you will investigate. It is not unlikely that you will receive letters denying these charges from members of the SIUC Administration. If you send someone to investigate I will be happy to prove my statements and provide witnesses as to the truthfulness of my statements. In that many of my friends here at the university are also engineers, I would be happy to provide your investigators with truly expert witnesses if it becomes required.

Sincerely Yours, (b)(7)(c)
XX

XX
XX
SIUC
Carbondale, Illinois 62901
XX

01-03113

DJ 202-PL-424

MAY 23 1994

Ms. Meredyth P. Partridge
Executive Director
Virginia Department of Health Professions
6606 West Broad Street
Fourth Floor
Richmond, Virginia 23230-1717

Dear Ms. Partridge:

This letter is in response to your inquiry of January 4, 1993, regarding whether the Americans with Disabilities Act

("ADA") prohibits funeral homes from imposing increased fees in cases involving bodies harboring infectious diseases. We regret the delay in responding to your letter.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist you in understanding the ADA's requirements. However, it does not constitute a legal interpretation or legal advice, and it is not binding on the Department of Justice.

Title III of the ADA prohibits discrimination on the basis of disability in the full and equal enjoyment of the goods and services of a place of public accommodation. See, e.g., 36.201(a), 36.202(a) and (b), and 36.205 of the title III regulation (copy enclosed). Under title III, funeral homes are considered to be places of public accommodation (28 C.F.R. 36.104), and are, therefore, subject to the non-discrimination provisions of the ADA.

The first question you asked was whether a funeral home may charge an increased embalming fee for a body harboring an infectious disease. In light of the regulations promulgated by the Occupational Safety and Health Administration of the Department of Labor (OSHA) and the guidelines promulgated by the federal Centers for Disease Control and Prevention (CDC), which

cc: Records, Chrono, Wodatch, Breen, Contois, Delaney, Perley,
MAF, FOIA
udd\delaney\partridg.2

01-03114

apply to the handling of all human remains without regard to whether an infectious disease is known to be present, it would be discriminatory under the ADA to assess an extra charge only when a body is known to be harboring an infectious disease. OSHA's Bloodborne Pathogen Rule, 29 C.F.R. 1910.1030, applies to all occupational exposures to blood and other potentially infectious materials and specifically governs those employees who handle human remains. Id. at 1910.1030(a). The regulation requires that employers ensure that their employees follow the standards articulated in the rule at all times. Id. at 1910.1030(a) and (b). Specifically, all blood and certain other bodily fluids

must be treated as if known to be infectious for the human immunodeficiency virus (HIV), the hepatitis B virus (HBV), and other bloodborne pathogens. Id. at 1910.1030(b). Engineering and work practice controls, which eliminate or minimize employee exposure to bloodborne pathogens, must be used at all times, as must personal protective equipment. Id. at 1910.1030(b)(2) and (3).

In addition, the CDC has recommended the use of Universal Precautions -- infection control procedures that treat all human blood as if it is infectious, regardless of whether the person is known or suspected to be infected with HIV or HBV -- when handling the body of a deceased person. Guidelines for Prevention of Transmission of HIV and HBV in Health-Care and Public-Safety Workers, U.S. Department of Health and Human Services, Centers for Disease Control, February l989, at 18. Similarly, the National Funeral Directors Association has adopted a policy recommending the use of the CDC's Universal Precautions by all personnel involved in the handling and preparation of human remains. National Funeral Directors Association Policy On Contagious, Communicable and Infectious Disease, at 1.

Since the OSHA regulation and CDC guidelines require that all bodies be treated as if harboring an infectious disease, the imposition of an additional embalming fee only in cases where a body is known to be harboring such a disease would violate the ADA. Imposition of such an additional fee impermissibly treats persons with disabilities and/or persons known to have a relationship or association with persons with disabilities differently from others who seek the services of a funeral home.1

1 It has come to our attention that some trade embalmers impose a contagious disease surcharge. The funeral director may not pass the surcharge on to the family of the deceased. The funeral director must either (a) find a trade embalmer that does not impose an additional fee or (b) absorb the surcharge and/or

(continued...)

The second question you posed was whether a funeral home can charge a fee for protective gear used by funeral home staff when handling or preparing an infectious disease case. The same analysis applies. Since such protective gear must be worn when handling any body, in compliance with the OSFA Bloodborne Pathogen Rule and Universal Precautions, an additional fee for

protective gear may not be imposed for handling or preparing a body known to be harboring an infectious disease. Again, both the OSHA Bloodborne Pathogen Rule and Universal Precautions require that all bodies be treated as if harboring an infectious disease and that appropriate protective gear be utilized when handling or preparing all human remains. Accordingly, imposition of an additional fee for handling those bodies known to be harboring an infectious disease would violate the ADA, as imposition of such a fee would impermissibly treat persons with disabilities and/or persons known to have a relationship or association with persons with disabilities differently from others who seek the services of a funeral home.

I hope this information is useful to you in understanding the requirements of the ADA. If you have any further questions,feel free to contact our information line at (800) 514-0301.

Sincerely,

John L. Wodatch
Chief
Public Access Section

Enclosure
Title III regulation

1(... continued)
spread the cost amongst all funeral home clients. See 28 C.F.R. 36.301(c) ("Charges")

01-03116

MAY 23 1994

DJ 202-PL-629

XX

XX
Bethesda, Maryland XX

Dear XX

I am responding to your letter regarding the Americans with Disabilities Act of 1990, 42 U.S.C. 12181-12189. 1 apologize for the delay in responding.

The Americans with Disabilities Act (ADA) authorizes the Department of Justice to provide technical assistance to individuals and entities that have rights or responsibilities under the Act. Pursuant to that authority, this letter provides informal guidance to assist you in understanding the ADA. However, this technical assistance does not constitute a legal interpretation of the statute, and it is not binding on the Department.

Your letter asks about the obligations of law schools under the ADA toward students with learning disabilities, specifically ADD and dyslexia. The ADA prohibits discrimination against persons with disabilities. A disability for purposes of the ADA is a physical or mental impairment that substantially limits one or more major life activities of an individual. A learning disability, such as ADD or dyslexia, may be a disability for purposes of the ADA if it substantially limits a major life activity.

A law school may be covered under title II, which prohibits discrimination on the basis of disability in programs offered by public entities, or title III, which prohibits discrimination on the basis of disability by private entities that own, operate, lease, or lease to places of public accommodation, including places of education.

cc: Records; Chrono; Wodatch; Blizard; Hill; FOIA; MAF.
\udd\hille\policylt\ryan.ltr

01-03117

Title II requires a public (i.e., State or local government) entity to afford individuals with disabilities an opportunity to participate in and benefit from its programs and services that is equal to that afforded to others. A covered public entity must make reasonable modifications in policies, practices, or procedures when necessary to avoid discrimination on the basis of disability, unless such modifications would fundamentally alter the nature of the program. A covered public entity must not impose eligibility criteria that screen out or tend to screen out individuals with disabilities unless such criteria are necessary for the provision of the program. See 28 C.F.R. 35.130. In addition, a public entity must furnish appropriate auxiliary aids and services where necessary to afford an individual with a disability an equal opportunity to participate in and enjoy the benefits of its programs, unless provision of such aids would result in a fundamental alteration in the nature of the program or in undue financial or administrative burdens.

Title III requires a place of public accommodation to afford individuals with disabilities an opportunity to participate in and benefit from its services that is equal to that afforded to other individuals. To fulfill this obligation, a public accommodation may be required to make reasonable modifications in policies, practices, or procedures when necessary to provide services to persons with disabilities, unless such modifications would fundamentally alter the nature of the services. A public accommodation must also take steps to provide auxiliary aids and services when necessary to ensure participation by individuals with disabilities, unless such steps would fundamentally alter the nature of the services provided by the public accommodation or would result in an undue burden, i.e., significant difficulty or expense. Title III prohibits a public accommodation from applying eligibility criteria that screen out or tend to screen out individuals with disabilities unless such criteria are necessary for the provision of the public accommodation's services. See 28 C.F.R. 36.301-36.303.

For your further reference, I am enclosing copies of the regulations implementing titles II and III of the ADA and the Department's Title II and Title III Technical Assistance Manuals. I am also enclosing, for your convenience, a list of organizations serving your area that may be able to assist you in addressing your concerns. These listings come from various sources, and the Department cannot guarantee that the listings are current or accurate. I suggest that if you contact any of these organizations, you let them know that you have received this letter from the Department.

If you have any further questions concerning the ADA, you may call our information line at 800/514-0301 (voice), 800/514-0383 (TDD). I hope this information is helpful to you and that this letter fully responds to your inquiry.

Sincerely,

John L. Wodatch
Chief
Public Access Section

Enclosures

T. 3-8-94

MAY 23 1994

DJ 202-PL-577
DJ 202-PL-578

Mr. Daniel M. Sprague
Executive Director
The Council of State Governments
Iron Works Pike
P.O. Box 11910
Lexington, Kentucky 40578-1910

Dear Mr. Sprague:

I am responding to letters from yourself and Mr. William Voit on behalf of the Council of State Governments concerning the Americans with Disabilities Act (ADA). I apologize for the delay in responding.

I appreciate your transmittal of the Resolution on Federal Assistance with State Level Implementation of the Title II Provisions of the Americans with Disabilities Act, and your organization's willingness to use its unique position and abilities to assist States and the Department of Justice in implementing the ADA. I believe the efforts of organizations such as yours are valuable to the ultimate fulfillment of the spirit and goals of the Act.

The ADA itself recognizes, as you do, the need for dissemination of information to covered entities, including State and local governments. For that reason, the ADA expressly requires each agency charged with enforcing the ADA to provide technical assistance regarding the agency's area of expertise. Therefore, questions and concerns may be directed to any of several different enforcing agencies, including the Equal Employment Opportunity Commission (for employment issues), the Department of Transportation (for transportation issues), and the Department of Justice (for public access and public services issues).

Over the past two years, the Department of Justice and the other enforcement agencies have been actively pursuing their duties to inform the public and covered entities of the rights and obligations imposed by the ADA. For example, the Department of Justice and the Equal Employment Opportunity Commission have

cc: Records, Chrono, Wodatch, Hill, FOIA, Friedlander
n:\udd\blizard\adaltrs\hill.578

01-03121

jointly published the ADA Handbook, which provides annotated regulations for titles I, II, and III, appendices of information related to the ADA, and resources for gathering additional information. The Department of Justice and Equal Employment Opportunity Commission have also jointly published a booklet of Questions and Answers addressing some of the most often asked questions about the ADA. In addition, the agencies have published Technical Assistance Manuals to provide information about the ADA in a complete and comprehensible format. The Technical Assistance Manuals for titles II and III are updated annually by the Department of Justice and are available on a subscription basis.

In addition to such general information, the Department of Justice has undertaken to provide more specific information and analysis about the application of the ADA through a variety of programs. First, the Department issues letters in response to written questions from covered entities and protected individuals. These letters are available to the public pursuant to the Freedom of Information Act. They can be obtained by sending a written request to: Freedom of Information/Privacy Acts Branch, Civil Rights Division, Department of Justice, Washington, D.C. 20530. Second, the Department has a Speakers' Bureau, made up of speakers with training and expertise in the ADA, that is made available to groups needing more detailed information regarding particular aspects of the Act. Third, the Department of Justice operates a toll-free telephone information line to respond to requests for publications and to provide advice to individuals about specific problems. The information line number is (800) 514-0301 (voice), (800) 514-0383 (TDD) and currently operates from 11:00 AM to 5:00 PM (eastern time).

Finally, to ensure further dissemination of technical assistance, the Department has awarded a substantial number of grants addressing the needs of both covered entities and protected individuals. For example, in 1992, the National Conference of States on Building Codes and Standards received a

grant to prepare and present a training seminar and materials regarding the process, provided by title III of the ADA, for Department of Justice certification of State and local building codes that meet the accessibility requirements of title III.

A number of recent grants have focused particularly on title II of the ADA. For example, the U.S. Conference of Mayors Research and Education Foundation has received a grant to provide material on title II of the ADA to more than 1000 cities, to publish articles on the ADA in its newsletter, to hold an ADA seminar at its annual conference, to create a directory of city ADA coordinators, and to select examples of good ADA practices for use as models by city officials in complying with title II of the ADA. The National Association of Towns and Townships has received a grant to produce ADA training materials for use by

State and regional ADA technical assistance providers to assist the providers to explain the ADA to towns and townships. The Bazelon Center for Mental Health Law has received a grant to document an analysis of South Carolina's public benefit and social services programs and to share the results with other States. The Police Executive Research Forum has received grants to produce materials for training police officers regarding the ADA rights of persons with disabilities. Through these efforts, the Department of Justice is attempting, and will continue to attempt, to address the general concerns raised by your letters regarding the dissemination of ADA information.

Your letter, and the subsequent letter from Mr. Voit, included specific questions that your organization's members had directed to you. Many of these questions can be answered by reference to the Technical Assistance Manuals developed by the Department of Justice and Equal Employment Opportunity Commission to assist entities subject to the ADA to understand and satisfy their obligations. Additional questions pertaining to titles II and III may be resolved as they arise by contacting the Department of Justice telephone information line. Questions regarding title I may be directed to the Equal Employment Opportunity Commission at the address and telephone number provided in the title I Technical Assistance Manual. I encourage you to make your members aware of these resources.

For your reference, I am sending, in a separate package, the Technical Assistance Manuals addressing titles I, II, and III, the Department of Justice regulations regarding titles II and III, the ADA Handbook and the ADA Questions and Answers booklet.

I hope that this information is helpful to you.

Sincerely,

John L. Wodatch
Chief
Public Access section

01-03123

March 10, 1992

Mr. John Wodatch
Director, Office on the
Americans with Disabilities Act
Civil Rights Division
U.S. Department of Justice
P.O. Box 75087
Washington, D.C. 20013

Dear Mr. Wodatch:

The Americans With Disabilities Act (ADA) affects state governments as employers, service providers, Inspectors, regulators, landlords and tenants. While states applaud the spirit of the Act, further guidance from the federal government is necessary in order for them to comply.

The Council of State Governments (CSG) is the principal secretariat for a number of professional associations of state officials. The members of these associations will be instrumental in implementing the Act. Their association with CSG puts CSG in a unique position to collect and disseminate information about the ADA.

In December 1991, The Council of State Governments' (GSG) Governing Board approved a resolution urging the U.S. Department of Justice to help states implement Title II. Attached is a list of questions we have received from some of our members. To the extent

possible, we have listed the questions by ADA category. The questions are unedited. Some could probably be answered by the ADA Handbook, but presenting them in an unedited format will give you a better idea of state officials' range of awareness about the requirements of this Act.

We would appreciate written response(s) from the Department of Justice and appropriate federal agencies that we could forward to our associations either in report form or via association newsletters. We hope CSG can become a two-way conduit for state-related ADA material and activities.

Please assist us as we help the states achieve compliance with the Americans with Disabilities Act.

Sincerely,

Daniel M. Sprague
Executive Director
cc: Senator Robert Dole
Senator Tom Harkin

01-03124

The
Council of
State Governments

Headquarters Office
Iron Works Pike
P.O. Box 11910
Lexington, KY 40578-1910
(606) 231-1939
Fax (606) 231-1858

Chairman
Speaker Pro Tam John H. Connors, Iowa
President
Governor Zell Miller, Georgia

Executive Director
Daniel M. Sprague

April 30, 1992

Mr. John Wodatch
Director, Office on the
Americans with Disabilities Act
Civil Rights Division
U.S. Department of Justice
P.O. Box 75087
Washington, D.C. 20013

Dear Mr. Wodatch:

The Council of State Governments' (CSG) Executive Director, Dan Sprague, recently sent you a letter, a resolution endorsed by our Governing Board, and questions about the Americans with Disabilities Act (ADA).

Attached is another set of questions (and some comments) about the ADA. They are from CSG affiliates. CSG affiliates are professional associations of state officials, some of whom will be instrumental in implementing the ADA. These include the Council on Licensure,
Enforcement and Regulation, the National Association of Government Training and Development Directors, National Association of State Facilities Administrators and the National Association of State Personnel Executives.

The questions are basically unedited. They are categorized by ADA title and by state. Twenty-two states and one territory are represented. We would appreciate a written response from the Department of Justice or appropriate federal agencies. CSG will publish the response(s) to our constituents in a report format or via our affiliate newsletters.

States want to comply with the spirit and letter of the Act, and avoid litigation. However, the nature of the language, apparent delay in some technical standards, and sheer number of agencies involved at all levels of government frustrates the process. We hope you can help.

Please call me at (606) 231-1838 if you need more information. Thanks for your consideration. We look forward to your reply.

Sincerely,
William K. Voit
Senior Policy Analyst

cc: Dan Sprague
Deborah Gona
Douglas Roederer
R. Steven Brown

01-03125

5-12-94
Control No. 4040710761

The Honorable Jim Leach
Member, U.S. House of Representatives
102 South Clinton, #505
Iowa City, Iowa 52240-4025

Dear Congressman Leach:

This is in response to your inquiry on behalf of your constituents, participants in the Iowa City Kickers Soccer Club ("Kickers"), regarding the application of the Americans with Disabilities Act (ADA) to such a club and the possible implications of the participation of individuals with disabilities in the club.

The Kickers may be covered by title III of the ADA, which prohibits discrimination on the basis of disability by private entities that own, operate, or lease places of public

accommodation. Places of entertainment, gathering, recreation, and exercise, such as sports facilities, are places of public accommodation. When the Kickers are using such facilities, they may be considered to be the operator of those facilities and, therefore, may be subject to title III. To the extent the Kickers are covered by title III of the ADA, they are prohibited from discriminating against prospective participants on the basis of disability.

The second aspect of the issue your letter raises is the possibility that the Kickers will be denied liability insurance coverage because they allow individuals with disabilities to participate in their program. The club's insurance company may also be considered to be the operator of a place of public accommodation, i.e., an insurance office. Thus, the insurance company may be prohibited by title III from discriminating on the basis of disability in making decisions to grant or deny coverage. The insurance company will not, however, be prohibited by the ADA from administering its benefit plan in accordance with State insurance laws. 28 C.F.R. 36.212. Therefore, State law may also play a significant role in the determination of the insurance company's duties regarding individuals with disabilities, but such State law may not be used as a subterfuge to evade the purposes of the ADA.

CC: Records, Chrono, Wodatch, Hill, McDowney, FOIA, Friedlander
n:\Udd\hille\policylt\leach.ltr

01-03126

Notably, assuming the insurance company were to deny liability coverage to the Kickers, the Kickers could not, under the ADA, use that denial as a basis for refusing to allow individuals with disabilities to participate in the soccer club. 28 C.F.R. 36.212(c).

The final aspect raised by your letter is the possibility that the State and national soccer associations of which the Kickers are members may cancel the Kickers' membership because of the participation of an individual with a disability. The State and national associations would only be subject to title III to the extent they own, operate, lease, or lease to one or more places of public accommodation, e.g., soccer fields, tournaments, or meetings. To the extent such an association fell within title III, it would be prohibited from imposing eligibility criteria that exclude individuals with disabilities unless such criteria

are necessary to the activity. In addition, the association would have to make reasonable modifications to its current policies, practices, and procedures in order to ensure participation of individuals with disabilities in the covered activities, unless making the modifications would fundamentally alter the nature of the activities. Thus, for example, if a State or national soccer association operated a tournament in a facility that it owned, operated, or leased, the association may have to permit the participation of individuals with disabilities. To the extent membership in the association was a requirement for participation in the tournament, the association may need to reasonably modify its membership criteria so that they do not screen out individuals with disabilities. In the absence of a place of public accommodation owned, operated, or leased by the State or national association, however, the association's membership decisions may not be covered by the ADA.

If the Kickers wish to have further information about the requirements of the ADA, they may contact our ADA information line at 800/514-0301 (voice) or 800/514-0383 (TDD) .

I hope this information will be useful to you in responding to your constituents.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

01-03127

CONGRESS OF THE UNITED STATES
March 30, 1994

John Wodatch, Chief, Public Access Division
Office of Americans with Disabilities Act
Civil Rights Division
U.S. Department of Justice
P.O. Box 66738
Washington, D.C. 20035

RE: Iowa City Kickers Soccer Club

Dear Mr. Wodatch:

I have been contacted by the above named youth soccer club asking For my assistance in obtaining information about how the Americans with Disabilities Act applies to their club.

The Iowa City Kickers is a nonprofit recreational soccer club servicing over 2,400 children on 150 teams. The Kickers do not own, lease or operate any facilities. They use, with permission, soccer fields in parks owned by two cities and provide financial contributions to the cities to maintain and develop fields.

The Kickers are members of the Iowa State Youth Soccer Association and the National Youth Soccer Association. Through the national organization the Kickers receive liability insurance. Because the Kickers have adopted a policy of compliance with the ADA, and therefore are allowing a disabled person aided by a walker to play, the state and national organizations are reviewing the Kickers membership and insurance.

This matter is very important to my 2,400 young constituents and their soccer club. The Kickers are in jeopardy of losing their liability insurance because it is not clear that Title III of the ADA applies to their situation. Their concerns are intensifying so I would appreciate receiving any information you can provide.

Please address any additional questions and a response to the attention of Janelle Rettig in my Iowa City office, 102 S. Clinton #505, Iowa city, Iowa 52240, (319) 351-0789. Thank you for your assistance.

Sincerely,
Jim Leach
Member of Congress

JL:jrr

01-03128

DJ 202-PL-746 JUNE 2 1994

Ms. Barbara Foster
Director of Residence Services
Laurel Lake Retirement Community

200 Laurel Lake Drive
Hudson, Ohio 44236

Dear Ms. Foster:

This letter is in response to your request for information about the requirements of the Americans with Disabilities Act ("ADA") applicable to the swimming pool at your retirement community.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist you in understanding the ADA requirements. However, it does not constitute a legal interpretation or legal advice, and is not binding on the Department.

Title III of the ADA applies to all privately owned places of public accommodation that fall within one of the twelve categories of "places of public accommodation" listed in the Act. Strictly residential facilities are not included in the twelve public accommodation categories and are thus not covered by the ADA. However, places of public accommodation within strictly residential facilities, such as recreational facilities, may be covered by the ADA, if their use is not limited exclusively to the owners, residents, and their guests.

Your correspondence to us indicates that the swimming pool in your facility is utilized only by residents and their visitors. Thus, assuming that the retirement community is a privately owned residential facility and would not be considered a social service center establishment, the pool would not be subject to the ADA requirements for accessibility. Nonetheless, your housing units may be subject to the requirements of the Fair Housing Act of 1968, as amended, which prohibits discrimination

on the basis of disability. For further information on the accessibility standards of the Fair Housing Act, please direct

your inquiries to the U.S. Department of Housing and Urban Development. The provisions of the ADA regarding public accommodations within residential facilities are described in more detail in the enclosed Technical Assistance Manual published by the Department of Justice. See Part III-1.2000 at page four.

If your residential facility provides a significant enough level of social services, such as meals, counseling, transportation or training, it may be covered under title III of the ADA as a "social service center establishment." The owners and operators of such a "social service center establishment" are required to remove architectural barriers to accessibility if removal is readily achievable, that is, without much difficulty or expense. The barrier removal obligations for existing facilities do not require a facility to exceed the requirements that would apply to new construction that are set out in the ADA Standards for Accessible Design. The Standards do not have specific provisions regarding swimming pools. When there are no specific standards for a particular type of facility in the Standards, the general standards should be applied to the extent possible. For example, a swimming pool complex must comply with the requirements for the parking facility, route to the facility door, route to the pool, locker rooms, showers, etc. Discussion of these provisions can be found in section 36.304 of the enclosed title III regulation, and at pages 30-40 and 46-47 of the Technical Assistance Manual. Also enclosed as Appendix A to the title III regulation are the ADA Standards for Accessible Design.

I hope this information is useful to you in understanding the requirements of the ADA.

Sincerely,

John L. Wodatch
Chief
Public Access Section

Enclosures

01-03130

June 3 1994

The Honorable Amo Houghton
Member, U. S. House of Representatives
32 Denison Parkway West
Corning, New York 14830

Dear Congressman Houghton:

This letter responds to your inquiry on behalf of your constituent, Dr. Bruce Surosky, concerning the regulatory requirements of the Americans with Disabilities Act (ADA) for accessibility to toilet rooms associated with examination rooms in a doctor's office.

The ADA carefully balances the rights of persons with disabilities with the costs to businesses of providing access. The regulations formulated by the Department of Justice maintain the law's careful balance and recognize the legitimate needs of the business community for efficiency and profitability.

In new construction, where good design practices can result in accessibility with little or no increase in overall square footage and where knowledgeable application of the technical requirements allows ordinary, "off-the-shelf" toilets and sinks to be used if properly installed, accessibility costs have been repeatedly demonstrated to be minimal. Therefore, the new construction requirements are that each public or common use toilet, such as the toilet associated with an examination room, must be accessible.

If a doctor's office, including examination rooms, is being voluntarily altered, then each altered space or element must comply with the new construction requirements unless technically infeasible. If the constraints of existing conditions constitute technical infeasibility, the alteration must provide accessibility to the maximum extent feasible.

01-03131

Another consideration is that when undertaking alterations to an area containing a primary function the path of travel to the altered area and the restrooms, telephones, and drinking fountains that serve the altered area must be made accessible to the extent that such additional modification costs do not exceed 20% of the cost of the overall alterations.

Enclosed are copies of the Department's implementing regulation for Title III of the ADA and the Title III Technical Assistance Manual. You may wish to pass these on to Dr. Surosky for his further reference. I hope this information is helpful to you in responding to your constituent.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

Enclosures

01-03132

April 12, 1994

Mr. John Wodatch
U.S. Department of Justice
Chief of Public Access Section
Civil Rights Division
PO Box 66738
Washington, D.C. 20035

Dear Mr. Wodatch:

I am enclosing a letter from one of my constituents.

Any assistance you may be able to provide Dr. Snyder would be greatly appreciated.

When Congress approved the Americans With Disabilities Act it was intended to help those with disabilities. Despite the good intentions of this bill, it is important that it is reasonably implemented. As we provide disabled individuals with accessible accommodations, we must make certain that the requirements placed on businesses are consistent with the intent of the legislation and do not place an unfair burden on the owners of these businesses. In this particular case, mandating wheelchair accessible bathrooms for each of the examining rooms seems to exceed the requirements that Congress had intended. I would appreciate hearing from you in this regard.

If you have any questions, please contact John Campbell in our Corning district office.

Thank you for your time and consideration.

Sincerely,

Amo Houghton
Member of Congress

January 13, 1994

Congressman Amory Houghton
32 Denison Parkway West
Corning, New York 14830

Dear Congressman Houghton:

Thank you for your courtesy and interest in the problem that we discussed during our telephone conversation January 3, 1994. Your assistance in solving our dilemma--which seems to involve the spirit of the law, as opposed to the letter of the law, but has great access and cost repercussions--would be greatly appreciated.

Specifically, our problem involves an interpretation of the Americans With Disabilities Act by the Architectural and Transportation Barriers Compliance Board--wherein it is their position that all bathroom facilities in a new or substantially renovated medical office suite be built to handicap specifications. This means that each of these rooms must be oversized (about two times normal) and have special toilets, sinks and support/transfer bars. In a busy primary care office such as ours, where each of three to eight examination rooms requires its own bathroom, this certainly creates an undue hardship and may in fact, reduce access to care if we cannot sufficiently expand our operation to meet current patient demand. Even if we can find the additional space to meet their expectations, it significantly increases the cost of providing health care services.

Please be assured that it is not our intention to ignore the needs of our physically disabled patients or employees. On the contrary, we support and are more than willing to comply with the spirit of the Americans With Disabilities Act. However, it is our position that reasonable accommodations can certainly be made for affected individuals by having one bathroom in our suite--as well as all corridors and passageways--accessible to the handicapped. I would

note that the Health Center For Women, where our office is located, was constructed only two years ago and also provides excellent access parameters and handicapped-accessible public facilities. I honestly believe that the addition of one handicapped bathroom in our suite will adequately complement these accommodations, without creating undue and counter-productive hardships for our medical

01-03134

offices. It is also worthwhile to note that other parameters associated with accessing our services (such as parking) don't have to be 100% handicapped accessible. Rather, only a representative portion of available parking spaces have to be handicapped accessible.

Finally, it is important to note that the Department of Justice and the U.S. Equal Employment opportunity Commission have published their interpretation of the ADA (attached), wherein they indicate that only "a reasonable number . . . of bathrooms must be made accessible." Unfortunately, the Architectural and Transportation Barriers Compliance Board--to which the EEOC refers technical questions on accessible design in new construction and alterations--does not share this view.

Again, any assistance you can give us in negotiating this legal gridlock would be greatly appreciated.

Respectfully,

Bruce Surosky, M.D.

BS/aob

JUN 5 1994

T. 6/17/94
MAF:AMP:ca
DJ 204-29-0

Ms. Kathleen Hagen
Attorney-at-Law
Minnesota Disability Law Center
430 First Avenue North, Suite 300
Minneapolis, Minnesota 55401

Dear Ms. Hagen:

This is in response to your letter to Attorney General Janet Reno regarding a letter to her from the Council of State Administrators of Vocational Rehabilitation. Although we are unable to comment on correspondence the Attorney General receives, we are able to address the issues you raise in your letter. Specifically, you express concern regarding the responsibility of State Vocational Rehabilitation Agencies to pay the cost of auxiliary aids for students with disabilities in light of newly raised arguments that the Americans with Disabilities Act of 1990 (ADA) changes the existing allocation of responsibility to pay for such aids. We apologize for any delay in responding to your letter.

The ADA authorizes the Department to provide technical

assistance to individuals and entities with rights or obligations under the Act. This letter does not constitute a legal interpretation or a formal legal opinion, and is not binding on the Department of Justice.

Generally, under the ADA, both public and private institutions of higher education have an independent responsibility to provide auxiliary aids and services, such as interpreter services and readers, to individuals with disabilities. Under title II this obligation arises when such aids and services are " ... necessary to afford an individual with a disability an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity conducted by a public entity." See Section 35.160(b)(1) of the enclosed title II regulation.

CC: Records CRS Chrono MAF Pecht. FOIA congress.93/hagen
McDowney

01-03136

Under title III, such aids and services must be provided ". . . when necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services .... " See Section 36.303(a) of the enclosed title III regulation.

The provision of an aid or service is not required under either regulation when the covered entity can demonstrate that providing such an aid or service would result in a fundamental alteration in the program or activity being offered (or, in the case of a title III entity, in the nature of the goods, services, facilities, privileges, advantages or accommodations being offered) or in undue burdens. These concepts are explained in more detail in the enclosed regulations and in section II-7.0000 of the enclosed title II Technical Assistance Manual and section III-4.3000 of the enclosed title III Technical Assistance Manual.

The ADA was not intended to affect existing law and policy under the Rehabilitation Act of 1973, as amended (the Rehabilitation Act), with respect to the general obligations of State Rehabilitation Agencies. As noted in the preamble to the

original regulation, promulgated by the now-defunct Department of Health, Education and Welfare to implement Section 504 of the Rehabilitation Act, " ... the Department anticipates that the bulk of auxiliary aids will be paid for by state and private agencies, not by colleges and universities." See 42 FR 22693 (May 4, 1977). Nothing in this Department's title II regulation was intended to change that expectation. The specific issue of whether a student who is not already the client of a Vocational Rehabilitation program can be required to apply for vocational rehabilitation services is currently under review.

We hope that this information will be of assistance to you.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

Enclosures (4)

01-03137

May 18, 1994

The Honorable Janet Reno
United States Attorney General
Washington D.C. 20530

Dear Ms. Reno:

I am writing to you concerning the letter you received from the Council of State Administrators of Vocational Rehabilitation. I am a staff attorney with the Minnesota Disability Law Center, and my specialty is ADA issues. I receive questions daily from persons with disabilities regarding the ADA and hear stories of discrimination they have experienced in, violation of the ADA. I an, also a person with a disability, I am blind. I received an education, including a law degree, with assistance from the vocational rehabilitation agency in my state. Without their assistance in paying for readers, and in providing, some other financial services, I would not have been able to get my degree. I am very distressed by the implications of this

letter. I am also angered by the fact that our state vocational rehabilitation agencies are using time and money which could better be spent providing services for persons with disabilities, in the hiring of legal counsel to formulate such specious arguments as were raised in this letter. Without exception, the arguments raised are disingenuous and without merit.

The first argument raised is that state-funded institutions of post-secondary education are public entities covered under Title II of the Americans with Disabilities Act (ADA.) The letter argues that to send students with disabilities to State Vocational Rehabilitation Agencies to gain services, instead of providing those services themselves, subjects the colleges receiving state funding to charges of violation of the ADA. They argue that this is true, not merely because the school fails to provide physical or program access, but also because it imposes an extra burden, in fact they refer to it as a "surcharge" for students to have to contact Rehabilitation Agencies to seek such services. Such a "surcharge", they argue, is in violation of the ADA. This argument is flawed. Services provided by Vocational Rehabilitation Agencies are generally free to students with disabilities who qualify for such

services. Students with disabilities who are gaining an education with a goal toward future employment almost always can gain such services from these agencies. The "surcharge" imposed on persons with disabilities would occur if State Rehabilitation Agencies were allowed to stop providing such auxiliary aids as are necessary for students to gain an education, merely because such services should be provided by the college the student is attending. This would mean that the students with disabilities would be left to institute the complaint process against the University, and might not gain an education at all if they did not have the private means to pay for the services they needed, or if they could not get the college to provide such services. Persons with disabilities denied such an education, when such

persons already constitute the largest group of unemployed persons, will have greatly decreased chances of productive employment. State Vocational Rehabilitation Agencies would, at best, be placing a "surcharge" on persons with disabilities in violation of the ADA.

The second argument raised is that the ADA prohibits one state-subsidized agency from perpetuating ongoing discrimination perpetrated by another state-funded agency. Thus, they argue, that if they participate in providing services to students with disabilities that a post-secondary college receiving public funding should provide, that the rehabilitation agency will be perpetuating the ongoing discrimination perpetrated by the college in question. This argument ignores the question of how students with disabilities are to gain services, including auxiliary aids, in order to complete their education, if a college cannot or will not provide that service, and the State Rehabilitation Agency will not provide the service. If a state agency refuses to provide services to a student with a disability simply because a post-secondary school should be providing those services, unquestionably the State Rehabilitation Agency itself would be perpetuating ongoing discriminatory actions against students with disabilities.

The third argument raised, more of a rhetorical question actually, is: why should students with disabilities be discriminated against by not being provided services which would be provided to students without disabilities? This question is based on a flawed premise. The University has no obligation to provide additional services or pay for auxiliary aids for students without disabilities. In fact, to ask for such accommodation, a student has the obligation to produce evidence of disability and indicate what accommodation is necessary.

The fourth argument raised was that post-secondary schools falling under Title III, in essence private schools, are considered public accommodations and must not discriminate against

students with disabilities in the provision of services. Again, the agencies attempt the specious argument discussed before that asking students to seek assistance from vocational rehabilitation agencies is a burden on the student with a disability. I can guarantee you that no student with a disability considers it more of a burden to seek services from a Vocational Rehabilitation Agency than they do to attempt to pay for those services themselves or to not gain an education at all because they cannot gain such services.

Finally, the letter concedes that previous cases decided under Section 504 of the Rehabilitation Act do not support these arguments, but they argue that those cases were decided prior to the passage of the ADA. The cases to which they refer indicate that, while a federally funded post-secondary school has the obligation to provide physical and program access, that a vocational rehabilitation agency, also receiving federal subsidies, cannot refuse to cover the services. The object of both Section 504 and the ADA is, after all, the provision of an education to a person with a disability, not to quibble about who will provide the service. The language incorporated into Title II of the ADA to provide a student with a disability with services whether or not the college in question refused to cover the services. The object of both Section 504 and the ADA is all, the provision of an education to a person with a disability, not to quibble about who provide the service. The language incorporated into Title II of the ADA is the same language that already existed in Section 501, and the administrative remedies are the same as well.

The purpose of Title II of the ADA was to provide the same protection for persons with disabilities receiving state or locally subsidized funding, that such persons currently receive from agencies receiving federal funds. Thus far, cases brought under the ADA have used Section 504 as instructive guidance, and it is unlikely that such cases brought under the ADA would result in a different decision than that reached previously under Section 504. The Council of State Administrators of Vocational Rehabilitation should be ashamed to advocate the balancing of their budgets on the backs of persons with disabilities. Rather than attempt the decrease of services they provide to persons with disabilities, such agencies should be seeking additional ways to provide such services as persons with disabilities need to become productive citizens.

No one would disagree that all post-secondary schools should provide physical and program access to persons with disabilities. Perhaps your office can advise post-secondary schools that they must make themselves accessible physically, as well as providing program access and reasonable accommodation, for students with disabilities. However, I would request that you also advise State Vocational Rehabilitation Agencies that they cannot avoid the responsibility of providing services, including auxiliary aids, to persons with disabilities, and that attempts to avoid their responsibilities in this area would constitute a violation of the ADA.

Thank you for the opportunity to respond to this letter. If you have questions, you may call me at (612) 334-5785, Extension 253.

Sincerely,

Kathleen Hagen
Attorney-at-Law

KH:dld

01-03141

T. 6-13-94

DJ 202-PL-762 JUN 20 1994

Dale J. Atkinson
Atkinson & Atkinson
1603 Orrington Avenue
Suite 2080
Evanston, Illinois 60201

Dear Mr. Atkinson:

I am responding to your letter, on behalf of the National Association of Boards of Pharmacy (NABP), regarding the Americans with Disabilities Act (ADA).

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities that have rights or responsibilities under the Act. Pursuant to that authority, this letter provides informal guidance to assist you in understanding the ADA. However, this technical assistance does not constitute a legal interpretation of the statute, and it is not binding on the Department.

Your letter addresses the application of the ADA to the National Association of Boards of Pharmacy Licensing Examination (NABPLEX), which is developed and owned by NABP and licensed to and administered by State pharmacy licensing agencies. You have asked whether the NABP or the State licensing agencies are responsible under the ADA for providing reasonable accommodations to individuals with disabilities who take the NABPLEX.

Title II of the ADA prohibits discrimination on the basis of disability in the programs, activities, and services of public (i.e., State and local government) entities. Title III requires private entities who offer examinations related to licensing to ensure that those examinations are accessible to individuals with disabilities.

The State licensing agencies that administer the NABPLEX are covered by title II. Title II provides that a public entity must not administer a licensing program in a manner that subjects qualified individuals with disabilities to discrimination on the basis of disability. 28 C.F.R. 35.130(b)(6). In order to fulfill that obligation, a public entity administering a

cc: Records, Chrono, Wodatch, Blizard, Hill, FOIA, Friedlander
n:\udd\hille\policylt\atkins.ltr

01-03142

licensing examination must take appropriate steps to ensure effective participation of individuals with disabilities. Such steps may include reasonable modification of policies, practices, and procedures, elimination of unnecessary eligibility criteria, and provision of auxiliary aids and services where necessary. 28 C.F.R. 35.130; 28 C.F.R. 35.160. Therefore, title II requires the State licensing agencies to ensure that the administration of the NABPLEX does not discriminate on the basis of disability.

The fact that title II obligates the State licensing agencies to administer their licensing examination in a non-discriminatory manner does not necessarily mean that NABP is exempt from obligations under the ADA. Under title III, any private entity that offers an examination related to licensing must ensure that the examination is selected and administered so that its results accurately reflect the aptitude or achievement of individuals with disabilities, rather than reflecting the disabilities. 28 C.F.R. 36-309. Therefore, to the extent that the administration of an examination related to licensing is within the control of a private entity, that private entity may be required to ensure accessibility to individuals with disabilities.

In addition, title II prohibits covered entities from discriminating on the basis of disability through contractual arrangements. 28 C.F.R. 35.130(b)(1). Therefore, the State licensing agencies would be prohibited from contracting with NABP to have NABP administer the test in a way that would not meet the requirements of title II. Further, title II prohibits covered entities from providing significant assistance to any organization that discriminates on the basis of disability in providing any service to beneficiaries of the covered entity. 28 C.F.R. 35.130(b)(1)(v). Therefore, to the extent the NABPLEX itself has the effect of excluding people because of their disabilities, the State licensing agencies may be prohibited by the ADA from dealing with NABP.

In situations where the ADA imposes overlapping obligations on two or more entities, the ADA does not determine which entity must accept ultimate responsibility for meeting or failing to meet those obligations. Instead, both entities are considered to be fully legally responsible and either party, alone, may be held liable for a violation. The allocation of responsibility between the parties is a contractual matter to be resolved by the parties. The allocation of responsibility is binding only between the parties.

For your further information, I am enclosing copies of the regulations implementing titles II and III. I hope that this information is helpful to you and that this letter fully responds to your inquiry.

Sincerely,

John L. Wodatch
Chief
Public Access Section

Enclosures

ATKINSON & ATKINSON
1603 ORRINGTON AVENUE
SUITE 2080
EVANSTON, ILLINOIS 60201

February 3, 1994

Mr. John Wodatch, Director
Office of the Americans with Disabilities Act
Civil Rights Division
US Department of Justice
Washington, DC 20530

RE: Americans with Disabilities Act

Dear Mr. Wodatch:

This law firm represents the National Association of Boards of Pharmacy ("NABP" or "Association") which hereby formerly requests a letter of opinion or letter ruling from the civil Rights Division of the U.S. Department of Justice with regard to the Americans with Disabilities Act.

NABP was established in 1904 by the state boards of pharmacy to serve as a mechanism for sharing information and for the purpose of establishing licensure transfer (interstate recognition) through the development and implementation of uniform licensure requirements. NABP is a not-for-profit Kentucky corporation recognized by the Internal Revenue Service as an organization exempt from taxation under Section 501(c) (3) of the Internal Revenue Code. Its members include the boards of pharmacy of all of the states of the United States, the District of Columbia, Puerto Rico, eight (8) of the provinces of Canada, and two (2) of the states of Australia.

The regulation of the pharmacy profession is statutorily vested in the boards of pharmacy or relevant state departments of professional regulation (licensing agency) of each jurisdiction. These licensing agencies are granted the ultimate authority in

decision making with regard to the licensure of pharmacists by the respective state legislation, generally referred to as the Pharmacy Practice Act. As a prerequisite to licensure, most practice acts require graduation from an accredited school, completion of an internship, successful completion of a licensure examination, completion of an application form and payment of applicable fees. Statutorily, the licensing agency is responsible for, and cannot delegate, its authority to issue or deny a license to an applicant.

01-03145

These licensing agencies, as mandated by statute, utilize a licensure examination which tests for minimum competencies to safely practice pharmacy. The complex process of developing a psychometrically sound and valid examination requires specialized skills and is extremely costly. State boards do not have the skilled personnel nor funds to prepare such an examination on an individual basis. Accordingly, the states have elected to utilize a national standardized examination to enhance initial licensure and to foster the ability of pharmacists to transfer from Jurisdiction to jurisdiction based on uniform standards.

NABP developed a uniform licensing examination referred to as the National Association of Boards of Pharmacy Licensing Examination (NABPLEX). The NABPLEX was developed through interaction with practitioners, academia, and regulators, to produce a valid and defensible test in accordance with contemporary testing standards. As an aid to government, NABP utilizes its resources and access to data to produce a valid examination which is standardized and which is sold to and administered by each board on uniform dates. NABPLEX has been utilized since the early 1970's. Currently, all states (with the exception of California), the District of Columbia, and Puerto Rico require successful completion of the NABPLEX as a prerequisite to licensure as a pharmacist. NABPLEX is copyrighted and owned by NABP.

The states, through their regulatory departments or boards of pharmacy, contract with NABP to purchase the NABPLEX which they utilize in the licensure process. The board or the state designated testing service administers the NABPLEX. NABP does not administer the NABPLEX in any jurisdiction.

The rights and obligations between NABP and the licensing authority are contractually set forth in an agreement duly executed

between the parties. NABP does not offer its examination directly to candidates for licensure. It contracts with and provides the state board of pharmacy with the examination and related scoring and statistical services. The state board offers the exam to candidates for licensure and administers the exam under conditions agreed to by NABP and the states to assure the continued validity and security of the NABPLEX.

Candidates apply for licensure, sit for the examination, and provide substantiation of compliance with the statutory requirements for licensure with the board of pharmacy. NABP has no direct nor indirect contact with candidates for licensure with regard to the application for licensure nor the administration of the NABPLEX.

In light of the Americans with Disabilities Act, issues have been raised over the entity legally and fiscally responsible for providing reasonable accommodations to disabled candidates who apply through the states to sit for the NABPLEX. Specifically, NABP respectfully requests the opinion of the Department of Justice as to the entity responsible for bearing the costs of accommodations where the state licensing agency (which administers the NABPLEX) is requested by a disabled candidate for licensure to provide a reasonable accommodations) related to NABPLEX. The state agency consults with NABP to determine whether an accommodation compromises the security or validity of the NABPLEX.

It is NABP's position that Title II of the ADA (which covers public entities) is applicable and therefore, the legal and fiscal responsibility to provide reasonable accommodations rests with the state licensing authority which administers the licensure process, including the administration of the NABPLEX.

Since, (i) under law, the authority to issue pharmacy license cannot be delegated by the state licensing authority to the NABP or any outside organization, (ii) NABP cannot offer its examinations directly to candidates for licensure and (iii) NABPLEX is administered by the state authority, NABP has concluded that Title III (which covers private entities) is not applicable under the facts as set forth in this letter.

NABP respectfully requests verification from the Department of Justice of these conclusions. Should you have any questions or need any further data, please do not hesitate to contact us. We look forward to your prompt reply.

Very truly yours,

Dale T. Atkinson
FOR THE FIRM

DJA:cd

cc: U.S. Dept of Justice
Chicago, Illinois

01-03147

T. 6-7-94
DJ 202-PL-454

JUN 20 l994

Gregory G. Brooker
Associate City Attorney
City of Bloomington
2215 West Old Shakopee Road
Bloomington, Minnesota 55431

Charles L. LeFevere
City Attorney
City of Richfield
470 Pillsbury Center
Minneapolis, Minnesota 55402

Roger Pauly
City Attorney
City of Eden Prairie
370 Suburban Place Building
250 Prairie Center Drive
Eden Prairie, Minnesota 55344

Dear Messrs. Brooker, LeFevere, and Pauly:

I am responding to your letter concerning the Americans with Disabilities Act (ADA). I apologize for the delay in responding.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities that have rights or responsibilities under the Act. Pursuant to that authority, this letter provides informal guidance to assist you in understanding the ADA. However, this technical assistance does not constitute a legal interpretation of the statute, and it is not binding on the Department.

You have asked about the application of the ADA to the activities of a joint powers organization (JPO) among three cities. The JPO is covered by title II of the ADA, which prohibits discrimination on the basis of disability by public (i.e., State or local government) entities and instrumentalities.

Your letter specifically addresses recreational programs provided by the JPO for individuals with disabilities, including "adaptive" programs that serve only individuals with

cc: Records, Chrono, Wodatch, Blizard, Hill, FOIA, Friedlander
n:\udd\hille\policylt\brooker.ltr

01-03148

disabilities, and "integrated" programs that serve individuals both with and without disabilities together. Your questions focus on the JPO's dealings with non-residents of the participating cities, and particularly on whether such non-residents can legally be excluded from the programs or charged a higher fee for participation therein.

The ADA prohibits discrimination on the basis of disability. It does not address other bases for treating people differently. Therefore, the primary consideration in answering your questions is whether the JPO's proposed actions would treat an affected person differently from other people in similar situations on the basis of the person's disability.

A public entity may not impose eligibility criteria that screen out individuals with disabilities from fully and equally enjoying any program, unless such criteria are necessary for the provision of the program. Thus, the JPO may not legally exclude non-residents with disabilities from any particular activity while permitting non-residents without disabilities to participate. Nor may the JPO legally charge a higher fee to non-residents with disabilities than it charges to non-residents without disabilities, even if the higher fee is based on the

higher cost of providing service to the individuals who have disabilities. 28 C.F.R. 35.130(f). Rather, the ADA requires that such costs be absorbed by the service provider or distributed to all users of the program, regardless of disability. Thus, all non-resident participants in an integrated activity must be charged the same fee, regardless of whether or not they have disabilities. Further, non-resident participants in an adaptive activity may not be charged a higher fee than non-resident participants in the comparable integrated activity.

If an activity, such as basketball, were offered only in an integrated setting, the JPO would be free to exclude all non-residents from participating in the activity. Similarly, if the activity were offered only in an adaptive setting, the JPO would be free to exclude all non-residents. If the activity were offered in both integrated and adaptive settings, again, the JPO could exclude all non-residents from both settings without violating the ADA. However, the JPO may not legally be able to exclude non-residents from the adaptive basketball program while allowing non-residents to participate in the integrated basketball program. Such a distinction may constitute an eligibility criterion that screens out individuals with disabilities from full enjoyment of the JPO's programs while allowing similarly situated (i.e., non-resident) individuals without disabilities to benefit fully. 28 C.F.R. 35.130(b)(8). A similar analysis would apply to the issue of a higher fee for non-resident participants.

The JPO is free, under the ADA, to adopt different residence criteria for different activities. For example, the basketball program could permit non-resident participation, while the swimming program excludes all nonresidents, as long as the criteria do not screen out individuals with disabilities.

For your further information, I am enclosing a copy of the regulation implementing title II of the ADA and the Department's Title II Technical Assistance Manual. I hope that this information is helpful to you and that this letter fully addresses your question.

Sincerely,

John L. Wodatch
Chief
Public Access Section

Enclosures

01-03150

T 6-3-94 JUN 23 1994
DJ 202-74-0

The Honorable E. "Kika" de la Garza
U.S. House of Representatives
1401 Longworth House Office Building
Washington, D.C. 20515-4315

Dear Congressman de la Garza:

This letter is in response to your inquiry on behalf of your constituent, XX , who seeks information about the applicability of the Americans with Disabilities Act (ADA) to parking spaces for a recreation hall in a subdivision.

Since the request for information from your constituent

describes only "a recreation hall - in a subdivision," we will assume for purposes of this response that the subdivision is a private residential community. Title III of the ADA imposes certain obligations on places of public accommodation. The Act lists twelve types of entities as places of public accommodation; strictly residential facilities are not among the twelve categories. Accordingly, residential communities are not covered by title III of the ADA, and common areas in such communities are not covered where use is restricted exclusively to residents and their guests.

However, if a residential community opens up common areas to general use by non-residents, it may lose its strictly residential character. Areas open to the public will probably be covered by the ADA if common activities or facilities fall within one of the twelve categories of places of public accommodation in title III. Discussion of these provisions can be found at pages 35551 - 35552 of the enclosed title III regulations and further discussion is included in Section III - 1.000 of the enclosed Technical Assistance Manual.

If the recreation hall is a place of public accommodation, then the owners or operators of the recreation hall would be required to remove architectural barriers to accessibility if their removal is readily achievable, that is, able to be accomplished without much difficulty or expense. Providing accessible parking spaces, where it is readily achievable to do

cc: Records, Chrono, Wodatch, Prieto, McDowney, FOIA, Friedlander
n:\udd\prieto\policy\residntl

01-03154

so, would be included in barrier removal by a public accommodation that provides parking spaces for self-parking by employees or visitors, or both. The requirements for parking spaces are set forth in the standards ("ADA Accessibility Guidelines for Buildings and Facilities"; Appendix A to the enclosed title III regulations), at pages 35612 and 35630 - 35632.

I hope this information will be useful to you in responding to your constituent.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

Enclosures

01-03155

U.S. Department of justice
Civil Rights Division
Coordination and Review Section
P.O. Box 66118
Washington, DC. 20035-6118

DJ 204-52-0

Ms. Margaret S. Rogers
Cape Fear Chapter
National Association of the
Physically Handicapped, Inc.
406 Mosley Street
Wilmington, North Carolina 28405

Dear Ms. Rogers:

This is in response to your letter to the White House concerning the Wilmington Post Office. We are sorry for the delay in responding.

Because the Wilmington Post Office was not constructed or altered after 1968, it does not fall under the requirements of the Architectural Barriers Act (ABA). Therefore, as you were informed by the Architectural and Transportation Barriers Compliance Board, that agency can take no further action with respect to your complaint and has closed its case against the Wilmington Post Office under the ABA.

Furthermore, the Americans with Disabilities Act (ADA) applies only to private employers, State and local government entities, and privately owned and operated places of public accommodation and commercial facilities. When Congress enacted the ADA, it specifically exempted the Federal government from coverage. The Department of Justice can take no action, therefore, against the Wilmington Post Office under the ADA.

However, all Federal government entities (including the United States Postal Service) must comply with section 504 of the Rehabilitation Act of 1973. The ADA was modeled on section 504, which prohibits discrimination against qualified individuals with disabilities in employment and the provision of services.

It is our understanding that you have already filed a complaint against the Wilmington Post Office with the Postmaster General's office. The U.S. Postal Service (USPS) is the Federal agency responsible for enforcing section 504 in all postal

service programs and activities. The Department of Justice does not generally monitor or review individual compliance investigations and decisions made by other agencies, such as the

USPS. If you are dissatisfied with the Postmaster General's handling of your complaint, however, you may be entitled to file a private suit in Federal court under section 504.

We hope that your complaint is resolved to your satisfaction and to the satisfaction of all concerned parties.

Sincerely,

Merrily Friedlander
Acting Chief
Coordination and Review section
Civil Rights Division

01-03159

406 Mosley St.
Wilmington, NC 20405
April 20, 1994

Marsha Scott
Deputy Illegible to the President
The White House
1600 Pennsylvania Ave.
Washington, DC 20007

Ms. Scott:

March 8, 1994, you mailed a letter to me informing me of your intention to forward my concerns over the inaccessibility of the handicapped to the main Post Office in Wilmington to the Architectural and Transportation Barriers Compliance Board. As we have been in constant contact with ATCB for over a year, we felt that was would not help.

Cathy Johnson once again called with same news. There is nothing they can do. Since this issue is too important to the more than 3,000 handicapped citizens in our area, it is mandatory that we continue to press the issue.

Cathy mailed us two pamphlets concerning the ADA and Historic Buildings. Granted, the Post Office was built in 1937, but this is a FEDERAL building. According to Architects: John B.G. Seimen, Sharon C. Park and Thomas C. Jeter, in the U.S. Department of Interior, National Park Service Cultural Resources, Preservation Assistance - November - December 1992 Pamphlet. "Historic buildings and sites are irreplaceable and require special stewardship to ensure that they will be preserved to the maximum extent possible. By the same measure, accessibility is a Civil Right for all persons and we must strive to make all existing buildings accessible.

It is just inconceivable, morally and ethically wrong that a Federal building would be able to circumvent the ADA and not provide this needed service for the elderly, disabled and handicapped or more than 3,00 in the area.

01-03160

There are ways to make this building accessible without a great deal of expense while not compromising the aesthetics and historic significance. There is, I am positive, a way to accomplish this and by God, I will not stop trying to find it.

If the Federal Government doesn't have to make its buildings accessible, then ADA really doesn't mean a lot, does it? I will not stop trying to solve this problem!!!

Sincerely,

Margaret S. Rogers

(910) 762-0242

CAPE FEAR CHAPTER

NATIONAL ASSOCIATION OF THE PHYSICALLY HANDICAPPED, INC.

01-03161

T. 6/8/94
MAF:AMP:ca
DJ 204-69-0

The Honorable Tom Daschle
United States Senate
Washington, D.C. 20510-4103

Dear Senator Daschle:

This letter responds to your recent inquiry on behalf of your constituents, officials of Deuel County, South Dakota, regarding their efforts to bring the Deuel County Courthouse into compliance with the Americans with Disabilities Act of 1990 (ADA). on behalf of Deuel County (the County), its officials are seeking information on enforcement of the ADA at the county level, particularly with respect to the County Courthouse which, they note, is on the National Register of Historic Places. They are also seeking sources of outside funding for ADA compliance. We apologize for any delay in responding to your letter.

Title II of the ADA prohibits discrimination against qualified individuals with disabilities on the basis of their disability in services, programs, or activities conducted by a State or local governmental entity such as Deuel County. A copy of the regulation implementing title II is enclosed for your convenience.

In recognition of the fact that covered entities might require some time to come into compliance with any structural alterations required by the ADA, the Department's title II regulation requires covered entities to make such changes as expeditiously as possible, but in no event later than January 26, 1995, three full years after the effective date of title II. As an enforcement matter, the Department of Justice does not have the authority to waive any applicable requirements imposed by the ADA or to extend the time frames for meeting such requirements. It appears, however, that County officials may have overestimated the County's obligations under the ADA and, consequently, may

have overestimated the County's cost to comply with that Act.

cc: Records CRS Chrono MAF McDowney, FOIA
Pecht\Congress.93\Daschle

01-03162

According to the information provided to you by the County, it has been advised that it will need to spend a minimum of $259,600.00 in order to modify the Courthouse to meet ADA requirements. In another document enclosed with your letter, the County Auditor states that compliance would require a 7.5% increase in county taxes over the next five years. The Auditor's calculation apparently is based on a transition plan for the Deuel County Courthouse prepared by an independent architectural consultant.

The Federal government does not generally review self-evaluation and transition plans required by ADA (except in the context of complaint investigations or compliance reviews). In the process of preparing this response, we did, however, briefly look at the transition plan sent to you by the County. From this brief review, which did not include a technical review of the architects recommendations, it appears that the architect surveyed the Courthouse to determine how it deviated from the ADA design standards for new construction (the ADA Accessibility Guidelines or "ADAAG"), and then provided estimates for retrofitting the Courthouse to comply with the new construction standards.

This approach reflects a fundamental misunderstanding of the requirements of title II. Title II does not require that existing buildings and facilities be brought up to the standards for new construction. Instead, the focus of title II of the ADA and its implementing regulation is to ensure that, to the extent that a covered entity provides programs, services, and activities to the public, they are readily accessible to and usable by individuals with disabilities. The concept of program access is discussed on pages 19-22 of the enclosed title II Technical Assistance Manual.

Providing access to its programs, services, and activities does not mean, however, that the County is necessarily required to make each of its existing facilities accessible. In some situations, providing access to facilities through structural

methods, such as the alteration of existing facilities and the acquisition or construction of additional facilities, may be the most efficient method of providing program accessibility. On the other hand, nonstructural methods, such as the acquisition or redesign of equipment, the assignment of aides to beneficiaries, and the provision of services at alternate accessible sites, may be acceptable alternatives. Thus, the County may wish to reevaluate its planned structural alterations to determine whether they are, in fact, necessary to achieve program access.

With respect to its Courthouse, the County should first analyze the programs, services, and activities it provides at the Courthouse. Providing access to some activities, such as judicial proceedings, may require that a specific part of the

building (i.e., a courtroom) be made accessible. However, it may be the case that some County services now provided in inaccessible locations within the Courthouse can be easily moved to accessible locations when an individual with a mobility impairment needs access to such services. Physical changes are only required when a public entity cannot provide equal access to its programs, services, and activities through alternative methods.

In addition, the County is not required to make alterations to its existing facilities, if it can demonstrate that the expense of making the facilities accessible would result in undue financial and administrative burdens. See 35.150(a)(3) of the enclosed title II regulation. Of course, in those circumstances where a public entity believes that proposed physical alterations to its facilities would result in undue financial and administrative burdens, the public entity has the burden of proving that compliance with title II's requirement for program access would result in such burdens.

The decision that any proposed alterations would result in undue financial and administrative burdens must be made by the head of the public entity or his or her designee after considering all the resources available for use in the funding and operation of the service, program, or activity. The decision must be accompanied by a written statement of the reasons for reaching the conclusion that undue burdens would occur. If alterations to facilities would result in such burdens, the public entity must take other actions that would not result in such hardships but that would, nevertheless, ensure that individuals with disabilities receive the benefits or services

provided by the public entity to other individuals. These requirements are also explained in 35.150(a)(3) of the title II regulation.

Finally, County officials should be made aware of the special provisions applicable to historic structures. Section 4.1.7 of the ADA Standards contains special provisions and procedures applicable to historic structures, which are designed to ensure that the historic significance of such structures is preserved. A copy of the ADA Standards is located at Appendix A to the enclosed title III rule.

With respect to financial assistance, we note that limited Federal funding for barrier removal may be available in some instances. The Department of Housing and Urban Development (HUD) provides community development block grants designed to assist low and moderate income households and communities. These grants may be used to remove architectural barriers that restrict accessibility to publicly owned and privately owned buildings,

facilities, and improvements. For information on applying for a community development block grant, the County should contact HUD's Office of Block Grant Assistance at (202) 708-3587.

We hope this information is helpful in responding to your constituent.

Sincerely,

Deval L. Patrick
Assistant Attorney General
civil Rights Division

Enclosures (3)

UNITED STATES SENATE
Washington DC. 20510-4103
March 14, 1994

The Honorable Henry Cisneros
Secretary
Department of Housing and Urban Dev
451 Seventh Street, S.W.
Washington, DC 20410

Dear Mr. Secretary:
I was recently contacted by officials from Deuel County, South Dakota, regarding the effort to bring, the Deuel County Courthouse into compliance with the Americans with Disabilities Act (ADA). I have attached for your review copies of a letter I received from Mr. Robert Atyeo, Deuel County Auditor, and the County's architect's compliance cost-projection report.

I write you today in accordance with the guidelines spelled out in President Clinton's Executive Order #12875, "Enhancing the Intergovernmental Partnership," which went into effect January 24, 1994. It is my hope that the Department will work with Deuel County officials on their effort to meet their obligations under the Americans with Disabilities Act.

Deuel County is located in northeastern South Dakota. Over the course

of the past five years, the area has been devastated by a series of natural disasters. The early 1990S brought repeated flooding, which inflicted costly damage on Clear Lake. Last summer's Mississippi River flooding was only the latest in an extended sequence of the region's problems.

Deuel County has a population of 4,522 individuals and a total county valuation less than $200 million. It is highly dependent upon the success of its predominantly agricultural population. Unfortunately, farm income in the area has been down for some time. A succession of poor crops and natural disasters have resulted in unexpected Country expenditures and reduced revenue. Deuel County's current fiscal status is extremely precarious.

In his letter Mr. Aryeo outlines his concerns about how the county would be negatively impacted by further increases necessitated by the demands of ADA compliance. Atyeo also points out that Deuel county experiences an extremely small demand for disability services, I should emphasize that my constituents do recognize their need to ensure access for disabled individuals and want to meet this civic obligation.

Finally, Deuel County officials are concerned about preserving the historic integration of the Deuel County Courthouse building This limestone and pared concrete structure was built between 1916 and 1919. It is my understanding that it is on National Register of Historic Places.

The County is currently struggling with the challenge of complying with regulations promulgated by the ADA. On behalf of Deuel County, I am requesting a timely review of their situation. Any
01-03166

consideration you can afford them, either in the form of regulatory flexibility or financial assistance, would be greatly appreciated.

With best wishes, I am

Sincerely

Tom Daschle
United States Senate

TAD/mdc

(Handwritten)

OFFICE OF
COUNTY AUDITOR
DEUEL COUNTY
CLEAR LAKE, S. DAK. 57226

13 Jan 94

Hon: Sen. Thomas Daschle,
317 Hart Bldg

Washington, DC 20510

Senator Daschle,

Mike Cole

Enclosed please find an estimate prepared for ADA Compliance at our County Courthouse by Michael Burns at a cost of $3,304.27

The Deuel County Courthouse is a limestone and poured concrete structure built in 1916-19. It is on the National Register of Historic Places.

Deuel County has a population of 4522 and a valuation of $193,633,946. We experience a very low demand for services by handicapped individuals.

A tax levey to find the modifications over a 5 year period would result in a tax increase of 7.5% per year in the County levey.

What are the plans for endorsement of ADA at our level? And, What if any outside resources would be available.

Sincerely,
Robert G. Atyer

01-03168

T. 6-7-94
Control No. 4051013783

JUN 30 1994

The Honorable Jesse Helms
United States Senate
403 Dirksen Senate office Building
Washington, D.C. 20510-3301

Dear Senator Helms:

This letter is in response to your inquiry on behalf of your constituent, Katherine P. Hux, MPH, Executive Director of the North Carolina Psychiatric Association. Ms. Hux requested clarification of the term "reasonable accommodation" as it is applied in title III of the Americans with Disabilities Act (ADA). She further sought to clarify whether patients or physicians make the determination of what constitutes a "reasonable accommodation."

Based upon the content and context of Ms. Hux' query, it would appear that her concerns relate most directly to the auxiliary aids and services provisions of title III. Such aids and services are measures that are undertaken to ensure effective communication for individuals with impaired speech, hearing, and/or vision, as well as those who are profoundly deaf. The auxiliary aids requirement is intended to be flexible, reflecting the variable nature of what constitutes "effectiveness."

In addition to the specific nature of the disability involved, factors used to determine communication effectiveness in any given circumstance are most generally related to the length, complexity, and significance of the information being exchanged. Appointments for psychotherapy sessions, due to the sensitive nature of the information being exchanged, their length, complexity, and potential long-term, impact on the patient's well-being would appear to require the highest level of communication effectiveness possible. Further discussion of this point may be found on page 35567 of the enclosed title III regulation.

The psychiatrist should weigh other factors that would minimize the degree of burden on the practice, such as the ability to spread costs throughout the general client population and the provision of tax credits for small businesses for costs

cc: Records, Chrono, Wodatch, Bouvier, McDowney, FOIA, Friedlander
n:\Udd\bouvier\plhlms

01-03169

incurred to provide auxiliary aids. Eligibility criteria for this credit is found in publication 907, available from the Internal Revenue service. This document will be a useful resource for the Psychiatric Association's membership.

Under section 36.301(c) of the regulation, when an

interpreter or other auxiliary aid or service is required to ensure effective communication, the physician or therapist must absorb the cost for this aid or service. The auxiliary aid requirement does not require a physician or therapist to take any action that would result in an undue burden. The term "undue burden" means "significant difficulty or expense." In determining whether the provision of an interpreter or other aids or services would result in an undue burden, the therapist should consider the overall financial resources of the practice, not just the fees paid for a particular procedure or treatment session.

Ms. Hux also addressed the issue of a patient who demanded that the physician pay for the interpreter of his or her choice. The auxiliary aids provisions of the ADA do not compel the physician to comply with the unilateral determination of the patient that a particular interpreter, or any auxiliary aid is essential to effective communication. Ideally, the psychiatrist and patient would arrive at a mutually acceptable choice through the consultation process. This specific point is illustrated in the Department's Title III Technical Assistance Manual, Supplement - January 1993 at page 5. Additional relevant information may be found in the preamble discussion of section 36.303 on pages 35567-35568 of the title III regulation. These documents are enclosed.

I trust that this information will be helpful in your response to your constituent.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

Enclosures

01-03170

North Carolina Psychiatric Association
4917 Waters Edge Drive #250 Raleigh,North Carolina 27606 919/859-3370 or 919/951-0067

April 5, 1994

The Honorable Jesse Helms
Dirksen Building Room 403
lst and C Streets, NE
Washington, DC 20510

Dear Senator Helms:

I recall you expressed a number of concerns regarding Title III of the Americans with Disabilities Act. I have contacted the North Carolina Governor's Advocacy Council and the North Carolina Medical Society, and no one seems to have a definitive answer to a question I pose to your staff for research.

What is a reasonable accommodation?

A Greensboro psychiatrist providing services to a deaf person has been told that he, the psychiatrist, must provide an interpreter for the psychotherapy session. We may assume it is for approximately 30-45 minutes. The Service agency which provides signers (interpreters for a deaf person) charges for a minimum of two hours. The result is that the physician has a total loss (or more) of income from treating the individual. If the doctor (particularly one in solo practice or in practice with one or two other physicians) refuses to provide a service he can be charged with discrimination on the basis of handicap. Are there "reasonable accommodation" guidelines on a threshold of size of the provider entity, such as a clinic with 10 or more employees as opposed to one or two doctors who share a nurse and secretary.

A second question relates to who determines what is a reasonable accommodation?

Is it the health care provider or is it the patient? The Medical Society staff person told me that a physician made inquiry after a patient insisted upon the doctor paying for an interpreter of the patient's choice. Again, what is reasonable accommodation

01-03171

If I can get some clear recommendations on this I will plan to publish, with your permission, your staff's response to these questions in our bi-monthly newsletter.

I thank you and your staff for any help you can provide. I'm sure you know that you and your staff have a superb reputation for problem-solving on behalf of your constituents.

I look forward to a response.

Sincerely,

Katherine P. Hux, MPH
Executive Director

cc: Dr. Michael Zarzar
Dr. Roger Perilstein

01-03172

JUN 30 1994

The Honorable Harold L. Volkmer
Member, U.S. House of Representatives
Federal Building, Room 370
Hannibal, Missouri 63401

Dear Congressman Volkmer:

This letter is in response to your inquiry on behalf of your constituent, Colonel Ronald Kelly, President of the Missouri Military Academy, regarding the application of the Americans with Disabilities Act (ADA).

Colonel Kelly's letter indicates some confusion regarding the scope of the ADA. The ADA is a comprehensive civil rights law. It seeks to eliminate the barriers that have previously kept persons with disabilities from full access to the mainstream of American life. Title III of the ADA addresses such barriers by prohibiting discrimination on the basis of disability in places of public accommodation, including private schools. The ADA does not exempt military schools.

As Colonel Kelly has noted, the ADA sets cut certain requirements for accessibility of buildings and facilities. For existing buildings and facilities, the ADA requires a public accommodation to remove architectural and communication barriers to access to the extent such barrier removal is readily achievable. 28 C.F.R. 36.304. A list of examples of barrier removal is provided by the enclosed regulation implementing title III at p. 35597.

For alterations to, and new construction of, buildings and facilities, the ADA requires full compliance with the ADA Standards for Accessible Design (Standards), 28 C.F.R. part 36, appendix A, which provide detailed minimum guidelines for accessible buildings. Colonel Kelly's letter mentions that the

Missouri Military Academy may be building new barracks for its students. Such new barracks would be required to comply with the general requirements of the Standards and also with section 9 of the Standards, which provides additional requirements for dormitories and similar places of lodging. The barracks may also be required to comply with the Department of Housing and Urban Development's guidelines implementing the Fair Housing Amendments Act of 1988.

Colonel Kelly also specifically mentions the possible need to include an elevator in any newly constructed barracks. The ADA generally requires an accessible elevator in new construction. However, if the facility being built has less than three stories or has less than 3,000 square feet per story, the ADA does not require provision of an elevator.

The application of the ADA is not, however, limited to the buildings and facilities of covered entities. The policies, practices, and procedures of public accommodations can also sometimes constitute barriers to full participation by individuals with disabilities. For this reason, the ADA prohibits a public accommodation from applying eligibility criteria that screen out individuals with disabilities, unless the public accommodation can show that the criteria are necessary for the provision of the services at issue. 28 C.F.R. 36.301(a). In addition, the ADA requires that a covered entity make reasonable modifications to its policies, practices, and procedures when necessary to ensure full participation of individuals with disabilities, unless the public accommodation can show that the modifications would fundamentally alter the nature of the services provided. 28 C.F.R. 36.302.

The ADA also requires a public accommodation to provide auxiliary aids and services, such as brailled material or sign language interpreters, when necessary to ensure effective communication with individuals with disabilities, unless the public accommodation can show that providing such aids would fundamentally alter the nature of the services at issue or would result in an undue burden. 28 C.F.R. 36.303.

These provisions may require the Missouri Military Academy to review its admissions policies and the requirements of its programs and, if necessary, to modify them to ensure that individuals with disabilities are given the opportunity to participate in, contribute to, and enjoy the benefits of the programs offered by the Academy.

01-03174

I hope this information will be useful to you in responding to your constituent.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

Enclosure

01-03175

Congress of the United States
House of Representatives
Washington, DC 20515-2509

May 4, 1994

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

RE: Missouri Military Academy

Dear Sirs:

I am contacting you on behalf of the Missouri Military Academy located at Mexico, Missouri.

COL Kelly, President of MMA has contacted me regarding ADA guidelines in regard to the construction of a new dormitory for the academy. I am enclosing a copy of COL Kelly's letter.

I would appreciate your reviewing his letter and if you need further information contact COL Kelly at 314/581-1776.

Please provide me with your comments on their request and direct your response to my district office in Hannibal, Missouri at Room 370, Federal Building.

With best wishes, I am

Sincerely yours,

Harold L. Volkmer
Member of Congress

HLV/bp

encs.

01-03176

May 2, 1994

The Honorable Harold L. Volkmer
Room 370
Federal Building
Hannibal, MO 63401

Dear Congressman Volkmer:

Like everyone else, we need your help! Help in this case is with the ADA and the Justice Department.

We have asked the Great Plains Disability and Business Technical Assistance Center at the University of Missouri to review the needs of Missouri Military Academy in light of the ADA and our interest in building a new barracks for our cadets.

M.M.A. does not accept cadets who cannot participate in military drill and does not have to meet the ADA guidelines for complete accessibility in our dormitories. If the ADA says that we have to accept children who are in wheelchairs and cannot perform military drill, it will destroy one of the pillars upon which the Academy was founded. We see military drill as critical to our disciplinary system and to the development of esprit de corps, and thus, M.M.A. is exempt from accepting children who cannot participate.

Given the above, why should we be forced to install a very expensive elevator in our new barracks, when the elevator will not be used? When

boys are hurt and must temporarily be on crutches, we move them, to the first floor of the dormitories for ease of accessibility. A boy with a handicapped parent would be housed on the first floor in any case.

What we need at this point is someone from the Department of Justice to rule that we do not need to construct an elevator in our new dorm because of our special status. Architects and contractors are afraid to act, for fear of law suits in the future. The Board of Trustees is willing to place in writing the fact that elevators will be installed in the future, should the mission of the school change.

Will it be possible to get the Justice Department on this as soon as possible? I will be willing to meet with them on our campus or in Washington, D.C., if needed, to resolve the issue quickly.

01-03177

Thank you in advance for any assistance you may offer. I know how much of a favor this is and appreciate your help.

Sincerely,

Ronald J. Kelly
President

RJK:b1r

T.

JUL 18 1994

The Honorable Benjamin A. Gilman
United States House of Representatives
2185 Rayburn Building
Washington, D.C. 20515-3220

Dear Congressman Gilman:

This letter is in response to your inquiry on behalf of Mr. Ralph Mandia concerning the implementation of the Americans with Disabilities Act (ADA). Mr. Mandia has asked if Federal financial assistance is available to enable the Rockland County Girl Scouts to pay for alterations to the New City Girl Scout House to make that facility accessible to individuals with disabilities.

Because the ADA is a civil rights statute, not a Federal assistance program, the ADA itself does not provide financial

assistance to fund compliance by covered entities. However, the Internal Revenue Code, as amended in 1990, allows a deduction of up to $15,000 per year for expenses associated with the removal of qualified architectural and transportation barriers. The 1990 amendment also permits eligible small businesses to receive a tax credit for certain costs of compliance with the ADA. An eligible small business is one whose gross receipts do not exceed $1,000,000 or whose work force does not consist of more than 30 full-time workers. Qualifying businesses may claim a credit of up to 50 percent of eligible access expenditures that exceed $250.00 but do not exceed $10,250. Examples of eligible access expenditures include the necessary and reasonable costs of removing architectural, physical, communications, and transportation barriers; providing readers, interpreters, and other auxiliary aids; and acquiring or modifying equipment or devices.

In addition, the Department of Housing and Urban Development makes community development block grants available to communities in need of funds for a number of reasons, one of which is to provide accessibility for disabled individuals. If Mr. Mandia

cc: Records, Chrono, Wadatch, Blizard, McDowney, FOIA, Friedlander
n:\Udd\blizard\control\gilman

would like to apply for such a grant, he may send a request to: Andrew Cuomo, Assistant Secretary, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street, S.W., Room 7100, Washington, D.C. 20410.

I hope that this information is helpful to you in responding to your constituent.

Sincerely,

Gerald W. Jones
Acting Assistant Attorney General

01-03180

May 5, 1994

U.S. Rep. Benjamin A. Gilman
2185 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Gilman:

Girl Scout House in New City has recently undergone some renovations and repairs to improve special utilization, heating and

air conditioning, etc. It appears that further work needs to be done to provide for Americans With Disabilities Act requirements. Fund-raising efforts in these difficult economic times are, of course, hampered.

Rockland County Girl Scouts provides a worthwhile service to girls throughout Rockland County and it is imperative that reasonable accommodation be made for girls with special needs as well as volunteers. I am seeking your advice as to whether Federal grants or funds may be available to offset the expense associated with ADA compliance.

The repairs necessary include items such as additional restrooms, several ramps and widening of access doors. I don't know an exact dollar figure at this point however, I would imagine $30,000 - $40,000 would be necessary for this purpose. You may contact Sandra Pochapin, the Executive Director of Girl Scout House, at 638-0438 for further information if required. Please let me know if there is anything I can do to help.

Thank you for your consideration. I am hopeful that something is available to assist in this matter.

Sincerely,

Ralph F. Mandia

RFM/pm
cc: Ms. Sandra Pochapin
211 Red Hill Road
New City, N.Y. 10956

01-03181

JUL 13 1994

The Honorable Mark O. Hatfield
United States Senator
727 Center Street N.E., Suite 305

Salem, Oregon 97301

Dear Senator Hatfield:

This letter is in response to your inquiry on behalf of your constituent, XX regarding the requirements of the Americans with Disabilities Act (ADA) for physicians to provide auxiliary aids or services to deaf patients.

Title III of the ADA requires physicians to furnish appropriate auxiliary aids and services, including sign language interpreters, where necessary to ensure effective communication with individuals with disabilities. Physicians should consult with their patients to determine what type of auxiliary aid or service is appropriate for particular circumstances. However, doctors are not required to provide sign language interpreters for deaf patients upon demand. Title III of the ADA does not require a doctor to accede to a patient's specific choice of auxiliary aid or service as long as the doctor satisfies his or her obligation to provide effective communication.

In determining what constitutes an effective auxiliary aid or service, doctors must consider, among other things, the length and complexity of the communication involved. For instance, a note pad and written materials may he sufficient means of communication in some routine appointments or when discussing uncomplicated symptoms resulting from minor injuries. Where, however, the information to be conveyed is lengthy or complex, the use of handwritten notes may be inadequate and the use of an interpreter may be the only effective form of communication. Use of interpreter services is not necessarily limited to the most extreme situations -- for example, a discussion of whether to undergo surgery or to decide on treatment options for cancer.

cc: Records, Chrono, Wodatch, Magagna, Mobley, McDowney, MAF, FOIA
udd\mobley\congress\hatfield

01-03182

Dr. XX suggests that the ADA's requirements for providing sign language interpreters will not inspire physicians

to take on the care of people with disabilities. However, health care professionals cannot use a patient's disability as the basis on which to refuse treatment to that individual.

A physician may not impose a surcharge on any particular individual with a disability to cover the costs of providing auxiliary aids and services. Instead, the costs should be treated like other overhead expenses that are passed on to all patients. However, the obligation to provide auxiliary aids and services is not unlimited and a doctor is not required to provide auxiliary aids and services if doing so would result in an undue burden, that is, a significant difficulty or expense. The factors to be considered in determining whether there is an undue burden include the nature and cost of the action, the type of entity involved, and the overall financial resources of, the entity.

Finally, as amended in 1990, the Internal Revenue Code permits small businesses to receive a tax credit for certain costs of compliance with the ADA. An eligible small business is one whose gross receipts do not exceed $1,000,000 or whose work force does not consist of more than 30 full-time workers. Qualifying businesses may claim a credit of up to 50 percent of eligible access expenditures that exceed $250 but do not exceed $10,250. Examples of eligible access expenditures include the necessary and reasonable costs of providing readers, interpreters, and other auxiliary aids and services to persons with disabilities.

The flexibility of the auxiliary aids requirement, the undue burden limitation, the ability to spread costs over all patients, and the small business tax credit should minimize any burden on the medical profession.

I hope this information will be helpful to you in responding to your constituent.

Sincerely,

Gerald W. Jones
Acting Assistant Attorney General
Civil Rights Division

01-03183

April 8, 1994

Mr. John Wodatch
Director, Public Access Section
Civil Rights Division
U.S. Department of Justice
P.O. Box 6118
Washington D.C. 20035-6118

Dear Mr. Wodatch:

Please find enclosed a copy of correspondence I recently received from XX M.D., regarding his concerns with the Americans with Disabilities Act. Because I want to do everything possible to be responsive to constituent concerns and inquiries, I would he grateful if your office would review his correspondence and respond to his question.

Dr. XX raises concerns about the costs associated with providing interpretive services to hearing impaired Patients that he sees. As you will note, in this instance, Dr. XX was charged more for the interpretive services than he charged the patient, resulting in a net loss for his practice.

According to the regulations formulated to implement the Americans with Disabilities Act, can charges for interpretive services be passed on to the individual? I believe that an interpretation of the meaning of providing a "reasonable" accommodation" in such situations would be very helpful. Once you have had an opportunity to review this matter, please send your findings and comments to my office in the Special Districts Center at 727 Center Street N.E., Suite 305, Salem, Oregon 97301. Your assistance in this matter is appreciated.

With kind regards.

Sincerely,

Mark O. Hatfield
United States Senator

MOH: js
Enclosure

01-03184

March 25, 1994

Senator Mark Hatfield
711 Hart
Senate Office Building
Washington D.C. 20510

Dear Senator Hatfield:

I am writing to protest a rather blatant example of reverse discrimination that comes about as a result of what I think is called the Americans With Disabilities Act. For your interest, I am enclosing two billing statements of one of my deaf patients. Up until the time of the above-mentioned act, I always dealt with my deaf patients by taking whatever time was needed to communicate with them, through writing, when an office communication was necessary, and they did not bring someone to act as an intermediary interpreter. In spite of the fact that it took more time, I never billed extra for the additional time, nor did I complain about having to write my notes. Under the Disabilities Act, I am now required to provide, at my expense, an interpreter when I see such a patient if they request. If you look at the billings, you will see that I saw this patient and my total bill for evaluating him for his problem and beginning treatment was $34.85. You will also note that I subsequently received a bill from the interpreter, to me, for $40.00. Hence, without even taking into account such things as my overhead and lost time, you can see that I have gone $5.15 in the hole on such an exchange. To me, this seems somewhat analogous to someone walking into a grocery store loading up their basket, and then walking out the door stopping only long enough to ask the owner of the store to give them a tip on the way out. I believe that there is a term that covers forcing someone to work at either no gain or a loss to them personally, and that term is slavery.

I don't know what you personally can do about this injustice. However, I am sure that this type of legislation is not going to do anything to inspire physicians to take on the care of people with disabilities. I look forward to hearing your comments.

Sincerely yours,

XX
XX
XX

XX

01-03185

T. 7-1-94

JUL 13 1994

The Honorable Toby Roth
Member, U. S. House of Representatives
2101 South Oneida Street
Green Bay, Wisconsin 54304

Dear Congressmen Roth:

This is in response to your inquiry on behalf of your constituent, Mr. Steve Barnett, regarding a health care providers obligation to provide auxiliary aids or services to persons with disabilities. I apologize for failing to respond to your prior correspondence. My office has no record of receiving that letter.

Title III of the Americans with Disabilities Act (ADA) requires public accommodations, including health care providers, to furnish appropriate auxiliary aids and services, including sign language interpreters, where necessary to ensure effective communication with individuals with disabilities. Health care providers should consult with their patients to determine what type of auxiliary aid or service is appropriate for particular circumstances. However, health care providers are not required to provide sign language interpreters for deaf patients upon demand. Title III of the ADA does not require a provider to accede to a patients specific choice of auxiliary aid or service as long as the provider satisfies his or her obligation to ensure effective communication.

In determining what constitutes an effective auxiliary aid or service, health care providers must consider, among other things, the length and complexity of the communication involved. For instance, a note pad and written materials may be sufficient means of communication in some routine appointments or when discussing uncomplicated symptoms resulting from minor injuries. Where, however, the information to be conveyed is lengthy or complex, the use of handwritten notes may be inadequate and the

use of an interpreter may be the only effective form of communication. Use of interpreter services is not necessarily limited to the most extreme situations -- for example, a discussion of whether to undergo surgery or to decide on treatment options for cancer.

cc: Records, Chrono, Wodatch, Hill, McDowney, FOIA, Friedlander
n:\Udd\hille\policylt\roth2.ltr1

Mr. Barnett suggests that provision of sign language interpreters will cause his clinic to lose money when treating individuals with disabilities. However, health care professionals cannot use a patient's disability as the basis for refusing treatment to that-individual.

A health care provider may not impose a surcharge on any particular individual with a disability to cover the costs of providing auxiliary aids and services. Instead, the costs should be treated like other overhead expenses that are passed on to all patients. However, the obligation to provide auxiliary aids and services is not unlimited and a health care provider is not required to provide auxiliary aids and services if doing so would result in an undue burden, that is, a significant difficulty or expense. The factors to be considered in determining whether there is an undue burden include the nature and cost of the action, the type of entity involved, and the overall financial resources of the entity.

Finally, as amended in 1990, the Internal Revenue Code permits small businesses to receive a tax credit for certain costs of compliance with the ADA. An eligible small business is one whose gross receipts do not exceed $1,000,000 or whose work force does not consist of more than 30 full-time workers. Qualifying businesses may claim a credit of up to 50 percent of eligible access expenditures that exceed $250 but do not exceed $10,250. Examples of eligible access expenditures include the necessary and reasonable costs of providing readers, interpreters, and other auxiliary aids and services to persons with disabilities.

The flexibility of the auxiliary aids requirement, the undue burden limitation, the ability to spread costs over all patients, and the small business tax credit should minimize any burden on

health care professionals.

I hope this information will be helpful to you in responding to your constituent.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

01-03187

United States
House of Representatives

April 5, 1994

Ms. Faith Burton
Program Analyst
U.S. Department of Justice
1333 F Street NW
Washington, D.C. 20004-1108

Dear Ms. Burton:

Enclosed is a copy of the correspondence I sent to you on December 15, 1993. This is in regard to the Americans with Disabilities Act.

My constituent, Mr. Steve Barnett, has contacted me again to ask why he has not received an answer to my inquiry.

I would appreciate your attention to this matter so that I may respond to Mr. Barnett. I am grateful for any information that you can render and will look forward to hearing from you soon. Thank you.

Sincerely,

Toby Roth
Member of Congress

2101 S. Oneida Street
Green Bay WI 54304
(414) 494-2800

TR:aCB
Enclosures

01-03188

United States
House of Representatives

December 15, 1993

Ms. Faith Burton
Program Analyst
U.S. Department of Justice
1333 F Street NW
Washington, D.C. 20004-1108

Dear Ms. Burton:

Enclosed is a copy of the letter I received from my constituent, Mr. Steve Barnett. This is in regard to the Americans with Disabilities Act. I believe you will find the letter self-explanatory.

I would appreciate your looking into the matter and providing Information that will help respond to Mr. Barnett. Please send Your response to my Green Bay office at the NEW ADDRESS listed Below. Thank you.

Sincerely,

Toby Roth
Member of Congress
2101 S. Oneida St.
Green Bay WI 54304
(414) 494-2800

TR:acb
Enclosure

01-03189

November 24, 1993

Congressman Toby Roth
2234 Rayburn Building
Washington, D.C. 20515

Dear Congressman Roth:

This is regarding an aspect of the American Disabilities Act that, was recently passed. I am the owner of a private practice physical therapy clinic in Green Bay and Menasha.

We recently had a deaf individual referred to our clinic for evaluation and treatment of low back pain. According to the patient's lawyer and the American Disabilities Act, the patient, had the authority to request an interpreter present for all his visits. It was also noted to us that we must pay for the interpreters time for travel and during the visit.

My concern with this is, interpreters are hired at a minimum of two hours or a total cost of $25.00 per hour. Our treatments normally last one half hour with our patients. Our charge for patient treatment is approximately $45.00. Therefore, we would

be losing revenue while treating this patient.

We were informed by the patient's lawyer that we must provide services for this patient, we must provide an interpreter for this patient, and we cannot bill the patient or bill excess charges to cover for the cost of the interpreter.

Please do not hesitate to give me a call if you do have any questions regarding this issue, I felt it was necessary to bring this matter to your attention.

Sincerely,

Steve Barnett, P.T.
President

SB/ch
01-03190

JUL 22 1994

Mr. Gene Colin
Chair
State Building Code Council
State of Washington
906 Columbia Street SW
P.O. Box 48300
Olympia, Washington 98504-8300

Dear Mr. Colin:

Thank you for your supplemental submissions of August 20, 1993, and March 23, 1994, in support of your request for certification that the Washington State Regulations for Barrier Free Design (WSR), as adopted on November 8, 1991, and amended on November 13, 1992, meet or exceed the new construction and alterations requirements of title III of the Americans with Disabilities Act (ADA). We greatly appreciate your thorough

responses to our initial review of the WSR.

We are still awaiting written confirmation from your staff of the legal effect of the State Building Code Council's (Council) "interpretations" of the WSR, and without such confirmation we are unable to issue a preliminary determination regarding certification. However, in order to avoid any unnecessary delay, we have proceeded to review the WSR and the additional information, explanations, interpretations, and amendments provided in your recent submissions.

Our analysis of the material you have submitted is discussed in detail in the attached side-by-side comparison. That analysis addresses only the issues raised in our initial response to your certification request and those raised by the 1992 amendments to the WSR. For each issue, the side-by-side comparison contains the relevant ADA provision in the left column, the WSR provision, with any amendments, in the center column, and the Department's original (May 1993) comment in the right column. Following that, the comparison provides, in the center column, the Council's

cc: Records; Chrono; Wodatch; Blizard; Hill; FOIA
\udd\hille\wash\final.mem

01-03192

"comment" (italicized) and, in the right column, our response (underlined and bracketed) to the Council's comment. Following that, the analysis provides, in the center column, any interpretation (italicized and underlined) issued by the Council to address the issue, and, in the right column, our response (underlined and bracketed) to the interpretation.

Based on this analysis, we have determined that in only a very few areas does the WSR not meet or exceed the relevant requirements of title III of the ADA. Therefore, upon correction of these few remaining problems, we propose to recommend that the Assistant Attorney General issue a preliminary determination of equivalency pursuant to 42 U.S.C. S 12188(b)(1)(A)(ii) and 28 C.F.R. SS 36.601 et seq.

The remaining areas of nonequivalency are discussed below and noted in the right column of the side-by-side analysis in underlined and bracketed text. Many of these issues may be addressed through further interpretations of the WSR. A few others may require amendments to the WSR.

A number of items that do not necessarily pose obstacles to certification require further discussion:

1) A number of items that are addressed by the ADA Standards for Accessible Design (ADA Standards), 28 C.F.R. Part 36 Appendix A, are not addressed by the WSR, including limited-flow toilet paper dispensers (Standard 4.16.6), telephone books (Standard 4.31.7), and audible alarms (Standard 4.28.2). These omissions from the WSR are based, in part, on the difficulty of regulating such items at the pre-construction/pre-occupancy stage. Because the omissions are limited to such "non-code" items, they will not prevent certification. Rather, the certification determination will not apply to those omitted items at all. Therefore, if such equipment is installed in a building, the certification determination will not constitute evidence of ADA compliance with respect to such equipment. 28 C.F.R. S36.607(a)(1). This limitation of the certification determination should be noted in any publication of the WSR if certification is issued.

2) The certification determination will be limited to the version of the WSR, including the amendments and interpretations, that has been submitted to the Department. The certification determination will not apply to amendments or interpretations that have not been submitted to and reviewed by the Department. This limitation should be noted in any publication of the WSR if certification is issued. In addition, any future uncertified

amendments should be distinguished from the certified version of the WSR. Finally, because the certification determination will be based, in part, on official interpretations of the WSR, those

interpretations should be made public and published together with the WSR.

3) The certification determination will not apply to waivers granted under the WSR by local building officials. 56 Fed. Reg. 35592 (July 26, 1991), 28 C.F.R. Part 36, Appendix B. Therefore, if a builder receives a waiver, modification, variance, or other exemption from the requirements of the WSR for any element of construction or alterations, the certification determination will not constitute evidence of ADA compliance with respect to that element. Examples of such waiver provisions include WAC S 51-20-3101(e) (allowing modifications where full compliance is impractical), WAC S 51-20-3113 and S 51-20-3114 (allowing modifications when full compliance would threaten or destroy the historic value of a historic building), and WAC S 51-20-3112(a)(2) (allowing a 20% cost limit on provision of access in the path of travel to altered primary function areas). This limitation of the certification determination should be noted in any publication of the WSR if certification is issued.

4) The WSR relies on building classifications that differ from those used by the ADA. This will not prevent certification of the WSR because the effects of these differences on accessibility have been substantially eliminated by the Council's interpretations. It should be made clear to building code enforcement officials that the WSR's general classifications should be applied flexibly in the context of accessibility to ensure full ADA compliance.

5) The Appendix to the WSR contains the "U.S. Architectural and Barriers Compliance Board Americans with Disabilities Act Guidelines for Automated Teller Machines," WAC S 51-20-93120. These provisions contain the former ADA Standards for ATMS. On January 18, 1994, however, the Department amended the ADA Standards regarding ATMs. The amended version is enclosed. The WSR Appendix, therefore, should be amended to reflect the current ADA Standards.

6) The WSR does not address transportation facilities. The ADA provides special accessibility requirements for such facilities (by amendment dated January 18, 1994, enclosed). This difference between the WSR and ADA will not prevent certification. However, the certification determination will not apply to any elements in transportation facilities that are

subject to section 10 of the ADA Standards and, therefore, will not constitute evidence of ADA compliance with respect to such elements. This limitation on the certification determination should be noted in any publication of the WSR if certification is issued. If the Council were to adopt accessibility requirements for transportation facilities, those requirements could be submitted to the Department for certification at a later date.
01-03194

The following issues need to be corrected before a certification determination can be issued (page references are to the side-by-side comparison):

1) Maneuvering clearances at doors (Standard 4.13.6, p. 77). The WSR fails to address the different requirements for different approaches to doors (i.e., hinge-side and latch-side). Instead, the code addresses only front approaches, assuming that providing the maneuvering clearance required for front approach will be sufficient, even if a side approach is required. This assumption is not valid. The size, shape, and placement of maneuvering clearances must change when the approach changes. Nor is it always possible to provide a front approach. In addition, the WSR assumes that the size of the maneuvering space is the only important factor. To the contrary, the shape and placement of the maneuvering space are also essential. In order to meet the ADA Standard, the WSR will need to be amended to provide the different space configurations needed for different approaches.

2) Grab bars (Standard 4.16.4, p. 86). The WSR does not correctly address all aspects of the required placement of grab bars at water closets. The WSR fails to require side grab bars to begin no more than 12 inches from the back wall and to extend at least 54 inches from the back wall (WSR would require only extension to 48 inches from the back wall). This extension is necessary for people who need to reach far forward to pull to a standing position. The WSR also fails to require back grab bars to extend at least 12 inches beyond the center of the water closet and at least 24 inches toward the open side of the water closet. This placement is necessary to allow a diagonal transfer to the toilet when needed. An amendment will be necessary to meet the ADA Standard.

3) Food service shelves (Standard 5.5, p. 108). The WSR generally requires at least one shelf to be accessible. However, for food service lines, the ADA requires 50% of shelves to be accessible. The Council has issued an interpretation purporting to require 50% to be accessible. However, because this

interpretation contradicts the code provision, the "interpretation" approach fails to provide appropriate guidance of the requirement. An amendment to the WSR is needed here.

4) Tableware and condiment areas (Standard 5.6, p. 109). The WSR provision references another code provision. However, the reference is erroneous. The Council has issued an interpretation directing readers to the correct provision. However, simply issuing an interpretation does not provide effective notice of the change and does not effectively correct the error in the code.
01-03195

5) Elements in showers and bathtubs:

a) Shower seats (Standard 4.21.3, p. 92). The WSR fails to require that shower seats be L-shaped. The L shape permits people to sit in the corner of the shower and use both walls for support.

b) Shower controls (Standard 4.21.5, p. 93). The WSR addresses placement of shower controls only in an interpretation. That interpretation fails to specify that such controls must be located at specific points on the wall, but, instead, simply requires them to be offset. Offsetting controls is not sufficient to ensure that they are always reachable. If a shower were built to the minimum accessibility requirements, offsetting may be acceptable, but if a shower were built larger than the minimum, offset controls may not be reachable.

c) Bathtub controls (Standard 4.20.5, p. 90). The WSR requires bathtub controls to be placed no more than 24 inches from the clear side of the tub. The ADA requires them to be offset between the midpoint of the tub and the outer edge. Although in very wide tubs (over 48 inches), the Washington requirement may exceed the ADA requirement, in standard tubs the ADA provision is better, because the midpoint of the tub will likely be 15-16 inches from the edge.

d) Clear floor space (Standard 4.21.2, p. 91). The WSR does not require the clear floor space at a transfer shower to extend 12 inches beyond the seat wall, as ADA Figure 35 does. This space is necessary to allow a wheelchair to be placed to permit transfer without obstructing the seat.

6) Parking at medical care facilities (Standard 4.1.2(5), p. 26). The ADA requires accessible parking in increased percentages at medical care facilities - 10% at outpatient facilities and 20% at (inpatient and outpatient) facilities that specialize in mobility impairments. The WSR requires 10% at all outpatient facilities and doctors' offices and 20% only at inpatient mobility-specialty facilities. Thus, outpatient mobility specialists are required to provide 20% accessible parking under the ADA, but only 10% under the WSR.

The WSR requires provision of 10% accessible spaces at physicians' offices; the ADA does not. However, outpatient mobility specialists create the greatest need for accessible parking, while physicians' offices create a lesser such need. Although the WSR approach may result in a larger total number of accessible spaces in the State of Washington, the spaces will be

not be placed where they are most needed.

7) Elevator exception (Standard 4.1.3(5), p. 28; see also pp. 21 and 24). The ADA provides that, generally, no elevator is

required in multi-story buildings (1) that are less than three stories or (2) that have less than 3000 square feet per story. The comparable WSR provision provides an exception to the general requirement to install an elevator for "floors above and below accessible levels that have areas of less than 3000 square feet per floor." S 51-20-3103(b)(2). This language is ambiguous because it is not clear that all floors must be less than 3000 square feet (not just the accessible floor). This language raises the possibility that if one floor is accessible and has less than 3000 square feet, the Washington code would allow all other floors to have no elevator access, regardless of the size of the floors.

Although the WSR exceeds the ADA in that it does not extend the elevator exception to most two-story buildings, this is not sufficient to make up for the nonequivalency of the exception for small floors.

8) Alterations. Because the WSR requires all routes in new construction to be accessible, a number of the ADA Standards' requirements that items be placed on an accessible route are superfluous in the context of new construction under WSR. However, such requirements are necessary under WSR for alterations, where not all routes may be accessible:

a) Protruding objects (Standard 4.1.2(3), p. 25; Standard 4.4, p. 58). The WSR provision regarding protruding objects limits protrusions into an "accessible route of travel, corridor, pathway, or aisle." S 51-20-3106(e). This appears to apply only to routes that are accessible to people who use wheelchairs. However, the ADA protrusion limits serve primarily people with vision impairments. Therefore, protrusions cannot be allowed in any route.

b) Self-service shelves (Standard 5.5, p. 108). The WSR was amended to remove the requirement that self-service shelves be on an accessible route.

9) Unisex toilet rooms (Standard 4.1.6(3)(e), p. 48). The WSR fails to require that, when a unisex toilet room is installed in alterations, it must be placed in the same area as the existing toilet facilities.

10) Companion seating (Standard 4.33.3, p. 104). The WSR fails to require companion seats to be adjacent to accessible seats. The Council states that the code's requirement that accessible seating be "an integral part of any fixed seating

plan" is sufficient. However, it is not clear that "integral" means that every accessible seat must be next to a companion seat. That meaning needs to be made more clear.
1-03197

11) Location of lavatories:

a) Water closets (Standard 4.16.2, p. 85). The WSR allows a lavatory to be installed in the clear floor space at a water closet. The ADA does not permit such a lavatory if the water closet is in a stall. The Council responded to this issue by stating that a lavatory could not be put in a stall because such a lavatory would reduce the required width of the stall. The reasoning behind this statement is unclear and needs to be explained.

b) Bathtubs (Standard 4.20.2, p. 88). The WSR fails to specify that, if a lavatory is placed in the clear floor space of a bathtub, it can never be placed at the end of the tub where the seat is located, but may only be placed at the control end of the tub.

12) Diagonal curb ramps (Standard 4.7.10, p. 63). The ADA provides special standards for diagonal curb ramps; the WSR does not. The Council argues that it is not necessary to address diagonal curb ramps because they are rarely used in private development. The WSR would require such ramps to be accessible if they were in an accessible route. However, the standards for accessibility would be the same as that for curb ramps generally. Therefore, the bottom of the ramp would not be required to have 48 inches of clear space. This clear space limitation is necessary at diagonal ramps to allow people to maneuver out of the intersection. In addition, 24 inches of straight curb on either side would not be required if the ramp had flared sides. This straight space is needed to lessen foot traffic on diagonal ramps.

13) Tactile signage (Standard 4.30.4, p. 101). The WSR technical requirements for raised characters have been amended. The amendment has removed the requirement that such characters be in simple typeface. Therefore, the amended code is not equivalent to the ADA.

14) Knee clearance at tables (Standard 4.32.3, p. 103). The WSR fails to require that knee clearance be at least 19 inches deep at tables and counters.

15) Transient lodging (Standard 9.2.2(6), p. 116). The WSR does not specifically require carports that serve accessible hotel rooms to be accessible. It only addresses such facilities if they serve type A (residential) dwelling units.

We understand from your letter of March 23, 1994, that the Council is currently in the process of updating the WSR and we hope that our analysis will be helpful in that effort. Our staff

would also be happy to meet with Council representatives to answer any questions that you may have about our analysis.

01-03198

Our offices have worked diligently together over a long period of time and we stand on the threshhold of achieving the nation's first ADA-certified State code. Almost all of our work is done. I hope that we can reach agreement on the few remaining issues. We look forward to recommending certification of the WSR as soon as the remaining issues can be resolved. If you have any questions concerning this letter, please call Eve Hill at (202) 307-0663.

Sincerely,

John L. Wodatch
Chief
Public Access Section

Enclosures:
Side-by-side comparison
Regulations Regarding ATMs and Transportation Facilities

cc: Mr. Lawrence W. Roffee
Executive Director
U.S. Architectural & Transportation Barriers Compliance Board

01-03199

ADA Requirements

1. Purpose. This document sets guidelines for accessibility to places of public accommodation and commercial facilities by individuals with disabilities. These guidelines are to be applied during the design, construction, and alteration of such buildings and facilities to the extent required by regulations issued by Federal agencies, including the Department of Justice, under the Americans with Disabilities Act of 1990.

The technical specifications 4.2 through 4.35 of these guidelines are the same as those of the American National Standard Institute's document A117.1-1980, except as noted in this text by italics. However, sections 4.1.1 through 4.1.7 and sections 5 through 10 are different from ANSI A117.1 in their entirety and are printed in standard type.

The illustrations and text of ANSI A117.1 are reproduced with permission from the American National Standards Institute. Copies of the standard may be purchased from the American National Standards Institute at 1430 Broadway, New York, New York 10018.

Washington State Regulations

51-20-002 Purpose. The purpose of these rules is to implement the provisions of chapter 19.27 RCW, which provides that the state building code council shall maintain the State Building Code in a status which is consistent with the purpose as set forth in RCW 19.27.020. In maintaining the codes the council shall regularly review updated versions of the codes adopted under the act, and other pertinent information, and shall amend the codes as deemed appropriate by the Council.
RCW 19-27-020 (5). To provide for standards and specifications for making buildings and facilities accessible to and usable by physically disabled persons.
51-20-003 Uniform Building Code. The 1991 edition of the Uniform Building Code as published by the International Conference of Building Officials and available from the International Conference of Building Officials, 5360 South Workman Mill Road, Whittier, California 90601 is hereby adopted by reference with the following additions, deletions, and exceptions.
41-20-005 Uniform Building Code Requirements for Barrier-Free Accessibility. Chapter 31 and other Uniform Build Code requirements for barrier-free access are adopted pursuant to chapters 70.92 and 19.27 RCW.

Commentary
E - Equivalent
NE - Not equivalent to ADA provisions
PNE - Possibly/potentially not equivalent to ADA provisions

Strike through = material deleted since prior DOJ review
[Underline] = material added since prior DOJ review
Italic = Washington response to DOJ comments

ADA/Washington State July 12, 1994

01-03200

1. Purpose, continued.

Pursuant to RCW 19.27.040, Chapter 31 and requirements affecting barrier-free access in Sections 3304 (b), 3304 (h), 3306 (g) and 3306 (i) shall not be amended by local governments.

In case of conflict with other provisions of this code, chapter 31 and requirements affecting barrier-free access in Sections 3304 (b), 3304 (h), 3306 (g), and 3306 (i) shall govern.

51-20-3101 Scope. (a) General. Buildings or portions of buildings shall be accessible to persons with disabilities as required by this chapter. Chapter 31 has been amended to comply with the Federal Fair Housing Act (FFHA) Guidelines as published by the U.S. Department of Housing and Urban Development (March 1991) and the Americans with Disabilities Act (ADA) Guidelines as published by the Architectural and Transportation Barriers Compliance Board and the Department of Justice (July 1991).

Reference is made to appendix Chapter 31 for FFHA and ADA requirements not regulated by this chapter.

(b) Design. The design and construction of accessible building elements shall be in accordance with this chapter. For a building, structure, or building element to be considered to be accessible, it shall be designed and constructed to the minimum provisions of this chapter.

51-20-3102 Person with Disability is an individual who has

an impairment, including a mobility, sensory, or cognitive impairment, which results in a functional limitation in access to and use of a building or facility.

01-03201

Comment: Issue 1. It is acknowledged that the purpose of the ADA is a civil rights law designed to prohibit discrimination against persons with disabilities as defined in the Act and its regulations. It is further recognized that the ADA regulations attempt to provide for compliance with the act through regulations affecting policies and procedures as well as construction.

The Washington Barrier-free facilities regulations are only construction regulations. The State Building Code Council is granted authority to promulgate accessibility construction standards under Chapter 70-92 of the Revised Code of Washington (RCW). The WAC process is similar to the federal regulatory process. Through the WAC process legislation is clarified and rules for enforcement are established. The Council can expand coverage in the adoption of the WAC as long as it isn't conflicting with the RCW. The provision of concern in the analysis is a provision of the RCW as adopted in 1973. The WAC is broader in application. Review of the scope and purpose statements found in Sec. 3101 will not reveal similar language limiting application to the "physically handicapped." Also to be taken into consideration is the adopted definition of "person with disability" found in Sec. 3102 which reads: "person with disability is an individual who has an impairment, including a mobility, sensory, or cognitive impairment, which results in a functional limitation in access to and use of a building or facility."

The Washington regulations were written to incorporate the standards for new construction and alteration contained in the Title III regulations of ADA. As such, the intent of the Washington regulations is to "protect" persons with disabilities as well as they are "protected" by the ADAAG, regardless of there [sic] specific type of disability. While the "stated" purpose may not be identical, the net result is the same, construction and alteration of buildings to be accessible.

[E. Section 3102 does seem to include all disabilities that are affected by building construction. Therefore, the substantive coverage is equivalent.]

Assembly Area. A room or space accommodating a group of individuals for recreational, educational, political, social, or amusement purposes, or for the consumption of food and drink.

Chapter 4 Definitions and Abbreviations Section 402. Assembly Building is a building or portion of a building used for the gathering together of 50 or more persons for such purposes as deliberation, education, instruction, worship, entertainment, amusement, drinking or dining or awaiting transportation.

Comment: Issue 2. The Uniform Building Code treats small assembly spaces as part of the major occupancy of the building. Most of these are Business (B) or Education (E) occupancies. For example, a small restaurant, is a B-2 occupancy. A small conference room in an office building is a B-2 occupancy. A classroom at a university or private or technical college is a B-2. A classroom at a grade school or high school will either be a E-1 or E-2. Anticipating this difference, the requirement for assistive listening systems is specifically referenced in the requirements for B and E occupancies (Sec. 3103(a)3 and 4, respectively). In addition the regulation on fixed seats and tables which you might find in a small restaurant is a general requirement contained in Sec. 3105(d)5. Since the exception to allow a portion of seats in a restaurant to be located in an inaccessible mezzanine applies only to A occupancies in the Washington regulations, it could not be used in smaller assembly spaces. In this regard the WSR code provides greater accessibility than ADA.

Not clearly referenced for small assembly spaces are the requirements for wheelchair spaces. The code does require each space, including such small assembly spaces to be accessible. We believe that assembly spaces where the total occupant load is less than 50 which also have fixed seats are

fairly rare. The most likely location would be in some classrooms. In order to clarify the application of the code to these circumstances, the Council has issued Interpretation No. 93-32. It should be noted that the Washington Code requires distribution of wheelchair locations in all assembly occupancies, even those with fewer than 300 fixed seats. On balance we believe that the total set of regulations of assembly areas is equivalent.

01-03203

Dwelling Unit. A single unit which provides a kitchen or food preparation area, in addition to rooms and spaces for living, bathing, sleeping, and the like. Dwelling units include a single family home or a townhouse used as a transient group home; an apartment building used as a shelter; guestrooms in a hotel that provide sleeping accommodations and food preparation areas; and other similar facilities used on a transient basis. For purposes of these guidelines, use of the term "Dwelling Unit" does not imply the unit is used as a residence.

Interpretation 93-32.
Question: Are wheelchair spaces required in assembly areas which are not assembly occupancies, specifically assembly spaces with fixed seats and an occupant load of less than 50?

Answer: Yes. The intent of the code, as provided in Sec. 3101(a), is to provide standards equivalent to the ADA Accessibility Guidelines. Regardless of occupancy classification, for assembly areas of 4 to 25 seats, one wheelchair location is required, for areas of 26 to 50 seats, two wheelchair locations are required. (See Table 31-A).

Sec. 405 D. Dwelling Unit is any building or portion thereof which contains living facilities, including provisions for sleeping, eating, cooking and sanitation, as required by this code, for not more than one family, or a congregate residence for 10 or less persons.

Dwelling Unit, Type A is an accessible dwelling unit that is designed and constructed [in accordance with this chapter] to provide greater accessibility than a Type B dwelling unit.

(Type A dwelling units constructed in accordance with this Chapter also meet the design standards for Type B dwelling units.)

Dwelling Unit, Type B is an accessible dwelling unit that is designed and constructed [in accordance with this chapter.] [(Type B Dwelling Unit Standards are based on] the U.S. Department of Housing and Urban Development [(HUD)] Federal Fair Housing Act Accessibility Guidelines.[)]

Single-Story Dwelling Unit is a dwelling unit with all finished living spaces located on one floor.

Multistory Dwelling Unit is a dwelling unit with finished living space located on one floor, and the floor or floors immediately above or below it.

[E. when read together with Table 31-A and S 3105.]
5 ADA/Washington State July 12, 1994
01-03204
Mezzanine or Mezzanine Floor. That portion of a story which is an intermediate floor level placed within the story and having occupiable space above and below its floor.

Primary Entry[ance] is a principal entrance through which most people enter the building. A building may have more than one primary entry.

Primary Entry[ance] Level is the floor or level of the building on which the primary entry is located.

Comment: Issue 4. The 1992/93 amendments changed the term entry to entrance in all locations to eliminate this possible difference between ADA and Washington. [See page 599b of the Published Code.] The intent is the same and training being provided around the State includes the ADA concept of entrances.

Chapter 4 Definitions and Abbreviations Section 414
Mezzanine or Mezzanine Floor is an intermediate floor placed within a room.

Comment: Issue 5. ADA and Washington definitions are very similar. The ADA differentiation between mezzanine and raised or lowered floor area does not occur in the ADA definition, but must be discovered by combining the various provisions in Section 5.

Similarly, the limitations on mezzanine design are found in Section 1717 of the UBC and Washington Code (attached). The key regulation is that the "clear height above and below the mezzanine floor construction shall not be less than 7 feet." It is clear from UBC that more than a simple raised or lowered area must be provided to be considered a mezzanine. This is clearer than the ADA which does not succinctly distinguish when a raised area becomes an intermediate floor level.
Chapter 4, Section 408 Grade (Adjacent Ground Elevation) is the lowest point of elevation of the finished surface of the ground, paving or sidewalk within the area between the building and the property line or, when the property line is more than 5 feet from the building, between the building and a line 5 feet from the building.

[E.]

[E.]

8 ADA/Washington State July 12, 1994

01-03205

Comment: Issue 3. The analysis has confused the application of the phrase of "for 10 or less persons" contained in the UBC definition as applying to the whole definition. In[sic] only applies to congregate residences of 10 or less persons as being included in the definition of a "dwelling unit." Congregate residences of larger than 10 persons are treated differently in the UBC. The ADA definitions of dwelling unit is at odds with the definition of dwelling unit used in almost all building and zoning codes by indicating a dwelling unit is used as transient lodging. This definitional difference has no effect on the accessibility requirements as applied in the Washington Code. In order to give assistance to local building officials in applying the Washington Code in these cases, the Council has issued Interpretation No. 93-39.

6 ADA/Washington State July 12, 1994

01-03206

Entrance. Any access point to a building or portion of a building or facility used for the purpose of entering. An entrance includes the approach walk, the vertical access leading to the entrance platform, the entrance platform itself, vestibules if provided, the entry door(s) or gate(s), and the hardware of the entry door(s) or gate(s).

Interpretation 93-39:
Question: For purposes of accessibility requirements of Chapter 31, how should buildings such as homeless shelters, halfway houses, transient group homes, and similar social service establishments where people may sleep or temporarily reside be classified? Similarly, how should apartments or condominium complexes be classified where some or all of the units are rented to short term quests.
Answer: The intent of the code, as provided in Sec. 3101(a), is to provide standards equivalent with the ADA Accessibility Guidelines.

For the purpose of determining accessibility requirements per

Chapter 31, uses such as homeless shelters, halfway houses, transient group homes, and similar facilities should be reviewed on a case by case basis. While these uses are "residential" in nature, if the residents are considered transient, classification as R-1 hotel, or R-3 lodging house is more appropriate. Some may need to be classified either in an I (Institutional) or B (Business) category. If services are provided at the site such as job or health counseling, classification should be in a category which requires accessibility. These uses should not be categorized as congregate residence when the residents are essentially transient.

Apartments or condominiums which are rented on a short term basis to transient guests should be categorized as either a Group R-1, hotel, or Group R-3 lodging house with appropriate accessibility provided.

[E.]

Ground Floor. Any occupiable floor less than one story above or below grade with direct access to grade. A building or facility always has at least one ground floor and may have more than one ground floor as where a split level entrance has been provided for where a building is built into a hillside.

Story. That portion of a building included between the upper surface of a floor and upper surface of the floor or roof next above. If such portion of a building does not include occupiable space, it is not considered a story for purposes of these guidelines. There may be more than one floor level within a story as in the case of a mezzanine or mezzanines.

51-20-0407 Section 407 Floor Area is the area included within the surrounding exterior walls of a building or portion thereof, exclusive of vent shafts and courts. The floor area

of a building, or portion thereof, not provided with surrounding exterior walls shall be the usable area under the horizontal projection of the roof or floor above.

Ground Floor is any occupiable floor less than one story above or below grade with direct access to grade. A building may have more than one ground floor.

51-20-0420 Section 420 Story is that portion of a building included between the upper surface of any floor and the upper surface of the floor next above, except that the topmost story shall be that portion of a building included between the upper surface of the topmost floor and the ceiling or roof above. If the finished floor level directly above a usable or unused under-floor space is more than 6 feet above grade as defined herein for more than 50 percent of the total perimeter or is more than 12 feet above grade as defined herein at any point, such usable or unused under-floor space shall be considered as a story.

51-20-0320 Section 420 Story. First is the lowest story in a building which qualifies as a story, as defined herein, except that a floor level in a building having only one floor level shall be classified as a first story, provided such floor level is not more than 4 feet below grade, as defined herein, for more than 50 percent of the total perimeter, or not more than 8 feet below grade, as defined herein, at any point.

01-03208

Comment: Issue 6. The term "story" in the UBC serves more specific purposes than the term does in ADA and therefore the definition is more specific. The UBC limits types of construction (wood vs concrete vs steel) based on the number of stories. The UBC also limits certain occupancies (uses) are limited to 1st stories. These examples show the importance of knowing exactly what a story is. There is no effect on accessibility as regulated in Washington since all stories and basements must be accessible (with the limited exception of not providing elevator access to some small stories).

[E. The potential problem here is that a building might be built with one or more floors below ground (for parking) and only one floor above ground. Under this definition, the below-ground floors would not be considered a "story". Thus, this would be considered a one-story building and no elevator would be required. However, the Washington accessibility provisions do not exempt a basement from accessibility requirements, even if it is not a "story", so a builder would be required to provide an accessible entrance and an accessible route to all parts of the building.]

Transient Lodging. A building, facility, or portion thereof, excluding inpatient medical care facilities, that contains one or more dwelling units or sleeping accommodations. Transient lodging may include, but is not limited to, resorts, group homes, hotels, motels, and dormitories.

DOJ 36.104(1). An inn, hotel, motel, or other place of lodging, except for an establishment located within a building that contains

not more than five rooms for rent or hire and that is actually occupied by the proprietor of the establishment as the residence of the proprietor.

51-20-0404 Section 404 Congregate Residence is any building or portion thereof which contains facilities for living, sleeping and sanitation, as required by this code, and may include facilities for eating and cooking, for occupancy by other than a family. A congregate residence may be a shelter, convent, monastery, dormitory, fraternity or sorority house but does not include jails, hospitals, nursing homes, hotels or lodging houses.

Chapter 4, Section 413 Lodging House is any building or portion thereof containing not more than five guest rooms where rent is paid in money, goods, labor or otherwise.

51-20-0409 Section 409 Hotel is any building containing six or more guest rooms intended or designed to be used, or which are used, rented or hired out to be occupied, or which are occupied for sleeping purposes by guests.

51-20-0409 Section 409 Motel is any building containing six or more guest rooms intended or designed to be used, or which are used, rented or hired out to be occupied, or which are occupied for sleeping purposes by guests.

(See definition of Hotel) 51-20-1201 Group R. Occupancies Defined. Group R Occupancies shall be:

Division 1. Hotels and apartment houses. Congregate residence (each accommodating more than 10 persons)
Division 2. Not used.
Division 3. Dwellings, family child day care homes and lodging houses. Congregate residences (each accommodating 10 persons or less).

01-03210

Comment: Issue 7. (See also Issue No. 19) ADA defines terms to clarify which activities are regulated for accessibility. UBC defines terms to distinguish how buildings must be constructed, safely occupied and exited. The UBC does not

use the term transient directly but it is a factor in all the regulations which distinguish a hotel from and[sic] an apartment building. A careful review and understanding of Chapters 12 and 33 of the UBC clarifies this approach. Every activity someone wishes to conduct in a building must fall in one of the UBC occupancy categories. If it is not specifically listed, the building official must categorize it as being similar to one of those listed and regulate it accordingly. See Section 501 of the UBC (attached). Thus any facility providing residential services on a transient basis will be categorized either as a hotel or lodging house by the building official and accessibility will be required at that change [sic] of occupancy. In order to assist local building officials address this potential concern, the Council has issued Interpretation No. 93-39.

Interpretation 93-39.
Question: For purposes of accessibility requirements of Chapter 31, how should buildings such as homeless shelters, halfway houses, transient group homes, and similar social service establishments where people may sleep or temporarily reside be classified? Similarly, how should apartments or condominium complexes be classified where some or all of the units are rented to short term quests.
Answer: The intent of the code, as provided in Sec. 3101(a), is to provide standards equivalent with the ADA Accessibility Guidelines.

For the purpose of determining accessibility requirements per Chapter 31, uses such as homeless shelters, halfway houses, transient group homes, and similar facilities should be reviewed on a case by case basis. While these uses are "residential" in nature, if the residents are considered transient, classification as R-1 hotel, or R-3 lodging house is more appropriate. Some may need to be classified either in an I (Institutional) or B (Business) category. If services are provided at the site such as job or health counseling. classification should be in a category which requires accessibility. These uses should not be categorized as congregate residence when the residents are essentially transient.

Apartments or condominiums which are rented on a short term basis to transient guests should be categorized as either a Group R-1, hotel, or Group R-3 lodging house with appropriate accessibility provided.

[E.]

ACCESSIBLE ELEMENTS AND SPACES: SCOPE AND TECHNICAL REQUIREMENTS.

4.1 Minimum Requirements

4.1.1* Application.

(1) General. All areas of newly designed or newly constructed buildings and facilities required to be accessible by 4.1.2 and 4.1.3 and altered portions of existing buildings and facilities required to be accessible by 4.1.6 shall comply with these guidelines, 4.1 through 4.35, unless otherwise provided in this section or as modified in a special application section.

51-20-3101 Scope (a) General. Buildings or portions of buildings shall be accessible to persons with disabilities as required by this chapter.

Chapter 31 has been amended to comply with the Federal Fair Housing Act (FFHA) Guidelines as published by the U.S. Department of Housing and Urban Development (March 1991) and the Americans with Disabilities Act (ADA) Guidelines as published by the U.S. Architectural and Transportation Barriers Compliance Board and Department of Justice (July, 1991).

Reference is made to Appendix Chapter 31 for FFHA and ADA requirements not regulated by this chapter.

51-20-3101 (b) Design. The design and construction of accessible building elements shall be in accordance with this chapter. For a building, structure or building element to be considered to be accessible, it shall be designed and constructed to the minimum provisions of this chapter.

51-20-3103 Building Accessibility (a) Where required. 1. General. Accessibility to temporary or permanent buildings or portions thereof shall be provided for all occupancy classifications except as modified by this chapter. See also Appendix Chapter 31.

51-20-0104 Application to Existing Buildings and Structures. (a) General. Buildings and structures to which additions, alterations or repairs are made shall comply with all the

requirements of this code for new facilities except as specifically provided in this section. See Section 1210 for provisions requiring installation of smoke detectors in existing Group R, Division 3 Occupancies.

14 ADA/Washington State July 12, 1994

01-03213

4.1.1 (2) Application Based on Building Use. Special application sections 5 through 10 provide additional requirements for restaurants and cafeterias, medical care facilities, business and mercantile, libraries, accessible transient lodging, and transportation facilities. When a building or facility contains more than one use covered by a special application section, each portion shall comply with the requirements for that use.

51-20-3106 Accessible Design and Construction Standards. (a) General. Where accessibility is required by this chapter, it shall be designed and constructed in accordance with this section, unless otherwise specified in this chapter.

51-20-3103 Building Accessibility (a) Where required. 1. General. Accessibility to temporary or permanent buildings or portions thereof shall be provided for all occupancy classifications except as modified by this chapter. See also Appendix Chapter 31.

UBC Section 503. (a) ... When a building houses more than one occupancy, each portion of the building shall conform to the requirements of the occupancy housed therein.

15 ADA/Washington State July 12, 1994

01-03214

4.1.1*(2) Continued.

51-20-3103 Building Accessibility. (a) Where required. 1. General. Accessibility to temporary or permanent buildings or portions thereof shall be provided for all occupancy classifications except as modified by this chapter. See also Appendix Chapter 31.
(a) 2. Group A. Occupancies. A. General. All Group A Occupancies shall be accessible as provided in this chapter.
(a) 3. Group B. Occupancies. All Group B Occupancies shall be accessible as provided in this chapter. Assembly spaces in Group B Occupancies shall comply with Section 3103 (a) 2. B.
4. Group E. Occupancies. All Group E. Occupancies shall be accessible as provided in this chapter. Assembly spaces in Group E Occupancies shall comply with Section 3103 (a) 2. B.
5. Group H Occupancies. All Group H Occupancies shall be accessible as provided in this chapter.
6. Group I Occupancies. All Group I Occupancies shall be accessible in all public use, common use and employee use areas, and shall have accessible patient rooms, cells and treatment or examination rooms as follows:
6.A. In Group I, Division 1.1 hospitals which specialize in treating conditions that affect mobility, all patient each nursing unit, including associated toilet rooms and bathrooms.
6.B. In Group I, Division 1.1 hospitals which do not specialize in treating conditions that affect mobility, all patient rooms in each nursing unit, including associated toilet rooms and bathrooms.
6.C. In Group I, Division 1.1 and Division 2 nursing homes and long-term care facilities, at least 1 in every 2 patient rooms, including associated toilet rooms and bathrooms.
6.D. In Group I, Division 3, mental health Occupancies, at least 1 in every 10 patient rooms, including associated toilet

rooms and bathrooms.

4.1.1 (2) Continued.

4.1.1 (2) Continued.

6.E. In Group I, Division 3 jail, prison and similar Occupancies, at least 1 in every 100 rooms or cells, including associated toilet rooms and bathrooms.

[6.F. In Group I Occupancies, all treatment and examination rooms shall be accessible.]
In Group I, Division 1.1 and 2 Occupancies, at least one accessible entrance that complies with Section 3103 (b) shall be under shelter. Every such entrance shall include a passenger loading zone which complies with Section 3108 (b) 3.

51-20-3103 (a) 7. Group M. Occupancies. Group M, Division 1 Occupancies shall be accessible. [as follows:]
[A.] Private garages, [and] carports
[which contain accessible parking serving Type A dwelling units.]
[B]. In Group M., Division 1 agricultural buildings, access need only be provided to paved work areas and areas open to the general public.

51-20-3103 (a) 8. Group R. Occupancies. A. General. All Group R Occupancies shall be accessible as provided in this chapter. Public and common-use areas and facilities such as recreational facilities, laundry facilities, garbage and recycling collection areas, mailbox locations, lobbies, foyers and

management offices, shall be accessible.
[EXCEPTION: Common- or public-use facilities accessory to buildings not required to contain either Type A or Type B dwelling units in accordance with Section 3103(a)8B.]

B. Number of Dwelling Units. In all Group R, Division 1 apartment buildings the total number of Type A dwelling units shall be as required by Table No. 31-B. All other dwelling units shall be designed and constructed to the requirements for Type B units as defined in this chapter.

EXCEPTIONS: 1. Group R Occupancies containing **[no more than] three dwelling units [need not be accessible]*
* *

01-03216
4.1.1 (2) Continued.

4.1.1 (3)* Areas Used Only by Employees as Work Areas. Areas that are used only as work areas shall be designed and constructed so that individuals with disabilities can approach, enter, and exit the areas. These guidelines do not require that any areas used only as work areas be constructed to permit maneuvering within the work area or be constructed or equipped (i.e., with racks or shelves) to be accessible.

51-20-3152

TABLE NO. 31-B
REQUIRED TYPE A DWELLING UNITS

Total Number of Dwelling Units on Site	Required Number of Type A Dwelling Units
0-10	None
11-20	1
21-40	2
41-60	3
61-80	4
81-100	5
For every 20 units or fractional part thereof, over 100	1 additional

See Occupancy Groups above

01-03217

Comment: Issue 8. Except in Group M occupancies, the Washington code does not distinguish areas in a building which are employee versus public areas. It requires all areas of a building to provide equal accessibility. In this regard the Washington Code provides greater accessibility than the ADA. For example if a plan shows a room with a series of built in work stations, ADA would simply ask if the room can be approached, entered and exited. Under the Washington code, accessible aisles would be required between work stations and 5% of the stations would be accessible.

Over time use of specific rooms change without need for a building permit or review by a building official. It is better in the long term of accessibility to require full accessibility at the time of construction.

Group M occupancies are small, miscellaneous buildings that are limited in size to less than 1000 square feet and don't fit in other categories. Typically they are accessory buildings at other buildings. A typical garage at a house in [sic] an M-1. So is the storage shed at the house. Another broad category is agricultural buildings, also limited to 1000 square feet or less. Most things that small are at family farms, but not always. Thus for these small buildings which might be places

of employment or places of public accommodation, accessibility is required by the Washington code.

[E.]

4.1.1 (4) Temporary Structures. These guidelines cover temporary buildings or facilities as well as permanent facilities. Temporary buildings and facilities are not of permanent construction but are extensively used or are essential for public use for a period of time. Examples of temporary buildings or facilities covered by these guidelines include, but are not limited to: reviewing stands, temporary classrooms, bleacher areas, exhibit areas, temporary banking facilities, temporary health screening services, or temporary safe pedestrian passageways around a construction site. Structures, sites and equipment directly associated with the actual processes of construction, such as scaffolding, bridging, materials hoists, or construction trailers are not included.
51-20-3103 Building Accessibility (a) Where required. 1. General. Accessibility to temporary or permanent buildings or portions thereof shall be provided for all occupancy classifications except as modified by this chapter. See also Appendix Chapter 31.
51-20-3103 (a) 1. EXCEPTION 2. Temporary structures, sites and equipment directly associated with the construction process such as construction site trailers, scaffolding,

bridging, or material hoists are not required to be accessible. [This exception does not include walkways or pedestrian protection required by Chapter 44.]
51-20-0104 (e) Moved Buildings and Temporary Buildings. Buildings or structures moved into or within the jurisdiction shall comply with the provisions of this code for new buildings or structures.
Temporary structures such as reviewing stands and other miscellaneous structures, sheds, canopies or fences used for the protection of the public around and in conjunction with construction work may be erected by special permit from the building official for a limited period of time. Such buildings or structures need not comply with the type of construction or fire-resistive time periods required by this code. Temporary buildings or structures shall be completely removed upon the expiration of the time limit stated in the permit.

Comment: Issue 9. Section 3103(a)1, Exception 3 has been amended to include the following sentence. "This exception does not include walkways or pedestrian protection required by Chapter 44." (See Page 599c of the Published Code.) By adding this limitation to the exception, these walkways must still be accessible.

Section 104(e) is primarily a permit process section. It allows a special permit for such temporary structures and allows waiver of construction type and fire-resistive standards. It does not waive requirements of Chapter 31 regarding accessibility.
[E.]
20 ADA/Washington State July 12, 1994
01-03219
4.1.1 (5) General Exceptions.
(a) In new construction, a person or entity is not required to meet fully the requirements of these guidelines where that person or entity can demonstrate that it is structurally impracticable to do so. Full compliance will be considered structurally impracticable only in those rare circumstances when the unique characteristics of terrain prevent the incorporation of accessibility features. If full compliance with the requirements of these guidelines is structurally impracticable, a person or entity shall comply with the requirements to the extent it is not structurally impracticable. Any portion of the building or facility which can be made accessible shall comply to the extent that it is not structurally impracticable.

51-20-3103(a) 1. EXCEPTIONS:

51-20-3103(b) 2. EXCEPTION[S]: [1. A single accessible route shall be permitted to pass through a kitchen or storage room in an accessible dwelling unit. 2. Floors above and below accessible levels that have areas of less than 3,000 square feet per floor, need not be served by an accessible route of travel from an accessible level. This exception shall not apply to: A. The offices of health care providers: or, B. Transportation facilities and airports: or, C. Buildings owned or leased by government agencies: or D. Multi-tenant Group B, Division 2, retail and wholesale occupancies of five tenant spaces or more.] [3] For sites where natural terrain or other unusual property characteristics do not allow the provision of an accessible route of travel from the public way to the building, the point of vehicular debarkation may be substituted for the accessible entrance to the site.
51-20-3105(a) General . . . [For Group R, Division 1 apartment buildings.] Where specific floors of a building are required to be accessible, the requirements shall apply only to the facilities located on accessible floors.

01-03220

4.1.1(5) Continued.

4.1.1(5)(b) Accessibility is not required to (i) observation galleries used primarily for security purposes; or (ii) in non-occupiable spaces accessed only by ladders, catwalks, crawl spaces, very narrow passageways, or freight (non-passenger) elevators, and frequented only by service personnel for repair purposes; such spaces include, but are not limited to, elevator pits, elevator penthouses, piping or equipment catwalks.

Comment: Issue 10. The elevator exception has been revised and is now generally equivalent and, for two story

buildings, requires substantially greater accessibility than the ADA. See also Issue No. 16, below.

51-20-3101(e) Modifications. Where full compliance with this chapter is impractical due to unique characteristics of the terrain, the building official may grant modifications in accordance with Section 106, provided that any portion of the building or structure that can be made accessible shall be made accessible to the greatest extent practical.

Comment: Issue 11. In preparing the Washington's regulations it was noted that this provision of the ADA was very limited in potential application, therefore an equivalent provision was not adopted. Under Section 105 and 3101(d), building officials can approve alternative designs which provide substantially equivalent or greater accessibility. In addition, a specific exception based on terrain which allows an alternative approach than providing an accessible route from the street is provided by Sec. 3103(b)2. Through these provisions, the Washington Code is more restrictive than the appearance of the ADA provisions and provides greater accessibility.

51-20-3103(a) 1. EXCEPTIONS: 1. Floors or portions of floors not customarily occupied, including, but not limited to, elevator pits, observation galleries used primarily for security purposes, elevator penthouses, nonoccupiable spaces accessed only by ladders, catwalks, crawl spaces, very narrow passageways or freight elevators, piping and equipment catwalks and machinery, mechanical and electrical equipment rooms.

[Amendment: P.N.E. The language raises the possibility that the phrase "that have areas of less than 3000 square feet per floor" refers to "accessible levels" without limiting "floors above and below" or vice versa. Thus, if the ground floor were less than 3000 square feet, WAC would not require an elevator, even though any number of floors above or below it were greater than 3000 square feet. It needs to be clear that no floor can exceed 3000 square feet. Although WAC does exceed the ADA in that WAC does not allow an elevator exemption for two-story buildings, that does not make up for the possible problem caused by the ambiguity regarding square footage per floor.]

[WAC applies a lower standard than "structurally impracticable". However, because this is a waiver provision, it is not part of the certification determination. Rather, any

waiver will be non-certified.]

22 ADA/Washington State July 12, 1994

01-03221

Comment: Issue 12. It was the intent of the WSR to have the same effect as the ADA. The language of the exception may be poorly crafted but was intended as a long list of ways in which areas not customarily occupied would be accessed.

To clarify application of this exception the Council has issued Interpretation No. 93-29.

Interpretation 93-29:
Question: 1. Do spaces such as machinery, mechanical, electrical, and telephone equipment rooms need to be accessible? Since these spaces typically work areas only open to employees, is it sufficient to have these rooms designed that persons with disabilities can approach, enter, and exit from these areas?
2. Are rooms used for storage considered to "not customarily occupied" and able to be nonaccessible?
Answer: 1. The intent of the code, as provided in Sec. 3101(a), is to provide standards equivalent to the ADA Accessibility Guideline. Machinery, mechanical, electrical, and telephone equipment rooms must be accessible, as must rooms identified as or other service spaces such as custodial, janitors', and supply rooms must be accessible when the primary occupancy must be accessible. Such rooms must be designed so they can be approached, entered, and exited by a person with disabilities. The intent of the exception is to only apply to spaces of the building which are very rarely accessed even by building service personnel such as a mechanical or plumbing chase, crawl space, plenum, or space above a suspended ceiling. The listing of the equipment rooms in this exception is intended only to be examples of locations where the small, non-occupiable spaces might be accessed.
2. Storage rooms are not spaces which are "not customarily occupied," and must meet accessibility standards of Chapter 31.

[P.E. The interpretation has so many typographical errors that it is very confusing.]

4.1.2 Accessible Sites and Exterior Facilities: New Construction.
An accessible site shall meet the following minimum requirements:
(1) At least one accessible route complying with 4.3 shall be provided within the boundary of the site from public transportation stops, accessible parking spaces, passenger loading zones if provided, and public streets or sidewalks, to an accessible building entrance.
4.1.2 (2) At least one accessible route complying with 4.3 shall connect accessible buildings, accessible facilities, accessible elements, and accessible spaces that are on the same site.
51-20-3105 Facility Accessibility (a) General. Where buildings are required to be accessible, building facilities shall be accessible to persons with disabilities as provided in this section. **[For Group R, Division 1 apartment buildings.] Where specific floors of a building are required to be accessible, the requirements shall apply only to the facilities located on accessible floors.
51-20-3103(b)2. Accessible Route of Travel. When a building or portion of a building, is required to be accessible, an accessible route of travel shall be provided to all portions of the building, to accessible building entrances and connecting the building and the public way.
The accessible route of travel to areas of primary function may serve but shall not pass through kitchens, storage rooms, toilet rooms, bathrooms, closets or other similar spaces.

EXCEPTION[S]: [1. A single accessible route shall be permitted to pass through a kitchen or storage room in an accessible dwelling unit. 2. Floors above and below accessible levels that have areas of less than 3,000 square feet per floor, need not be served by an accessible route of travel from an accessible level. This exception shall not apply to: A. The offices of health care providers; or, B. Transportation facilities and airports; or, C. Buildings owned or leased by government agencies; or, D. Multi-tenant Group B, Division 2, retail and wholesale occupanices of five tenant spaces or more.] **[moved up #3] For sites where natural terrain or other unusual property characteristics do not allow the provision of an accessible route of travel from the public way to the building, the point of vehicular debarkation may be substituted for the accessible entrance to the site.

[Amendment: P.N.E. It appears that the phrase "that have areas of less than 3000 square feet per floor" refers to "accessible levels" without limiting "floors above and below"or vice versa. It needs to be clear that no floor can exceed 3000 square feet (see discussion above at Standard

01-03223
Continued.

4.1.2 (3) All objects that protrude from surfaces or posts into circulation paths shall comply with 4.4.

4.1.2(5)(b) One in every eight accessible spaces, but not less than one, shall be served by an access aisle 96 in (2440 mm) wide minimum and shall be designated "van accessible" as required by 4.6.4. The vertical clearance at such spaces shall comply with 4.6.5. All such spaces may be grouped on one level of a parking structure.

EXCEPTION: Provision of all required parking spaces in conformance with "Universal Parking Design" (see appendix A4.6.3) is permitted.

4.1.2(5)(c) If passenger loading zones are provided, then at least one passenger loading zone shall comply with 4.6.6.

Accessible routes of travel serving any accessible space or element shall also serve as a means of egress for emergencies or connect to an area of evacuation assistance.

When more than one building or facility is located on a site, accessible routes of travel shall [connect]
accessible buildings and accessible site facilities.
The accessible route of travel shall be the most practical direct route connecting accessible building entrances, accessible site facilities and the accessible site entrances.

51-20-3106(e) Protruding Objects. Protruding objects shall not reduce the clear width of an accessible route of travel or maneuvering space. Any wall- or post-mounted object with its leading edge between 27 inches and 79 inches above the floor may project not more than 4 inches into [an accessible route of travel.] corridor,
passageway, or aisle]. Any wall-or post-mounted projection greater than 4 inches shall extend to the floor.

51-20-3107(a)[5] . . . [For other than Group R, Division 1 apartment buildings, where accessible parking is required,] one [of] every eight accessible parking spaces,
[or fraction thereof], shall
[be designed to be accessible to vans].

51-20-3107(b)2. . . . Van accessible parking spaces shall have an adjacent access aisle not less than 96 inches in width.

[(c) Signs. . . . Van accessible parking spaces shall have an additional sign mounted below the International Symbol of Access identifying the spaces as "Van Accessible." EXCEPTION: Where all of the accessible parking spaces comply with the standards for van accessible parking spaces.]
51-20-3108 Passenger Loading Zones. (a) Location. Where provided, passenger loading zones shall be located on an accessible route of travel
[Amendment: E.]
[Amendment: N.E. The amendment creates an ambiguity because of the placement of "accessible" at the beginning of the list of covered pathways. We need to be clear that objects must not protrude into any corridor or passageway or aisle, regardless of whether it is otherwise accessible. Because, in new construction, WAC requires all routes to be accessible, this distinction is a problem only for alterations.]

[Amendment: E.]

[Amendment: E.]

01-03224

4.1.2(5)(d) At facilities providing medical care and other services for persons with mobility impairments, parking spaces complying with 4.6 shall be provided in accordance with 4.1.2(5)(a) except as follows:

(i) Outpatient units and facilities: 10 percent of the total number of parking spaces provided serving each such outpatient unit or facility;

(ii) Units and facilities that specialize in treatment or services for persons with mobility impairments: 20 percent of the total number of parking spaces provided serving each such unit or facility.

4.1.2 (6) If toilet facilities are provided on a site, then each such public or common use toilet facility shall comply with 4.22. If bathing facilities are provided on a site, then each such public or common use bathing facility shall comply with 4.23.

For single user portable toilet or bathing units clustered at a single location, at least 5% but no less than one toilet unit or bathing unit complying with 4.22 or 4.23 shall be installed at each cluster whenever typical inaccessible units are provided. Accessible units shall be identified by the International Symbol of Accessibility. EXCEPTION: Portable toilet units at construction sites used exclusively by construction personnel are not required to comply with 4.1.2(6).

51-20-3107 (a) Accessible Parking Required. . . . [2] Inpatient Medical Care Facilities] For Group I, Division 1.1, 1.2 and 2 medical care Occupancies specializing in the treatment of persons with mobility impairments, 20 percent of parking spaces provided accessory to such occupancies shall be accessible.
[3. Outpatient Medical Care Facilities. For Group I, Division 1.1 and 1.2 and Group B, Division 2 Occupancies providing

outpatient medical care facilities, 10 percent of the parking spaces provided accessory to such occupancies shall be accessible.]

Comment: Issue 13. Section 3107 has been amended to include a 10 percent requirement for outpatient medical care facilities at either hospitals (Group 1.1), Outpatient surgery centers (Group 1.2) or doctors and dentists offices (Group B-2). (See page 604s of the Published Code.) Ironically this WSR provision will require more accessible parking than the ADA based on the interpretation of this provision contained in the January 1993 supplement to the Title III technical assistance manual.

51-20-3106 (k) 1. General. Bathrooms, toilet rooms, bathing facilities and shower rooms shall be designed in accordance with this section. (3106)

[Amendment: N.E. WAC requires 20% at inpatient mobility-specialists and 10% at outpatient facilities. Under S 3107 outpatient mobility-specialty facilities would only need 10%. The ADA would require 20% for all (inpatient and outpatient) mobility-specialty facilities. Although WAC does exceed the ADA in that it requires the additional (10%) accessible spaces at doctors' offices, the increased accessible parking is most needed in the places WAC does not provide it (outpatient mobility specialists) and least needed in the places WAC does provide it (doctors' and dentists' offices).]

4.1.3 (4) Interior and exterior stairs connecting levels that are not connected by an elevator, ramp, or other accessible means of vertical access shall comply with 4.9.

Comment: Issue 14. Section 3103(a) 1 only exempts temporary structures which are directly related to the construction process. The standards for accessible toilets are provided and are applicable to permanent and temporary facilities. If someone gets a local building permit for portable toilets, there is nothing in Chapter 31 which exempts them from complying with 3105(b) or 3106(k). The code specifically regulates temporary as well as permanent structures in Section 3103(a)1. Not all jurisdictions require building permits for these temporary installations, thus it is not uniformly covered by local application of the code. This in no way exempts them from ADA compliance.

51-20-3306 Stairways. (a) General. Every stairway having two or more risers serving any building or portion thereof shall conform to the requirements of this section. When aisles in assembly rooms have steps, they shall conform with the provisions in Section 3315.

51-20-3106 (i) Stairways. 1. General. Stairways required to be accessible shall comply with section 3306 and provisions of this section.
51-20-5105 (c)3. Stairways. Stairways shall comply with Section 3106(i).

Comment: Issue 15. Section 3105(c) has been amended to provide scoping for elevators, platform lifts and stairways. (See pages 603a and 603b of the Published Code.) The net result is the Washington regulations provide greater accessibility than the ADA in that all stairways in covered buildings must comply with 3106(i). This is significantly more than the ADA which only applies to stairways where floors are not accessible by elevator or ramp.

[E.]

[E.]

27 ADA/Washington State July 12, 1994

01-03226

4.1.3 (5)* One passenger elevator complying with 4.10 shall serve each level, including mezzanines, in all multi-story buildings and facilities unless exempted below. If more than one elevator is provided, each full passenger elevator shall comply with 4.10.

EXCEPTION 1: Elevators are not required in facilities that are less than three stories or that have less than 3000 square feet per story unless the building is a shopping center, a shopping mall, or the professional office of a health care provider, or another type of facility as determined by the Attorney General. The elevator exemption set forth in this paragraph does not obviate or limit in any way the obligation to comply with the other accessibility requirements established in section 4.1.3. For example, floors above or below the accessible ground floor must meet the requirements of this section except for elevator service. If toilet or bathing facilities are provided on a level not served by an elevator, then toilet or bathing facilities must be provided on the accessible ground floor. In new construction if a building or facility is eligible for this exemption but a full passenger elevator is nonetheless planned, that elevator shall meet the requirements of 4.10 and shall serve each level in the building. A full passenger elevator that provides service from a garage to only one level of a building or facility is not required to serve other levels.

EXCEPTION 2: Elevator pits, elevator penthouses, mechanical rooms, piping or equipment catwalks are exempted from this requirement.

EXCEPTION 3: Accessible ramps complying with 4.8 may be used in lieu of an elevator.

51-20-3105 (c) Elevators[, Platform Lifts and Stairways].
1. [Elevators. A.] Where Required. In multi-story buildings or portions thereof required to be accessible by Section 3103, at least one elevator shall serve each level, including mezzanines. Other than within an individual dwelling unit, when an elevator is provided but not required, it shall be accessible.

EXCEPTIONS: 1. In Group R. Division 1 apartment occupancies, an elevator is not required where accessible dwelling units and guest rooms are accessible by ramp or by grade level route of travel. 2. In a building of fewer than three stories an elevator is not required where ramps, grade-level entrances or accessible horizontal exits from an adjacent building, are provided to each floor. 3. In multistory parking garages, an elevator is not required where an accessible route of travel is provided from accessible parking spaces on levels with accessible horizontal connections to the primary building served. 4. In Group R, Division 1 hotels and lodging houses less than 3 stories in height, an elevator is not required provided that accessible guest rooms are provided on the ground floor.

[B. Design. All elevators shall be accessible.]
EXCEPTIONS: 1. Private elevators serving only one dwelling unit. 2. Where more than one elevator is provided in the building, elevators used exclusively for movement of freight.

4.1.3 (5)* Continued.

4.1.3 (5)* Continued.

51-20-3103 EXCEPTION 2:
floors above
and below accessible levels that have areas of less than
3000 square feet per floor, need not be
[served by an accessible route of travel
from an accessible level. This exception shall not apply to:
A. The offices of health care providers; or, B. Transportation
facilities and airports; or, C. Buildings owned or leased by
government agencies; or D. Multi-tenant Group B, Division 2,
retail and wholesale occupancies of five tenant spaces or
more.]

51-20-3105 (c) [1. Elevators.B.] Design. All elevators shall be accessible.

EXCEPTIONS: 1. Private elevators serving only one dwelling unit.

2. Where more than one elevator is provided in the building, elevators used exclusively for movement of freight.

Elevators required to be accessible shall be designed and constructed to comply with Chapter 296-81 of the Washington Administrative Code.

[Amendment. P.N.E. The language raises the possibility that the phrase "that have areas of less than 3000 square feet per floor" refers to "accessible levels" without limiting "floors above and below" or vice versa. Thus, if the ground floor were less than 3000 square feet, WAC would not require an elevator, even though any number of floors above or below it were greater than 3000 square feet. It needs to be clear that no floor can exceed 3000 square feet. Although WAC does exceed the ADA in that WAC does not allow an elevator exemption for two-story buildings, that does not make up for the possible problem caused by the ambiguity regarding square footage per floor.]

29 ADA/Washington State July 12, 1994

01-03228

EXCEPTION 4: Platform lifts (wheelchair lifts) complying with 4.11 of this guideline and applicable state or local codes may be used in lieu of an elevator only under the following conditions:

(a) To provide an accessible route to a performing area in an assembly occupancy.

(b) To comply with the wheelchair viewing position line-of-sight and dispersion requirements of 4.33.3.

(c) To provide access to incidental occupiable spaces and rooms which are not open to the general public and which house

no more than five persons, including but not limited to equipment control rooms and projection booths.

(d) To provide access where existing site constraints or other constraints make use of a ramp or an elevator infeasible.

Comment: Issue 16. Item 1: Section 3103(a) 1 and 3103(b)2 have been revised to clarify that the exception for elevators is truly only an accessible route exception. It no longer exempts whole spaces from all accessibility standards. See also amendments to 3105(a). The Washington code now clearly provides greater accessibility than the ADAAG. See pages 599c, 601a and 603 of the Published Code.
Item 2: The Washington State elevator standards were revised through an amendment to WAC Chapter 296-81 which was effective on July 1, 1992 to be consistent with the ADAAG. Section 296-81-007(5) specifically adopts the ANSI A117.1-1990 elevator standard which includes standards for wheelchair and platform lifts. In addition sections .300 through .360 and .370 adopts additional standards for elevator design and installation which are consistent with the ADA requirements. See Issue No. 46 for a comparison of the ADA and Washington regulations. (A copy of WAC 296-81 is attached.)

51-20-3105 (c) [2] Platform Lifts. Platform lifts may be used in lieu of an elevator under one of the following conditions subject to approval by the building official:
[A.] To provide an accessible route of travel to a performing area in a Group A. Occupancy; or,
[B.] To provide unobstructed sight lines and distribution for wheelchair viewing positions in Group A Occupancies; or,
[C.] To provide access to spaces with an occupant load of less than 5 [that are not open to the public]; or
[D.] To provide access where existing site constraints or other constraints make use of a ramp or elevator infeasible.

All platform lifts used in lieu of an elevator shall be capable of independent operation and shall comply with Chapter 296-81 of the Washington Administrative Code.

[E. Equivalency of technical standards is addressed separately below.]

4.1.3 (8) In new construction, at a minimum, the requirements in (a) and (b) below shall be satisfied independently:

(a) (i) At least 50% of all public entrances (excluding

those in (b) below) must be accessible. At least one must be a ground floor entrance. Public entrances are any entrances that are not loading or service entrances.

(ii) Accessible entrances must be provided in a number at least equivalent to the number of exits required by the applicable building/fire codes. (This paragraph does not require an increase in the total number of entrances planned for a facility.)

(iii) An accessible entrance must be provided to each tenancy in a facility (for example, individual stores in a strip shopping center).

One entrance may be considered as meeting more than one of the requirements in (a). Where feasible, accessible entrances shall be the entrances used by the majority of people visiting or working in the building.

[296-81-007. National Elevator Code adopted. ...(5) The American National Standard Safety Code for Elevators, Dumbwaiters, Escalators, and Moving Walks, ANSI A17.1, 1990 Edition, is adopted as the standard for elevators, dumbwaiters, escalators, and moving walks installed on or after July 1, 1992, with the exceptions of ANSI A17.1, Part XIX, and ANSI A17.1, Part V, Section 513, which is replaced by chapter 296-94 WAC.]

Comment: Issue 17. Section 3105(c) 2C has been revised to read "To provide access to spaces with an occupant load of less than 5, that are not open to the public." (See paged (sic) 603a and 603b of the Published Code.) The provisions are now equivalent.
Comment: Issue 18. See comment on Issue No. 16, above.

51-20-3103 (b) 3. Primary Entry[ance] Access. At least 50% of all public entries, or a number equal to the number of exits required by Section 3303 (a), whichever is greater, shall be accessible. One of the accessible public entries shall be the primary entry to a building. At least one accessible entry must be a ground floor entrance. Public entries do not include loading or service entries.

EXCEPTION: In Group R. Division 1 apartment buildings only the primary entry need be accessible, provided that the primary entry provides an accessible route of travel to all dwelling units required to be accessible.

Where a building is designed not to have common or primary entries, the primary entry to each individual dwelling unit required to be accessible, and each individual tenant space, shall be accessible.

[E. Technical requirements addressed separately below.]

Comment: Issue 19. (See also comment on Issue No. 7, above.) Except where an apartment building is used as a hotel, the ADA does not regulate apartment buildings. Under the UBC a permit issued for an apartment building is for residential apartment use and does not include transient use as covered by the ADA. A transient use of an apartment building would require a new building permit and occupancy certificate. If this is the intended use at the first permit, the applicant needs to so state so that the building is reviewed according to the proper standards. If that information is withheld there is a violation of the building code. Where the permit process is properly followed, this exception does not result in less accessibility than the ADA. To assist local building officials in understanding this difference, the Council has issued Interpretation No. 93-39.

Interpretation 93-39:
Question: For purposes of accessibility requirements ofChapter 31, how should buildings such as homeless shelters,
halfway houses, (transient group homes, and similar social service establishments where people may sleep or temporarily reside be classified? Similarly, how should apartments or condominium complexes be classified where some or all of the units are rented to short term guests.
Answer: The intent of the code, as provided in Sec. 3101(a), is to provide standards equivalent with the ADA Accessibility Guidelines.

For the purpose of determining accessibility requirements per Chapter 31, uses such as homeless shelters, halfway houses, transient group homes, and similar facilities should be reviewed on a case by case basis. While these uses are "residential" in nature, if the residents are considered transient, classification as R-1 hotel, or R-3 lodging house is more appropriate. Some may need to be classified either in an I (Institutional) or B (Business) category. If services are provided at the site such as job or health counseling, classification should be in a category which requires accessibility. These uses should not be categorized as congregate residence when the residents are essentially transient.

Apartments or condominiums which are rented on a short term basis to transient guests should be categorized as either a Group R-1, hotel, or Group R-3 lodging house with appropriate accessibility provided.

[E.]

4.1.3 (8)(b)(i) In addition, if direct access is provided for pedestrians from an enclosed parking garage to the building, at least one direct entrance from the garage to the building must be accessible.

(ii) If access is provided for pedestrians from a pedestrian tunnel or elevated walkway, one entrance to the building from each tunnel or walkway must be accessible.

One entrance may be considered as meeting more than one of the requirements in (b).

Because entrances also serve as emergency exits whose proximity to all parts of buildings and facilities is essential, it is preferable that all entrances be accessible.

51-30-3103 (b)2. ...The accessible route of travel shall be the most practical direct route connecting accessible building entrances, accessible site facilities and the accessible site entrances.

Comment: Issue 20. Per the definition contained in Section 3102, these are primary entrances to a building and would need to be accessible, including the provision of accessible routes. Further, the side by side comparison appears to only compare this ADA requirement with one small part of the Washington provisions. Other provisions are critical to this comparison. The rest of 3103(b)2 is important, see attached. It clearly states that where there is more than one facility on the site, accessible routes be provided connected each facility. No exemption of any kind is provided for tunnels or elevated walkways. Section 3107 requires parking to be on an accessible route which is the shortest possible to accessible building entrance(s). In case there is any question as to the intent of the provision, the Council has issued Interpretation No. 93-30.

Intrepretation 93-30
Question: Must tunnels, elevated walkways, (pedestrian walkways) and doorways providing direct access from parking garages to a building provide an accessible entrance.
Answer: Yes. The intent of the code, as provided in Sec. 3101(a), is to provide standards equivalent to the ADA Accessibility Guideline. These types of entrances and connections between buildings are considered to be primary entrances and must be accessible.

[E.]

01-03233
4.1.3 (11) Toilet Facilities: If toilet rooms are provided, then each public and common use toilet room shall comply with 4.22. Other toilet rooms provided for the use of occupants of specific spaces (i.e., a private toilet room for the occupant of a private office) shall be adaptable. If bathing rooms are provided, then each public and common use bathroom shall comply with 4.23. Accessible toilet rooms and bathing facilities shall be on an accessible route.

51-20-3105 (b) Bathing and Toilet Facilities. 1. Bathing Facilities. When bathing facilities are provided, at least 2 percent but not less than 1, bathtub or shower shall be accessible. In dwelling units where both a bathtub and shower are provided in the same room, only one need be accessible.

51-20-3105 (b) 2. Toilet Facilities. Toilet facilities located within accessible dwelling units, guest rooms and congregate residences shall comply with Sections 3106(k) and 3106 (aa).
In each toilet facility in other occupancies, at least one wheelchair accessible toilet stall with an accessible water closest shall be provided. In addition, when there are 6 or more water closets within a toilet facility, at least one other accessible toilet stall complying with Section 3106(k) 4, also shall be installed.

Where urinals are provided, at least one urinal shall be accessible.

51-20-3105 (b) 3. Lavatories, Mirrors and Towel Fixtures. At least one accessible lavatory shall be provided within any

toilet facility. Where mirrors, towel fixtures and other toilet and bathroom accessories are provided, at least one of each shall be accessible.

51-20-3106(k) 1. General. Bathrooms, toilet rooms, bathing facilities and shower rooms shall be designed in accordance with this section. For dwelling units see also Section 3106(aa).

35 ADA/Washington State July 12, 1994

01-03234

Comment: Issue 21. Item 1: 2% of Bathing Facilities. The intent of Interpretation No. 93-31 is to require accessible bathing facilities as required by ADA. It states that if only one bathing facility is provided in a building, it must be unisex and have 2% of its bathing features accessible; if multiple facilities are provided, they also must be accessible at the rate of 2% of the bathing fixtures.
Item 2: Toilet Facilities without Stalls. The application of this section has been that each toilet facility is accessible, regardless of the number of facilities in a building or the number of water closets in the room or the presence of an actual "stall." In each "toilet facility" at least one fixture of each type provided must be accessible. The intent is to provide accessibility whether or not there is a stall. Read literally the WSR actually require a stall in all instances. No official interpretation of this has been issued and the questions received to date have been to nuances of meeting these provisions such as overlapping clear spaces in a single user facility, not whether it even has to be accessible because there is not a stall.

Interpretation 93-31:
Question: What is the application of the requirements for 2 percent of bathing facilities to be accessible when there is only one bathing facility in a building, or when there are multiple bathing facilities? Must separate facilities for each sex be provided?
Answer: The intent of the code, as provided in Sec. 3101(a),

is to provide standards equivalent to the ADA Accessibility Guidelines.

Where only one bathing facility is provided in a building, 2 percent of the shower or bathtub fixtures within that facility must be accessible and the facility must be accessible to all persons (unisex). Where there are multiple bathing facilities in a building, each bathing facility must provide 2 percent of the shower or bathtub fixtures as accessible. Chapter 31 does not restrict how those bathing facilities are designated (men, women or unisex).

[E.]

01-03235

4.1.3 (12) Storage, Shelving and Display Units:
(a) If fixed or built-in storage facilities such as cabinets, shelves, closets, and drawers are provided in accessible spaces, at least one of each type provided shall contain storage space complying with 4.25. Additional storage may be provided outside of the dimensions required by 4.25.
(b) Shelves or display units allowing self-service by customers in mercantile occupancies shall be located on an accessible route complying with 4.3. Requirements for accessible reach range do not apply.

4.1.3 (14) If emergency warning systems are provided, then they shall include both audible alarms and visual alarms complying with 4.28. Sleeping accommodations required to comply with 9.3 shall have an alarm system complying with 4.28. Emergency warning systems in medical care facilities may be modified to suit standard health care alarm design practice.

4.1.3 (15) Detectable warnings shall be provided at locations as specified in 4.29.

51-20-3105 (d) 6. Storage
[Facilities]. In other than Group R, Division 1 apartment buildings, where fixed or built-in storage facilities such as

cabinets, shelves, closets and drawers are provided in accessible spaces, at least one of each type provided shall contain storage space complying with Section 3106(r).

Comment: Issue 22. See comment to Issue No. 19, above.

51-20-3105 (d) 9. Alarms. where provided, [alarm systems] shall include both audible and visible alarms. [Visible] alarm devices shall be located in all [assembly areas;] common-use areas including toilet rooms and bathing facilities,[;] hallways and lobbies[; and hotel guest rooms as required by Section 3103(a)8C].

EXCEPTIONS: 1. Alarm systems in Group I, Division 1.1 and 1.2 Occupancies may be modified to suit standard health care design practice.

2. Visible alarms are not required in Group R, Division 1 apartment buildings.

Comment: Issue 23. See comment to Issue No. 19, above.

51-20-3106 (d) 5. B. Detectable Warnings. Curb ramps shall have detectable warnings complying with Section 3106 (g). Detectable warnings shall extend the full width and depth of the curb ramp.

51-20-3106 (d) [8]. Vehicular Areas. Where an accessible route of travel crosses or adjoins a vehicular way, and where there are no curbs, railings or other elements [which separate the pedestrian and vehicular areas and which are] detectable by a person who has a severe vision impairment, the boundary between the areas shall be defined by a continuous detectable warning not less than 36 inches wide, complying with Section 3106 (q).

[E.]

[E.]

4.1.3 (17) Public Telephones:

(a) If public pay telephones, public closed circuit telephones, or other public telephones are provided, then they shall comply with 4.31.2 through 4.31.8 to the extent required by the following table:

Number of each type of telephone provided on each floor	Number of telephones required to comply with 4.31.2 through 4.31.81
1 or more single unit	1 per floor
1 bank2	1 per floor
2 or more banks2	1 per bank. Accessible unit may be installed as a single unit in proximity (either visible or with signage) to the bank. At least one

public telephone per floor shall meet the requirements for a forward reach telephone3.

1 Additional public telephones may be installed at any height. Unless otherwise specified, accessible telephones may be either forward or side reach telephones.

2 A bank consists of two or more adjacent public telephones, often installed as a unit.

3 EXCEPTION: For exterior installations only, if dial tone first service is available, then a side reach telephone may be installed instead of the required forward reach telephone (i.e., one telephone in proximity to each bank shall comply with 4.31).

Comment: Issue 24. The references have been corrected to 3106(q) in the November 1992 amendments, see attached.

51-20-3105 (d) 2. Telephones. On any floor where public telephones are provided at least one telephone shall be accessible. On any floor where 2 or more banks of multiple telephones are provided, at least one telephone in each bank shall be accessible and at least one telephone per floor shall be designed to allow forward reach complying with Section 3106...

Comment: Issue 25. To simplify the code provisions, the Washington regulations lumped all telephones available to the public as public telephones. Section 401(a) of the UBC requires the use of Webster's Third New International Dictionary of the English Language, Unabridged, copyright 1986, to provide ordinary meanings for words not defined in the code. Webster's dictionary defines public as "a place accessible or visible to all members of the community."

[E.]

[E.]

01-03237

4.1.3 (19) (b) This paragraph applies to assembly areas where audible communications are integral to the use of the space (e.g., concert and lecture halls, playhouses and movie theaters, meeting rooms, etc.). Such assembly areas, if (1) they accommodate at least 50 persons, or if they have audio-amplification systems, and (2) they have fixed seating, shall have a permanently installed assistive listening system complying with 4.33. For other assembly areas, a permanently installed assistive listening system, or an adequate number of electrical outlets or other supplementary wiring necessary to support a portable assistive listening system shall be provided. The minimum number of receivers to be provided shall be equal to 4 percent of the total number of seats,

but in no case less than two. Signage complying with applicable provisions of 4.30 shall be installed to notify patrons of the availability of a listening system.

4.1.3 (20) Where automated teller machines are provided, each machine shall comply with the requirements of 4.34 except where two or more machines are provided at a location, then only one must comply.

EXCEPTION: Drive-up-only automated teller machines are not required to comply with 4.34.2 and 4.34.3.

51-20-3103 (a) 2. B. Assistive Listening Devices. Assistive listening systems complying with Section 3106 (u) 3 shall be installed in assembly areas where audible communications are integral to the use of the space including stadiums, theaters, auditoriums, lecture halls, and similar areas; where fixed seats are provided; as follows:

1. Areas with an occupant load of 50 or more.
2. Areas where an audio-amplification system is installed.
Receivers for assistive-listening devices shall be provided at a rate of 4 percent of the total number of seats, but in no case fewer than two devices. In other assembly areas, where permanently installed assistive-listening systems are not provided, [electrical outlets shall be provided at a rate of not less than 4 percent of the total occupant load].
Signage complying with Section 3106 (p) shall be installed to notify patrons of the availability of the listening system.

Comment: Issue 26. See comment on Issue No. 2, above. Also, for assembly spaces without fixed seats, the ADA language requiring "an adequate number of electrical outlets. ... to support a portable assistive listening system" is not readily enforceable. To provide more specific standards for building designers and regulators, the Washington code provides an exact number of electrical outlets. If the intent of the ADA is only an outlet for the system transmitter, then a number of outlets which is 4% of the occupant load is going to be more than "adequate" and will provide greater accessibility than the ADA.

[Appendix 51-20-93120(a) Purpose. The purpose of this division is to provide the United States Architectural and Transportation Barriers Compliance Board Americans with Disabilities Act Guidelines for automated teller machines.]

[E.]

39 ADA/Washington State July 12, 1994

01-03238

Comment: Issue 27. The ADA standards for ATM's are now located in the Appendix to Chapter 31. See page 970j of the Published Code.) As a total document, standards equivalent to the ADA are present and available for use.

51-20-3105 (d) 4. [Recreation Facilities.
Where common or public use [recreation facilities,] swimming pools, hot tubs, spas and similar facilities are provided, they shall be accessible. Swimming pools shall be accessible by transfer tier, hydraulic chair, ramp or other means. Hot tubs and spas [need] be accessible only to the edge of the facility.

[EXCEPTION: Common- or public-use facilities accessory to buildings not required to contain either Type A or Type B dwelling units in accordance with Section 3103(a)8B.]

[This still does not provide scoping requirements. However, 28 C.F.R. S 36.607 provides that "if certain equipment is not covered by the [submitted] code, the determination of equivalency cannot be used as evidence with respect to the question of whether equipment in a building built according to the code satisfies the Act's requirements with respect to such equipment."]

[Amendment: E.]

4.1.5 Accessible Buildings: Additions. Each addition to an existing building or facility shall be regarded as an alteration. Each space or element added to the existing building or facility shall comply with the applicable provisions of 4.1.1 to 4.1.3, Minimum Requirements (for New Construction) and the applicable technical specifications of 4.2 through 4.35 and sections 5 through 10. Each addition that affects or could affect the usability of an area containing a primary function shall comply with 4.1.6(2).

51-20-3111 Additions. New additions may be made to existing buildings without making the entire building comply, provided the new additions conform to the provisions of Part II of this chapter except as follows:

1. Entries. Where a new addition to a building or facility does not have an accessible entry, at least one entry in the existing building or facility shall be accessible.

2. Accessible Route. Where the only accessible entry to the addition is located in the existing building or facility, at least one accessible route of travel shall be provided through the existing building or facility to all rooms, elements and spaces in the new addition which are required to be accessible.
3. Toilet and Bathing Facilities. Where there are no toilet rooms and bathing facilities in an addition and these facilities are provided in the existing building, then at least one toilet and bathing facility in the existing facility shall comply with Section 3106 or with Section 3112 (c) 5.
4. Group I Occupancies. Where patient rooms are added to an existing Group I Occupancy, a percentage of the additional rooms equal to the requirement of Section 3103 (a) 6., but in no case more than the total number of rooms required by Section 3103 (a) 6. shall comply with Section 3106 (w). Where toilet or bath facilities are part of the accessible rooms, they shall comply with Section 3106 (k).
5. Group R, Division 1 Apartment Buildings. Additions of 3 or fewer dwelling units in Group R, Division 1 apartment buildings need not comply with Part 1 of this chapter. Where an addition affects the access to or use of an area of primary function, to the maximum extent feasible, the path of travel to the area of primary function shall be made accessible.

Comment: Issue 28. See comment on to Issue No. 19, above.

[E.]

01-03240

4.1.6 Accessible Buildings: Alterations.

(1) General. Alterations to existing buildings and facilities shall comply with the following:

(1) (a) No alteration shall be undertaken which decreases or has the effect of decreasing accessibility or usability of a building or facility below the requirements for new construction at the time of alteration.

(1)(b) If existing elements, spaces, or common areas are altered, then each such altered element, space, feature, or area shall comply with the applicable provisions of 4.1.1 to 4.1.3 Minimum Requirements (for New Construction). If the applicable provision for new construction requires that an element, space, or common area be on an accessible route, the altered element, space, or common area is not required to be on an accessible route except as provided in 4.1.6(2) (Alterations to an Area Containing a Primary Function).

51-20-3110 Alteration is any change, addition or modification in construction or occupancy.

51-20-3112 Alterations. (a) General. 1. Compliance Alterations to existing buildings or facilities shall comply with this section. No alteration shall reduce or have the effect of reducing accessibility or usability of a building, portion of a building or facility. If compliance with this section is technically infeasible, the alteration shall provide accessibility to the maximum extent feasible. 51-20-3112 (a) 1. EXCEPTION: Except when substantial as defined by Section 3110, alterations to Group R, Division 1 apartment buildings need not comply with this section.

51-20-0104 Application to Existing Buildings and Structures. (a) General. Buildings and structures to which additions, alterations or repairs are made shall comply with all the requirements of this code for new facilities except as specifically provided in this section. See Section 1210 for provisions requiring installation of smoke detectors in existing Group R, Division 3 Occupancies.

(b) Addition, Alterations or Repairs. Additions, alterations or repairs may be made to any building or structure without

requiring the existing building or structure to comply with all the requirements of this code, provided the addition, alteration or repair conforms to that required for a new building or structure. Additions or alterations shall not be made to an existing building or structure which will cause the existing building or structure to be in violation of any of the provisions of this code nor shall such additions or alterations cause the existing building or structure to become unsafe. . .

(c) Any change in the use or occupancy of any existing building or structure shall comply with the provisions of Sections 308 and 502 of this code.
For existing buildings, see Appendix Chapter 1.

4.1.6, Continued.

(1) (c) If alterations of single elements, when considered together, amount to an alteration of a room or space in a building or facility, the entire space shall be made accessible.

4.1.6(k) EXCEPTION:
(i) These guidelines do not require the installation of an elevator in an altered facility that is less than three stories or has less than 3,000 square feet per story unless the building is a shopping center, a shopping mall, the professional office of a health care provider, or another type of facility as determined by the Attorney General.

4.1.6(k) EXCEPTION: (ii) The exemption provided in paragraph (i) does not obviate or limit in any way the obligation to comply with the other accessibility requirements established in these guidelines. For example, alterations to floors above or below the ground floor must be accessible regardless of whether the altered facility has an elevator. If a facility subject to the elevator exemption set forth in paragraph (i) nonetheless has a full passenger elevator, that elevator shall meet, to the maximum extent feasible, the accessibility requirements of these guidelines.

51-20-3112 (a) 2. Existing Elements. If existing elements, spaces, essential features or common areas are altered, each such altered element, space feature or area shall comply with the applicable provisions of Part II of this Chapter. Where an alteration is to an area of primary function, to the maximum extent feasible, the path of travel to the altered area shall be made accessible. See also Appendix Chapter 31 Division II. EXCEPTION 1: Accessible route of travel need not be provided to altered elements, spaces or common areas which are not areas of primary functions.

51-20-3112 (a) 4. Other Requirements. A. Where

alterations of single elements, when considered together, amount to an alteration of a room or space in a building or facility, the entire area or space shall be accessible.
51-20-3112 (b) Substantial Alterations. Where substantial alteration as defined in Section 3110 occurs to a building or facility, the entire building or facility shall comply with Part II of this code.

[EXCEPTION: Areas of evacuation assistance need not be added to a substantially altered building.]

Comment: Issue 29. See comment on Issue No. 19, above.

51-20-3112(a)4.B. No alteration of an existing element, space or area of a building shall impose a requirement for greater accessibility than that which would be required for new construction.

[E.]

NE No equivalent provision. Section 51-30-3103 (a) 1 allows floors of more than 3000 square feet above and below accessible floors to be constructed without access features.

01-03242

4.1.6 (2) Alterations to an Area Containing a Primary Function: In addition to the requirements of 4.1.6(1), an alteration that affects or could affect the usability of or access to an area containing a primary function shall be made so as to ensure that, to the maximum extent feasible, the path of travel to the altered area and the restrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities, unless such alterations are disproportionate to the overall alterations in terms of cost and scope (as determined under criteria established by the Attorney General). (See Section 36.403)

Comment: Issue 30. See comment on Issue No. 16, above.

51-20-3112 (a) 2. Existing Elements. If existing elements, spaces, essential features or common areas are altered, each such altered element, space feature or area shall comply with the applicable provisions of Part II of this chapter. Where an alteration is to an area of primary function, to the maximum extent feasible, the path of travel to the altered area shall be made accessible. See Also Appendix Chapter 31, Division II. EXCEPTIONS: 1. Accessible route of travel need not be provided to altered elements, spaces or common areas which are not areas of primary function.

2. Areas of evacuation assistance need not be added to an altered building.

[3. Subject to the approval of the building code official, the path of travel need not be made accessible if the cost of compliance with this part would exceed 20 percent of the total cost of construction, inclusive of the cost of eliminating barriers, within an 36-month period.]
51-20-3114 (a)

44 ADA/Washington State July 12, 1994

01-03243

Comment: Issue 31. With respect to this requirement, the Washington regulations will result in substantially more accessibility than the ADA. The Washington provision, now located in Sections 51-20-3111 and 3112(a)2 read as follows: ... [see above]
The Washington provisions will result in more, rather than less improvements to the path of travel because of three differences between ADA and WSR:

1. Use of the exception is subject to review of the building official. The building official has the option of turning down the exception request, even if it exceeds 20%.

2. The Washington regulations do not require barrier removal. When a place of public accommodation does remove barriers, that action is treated as an alteration under the Washington regulations. If that action is occurring in an area of primary function, Washington law requires improvement to the path of travel, the ADA does not.

3. The Washington regulations require that 20% of the "total cost of construction" of the addition or alteration be applied to improving the path of travel. ADA requirements stated in Section 36.403(a) apply only to alterations which affect usability of, or access to an area of primary function. As such building modifications which don't affect access are not alterations under the ADA. These actions would not

trigger the path of travel requirements nor their costs included in the determination of disproportional costs. In the Washington regulations, all the costs of the remodeling are included.

[The 36-month provision will create a snowball effect, because you take 20% of the past 3 years, regardless of whether the path of travel requirement was satisfied in the previous alterations. The ADA looks back only if the path of travel requirement was not met on the prior alterations. However, this does not result in less accessibility.
In addition, because the disproportionality provision in WAC is a waiver, it is not covered by the certification determination.]

45 ADA/Washington State July 12, 1994

01-03244

Example: A owner proposes remodels of a building which include alterations to areas of primary function, removal of barriers and other changes. The total cost of the construction is $200,000. Under Washington regulations, $40,000 must also be applied to improvements to the path of travel. Under the ADA, much less will be spent. $50,000 is being spent to remove barriers. Another $40,000 is being spent on elements which do not affect accessibility or usability. Leaving only $110,000 being applied to "alterations," as defined in ADA. Under ADA, only $22,000 need be applied to improving the path of travel, before a claim of disproportionality can be made.
For further clarification of the application of the Washington regulations see Council Interpretation No. 93-14.

Interpretation 93-14:
Question: 1. A 500 square foot addition is being proposed to the basement of an existing Group B, Division 2 Occupancy. The existing basement area is 3,200 square feet. Currently the building has two stairway exits from the

basement, but it is not served by an elevator. The addition is primary function area. When applying the path of travel requirements, where the applicant intends to pursue an appeal because of costs over 20%, is it required that up to 20% be spent, or can it be waived.
2. Are items 1, 2, and 3 of Section 51-20-3111 redundant with the requirement for improvements to the path of travel?

Answer: 1. Each project should be considered on a case by case basis. If alterations to the path of travel exceed 20%, the intent of the code is that improvements to the path of travel be made to at least the 20% level.
If however the only item needed to improve the path of travel costs more than the 20%, e.g. an elevator, then the expenditure on the path of travel can be "waived" at this time, but the amount should be added to future alterations or additions made in the subsequent 36 months.
The code only requires improvements to the path of travel serving the addition or altered area.
2. Yes, items 1, 2, and 3 are part of the path of travel when additions are made to the area of primary function.

46 ADA/Washington State July 12, 1994

01-03245

4.1.6 (3) (c) Elevators:

(i) If safety door edges are provided in existing automatic elevators, automatic door reopening devices may be omitted (see 4.10.6).

(ii) Where existing shaft configuration or technical infeasibility prohibits strict compliance with 4.10.9, the minimum car plan dimensions may be reduced by the minimum amount necessary, but in no case shall the inside car area be smaller than 48 in by 48 in.

(iii) Equivalent facilitation may be provided with an elevator car of different dimensions when usability can be demonstrated and when all other elements required to be accessible comply with the applicable provisions of 4.10. For example, an elevator of 47 in

by 69 in (1195 mm by 1755 mm) with a door opening on the narrow dimension, could accommodate the standard wheelchair clearances shown in Figure 4.

Fig. 4 Minimum Clear Floor Space for Wheelchairs.

Fig. 4(d) Clear Floor Space in Alcoves. For a front approach, where the depth of the alcove is equal to or less than, 24 inches (610 mm), the required clear floor space is 30 inches by 48 inches (760 mm by 1220 mm).

For a side approach, where the depth of the alcove is equal to or less than 15 inches (380 mm), the required clear floor space is 30 inches by 48 inches (760 mm by 1220 mm).

Fig. 4(e) Additional Maneuvering Clearances for Alcoves. For a front approach, if the depth of the alcove is greater than 24 inches (610 mm), then in addition to the 30 inch (760 mm) width, a maneuvering clearance of 6 inches (150 mm) in width is required.

For a side approach, where the depth of the alcove is greater than 15 inches (380 mm), then in addition to the 48 inch (1220 mm) length, an additional maneuvering clearance of 12 inches in length (305 mm) is required.

51-20-3112 (c) 4. Elevators. Elevators shall comply with Chapter 296-81, Washington Administrative Code.

Comment: Issue 32. See comment on Issue No. 16, above.

[E.]

47 ADA/Washington State July 12, 1994

01-03246
4.1.6 (3) (e) Toilet Rooms:

(i) Where it is technically infeasible to comply with 4.22 or 4.23, the installation of at least one unisex toilet/bathroom per floor, located in the same area as existing toilet facilities, will be permitted in lieu of modifying existing toilet facilities to be accessible. Each unisex toilet room shall contain one water closet complying with 4.16 and one lavatory complying with 4.19, and the door shall have a privacy latch.

(ii) Where it is technically infeasible to install a required standard stall (Fig. 30(a)), or where other codes prohibit reduction of the

fixture count (i.e., removal of a water closet in order to create a double-wide stall), either alternate stall (Fig.30(b)) may be provided in lieu of the standard stall.

(iii) When existing toilet or bathing facilities are being altered and are not made accessible, signage complying with 4.30.1, 4.30.2, 4.30.3, 4.30.5, and 4.30.7 shall be provided indicating the location of the nearest accessible toilet or bathing facility within the facility.

4.1.7 Accessible Buildings: Historic Preservation.

(1) Applicability:

(a) General Rule. Alterations to a qualified historic building or facility shall comply with 4.1.6 Accessible Buildings: Alterations, the applicable technical specifications of 4.2 through 4.35 and the applicable special application sections 5 through 10 unless it is determined in accordance with the procedures in 4.1.7(2) that compliance with the requirements for accessible routes (exterior and interior), ramps, entrances, or toilets would threaten or destroy the historic significance of the building or facility in which case the alternative requirements in 4.1.7(3) may be used for the feature.

51-20-3112 (c) 7. Toilet Rooms. A. Shared Facilities. The addition of one unisex toilet facility accessible to all occupants on the floor may be provided in lieu of making existing toilet facilities accessible when it is technically infeasible to comply with either part of Chapter 31.
B. Number. The number of toilet facilities and water closets required by the Uniform Plumbing Code may be reduced by one, in order to provide accessible features.

[C. Signage. When existing toilet facilities are altered and not all are made accessible, directional signage complying with Section 3106(p)3 and 4 shall be provided indicating the location of the nearest accessible toilet facility.]

51-20-3113 Historic Preservation (a) General. Generally, the accessibility provisions of this part shall be applied to historic buildings and facilities as defined in Section 104 (f) of this code. The building official, after consultation with the appropriate historic preservation officer, shall determine whether provisions required by this part for accessible routes of travel (interior or exterior), ramps, entrances, toilets, parking or signage would threaten or destroy the historic significance of the building or facility.

If it is determined that any of the accessibility requirements listed above would threaten or destroy the historic significance of a building or facility, the modifications of Section 3112 (c) for that feature may be utilized.

[N.E. Need to address placement of the unisex toilet in the same area as existing facilities.]

4.1.7 (1) (b) Definition. A qualified historic building or facility is abuilding
or facility that is:

(i) Listed in or eligible for listing in the National Register of Historic Places; or

(ii) Designated as historic under an appropriate State or local law.

4.1.7 (2) Procedures: (a) Alterations to Qualified Historic buildings and Facilities Subject to Section 106 of the National Historic Preservation Act:

4.1.7 (2) (a) (i) Section 106 Process. Section 106 of the National Historic Preservation Act (16 U.S.C. 470 f) requires that a Federal agency with jurisdiction over a Federal, federally assisted, or federally licensed undertaking consider the effects of the agency's undertaking on buildings and facilities listed in or eligible for listing in the National Register of Historic Places and give the Advisory Council on Historic Preservation a reasonable opportunity to comment on the undertaking prior to approval of the undertaking.

4.1.7 (2) (a) (ii) ADA Application. Where alterations are undertaken to a qualified historic building or facility that is subject to section 106 of the National Historic Preservation Act, the Federal agency with jurisdiction over the undertaking shall follow the section 106 process. If the State Historic Preservation Officer or Advisory Council on Historic Preservation agrees that compliance with the requirements for accessible routes (exterior and interior), ramps, entrances, or toilets would threaten or destroy the historic significance of the building or facility, the alternative requirements in 4.1.7(3) may be used for the feature.

51-20-0104 (f) Historic Buildings. Repairs, alterations and additions necessary for the preservation, restoration, rehabilitation or continued use of a building or structure may be made without conformance to all the requirements of this code when authorized by the building official, provided:
1. The building or structure has been designated by official action of the legally constituted authority of this jurisdiction as having special historical or architectural significance.
2. Any unsafe conditions as described in this code are corrected.
3. The restored building or structure will be no more hazardous based on life safety, fire safety and sanitation than the existing building.

4.1.7 (2) (b) Alterations to Qualified Historic Buildings and Facilities Not Subject to Section 106 of the National Historic Preservation Act. Where alterations are undertaken to a qualified historic building or facility that is not subject to section 106 of the National Historic Preservation Act, if the entity undertaking the alterations believes that compliance with the requirements for accessible routes (exterior and interior), ramps, entrances, or toilets would threaten or destroy the historic significance of the building or facility and that the alternative requirements in 4.1.7(3) should be used for the feature, the entity should consult with the State Historic Preservation Officer. If the State Historic Preservation Office agrees that compliance with the accessibility requirements for accessible routes (exterior and interior), ramps, entrances or toilets would threaten or destroy the historical significance of the building or facility, the alternative requirements in 4.1.7(3) may be used.

4.1.7 (2) (c) Consultation With Interested Persons. Interested persons should be invited to participate in the consultation process, including State or local accessibility officials, individuals with disabilities, and organizations representing individuals with disabilities.

4.1.7 (2) (d) Certified Local Government Historic Preservation Programs. Where the State Historic Preservation Officer has delegated the consultation responsibility for purposes of this section to a local government historic preservation program that has been certified in accordance with section 101(c) of the National Historic Preservation Act of 1966 (16 U.S.C. 470a (c)) and implementing regulations (36 CFR 61.5), the responsibility may be carried out by the appropriate local government body or official.

51-20-3113 (a) ... The building official, after consultation with the appropriate historic preservation officer, shall determine whether provisions required by this part for accessible routes of travel (interior or exterior), ramps, entrances, toilets, parking or signage would threaten or destroy the historic significance of the building or facility.

If it is determined that any of the accessibility requirements listed above would threaten or destroy the historic significance of a building or facility, the modifications of Section 3112 (c) for that feature may be utilized.

4.1.7 (3) Historic Preservation: Minimum Requirements:

(a) At least one accessible route complying with 4.3 from a site access point to an accessible entrance shall be provided.

EXCEPTION: A ramp with a slope no greater than 1:6 for a run not to exceed 2 ft (610 mm) may be used as part of an accessible route to an entrance.

51-20-3113 (b) Special Provisions. Where removing architectural barriers or providing accessibility would threaten or destroy the historic significance of a building or facility, the following special provisions may be used; 51-20-3113 (b) 1. At least one accessible route from a site access point to an accessible route shall be provided.

51-20-3112 (c) Modifications. 1. General. The following modifications set forth in this section may be used for compliance where the required standard is technically infeasible or when providing access to historic buildings

51-20-3112 (c) 2. Ramps. Curb ramps and ramps constructed on existing sites, or in existing buildings or facilities, may have slopes and rises as specified for existing facilities in Chapter 31, where space limitations prohibit the use of 1 vertical in 12 horizontal slope or less provided that:
A. A slope of not greater than 1 vertical in 10 horizontal is allowed for a maximum rise of 6 inches.
B. A slope not greater than 1 vertical in 8 horizontal is allowed for a maximum rise of 3 inches.
C. Slopes greater than 1 vertical in 8 horizontal are prohibited.

51-20-3114 Appeal (a) Request for Appeal. An appeal from the standards for accessibility for existing buildings may be filed with the building official in accordance with Section 204, when

Existing structural elements or physical constraints of the site prevent full compliance or would threaten or destroy the historical significance of a historic building.
51-20-3114 (b) Review. 1. Consideration of Alternative Methods. Review of appeal requests shall include consideration of alternative methods which may provide partial access.
51-20-3114 (b) 2. Waiver or Modification of Requirements. The appeals board may waive or modify the requirements of this section when it is determined that compliance with accessibility requirements would threaten or destroy the historic significance of a building or facility.

Comment: Issue 33. The Washington request is for a determination of equivalency of the design and construction standards between the Washington Building Code and the ADA provisions. In the commentary to the final rule publication (page 35591, Federal Register, Volume 56, No 144); the Department of Justice implies that it will not be reviewing procedures as part of the certification process. The Washington procedure is only at slight variance from those contained in the ADA. The Washington law requires that the building official consult with the appropriate preservation officer. Therefore, if the building is on the National Register of Historic Places, the national process will have to be consulted. If it is a State or local landmark, that state or local process will be followed.

Under the building code, the ultimate authority for review and issuance of permits lies with the building official. That duty technically can't be delegated to another agency or person outside of the direct authority of the building official. This is the main reason behind the difference in the Washington procedure. The net effect may actually be more accessibility, in that a building official may be less likely to waive accessibility standards and requirements because of perceived impacts on historic significance than the specific historic preservation officer.

Comment: Issue 34. See comment on Issue No. 33, above.

[Because the historic preservation provisions of WAC constitute a waiver, they are not covered by the certification determination.]

01-03252

3/23/94 letter from Washington State Building Code Council. Issue 33 - Historic Buildings. The Washington State Building Code requires local building officials to consult with the appropriate preservation officer prior to approving use of alternative standards for accessibility for an historic building. Questions were raised whether the state process was similar to the national process. According to Mary Thompson, Assistant Director of the Washington State Office of Archeology and Historic Preservation, state and local historic offices are required to parallel the national process. See attached letter.

Thompson letter. This letter is written to describe the process for entering properties onto the Washington State Register of Historic Places. The State Register is intended to give recognition and encourage protection to places having historic significance in the State of Washington.

The State Register process closely parallels the National Register process. Nominations are accepted by this office and are reviewed against the State Register Criteria (copy enclosed). That review takes place first at a staff level and then before the Washington State Advisory Council on Historic Preservation. If, in the judgment of the Advisory Council, a property meets the outlined criteria, they may recommend it to the State Historic Preservation Officer that it be placed on the State Register. The final decision on whether the property is listed belongs to the State Historic Preservation Officer.

Properties that are reviewed and recommended for the National Register of Historic Places are automatically included on the State Register. Separate votes of the Advisory Council are taken for each listing....

01-03253

4.2.3* Wheelchair Turning Space. The space required for a wheelchair to make a 180-degree turn is a clear space of 60 in (1525 mm) diameter (see Fig. 3(a)) or a T-shaped space (see Fig. 3(b)).

Fig. 3 Wheelchair Turning Space.

Fig. 3(b) T-Shaped Space for 180 degree Turns. The T-shape space is 36 inches (915 mm) wide at the top and stem within a 60 inch by 60 inch (1525 mm by 1525 mm) square.

51-20-3106 (b) 2. Wheelchair Turning Spaces. Wheelchair turning spaces shall be designed and constructed to satisfy one of the following requirements:

A. A turning space not less than 60 inches in diameter; or,

B. A turning space at T-shaped intersections or within a room, where the minimum width is not less than 36 inches. Each segment of the T shall be clear of obstructions not less than 24 inches in each direction.

[Wheelchair turning space may include knee and toe clearance in accordance with Section 3106(b)4C.]

[Amendment: E.]

01-03254

4.3.2 Location.

(1) At least one accessible route within the boundary of the site shall be provided from public transportation stops, accessible parking, and accessible passenger loading zones, and public streets or sidewalks to the accessible building entrance they serve. The accessible route shall, to the maximum extent feasible, coincide with the route for the general public.

(2) At least one accessible route shall connect accessible buildings, facilities, elements, and spaces that are on the same site.

(3) At least one accessible route shall connect accessible building or facility entrances with all accessible spaces and elements and with all accessible dwelling units within the building or facility.

(4) An accessible route shall connect at least one accessible entrance of each accessible dwelling unit with those exterior and interior spaces and facilities that serve the accessible dwelling unit.

51-20-3103 (b) 2. Accessible Route of Travel. When a building, or portion of a building, is required to be accessible, an accessible route of travel shall be provided to all portions of the building, to accessible building entrances and connecting the building and the public way. The
accessible route of travel to areas of primary function may serve but shall not pass through kitchens, storage rooms, toilet rooms, bathrooms, closets or other similar spaces.

[EXCEPTIONS: 1. A single accessible route shall be permitted to pass through a kitchen or storage room in an accessible dwelling unit. 2. Floors above and below accessible levels that have areas of less than 3,000 square feet per floor, need not be served by an accessible route of travel from an accessible level. This exception shall not apply to: A. The offices of health care providers; or, B. Transportation facilities and airports; or, C. Buildings owned or leased by government agencies; or, D. Multi-tenant Group B, Division 2, retail and wholesale occupancies of five tenant spaces or more.
Accessible routes of travel serving any accessible space or element shall also serve as a means of egress for emergencies or connect to an area of evacuation assistance.]
When more than one building or facility is located on a site, accessible routes of travel shall be provided connecting accessible buildings and accessible site facilities. The accessible route of travel shall be the most practical direct route connecting accessible building entrances, accessible site facilities and the accessible site entrances.
EXCEPTION [3] [Move up]: For sites where natural terrain or other unusual property characteristics do not allow the provision of an accessible route of travel from the public way to the building, the point of vehicular debarkation may be substituted for the accessible entrance to the site.
[(For Group R, Division 1 occupancies, see Section 3105(c)1.)]
[Amendment: E.]
56 ADA/Washington State July 12, 1994
01-03255
4.3.8 Changes in Levels. Changes in levels along an accessible route shall comply with 4.5.2. If an accessible route has changes in level greater than 1/2 in (13 mm), then a curb ramp, ramp, elevator, or platform lift (as permitted in 4.1.3 and 4.1.6) shall be provided that complies with 4.7, 4.8, 4.10, or 4.11, respectively. An accessible route does not include stairs, steps, or escalators. See definition of "egress, means of" in 3.5.

4.3.11.3* Stairway Width. Each stairway adjacent to an area of rescue assistance shall have a minimum clear width of 48 inches between handrails.

4.3.11.4* Two-way Communication. A method of two-way communication, with both visible and audible signals, shall be provided between each area of rescue assistance and the primary entry. The fire department or appropriate local authority may approve a location other than the primary entry.

51-20-3106 (d) 4. Changes in Level. Changes in level along an

accessible route of travel shall comply with Section 3106 (f). Stairs shall not be part of an accessible route of travel. Any raised area within an accessible route of travel shall be cut through to maintain a level route or shall have curb ramps at both sides and a level area not less than 48 inches long connecting the ramps.

51-20-3106 (f) Changes in Level. Accessible routes of travel and accessible spaces within buildings shall have continuous common floor or ramp surfaces. Abrupt change in height greater than 1/4 inch shall be beveled to 1 vertical in 2 horizontal. Changes in level greater than 1/2 inch shall be accomplished by means of a ramp meeting the requirements of Section 3106 (h) [a curb ramp meeting the requirements of Section 3106(d)7, or an elevator or platform lift meeting the requirements of Section 3105(c)]. For Type B dwelling units, see also Section 3106 (aa).

51-20-3104 (b) 3. Stairway Width. Each stairway adjacent to an area for evacuation assistance shall have a minimum clear width of 48 inches [between handrails].

Comment: Issue 35. Section 3104(b)3 has been amended to read in part ". . .shall have a minimum clear width of 48 inches between handrails." See page 602 of the Published Code.

51-20-3104 (b) 4. Two-way Communication. A telephone with controlled access to a public telephone system or another method of two-way communication shall be provided between each area for evacuation assistance and the primary entry. [The telephone or other two-way communication system shall be located with the reach ranges specified in Section 3106(b)4.] The fire department may approve location other than the primary entrance. [The communication system shall not require voice communication.]

Comment: Issue 36. Section 3104(b)4 has been amended to include the following sentence: "The communication system shall not require voice communication." See page 602 of the Published Code.

[Amendment: E.]

[E.]

[E.]

57 ADA/Washington State July 12, 1994

01-03257

4.4 Protruding Objects.

4.4.1* General. Objects projecting from walls (for example, telephones) with their leading edges between 27 in and 80 in (685 mm and 2030 mm) above the finished floor shall protrude no more than 4 in (100 mm) into walks, halls, corridors, passageways, or aisles (see Fig. 8(a)). Objects mounted with their leading edges at or below 27 in (685 mm) above the finished floor may protrude any amount (see Fig. 8(a) and (b)). Free-standing objects mounted on posts or pylons may overhang 12 in (305 mm) maximum from 27 in to 80 in (685 mm to 2030 mm) above the ground or finished floor (see Fig. 8(c) and (d)). Protruding objects shall not reduce the

clear width of an accessible route or maneuvering space (see Fig. 8(e)).

Fig. 8 Protruding Objects.

Fig. 8(c-1) Overhead Hazards. As an example, the diagram illustrates a stair whose underside descends across a pathway. Where the headroom is less than 80 inches, protection is offered by a railing (2030 mm) which can be no higher than 27 inches (685 mm) to ensure detectability.

Fig. 8(d) Objects Mounted on Posts or Pylons. The diagram illustrates an area where an overhang can be greater than 12 inches (305 mm) because the object cannot be approached in the direction of the overhang.

Fig. 8(e) Example of Protection around Wall-Mounted Objects and Measurements of Clear Widths. The minimum clear width for continuous passage is 36 inches. Thirty two (32) inches is the minimum clear width for a maximum distance of 24 inches (610 mm). The maximum distance an object can protrude beyond a wing wall is 4 inches (100 mm).

51-20-3106(e) Protruding Objects. Protruding objects shall not reduce the clear width of an accessible route of travel or maneuvering space. Any wall- or post-mounted object with its leading edge between 27 inches and 79 inches above the floor may project not more than 4 inches into a [an accessible route of travel, corridor, passageway, or aisle]. Any wall-or post-mounted projection greater than 4 inches shall extend to the floor.

[Amendment: N.E. It needs to be clear that "accessible" refers only to "route of travel" and not to "corridor, passageway, or aisle." Objects may not protrude into pathways even if those pathways are not otherwise "accessible". However, because WAC seems to require all routes in new construction to be accessible, this is only a potential problem in alterations.]

4.5.2 Changes in Level. Changes in level up to 1/4 in (6 mm) may be vertical and without edge treatment (see Fig. 7(c)). Changes in level between 1/4 in and 1/2 in (6 mm and 13 mm) shall be beveled with a slope no greater than 1:2 (see Fig. 7(d)). Changes in level greater than 1/2 in (13 mm) shall be accomplished by means of a ramp that complies with 4.7 or 4.8.

4.5.3* Carpet. If carpet or carpet tile is used on a ground or floor

surface, then it shall be securely attached; have a firm cushion, pad, or backing, or no cushion or pad; and have a level loop, textured loop, level cut pile, or level cut/uncut pile texture. The maximum pile thickness shall be 1/2 in (13 mm) (see Fig. 8(f)). Exposed edges of carpet shall be fastened to floor surfaces and have trim along the entire length of the exposed edge. Carpet edge trim shall comply with 4.5.2.

51-20-3106 (f) Changes in Level. Accessible routes of travel and accessible spaces within buildings shall have continuous common floor or ramp surfaces. Abrupt change in height greater than 1/4 inch shall be beveled to 1 vertical in 2 horizontal. Changes in level greater than 1/2 inch shall be accomplished by means of a ramp meeting the requirements of Section 3106 (h) [, a curb ramp meeting the requirements of Section 3106(d)7, or an elevator or platform lift meeting the requirements of Section 3105(c)]. For Type B dwelling units, see also Section 3106 (aa).

51-20-3106 (g) 2. Carpeting. Carpeting and floor mats in accessible areas shall be securely fastened to the underlying surface, and shall provide a firm, stable, continuous and relatively smooth surface.

Comment: Issue 37. The Washington State Building Code Council did not feel that it was appropriate to include carpet pile height (thickness) in a building code, nor would it be appropriate to expect building inspectors to inspect for carpet pile height. Instead the WSR provides performance rather than prescriptive standards which have a better chance of resulting in accessible surfaces. In addition it allows greater design flexibility than the simplistic pile thickness standard.
The Washington accessibility regulations have contained the requirement that carpeting provide a firm, stable, continuous and relatively smooth surface since 1976. Experience with this performance provision is that is adequate for the purpose. While carpet pile height may be important, the density of carpet piles is more critical and whether a surface is provided on which a person in a wheelchair can move and maneuver. The Washington regulation actually provides a more stringent, more accessible standard than the ADA.
[Amendment: E.]
[E.]
59 ADA/Washington State July 12, 1994
01-03259
4.6.2 Location. Accessible parking spaces serving a particular building shall be located on the shortest accessible route of travel from adjacent parking to an accessible entrance. In parking facilities that do not serve a particular building, accessible parking

shall be located on the shortest accessible route of travel to an accessible pedestrian entrance of the parking facility. In buildings with multiple accessible entrances with adjacent parking, accessible parking spaces shall be dispersed and located closest to the accessible entrances.

4.6.3* Parking Spaces. Accessible parking spaces shall be at least 96 in (2440 mm) wide. Parking access aisles shall be part of an accessible route to the building or facility entrance and shall comply with 4.3. Two accessible parking spaces may share a common access aisle (see Fig. 9). Parked vehicle overhangs shall not reduce the clear width of an accessible route. Parking spaces and access aisles shall be level with surface slopes not exceeding 1:50 (2%) in all directions.

Fig. 9 Dimensions of Parking Spaces.

The access aisle shall be a minimum of 60 inches (1525 mm) wide for cars or a minimum of 96 inches (2440 mm) wide for vans. The accessible route connected to the access aisle at the front of the parking spaces shall be a minimum of 36 inches (915 mm).

51-20-3107 (a) . . .[6] Accessible parking spaces shall be located on the shortest possible accessible route of travel to an accessible building entrance. In facilities with multiple accessible building entrances with adjacent parking, accessible parking spaces shall be dispersed and located near the accessible entrances. Wherever practical, the accessible route of travel shall not cross lanes of vehicular traffic. Where crossing traffic lanes is necessary, the route of travel shall be designated and marked as a crosswalk.
[EXCEPTION: In multilevel parking structures, all accessible van parking spaces may be located on the same level.
Where a parking facility is not accessory to a particular building, accessible parking spaces shall be located on the shortest accessible route to an accessible pedestrian entrance to the parking facility.]

51-20-3107 (b) 2. Size. Parking spaces shall be not less than 96 inches in width and shall have an adjacent access aisle not less than 60 inches in width. [Van accessible parking spaces shall have an adjacent access aisle not less than 96 inches in width.] Where two adjacent spaces are provided, the access aisle may be shared between the two spaces. Boundaries of access aisles shall be marked so that aisles will not be used as parking space.

51-20-3107 (b) 4. Slope. Accessible parking spaces and access

aisles shall be located on a surface with a slope not to exceed 1 vertical in 48 horizontal.
51-20-3107 (b) 5. Surface. Parking spaces and access aisles shall be firm, stable, smooth and slip-resistant.

[Amendment: E]

[Amendment: E]

01-03260

4.6.4* Signage. Accessible parking spaces shall be designated as reserved by a sign showing the symbol of accessibility (see 4.30.7). Spaces complying with 4.1.2(5)(b) shall have an additional sign "Van-Accessible" mounted below the symbol of accessibility. Such signs shall be located so they cannot be obscured by a vehicle parked in the space.
4.6.5* Vertical Clearance. Provide minimum vertical clearance of 114 in (2895 mm) at accessible passenger loading zones and along at least one vehicle access route to such areas from site entrance(s) and exit(s). At parking spaces complying with 4.1.2(5)(b), provide minimum vertical clearance of 98 in (2490 mm) at the parking space and along at least one vehicle access route to such spaces from site entrance(s) and exit(s).

51-20-3107 (c) Signs. Every parking space required by this section shall be identified by a sign, centered between 3 and 5 feet above the parking surface, at the head of the parking space. The sign shall include the International Symbol of Access and the phrase "State Disabled Parking Permit Required." [Van accessible parking spaces shall have an additional sign mounted below the International Symbol of Access identifying the spaces as "Van Accessible."
EXCEPTION: Where all of the accessible parking spaces comply with the standards for van accessible parking spaces. (See also Section 3106(aa)2.)]

Comment: Issue 38. Section 3107(c) has been amended to require the additional van accessible signage. See page 604t of the Published Code.

51-20-3107 (b) 3. Vertical Clearance. Where accessible parking spaces are provided for vans, the vertical clearance shall be not less than 114 inches [at the parking space and along at least one vehicle access route to such spaces from site entrances and exits].

Comment: Issue 39. Section 3107(b)3 has been amended to read in part ". . . the vertical clearance shall be not less than 114 inches at the parking space and along at least one vehicle access route to such spaces from site entrances and exits." (See page 604s of the Published Code.) It should be noted that the Washington van height provides greater accessibility than the ADA.
The intent of the WSR van parking height requirement was to apply to loading zones as well because these are essentially

temporary parking spaces for all types of vehicles. To clarify the intent of the Code, the Council has issued interpretation No. 93-33.
[E.]
[Amendment: E.]
[E.]
61 ADA/Washington State July 12, 1994
01-03261
4.6.6 Passenger Loading Zones. Passenger loading zones shall provide an access aisle at least 60 in (1525 mm) wide and 20 ft (240 in)(6100 mm) long adjacent and parallel to the vehicle pull-up space (see Fig. 10). If there are curbs between the access aisle and the vehicle pull-up space, then a curb ramp complying with 4.7 shall be provided. Vehicle standing spaces and access aisles shall be level with surface slopes not exceeding 1:50 (2%) in all directions.

4.7.5 Sides of Curb Ramps. If a curb ramp is located where pedestrians must walk across the ramp, or where it is not protected by handrails or guardrail, it shall have flared sides; the maximum slope of the flare shall be 1:10 (see Fig. 12(a)). Curb ramps with returned curbs may be used where pedestrians would not normally walk across the ramp (see Fig. 12(b)).

Fig. 12 Sides of Curb Ramps.

Fig. 12(a) Flared Sides. If the landing depth at the top of a curb ramp is less than 48 inches, then the slope of the flared side shall not exceed 1:12.

Interpretation No. 93-33
Question: Are there any height (clearance) requirements for passenger load zones?
Answer: The intent of the code, as provided in Sec. 3101(a), is to provide standards equivalent to the ADA Accessibility Guidelines. Accessible passenger load zones are essentially temporary parking spaces. The loading zones and the vehicular route to and from the load zones must have a clear height of 114 inches, as is required for van parking spaces.

51-20-3108 Passenger Drop-off and Loading Zones. (a) Location. Where provided, passenger loading zones shall be located on an accessible route of travel.

51-20-3108 (b) [2] Size.
Passenger loading zones shall provide an access aisle not less than 5 feet in width by 20 feet in length with the long dimension abutting and parallel to: (1) the vehicle space on one side and (2)

an accessible route of travel on the other.

51-20-3108 (b) 3. Slope. Such zones shall be located on a surface with a slope not exceeding 1 vertical in 48 horizontal.

51-20-3106 (d) [7] C. Side Slopes of Curb Ramps. Curb ramps located where pedestrians must walk across the ramp, or where not protected by handrails or guardrails, shall have sloped sides. The maximum side slope shall be 1 vertical in 10 horizontal. Curb ramps with returned curbs may be used where pedestrians would not normally walk across the ramp.

[EXCEPTION: Where the width of the walking surface at the top of the ramp and parallel to the run of the ramp is less than 48 inches, the maximum side slope shall be 1 vertical in 12 horizontal.]

[E.]

[Amendment: E.]

4.7.7 Detectable Warnings. A curb ramp shall have a detectable warning complying with 4.29.2. The detectable warning shall extend the full width and depth of the curb ramp.

4.7.10 Diagonal Curb Ramps. If diagonal (or corner type) curb ramps have returned curbs or other well-defined edges, such edges shall be parallel to the direction of pedestrian flow. The bottom of diagonal curb ramps shall have 48 in (1220 mm) minimum clear space as shown in Fig. 15(c) and (d). If diagonal curb ramps are provided at marked crossings, the 48 in (1220 mm) clear space shall be within the markings (see Fig. 15(c) and (d)). If diagonal curb ramps have flared sides, they shall also have at least a 24 in (610 mm) long segment of straight curb located on each side of the curb ramp and within the marked crossing (see Fig. 15(c)).

Comment: Issue 40. Section 3106(d)7C has been amended to add the following additional provision: ... [see above]. See page 604b of the Published Code.

51-20-3106 (d) 5. B. Detectable Warnings. Curb ramps shall have detectable warnings complying with Section 3106 (q). Detectable warnings shall extend the full width and depth of the curb ramp.

51-20-3106 (d) [8]. Vehicular Areas. Where an accessible route of travel crosses or adjoins a vehicular way, and where there are no curbs, railings or other elements [which separate the pedestrian and vehicular areas, and which are] detectable by a person who has severe vision impairment
the boundary between the areas shall be defined
by a continuous detectable warning not less than 36 inches wide, complying with Section 3106 (g).

Comment: Issue 41. See comment on Issue No. 24, above.

Comment: Issue 42. Diagonal curb ramp standards are not included in the WSR. Therefore, diagonal curb ramps are not directly permitted by the Washington Code. This design is rarely seen in designs for private development, but is more typically found at street intersection designs. The Washington Building Code does not apply to public rights of way, but only to development off of public rights of way. If someone wishes to use it, it could be approved by the local building official as an alternate design (equivalent facilitation).

[E.]

[E.]

NE No equivalent provisions.

[N.E. WSR does not prohibit use of diagonal curb ramps and leaves regulation of such ramps completely up to the discretion of the inspector. The special provisions for diagonal curb ramps are necessary to allow people enough space to maneuver out of the way of traffic and to lessen pedestrian traffic on the ramp so that individuals in wheelchairs can use it.]

4.8.2* Slope and Rise. The least possible slope shall be used for any ramp. The maximum slope of a ramp in new construction shall be 1:12. The maximum rise for any run shall be 30 in (760 mm) (see Fig. 16). Curb ramps and ramps to be constructed on existing sites or in existing buildings or facilities may have slopes and rises as shown as allowed in 4.1.6(3)(a) if space limitations prohibit the use of a 1:12 slope or less (see 4.1.6).

Fig. 16 Components of a Single Ramp Run and Sample Ramp Dimensions.

If the slope of a ramp is between 1:12 and 1:16, the maximum rise shall be 30 inches (760 mm) and the maximum horizontal run shall be 30 feet (9 m). If the slope of the ramp is between 1:16 and 1:20, the maximum rise shall be 30 inches (760 mm) and the maximum horizontal run shall be 40 feet (12 m).

51-20-3106 (h) 2. Slope and Rise. The maximum slope of a ramp shall be 1 vertical in 12 horizontal. The maximum rise for any run shall be 30 inches.

51-20-3315 (e) Ramp Slope. The slope of ramped aisles shall not be more than 1 vertical in 8 horizontal. Ramped aisles shall have a slip-resistant surface.

EXCEPTION: When provided with fixed seating, theaters may have a slope not steeper than 1 vertical to 5 horizontal.

Comment: Issue 43. The ramped aisles allowed by Section 3315(e) of the UBC are not allowed as part of an accessible route. Specifically Section 3315(a) states: "Aisles located within an accessible route of travel shall also comply with Chapter 31." Chapter 31 limits slope on accessible routes to a maximum rise of 1 in 12.

[E.]

01-03264

4.8.5* Handrails. If a ramp run has a rise greater than 6 in (150 mm) or a horizontal projection greater than 72 in (1830 mm), then it shall have handrails on both sides. Handrails are not required on curb ramps or adjacent to seating in assembly areas. Handrails shall comply with 4.26 and shall have the following features:

(1) Handrails shall be provided along both sides of ramp segments. The inside handrail on switchback or dogleg ramps shall always be continuous.

51-20-3106 (h) 5. Handrails. Ramps having slopes steeper than 1 vertical in 20 horizontal shall have handrails as required for stairways, except that intermediate handrails as required in Section 3306 (i) are not required. Handrails shall be continuous provided that they shall not be required at any point of access along the ramp, nor at any curb ramp. Handrails shall extend at least 12 inches beyond the top and bottom of any ramp segment.

EXCEPTION: Ramps having a rise less than or equal to 6 inches or a run less than or equal to 72 inches need not have handrails.

51-20-3306 (i) Handrails. Stairways shall have handrails on each side, and every stairway required to be more than 88 inches in width shall be provided with not less than one intermediate handrail for each 88 inches of required width. Intermediate handrails shall be spaced approximately equally across the entire width of the stairway.

EXCEPTION: 1. Stairways less than 44 inches in width or stairways serving one individual dwelling unit in Group R, Division 1 or 3 Occupancies, or a Group R, Division 3 congregate residence may have one handrail.
2. Private stairways 20 inches or less in height may have handrails on one side only.
3. Stairways having less than four risers and serving one individual dwelling unit in Group R, Division 1 or 3, or a Group R. Division 3 congregate residence or serving Group M. Occupancies need not have handrails.

01-03265

(2) If handrails are not continuous, they shall extend at least 12 in (305 mm) beyond the top and bottom of the ramp segment and shall be parallel with the floor or ground surface (see Fig. 17).

(3) The clear space between the handrail and the wall shall be 1 - 1/2 in (38 mm).

(4) Gripping surfaces shall be continuous.

(5) Top of handrail gripping surfaces shall be mounted between 34 in and 38 in (865 mm and 965 mm) above ramp surfaces.

(6) Ends of handrails shall be either rounded or returned smoothly to floor, wall, or post.

(7) Handrails shall not rotate within their fittings.

The top of handrails and handrail extensions shall be placed not less than 34 inches or more than 38 inches above the nosing of treads and landings. Handrails shall be continuous the full length of the stairs and, except for private stairways, at least one handrail shall extend in the direction of the stair run not less than 12 inches beyond the top riser or less than 23 inches beyond the bottom riser. Ends shall be returned or shall terminate in newel posts or safety terminals.

The handgrip portion of handrails shall be not less than 1 1/2 inches or more than 2 inches in cross-sectional dimension or the shape shall provide an equivalent gripping surface. The handgrip portion of handrails shall have a smooth surface with no sharp corners.

Handrails projecting from a wall shall have a space of not less than 1 1/2 inches between the wall and the handrail. Any recess containing a handrail shall allow a clearance of not less than 18 inches above the top of the rail, and shall be not more than 3 inches in horizontal depth.

Handrails shall not rotate within their fittings.

Comment: Issue 44. The reference to Section 3306(i) for handrail requirements could be construed to allow single handrails in some circumstances. Since the exceptions only specifically state stairways, it was the intent of the Council that these exceptions not apply to ramps. The Council has issued Interpretation No. 93-35 to clarify this limitation.

[E.]

66 ADA/Washington State July 12, 1994

01-03266
Interpretation No. 93-35.
Question: Do the exceptions in Section 3306(i) allowing only one handrail apply to ramps and stairways required to be accessible by Chapter 31?
Answer: The intent of the code, as provided in Sec. 3101(a) is to provide standards equivalent to the ADA Accessibility Guidelines.
Ramps. The exceptions do not apply to ramps designed for compliance with Chapter 31. Such ramps must provide handrails on both sides.
Stairways. For stairways which provide access to areas of buildings where the accessible route exceptions have been used and no elevator or ramp is provided (per Sec. 3103(b)), handrails

must be provided on both sides of the stairway regardless of the occupant load served.

01-03267

4.8.7 Edge Protection. Ramps and landings with drop-offs shall have curbs, walls, railings, or projecting surfaces that prevent people from slipping off the ramp. Curbs shall be a minimum of 2 in (50 mm) high (see Fig. 17).

[51-20-3106(h)7. Edge Protection. Any portion of the edge of a ramp with a slope greater than 1 vertical in 20 horizontal, or landing which is more than 1/2 inch above the adjacent grade or

floor, shall be provided with edge protection in accordance with the following: A. Walls and Curbs. When used, walls or curbs shall be not less than 2 inches in height above the surface of the accessible route of travel. B. Railings. When used, railings shall comply with Section 3106(h)5 and also shall have one of the following features: (i) An intermediate rail mounted 17 to 19 inches above the ramp or landing surface, or (ii) A guardrail complying with Section 1712.]

[Amendment: E.]

01-03268

4.9.4 Handrails. Stairways shall have handrails at both sides of all stairs. Handrails shall comply with 4.26 and shall have the following features:

(1) Handrails shall be continuous along both sides of stairs. The inside handrail on switchback or dogleg stairs shall always be continuous (see Fig. 19(a) and (b)).

(2) If handrails are not continuous, they shall extend at least 12 in (305 mm) beyond the top riser and at least 12 in (305 mm) plus the width of one tread beyond the bottom riser. At the top, the extension shall be parallel with the floor or ground surface. At the bottom, the handrail shall continue to slope for a distance of the width of one tread from the bottom riser; the remainder of the extension shall be horizontal (see Fig. 19(c) and (d)). Handrail extensions shall comply with 4.4.

(3) The clear space between handrails and wall shall be 1-1/2 in (38 mm).

(4) Gripping surfaces shall be uninterrupted by newel posts, other construction elements, or obstructions.

(5) Top of handrail gripping surface shall be mounted between 34 in and 38 in (865 mm and 965 mm) above stair nosing.

(6) Ends of handrails shall be either rounded or returned smoothly to floor, wall or post.

(7) Handrails shall not rotate within their fittings.

51-20-3306 (i) Handrails. Stairways shall have handrails on each side, and every stairway required to be more than 88 inches in width shall be provided with not less than one intermediate handrail for each 88 inches of required width. Intermediate handrails shall be spaced approximately equally across the entire width of the stairway.

EXCEPTION: 1. Stairways less than 44 inches in width or stairways serving one individual dwelling unit in Group R, Division 1 or 3 Occupancies, or a Group R, Division 3 congregate residence may have one handrail.
2. Private stairways 20 inches or less in height may have handrails on one side only.
3. Stairways having less than four risers and serving one individual dwelling unit in Group R, Division 1 or 3, or a Group R, Division 3 congregate residence or serving Group M. Occupancies need not have handrails.

3306 (i) Handrails. ... The top of handrails and handrail extensions shall be placed not less than 34 inches or more than 38 inches above the nosing of treads and landings. Handrails shall be

continuous the full length of the stairs and, except for private stairways, at least one handrail shall extend in the direction of the stair run not less than 12 inches beyond the top riser or less than 23 inches beyond the bottom riser. Ends shall be returned or shall terminate in newel posts or safety terminals.

The handgrip portion of handrails shall be not less than 1 1/2 inches or more than 2 inches in cross-sectional dimension or the shape shall provide an equivalent gripping surface. The handgrip portion of handrails shall have a smooth surface with no sharp corners.

Handrails projecting from a wall shall have a space of not less than 1 1/2 inches between the wall and the handrail. Any recess containing a handrail shall allow a clearance of not less than 18 inches above the top of the rail, and shall be not more than 3 inches in horizontal depth.

Handrails shall not rotate within their fittings.

4.10 Elevators.
4.10.1 General. Accessible elevators shall be on an accessible route and shall comply with 4.10 and with the ASME A17.1-1990, Safety Code for Elevators and Escalators. Freight elevators shall not be considered as meeting the requirements of this section unless the only elevators provided are used as combination passenger and freight elevators for the public and employees.

Comment: Issue 45. Section 3306(a) requires all stairways to be 44 inches wide or more unless the occupant load served is less than 50. These are all fairly small buildings, and typically stairways less than 44 inches only occur in residential (non transient) apartment buildings. Use in commercial, educational or assembly buildings is very rare. To clarify that handrails on accessible stairs must have two handrails, the Council has issued Interpretation No. 93-35.

Interpretation No. 93-35.
Question: Do the exceptions in Section 3306(i) allowing only one handrail apply to ramps and stairways required to be accessible by Chapter 31?
Answer: The intent of the code, as provided in Sec. 3101 (a) is to provide standards equivalent to the ADA Accessibility Guidelines.
Ramps. The exceptions do not apply to ramps designed for compliance with Chapter 31. Such ramps must provide handrails on both sides.
Stairways. For stairways which provide access to areas of buildings where the accessible route exceptions have been used and no elevator or ramp is provided (per Sec. 3103(b)), handrails must be provided on both sides of the stairway regardless of the occupant load served.
51-20-3105 (c) Elevators. 2-[B] Design. All elevators shall be accessible.

EXCEPTION: 1. Private elevators serving only one dwelling unit.
2. Where more than one elevator is provided in the building, elevators used exclusively for movement of freight.

Elevators required to be accessible shall be designed and constructed to comply with Chapter 296-81 of the Washington Administrative Code.

[296-81-007 (5) The American National Standard Safety Code for Elevators, Dumbwaiters, Escalators, and Moving Walks, ANSI

A17.1, 1990 Edition is adopted as the standard for elevators, dumbwaiters, escalators and moving walks installed on or after July 1, 1992, with the exceptions of ANSI A17.1, part XIX, and ANSI A17.1, part V, Section 513, which is replaced by chapter 296-94 WAC.]
[E.]
70 ADA/Washington State July 12, 1994
01-03861
4.10.2 Automatic Operation. Elevator operation shall be automatic.

Each car shall be equipped with a self-leveling feature that will automatically bring the car to floor landings within a tolerance of 1/2 in (13 mm) under rated loading to zero loading conditions. This self-leveling feature shall be automatic and independent of the operating device and shall correct the overtravel or undertravel.

4.10.3 Hall Call Buttons. Call buttons in elevator lobbies and halls shall be centered at 42 in (1065 mm) above the floor. Such call buttons shall have visual signals to indicate when each call is registered and when each call is answered. Call buttons shall be a minimum of 3/4 in (19 mm) in the smallest dimension. The button designating the up direction shall be on top. (See Fig. 20.) Buttons shall be raised or flush. Objects mounted beneath hall call buttons shall not project into the elevator lobby more than 4 in (100 mm).

4.10.4 Hall Lanterns. A visible and audible signal shall be provided at each hoistway entrance to indicate which car is answering a call. Audible signals shall sound once for the up direction and twice for the down direction or shall have verbal annunciators that say "up" or "down." Visible signals shall have the following features:

(1) Hall lantern fixtures shall be mounted so that their centerline is at least 72 in (1830 mm) above the lobby floor. (See Fig. 20.)

(2) Visual elements shall be at least 2-1/2 in (64 mm) in the smallest dimension.

(3) Signals shall be visible from the vicinity of the hall call button (see Fig. 20). In-car lanterns located in cars, visible from the vicinity of hall call buttons, and conforming to the above requirements, shall be acceptable.

Comment: Issue 46. See comment on Issue No. 16, above. Also see attached side by side analysis of the adopted Washington elevator standards and ADAAG standards.

[296-81-300. Operation and leveling. The elevator shall be automatic and be provided with a self-leveling feature that will automatically bring the car to the floor landings within a tolerance of plus or minus 1/2 inch under normal loading and unloading conditions. This self-leveling shall within its zone, be entirely automatic and independent of the operating device and shall correct for overtravel or undertravel. The car shall also be maintained approximately level with the landing irrespective of load.]

[296-81-355. Hall Buttons. The centerline of the hall call buttons shall be a nominal (42) inches above the floor. The button designating the UP direction shall be on top.
Direction buttons, exclusive of border, shall be a minimum of (3/4) inch in size, raised or flush. Visual indication shall be provided to show each call registered and extinguished when the call is answered. Depth of flush buttons when operated shall not exceed (3/8) inch.]

[296-81-360. Hall lantern. A visual and audible signal shall be provided at each hoistway entrance, indicating to the prospective passenger which car is answering the call and its direction of travel.

The visual signal for each direction shall be at least two and one-half inches in size and visible from the vicinity of the hall call button. The audible signal shall sound once for the up direction and twice for the down direction.

The centerline of the fixture shall be located at least six feet from the floor.

The lanterns may be located in the jamb or in the car.]

[See below]

[Amendment: E.]

[Amendment: E.]

[Amendment: E.]

4.10.5 Raised and Braille Characters on Hoistway Entrances. All elevator hoistway entrances shall have raised and Braille floor designations provided on both jambs. The centerline of the characters shall be 60 in (1525 mm) above finish floor. Such characters shall be 2 in (50 mm) high and shall comply with 4.30.4. Permanently applied plates are acceptable if they are permanently fixed to the jambs. (See Fig. 20).

4.10.6* Door Protective and Reopening Device. Elevator doors shall open and close automatically. They shall be provided with a reopening device that will stop and reopen a car door and hoistway door automatically if the door becomes obstructed by an object or person. The device shall be capable of completing these operations without requiring contact for an obstruction passing through the opening at heights of 5 in and 29 in (125 mm and 735 mm) above finish floor (see Fig. 20). Door reopening devices shall remain effective for at least 20 seconds. After such an interval, doors may close in accordance with the requirements of ASME A17.1-1990.

4.10.7* Door and Signal Timing for Hall Calls. The minimum acceptable time from notification that a car is answering a call until the doors of that car start to close shall be calculated from the following equation:

$$T = D/(1.5 \text{ ft/s}) \text{ or } T = D/(445 \text{ mm/s})$$

where T total time in seconds and D distance (in feet or millimeters) from a point in the lobby or corridor 60 in (1525 mm) directly in front of the farthest call button controlling that car to the centerline of its hoistway door (see Fig. 21). For cars with in-car lanterns, T begins when the lantern is visible from the vicinity of hall call buttons and an audible signal is sounded. The

minimum acceptable notification time shall be 5 seconds.

4.10.8 Door Delay for Car Calls. The minimum time for elevator doors to remain fully open in response to a car call shall be 3 seconds.

[296-81-350. Door jamb marking. The floor designation shall be provided at each hoistway entrance on both sides of jamb visible from within the car and the elevator lobby at a centerline height of (60) inches above the floor. Designations shall be on contrasting color background (2) inches high and raised (.30) inch, and shall be accompanied by Grade 2 Braille. Applied plates permanently attached shall be acceptable.]

[296-81-310 Door delay. (1). Hall call. The minimum acceptable initial transfer time from notification that a car is answering a call (lantern and audible signal) until the doors of the car start to close shall be 0 to 5 ft.-4 sec.; 10 ft.-7 sec.; 15 ft.-10 sec.; 20 ft.-13 sec. The distance shall be established from a point in the center of the corridor or lobby (maximum 5 feet) directly opposite the farthest hall button controlling that car to the centerline of the hoistway entrance.]

[296-81-310 Door delay. (2). Car call. The minimum acceptable initial transfer time for doors to remain fully open shall be not less than 3 seconds.]

[Amendment: E.]

NE

[Amendment: E.]

[Amendment: E.]

72 ADA/Washington State July 12, 1994

01-03863

4.10.9 Floor Plan of Elevator Cars. The floor area of elevator cars shall provide space for wheelchair users to enter the car, maneuver within reach of controls, and exit from the car. Acceptable door opening and inside dimensions shall be as shown in Fig. 22. The clearance between the car platform sill and the edge of any hoistway landing shall be no greater than 1-1/4 in (32 mm).

Fig. 22 Minimum Dimensions of Elevator Cars.

Diagram (a) illustrates an elevator with a door providing a 36 inch (915 mm) minimum clear width, in the middle of the elevator. The width of the elevator car is a minimum of 80 inches (2030 mm). The depth of the elevator car measured from the back wall to the elevator door is a minimum of 54 inches (1370 mm). The depth of the elevator car measured from the back wall to the control panel is a minimum of 51 inches (1291 mm).

Diagram (b) illustrates an elevator with door providing a minimum 36 inch (915 mm) clear width, located to one side of the elevator. The width of the elevator car is a minimum of 68 inches (1730 mm). The depth of the elevator car measured from the back wall to the elevator door is a minimum of 54 inches (1370 mm). The depth of the elevator car measured from the back wall to the

control panel is a minimum of 51 inches (1291).

4.10.10 Floor Surfaces. Floor surfaces shall comply with 4.5.

4.10.11 Illumination Levels. The level of illumination at the car controls, platform, and car threshold and landing sill shall be at least 5 footcandles (53.8 lux).

[296-81-315 Car interior. The car interior shall provide space for wheelchair users to enter the car, maneuver within reach of controls and exit the car. (1) Doors shall provide (36) inches clear minimum width. (2) Car depth (51) inches minimum from rear wall to return panel, with (54) inches minimum from rear wall to inside face of cab door. (3) Cab width of cab for side opening door (68) inches minimum, center opening door cab width (80) inches minimum.

Clearance between car platform sill and edge of hoistway landing sill shall be (1 1/4) inches maximum.

EXCEPTION: Elevators provided in existing schools, institutions, or other buildings specifically authorized by local authorities may have a minimum clear distance between walls or between wall and door including return panels of not less than 54 X 54 inches. Minimum distance from wall to return panel shall be not less than 51 inches.]

[296-81-335 Floor covering. Floor covering should have a nonslip hard surface which permits easy movement of wheelchairs. If carpeting is used, it should be securely attached, heavy duty, with a tight weave and low pile, installed without padding.]

[296-81-345 Minimum illumination. The minimum illumination shall be in accordance with the latest edition of ANSI A17.1.]

[Amendment: E.]

[Amendment: E.]

[Amendment: E.]

4.10.12* Car Controls. Elevator control panels shall have the following features:

(1) Buttons. All control buttons shall be at least 3/4 in (19 mm) in their smallest dimension. They shall be raised or flush.

(2) Tactile, Braille, and Visual Control Indicators. All control buttons shall be designated by Braille and by raised standard alphabet characters for letters, arabic characters for numerals, or standard symbols as shown in Fig. 23(a), and as required in ASME A17.1-1990. Raised and Braille characters and symbols shall comply with 4.30. The call button for the main entry floor shall be designated by a raised star at the left of the floor designation (see Fig. 23(a)). All raised designations for control buttons shall be placed immediately to the left of the button to which they apply. Applied plates, permanently attached, are an acceptable means to provide raised control designations. Floor buttons shall be provided

with visual indicators to show when each call is registered. The visual indicators shall be extinguished when each call is answered.

(3) Height. All floor buttons shall be no higher than 54 in (1370 mm) above the finish floor for side approach and 48 in (1220 mm) for front approach. Emergency controls, including the emergency alarm and emergency stop, shall be grouped at the bottom of the panel and shall have their centerlines no less than 35 in (890 mm) above the finish floor (see Fig. 23(a) and (b)).

Fig. 23 Car Controls.

Fig. 23(a) Panel Detail. The diagram illustrates the symbols used for the following control buttons: main entry floor, door closed, door open, emergency alarm, and emergency stop. The diagram further states that the octagon symbol for the emergency stop shall be raised but the X (inside the octagon) is not.

(4) Location. Controls shall be located on a front wall if cars have center opening doors, and at the side wall or at the front wall next to the door if cars have side opening doors (see Fig. 23(c) and (d)).

[296-81-320 Car controls. At least one set of controls shall be readily accessible from a wheelchair upon entering an elevator.

The centerline of the alarm button and emergency stop switch shall be at nominal (35) inches and the highest floor buttons no higher than (54) inches from the floor where side approach is provided. (48) inches maximum where forward approach is required. Floor registration buttons, exclusive of border, shall be a minimum of (3/4) inch in size, raised or flush. Visual indication shall be provided to show each call registered and extinguished when call is answered. Depth of flush buttons when operated shall not exceed (3/8) inch.

Markings shall be adjacent to the controls on a contrasting color background to the left of the controls. Letters or numbers shall be a minimum of (5/8) inch high and raised (.030) inch. All control buttons shall be designated by Braille. Applied plates permanently attached shall be acceptable. Emergency controls shall be grouped together at the bottom of the control panel. Symbols as indicated shall be used to assist in readily identifying essential controls (see ANSI A17.1, page 114, Rule 211.1). Controls not essential to the operation of the elevator may be located as convenient.]

[Amendment: E. Although the ADA requires all panels to be at wheelchair-accessible height and WAC only requires 1, having several control panels at different heights can serve more people (higher panels help people who have difficulty bending). As long as all panels are accessible to people with visual impairments, this is alright.]

NE

74 ADA/Washington State July 12, 1994

01-03865

4.10.13* Car Position Indicators. In elevator cars, a visual car position indicator shall be provided above the car control panel or over the door to show the position of the elevator in the hoistway. As the car passes or stops at a floor served by the elevators, the corresponding numerals shall illuminate, and an audible signal shall sound. Numerals shall be a minimum of « in (13 mm) high. The audible signal shall be no less than 20 decibels with a frequency no higher than 1500 Hz. An automatic verbal announcement of the

floor number at which a car stops or which a car passes may be substituted for the audible signal.

4.10.14* Emergency Communications. If provided, emergency two-way communication systems between the elevator and a point outside the hoistway shall comply with ASME A17.1-1990. The highest operable part of a two-way communication system shall be a maximum of 48 in (1220 mm) from the floor of the car. It shall be identified by a raised symbol and lettering complying with 4.30 and located adjacent to the device. If the system uses a handset then the length of the cord from the panel to the handset shall be at least 29 in (735 mm). If the system is located in a closed compartment the compartment door hardware shall conform to 4.27. Controls and Operating Mechanisms. The emergency intercommunication system shall not require voice communication.

[296-81-325 Car position indicator signal. A visual car position indicator shall be provided above the car control panel or above the door.

(1) As the car passes or stops at a floor, the corresponding numbers shall illuminate and an audible signal shall sound.
(2) Numerals shall be a minimum (1/2) inch high.
(3) Audible signal shall be no less than (20) decibels with frequency no higher than 1500 Hz.
(4) An automatic verbal announcement of the floor number may be substituted for the audible signal.]

[296-81-330 Telephone or intercommunicating system. An emergency two-way communication system shall be provided between the elevator and a point outside the hoistway that shall comply with ASME/ANSI A17.1-1990, and the following:
(1) Highest operable part of system shall be maximum (48) inches from the floor.
(2) System shall be identified by raised symbol and lettering located adjacent to the device. Characters shall be (5/8) inch to (2) inches high, raised (1/32) inch, upper case, sans serif or simple serif type, and shall be accompanied by Grade 2 Braille.
(3) If system uses a handset, minimum cord length shall be (29) inches.
(4) If located in a closed compartment, door shall be operable with one hand, shall not require tight grasping, pinching, or twisting of the wrist, and shall require a maximum force of (5) lbf.
(5) The emergency communication system shall not require voice communication. (Voice only system is inaccessible to persons with speech or hearing impairments.)]

[296-81-340 Handrails. A handrail shall be provided on all walls of

the car that are not used for normal exits. There shall be a space of one and one-half inches between the wall and the rail. The rail shall be at a nominal height of between thirty-two and thirty-five inches from the floor. The hand grip portion of handrails shall be not less than one and one-quarter inches or more than two inches in width, shall be basically oval or round in cross-section, and shall have smooth surfaces with no sharp corners. Handrails that approach each other or a blank car wall in the interior corners of the car need not be returned to the wall. If the end of the handrail presents an abrupt end on the closing jamb wall to persons entering a car that has a single-slide or two-speed entrance, the handrail end shall be returned to the wall.]

[Amendment: E.]

[Amendment: E.]

75 ADA/Washington State July 12, 1994

01-03866

4.11 Platform Lifts (Wheelchair Lifts).

4.11.1 Location. Platform lifts (wheelchair lifts) permitted by 4.1 shall comply with the requirements of 4.11.

4.11.2* Other Requirements. If platform lifts (wheelchair lifts) are used, they shall comply with 4.2.4, 4.5, 4.27, and ASME A17.1 Safety Code for Elevators and Escalators, Section XX, 1990.

4.11.3 Entrance. If platform lifts are used then they shall facilitate unassisted entry, operation, and exit from the lift in compliance with 4.11.2.

See below.

Comment: Issue 47. See comment on Issue No. 18, above.

51-20-3105 (c) 3. All platform lifts used in lieu of an elevator shall be capable of independent operation and shall comply with Chapter 296-81 of the Washington Administrative Code.

[296-81-007. National Elevator Code Adopted. ... (5) The American National Standard Safety Code for Elevators, Dumbwaiters, Escalators, and Moving Walks, ANSI A17.1, 1990 Edition is adopted as the standard for elevators, dumbwaiters, escalators, and moving walks installed on or after July 1, 1992, with the exceptions of ANSI A17.1, Part XIX, and ANSI A17.1, Part V, Section 513, which is replaced by chapter 296-94 WAC.]

[Amendment: E.]

01-03867

4.13.6 Maneuvering Clearances at Doors. Minimum maneuvering clearances at doors that are not automatic or power-assisted shall be as shown in Fig. 25. The floor or ground area within the required clearances shall be level and clear.

Fig. 25 Maneuvering Clearances at Doors. NOTE: All doors in alcoves shall comply with the clearances for front approaches.

Diagram (a) Front Approaches--Swinging Doors. Front approaches to pull side of swinging doors shall have maneuvering space that extends 18 in (455 mm) minimum beyond the latch side of the door and 60 in (1525 mm) minimum perpendicular to the doorway.

Front approaches to push side of swinging doors, equipped with both closer and latch, shall have maneuvering space that extends 12 in (305 mm) minimum beyond the latch side of the door and 48 in (1220 mm) minimum perpendicular to the doorway.

Front approaches to push side of swinging doors, not equipped with latch and closer, shall have maneuvering space that is the same width as door opening and extends 48 in (1220 mm). minimum perpendicular to the doorway.

Diagram (b) Hinge Side Approaches. Hinge-side approaches to pull side of swinging doors shall have maneuvering space that extends 36 in (915 mm) minimum beyond the latch side of the door if 60 in (1525 mm) minimum is provided perpendicular to the doorway or maneuvering space that extends 42 in (1065 mm) minimum beyond the latch side of the door shall be provided if 54 in (1370 mm) minimum is provided perpendicular to the doorway.

Hinge-side approaches to push side of swinging doors, not equipped with both latch and closer, shall have a maneuveringspace of 54 in (1370 mm) minimum, parallel to the doorway and 42 in (1065 mm) minimum, perpendicular to the doorway.

51-20-3106 (j) 3. Maneuvering Clearances at Doors. Except as provided in Section 3106 (aa) (3106 (aa) is dwelling units), all doors shall have minimum maneuvering clearances as follows:

A. Where a door must be pulled to be opened, an unobstructed floor space shall extend at least 18 inches beyond the strike jamb.

B. Where a door must be pushed to be opened and is equipped with a closer and a latch, an unobstructed floor space shall extend at least 12 inches beyond the strike jamb.

[...
D. Where a door must be pulled to be opened, an unobstructed floor space shall be provided that extends 60 inches, perpendicular to the doorway.
E. Where a door must be pushed to be opened an unobstructed floor space shall extend 48 inches perpendicular to the doorway.]

NE Provisions do not contain enough detail to ensure access at doors. For example, ADAAG Fig. 25 requires maneuvering clearances that range in size from 60 inches by 52 inches to 48 inches by 32 inches, depending on door swing, approach, etc. Although provisions in sections 51-20-3304 (i) and (j) compensate in some ways, the provisions are still inadequate.

77 ADA/Washington State July 12, 1994

01-03868

Hinge side approaches to push side of swinging doors, equipped with both latch and closer, shall have maneuvering space of 54 in (1370 mm) minimum, parallel to the doorway, 48 in (1220 mm) minimum perpendicular to the doorway.

Diagram (c) Latch Side Approaches--Swinging Doors. Latch-side approaches to pull side of swinging doors, with closers, shall have maneuvering space that extends 24 in (610 mm) minimum beyond the latch side of the door and 54 in (1370 mm) minimum perpendicular to the doorway.

Latch-side approaches to pull side of swinging doors, not equipped with closers, shall have maneuvering space that extends 24 in (610 mm) minimum beyond the latch side of the door and 48 in (1220 mm) minimum perpendicular to

EXCEPTION: Entry doors to acute care hospital bedrooms for in-patients shall be exempted from the requirement for space at the latch side of the door (see dimension "x" in Fig. 25) if the door is at least 44 in (1120 mm) wide.

51-20-3304 (i) Floor Level at Doors. Regardless of the occupant load, there shall be a floor or landing on each side of a door. When access for persons with disabilities is required by Chapter 31, the floor or landing shall not be more than 1/2 inch lower than the threshold of the doorway. When such access is not required, such dimension shall not exceed 1 inch. Landings shall be level except for exterior landings, which may have a slope not to exceed 1/4 inch per foot.

51-20-3304 (j) Landings at Doors. Landings shall have a width not less than the width of the stairway or the width of the door, whichever is the greater. Doors in the fully open position shall not reduce a required dimension by more than 7 inches. when a landing serves an occupant load of 50 or more, doors in any position shall not reduce the landing dimension to less than one-

half its required width. Landings shall have a length measured in the direction of travel of not less than 44 inches.

Comment: Issue 48. The provisions of Section 3106(j)3 were amended in November 1992 to provide clear areas measured perpendicular to the door. (See page 604e of the Published Code.) In developing the Washington regulations, it was felt that the 11 different approach requirements were confusing and unnecessary. Most doors are hinged swing doors. Few manually operated doors are slide opening doors. With the 1992 amendments, we believe that the maneuvering clearance standards are comparable. The Washington Code simplifies the doors and maneuvering clearances from the variety in ADA. This simplifies compliance and enforcement and is more likely to result in accessible construction of doorways. The ADA and ANSI standards are still available as alternate designs which can be approved by the building official.

NE See above.

[N.E. WAC fails to address hinge-side approaches and latch-side approaches. WAC still does not address sliding/folding doors.]

3/23/94 letter from Washington State Building Code Council Issue 48 - In order to simplify the Washington regulations, the maneuvering clearance requirements were condensed into three basic requirements contained in Section 3106(j). These three are the forward approach to a door where the door swings toward the user, a forward approach to a door where the door swings away from the user, and two doors in series. As stated in our response of August 20, 1993, our regulations simplify compliance and enforcement and is more likely to result in accessible construction of doorways. We have recently issued a specific interpretation, number 94-02, that allows the use of ANSI A117.1-1992 door clearances as alternatives to the three standards in the code.

Maneuvering clearances at doors must be looked at in conjunction with other requirements of the State Building Code which are provided in Chapter 33 on Exiting (egress). The primary provisions which will affect maneuvering clearances are the requirements for minimum corridor widths (Sec. 3305). Most corridors must be a minimum of 44 inches in width, unless the occupant load is less than 49 persons. In addition, the code prohibits doors in any position from reducing the width of a corridor by more than half of the required width. We assume that you understand that if a door is in the wall of a room, that adequate maneuvering clearances will always be present unless the door is in a corner. We have therefore focused our comparison on where maneuvering clearances might be most restricted and that is where a door is located on a corridor wall.

Figure 25 of the ADAAG illustrates 9 different maneuvering clearances for doors. We have compared the effect of the

Washington State Code in comparison to the ADAAG diagrams and provide the following analysis. It should be noted that the footnote in Figure 25 states that doors in alcoves must comply with clearances for a front approach. The ADAAG does not define an alcove. The Washington Code presumes a forward approach in all situations, in which case it is completely consistent with the ADAAG.

79 ADA/Washington State July 12, 1994

01-03870

A. Front Approaches - Swinging Doors: The front approaches as diagrammed in Figure 25(a) are reflected specifically in the Washington language in Section 3106(j).

B. Hinge Side Approaches - Swinging Doors: Two basic conditions are noted: 1. Doors swing into the approach. Please refer to attached Diagram A. Under the Washington code this would be treated as a forward approach door and the required maneuvering clearance is shown in black. In this case ADA would require additional clearance on the latch side of the door. If the design of the building is such that this door was at the end of a corridor, the additional clearance would be missing. If the corridor continues, then only the crosshatched area labeled A would not be provided. It should be noted that the maneuvering clearance required for this door when approached in a forward approach is deemed adequate with only 18 inches on the latch side, but if the approach is from behind the door 18 inches is not sufficient, even though a person would have to turn and essentially make a forward approach to this door. While it appears that the Washington code is not identical to the ADAAG, there is no loss in maneuverability.

2. Doors swing away from approach: Two conditions are noted in Figure 25(b), doors with, or without, closers. For doors without

both a closer and a latch, a smaller maneuvering clearance is shown in ADAAG. See Diagram B. Again the Washington regulations for this door are shown in black, the comparable ADAAG design is shown in red. In this instance, the overall maneuvering space required by the Washington Code is greater than ADAAG. If the approaching corridor is only 36 inches in width, a small area shown crosshatched (A) would not be present, but the area labeled (B) would be present which is substantially greater.

Where a door in this condition has both a closer and a latch, a greater width is required. Again, as illustrated in Diagram C, the potentially lost space (A) is more than compensated by the Washington required maneuvering space (B).

[#B.1. N.E. ADA Standards require a space 60" by 72" for a hinge side parallel approach. Washington only requires 60" by 54". There is a loss of maneuverability because the person does not make simply a front approach, as Washington assumes, but rather, the person has to continue beyond the door before attempting to maneuver into a forward approach position. The cross-hatched area is an essential part of the minimum maneuvering space because it allows the person room to move from the side of the door into the forward approach position.

#B.2. N.E. For a hinge side parallel approach on the push side of a door, the ADA Standards require a space 48" by 54". Also, the ADA requires the 54" dimension to begin at the latch side of the door. The Washington requirement overlaps the ADA requirement only partially because it does not require the 54" dimension to begin at the latch side. Therefore, Washington allows the maneuvering space to be in a different place than the ADA requires.

Washington assumes that the size of the maneuvering space is all that matters. In fact, the size, the shape, and the position of the maneuvering space all matter and different sizes, shapes and positions are needed depending on the direction of approach to the door.]

C. Latch Side Approaches - Swinging Doors: 1. Doors swing into approach: Two conditions are noted in the left hand portion of Figure 25(c), doors with, or without, closers. For doors without a closer a smaller maneuvering clearance is shown in ADAAG. See Diagram D. Where the approaching corridor is only 36 or 44 inches wide, a minor portion of maneuvering space would not be present as shown in the crosshatched area (A), however a substantially greater area of maneuvering space is provided in the area shown as (B).

Where the door has a closer, See Diagram E, the potentially missing space (A) is slightly larger than noted in the preceding case, but it is still compensated by a significant increase in maneuvering space at (B).

2. Doors swing away from approach: Again two conditions are

noted depending on whether or not a closer is present. Where a door does not have a closer, (See Diagram F) a small area of ADAAG maneuvering clearance (A) would not be present where a corridor is only 36 inches in width, which would be compensated for by the additional area (B) which results from compliance with the Washington requirements.

Where the door does have a closer a minor amount of space may not be provided as shown by the crosshatched area A in Diagram G.

D. Sliding Doors: 1. Forward approach. The maneuvering space will be adequate in all cases since the minimum corridor widths of 36 or 44 inches are equal to or greater than the width of shown in the ADAAG Figure 25(d). The depth will be provided, or else this would not be a forward approach of someone traveling down a corridor or across a room to this door.

2. Slide or latch side approaches. For doors located on a typical corridor of 44 inches, the maneuvering space shown in ADAAG Figures 25(e) and 25(f) will be present, or the corridor will not be in compliance with other provisions of our code.

4.13.7 Two Doors in Series. The minimum space between two hinged or pivoted doors in series shall be 48 in (1220 mm) plus the width of any door swinging into the space. Doors in series shall swing either in the same direction or away from the space between the doors (see Fig. 26).

4.13.8* Thresholds at Doorways. Thresholds at doorways shall not exceed 3/4 in (19 mm) in height for exterior sliding doors or 1/2 in (13 mm) for other types of doors. Raised thresholds and floor level changes at accessible doorways shall be beveled with a slope no greater than 1:2 (see 4.5.2).

Interpretation No. 94-02. Question: Do the requirements for door clearances as defined in this section apply to all approaches including parallel, or are they applicable only to a forward approach?

Answer: In order to simplify all potential options into a concise format, the door standards were written for the most stringent conditions with the reasoning that if doors always met these standards full compliance would also be met.
Section 3101(d) allows the approval of alternate methods of construction, design, or technologies provided that they supply equivalent or greater accessibility. The CABO/ANSI A117.1-1992 Section 4.13 provides description and diagramming of suitable alternate standards for all types of door operations. It was not the intent of the code to prohibit the use of these alternatives.

51-20-3106 (j) 3.C. Where two doors are in a series, the minimum distance between two hinged or pivoted doors shall be 48 inches in addition to any needed for door swing. [Doors in series shall swing either in the same direction or away from the space between the doors.]

Comment: Issue 49. Section 3106(j)3C was amended to add the following sentence: "Doors in series shall swing either in the same direction, or away from the space between the doors." (See page 604e of the Published Code.) With this addition the provisions are equivalent to the ADAAG.

51-20-3106 (j) 4. Thresholds at Doors. Thresholds at doors shall comply with Section 3106.

51-20-3106 (f) Changes in Level. Accessible routes of travel and accessible spaces within buildings shall have continuous common floor or ramp surfaces. Abrupt change in height greater than 1/4 inch shall be beveled to 1 vertical in 2 horizontal. Changes in level greater than 1/2 inch shall be accomplished by means of a ramp meeting the requirements of 3106 (h) [a curb ramp meeting the requirements of Section 3106(d)7, or an elevator or platform lift meeting the requirements of Section 3105(d)]. For Type B dwelling units, see also Section 3106(aa).

Comment: Issue 50. Section 3106(j)4 was amended to simplify the reference to Section 3106. See page 604e of the Published Code.

[N.E. Front approach is not the "most stringent." It is only different from the requirements for the other approaches.]

[Amendment: E.]

[Amendment: E.]

4.15.3 Spout Location. The spouts of drinking fountains and water coolers shall be at the front of the unit and shall direct the water flow in a trajectory that is parallel or nearly parallel to the front of the unit. The spout shall provide a flow of water at least 4

in (100 mm) high so as to allow the insertion of a cup or glass under the flow of water. On an accessible drinking fountain with a round or oval bowl, the spout must be positioned so the flow of water is within 3 in (75 mm) of the front edge of the fountain.

51-20-3106 (m) 3. ...Spouts shall be located in the front of the unit and shall direct a water flow not less than 4 inches in height, in a trajectory parallel to the front of the unit. [Recessed units shall be installed such that the spout is not recessed beyond the plane of the wall.]

Comment: Issue 51: There is a typographical error in the side by side analysis and the text in ADAAG and WSR regulations is the same that the spout must be "at" the front of the unit. To clarify the application to round or oval bowls, the Council has issued Interpretation No. 93-34.

Interpretation No. 93-34.
Question: For water fountains with round or oval bowls, how far back can the spout be located and still be considered "at the front" of the unit?
Answer: The intent of the Code, as provided in Sec. 3101(a), is to provide standards equivalent to the ADA Accessibility Guideline. On round or oval bowls, the spout must be positioned so the flow of water is within three (3) inches of the front edge of the fountain.

[Amendment: E.]

[E.]

4.15.5 Clearances.

(1) Wall- and post-mounted cantilevered units shall have a clear knee space between the bottom of the apron and the floor or ground at least 27 in (685 mm) high, 30 in (760 mm) wide, and 17 in to 19 in.
(430 mm to 485 mm) deep (see Fig. 27(a) and (b)). Such units shall also have a minimum clear floor space 30 in by 48 in (760 mm by 1220 mm) to allow a person in a wheelchair to approach the unit facing forward.

(2) Free-standing or built-in units not having a clear space under them shall have a clear floor space at least 30 in by 48 in (760 mm by 1220 mm) that allows a person in a wheelchair to make a parallel approach to the unit (see Fig. 27(c) and (d)). This clear floor space shall comply with 4.2.4.

51-20-3106 (m) Water Fountains. 1. Clear Floor Space. Wall- and post-mounted cantilevered units shall have a minimum clear floor space in front of the units 30 inches in width by 48 inches in depth to allow a forward approach.

Free-standing or built-in units not having a clear space under them shall have a clear floor space at least 30 inches in depth by 48 inches in width in order to allow a person in a wheelchair to make a parallel approach to the unit.

2. Knee space. Wall- and post-mounted cantilevered units shall have knee space in accordance with Section 3106(b) 2. B. The knee space shall be not less than 19 inches in depth.

51-20-3106 (m) 5. Water Fountains in Alcoves. Where a unit is installed in an alcove greater than 3 inches in depth, the alcove shall be not less than 48 inches in width. A minimum 24 inches of clear space shall be provided from the spout to the nearest side wall of the alcove.
[Moved to
3106(m)3.]

Comment: Issue 52. This reference in Sec. 3106(m)2 was corrected to a reference to Sec. 3106(b)4C. See page 604k of the Published Code.

[P.E. but 3106(b)4C addresses when knee clearance can be included in clear floor space. 3106(m) is addressing what knee/toe clearance is required at water fountains. The connection is not entirely clear but the specifications are equivalent.]

01-03875

4.16.2 Clear Floor Space. Clear floor space for water closets not in stalls shall comply with Fig. 28. Clear floor space may be arranged to allow either a left-handed or right-handed approach.
Fig. 28 Clear Floor Space at Water Closets.

For a front transfer to the water closet, the minimum clear floor space at the water closet is a minimum 48 inches (1220 mm) in width by a minimum of 66 inches (1675 mm) in length. For a diagonal transfer to the water closet, the minimum clear floor space is a minimum of 48 inches (1220 mm) in width by a minimum of 56 inches (1420 mm) in length. For a side transfer to the water closet, the minimum clear floor space is a minimum of 60 inches (1525 mm) in width by a minimum of 56 inches (1420 mm) in length. (4.16.2, A4.22.3)

51-20-3106 (k) 5.A. Clear Floor Space. The lateral distance from the center line of the water closet to the nearest obstruction [excluding] grab bars, shall be 18 inches on
one side and [not less than 42] inches on the other side. In other than stalls, a clear floor space not less than 32 inches measured perpendicular to the wall on which the water closet is mounted, shall be provided in front of the water closet.
EXCEPTION: A lavatory may be located within the clear floor space required for a water closet provided that knee and toe clearances for the lavatory comply with subsection 7 below and:
A. In Type B dwelling units the edge of the lavatory shall be located not less than 15 inches from the centerline of the water closet; or
B. In all other occupancies the edge of the lavatory shall be located not less than 18 inches from the centerline of the water closet.
Comment: Issue 53. Section 3106(k)3A provides the dimension requirements for Wheelchair Accessible Toilet Stalls. This section requires such stalls to be at least 60 inches in width. This provision must also be complied with in addition to the clear floor space requirements for the water closet which happens to be in the toilet stall. Therefore if a lavatory were to be installed in the clear floor space of a water closet in a toilet stall, the toilet stall would not comply with the minimum width of 60 inches.

PNE A clarification is needed as to where the lavatory is allowed to be in clear floor area. The ADA does not allow a lavatory in the clear floor area in stalls.
[N.E. The stall would still be 60 inches wide, it would just have a lavatory in it. That lavatory will inhibit a side

transfer to the water closet, even if there is knee space under it. The problem raised has not been addressed. In addition, 32" in front of the water closet will not make a total of 66" depth of clear space, as required by ADA (it will only be 61-62").]

85 ADA/Washington State July 12, 1994
01-03876
4.16.4* Grab Bars. Grab bars for water closets not located in stalls shall comply with 4.26 and Fig. 29. The grab bar behind the water closet shall be 36 in (915 mm) minimum.

Fig. 29(a) Back Wall. A 36 inch (915 mm) minimum length grab bar is required behind the water closet mounted at a height between 33 and 36 inches (840-915 mm). The grab bar must extend a minimum of 12 inches (305) beyond the center of the water closet toward the side wall and a minimum of 24 inches (610 mm) toward the open side for either a left or right side approach.

Fig. 29(b) Side Wall. A 42 inch (1065 mm) minimum length grab bar is required to the side of the water closet spaced 12 inches (305 mm) maximum from the back wall and extending a minimum of 54 inches (1370 mm) from the back wall at a height between 33 and 36 inches (840-915 mm). The toilet paper dispenser shall be mounted at a minimum height of 19 inches (485 mm). (4.16.3, 4.16.4, 4.16.6)

4.16.5* Flush Controls. Flush controls shall be hand operated or automatic and shall comply with 4.27.4. Controls for flush valves shall be mounted on the wide side of toilet areas no more than 44 in (1120 mm) above the floor.

4.16.6 Dispensers. Toilet paper dispensers shall be installed within reach, as shown in Fig. 29(b). Dispensers that control delivery, or that do not permit continuous paper flow, shall not be used.

Fig. 29(b)...The toilet paper dispenser shall be mounted at a minimum height of 19 inches (485 mm). (4.16.3, 4.16.4, 4.16.6)

51-20-3106 (k) 5. C. Grab Bars. Grab bars shall be installed at one side and the back of the water closet. The top of grab bars shall be not less than 33 inches and not more than 36 inches above and parallel to the floor. Grab bars located at the side shall be a minimum 42 inches in length with the front end positioned not less than 18 inches in front of the water closet.
Grab bars located at the back shall be a minimum of 36 inches in length. Grab bars shall be mounted not more than 9 inches behind

the water closet seat. See also Section 3106(k)11.

51-20-3106 (k) 5. D. Flush Controls. Flush controls shall be mounted for use from the wide side of the water closet area and not more than 44 inches above the floor. [Flush valves shall comply with Section 3106(c).]

51-20-3106 (k) 5. E. Dispensers and Receptacles. Toilet paper and other dispensers or receptacles shall be installed within easy reach of the water closet, and shall not interfere with [unobstructed floor space] grab bar utilization.

Comment: Issue 54. While the WSR standards limit the location of toilet paper dispenser, the actual design of those dispensers is considered to be outside the scope of equipment regulated by the building code. The WSR standards do prohibit placement of dispensers so as to preclude interference with use of the grab bars.

[Amendment: N.E. The requirements for placement of the side grab bar are insufficient. WAC's requirement that the front of the bar be 18" in front of the water closet would make the bar extend only 48" from the back wall, whereas ADA requires it to extend 54" from the back wall. This extra extension is needed by people who need to reach forward to pull to a standing position. Also, WAC does not specify placement of the back grab bar in relation to the side wall. The ADA's placement requirements ensure that a diagonal transfer will be possible if needed.]

[Amendment: E.]

[E.]

86 ADA/Washington State July 12, 1994

01-03877

4.17.6 Grab Bars. Grab bars complying with the length and positioning shown in Fig. 30(a), (b), (c), and (d) shall be provided. Grab bars may be mounted with any desired method as long as they have a gripping surface at the locations shown and do not obstruct the required clear floor area. Grab bars shall comply with 4.26.

4.19.3 Clear Floor Space. A clear floor space 30 in by 48 in (760 mm by 1220 mm) complying with 4.2.4 shall be provided in front of a lavatory to allow forward approach. Such clear floor space shall adjoin or overlap an accessible route and shall extend a maximum of 19 in (485 mm) underneath the lavatory (see Fig. 32).

Fig. 32 Clear Floor Space at Lavatories.

The minimum depth of the lavatory is 17 inches (430 mm). (4.19.3, 4.24.5)

4.19.5 Faucets. Faucets shall comply with 4.27.4. Lever-operated, push-type, and electronically controlled mechanisms are examples of acceptable designs. If self-closing valves are used the faucet shall remain open for at least 10 seconds.

4.20 Bathtubs.

4.20.1 General. Accessible bathtubs shall comply with 4.20.

51-20-3106 (k) 5. C. Grab Bars. Grab bars shall be installed at one side and the back of the water closet. The top of grab bars shall be not less than 33 inches and not more than 36 inches above and parallel to the floor. Grab bars located at the side shall

be a minimum 42 inches in length with the front end positioned not less than 18 inches in front of the water closet.
Grab bars located at the back shall be a minimum of 36 inches in length. Grab bars shall be mounted not more than 9 inches behind the water closet seat. See also Section 3106 (k) 11.

51-20-3106 (k) 7. A. Clear Floor Space. A clear floor space not less than 30 inches (in width) by 48 inches (in depth) shall be provided in front of lavatories and sinks. [The clear floor space may include knee and toe clearances not to exceed 19 inches extending under the lavatory or sink.]

51-20-3106(k) 7. E. Faucets. Faucet control handles shall be located not more than 17 inches from the front edge of the lavatory, sink or counter, and shall comply with Section 3105 (c). Self-closing valves shall remain open for at least 10 seconds per operation.

51-20-3106 (c) Controls and Hardware 1. Operation. Handles, pulls, latches, locks and other operating devices on doors, windows, cabinets, plumbing fixtures and storage facilities shall have a lever or other shape which will permit operation by wrist or arm pressure and does not require tight grasping, pinching or twisting to operate. Doors shall comply with Section 3304.
[The force to activate controls on lavatories and water fountains and flush valves on water closets and urinals shall not be greater than 5 pounds.]

51-20-3106 (k) 9. Bathtubs.

[Amendment: See above.]

[Amendment: E.]

[Amendment: E.]

PNE See below.

4.20.2 Floor Space. Clear floor space in front of bathtubs shall be as shown in Fig. 33.

Fig. 33 Clear Floor Space at Bathtubs. (4.20.2, 4.20.3, 4.20.4)

Fig. 33(a) With Seat in Tub. If the approach is parallel to the bathtub, a 30 inch (760mm) minimum width by 60 inch (1525 mm) minimum length clear space is required alongside the bathtub. If the approach is perpendicular to the bathtub, a 48 inch (1220 mm) minimum width by 60 inch (1525 mm) minimum length clear space is required.

Fig. 33(b) With Seat at Head of Tub. If the approach is parallel to the bathtub, a 30 inch (760 mm) minimum width by 75 inch (1905 mm) minimum length clear space is required alongside the bathtub. The seat width must be 15 inches (380 mm) and must extend the full width of the bathtub.

51-20-3106 (k) 9. A. Clear Floor Space. A clear floor space not less than 60 inches in length shall be provided along the tub. Where the required seat is located at the end of the tub, the clear floor space shall be not less than 75 inches in length. The clear floor space shall be not less than 30 inches in width where access to the space is parallel to the tub and not less than 48 inches in

width where access to the space is at right angles to the tub. A lavatory which complies with Subsection 5, above, may be located in the clear floor space of the tub.

PNE This appears to be generally equivalent in intent but language must be more precise. As written, the lavatory could be located anywhere within the clear floor area, where as ADAAG only allows a complying lavatory at the end of the tub where the controls are located.

01-03879

Comment: Issue 55. Section 3102 defines clear floor space as unobstructed ground or floor space. Section 3106(b)4A requires a minimum clear floor space of 30 by 48 inches. In addition, the Washington regulations provide standards clarifying that which is unobstructed floor space in Section 3106(b)3. This last provision clarifies that a space can be clear and unobstructed even where fixtures such as counters or lavatories project into the clear floor space at minimum heights above the floor.
The provisions in Sections 3106(k)9A and (k)10B which allow lavatory complying with Section 3106(k)7 to be located in the clear floor space of an accessible bathtub or roll-in shower is limited by the provisions of 3106(k)7 and those sections cited in the preceding paragraph. If a lavatory was located in the clear floor space of a tub or shower in such a way to eliminate the unobstructed floor space, the net result would be that the required floor space would not be provided. The combinations of provisions forces the lavatory to the end of the clear floor space. Further if the lavatory was positioned in a manner that obstructed access to the grab bars and/or the controls, one purpose of the clear floor space would again be defeated.

Finally, it should be noted again, that the lavatory allowed by the Washington regulations must be an accessible lavatory, one which provided knee and toe clearances. The ADAAG has no such limit on the lavatory, and it could easily obstruct access to grab bars and controls.

[N.E. The problem is that WAC allows the lavatory to be at either end of the tub. The ADA requires it to be at the foot end of the tub, because if it were at the head end of the tub, it would obstruct transfer onto the seat.]

89 ADA/Washington State July 12, 1994

01-03880

4.20.5 Controls. Faucets and other controls complying with 4.27.4 shall be located as shown in Fig. 34.

Fig. 34 Grab Bars at Bathtubs. (4.20.3, 4.20.4, 4.20.5)

Fig. 34(a) With Seat in Tub. At the foot of the tub, the grab bar shall be 24 inches (610 mm) minimum in length measured from the outer edge of the tub. On the back wall, two grab bars are required. The grab bars mounted on the back (long) wall shall be a minimum 24 inches (610 mm) in length located 12 inches (305 mm) maximum from the foot of the tub and 24 inches (610 mm) maximum from the head of the tub. One grab bar shall be located 9 inches (230 mm) above the rim of the tub. The others shall be 33 to 36 inches (840 mm to 910 mm) above the bathroom floor. At the head of the tub, the grab bar shall be a minimum of 12 inches (305 mm) in length measured from the

outer edge of the tub.

Fig. 34(b) With Seat at Head of Tub. At the foot of the tub, the grab bar shall be a minimum of 24 inches (610 mm) in length measured from the outer edge of the tub. On the back wall, two grab bars are required. The grab bars mounted on the back wall shall be a minimum of 48 inches (1220 mm) in length located a maximum of 12 inches (305 mm) from the foot of the tub and a maximum of 15 inches (380 mm) from the head of the tub. Heights of grab bars are as described above.

Figure 34 Grab Bars at Bathtubs. (a) and (b) require controls to be "offset," located in an area between the open edge and the midpoint of the tub.

51-20-3106 (c) Controls and Hardware 1. Operation. Handles, pulls, latches, locks and other operating devices on doors, windows, cabinets, plumbing fixtures and storage facilities shall have a lever or other shape which will permit operation by wrist or arm pressure and does not require tight grasping, pinching or twisting to operate. ...[The force to activate controls on lavatories and water fountains and flush valves on water closets and urinals shall not be greater than 5 pounds.]

51-20-3106 (k) 9. D. Controls and Fixtures. Faucets and other controls shall be located above the tub rim and below the grab bars, shall be not more than 24 inches laterally from the clear floor space and shall comply with Section 3105 (c).

Comment: Issue 56. The intent of the WSR provisions was to provide equivalent facilitation to that of the ADA. The allowed distance is within the reach ranges specified in Sec. 4.2 of the ADA. In addition, under the Washington Code, any lavatory installed next to the controls must meet accessibility standards and have knee and toe clearance underneath, these controls will be reachable, whereas under ADAAG which does not require the provision of knee and toe clearance, the controls will not be as accessible as those provided in compliance with the Washington Code.

NE ADA drawing requires controls to be offset between the open edge of the tub and the centerline.

[N.E. The 24 inch measurement to the controls is not equivalent. ADA requires the controls to be offset between the midpoint of the tub and the outer edge of the tub, so they can be reached from a wheelchair at the outer edge of the tub. 24 inches is too far into the tub. The

midpoint of the tub is likely to be 15-16 inches from the edge.]

4.21.2 Size and Clearances. Except as specified in 9.1.2, shower stall size and clear floor space shall comply with Fig. 35(a) or (b). The shower stall in Fig. 35(a) shall be 36 in by 36 in (915 mm by 915 mm). Shower stalls required by 9.1.2 shall comply with Fig. 57(a) or (b). The shower stall in Fig. 35(b) will fit into the space required for a bathtub.

Fig. 35 Shower Size and Clearances.

Fig. 35(a) 36 inches by 36 inches (915 mm by 915 mm) Stall (Transfer Shower). The clear floor space shall be a minimum of 48 inches (1220 mm) in length by a minimum of 36 inches (915 mm) in width and allow for a parallel approach. The clear floor space shall extend 1 foot beyond the shower wall on which the seat is mounted.

Fig. 35(b) 30 inches by 60 inches (760 mm by 1525 mm) Stall (Roll-in Shower). The clear floor space alongside the shower shall be a minimum of 60 inches (1220 mm) in length by a minimum of 36 inches (915 mm) in width.

51-20-3106 (k) 10. A. Configuration. Shower stalls shall have one of the following configurations.

(i) Transfer shower stalls shall be 36 inches by 36 inches, nominal, and shall have a seat; or,

(ii) Roll-in shower stalls shall be not less than 30 inches in depth by 60 inches in length.

51-20-3106 (k) 10 B. Clear Floor Space. A clear floor space not less than 48 inches in length shall be provided adjacent to shower stalls. For roll-in shower stalls, the clear floor space shall be not less than (60) inches in [length]. [A clear floor space shall not be less than 36 inches in width.] A lavatory which complies with Subsection [7] above, may be located in the clear floor space of a roll-in shower.

91 ADA/Washington State July 12, 1994

01-03882

4.21.3 Seat. A seat shall be provided in shower stalls 36 in by 36 in (915 mm by 915 mm) and shall be as shown in Fig. 36. The seat shall be mounted 17 in to 19 in (430 mm to 485 mm) from the bathroom floor and shall extend the full depth of the stall. In a 36

in by 36 in (915 mm by 915 mm) shower stall, the seat shall be on the wall opposite the controls. Where a fixed seat is provided in a 30 in by 60 in minimum (760 mm by 1525 mm) shower stall, it shall be a folding type and shall be mounted on the wall adjacent to the controls as shown in Fig. 57. The structural strength of seats and their attachments shall comply with 4.26.3.

Fig. 36 Shower Seat Design.

The diagram illustrates an L-shaped shower seat extending the full depth of the stall. The seat shall be located 1-1/2 inches (38 mm) maximum from the wall. The front of the seat (nearest to the opening) shall extend a maximum 16 inches (330 mm) from the wall. The back of the seat (against the back wall shall extend a maximum of 23 inches (582 mm) from the side wall and shall be a maximum of 15 inches (305 mm) deep.

Comment: Issue 57. The printing of Section 3106(k) 10B in the side by side analysis is incomplete, thus the analysis is in error. The complete section reads as follows: [see above]. See also comment on Issue No. 55, above.

51-20-3106 (k) 10 C. Seats. In transfer shower stalls, a seat shall be mounted not less than 17 inches and not more than 19 inches above the floor, and shall extend the full depth of the stall. The seat shall be located on the wall opposite the controls and shall be mounted not more than 1-1/2 inches from the shower walls. The seat shall be not more than 16 inches in width.

EXCEPTION: A section of the seat not more than 15 inches in length and adjacent to the wall opposite the clear space, may be not more than 23 inches in width.

In roll-in shower stalls, a fold down seat complying with the dimensional requirements of this subsection, may be installed.
Comment: Issue 58. Clarification of seat and control location in showers as regulated by the WSR in Sec. 3106(k)10 has been clarified by Council Interpretation No. 93-36.

[N.E. For transfer shower, the clear floor space must be configured so that it extends 12 inches beyond the seat wall.]

[N.E. WAC does not require that the seat be L-shaped. The seat needs to be L-shaped so that people can sit in the corner and use the two walls for support.]

4.21.5 Controls. Faucets and other controls complying with 4.27.4 shall be located as shown in Fig. 37. In shower stalls 36 in by 36 in (915 mm by 915 mm), all controls, faucets, and the shower unit shall be mounted on the side wall opposite the seat.
Fig. 37 Grab Bars at Shower Stalls.

Fig. 37(a) 36 inches by 36 inches (915 mm by 915 mm) Stall. The diagram illustrates an L-shaped grab bar that is located along the full depth of the control wall (opposite the seat) and halfway along the back wall. The grab bar shall be mounted between 33 to 36 inches (840-915 mm) above the shower floor. The bottom of the control area shall be a maximum of 38 inches (965 mm) high and the top of the control area shall be a maximum of 48 inches (1220 mm) high. The controls and spray unit shall be within 18 inches (455 mm) of the front of the shower.

Fig. 37(b) 30 inches by 60 inches (760 mm by 1525 mm) Stall. The diagram illustrates a U-shaped grab bar that wraps around the stall. The grab bar shall be between 33 to 36 inches (840-915 mm) high. The controls are placed in an area between 38 inches and 48 inches (965 mm and 1220 mm) above the floor. If the controls are located on the back (long) wall they shall be located 27 inches (685 mm) from the side wall. The shower head and control area may be located on either side wall.

Interpretation No. 93-36.
Question: Can the controls of a shower be located on any wall of the enclosure of an accessible shower? What is the relationship between the controls and the seat installed in a shower?
Answer: The intent of the code, as provided in Sec. 3101(a), is to provide standards equivalent to the ADA Accessibility Guideline.
In a transfer shower stall, the seat must be located along a side wall. The controls must be located on the other side wall opposite to the seat.
For a roll-in shower stall, the controls must be located on the back, or long, wall opposite the clear floor area and located to one side or the other of the midpoint of the wall. Where a seat is installed in a roll-in shower, it must be located along the end wall closest to the controls.

51-20-3106 (k) 10 E. Controls and Fixtures. Faucets and other controls shall be located on the same wall as the shower spray unit, and shall be installed not less than 38 inches or more than 48 inches above the shower floor and shall comply with Section 3106(c)...

NE Language should be more precise here to ensure that controls are useable. ADAAG is very specific about location of

controls when placed on back wall and location of controls adjacent to a fold down seat in a roll-in/transfer shower.
93 ADA/Washington State July 12, 1994
01-03884
4.22.6 Lavatories and Mirrors. If lavatories and mirrors are provided, then at least one of each shall comply with 4.19.
Comment: Issue 59. Clarification of seat and control location in showers as regulated by the WSR in Sec. 3106(k) 10 has been clarified by Council Interpretation No. 93-36.
Interpretation No. 93-36.
Question: Can the controls of a shower be located on any wall of the enclosure of an accessible shower? What is the relationship between the controls and the seat installed in a shower?
Answer: The intent of the code, as provided in Sec. 3101(a), is to provide standards equivalent to the ADA Accessibility Guideline.
In a transfer shower stall, the seat must be located along a side wall. The controls must be located on the other side wall opposite to the seat.
For a roll-in shower stall, the controls must be located on the back, or long, wall opposite the clear floor area and located to one side or the other of the midpoint of the wall. Where a seat is installed in a roll-in shower, it must be located along the end wall closest to the controls.

51-20-3105 (b) 3. Lavatories, Mirrors and Towel Fixtures. At least one accessible lavatory shall be provided within any toilet facility. Where mirrors, towel fixtures and other toilet and bathroom accessories are provided, at least one of each shall be accessible.

51-20-3106 (k) 7. Lavatories and Sinks. A. Clear Floor Space. A clear floor space not less than 30 inches [in width] by 48 inches [in depth] shall be provided in front of lavatories and sinks [to allow a forward approach. The clear floor space may include knee and toe clearances not to exceed 19 inches extending under the lavatory or sink].

51-20-3106 (k) 8. Mirrors, Dispensers and Other Fixtures. Mirrors or shelves shall be installed so that the bottom of the mirror or the top of the shelf is within 40 inches of the floor...

[N.E. This interpretation does not provide specifications for placement of controls in relation to side wall/front of shower (i.e. 18 in for transfer: 27 in for roll-in.) Merely offsetting them may not put them close enough to the seat. This is a real problem because the accessibility requirements provide only

minimum dimensions. If someone were to build a roll-in shower with a back wall 84 inches long and simply offset the controls at 40 inches from the seat wall, the controls would not be reachable from the seat.]
[Amendment: E.]
94 ADA/Washington State July 12, 1994

01-03885
4.23.4 Water Closets. If toilet stalls are provided, then at least one shall be a standard toilet stall complying with 4.17; where 6 or more stalls are provided, in addition to the stall complying with 4.17.3, at least one stall 36 in (915 mm) wide with an outward swinging, self-closing door and parallel grab bars complying with Fig. 30(d) and 4.26 shall be provided. Water closets in such stalls shall comply with 4.16. If water closets are not in stalls, then at least one shall comply with 4.16.

4.24.5 Clear Floor Space. A clear floor space at least 30 in by 48 in (760 mm by 1220 mm) complying with 4.2.4 shall be provided in front of a sink to allow forward approach. The clear floor space shall be on an accessible route and shall extend a maximum of 19 in (485 mm) underneath the sink (see Fig. 32).

4.26.3 (5) Grab bars shall not rotate within their fittings.

51-20-3105 (b) 2. Toilet Facilities. ...In each toilet facility in other occupancies, at least one wheelchair accessible toilet stall with an accessible water closet shall be provided. In addition, when there are 6 or more water closets within a toilet facility, at least one other accessible toilet stall complying with Section 3106 (k) 4. also shall be installed.

51-20-3106 (k) 3. Wheelchair Accessible Toilet Stalls. A. Dimensions. Wheelchair accessible toilet stalls shall be at least 60 inches in width. Where wall-hung water closets are installed, the depth of the stall shall be not less than 56 inches. Where floor-mounted water closets are installed, the depth of the stall shall be not less than 59 inches. Entry to the compartment shall have a clear width of 32 inches. Toilet stall doors shall not swing into the clear floor space required for any fixture. Except for door swing, a clear unobstructed access not less than 48 inches in width shall be provided to toilet stalls.

EXCEPTION: [Moved to B]
[Partitions may
project not more than one inch, in the aggregate, into the required width of the stall]

51-20-3106 (k) 4. Ambulatory Accessible Toilet Stalls. ambulatory accessible toilet stalls shall be at least 36 inches in width, with an outward swinging, self-closing door. Grab bars shall be installed on each side of the toilet stall and shall comply with Sections 3106 (k) 4. C. and 3106 (k) 9.

51-20-3106 (k) 7. Lavatories and Sinks. A. Clear Floor Space. A clear floor space not less than 30 inches [in width] by 48 inches [in depth] shall be provided in front of lavatories and sinks [to allow a forward approach. The clear floor space may include knee and toe clearances not to exceed 19 inches extending under the lavatory or sink].

Comment: Issue 60. In order for grab bars to meet the loading requirement, rotation in the fittings is not feasible because it is physically impossible for grab bars to rotate and still meet the structural standards in Sec. 3106(k)11.

[Amendment: E.]

[Amendment: E.]

[E.]

95 ADA/Washington State July 12, 1994

01-03886

4.27.4 Operation. Controls and operating mechanisms shall be operable with one hand and shall not require tight grasping, pinching, or twisting of the wrist. The force required to activate controls shall be no greater than 5 lbf (22.2 N).

4.28.2* Audible Alarms. If provided, audible emergency alarms shall produce a sound that exceeds the prevailing equivalent sound level in the room or space by at least 15 dbA or exceeds any maximum sound level with a duration of 60 seconds by 5 dbA, whichever is louder. Sound levels for alarm signals shall not exceed 120 dbA.

51-20-3106 (c) 1. Operation. Handles, pulls, latches, locks and other operating devices on doors, windows, cabinets, plumbing fixtures and storage facilities, shall have a lever or other shape which will permit operation by wrist or arm pressure and does not require tight grasping, pinching or twisting to operate.
[The force to activate controls on lavatories and water fountains and flush valves on water closets and urinals shall not be greater than 5 pounds.]

51-20-3106 (o) Alarms. 1. Audible Alarms. Audible alarms shall produce a sound in accordance with
[the Fire Code].

Appendix. Chapter 31 Division IV. 51-20-92118 (b) Audible Alarms. Audible alarms shall exceed the prevailing equivalent sound level in the room or space by at least 15 decibels, or shall exceed any maximum sound level with a duration of 30 seconds by 5 decibels, whichever is louder. Sound levels for alarm signals shall not exceed 120 decibels.

[Uniform Fire Code, Article 14, S 14.103(b). System Design. Fire alarm systems, automatic fire detectors, emergency voice alarm communication systems and notification devices shall be designed, installed and maintained in accordance with U.F.C. Standards Nos. 14-1 and 14-2 and other nationally recognized standards.
U.F.C. Appendix S A-2-8-4. To ensure that audible evacuation signals are clearly heard, it is recommended that their sound level be at least 15 dBA above the equivalent sound level or 5 dBA above the maximum sound level having a duration of at least 60 seconds (whichever is greater) measured 5 ft (1.5 m) above the floor in the occupiable area.]

[Amendment: E:]

96 ADA/Washington State July 12, 1994

01-03887

Comment: Issue 61. The provision has been amended to read: "Audible alarms shall produce a sound in accordance with the Fire Code."
The Uniform Fire Code and the Uniform Fire Code Standards are part of the adoption of the Washington State Building Code. They are not appendix provisions which local jurisdictions have an option to enforce. These regulations are enforced on an equal basis with all other construction codes in the state. The audible standards in the Fire Code are equivalent to the ADA standards. Attached is a copy of the adopting action which was taken concurrently with the original adoption of WAC 51-20. The Fire Code was a referenced document and part of the overall hearing process for these regulations.
It should be noted that the Fire Code gives the Fire official authority to regularly inspect buildings and if a system is not meeting a performance standard, the official can require the system to be changed. In this case if the building is occupied by a use which is noisier than anticipated, or ambient sound levels change over time, the fire official can have the sound level of the audible alarms raised to be above the ambient levels.

[The sound level provisions are only in an Appendix in the Fire Code. They are merely a "recommendation" and, therefore, unenforceable. However, these are "non-code" items and such omissions are not covered by the certification determination. 28 C.F.R. S 36.607(a)(1).]

4.28.3* Visual Alarms. Visual alarm signal appliances shall be integrated into the building or facility alarm system. If single station audible alarms are provided then single station visual alarm signals shall be provided. Visual alarm signals shall have the following minimum photometric and location features:

(1) The lamp shall be a xenon strobe type or equivalent.

(2) The color shall be clear or nominal white (i.e., unfiltered or clear filtered white light).

(3) The maximum pulse duration shall be two-tenths of one second (0.2 sec) with a maximum duty cycle of 40 percent. The pulse duration is defined as the time interval between initial and final points of 10 percent of maximum signal.

(4) The intensity shall be a minimum of 75 candela.

(5) The flash rate shall be a minimum of 1 Hz and a maximum of 3 Hz.

(6) The appliance shall be placed 80 in (2030 mm) above the highest floor level within the space or 6 in (152 mm) below the ceiling, whichever is lower.

(7) In general, no place in any room or space required to have a visual signal appliance shall be more than 50 ft (15 m) from the signal (in the horizontal plane). In large rooms and spaces exceeding 100 ft (30 m) across, without obstructions 6 ft (2 m) above the finish floor, such as auditoriums, devices may be placed

around the perimeter, spaced a maximum 100 ft (30 m) apart, in lieu of suspending appliances from the ceiling.

(8) No place in common corridors or hallways in which visual alarm signalling appliances are required shall be more than 50 ft (15 m) from the signal.

51-20-3106(o) 2. Visible Alarms. Visible alarms shall be located not less than 80 inches above floor level, or 6 inches below the ceiling, whichever is lower, and at an interval of not less than 50 feet horizontal, in rooms, corridors and hallways. In rooms or spaces exceeding 100 feet in horizontal dimension, with no obstructions exceeding 6 feet in height above the finished floor, visible alarms may be placed around the perimeter at intervals not to exceed 100 feet horizontally.

01-03889

4.28.4* Auxiliary-Alarms. Units and sleeping accommodations shall have a visual alarm connected to the building emergency alarm system or shall have a standard 110-volt electrical receptacle into which such an alarm can be connected and a means by which a signal from the building emergency alarm system can trigger such an auxiliary alarm. When visual alarms are in place the signal shall be visible in all areas of the unit or room. Instructions for use of the auxiliary alarm or receptacle shall be provided.

[Visible alarm signals shall comply with the following criteria:
[A]. The lamp shall be a xenon strobe type [or equivalent].
[B]. The color shall be clear [or] unfiltered white light.
[C]. The maximum pulse duration shall be two-tenths of one second (0.2 sec) with a maximum duty cycle of 40 percent. The pulse duration is defined as the time interval between initial and final point of 10 percent of maximum signal.]
[D]. The intensity shall be a minimum of 75 candela
4[E]. The flash rate shall be a minimum of 1 Hz and a maximum of 3 Hz.

Comment: Issue 62. The performance standards for visible alarms have been moved from the appendix to the main body of the code at Section 3106(o) as part of the amendments of November 1992. See page 6041 of the Published Code.

51-20-3105 (d) 9. Alarms. [Where provided] Alarm systems shall include both audible and visible alarms.
[Visible] alarm devices shall be located in all [assembly areas;] common-use areas
including toilet rooms and bathing facilities[;] hallways, and lobbies [; and hotel guest rooms as required by Section 3103(a)8C.
EXCEPTIONS: 1. Alarm systems in Group I, Division 1.1 and 1.2 Occupancies may be modified to suit standard health care design practice 2. Visible alarms are not required in Group R, Division 1 apartment buildings].

[Amendment: E.]

[Amendment: E.]

99 ADA/Washington State July 12, 1994

01-03890

4.29.3 Detectable Warnings on Doors To Hazardous Areas. (Reserved).

4.29.5 Detectable Warnings at Hazardous Vehicular Areas. If a walk crosses or adjoins vehicular way, and the walking surfaces are not separated by curbs, railings, or other elements between the pedestrian areas and vehicular areas, the boundary between the areas shall be defined by a continuous detectable warning which is 36 in (915 mm) wide, complying with 4.29.2.

4.29.6 Detectable Warnings at Reflecting Pools. The edges of reflecting pools shall be protected by railings, walls, curbs, or detectable warnings complying with 4.29.2.

51-20-3106 (d) [8]. Vehicular Areas. Where an accessible route of travel crosses or adjoins a vehicular way, and where

there are no curbs, railings or other elements [which separate the pedestrian and vehicular areas, and which are] detectable by a person who has severe vision impairment
the boundary between the
areas shall be defined by a continuous detectable warning not less than 36 inches wide, complying with Section 3106 (
[o]).

Comment: Issue 63. The reference has been corrected to 3106(q) in the November 1992 amendments.

[Amendment: E.]

[Amendment: E.]

[Amendment: E. because ADA requirement has been suspended until July 26, 1996.]

100 ADA/Washington State July 12, 1994

01-03891

4.30.4* Raised and Brailled Characters and Pictorial Symbol Signs (Pictograms). Letters and numerals shall be raised 1/32 in, upper case, sans serif or simple serif type and shall be accompanied with Grade 2 Braille. Raised characters shall be at least 5/8 in (16 mm) high, but no higher than 2 in (50 mm). Pictograms shall be accompanied by the equivalent verbal description placed directly below the pictogram. The border dimension of the pictogram shall be 6 in (152 mm) minimum in height.

51-20-3106 (p) 5. Raised and Brailled Characters and Pictorial Symbol Signs (Pictograms).

[Characters and symbols on tactile signs shall be raised at least 1/32 inch. Raised characters and symbols shall be upper case characters. Raised characters and symbols shall be between 5/8 inch and 2 inches in height. Raised characters shall be accompanied by Braille in accordance with this section.
B. Braille. Braille shall be separated from the corresponding raised characters or symbols. Braille shall be Grade 2.
C. Pictograms. Where provided, pictograms shall be accompanied by the equivalent verbal description placed directly below the pictogram. The border dimension of the pictogram shall be not less than 6 inches in height.]

[Amendment: N.E. No longer requires simple typeface.]

01-03892

4.30.7* Symbols of Accessibility.
(1) Facilities and elements required to be identified as accessible by 4.1 shall use the international symbol of accessibility. The symbol shall be displayed as shown in Fig. 43(a) and (b).
Fig. 43 International Symbols.
Fig. 43(a) Proportions, International Symbol of Accessibility.
The diagram illustrates the International Symbol of Accessibility on a grid background.

Fig. 43(b) Display Conditions, International Symbol of Accessibility. The symbol contrast shall be light on dark, or dark on light.

(2) Volume Control Telephones. Telephones required to have a volume control by 4.1.3(17)(b) shall be identified by a sign containing a depiction of a telephone handset with radiating sound waves.

(3) Text Telephones. Text telephones required by 4.1.3(17)(c). shall be identified by the international TDD symbol (Fig 43(c)). In addition, if a facility has a public text telephone, directional signage indicating the location of the nearest text telephone shall be placed adjacent to all banks of telephones which do not contain a text telephone. Such directional signage shall include the international TDD symbol. If a facility has no banks of telephones, the directional signage shall be provided at the entrance (e.g., in a building directory).

(4) Assistive Listening Systems. In assembly areas where permanently installed assistive listening systems are required by 4.1.3(19)(b) the availability of such systems shall be identified with signage that includes the international symbol of access for hearing loss (Fig 43(d)).

51-20-3103 (b) 4. Signs. A. International Symbol of Access.

1. International Symbol of Access. A. General. The International Symbol of Access shall be as shown below. (Note: picture of International Access Symbol.)[This is now 3106(p) 1 A]

51-20-3106 (p) 1. B. Text Telephones. Text Telephones required by Section 3105 (d) 2. shall be identified by the International Text Telephone symbol as shown below: (Note International TDD Symbol pictured.)

51-20-3106 (p) 1. C. Assistive Listening Systems. Permanently installed assistive listening systems that are required by Section 3103 (a) 2. B. shall be identified by the International Symbol of Access for Hearing Loss as shown below: (Note: International Symbol of Access for Hearing Loss pictured.)

51-20-3106 (p) 1. D. Volume Control Telephones. Telephones required by Section 3105 (d) 2. to have volume controls shall be identified by a handset with radiating sound waves.

Comment: Issue 64. To clarify the application of the WSR, the Council has issued Interpretation No. 93-37.

102 ADA/Washington State July 12, 1994

01-03893

4.31.3 Mounting Height. The highest operable part of the telephone shall be within the reach ranges specified in 4.2.5 or 4.2.6.

4.31.7 Telephone Books. Telephone books, if provided, shall be located in a position that complies with the reach ranges specified in 4.2.5 and 4.2.6.

4.32.3 Knee Clearances. If seating for people in wheelchairs is provided at tables or counters, knee spaces at least 27 in (685 mm) high 30 in (760 mm) wide, and 19 in (485 mm) deep shall be provided (see Fig. 45).

Interpretation No. 93-37.
Question: If public telephones are provided in more than one location in a building, or at a building and its site, and Sec. 3105(d)2 requires the provision of a text telephone (TDD), is any signage required to indicate the location of the text telephone?
Answer: Yes. The intent of the code, as provided in Sec. 3101(a), is to provide standards equivalent to the ADA Accessibility Guideline. Directional signage indicating the location of the nearest text telephone shall be placed next to all banks of public telephone which do not include a text telephone. If there are no banks of telephones (i.e., only single telephone), this directional signage must be posted at the entrance.

51-20-3106 (n) 2. Height. The highest operable part of a telephone shall be within the reach ranges specified in Sections 3106 (b) 2.D. or 3106 (b) 2.E.

Comment: Issue 65. The references in Sec. 3106(n)2 have been changed to Sec. 3106(b)4 in the November 1992 amendments. See page 604k of the Published Code.

Comment: Issue 66. Since telephone books are neither building construction or equipment, their location is not included in the Washington State Building Code.

51-20-3106 (s) 2. Knee Clearances. Knee space at tables, counters, and sinks shall be provided in accordance with Section 3106 (b) 2. B. No projection which might obstruct the arm of a wheelchair may intrude into this clearance height, within 24 inches horizontally from the table edge.

Comment: Issue 67. The reference has been changed to Sec. 3106(b)4C in the November 1992 amendments. See Section 3106(s)2 on page 604o of the Published Code.

[E. as interpreted.]

[Amendment: E.]

[Such omissions of non-code items are not covered by the certification determination.]

[N.E. WAC fails to require 19 inch minimum depth. (Also, 3106(b)4C addresses when knee clearance can be treated as part of clear space. It doesn't address knee clearance requirements generally.)]

103 ADA/Washington State July 12, 1994

01-03894

4.33.3 Placement of Wheelchair Locations. Wheelchair areas shall be an integral part of any fixed seating plan and shall be provided so as to provide people with physical disabilities a choice of admission prices and lines of sight comparable to those for members of the general public. They shall adjoin an accessible route that also serves as a means of egress in case of emergency. At least one companion fixed seat shall be provided next to each wheelchair seating area. When the seating capacity exceeds 300, wheelchair spaces shall be provided in more than one location. Readily removable seats may be installed in wheelchair spaces when the spaces are not required to accommodate wheelchair users.
EXCEPTION: Accessible viewing positions may be clustered for bleachers, balconies, and other areas having sight lines that require slopes of greater than 5 percent. Equivalent accessible viewing positions may be located on levels having accessible egress.

4.33.5 Access to Performing Areas. An accessible route shall connect wheelchair seating locations with performing areas, including stages, arena floors, dressing rooms, locker rooms, and other spaces used by performers.

4.34 Automated Teller Machines.

4.34.1 General. Each automated teller machine required to be accessible by 4.1.3 shall be on an accessible route and shall comply with 4.34.

4.34.2 Clear Floor Space. The automated teller machine shall be located so that clear floor space complying with 4.2.4 is provided to allow a person using a wheelchair to make a forward approach, a parallel approach or both, to the machine.

51-20-3106 (u) 1. A. Location. Wheelchair spaces shall be an integral part of any fixed seating plan and shall be dispersed throughout the seating area. Spaces shall adjoin an accessible route of travel that also serves as a means of egress and shall be located to provide lines of sight comparable to those for all viewing areas.

EXCEPTION: Accessible viewing positions may be clustered for bleachers, balconies, and other areas having sight lines that require slopes of greater than 5 percent. Equivalent accessible viewing positions may be located on levels having accessible egress.

Comment: Issue 68. The intent of the WSR provision is for wheelchair spaces to be "an integral part of any fixed seating plan" and has to be adjacent to companion seating in order to be considered integral.

Appendix 51-20-93120. See below.

Comment: Issue 69. See comment on Issue No. 27, above.

Appendix 51-20-93120(c) Clearance and Reach Range. Free standing or built-in units not having a clear floor space under them shall comply with Sections 3106(c)2 and 3, and provide for parallel approach and both a forward and side reach to the unit allowing a person with a wheelchair to access the controls.

PNE No specific provision for companion seating adjacent to accessible wheelchair locations.

[N.E. It is not clear that "integral" means wheelchair seats must have adjacent companion seats.]

[Still no scoping. However, as discussed above, the fact that an item is not addressed in a submitted code means it is not considered for purposes of certification.]

[E.]

01-03896

4.34.3 Reach Ranges.

(1) Forward Approach Only. If only a forward approach is possible, operable parts of all controls shall be placed within the forward reach range specified in 4.2.5.

(2) Parallel Approach Only. If only a parallel approach is possible, operable parts of controls shall be placed as follows:

(a) Reach Depth Not More Than 10 in (255 mm). Where the reach depth to the operable parts of all controls as measured from the vertical plane perpendicular to the edge of the unobstructed clear floor space at the farthest protrusion of the automated teller machine or surround is not more than 10 in (255 mm), the maximum height above the finished floor or grade shall be 54 in (1370 mm).

(b) Reach Depth More Than 10 in (255 mm). Where the reach depth to the operable parts of any control as measured from thevertical plane perpendicular to the edge of the unobstructed clear floor space at the farthest protrusion of the automated teller machine or surround is more than 10 in (255 mm), the maximum height above the finished floor or grade shall be as follows:

Reach Depth		Maximum Height	
In	Mm	In	Mm
10	255	54	1370
11	280	53 1/2	1360
12	305	53	1345
13	330	52 1/2	1335
14	355	51 1/2	1310
15	380	51	1295
16	405	50 1/2	1285
17	430	50	1270
18	455	49 1/2	1255
19	485	49	1245
20	510	48 1/2	1230

21	535	47 1/2	1205
22	560	47	1195
23	585	46 1/2	1180
24	610	46	1170

Appendix 51-20-93120(c) Clearance and Reach Range. Free standing or built-in units not having a clear floor space under them shall comply with Sections 3106(c)2 and 3, and provide for parallel approach and both a forward and side reach to the unit allowing a person with a wheelchair to access the controls.

[WAC should adopt the new language.]

106 ADA/Washington State July 12, 1994
01-03897
4.34.3 (3) Forward and Parallel Approach. If both a forward and parallel approach are possible, operable parts of controls shall be placed within at least one of the reach ranges in paragraphs (1) or (2) of this section.

(4) Bins. Where bins are provided for envelopes, waste paper, or other purposes, at least one of each type provided shall comply with the applicable reach ranges in paragraph (1), (2), or (3) of this section.

EXCEPTION: Where a function can be performed in a substantially equivalent manner by using an alternate control, only one of the controls needed to perform that function is required to comply with this section. If the controls are identified by tactile markings, such markings shall be provided on both controls.

4.34.4 Controls. Controls for user activation shall comply with 4.27.4.
4.34.4 5 Equipment for Persons with Vision Impairments. Instructions and all information for use shall be made accessible to and independently usable by persons with vision impairments.

5.3 Access Aisles. All accessible fixed tables shall be accessible by means of an access aisle at least 36 in (915 mm) clear between parallel edges of tables or between a wall and the table edges.

Appendix 51-20-93120(b) Controls. Controls for user activation shall comply with Section 3106(c).

Appendix 51-20-93120(d) Equipment for Persons with Vision Impairments. Instructions and all information for use shall be

made accessible to and independently usable by persons with vision impairments.
51-20-3106(v) 1. Restaurants and Cafeterias. 1. Aisles. Aisles to fixed tables required to be accessible shall comply with 3106 (s).

51-20-3106 (t) Aisles. All aisles [required to be accessible]. including check out aisles, food service lines and aisles between fixed tables, shall be not less than 36 inches in width.
Comment: Issue 70. The reference has been changed to Sec. 3106(t) in the November 1992 amendments. See page 604o of the Published Code (Sec. 3106(v)).

[See above.]
[See above.]
[Amendment: E.]
107 ADA/Washington State July 12, 1994

01-03898
5.5 Food Service Lines. Food service lines shall have a minimum clear width of 36 in (915 mm), with a preferred clear width of 42 in (1065 mm) to allow passage around a person using a wheelchair. Tray slides shall be mounted no higher than 34 in (865 mm) above the floor (see Fig. 53). If self-service shelves are provided, at least 50 percent of each type must be within reach ranges specified in 4.2.5 and 4.2.6.

51-20-3106 (v) 2. Food Service Lines A. Clear Floor Space. Food service lines shall comply with Section 3106 (t) (3106 (t) requires 36 inch aisle width).

51-20-3106 (v) 2. B. Height. Tray slides shall be mounted not more than 34 inches in height above the floor.

51-20-3105 (d) 6. Storage.
[Facilities]. In other than Group R, Division 1 apartment buildings, where fixed or built-in storage facilities such as cabinets, shelves, closets and drawers are provided in accessible spaces, at least one of each type provided shall contain storage space complying with Section 3106 (r).

Comment: Issue 71. To clarify these provisions the Council has issued Interpretations No. 93-38 and 93-42.

Interpretation No. 93-38
Question: How many shelves must be in reach ranges where the code states "Not all self-service shelves and display units

need be located within reach ranges required by Sec. 3106(b)4?" In Sec. 3106(v)2D, is the reference to Sec. 3106(s) correct in establishing the location of shelves and dispensing devices for tableware, dishware, food, beverages, and condiments in restaurants and cafeterias?
Answer: The intent of the code, as provided in Sec. 3101(a), is to provide standards equivalent with the ADA Accessibility Guidelines. Where self-service shelves are provided in restaurants and cafeterias, at least 50 percent of each type shall be within the reach ranges of Sec. 3106(b). The proper reference in Section 3106(v)2D is to Sec. 3106(r).

NE ADAAG requires 50% of self service shelves in food service lines to be accessible. WSR has no specific provision, only a general provision (see 3105 (d) 6).

[N.E. The code says 1 has to be accessible. When an interpretation contradicts the code, the code will be given priority.]
[Amendment: The removal of the requirement that self-service shelves be on an accessible route seems to be a problem. The interpretation helps, but is not sufficient.]
108 ADA/Washington State July 12, 1994
01-03899
5.6 Tableware and Condiment Areas. Self-service shelves and dispensing devices for tableware, dishware, condiments, food and beverages shall be installed to comply with 4.2 (see Fig. 54).

Fig. 54 Tableware Areas.
The maximum height is 54 inches (1370 mm).
Interpretation No. 93-42.
Question: Self-service shelving and display units in retail occupancies are required to be located on an accessible route. See also wording of 3106(r)2.
1. Does this mean each and every clothing rack at Nordstroms or Target must be on an accessible route or just the area where racks may be installed?
2. The Section is unclear as to how many of the shelves in these self-service areas, must be within the reach ranges.
Answer: 1. Access is required between permanent fixtures or furniture which are shown on the plans and to the area where portable racks may be located.
2. Except in restaurant and cafeterias, the number of shelves which are in reach ranges is not limited. Some must be, but there is no set minimum percentage. For restaurants and cafeterias, see interpretation No. 93-38.

51-20-3106 (v) 2. D. Tableware and Condiment Areas. Self-

service shelves and dispensing devices for tableware, dishware, condiments, food and beverages shall be installed to comply with Section 3106 (s).

Comment: Issue 72. The intent was to refer to Section 3106(r). To correct this reference the Council has issued Interpretation No. 93-38.
Interpretation No. 93-38
Question: How many shelves must be in reach ranges where the code states "Not all self-service shelves and display units need be located within reach ranges required by Sec. 3106(b)4?" In Sec. 3106(v)2D, is the reference to Sec. 3106(s) correct in establishing the location of shelves and dispensing devices for tableware, dishware, food, beverages, and condiments in restaurants and cafeterias?
Answer: The intent of the code, as provided in Sec. 3101(a), is to provide standards equivalent with the ADA Accessibility Guidelines. Where self-service shelves are provided in restaurants and cafeterias, at least 50 percent of each type shall be within the reach ranges of Sec. 3106(b). The proper reference in Section 3106(v)2D is to Sec. 3106(r).

PNE Clarification needed. 3106 (s) is not correct section. [N.E. It is not sufficient to correct an error in the code by issuing an interpretation.]
109 ADA/Washington State July 12, 1994

01-03900
5.8 Vending Machines and Other Equipment. Spaces for vending machines and other equipment shall comply with 4.2 and shall be located on an accessible route.

6. MEDICAL CARE FACILITIES.

6.1 General. Medical care facilities included in this section are those in which people receive physical or medical treatment or care and where persons may need assistance in responding to an emergency and where the period of stay may exceed twenty-four hours. In addition to the requirements of 4.1 through 4.35, medical care facilities and buildings shall comply with 6.

(1) Hospitals - general purpose hospitals, psychiatric facilities, detoxification facilities - At least 10 percent of patient bedrooms and toilets, and all public use and common use areas are required to be designed and constructed to be accessible.

(2) Hospitals and rehabilitation facilities that specialize in treating conditions that affect mobility, or units within either that

specialize in treating conditions that affect mobility - All patient bedrooms and toilets, and all public use and common use areas are required to be designed and constructed to be accessible.

(3) Long term care facilities, nursing homes - At least 50 percent of patient bedrooms and toilets, and all public use and common use areas are required to be designed and constructed to be accessible.

Comment: Issue 73. ADAAG does not specifically regulate the vending machines, only the spaces in which they are located. The machines themselves and their location and installation are viewed as beyond the scope of building code regulation. Since the Washington code requires universal accessibility in all spaces regardless of function, and does not allow spaces to be inaccessible, the locations available for vending machine installation are accessible on accessible routes.

51-20-3103 (a) 6. Group I Occupancies. All Group I Occupancies shall be accessible in all public use, common use and employee use areas, and shall have accessible patient rooms, cells and treatment or examination rooms as follows:
51-20-3103(a) 6. A. In Group I Division 1.1 hospitals which specialize in treating conditions that affect mobility, all patient rooms in each nursing unit, including associated toilet rooms and bathrooms.

51-20-3103 (a) 6. B. In Group I, Division 1.1 hospitals which do not specialize in treating conditions that affect mobility, at least 1 in every 10 patient rooms in each nursing unit, including associated toilet rooms and bathrooms.
51-20-3103 (a) 6. C. In Group I, Division 1.1 and Division 2 nursing homes and long-term care facilities, at least 1 in every 2 patient rooms, including associated toilet rooms and bathrooms.
51-20-3103 (a) 6. D. In Group I, Division 3, mental health Occupancies, at least 1 in every 10 patient rooms, including associated toilet rooms and bathrooms.

Comment: Issue 74. Section 3103(a)6 has been amended to add a new Section F which reads: "In Group I Occupancies, all treatment and examination rooms shall be accessible." See page 600 of the Published Code.

[Amendment: E.]

7.4 Security Bollards. Any device used to prevent the removal of shopping carts from store premises shall not prevent access or egress to people in wheelchairs. An alternate entry that is equally convenient to that provided for the ambulatory population is acceptable.

8.5 Stacks. Minimum clear aisle width between stacks shall comply with 4.3, with a minimum clear aisle width of 42 in (1065 mm) preferred where possible. Shelf height in stack areas is unrestricted (see Fig. 56).

Comment: Issue 75. The Washington State Regulations did

not include specific regulation of security bollards because it was believed that special attention was not necessary. Such bollards are simply one item which could interfere with an accessible route or accessible route of egress and would be prohibited.

See 51-20-3106 (x) 3. Above.

Comment: Issue 76. Section 3106(y)3 was amended in November 1992 to delete the word "reference" so that the accessible aisle requirements apply to all stacks. See page 604q of the Published Code.

[E.]

[E.]

111 ADA/Washington State July 12, 1994

01-03902

9.1 Hotels, Motels, Inns, Boarding Houses, Dormitories, Resorts and Other Similar Places of Transient Lodging.
9.1.1 General. All public use and common use areas are required to be designed and constructed to comply with section 4 (Accessible Elements and Spaces: Scope and Technical Requirements).
EXCEPTION: Sections 9.1 through 9.4 do not apply to an establishment located within a building that contains not more than five rooms for rent or hire and that is actually occupied by the

proprietor of such establishment as the residence of such proprietor.

51-20-3103(a) 8. Group R. Occupancies. A. General. All Group R Occupancies shall be accessible as provided in this chapter. Public-and common use areas and facilities such as recreational facilities, laundry facilities, garbage and recycling collection areas, mailbox locations, lobbies, foyers and management offices, shall be accessible.
[EXCEPTION: Common- or public-use facilities accessory to buildings not required to contain either Type A or Type B dwelling units in accordance with Section 3103(a)8B.]
B. Number of Dwelling Units. In all Group R, Division 1 apartment buildings the total number of Type A dwelling units shall be as required by Table No. 31-B. All other dwelling units shall be designed and constructed to the requirements for Type B units as defined in this chapter.
EXCEPTIONS: 1. Group R Occupancies containing [no more than] three dwelling units....
51-20-3103 (a)8.C. Hotels and Lodging Houses. In all hotels and lodging houses, accessible guest rooms, including associated bathing, shower and toilet facilities, shall be provided in accordance with Table No. 31-C....

....In addition public-use and common-use areas of all hotels and lodging houses shall be accessible.
EXCEPTION: Group R, Division 3 lodging houses that are occupied by the owner or proprietor of the lodging house.

51-20-3103 (a) 8. E. Congregate Residences. In congregate residences with multi-bed rooms or spaces, a percentage equal to the minimum number of accessible rooms required by Table No. 31-C shall be accessible in accordance with Section 3106 (z).
EXCEPTION: Congregate residences with 10 or fewer occupants need not be accessible.

Comment: Issue 77. Congregate residences as intended by the UBC definition have non transient residents. The exemption in WSR has no effect on equivalency with the ADA. See also Council Interpretation No. 93-39.

01-03903
Interpretation 93-39:
Question: For purposes of accessibility requirements of Chapter 31, how should buildings such as homeless shelters, halfway houses, transient group homes, and similar social

service establishments where people may sleep or temporarily reside be classified? Similarly, how should apartments or condominium complexes be classified where some or all of the units are rented to short term quests.
Answer: The intent of the code, as provided in Sec. 3101(a), is to provide standards equivalent with the ADA Accessibility Guidelines.

For the purpose of determining accessibility requirements per Chapter 31, uses such as homeless shelters, halfway houses, transient group homes, and similar facilities should be reviewed on a case be case basis. While these uses are "residential" in nature, if the residents are considered transient, classification as R-1 hotel, or R-3 lodging house is more appropriate. Some may need to be classified either in an I (Institutional) or B (Business) category. If services are provided at the site such as job or health counseling, classification should be in a category which requires accessibility. These uses should not be categorized as congregate residence when the residents are essentially transient.

Apartments or condominiums which are rented on a short term basis to transient guests should be categorized as either a Group R-1, hotel, or Group R-3 lodging house with appropriate accessibility provided.

9.1.2 Accessible Units, Sleeping Rooms, and Suites. Accessible sleeping rooms or suites that comply with the requirements of 9.2 (Requirements for Accessible Units, Sleeping Rooms, and Suites) shall be provided in conformance with the table below. In addition, in hotels, of 50 or more sleeping rooms or suites, additional accessible sleeping rooms or suites that include a roll-in shower shall also be provided in conformance with the table below. Such accommodations shall comply with the requirements of 9.2, 4.21, and Figure 57(a) or (b).

Fig. 57 Roll-in Shower with Folding Seat.

Diagram (a): Where a fixed seat is provided in a 30 inch minimum by 60 inch (716 mm by 1220 mm) minimum shower stall, the controls and spray unit on the back (long) wall shall be located a maximum of 27 inches (685 mm) from the side wall where the seat is attached. (4.21.2, 9.1.2)

Diagram (b): An alternate 36 inch minimum by 60 inch (915 mm by 1220 mm) minimum shower stall is illustrated. The width of the stall opening stall shall be a minimum of 36 inches (915 mm) clear located on a long wall at the opposite end of the shower from the controls. The shower seat shall be 24 inches (610 mm) minimum in length by 16 inches (330 mm) minimum in width and may be rectangular in shape. The seat shall be located next to the opening to the shower and adjacent to the end wall containing the shower head and controls. (4.21.2, 9.1.2, A4.23.3)

Number of Rooms	Accessible Rooms	Rooms with Roll-in Showers
1 to 25	1	
26 to 50	2	
51 to 75	3	1
76 to 100	4	1
101 to 150	5	2
151 to 200	6	2
201 to 300	7	3
301 to 400	8	4
401 to 500	9	4, plus one for each additional 100 over 400
501 to 1000	2% of total	
1001 and over	20 plus 1 for each 100 over 1000	

51-20-3103 (a) 8:C. Hotels and Lodging Houses. In all hotels and lodging houses, accessible guest rooms, including associated bathing, shower and toilet facilities, shall be

provided in accordance with Table No. 31-C...

...In addition public-use and common-use areas of all hotels and lodging houses shall be accessible.

EXCEPTION: Group R, Division 3 lodging houses that are occupied by the owner or proprietor of the lodging house.

Table No. 31-C-Number of
Accessible Rooms and Roll-in Showers

Total Number of Rooms1	Minimum Required Accessible Rooms1	Rooms With Roll-in Showers
1 to 25	1	
26 to 50	2	
51 to 75	3	1
76 to 100	4	1
101 to 150	5	2
151 to 200	6	2
201 to 300	7	3
301 to 400	8	4
401 to 500	9	4, plus 1 for every 100 rooms or fraction thereof, over 400.
501 to 1000	2% of total	
Over 1000	20 plus 1 for every 100 rooms or fraction thereof, over 1000	

1 For congregate residences the numbers in these columns shall apply to beds rather than rooms.

9.2 Requirements for Accessible Units, Sleeping Rooms and Suites.

9.2.1 General. Units, sleeping rooms, and suites required to be accessible by 9.1 shall comply with 9.2.

Comment: Issue 78. The Council has issued Interpretation No. 93-40 to clarify the requirements for the three accessible rooms standards.

Interpretation No. 93-40.
Question: The code seems to require three different types of accessible rooms: an accessible room with roll-in type showers: an accessible room with another type of bathing facility; and rooms with features to assist persons with hearing impairments. Must the three categories be satisfied independently, or can the various requirements be combined in the same room?

Answer: The intent of the code, as provided in Sec. 3101(a), is to provide standards equivalent with the ADA Accessibility Guidelines. Each requirement for the three categories of rooms must be complied with independently of the other requirements. For example, in a 100 guest room motel, four (4) rooms must be wheelchair accessible, one (1) more room must be wheelchair accessible and provide a roll-in shower, and four (4) more rooms must provide equipment for persons with hearing impairments. In addition, the five wheelchair accessible rooms must also provide the equipment for persons with hearing impairments.

51-20-3106 (z) [H]otels and Congregate Residences. See below.

Comment: Issue 79. The DOJ analysis contains a typographical error in translating the provisions of WSR Section 3106(z), the correct title is "Hotels and Congregate Residences." See the comment on to Issue No. 19, above.

[E.]

9.2.2(6) Where provided as part of an accessible unit, sleeping room, or suite, the following spaces shall be accessible and shall be on an accessible route:

(a) the living area.

(b) the dining area.

(c) at least one sleeping area.

(d) patios, terraces, or balconies.

EXCEPTION: The requirements of 4.13.8 and 4.3.8 do not apply where it is necessary to utilize a higher door threshold or a change in level to protect the integrity of the unit from wind/water damage. Where this exception results in patios, terraces or balconies that are not at an accessible level, equivalent facilitation shall be provided. (e.g., Equivalent facilitation at a hotel patio or balcony might consist of providing raised decking or a ramp to provide accessibility).

(e) at least one full bathroom (i.e., one with a water closet, a lavatory, and a bathtub or shower).

(f) if only half baths are provided, at least one half bath.

(g) carports, garages or parking spaces.

51-20-3103 (a) 8. C. Hotels and Lodging Houses. In all hotels and lodging houses, accessible guest rooms, including associated bathing, shower and toilet facilities, shall be provided in accordance with Table No. 31-C. Where provided in accessible guest rooms the following facilities shall be accessible: dining areas; kitchens; kitchenettes, wet bars; patios; balconies; terraces; or similar facilities.

EXCEPTION: Kitchens in Type B dwelling units need not comply with Section 3106 (1) 1.

51-20-3106 (z) 2. Accessible Route of Travel. An accessible route complying with Section 3103 (b) 2. shall connect all accessible spaces and elements including telephones, patios, terraces, balconies, carports, garages or parking spaces with all accessible sleeping rooms.

Comment: Issue 80. See the comment on Issue No. 19, above. Also, Section 3103(a)BA requires all public and common use areas of a Group R occupancy to be accessible. The definition of hotel contained in Section 409 of the UBC should also be noted.

PNE Although carports, parking garages, or parking spaces must be connected by an accessible route to the unit, it doesn't specifically state they must be accessible. Interpretation needed.

[E.]

116 ADA/Washington State July 12, 1994

01-03907
9.2.2(8) Sleeping room accommodations for persons with hearing impairments required by 9.1 and complying with 9.3 shall be provided in the accessible sleeping room or suite.

9.4 Other Sleeping Rooms and Suites. Doors and doorways designed to allow passage into and within all sleeping units or other covered units shall comply with 4.13.5.
Comment: Issue 81. Section 3107 states the parking requirement. If the parking is provided in garages or carports (a B-1 or B-3 or M-1 occupancy) then that occupancy must also be accessible per section 3103(a). Like ADAAG, the WSR do not require parking to be provided, but where provided, it must be accessible according to Section 3107. Sec. 3107(a)6 states that accessible parking must be the closest to the accessible entrance and where there are multiple accessible entrances, the accessible parking must be distributed at the various entrances. As a result, if a hotel design includes parking located at individual units, those units which are required to be accessible will have to have accessible entrances and the parking nearest those entrances will need to be the location of accessible parking.
Comment: Issue 82. See comment on Issue No. 78, above.
51-20-3106 (z) 3. Doors. Doors within all sleeping rooms, suites or other covered units shall comply with Section 3106 (j).
Comment: Issue 83. The intent of the WSR regulations is to apply to all the doors of the guest rooms - including entry to the room - not just those "within" the room. To clarify the application of the WSR the Council has issued Interpretation No. 93-41.
Interpretation No. 93-41.
Question: What doors are covered by this requirement

[Section 51-20-3106(z)3]?
Answer: The intent of the code, as provided in Sec. 3101(a), is to provide standards equivalent to the ADA Accessibility Guideline. All doors which enter a guest room from common corridors or spaces and doors within the guest room providing access to other rooms in the guest room unit, or to adjacent units, must meet the standards for accessible doors. This requirement applies to all of the guest rooms in a hotel, not just those which must meet other accessibility standards. [N.E. S3103(a)7 requires accessibility of M-1 occupancies only if they are "private garages and carports which contain accessible parking serving Type A dwelling units." Accessible hotel rooms are not Type A dwelling units. The ADA would require a carport that was designated for an accessible hotel room to be accessible. WAC would not.]
[E.]
[E.]

01-03908

9.5 Transient Lodging in Homeless Shelters, Halfway Houses, Transient Group Homes, and Other Social Service Establishments.

9.5.1 New Construction. In new construction all public use and common use areas are required to be designed and constructed to comply with section 4. At least one of each type of amenity (such as washers, dryers and similar equipment installed for the use of occupants) in each common area shall be accessible and shall be located on an accessible route to any accessible unit or sleeping accommodation.

EXCEPTION: Where elevators are not provided as allowed in 4.1.3(5), accessible amenities are not required on inaccessible floors as long as one of each type is provided in common areas on accessible floors.

51-20-3108 (a) 8. Group Occupancies. A. General. All Group R Occupancies shall be accessible as provided in this chapter. Public- and common-use areas and facilities such as recreational facilities, laundry facilities, garbage and recycling collection areas, mailbox locations, lobbies, foyers and management offices, shall be accessible.

51-20-3103 (a) 8. E. Congregate Residences. In congregate residences with multi-bed rooms or spaces, a percentage equal to the minimum number of accessible rooms required by Table No. 31-C shall be accessible in accordance with Section 3106 (z).

EXCEPTION: Congregate residences with 10 or fewer occupants need not be accessible.

9.5.2 Alterations.

(1) Social service establishments which are not homeless shelters:

(a) The provisions of 9.5.3 and 9.1.5 shall apply to sleeping rooms and beds.

(b) Alteration of other areas shall be consistent with the new construction provisions of 9.5.1.

(2) Homeless shelters. If the following elements are altered, the following requirements apply:

(a) at least one public entrance shall allow a person with mobility impairments to approach, enter and exit including a minimum clear door width of 32 in (815 mm).

(b) sleeping space for homeless persons as provided in the scoping provisions of 9.1.2 shall include doors to the sleeping area with a minimum clear width of 32 in (815 mm) and maneuvering space around the beds for persons with mobility impairments complying with 9.2.2(1).

(c) at least one toilet room for each gender or one unisex

toilet room shall have a minimum clear door width of 32 in (815 mm), minimum turning space complying with 4.2.3, one water closet complying with 4.16, one lavatory complying with 4.19 and the door shall have a privacy latch; and, if provided, at least one tub or shower shall comply with 4.20 or 4.21, respectively.

(d) at least one common area which a person with mobility impairments can approach, enter and exit including a minimum clear door width of 32 in (815 mm).

(e) at least one route connecting elements (a), (b), (c) and (d) which a person with mobility impairments can use including minimum clear width of 36 in (915 mm), passing space complying with 4.3.4, turning space complying with 4.2.3 and changes in levels complying with 4.3.8.

(f) homeless shelters can comply with the provisions of (a)-(e) by providing the above elements on one accessible floor. See comments above.

119 ADA/Washington State July 12, 1994
01-03910

Comment: Issue 84. See comment on Issue No. 19, above.

Interpretation 93-39:
Question: For purposes of accessibility requirements of Chapter 31, how should buildings such as homeless shelters, halfway houses, transient group homes, and similar social service establishments where people may sleep or temporarily reside be classified? Similarly, how should apartments or condominium complexes be classified where some or all of the units are rented to short term guests.
Answer: The intent of the code, as provided in Sec. 3101(a), is to provide standards equivalent with the ADA Accessibility Guidelines.

For the purpose of determining accessibility requirements per Chapter 31, uses such as homeless shelters, halfway houses, transient group homes, and similar facilities should be reviewed on a case be case basis. While these uses are "residential" in nature, if the residents are considered transient, classification as R-1 hotel, or R-3 lodging house is

more appropriate. Some may need to be classified either in an I (Institutional) or B (Business) category. If services are provided at the site such as job or health counseling, classification should be in a category which requires accessibility. These uses should not be categorized as congregate residence when the residents are essentially transient.

Apartments or condominiums which are rented on a short term basis to transient guests should be categorized as either a Group R-1, hotel, or Group R-3 lodging house with appropriate accessibility provided.

[E.]

9.5.3. Accessible Sleeping Accommodations in New Construction. Accessible sleeping rooms shall be provided in conformance with the table in 9.1.2 and shall comply with 9.2 Accessible Units, Sleeping Rooms and Suites (where the items are provided). Additional sleeping rooms that comply with 9.3 Sleeping Accommodations for Persons with Hearing Impairments shall be provided in conformance with the table provided in 9.1.3.

In facilities with multi-bed rooms or spaces, a percentage of the beds equal to the table provided in 9.1.2 shall comply with 9.2.2(1).

10. TRANSPORTATION FACILITIES.

10.1 General. Every station, bus stop, bus stop pad, terminal, building or other transportation facility, shall comply with the

applicable provisions of 4.1 through 4.35, sections 5 through 9, and the applicable provisions of this section. The exceptions for elevators in 4.1.3(5) exception 1 and 4.1.6(1)(k) do not apply to a terminal, depot, or other station used for specified public transportation, or an airport passenger terminal, or facilities subject to Title II.

51-20-3103 (a) 8. C. Hotels and Lodging Houses. In all hotels and lodging houses, accessible guest rooms, including associated bathing, shower and toilet facilities, shall be provided in accordance with Table No. 31-C. In addition, sleeping rooms or suites for persons with hearing impairments shall be provided in accordance with Table No. 31-D. In addition, public-use and common-use areas of all hotels and lodging houses shall be accessible.

51-20-3103 (a) 8. E. Congregate Residences. In congregate residences with multi-bed rooms or spaces, a percentage equal to the minimum number of accessible rooms required by Table No. 31-C shall be accessible in accordance with Section 3106 (z).

EXCEPTION: Congregate residences with 10 or fewer occupants need not be accessible.

[E. See Interpretation 93-39.]

[Washington does not address transportation facilities separately.]

10.2 Bus Stops and Terminals.

10.2.1 New Construction.

(1) Where new bus stop pads are constructed at bus stops, bays or other areas where a lift or ramp is to be deployed, they shall have a firm, stable surface; a minimum clear length of 96 inches (measured from the curb or vehicle roadway edge) and a minimum clear width of 60 inches (measured parallel to the vehicle roadway) to the maximum extent allowed by legal or site constraints; and shall be connected to streets, sidewalks or pedestrian paths by an accessible route complying with 4.3 and 4.4. The slope of the pad

parallel to the roadway shall, to the extent practicable, be the same as the roadway. For water drainage, a maximum slope of 1:50 (2%) perpendicular to the roadway is allowed.

(2) Where provided, new or replaced bus shelters shall be installed or positioned so as to permit a wheelchair or mobility aid user to enter from the public way and to reach a location, having a minimum clear floor area of 30 inches by 48 inches, entirely within the perimeter of the shelter. Such shelters shall be connected by an accessible route to the boarding area provided under paragraph (1) of this section.

(3) Where provided, all new bus route identification signs shall comply with 4.30.5. In addition, to the maximum extent practicable, all new bus route identification signs shall comply with 4.30.2 and 4.30.3. Signs that are sized to the maximum dimensions permitted under legitimate local, state or federal regulations or ordinances shall be considered in compliance with 4.30.2 and 4.30.3 for purposes of this section.

EXCEPTION: Bus schedules, timetables, or maps that are posted at the bus stop or bus bay are not required to comply with this provision.

(Not addressed.)

10.2.2 Bus Stop Siting and Alterations.

(1) Bus stop sites shall be chosen such that, to the maximum extent practicable, the areas where lifts or ramps are to be deployed comply with section 10.2.1(1) and (2).

(2) When new bus route identification signs are installed or old signs are replaced, they shall comply with the requirements of

10.2.1(3).

(Not addressed.)

10.3 Fixed Facilities and Stations.

10.3.1 New Construction. New stations in rapid rail, light rail, commuter rail, intercity bus, intercity rail, high speed rail, and other

fixed guideway systems (e.g., automated guideway transit, monorails, etc.) shall comply with the following provisions, as applicable.

(1) Elements such as ramps, elevators or other circulation devices, fare vending or other ticketing areas, and fare collection areas shall be placed to minimize the distance which wheelchair users and other persons who cannot negotiate steps may have to travel compared to the general public. The circulation path, including an accessible entrance and an accessible route, for persons with the circulation path for the general public. Where the circulation path is different, signage complying with 4.30.1, 4.30.2, 4.30.3, 4.30.5, and 4.30.7(1) shall be provided to indicate direction to and identify the accessible entrance and accessible route.

(2) In lieu of compliance with 4.1.3(8), at least one entrance to each station shall comply with 4.14, Entrances. If different entrances to a station serve different transportation fixed routes or groups of fixed routes, at least one entrance serving each group or route shall comply with 4.14, Entrances. All accessible entrance shall, to the maximum extent practicable, coincide with those used by the majority of the general public.

(3) Direct connections to commercial, retail, or residential facilities shall have an accessible route complying with 4.3 from the point of connection to boarding platforms and all transportation system elements used by the public. Any elements provided to facilitate future direct connections shall be on an accessible route connecting boarding platforms and all transportation system elements used by the public.

(4) Where signs are provided at entrances to stations identifying the station or the entrance, or both, at least one sign at each entrance shall comply with 4.30.4 and 4.30.6. Such signs shall be placed in uniform locations at entrances within the transit to the maximum extent practicable.

EXCEPTION: Where the station has no defined entrance, but signage is provided, then the accessible signage shall be placed in a central location.

51-20-3101 (a) General. Buildings or portions of buildings shall be accessible to persons with disabilities as required by this chapter.

51-20-3101 (a) 1. General. Accessibility to temporary or permanent buildings or portions thereof shall be provided for all occupancy classifications except as modified by this

chapter.

(P.E. to the extent transportation stations are buildings. WAC does not address minimizing distance. WAC does not address accessible entrances for different fixed routes. WAC does not address accessible direct connections.)

124 ADA/Washington State July 12, 1994
01-03915

(5) Stations covered by this section shall have identification signs complying with 4.30.1, 4.30.2, 4.30.3, and 4.30.5. Signs shall be placed at frequent intervals and shall be clearly visible from within the vehicle on both sides when not obstructed by another train. When station identification signs are placed close to vehicle windows (i.e., on the side opposite from boarding) each shall have the top of the highest letter or symbol below the top of the vehicle window and the bottom of the lowest letter or symbol above the horizontal mid-line of the vehicle window.

(6) Lists of stations, routes, or destinations served by the station and located on boarding areas, platforms, or mezzanines shall comply with 4.30.1, 4.30.2, 4.30.3, and 4.30.5. A minimum of one sign identifying the specific station and complying with 4.30.4 and 4.30.6 shall be provided on each platform or boarding area. All signs referenced in this paragraph shall, to the maximum extent practicable, be placed in uniform locations within the transit system.

(7)* Automatic fare vending, collection and adjustment (e.g., add-fare) systems shall comply with 4.34.2, 4.34.3, 4.34.4, and 4.34.5. At each accessible entrance such devices shall be located on an accessible route. If self-service fare collection devices are provided for the use of the general public, at least one accessible device for entering, and at least one for exiting, unless one device serves both functions, shall be provided at each accessible point of entry or exit. Accessible fare collection devices shall have a minimum clear opening width of 32 inches; shall permit passage of a wheelchair; and, where provided, coin or card slots and controls necessary for operation shall comply with 4.27. Gates which must be pushed open by wheelchair or mobility aid users shall have a smooth continuous surface extending from 2 inches above the floor to 27 inches above the floor and shall comply with 4.13. Where the circulation path does not coincide with that used by the general public, accessible fare collection systems shall be located at or adjacent to the accessible point of entry or exit.

(8) Platform edges bordering a drop-off and not protected by platform screens or guard rails shall have a detectable warning. Such detectable warnings shall comply with 4.29.2 and shall be 24 inches wide running the full length of the platform drop-off.

(9) In stations covered by this section, rail-to-platform height in new stations shall be coordinated with the floor height of new vehicles so that the vertical difference, measured when the vehicle is at rest, is within plus or minus 5/8 inch under normal passenger load conditions. For rapid rail, light rail, commuter rail, high speed rail, and intercity rail systems in new stations, the horizontal gap, measured when the new vehicle is at rest, shall be no greater than 3 inches. For slow moving automated guideway "people mover" transit systems, the horizontal gap in new stations shall be no greater than 1 inch.

EXCEPTION 1: Existing vehicles operating in new stations may have a vertical difference with respect to the new platform within plus or minus 1-1/2 inches.

EXCEPTION 2: In light rail, commuter rail and intercity rail systems where it is not operationally or structurally feasible to meet the horizontal gap or vertical difference requirements, mini-high platforms, car-borne or platform-mounted lifts, ramps or bridge plates, or similar manually deployed devices, meeting the applicable requirements of 36 C.F.R. part 1192, or 49 C.F.R. part 38 shall suffice.

(10) Stations shall not be designed or constructed so as to require persons with disabilities to board or alight from a vehicle at a location other than one used by the general public.

(11) Illumination levels in the areas where signage is located shall be uniform and shall minimize glare on signs. Lighting along circulation routes shall be of a type and configuration to provide uniform illumination.

[Not addressed.]

(12) Text Telephones: The following shall be provided in accordance with 4.31.9:

(a) If an interior public pay telephone is provided in a transit facility (as defined by the Department of Transportation) at least one interior public text telephone shall be provided in the station.

(b) Where four or more public pay telephones serve a particular entrance to a rail station and at least one is in an interior location, at least one interior public text telephone shall be provided to serve that entrance. Compliance with this section constitutes compliance with section 4.1.3(17)(c).

(13) Where it is necessary to cross tracks to reach boarding platforms, the route surface shall be level and flush with the rail top at the outer edge and between rails, except for a maximum 2-1/2 inch gap on the inner edge of each rail to permit passage of wheel flanges. Such crossings shall comply with 4.29.5. Where gap reduction is not practicable, an above-grade or below-grade accessible route shall be provided.

(14) Where public address systems are provided to convey information to the public in terminals, stations, or other fixed facilities, a means of conveying the same or equivalent information to persons with hearing loss or who are deaf shall be provided.

(15) Where clocks are provided for use by the general public, the clock face shall be uncluttered so that its elements are clearly visible. Hands, numerals, and/or digits shall contrast with the background either light-on-dark or dark-on-light. Where clocks are mounted overhead, numerals and/or digits shall comply with 4.30.3. Clocks shall be placed in uniform locations throughout the facility and system to the maximum extent practicable.

(16) Where provided in below grade stations, escalators shall have a minimum clear width of 32 inches. At the top and bottom of each escalator run, at least two contiguous treads shall be level

beyond the comb plate before the risers begin to form. All escalator treads shall be marked by a strip of clearly contrasting color, 2 inches in width, placed parallel to and on the nose of each step. The strip shall be of a material that is at least as slip resistant as the remainder of the tread. The edge of the tread shall be apparent from both ascending and descending directions.

51-20-3105 (d) 2. Telephones. ...Where four or more public telephones are provided at a building site, and at least one is in an interior location, at least one interior telephone shall be a text telephone in accordance with Section 3106 (n). Where interior public pay phones are provided in transportation facilities ... at least one interior text telephone shall be provided.

[E.]

[Not addressed.]

[Not addressed.]

[Not addressed.]

[Not addressed.]

127 ADA/Washington State July 12, 1994
01-03918

(17) Where provided, elevators shall be glazed or have transparent panels to allow an unobstructed view both in to and out of the car. Elevators shall comply with 4.10.

EXCEPTION: Elevator cars with a clear floor area in which a 60 inch diameter circle can be inscribed may be substituted for the minimum car dimensions of 4.10, Fig. 22.

(18) Where provided, ticketing areas shall permit persons with disabilities to obtain a ticket and check baggage and shall comply with 7.2.

(19) Where provided, baggage check-in and retrieval systems shall be on an accessible route complying with 4.3, and shall have space immediately adjacent complying with 4.2. If unattended security barriers are provided, at least one gate shall comply with 4.13. Gates which must be pushed open by wheelchair or mobility aid users shall have a smooth continuous surface extending from 2 inches above the floor to 27 inches above the floor.

10.3.2 Existing Facilities: Key Stations.
Not reproduced because key stations are covered by title II of the ADA only and, therefore, section 10.3.2 is inapplicable to title III entities.

10.3.3 Existing Facilities: Alterations.

(1) For the purpose of complying with 4.1.6(2) Alterations to an

Area Containing a Primary Function, an area of primary function shall be as defined by applicable provisions of 49 C.F.R. 37.43(c) (Department of Transportation's ADA Rule) or 28 C.F.R. 36.403 (Department of Justice's ADA Rule).

51-20-3105 (d) 7. C. Counters and Windows. Where customer sales and service counters or windows are provided, a portion of the counter, or at least one window, shall be accessible in accordance with Section 3106 (x) 2.

[Not addressed.]

[P.E.]

[Not addressed.]

[See above discussion of path of travel at Standard 4.1.6 (2).]

10.4 Airports.

10.4.1 New Construction.

(1) Elements such as ramps, elevators or other vertical circulation devices, ticketing areas, security checkpoints, or passenger waiting areas shall be placed to minimize the distance which wheelchair users and other persons who cannot negotiate steps may have to travel compared to the general public.

(2) The circulation path, including an accessible entrance and an accessible route, for persons with disabilities shall, to the maximum extent practicable, coincide with the circulation path for the general public. Where the circulation path is different, directional signage complying with 4.30.1, 4.30.2, 4.30.3 and 4.30.5 shall be provided which indicates the location of the nearest accessible entrance and its accessible route.

(3) Ticketing areas shall permit persons with disabilities to obtain a ticket and check baggage and shall comply with 7.2.

(4) Where public pay telephones are provided, and at least one is at an interior location, a public text telephone shall be provided in compliance with 4.31.9. Additionally, if four or more public pay

telephones are located in any of the following locations, at least one public text telephone shall also be provided in that location:

(a) a main terminal outside the security areas;

(b) a concourse within the security areas; or

(c) a baggage claim area in a terminal.

Compliance with this section constitutes compliance with section 4.1.3(17)(c).

(5) Baggage check-in and retrieval systems shall be on an accessible route complying with 4.3, and shall have space immediately adjacent complying with 4.2.4. If unattended security barriers are provided, at least one gate shall comply with 4.13. Gates which must be pushed open by wheelchair or mobility aid users shall have a smooth continuous surface extending from 2 inches above the floor to 27 inches above the floor.

51-20-3103 (a) 1. General. Accessibility to temporary or permanent buildings or portions thereof shall be provided for all occupancy classifications except as modified by this chapter.

51-20-3105 (d) 7. C. Counter and Windows. Where customer sales and service counters or windows are provided a portion of the counter or at least one window, shall be accessible in accordance with Section 3106 (x) 2.

51-20-3105 (d) 2. Telephones. ...Where four or more public telephones are provided at a building site, and at least one is in an interior location, at least one interior telephone shall be a text telephone in accordance with Section 3106 (h). Where interior public pay phones are provided in transportation facilities ... at least one interior text telephones shall be provided.

[Washington does not specifically address airports.]

[P.E. if airports are considered buildings.]

[Does not address minimizing distance.]

[P.E.]

[E.]

[Not addressed.]

(6) Terminal information systems which broadcast information to the general public through a public address system shall provide a means to provide the same or equivalent information to persons with a hearing loss or who are deaf. Such methods may include, but are not limited to, visual paging systems using video monitors and computer technology. For persons with certain types of hearing loss such methods may include, but are not limited to, an assistive listening system complying with 4.33.7.

(7) Where clocks are provided for use by the general public the clock face shall be uncluttered so that its elements are clearly visible. Hands, numerals, and/or digits shall contrast with their background either light-on-dark or dark-on-light. Where clocks are mounted overhead, numerals and/or digits shall comply with 4.30.3. Clocks shall be placed in uniform locations throughout the facility to the maximum extent practicable.

(8) Security Systems. (Reserved).

10.5 Boat and Ferry Docks.

(Reserved).

[Not addressed.]

[Not addressed.]

130 ADA/Washington State July 12, 1994
01-03921

. 7-8-94 DATE ILLEGIBLE
AF:MM:NM
J 204-8-0

The Honorable John McCain
United States Senate
111 Russell Senate Office Building
Washington, D.C. 20510-0303

Dear Senator McCain:

This is in response to your letter on behalf of your

constituent, Ms. Susan Webb, regarding the implementation of title II of the Americans with Disabilities Act (ADA) by the Department of Justice. We apologize for the delay in responding.

On June 20, 1994, the Architectural and Transportation Barriers Compliance Board (Access Board) published an Interim Rule that added four new sections to the ADA Accessibility Guidelines. On the same date, the Department of Justice published a Notice of Proposed Rulemaking to amend the Department's title II regulation to adopt the Access Board's new Guidelines. The Access Board's rule is only effective on the Departments of Justice and Transportation, which must use the Guidelines as the basis for issuing standards. Therefore, the new Guidelines are unenforceable until such time as the Department of Justice issues a final rule adopting them as standards.

Ms. Webb is concerned that the publishing of a Notice of Proposed Rulemaking, along with the concomitant comment period, will delay the effective date of the new Guidelines. Ms. Webb should be aware, however, that the Department of Justice is under a legal obligation to propose new rules and request public comment. Section 553 of the Administrative Procedure Act requires Federal agencies to publish general notice of proposed rulemaking in the Federal Register and to give interested persons an opportunity to participate in the rulemaking through submission of written data, views, or arguments (5 USC S 553(b), (c)). Because the Department has not previously given notice of our intent to adopt the Access Board's new Guidelines, we are

cc: Records CRS Chrono NM McDowney FOIA MAF NM
udd:Milton Congress NPRMVFIN.MCC

01-03330

obligated to do so now. Ms. Webb should be assured, however, that we intend to publish a final rule as soon as possible after the comment period has ended and the comments have been thoroughly considered.

I hope this information is helpful to you in responding to your constituent.

Sincerely,

Sheila F. Anthony
Assistant Attorney General

01-03331

ABIL Arizona Bridge to Independent Living
1229 E. Washington, Phoenix, AZ 85034

June 14, 1994

Senator John McCain
111 Russell Senate Office Bldg.
Washington DC 20510

Dear Senator McCain,

I am writing to express concern about the Americans with Disabilities Act Title II regulations for State and Local Government Services (28 CFR Part 35). The ADA mandates that the Access Board and the Department of Justice issue regulations for access to public buildings and facilities. The Department of Justice issued a Final Rule on July 26, 1991 that allowed these entities to use either the newly developed ADA Accessibility Guidelines (ADAAG) or the old Uniform Federal Accessibility Standards (UFAS).

It was the intent that Government entities use ADAAG; however, since certain facilities (e.g. public housing) were not yet addressed in ADAAG, UFAS was allowed as an alternate for guidance. Unfortunately, that has not been the way State and Local Government entities interpret the requirements. Generally, they feel that UFAS is a lesser standard and, therefore, a loophole. Because of this interpretation, some State and Local Government entities have been using a less stringent standard than that required of the private sector under Title III.

In November, 1993 The Access Board approved four new sections of ADAAG targeted specifically at Title II entities. These rules will be published in the Federal Register on June 20, nearly three years late! However, it is only an INTERIM rule as DOJ must adopt the Access Board's guidelines for them to have the force of law.

According to a source at the Access Board, DOJ will publish a Notice of Proposed Rulemaking on June 20 with a 60-day comment period for their own Title II accessibility rules. This translates into more delay of these new sections of ADAAG. While I realize and concur that perhaps there are some additional requirements that DOJ would like to include, I see no reason to delay adopting the Board's guidelines while DOJ works on some of the other details.

(602) 256-2245 Voice/TDD * (602) 254-6407 FAX * 1-800-280-2245

These delays are especially problematic as government buildings and facilities are still not being built or renovated to be fully accessible to the same extent that privately owned facilities are required to be accessible. Your help would be appreciated in urging the DOJ to publish the Board's interim rule as their own and continue to work on the other issues separately.

Sincerely,

Susan Webb
Executive Director

7-1-94 DATE ILLEGIBLE

DJ 202-PL-772

XX
XX
XX

Dear XX

I am responding to your letter requesting assistance in obtaining a ramp at the Royal Oak, Michigan Post Office. I apologize for the delay in responding.

You stated that you have been attempting to get the Post Office to comply with the Americans With Disabilities Act (ADA). However, the U.S. Postal Service, as a Federal agency, is not covered by the ADA. It is covered by the Architectural Barriers Act of 1968, which requires Federal buildings to meet accessibility standards, and by the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of disability by Federal Executive Agencies and the U.S. Postal Service.

The Architectural Barriers Act is enforced by the Architectural and Transportation Barriers Compliance Board (Access Board). You can contact them for assistance at:

U.S. Architectural and Transportation
Barriers Compliance Board
1331 F Street, N.W., Suite 1000
Washington, D.C. 20004-1111
1-800-872-2253 (Voice and TDD)

Additionally, you can contact the U.S. Postal Service directly concerning compliance with the Rehabilitation Act, as amended. You can direct your correspondence to:

Mr. Chuck Baker
Architectural Barriers Compliance Program

U.S. Postal Service
475 L'Enfant Plaza, N.W., Room 4130
Washington, D.C. 20260-6422

cc: Records, Chrono, Wodatch, Blizard, Gracer, FOIA, Friedlander
ILLEGIBLE\udd\gracer\tacokewe

01-03334

I hope this information is helpful to you.

Sincerely,

Janet L. Blizard
Supervisory Attorney

01-03335

January 26, 1994

Department of Justice
Constitution Ave. & Tenth St. N.W.
Washington, D.C. 20530

To whom this may concern;

I am writing to you for your assistance regarding the Americans Disabilities Act.

After many attempts of trying to get the Royal Oak, Michigan Post Office 48067 to adhere to the American Disabilities Act and become accessible to the disabled my attempts have gone in vain.

I would appreciate your assistance in resolving this matter.

The Royal Oak Post Office needs a ramp to the main entrance, curb cuts and parking for the disabled in the front of the building.

If you need any further information please contact me.

Thank you for your attention to this important need.

Respectfully,

XX
XX
XX
XX

01-03336

T. 7-13-94

AUG 3 1994

Ms. Belinda Gilzow-Carlton
Executive Director
Coalition of Texans with Disabilities
316 W. 12th Street, Suite 405
Austin, Texas 78701

Dear Ms. Gilzow-Carlton:

The Attorney General has asked me to respond to your letter alleging that the Houston, Texas office of Representative Craig Washington does not comply with the Americans with Disabilities Act (ADA).

Section 509(b)(3) of the ADA provides that the rights and protections of the ADA apply to the conduct of the House of Representatives. However, this provision is implemented and enforced exclusively through regulations and procedures established by the Architect of the Capitol. The Department of Justice has no authority to investigate alleged violations of section 509.

In addition, the space used as Representative Washington's office may be required to comply with the Architectural Barriers Act of 1968. That statute is enforced by the U.S. Architectural and Transportation Barriers Compliance Board (Access Board). Alleged violations of the Architectural Barriers Act may be reported to the Access Board at 1331 F Street, N.W., Washington, D.C. 20004-1111.

I hope that this information is helpful to you.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

cc: Records, Chrono, Wodatch, Blizard, McDowney, FOIA, Friedlander
n:\udd\blizard\control\gilzow

01-03337

Coalition of Texans with Disabilities
316 W. 12th St., Suite 405
Austin, Texas 78701
(512) 478-3366 V/TDD
FAX (512) 478-3370

June 14, 1994

Janet Reno
U.S. Attorney General
Department of Justice
Constitution Ave. and 10th. St.NW
Washington, DC 20530

Dear Ms. Reno:

The Coalition of Texans with Disabilities would like to make a formal complaint against U.S. Representative Craig Washington for blatant disregard of our civil rights under the Americans Disabilities Act. Attached is a letter we sent to Representative Craig Washington today which lays out the history of his willful non-compliance and our advocates' efforts to inform and work with him to achieve compliance.

Thank you for your attention to this matter. Please feel free to contact me for more information.

FOR A BARRIER FREE SOCIETY,

Belinda Gilzow-Carlton
Executive Director

cc: Devon Patrick
Civil Rights Division
U.S. Attorney General

EMPOWERMENT THROUGH ACTION

01-03338

Coalition of Texans with Disabilities
316 W. 12th St., Suite 405
Austin, Texas 78701
(512) 478-3366 V/TDD
FAX (512) 478-3370

June 14, 1994

The Honorable Craig Washington
United States House of Representatives
Washington, DC 20515

Dear Congressman Washington:

Members of the Coalition of Texans with Disabilities have tried four times within the past two years to visit you or your staff at your Houston office, but have been unable to enter your offices because there is no accessible entrance and there is not accessible parking places. These are two known violations of the Americans with Disabilities Act. Because we were unable to enter the premises the violations inside your offices are unknown.

Your staff member, Greg White, promised us that a ramp would be installed immediately when on our appointment to discuss healthcare reform on April 8, 1994 Glen Baker, who uses an electric wheelchair, feel backwards onto the concrete when he attempted to use a makeshift ramp of a piece of plywood placed against the curb by your staff. Steve Strubbe, of the CTD staff was able to clasp Mr. Baker's head and follow it to the ground preventing a head injury.

Two months have passed, Mr. Washington, and there is no ramp and no attempt to come into compliance with the Americans with Disabilities Act. Today, Natalie Warner, of your Washington, D.C. office has advised me that you have stated that you have no intention to comply with the law and that our organization may take whatever action we deem necessary.

Mr. Washington, we believed you to be a supporter of the civil rights of Texans with disabilities. You have been a Texas Representative; you voiced your support of disability rights at our conference ten years ago and you have been at the same Houston office since at least that year. Mr. Washington hold yourself out to be a civil rights advocate. Your failure to recognize our civil rights is incomprehensible.

Before filing suit, Mr. Washington, we will give you 10 days to make the corrections.

Please note that this letter does not intend to inform you of your legal rights, but to state our position with respect to your substantial lack of compliance with the Americans with Disabilities Act.

We are also asking U.S. Attorney General Janet Reno and the head of the Civil Rights Division, Devon Patrick, to investigate.

FOR A BARRIER FREE SOCIETY,

Belinda Carlton
Executive Director

cc: Helen Malveaux, Attorney
Disability Advocacy Project
Houston

Jim Harrington, Attorney/Director
Disability Advocacy Project

Janet Reno
U. S. Attorney General

Devon Patrick
Civil Rights Division
U. S. Attorney General

Rand Metcalfe
Houston Center for Independent Living

Lee Sanders
Judy Ziegler
ADAPT of Houston

01-03340

(Pictures) Outside U.S. Representative Craig Washington's Houston TX office --2323 Caroline 177004

01-03341

t. 7/6/94
MAF:NM:ls/rjc
DJ 204-58-0

DATE ILLEGIBLE

The Honorable Tony P. Hall
Member, U.S. House of Representatives
501 Federal Building
200 West Second Street
Dayton, Ohio 45402

Dear Congressman Hall:

This is in response to your letter on behalf of your constituent, XX , who is concerned about the opening force of doors to public restrooms. We apologize for the delay in responding.

The Americans with Disabilities Act (ADA) authorizes the Department of Justice to provide technical assistance to individuals and entities that are subject to the Act. This letter provides informal guidance to assist you in understanding provisions applicable to your constituent. However, this technical assistance does not constitute a legal interpretation of the application of the statute and it is not binding on the Department.

The Department of Justice's regulation implementing title II of the ADA prohibits discrimination against qualified individuals with disabilities on the basis of disability by State and local governments. The Department of Justice's regulation implementing title III of the ADA prohibits discrimination on the basis of disability by privately owned places of public accommodation and commercial facilities. The title III regulation requires that all newly constructed or altered facilities comply with the ADA Standards for Accessible Design (ADA Standards). The title II regulation requires that all newly constructed or altered facilities comply with either the ADA Standards or the Uniform Federal Accessibility Standards (UFAS). Both the ADA Standards and UFAS require that all interior doors have a maximum opening force of five pounds. Thus, in any restroom facilities constructed or altered after January 26, 1992, interior doors would be required to meet this maximum door opening force requirement.

Records, CRS, Chrono, Friedlander, Milton, FOIA
udd\Milton\Congress\Doors.Hal

01-03342

In existing facilities (facilities that were not constructed or altered after January 26, 1992) covered by title II, State and local governments are required to make all programs, services, and activities in the facility accessible to people with disabilities. If a State or local government facility, such as a publicly owned highway rest area, contained restrooms that were open to the public, the government would be providing a service to the public that they would therefore have to provide to people with disabilities. If the doors to the restrooms were too heavy for someone with a disability to open, the government entity would either have to make some of the doors accessible by making them lighter or would have to find some other way to make some of the restrooms accessible.

In existing facilities covered by title III, privately owned places of public accommodation must remove architectural barriers to access where such removal is readily achievable (easy to accomplish without much difficulty or expense). Where barrier removal is not readily achievable, a public accommodation must make its services available through alternative methods.

Please note that the provisions requiring a maximum of five pounds of force for opening doors apply only to interior doors. Neither UFAS nor the ADA Standards set a limit for the maximum door opening force for exterior hinged doors. Thus, exterior hinged doors, including entrances to restrooms from exterior areas, need not be built in compliance with any specific design standards. Nevertheless, exterior doors to State and local restroom facilities are not exempt from the ADA. Title II of the ADA requires that qualified individuals with disabilities be given an equal opportunity to participate in the programs and services of covered entities, and title III likewise requires equal opportunity. Providing an equal opportunity may entail provision of fully accessible restrooms, including accessible exterior doors that can be opened using less than five pounds of force.

Finally, the Architectural and Transportation Barriers Compliance Board (Access Board) is in the process of developing guidelines for automated doors under the ADA. (Currently, automated doors are not required either by UFAS or the ADA Standards.) Preliminary research on automated doors has been completed and is being studied by the Access Board's ADA Accessibility Guidelines Review Committee, which was established to provide advice on issues related to amending the ADA Accessibility Guidelines. Once the Access Board has completed developing its guidelines for automated doors, it is anticipated

that the ADA Standards will be amended to incorporate those new guidelines.

01-03343

If XX wishes to file a complaint against a specific State or local government entity that maintains inaccessible restrooms, she should send her complaint to Merrily A. Friedlander, Acting Chief, Coordination and Review Section, Civil Rights Division, U.S. Department of Justice, P.O. Box 66118, Washington, D.C. 20035-6118. If she wishes to file a complaint against a specific privately owned place of public accommodation that maintains inaccessible restrooms, she should send her complaint to Mr. John Wodatch, Chief, Public Access Section, Civil Rights Division, U.S. Department of Justice, P.O. Box 66738, Washington, D.C. 20035-6738.

We hope this information is helpful to you in responding to your constituent.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

01-03344

HANDWRITTEN ILLEGIBLE

May 20, 1994

Honorable Tony Hall,

I'd like to call your attention to a difficulty for handicapped people who must use public restrooms. The pressure mechanism is set so heavy that handicapped people have difficulty entering and leaving the restroom. Some are so heavy if some one doesn't open the door for us we could not go in or leave.

Im sure you or whoever is responsible for the inspection of the public restrooms and doors do not think of this problem. I never did until four years ago when we were hit by a DUI driver and I was handicapped with walking ILLEGIBLE go in wheelchair or very short dist-ance with my walker ILLEGIBLE I must have someone open them

01-03345

for me.

We must travel to visit our children in Florida, Louisiana, Indiana, Tennessee - So we do get into a many different rest rooms. Last trip we stopped in a State at Welcome Station and the pressure on the door was so light I could open the door by myself. So I know it can be remedied if it is brought to the right persons attention.

The ILLEGIBLE in your Dayton Office said to write to you and you'd see it would get to the correct person.

Thank you for your attention and help.

Sincerely

XX
XX
XX

01-03346

T. 7-13-94

AUG 8 1994

The Honorable Kent Conrad
United States Senator
104 Federal Building
102 North Fourth Street
Grand Forks, North Dakota 58203

Dear Senator Conrad:

This is in response to your inquiry on behalf of your constituent, XX regarding his complaint about transportation for individuals with disabilities between terminals in an airport.

Title III of the Americans with Disabilities Act of 1990 (ADA), for which this office has implementation responsibility, requires readily achievable removal of architectural barriers and reasonable modification of policies where necessary to facilitate access by individuals with disabilities to places of public accommodation. Places of public accommodation include terminals for specified public transportation. However, the Act explicitly exempts air transportation from coverage. 42 U.S.C. S12181(10).

To the extent an airport is operated by an instrumentality of a State or local government, it may be covered by title II of the ADA. Such an airport may be considered a program of a public entity. Therefore, the public entity may be required to design and construct alterations and new construction of its facilities so they are fully accessible, to ensure program accessibility in existing facilities, and to reasonably modify its procedures to accommodate individuals with disabilities. Responsibility for enforcement of title II in the context of transportation lies with the Department of Transportation. 28 C.F.R. S35.190(b)(8).

In addition, if an airport receives Federal funding or serves a certificated air carrier, it may be covered by Section 504 of the Rehabilitation Act of 1973. 29 U.S.C. S794. The Department of Transportation has issued regulations under Section 504 to specifically address accessibility of both new and existing airport facilities. 49 C.F.R. part 27.

cc: Records, Chrono, Wodatch, Hill, McDowney, FOIA, Friedlander
n:\udd\hille\policylt\conrad.ltr

01-03347

Finally, the Air Carrier Access Act may be applicable to XX complaint. The Air Carrier Access Act prohibits air carriers from discriminating against people with disabilities in the provision of air transportation. 49 U.S.C. S1374(c). The Department of Transportation has responsibility for the implementation of the discrimination provisions of the Air Carrier Access Act.

Thus, it appears that all of the issues raised by XX complaint are within the jurisdiction of the Department of Transportation. Because you have already contacted the Department of Transportation, it is likely that the review process pursuant to the applicable legal standards is already being undertaken. If XX wishes to have further information about the requirements of the ADA, he may contact our ADA information line at 800/514-0301 (voice) or 800/514-0383 (TDD).

I hope this information will be useful to you in responding to your constituents.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

01-03348

United States Senate
WASHINGTON, DC 20510-3403
June 21, 1994

John Wodatch
Chief, Public Access Section
Department of Justice, Civil Rights Division
PO Box 66738
Washington, DC 20035

Dear Mr. Wodatch:

I am writing on behalf of Dr. XX of Grand Forks, North Dakota. He has contacted my office about his wife's difficulties when a flight was cancelled and she had to change terminals at Newark Airport due to rerouting.

He indicates that his wife's mobility is impaired; she had to walk from one airport terminal to another at the Newark (NJ) Airport because the airport shuttle system was too slow to get her to her connecting flight and the airlines did not make any arrangement to assist her. Copies of correspondence from Dr. XX are enclosed.

I am writing to you in the Department of Justice and to the Department of Transportation with the hope that this case will be thoroughly reviewed. I would like to know whether action will be taken by the airport, or by the airline companies, to prevent this kind of problem in the future for those who cannot easily walk between terminals. I would appreciate it if you would see that a response is forwarded to me at my Grand Forks office at:

104 Federal Building
102 North Fourth Street
Grand Forks, ND 58203
(701) 775-9601

Thank you for your assistance with this matter.

Sincerely,

KENT CONRAD
United States Senator

KC:gjh

01-03349

HANDWRITTEN

Grand Forks Clinic, Ltd.
Our Specialty is You

6/15/94

Senator Kent Conrad
102 N. 4th St #104
Federal Building
Grand Forks, ND 58203

Dear Senator Conrad,

I would like your help in reporting to the proper authorities an incident which occurred on 6/13/94. The general problem is described in the enclosed copies of correspondence. I think some action is warranted to force Newark Airport to consider and provide for handicapped persons transferring between terminals (including signage).

Thank you for your help.

Sincerely, XX
XX

P.S. Flights info:
original flight: Northwest 3309 changed to Continental ILLEGIBLE 6/13/94
subsequent " : " 107 6/13/94

01-03350

HANDWRITTEN

Grand Forks Clinic, Ltd.

Our Specialty is You

6/15/94

Northwest Airlines
Customer Relations
5101 Northwest Dr.
St. Paul, MN 55111-3034

Dear Sirs:

I'm enclosing a copy of a letter to the Nework Airport. I think that when you cancel a plane and re-route customers, they ought to be given accurate information about the transfer process in the substituted airport. In this case, we were not given proper information.

Our experience in Nework was dreadful. That airport should be avoided at all costs by people who have any mobility handicaps. We were not warned by the people in Binghamton that going through Newark would be an ordeal.

Since you cancelled our plane, I feel you are responsible for our plight. I would like some conyen-sation (eg. a first class upgrade for the five of us who were inconvenienced) for this terrible inconvenien

Sincerely,

XX

01-03351

XX
XX
XX

Grand Forks Clinic, Ltd.
Our Specialty is You

6/15/94

Airport Manager
Newark Airport
Newark, NJ 07101

Dear Sir

I had the misfortune this weekend to be re routed through your airport on my way from Binghamton to Minneapolis. Although we were told in Binghamton that transferring between terminals C and B was simple and handled by a shuttle, it was neither.

My wife has multiple sclerosis. We asked for a cart to help her between gates. She was driven from the arrival gate in C to the door of the terminal and pointed in the direction of terminal B. She was told that the bus took too long and that she would have to walk to make it on time. The man offered to carry her bags for her and made it clear that he would require renumeration for doing so.

She made it to terminal B on foot exhausted and exasperated and angry. She should be. It is unconscious that you have such poor interterminal connection for your

01-03352

AUG 10 1992

The Honorable Richard Bilirakis
Member, U.S. House of Representatives
4111 Land O'Lakes Boulevard, Suite 306
Land O'Lakes, Florida 34639

Dear Congressman Bilirakis:

This is in response to the questions regarding accessibility for individuals with disabilities raised by your constituent, XX of Tampa, Florida. The Americans with Disabilities Act (ADA) covers all of the barriers encountered by XX heavy doors, location of parking spaces, steep incline from accessible parking to entrance of building, and inaccessible bathrooms. For existing facilities, the ADA requires that barriers be removed if it is readily achievable to do so. Please refer to section 36.304 of the title III regulations for information regarding readily achievable barrier removal in existing facilities. I am enclosing a copy of these regulations and a copy of our Title III Technical Assistance Manual.

The Department of Justice has established a free telephone information service that provides technical assistance on title III of the ADA. The number is 800-514-0301 (voice) or 800-514-0383 (TDD). Publications are available for entities covered by the ADA and for individuals with disabilities protected by the ADA.

I hope this information is useful to you in responding to your constituent.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

Enclosures

cc: Records Chrono Wodatch Breen Mistler FOIA Friedlander McDowney

June 1, 1994

XX
XX
Tampa, FL 33624

Sam M. Gibbons - Congressman
2002 N. Lois Avenue
Suite 260
Tampa, FL

Dear Congressman Gibbons:

Have you, personally, ever had to deal with problems such as these?

I had an appointment in 5 minutes, and I thought, "just enough time to go into the ladies/men's room" "Wonderful! Special provisions have been made for the handicapped." However, when I tried to go in, the door was so hard to open it took both arms and all my weight to push the door open. My walker was there between me and the door. I struggled to keep the door open while inching the walker in. Finally, I was in but I thought, "What's this? A baby's dressing table?" The walker can't be put to one side so that I can get out of the way of the door when it closes. The door is so heavy it will knock me down when it closes, I have to get out of the way. I have a few other problems, like getting out of here. The 5 minutes will be long gone. So much for being on time.

Again, I had an appointment. It's in a beautiful new professional building. The handicapped parking spaces are in the front - - near the drive - - out of the way. They are on such an incline that a walker is difficult to maneuver, a manual wheelchair could prove to be hazardous. The office I had business in, has no handicapped provisions in the bathroom.

A popular fast food restaurant I frequent with a handy drive-thru has two handicapped parking spaces - - out of the way!! The drive-thru goes through the parking lot. I would love to walk faster so that I could get out of harm's way; however, I cannot. I move as fast as I can with my walker to reach those heavy double doors - - my next challenge of the day.

01-03354

U.S. Department of Justice

Civil Rights Division

Coordination and Review Section

P.O. Box 66118
Washington, D.C. 20035-6113

The Honorable Wellington E. Webb
Mayor of the City and County of Denver
City and County Building
Denver, Colorado 80202

RE: Complaint Number XX

Dear Mayor Webb:

This letter constitutes the Department of Justice's (the Department) Letter of Findings with respect to allegations received by this office concerning violations of Title II of the Americans with Disabilities Act of 1990 (ADA) by the City and County of Denver (the City). Title II of the ADA, 42 U.S.C. SS 12131-12134, prohibits discrimination against qualified individuals with disabilities on the basis of disability by State and local governments. The allegations concern the denial of reasonable accommodations provided to XX and his subsequent termination from the Denver Police Department in XX

The regulation implementing Title II, at 28 CFR S 35.140(a), prohibits employment discrimination against qualified individuals with disabilities. Title II adopts the legal standards of Title I of the ADA, 29 CFR Part 1630, which took effect in July 1992, and which also prohibits employment discrimination. 28 CFR S 35.140(b). The Coordination and Review Section of the Civil Rights Division is responsible for the investigation and resolution of administrative complaints alleging violations of Title II by components of State and local governments in all programs, services, and regulatory activities relating to law enforcement and public safety. 28 CFR S 35.190(b)(6).

As discussed in detail below, the Department finds that the City has violated Title II by its failure to provide a reassignment or transfer as a reasonable accommodation for

XX , and by terminating him from the Police Department. Pursuant to 28 CFR S 35.172, the Department is issuing this Letter of Findings and hereby informing the City that the Department is prepared to enter into negotiations in order to secure compliance by voluntary means, as provided in 28 CFR S 35.173.

FINDINGS OF FACT

COMPLAINANT'S POSITION

Officer XX alleged that the Denver Police Department violated Title II by failing to reassign or transfer him as a reasonable accommodation for his disability. He further alleges that this failure resulted in his termination from the City in XX

XX was a patrol officer in the Denver Police Department from XX . During this period, he was seriously injured on three separate occasions while on duty. These injuries resulted in herniated and ruptured spinal disks in his back, pain in his legs, hip and heel, and loss of coordination in his legs, among other things. He sustained his most recent injury after a high speed chase and collision in 1991. As a result, he was diagnosed with multiple degenerative disk disease, left shoulder scapular winging, and thoracic disk protrusion. These injuries, for which he has received ongoing medical treatment, restrict XX from walking up stairs, repetitive bending or lifting, standing for any length of time, engaging in physical recreation or sports, and many physical activities those without disabilities can engage in. The injuries have resulted in chronic ongoing pain and discomfort. Physicians have told XX that he risks permanent paralysis if he reinjures his back.

Based on the medical evaluations of City physicians, XX was deemed unable to return to full duty in May 1992. XX has a record of this impairment dating back to 1987, when he first injured himself severely in the line of duty. His disability prevents him from performing law enforcement work as an officer (e.g., security guard or correctional officer) and any work involving heavy labor or lifting (e.g., construction).

Officer XX was placed in a "light duty" desk job following his most recent injuries, which he sustained in January 1991. Under the Police Department's personnel policies, injured officers must be able to return to "full duty" within 365 days or they are required to retire (usually on a disability pension). There are no permanent light duty positions provided to officers

injured in the line of duty, nor are reassignments or transfers to other positions permitted.
01-03356

Officer XX was a police officer for 20 years. He worked as a patrol officer and a detective, and in a variety of other assignments. He has no other professional or specialized vocational training. Officer XX believes he is qualifed to perform many other jobs within the Police Department (e.g., investigator, lab technician, firearms instructor, or dispatcher) and that he should be able to remain in some capacity. His salary as a police officer was $37,000 when he retired on disability. His disability pension is $14,800. In addition, his health insurance is no longer paid by the City.

During his final months on the police force, from XX XX , Officer XX made several requests to be permanently placed in a related position that did not require the ability to make a forcible arrest. These transfer or reassignment requests were requests for a reasonable accommodation for his disability. Because Police Department policies preclude reassignment or transfer, XX was terminated in XX XX , on the grounds that he did not recover sufficiently to resume his duties as a patrol officer, and was directed to apply for disability retirement. Officer XX alleges that the City's failure to reassign or transfer him to another position within the Police Department constituted a denial of a reasonable accommodation and discrimination against him on the basis of disability. He alleges that the City had ample opportunity to make a reasonable accommodation through reassignment or transfer, but refused to do so, in violation of his rights under Title II. He seeks reinstatement to a position that is equivalent in terms of salary, benefits and seniority.

THE CITY'S POSITION

The Denver Police Department's policy permits a police officer 365 days at full salary to recover from a line-of-duty injury. Officers who are expected to be off duty for more than 30 days are assigned to the "limited duty section" where they perform clerical assignments; however, permanent reassignments to so-called "light duty" positions are not available. If injured officers who are temporarily reassigned because of injury do not reach "maximum medical improvement" within one year, and they are deemed unable to return to full time duty, they are removed from the payroll and can apply for a disability retirement. Transfer or reassignment to a non-police officer position within the

Police Department, the Department of Safety, or elsewhere in the City and County government is not an option. The City maintains that a transfer to a non-police officer position is unreasonable, is not an accommodation required by the ADA, and is a violation of the Denver City Charter, which mandates two separate and distinct personnel systems.

The City of Denver has two legally separate employment systems within the Department of Safety. The Classified Service consists of all police and fire officers and is administered by the Civil Service Commission. The Career Service consists of all other City employees, except members of the Classified Service, and is administered by the Career Service Authority. The Manager of Safety is responsible for all public safety employees in the City of Denver, in both the police and fire departments, including classified and career employees.

Police officers, as part of the Classified Service, are classified as "Patrol Officers"; only their rank or assignment differs (e.g., detective, firearms instructor, Sergeant, etc.). The positions, such as lab technician and dispatcher, that are supervised by the Manager of Safety are within the Career Service, which is the civilian segment of the police workforce. Career Service employees perform duties designated by the Manager of Safety through the Chief of Police, and work under the direct supervision of police managers and alongside police officers in support roles.

Because of personnel and budget considerations, the Police Department does not provide permanent inside, or "light duty," positions for anyone. The City believes that if it created a permanent light duty position, this would change the essential functions of the Patrol Officer's position. Police officers performing in any capacity are expected to perform the essential functions of their job, which include the ability to fire a weapon and make a forcible arrest, if necessary. All police officers are theoretically on duty 24 hours a day, carry a badge and weapon, and may be required to act in their law enforcement capacity at any time. If an injured officer is unable to resume "full duty" within 365 days (i.e., be able to make a forcible arrest and fire a weapon), he or she is removed from the force and can apply for disability retirement. The City considers such officers no longer "qualified" to perform the essential functions of their job.

Reassignment to positions in the Career Service of the Department of Safety (e.g., dispatcher or lab technician) is not an option. According to the City, the Career Service is an entirely different personnel system, in which the positions have their own unique experience requirements and qualification standards. The City contends that the Police Department has no authority over the Career Service. In summing up its position, the City states:

> ... the City's interpretation of the ADA requirements regarding accommodations is that the accommodation (a transfer) should be related to the job of a police person, not an entirely different job. More specifically, our interpretation of the ADA requirement is that the accommodation would be to his physical limitation (back problem), and for XX to be a 'qualified' individual of [sic] a disability he should be capable of performing the essential functions of the job of police person with an accommodation, to that disability. Here, XX seeks to be accommodated into a non-police position without meeting the qualification standards, test requirements and other selection criteria for a Career Service position. ... our position is grounded in a good faith belief that the transfer requested is unreasonable and not an accommodation compelled by the ADA...

ANALYSIS

Under Title II of the ADA, which adopts the legal standards of Title I, reassignment to a vacant position is a right of qualified individuals with disabilities, and is permitted as a form of reasonable accommodation. 29 CFR Part 1630.2(o). The legislative history of Title I explains the intent of this aspect of the ADA. The Senate Report states: "If an employee, because of disability, can no longer perform the essential functions of the job that he or she has held, a transfer to another job for which the person is qualified may prevent the employee from being out of work and the employer from losing a valuable worker." S. Rep. No. 101-116, 101 Cong., 1st Sess. 129-130 (1989). Consideration of reassignment is only required for persons who are already employees, and to the extent possible, employers should reassign individuals to equivalent positions in terms of pay and benefits.

The City asserts that one of the essential functions of a patrol officer's job is the ability to make a forcible arrest, and that its only obligation is to accommodate XX in police positions that require the ability to make a forcible arrest. The complainant concedes that he is unable to make a forcible arrest because of the seriousness of the damage to his spinal disks. However, the fact that the complainant may not meet the essential functions of a patrol officer's job does not mean that the City's obligations under the ADA have been met. The statutory obligation to "reassign" would have no meaning if it only applied to those individuals who meet the essential functions of the job they were occupying. Indeed, if they could meet the essential functions of that job, they would have no need

to be accommodated by being reassigned. In other words, the concept of "reassignment" as interpreted by the City has no meaning.

The statute and regulations make clear that when an accommodation in an employee's present position is not possible, reassignment to another position must be considered as a reasonable accommodation. Reassignment assumes that an essential function (such as the ability to make a forcible arrest) cannot be met.

Despite the City's contention that it is impossible to consider reassignment of police officers with disabilities to support positions, inter alia, within the department, the City has not adequately explained its reasoning. The Manager of Safety, who in fact has direct administrative control over all employees in the Police Department, has stated in interviews with DOJ personnel and others in the City that she has given thought to arranging for transfers, reassignments or alternative placements for officers with disabilities, like XX Officer XX 20 years of experience in police work, in which he performed a variety of duties including detective, firearms instructor, dispatcher and other support services, demonstrates that he is apparently qualified for a number of positions in the Police Department. The duty to reassign extends to other related positions in the City for which the complainant is qualified and that were vacant at the time it was determined that he would not be able to return to full duty as a patrol officer. 29 CFR 1630.2(o).

How far beyond the employee's immediate job classification ("patrol officer") the employer must look to meet its obligation

to reassign is a case-by-case decision, taking into consideration the totality of circumstances, including the employer's size, structure, general policies and procedures, and the frequency and location of available positions. In this case there were, in fact, many vacancies in the Police Department that were available during the period when Officer XX was on "light duty" for which he could have been considered, given his years of police experience and training. The Police Department listed 221 positions that were filled between January 1992 and March 1993; an additional 13 positions were filled through transfers. Mr. XX could have been considered for positions such as Emergency Service Dispatcher, Code Investigator, Staff Probation Officer, Criminal Justice Technician, Senior Clerk and Specialty Clerk, among others.

As a further example, the data show that in every month from March 1992, when the complainant filed his charge, through February 1993, one or more Emergency Service Dispatcher positions were vacant and available for reassignment. Generally speaking,

reassignment should be made to a position equivalent to the one presently held in terms of pay and job status, if the individual is qualified for the position and the position is vacant or will be vacant. Officer XX appeared at that time to possess the requisite skills and experience to work as a "Dispatcher" and identified this as an appropriate transfer or reassignment. Officer XX salary as a patrol officer, approximately $37,000 per year, exceeded the salary of Emergency Service Dispatcher (a maximum of $2,551 per month, or $30,612 per year). While such a reassignment would not result in entirely equivalent pay and benefits, it would not be the obligation of the City to make up the difference between this position and Officer XX position of patrol officer, if it appears that this is the most closely equivalent vacant position to which Officer XX could have been reassigned. If there were other positions available, the Police Department should have also considered them as options.

CONCLUSIONS

Based on the information provided by the City, the Department of Justice concludes that the City's failure to consider a reassignment or transfer option for police officers with disabilities to other positions with the City constitutes a violation of the ADA and the implementing Title II regulation at 28 CFR S 35.140(b). The current policies and procedures

implemented by the City as regards officers with disabilities who are no longer able to carry out a forcible arrest discriminate against the complainant and others similarly situated, in violation of Title II. In addition, the City's failure to reassign Officer XX as a reasonable accommodation for his disability and its termination of him based on his disability constitute violations of Title II.

In order to resolve this case, it will be necessary to enter into a formal written voluntary compliance agreement that will provide appropriate remedies for the complainant and others similarly situated, and ensure that the City's policies and practices conform to the requirements of the ADA. Accordingly, the Department hereby offers the City an opportunity to negotiate a voluntary compliance agreement, as provided in 28 CFR S 35.173. The Department is open to discussing the violations cited in this letter and remedies that could lead to a satisfactory resolution. In that regard, Thomas Esbrook, the investigator assigned to this case, will contact Mr. J. Wallace Wortham, Assistant City

Attorney, within 15 days to determine whether the City is interested in entering into voluntary compliance negotiations. Please be advised that if you choose not to enter into good faith negotiations within 15 days, or if negotiations are unsuccessful, we will refer this matter to our litigating unit for appropriate action. If you or your staff have any questions or need further information, please contact Mr. Esbrook at (202) 307-2940.

Sincerely,

Merrily A. Friedlander
Acting Chief
Coordination and Review Section
Civil Rights Division

ccs: XX
David C. Feola, Esq.
Elizabeth H. McCann, Manager of Safety
David L. Michaud, Chief of Police
J. Wallace Wortham, Jr., Assistant City Attorney

01-03362

AUG 23 1994

The Honorable Bill Bradley
United States Senator
1 Greentree Centre
Suite 303
Marlton, New Jersey 08053

Dear Senator Bradley:

This is in response to your inquiry on behalf of your constituent, XX She states that she is a person with a disability who has difficulty gaining access to her physician's office because of steps, doors, and curbs that impede access. She also complains that she has difficulty in other places where wheelchairs, especially wheelchairs for large people, are not provided, and in restaurants that do not have chairs with rollers along with booths.

The Americans with Disabilities Act (ADA) imposes certain obligations on places of public accommodation to make their goods and services accessible to persons with disabilities. Existing facilities, such as the doctor's office and restaurants mentioned, must remove barriers to access to the extent it is readily achievable to do so. Readily achievable is defined in the statute to mean easily accomplishable without much difficulty or expense. An examination of the barriers involved and the resources of the public accommodation is necessary to determine whether a particular action is readily achievable. In restaurants that have fixed seating, such as booths, the restaurant must, if readily achievable, make 5% (or not less than one) of such seating accessible to persons who use wheelchairs. There is no requirement for chairs with rollers. Nor is there a requirement in the ADA that public accommodations provide wheelchairs for the use of their customers with disabilities.

cc: Records, Chrono, Wodatch, Magagna, McDowney, MAF, FOIA
udd\magagna\congress\bradley.2

01-03363

Enclosed is a report of the Department's enforcement activities under the ADA. It also contains information about how to file a complaint with the Department. If your constituent has further questions about the ADA, she may call the Department's ADA information line at 1-800-514-0301 between 10:00 a.m. and 6:00 p.m. EDT.

I hope this information will assist you in responding to your constituent.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

Enclosures

01-03364

May 4, 1994
XX
XX
Williamstown, NJ XX

N.J. US. Senate
c/o Bill Bradley
731 Senate Hart office Bld
Washington D.C. 20510

Dear Senator Bradley
I am a disabled person I am
unable to enter my doctors office
Dr. James Melecka
Willow St + B.H.P
Williamstown NJ 08094

due to no feasable access, he has 2 sets
of stairs and two doors that open the wrong
way he has no ramp or entrance for people
such as myself. I have mentioned this to him
on numerous occassions and he seems to ignore
me each time, the further my disease progresses
the harder it becomes, there are also no low
curbs when I find it necessary to park in
the street. I also find high curbs at
Monroe Med. Cntr
640 B.H.P
Williamstown NJ 08094.
I not only find a problem at these places
but almost everywhere I go.
There are not allways wheelchairs, there are
NEVER ones for large people, I find it hard
at times to find restaurants that have tables with/with-
out chairs with rollers along with booth ILLEGIBLE
I thought that everyone had to comply with
the law of 1969. What can be done ILLEGIBLE

01-03365

correct this problem, I feel as if I'm a
prisoner that can't leave my home
because everywhere I go seems the same

Sincerely
XX
XX
Williamstown NJ XX

XX
XX

01-03366

AUG 23 1994

The Honorable Christopher Cox
Member, U.S. House of Representatives
4000 MacArthur Blvd.
East Tower, Suite 430
Newport Beach, California 92660

Dear Congressman Cox:

This is in response to your inquiry on behalf of your constituent, XX who seeks information about the Americans with Disabilities Act (ADA).

XX asks whether the Leisure World community she lives in is subject to the ADA. As her letter indicates, strictly residential facilities are not subject to the ADA. However, some facilities include residential units along with places of public accommodation that are covered by the ADA, such as a doctor's office, retail store, or social service center establishments. In those circumstances, the portions of the facility that comprise the public accommodations and common areas, such as parking, entrances, lobbies, and restrooms, that serve the public accommodations are subject to the ADA.

This Department does not make determinations about the specific ADA obligations of particular facilities except in the context of complaint investigations. We therefore cannot say whether or to what extent the Leisure World facility in question is subject to the requirements of the ADA.

XX should also be advised that regardless of the applicability of the ADA, residential facilities are subject to the Fair Housing Act, as amended, which also prohibits discrimination on the basis of disability. Further information about the Fair Housing Act can be obtained from the Department of Housing and Urban Development, 451 Seventh Street S.W., Washington, D.C. 20410, 202-208-1422.

FOIA

01-03367

I hope this information is useful to you in responding to your constituent. If XX has further questions about the ADA, she may contact the Department's ADA information line at 1-800-514-0301 between 10:00 a.m. and 6:00 p.m. EDT.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

01-03368

RECEIVED
JUN 24 1994

Dear Ann -

I rewrote letter as copy was too faint - Perhaps I did not make my request properly -

In reading some Questions & Answers I received from Consumer Information Center, this pamphlet states

Question: Does the ADA cover private apartments and private homes?

Answer - The ADA does not cover XX residential private apartments and homes - If, however, a place of public accomodation, such as a doctor's office or day care center, is located in a private residence, those portions of the residence used for that purpose are subject to the ADA's requirements.

My question is - are we in Leisure World in that category?

Would appreciate your finding the answer.

Thank you,

XX

01-03369

Feb 21, 1994

Department of Justice
Mr James P Turner
Constitution Ave & 10th ST. NW.
Washington, D.C. 20530

Dear Mr. Turner:

I am writing to ask you to look into some of the "Abstracts" in regards to the ADA act of 1992

It seems when this Act was passed, the main purpose was mostly for the public at large, and did not pertain to private communities.

We moved here 13 years ago knowing it to be a Senior Active Community (Private) There are over 17,000 residents living here, 95% are active seniors, and 5% became disabled after moving in.

We pay a monthly maintenance fee, paid in and bought a share in the United Mutual Co-op - therefore I believe it not fair to ask 95% of residents to contribute to the 5% disabled. I am not an uncaring person but do believe in sharing what I entered into L.W for - an active senior community, and being a private community should not

01-03370

be made to adhere to the ADA act.

Please send me information that would clarify whether Leisure World is subject to the ADA act.

Thanking you in advance,

XX
XX
XX
LAGUNA HILLS, CA XX

01-03371

Feb 21, 1994

Department of Justice
Mr. James P Turner
Constitution Ave + 10th St NW
Washington, D.C. 20530

Dear Mr. Turner.

I am writing to ask you to look into some of the Abstracts in regards to the ADA Act of 1990.

It seems ILLEGIBLE, the main purpose was mostly for the public at large and did not pertain to private communities.

We moved here 13 ILLEGIBLE ILLEGIBLE Community (Private). There are over ILLEGIBLE and 5% became disabled after moving in. We pay a monthly maintenance fee ILLEGIBLE ILLEGIBLE in the United Mutual Co-op, therefore, I believe it not fair to ask 95% ILLEGIBLE to contribute to the 5% disabled I am not receiving ILLEGIBLE but do believe in sharing what I ILLEGIBLE L.W for - ILLEGIBLE community, and being a private community should not be made to adhere to the ADA ILLEGIBLE

01-03372

Please send me information that ILLEGIBLE whether Leisure World is subject to the A D A Act.

Thanking you in advance,

XX
XX
XX
LAGUNA HILLS, CA XX

01-03373

T. 8-23-94

AUG 2ILLEGIBLE 1994

Mr. John Murdoch
U.S. Architectural and Transportation
Barriers Compliance Board
1331 F Street, NW
Suite 1000
Washington, D.C. 20004

Dear Jay:

This letter is to provide the Department of Justice's comments on the proposed text of the accessibility guidelines for children's environments that were discussed by the Children's Environments Work Group in July, so that you may address these concerns in the revisions to the draft rule that you are planning to present at the next meeting of the Board.

In general, we think that the draft presented at the last meeting is good; however, we do have some concerns. Because the draft was presented to the Board without an accompanying rationale, it is unclear whether the proposed guidelines would (1) make provision of accessible child-sized elements mandatory in children's facilities, (2) make provision of accessible child-sized elements mandatory whenever inaccessible child-sized elements are provided, or (3) simply provide advisory guidance regarding what will be considered equivalent facilitation for those instances where a children's facility chooses to provide accessible child-sized elements. It is unclear which approach is preferable. For example, the first approach provides greater access for children with disabilities, yet may conflict with the facility's need to teach children, both with and without disabilities, to function in a world where child-sized facilities will not generally be available. We recommend that this issue be raised in the preamble to the NPRM. The preamble should also make clear that these requirements apply only to elements that are used primarily by children. Elements (e.g., tables) that are used primarily by adults must meet adult accessibility standards, even if they are in areas used primarily by children.

cc: Records, Chrono, Wodatch, Hill, FOIA, Friedlander
n:\udd\hille\kid.ltr

In addition, because it is not possible to fully assess the proposed text without having the background data on which it is based, the preamble should address how the Board resolved such issues as reconciling the needs of children who use differing types and sizes of mobility aids. For example, the proposed text appears to assume that most children with mobility impairments use child-sized mobility aids. Yet there are a variety of types of wheelchairs, some of which place children at heights similar to adults. It is unclear how the proposed text addresses these differences.

The following are more specific comments regarding particular provisions of the proposed text:

- S15.2 should address requirements for reach ranges over obstructions.

- S15.2 provides the same reach range requirements for both front and side reaches, yet addresses them in two separate subsections. The rationale for this should be explained in the preamble.

- S15.3 provides a lesser standard than S4.4.1 regarding protruding objects. S15.3 only addresses protrusions into "circulation paths required to be accessible," while S4.4.1 applies to all "walks, halls, corridors, passageways, or aisles." This should be corrected.

- S15.3 should refer to Figure 8(d) to illustrate the 12-inch overhang permitted for forward approach.

- S15.4 does not change the requirement of S4.8.5 and S4.9.4 for a 1.5 inch clear space between rail and wall. We are concerned that a smaller space may be needed to prevent children's smaller arms from slipping through.

- S15.4.1 needs to be edited to make clear that two sets of handrails are required; one that complies with S4.8 or S4.9, and one that complies with S4.8.5 or S4.9.4 as modified by S15.4.2 and S15.4.3.

- S15.6 requires compliance "to the maximum extent practicable." This appears to create a new compliance standard. How does the Board intend this test to relate to the current ADA standards ("structurally impracticable" and "maximum extent feasible")?

- S15.6.1 needs to include S4.26.2 (grab bar dimension) as one of the requirements being modified.

- S15.6.3 raises a number of issues about the table of toilet seat heights:

(1) How should a builder determine who the "primary users" are?

(2) Should the metric measurements should be rounded to the nearest '0' or '5' mm to be consistent with other dimensions?

(3) Won't the flush valve or toilet tank interfere with placement of the back grab bars at the heights required by the table?

- S15.6.5 should specify that the toilet paper dispenser must be below the grab bar and a specific distance from the back wall.

- S15.7.2 requires a toilet stall to be configured according to Figure 30(a-1) if the door swings inward. Figure 30(a-1) shows the door on the side wall. However, that precise configuration may not necessarily be required. As long as the door does not encroach on the clear floor space, the door can be on the end wall.

- S15.7.3 should be edited to apply to standard stalls of minimum dimensions, rather than to all standard stalls. In larger stalls, toe clearance may not be necessary.

- S15.8.1 should simply refer to all lavatories (without limitation to "lavatory fixtures, vanities, built-in lavatories"). An accessible lavatory cannot have a vanity cabinet beneath it.

- S15.8.3 should provide both a maximum and a minimum depth for clear space under lavatories.

- S15.9.2 provides a maximum 36 inch height for clothes rods, hooks, and shelves. We are concerned that this may be unworkable for older children, whose dresses and long coats will drag on floors from that height. We suggest that the preamble to the NPRM should ask for suggestions about using ranges of mounting heights for children of different ages.

- S15.10.3 requires knee clearance to be 24 inches deep. This exceeds the 19 inches required for adults. What is the reason for the increase?

I hope these comments are helpful in drafting the next version and I look forward to discussing the proposed text at the next meeting of the Children's Environments Work Group.

01-03376

If you have any questions about this letter, please call Janet Blizard at (202) 307-0847, or Eve Hill at (202) 307-0982.

Sincerely,

Merrily A. Friedlander
Acting Chief
Coordination and Review Section

01-03377

AUG 29 1994

The Honorable Benjamin A. Gilman
U.S. House of Representatives
2185 Rayburn Building
Washington, D.C. 20515-3220

Dear Congressman Gilman:

This is in response to your inquiry on behalf of your constituent, Dr. XX who has a question about the Americans with Disabilities Act (ADA).

Dr. XX has inquired whether the ADA requires insurance companies to make direct deposit of monthly benefit payments for people with vision impairments who have difficulty handling checks because of their disability.

The ADA requires public accommodations to make "reasonable modifications" in their policies, practices, and procedures in order to make their goods and services available to persons with disabilities, unless a modification would "fundamentally alter" the nature of the goods and services offered. Absent an investigation, we are unable to determine in this particular situation whether the insurance fund would be required to modify its practices to enable Dr. XX checks to be deposited directly.

In reference to Dr. XX letter about his 1989 and 1990 Federal Income Tax Returns, we suggest that you contact the Internal Revenue Service. The Department of Justice does not have jurisdiction over these matters.

We hope that this information is useful to you and your constituent.

Sincerely,

Stuart J. Ishimaru
Acting Assistant Attorney General
Civil Rights Division

Enclosure

XX M.D., M.B.A.
New City, NY XX
Simple Telephone XX
Caller Controlled Voice Mail/Facsimile Machine XX

June 13, 1994

Honorable Benjamin Gilman
United States House of Representatives
2185 Rayburn Building
Washington, D.C. 20515-3222 Facsimile (202) 225-2541

ATTN: Jason Epstein

Dear Mr. Gilman,

Since I have become disabled from my work I have contacted the three insurance companies with which I have disability income insurance. At this time all three companies are either paying me by benefits or are making final decisions.

Because of my vision impairment I find it very difficult to handle any object without risking misplacing it. This is a very serious problem and while at times it is almost comical to see me scurrying around trying to determine where I put something down, it is emotionally very depressing. That is why I have requested of all three insurance companies to provide me with wire direct deposit of my monthly benefits checks. All have refused, while one is considering providing me with a mail deposit. I made those requests to simplify my life, and the insurance companies will not comply. I assume their refusal is based on their desire to have the money paid to me, "float," for their benefit.

I have no concern regarding the insurance companies finances, I paid insurance premiums for up to 23 years so that I could protect myself. Please ask the Equal Employment Opportunity Commission if they would consider ordering a public company to wire transfer money into the account of an insured who cannot handle checks because of a disability. The Americans with Disabilities Act (ADA) orders businesses that serve the public to make accommodations for the benefit of disabled persons.

I would rather not be disabled, but since the EEOC was unable to assist me, I am now at home attempting to live on my insurance benefits. Your prompt action in forwarding this request to the EEOC for a decision is appreciated. Thank you very much.

XX

Yours truly,
XX

01-03382

XX M.D., M.B.A.
New City, NY XX
Simple Telephone XX
Caller Controlled Voice Mail/Facsimile Machine XX

June 13, 1994

Honorable Benjamin Gilman
United States House of Representatives
2185 Rayburn Building
Washington, D.C. 20515-3222 Facsimile (202) 225-2541

ATTN: Jason Epstein

Dear Mr. Gilman,

Despite my poor vision I have been fortunate to find parts of our 1989 Form 1040 and some of the correspondence with the IRS that relates to our payment of approximately $9,200 last spring, payment that was coerced from us despite our having paid that money in a timely manner in 1989 and 1990.

The reason for the IRS demanding the principal, interest and penalties is that one of their employees incorrectly keyed our tax form into their computer. I entered on our 1989 Form 1040 that I had paid $7,000 with a request for an extension that was filed on time in 1990. I have even provided you with copies of both sides of that check. What happened is the IRS employee entered the $7,000 on line 60, rather than line 59 where we correctly entered it. That is why the IRS could not find the money that we claimed as having paid. Revenue Agent Anthony J. Stabile, had in front of him the Form 1040 as well as the computerized print out. He was either too stupid to compare the Form 1040 with the computer print out, or he did and didn't care to act properly by correcting the computer print out. What is most interesting is that all his supervisors and superiors had the same opportunity to see the glaring error, but they also let it pass through undetected.

It should have been evident to all the personnel involved in our audit and to the personnel who prepared Mr. Alexander's June 22, 1993 letter to you, which you forwarded to us, that entering $7,000 as a claim for overpayment of FICA taxes is very unusual, and perhaps there was an error. No one, including the District Director, had the least discomfort with accusing us of entering $7,000 as a claim for overpayment of FICA taxes. No one made the effort to determine if there was an error. Only the IRS had the

original Form 1040, we had already notified Mr. Stabile that we could no longer locate our copy.

In the letter dated June 22, 1993 Mr. Alexander repeated the idiotic statement that we had entered $7,000 on line 60. Anyone with half a brain should have recognized the stupidity of that statement. If the IRS wishes to confirm my statements your
01-03383
office can provide Mr. Alexander with a copy of his letter and they can review the copy of our Form 1040 in the possession of Mr. Hank Rummell the accountant who prepared our return that year. Mr. Rummell has not cooperated with us in any manner during this matter and he demanded and received his fee before he would meet with the Revenue Agent. Mr. Rummell was party to an error in a prior year tax return and that was why he no longer did our returns in January 1993.

I am overwhelmed that even with your assistance in this matter the District Director was incapable of recognizing the nonsense that was published over his signature. I would like you to contact the IRS in its national headquarters and ask them to investigate the whole matter of our 1989 Form 1040 and the manner in which we were coerced into paying money that we had already paid. Each employee is responsible for the quality of his/her work output and I have now identified a whole chain of employees, including the District Director who were careless, perhaps even intentionally in error, and who allowed this injustice to be perpetrated on us.

We deserve an apology as well as a refund of our money and interest on it. I am very concerned that we will become targets of the IRS with perpetual audits and other forms of harassment. We overpaid our 1989 taxes, and there were no adjustments in our 1990 and 1991 taxes after the audit by Agent Stabile. I seek your assistance in providing us a barrier from future harassing actions.

I remain available to assist the IRS in disciplining any employee who was involved in our 1989 Form 1040 key entry and the audit and was party to the repeated errors made at many levels. This is not a matter which I am willing to forget. We were subjected to coercion, harassment, stupidity, ridicule, and the denial of access to a considerable amount of money for more than one year. Ms. Sabb of the Manhattan Problem Resolution Office of the IRS told me that in 30 years of working for the IRS she had never heard of a complete file being lost, everything is gone into some, "Black Hole," at the IRS. I remain suspicious that some IRS employee intentionally trashed our file realizing that

an error of monumental stupidity had been made, and the loss of the file would prevent us from recognizing what had happened. I wish the IRS Inspector General be provided with all our letters to you. With whatever the Manhattan and White Plains IRS offices can provide he should investigate whether the loss of our file may have been intended to prevent anyone from learning of the chain of errors that resulted in our being forced to pay money that had already been collected. The Inspector General should review whether the IRS should have acted more aggressively to subpoena files, checks, banking records, etc., in order to have brought this matter to an earlier conclusion. I would like to discuss these matters with the Inspector General in a face to face meeting to be able to provide him/her with my experiences and feelings about this case. I suspect a criminal conspiracy to cover up the chain of significant errors surrounding our 1989

01-03384

Form 1040 handling.

What adds to my belief that our experience in 1993 was a criminal conspiracy is the actions NOT taken by the IRS. If I had claimed the $7,000 as an overpayment of FICA taxes in 1989 then the IRS should have referred this case for a criminal investigation. If I had made such a ridiculous claim, that would have been perjury and should have been construed as a criminal attempt to defraud the IRS of taxes owed. The lack of a criminal referral further adds to my suspicions that there was more than one IRS employee who conspired to defraud us of our money. Certainly many employees were careless, including the District Director, and did not perform their duties properly. Perhaps the District Director will contact the office that would have been requested to initiated a criminal investigation to learn if our 1989 Form 1040 file was forwarded to them. I am unable to express in words the anger I feel.

Now I better understand why my former employers had no concern regarding my charges to the EEOC. They had prior experience dealing with the EEOC and they could reliably predict that the EEOC would never be able to act to protect me because it is staffed with personnel who had previously been employed at the IRS. The Americans with Disabilities Act (ADA) contains Section 503 and 504 that require the withholding of all federal funds if an employer is found guilty of discrimination in defiance of the ADA. Please remember that my EEOC file was in a black hole at the EEOC for more than two months and would have remained there forever if I hadn't called to seek action. Perhaps I misunderstand, maybe EEOC employees are subsequently transferred to the IRS after they prove that they can successfully misplace whole files. The two agencies used to be housed together at 90 Church Street and I can now see that an employee at one agency could feel perfectly comfortable if they got off the elevator at the other agency's floor. Considering the quality of work and the non-existent review of the quality of employee work output demonstrated by both agencies in my recent interactions, I am not even sure that the employee would realize that they hadn't arrived at their proper work location.

I am enclosing another copy of both sides of the check that I used to pay the IRS $7,000 when we applied for an extension to file our 1989 Form 1040.

Please forward to me a copy of your letter to the EEOC Inspector General so that I will have a better understanding of how they cover over their mistakes. Perhaps the only instance when something comes out of a, "Black Hole," at one Federal Agency is when the Inspector General seeks answers to questions, and perhaps not even then.

XX

Yours truly,

XX , M.D., M.B.A.
enclosure

01-03385

AUG 29 1994

The Honorable Benjamin A. Gilman
U.S. House of Representatives
2185 Rayburn Building
Washington, D.C. 20515-3220

Dear Congressman Gilman:

This is in response to your inquiry on behalf of your constituent, Dr. XX who has a question about the Americans with Disabilities Act (ADA).

Dr. XX has inquired whether the ADA requires insurance companies to make direct deposit of monthly benefit payments for people with vision impairments who have difficulty handling checks because of their disability.

The ADA requires public accommodations to make "reasonable modifications" in their policies, practices, and procedures in order to make their goods and services available to persons with disabilities, unless a modification would "fundamentally alter" the nature of the goods and services offered. Absent an investigation, we are unable to determine in this particular situation whether the insurance fund would be required to modify its practices to enable Dr. XX checks to be deposited directly.

In reference to Dr. XX letter about his 1989 and 1990 Federal Income Tax Returns, we suggest that you contact the Internal Revenue Service. The Department of Justice does not have jurisdiction over these matters.

We hope that this information is useful to you and your constituent.

Sincerely,

Stuart J. Ishimaru
Acting Assistant Attorney General
Civil Rights Division

Enclosure

XX M.D., M.B.A.
New City, NY XX
Simple Telephone XX
Caller Controlled Voice Mail/Facsimile Machine XX
June 13, 1994

Honorable Benjamin Gilman
United States House of Representatives
2185 Rayburn Building
Washington, D.C. 20515-3222 Facsimile (202) 225-2541

ATTN: Jason Epstein
Dear Mr. Gilman,

Since I have become disabled from my work I have contacted the three insurance companies with which I have disability income insurance. At this time all three companies are either paying me by benefits or are making final decisions.

Because of my vision impairment I find it very difficult to handle any object without risking misplacing it. This is a very serious problem and while at times it is almost comical to see me scurrying around trying to determine where I put something down, it is emotionally very depressing. That is why I have requested of all three insurance companies to provide me with wire direct deposit of my monthly benefits checks. All have refused, while one is considering providing me with a mail deposit. I made those requests to simplify my life, and the insurance companies will not comply. I assume their refusal is based on their desire to have the money paid to me, "float," for their benefit.

I have no concern regarding the insurance companies finances, I paid insurance premiums for up to 23 years so that I could protect myself. Please ask the Equal Employment Opportunity Commission if they would consider ordering a public company to wire transfer money into the account of an insured who cannot handle checks because of a disability. The Americans with Disabilities Act (ADA) orders businesses that serve the public to make accommodations for the benefit of disabled persons.

I would rather not be disabled, but since the EEOC was unable to assist me, I am now at home attempting to live on my insurance benefits. Your prompt action in forwarding this request to the EEOC for a decision is appreciated. Thank you very much.

XX
Yours truly,

XX

01-03382

XX M.D., M.B.A.
New City, NY XX
Simple Telephone XX
Caller Controlled Voice Mail/Facsimile Machine XX

June 13, 1994

Honorable Benjamin Gilman
United States House of Representatives
2185 Rayburn Building
Washington, D.C. 20515-3222 Facsimile (202) 225-2541

ATTN: Jason Epstein
Dear Mr. Gilman,

Despite my poor vision I have been fortunate to find parts of our 1989 Form 1040 and some of the correspondence with the IRS that relates to our payment of approximately $9,200 last spring, payment that was coerced from us despite our having paid that money in a timely manner in 1989 and 1990.

The reason for the IRS demanding the principal, interest and penalties is that one of their employees incorrectly keyed our tax form into their computer. I entered on our 1989 Form 1040 that I had paid $7,000 with a request for an extension that was filed on time in 1990. I have even provided you with copies of both sides of that check. What happened is the IRS employee entered the $7,000 on line 60, rather than line 59 where we correctly entered it. That is why the IRS could not find the money that we claimed as having paid. Revenue Agent Anthony J. Stabile, had in front of him the Form 1040 as well as the computerized print out. He was either too stupid to compare the Form 1040 with the computer print out, or he did and didn't care to act properly by correcting the computer print out. What is most interesting is that all his supervisors and superiors had the same opportunity to see the glaring error, but they also let it pass through undetected.

It should have been evident to all the personnel involved in our audit and to the personnel who prepared Mr. Alexander's June 22, 1993 letter to you, which you forwarded to us, that entering $7,000 as a claim for overpayment of FICA taxes is very unusual, and perhaps there was an error. No one, including the District Director, had the least discomfort with accusing us of entering $7,000 as a claim for overpayment of FICA taxes. No one made the effort to determine if there was an error. Only the IRS had the

original Form 1040, we had already notified Mr. Stabile that we could no longer locate our copy.

In the letter dated June 22, 1993 Mr. Alexander repeated the idiotic statement that we had entered $7,000 on line 60. Anyone with half a brain should have recognized the stupidity of that statement. If the IRS wishes to confirm my statements your
01-03383
office can provide Mr. Alexander with a copy of his letter and they can review the copy of our Form 1040 in the possession of Mr. Hank Rummell the accountant who prepared our return that year. Mr. Rummell has not cooperated with us in any manner during this matter and he demanded and received his fee before he would meet with the Revenue Agent. Mr. Rummell was party to an error in a prior year tax return and that was why he no longer did our returns in January 1993.

I am overwhelmed that even with your assistance in this matter the District Director was incapable of recognizing the nonsense that was published over his signature. I would like you to contact the IRS in its national headquarters and ask them to investigate the whole matter of our 1989 Form 1040 and the manner in which we were coerced into paying money that we had already paid. Each employee is responsible for the quality of his/her work output and I have now identified a whole chain of employees, including the District Director who were careless, perhaps even intentionally in error, and who allowed this injustice to be perpetrated on us.

We deserve an apology as well as a refund of our money and interest on it. I am very concerned that we will become targets of the IRS with perpetual audits and other forms of harassment. We overpaid our 1989 taxes, and there were no adjustments in our 1990 and 1991 taxes after the audit by Agent Stabile. I seek your assistance in providing us a barrier from future harassing actions.

I remain available to assist the IRS in disciplining any employee who was involved in our 1989 Form 1040 key entry and the audit and was party to the repeated errors made at many levels. This is not a matter which I am willing to forget. We were subjected to coercion, harassment, stupidity, ridicule, and the denial of access to a considerable amount of money for more than one year. Ms. Sabb of the Manhattan Problem Resolution Office of the IRS told me that in 30 years of working for the IRS she had never heard of a complete file being lost, everything is gone into some, "Black Hole," at the IRS. I remain suspicious that some IRS employee intentionally trashed our file realizing that

an error of monumental stupidity had been made, and the loss of the file would prevent us from recognizing what had happened. I wish the IRS Inspector General be provided with all our letters to you. With whatever the Manhattan and White Plains IRS offices can provide he should investigate whether the loss of our file may have been intended to prevent anyone from learning of the chain of errors that resulted in our being forced to pay money that had already been collected. The Inspector General should review whether the IRS should have acted more aggressively to subpoena files, checks, banking records, etc., in order to have brought this matter to an earlier conclusion. I would like to discuss these matters with the Inspector General in a face to face meeting to be able to provide him/her with my experiences and feelings about this case. I suspect a criminal conspiracy to cover up the chain of significant errors surrounding our 1989

Form 1040 handling.

What adds to my belief that our experience in 1993 was a criminal conspiracy is the actions NOT taken by the IRS. If I had claimed the $7,000 as an overpayment of FICA taxes in 1989 then the IRS should have referred this case for a criminal investigation. If I had made such a ridiculous claim, that would have been perjury and should have been construed as a criminal attempt to defraud the IRS of taxes owed. The lack of a criminal referral further adds to my suspicions that there was more than one IRS employee who conspired to defraud us of our money. Certainly many employees were careless, including the District Director, and did not perform their duties properly. Perhaps the District Director will contact the office that would have been requested to initiated a criminal investigation to learn if our 1989 Form 1040 file was forwarded to them. I am unable to express in words the anger I feel.

Now I better understand why my former employers had no concern regarding my charges to the EEOC. They had prior experience dealing with the EEOC and they could reliably predict that the EEOC would never be able to act to protect me because it is staffed with personnel who had previously been employed at the IRS. The Americans with Disabilities Act (ADA) contains Section 503 and 504 that require the withholding of all federal funds if an employer is found guilty of discrimination in defiance of the ADA. Please remember that my EEOC file was in a black hole at the EEOC for more than two months and would have remained there forever if I hadn't called to seek action. Perhaps I misunderstand, maybe EEOC employees are subsequently transferred to the IRS after they prove that they can successfully misplace whole files. The two agencies used to be housed together at 90 Church Street and I can now see that an employee at one agency could feel perfectly comfortable if they got off the elevator at the other agency's floor. Considering the quality of work and the non-existent review of the quality of employee work output demonstrated by both agencies in my recent interactions, I am not even sure that the employee would realize that they hadn't arrived at their proper work location.

I am enclosing another copy of both sides of the check that I used to pay the IRS $7,000 when we applied for an extension to file our 1989 Form 1040.

Please forward to me a copy of your letter to the EEOC Inspector General so that I will have a better understanding of how they cover over their mistakes. Perhaps the only instance when something comes out of a, "Black Hole," at one Federal Agency is when the Inspector General seeks answers to questions, and perhaps not even then.

XX

Yours truly,
XX , M.D., M.B.A.

enclosure
01-03385

AUG 29 1994

The Honorable Michael R. McNulty
U.S. House of Representatives
217 Cannon Building
Washington, D.C. 20515-3221

Dear Congressman McNulty:

This letter is in response to your inquiry on behalf of your constituent, Kristin L. Woodward, workshop coordinator for the Colonie Art League, Inc. Ms. Woodward requested guidelines for the provision of interpreter services by her organization for workshops and courses. She further sought to clarify if this responsibility would extend to the group's regular monthly meetings.

Ms. Woodward's query relates most directly to the auxiliary aids and services provisions of title III. Such aids and services must be provided by public accommodations to ensure "effective communication" for individuals who are deaf or hard of hearing or who have impaired vision or speech. Under title III of the ADA, "public accommodations" are private entities who own, operate, lease, or lease to, a place of public accommodation. In the present instance, it would appear that both the Colonie Art League, Inc., and the contracted artist would have obligations as covered entities under title III for the proposed workshop.

The auxiliary aids requirement is intended to be flexible, reflecting the variable nature of what constitutes effective communication. In addition to the specific nature of the disability involved, factors used to determine communication effectiveness in any given circumstance include the length, complexity, and significance of the information being exchanged.

Under section 36.301(c) of the title III regulation, when an interpreter or other auxiliary aid or service is necessary to ensure effective communication, the covered entity must absorb the cost of this aid or service, unless it would result in an undue burden. The term "undue burden" means "significant difficulty or expense." In determining whether the provision of an interpreter or other aid or service would result in an undue burden, covered entities should consider their overall financial

resources.

FOIA

01-03386

Ms. Woodward states that the provision of interpreter services for the workshop would place her organization in the position of operating at a financial loss. One should consider, however, the extent to which the interpreter costs could be shared contractually with the artist, who also has an independent obligation to provide auxiliary aids. Failure of the artist though, to fulfill his or her ADA or contractual obligations does not in any way relieve Colonie Art League, Inc., of its ADA responsibilities.

In addition to cost-sharing, another option might be to consider raising the workshop fees slightly for all registrants to cover the cost of auxiliary aids and other measures to remove barriers to participation by people with disabilities. This same principle could be applied to monthly meetings.

Another avenue to explore would be the availability of outside funding sources for interpreter services. Some states have monies available through health care or education funds that may be applied to interpreter services, if the activities are either therapeutic or educational in nature.

The auxiliary aids provisions of title III of the ADA do not compel covered entities to comply with a unilateral determination of an individual with a disability that a particular interpreter, or any auxiliary aid, is essential to effective communication. Ideally, the covered entities and the individual would arrive at a mutually acceptable choice through a process of consultation. This specific point is illustrated in section III-4.3200 on page 28 of the Department of Justice's Title III Technical Assistance Manual. Additional relevant information may be found in the preamble discussion of section 36.303 on pages 35567-35568 of the title III regulation. These documents are enclosed.

I trust that this information will be helpful in your response to your constituent.

Sincerely,

Stuart J. Ishimaru
Acting Assistant Attorney General
Civil Rights Division

Enclosures

01-03387

Colonie ART League Inc. JUL 06 1994

129 old london road * latham, new york 12110

June 28, 1994

Mr. David Torian
Congressman McNulty's Office
217 Cannon House Office Building
Washington, D. C. 20515

Dear David:

Thank you for returning my call so quickly this evening. As promised, I am detailing the general information for you regarding the American's for Disability Act as it relates to our not-for-profit group. I appreciate your clarifying this issue thru the Department of Justice.

We are a 200 +- art group, meeting monthly for the purpose of artists associating with other artists, presenting demonstrations, exhibitions, etc. Anyone interested in art may join for $25. yearly to participate in regular meetings and activities.

We have a member who is hearing and speech impaired. He referred the Capital District Center for Independence to us and they informed us that we should supply an interpreter for Bill at all meetings so that he may "hear" the demonstrator and business meeting. If we did that at each meeting, we would be operating at a loss (using this year as a prime example).

We are contracting an international artist to come and run a 5-day workshop for anyone interested in intensive study. We do not profit from his being here, we just offer this workshop to save our members the extensive costs of travel and lodging elsewhere to study with him. Anyone participating pays his own way in full. The workshop includes lectures and demonstrations and individual instruction to the participants for the five day period. This is a service we provide to our members whenever we can do this...once or twice a year. It is an individual decision as to whether or not a member would like to participate.

The CDCI suggested an interpreter for the first two hours of the demo/lecture/and private instruction, for each day, totaling $300 in fees.

CDCI told me that the contracted artist should pay since he
TO FURTHER ART APPRECIATION
01-03388
Page 2

since it is the individual who wants to take this one week course, and suggests that the CDCI naturally would want to get all the financial help for it's members that it can if it can coerce us into it.

We need to know...Are we responsible for an interpreter for the special workshops that we run that an individual contract for his personal benefit?

What are the guidlines for meetings on a monthly basis?

We want to do all we can, but not go in the hole doing it. We thank you in advance for your advice on this matter and appreciate a timely response as our decision will be needed soon.

Kindest regards,

COLONIE ART LEAGUE, INC.

Kristin L. Woodward
Workshop Coordinator

CC Susan Thirolle, President
01-03389

U.S. Department of Justice
Civil Rights Division
Coordination and Review Section

P.O. Box 66118
Washington, D.C. 20035-6118

AUG 29 1994

XX

RE: Complaint Number XXXXXX

Dear Mr. Modica:

This letter constitutes our Letter of Findings in response to the complaint filed by XX against the Town of Henrietta, New York, under Title II of the Americans with Disabilities Act of 1990 (ADA). Title II protects qualified individuals with disabilities from discrimination on the basis of disability in the services, programs and activities of a State or local government. XX is alleged that the programs, services, and activities provided in the Henrietta Town Hall are not readily accessible to and usable by individuals with disabilities. XX also alleged that the Town retaliated against him because he complained about the lack of accessible facilities. Specifically, XX alleged that his job description was changed and he was moved to another work site, which was allegedly inaccessible. In conducting this investigation we reviewed information supplied by XX , as well as information provided by the Town of Henrietta.

Section 35.140 of the regulation implementing Title II states that no qualified individual with a disability shall, on the basis of disability, be subjected to discrimination in employment under any service, program, or activity conducted by a public entity. This section requires an employer to provide a reasonable accommodation for any qualified employee with a disability.

Section 35.149 of the Title II regulation requires a public entity to ensure that no qualified individual with a disability shall, because the facilities are inaccessible to or unusable by such individuals, be excluded from receiving the benefits of the services, programs or activities.

01-03390

Section 35.150(a) of the Title II regulation requires that a public entity operate each of its programs so that, when viewed in its entirety, the program is readily accessible to and usable by individuals with disabilities. Section 35.150(b) lists a number of methods that a public entity may use to make its programs accessible. These methods include reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, and alteration of existing facilities. Structural changes in existing facilities are required only when there is no other feasible way to make the program accessible. Section 35.150(a) states that actions are not required if they would result in undue financial and administrative burdens or in a fundamental alteration in the nature of the program or activity.

Section 35.134 of the Department of Justice's implementing regulation prohibits retaliation against any individual because that individual has opposed any practices alleged to be unlawful by Title II or for participating in a complaint investigation.

This Department has completed its investigation of the complainant's allegations. The issues raised have been successfully resolved based on the actions taken by the Town of Henrietta to comply voluntarily with the requirements of Title II. The results of the investigation are summarized below.

Issue I: Alleged Retaliation

XX worked as an employment counselor for the Town of Henrietta. In November 1992, he was reassigned from his worksite at the Town Hall to a new location in a local high school. XX viewed this reassignment of his worksite as a form of retaliation. He alleged that his activism in seeking to bring the Town of Henrietta into full compliance with the ADA and his advocacy of issues important to persons with disabilities led to the reassignment. XX alleged that he encountered serious problems entering the local high school building and that, once inside, he did not have access to his office or to restrooms. He added that it was difficult to move about the facility because of the building's layout and that the doorknobs prevented access to the offices he used.

The Town denied that XX reassignment was in retaliation for asserting rights protected by the ADA. The Town stated that it made the transfer to a new worksite as a means of providing counseling services at a location closer to the clients

XX served. Since XX clients were primarily high school students, Town officials believed that he would be

more effective working in the local high school, as opposed to the Town Hall.

The Town also moved immediately to resolve the accessibility problems XX is encountered at his new worksite. Based upon documentation submitted by the complainant and the Town, and as clarified in interviews with XX, these problems were resolved. XX expressed satisfaction with the Town's response and the adjustments to make his worksite readily accessible.

Before this aspect of the investigation was finished, XX passed away on May 25, 1993. However, in response to his allegations, the Department examined fully the other issues raised in his complaint. These issues follow:

Issue II: Access to the Henrietta Town Hall

The complainant alleged that several areas of the Town Hall were not readily accessible to persons with disabilities. The balance of this letter describes the alleged problems, the actions taken by the Town to address them, and the resolution of each.

A. Entrance to Town Hall

The complainant alleged that the doors to the Town Hall were too heavy to open unassisted. Because of weather conditions, lighter doors were not an option. The Town recognized this and made plans to install power-assisted doors. Power-assisted doors were installed at all entrances to the Town Hall in October 1993, providing accessibility to the building for individuals with mobility impairments and others who have difficulty opening doors.

The Town also redesigned and altered the sidewalk area and ramps leading to the building at the rear entrance, making it easier for individuals with disabilities to enter.

B. Programs, Services and Activities

Although the investigation determined that the programs, services and activities conducted inside the Town Hall are

accessible to persons with disabilities, the complainant described problems with the counters at which business is carried out, stating that some counters are too high for persons in wheelchairs. As a consequence, the Town built what it describes as "knee holes" that allow individuals in wheelchairs to see over the counter and to access the services provided in the Town Hall.

C. Water Fountain

The complainant alleged that there was an inaccessible water fountain outside the Town Supervisor's office. The Town installed a cup dispenser to provide access. The complainant asserted that because the dispenser next to the water fountain was frequently out of cups, it was often inaccessible to individuals with disabilities. The Town acknowledged that cups are frequently taken by employees or others who are not disabled, and said it would monitor the cup supply. As a permanent solution, the Town installed a new, accessible water fountain.

D. Restrooms

The complainant alleged that the Town Hall's bathrooms were inaccessible. The investigation disclosed that there are two bathrooms for employees on the main floor. Persons with disabilities may use these. The Town has made some adjustments to make them accessible and plans to post signage to clearly indicate that they are available to persons with disabilities, as well as employees. A consultant who evaluated the Town Hall's facilities made several recommendations for improving the restroom services, which have been accepted. The consultant's report and recommendations are discussed below.

E. Town Supervisor's Office

The complainant alleged that the entrance to this office is too narrow for someone in a wheelchair to enter. The Town does, however, provide access to the programs in the office. The door is always open and the staff person sitting in the outer office is available to respond to the needs of persons who use wheelchairs, as well as arrange for direct contacts with the Town Supervisor, which are held in an accessible room.

F. Access to Town Park Baseball Fields

The complainant alleged that because of the installation of a one foot-high curb surrounding the baseball fields, without

curb cuts, he was unable to attend local games played in this location. Before the curb was installed, XX was able to roll up the grassy slope to the baseball diamonds. With the new curbs, it became difficult, if not impossible, for him to continue attending these activities. The Town acknowledged that some of the fields were inaccessible to individuals using wheelchairs or those with other mobility impairments. The Town has made plans, and budgeted funds, for providing direct access to the ballfields. It will construct several five foot-wide paths going from the parking lot, which has accessible parking,

to the ballfields. Once there, an individual in a wheelchair will approach a pad wide enough for viewing all activities conducted on the ballfields. The Town planned to have this project completed in November 1993. Because of the weather, lack of staff and other priorities, the Director of Parks and Facilities has now committed to completing this alteration by the Fall of 1994.

G. Other Activities

The Town of Henrietta commissioned a study of the Town Hall's accessibility by the Rochester Center for Independent Living. The study examined all public and common use areas of the building for adherence to the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (ADAAG). Although strict adherence to ADAAG is not necessarily required in existing facilities where the standard is one of "program accessibility" (i.e., ensuring that programs rather than individual facilities are accessible), the Town has nevertheless made plans to implement the recommendations of this study.

In response to suggestions by the Department, the Town of Henrietta has taken steps to notify members of the public and its employees regarding their rights and the protections afforded by the ADA. The notice describes the accommodations available for individuals with disabilities who wish to use the services offered or participate in activities conducted in the Town Hall. The notification includes steps to effectively communicate with individuals with hearing and visual impairments and describes the availability of services, e.g., interpreters, for qualified individuals seeking services. The notice identifies the person(s) responsible for ADA matters, and the availability of grievance procedures for prompt and equitable resolution of complaints alleging any actions prohibited by the ADA. The Town will also ensure that appropriate signage is installed in and

around the Town Hall directing individuals with disabilities into the facility. The Town has taken steps to consult with persons with disabilities whenever program changes or construction are planned, to identify any accessibility problems.

Conclusion

This letter contains our determination with respect to the allegations raised in the administrative complaint filed by XX . We find that the Town of Henrietta is in compliance with the ADA because it has taken appropriate steps to provide access to its programs, services and activities and will communicate these efforts to the community. These actions, when completed, successfully resolve the issues raised in the complaint to the Department of Justice. The Town will submit a written report to the Department no later than October 15, 01-03394

1994, describing the progress of the actions planned above to provide accessibility to individuals with disabilities.

If you are dissatisfied with our determination, you may file a complaint presenting your allegations of discrimination in an appropriate United States District Court under Title II of the ADA.

You should be aware that no one may intimidate, threaten, or coerce anyone or engage in other discriminatory conduct against anyone because he or she either has taken action or participated in an action to secure rights protected by the ADA. Any individual alleging such harassment or intimidation may file a complaint with the Department of Justice. We would investigate such a complaint if the situation warrants.

Under the Freedom of Information Act, 5 U.S.C. 552, we may be required to release this letter and other correspondence and records related to the complaint in response to a request from a third party. Should we receive such a request, we will safe-guard, to the extent permitted by law, release of information that could constitute an unwarranted invasion of your or another's privacy.

If you have any questions regarding this letter, please contact Thomas Esbrook at (202) 307-2940.

Sincerely,

Merrily A. Friedlander

Acting Chief
Coordination and Review Section
Civil Rights Division

cc: Mr. James R. Breese
Supervisor
Town of Henrietta

Mr. William H. Walker, Jr.

Mrs. Gene McGinnis

Mr. William Dykstra

01-03395

U.S. Department of Justice
Civil Rights Division
Coordination and Review Section
P.O. Box 66118
Washington, D.C. 20035-6118

AUG 29 1994

Mr. James R. Breese
Supervisor
Town of Henrietta
475 Calkins Road
P.O. Box 999
Henrietta, New York 14467-0999

RE: Complaint Number XX

Dear Mr. Breese:

Enclosed is the Letter of Findings (LOF) resolving a complaint filed with the Department of Justice by XX XX under Title II of the Americans with Disabilities Act. We appreciate your willingness to resolve this matter in a voluntary manner. As discussed with Mr. William Walker, Town Attorney, and Mr. William Dykstra, Director of Parks and Facilities, the Department requires a written report that describes your progress in completing all projected improvements to provide access to the Town's programs, services, and activities for individuals with disabilities. Please submit a report to the Department no later than October 15, 1994, that includes information on the following planned activities that are referenced in the LOF:

- Installation of a new, accessible water fountain in the Town Hall.

- Construction of accessible paths to the Town ballfields.

- Signage for the accessible restrooms.

- A description of all actions taken in response to the recommendations of the study conducted for the Town by the Rochester Center for Independent Living.

01-03396

The Department will monitor your adherence to the proposed changes until they are completed. If you have any questions or need further information, please contact Mr. Thomas Esbrook of my staff at (202) 307-2940.

Sincerely,

Merrily A. Friedlander
Acting Chief
Coordination and Review Section
Civil Rights Division

Enclosure

cc: Mr. William Walker
Town Attorney

Mr. William Dykstra
Director of Parks and Facilities

01-03397

AUG 29 1994

The Honorable Dick Zimmer
Member, U.S. House of Representatives
133 Franklin Corner Road
Lawrenceville, New Jersey 08648

Dear Congressman Zimmer:

This is in response to your inquiry on behalf of your constituent, XX The Civil Rights Division has no record of having received your previous inquiry.

XX complains that shopping malls in his community during winter storms have plowed snow into parking spaces designated for persons with disabilities. XX wants to have malls ticketed for failure to comply with the requirements of the Americans with Disabilities Act (ADA) to maintain accessible parking.

Retail shopping facilities are subject to title III of the ADA. The Department's regulation implementing title III does provide that retail shopping facilities maintain their accessible features in operable working condition. This requirement includes keeping accessible spaces free of snow during the winter. However, the ADA does not provide for automatic ticketing or fines as XX seems to believe. Congress created two enforcement tracks under title III. First, private individuals may file suit in Federal court to obtain relief. Second, the Department of Justice may file suit in circumstances where the Attorney General believes there is a pattern or practice of discrimination or discrimination raising an issue of general public importance. A report summarizing the Department's ADA enforcement efforts is enclosed.

The Department does not have the resources to pursue every meritorious complaint it receives and we have determined not to investigate XX complaint. We have enclosed a list of organizations in New Jersey that may be able to assist XX

in pursuing his complaint.

01-03398

I hope this will assist you in responding to your constituent.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

Enclosures

01-03399

XX
Jamesburg, NJ

XX

February 22, 1994

Congressman Pallone
67 Church Street
New Brunswick, NJ 08901

Dear Congressman Pallone:

A severe injustice against disabled people is being committed and I would like someone to step in and speak up on our behalf. On Valentine's Day, (2/14/94), I went shopping at the East Brunswick mall and found the problem of snow removal in handicapped spaces intolerable. This is not the first time. Every storm we have had, the scenario remained the same. Parking spaces reserved for needy people are empty because most of us can't go out when weather is inclement. Snow plowers take advantage of this opportunity to plow excessive snow into these spots. (where it stays until final snow removal chores are finished or until it melts). This is not an isolated incident; 13 storms in the past three months and everytime the same thing.

I went to three malls on Valentine's Day and finally went to the managers office to file a complaint. I parked sideways (I drive a pick up truck, am paralyzed, and need extra room when exiting my truck) in a reserved zone so no one could "block me in", went into the office and filed a complaint. When I came out I found a "violation" on my windshield. I was mad! Being paralyzed I could not reach the ticket on the windshield.

I would like to see malls ticketed for not complying with minimum ADA standards. They must have a correct ratio of parking spaces at all times!

Thank you.

Very truly yours,

XX
XX

01-03400

(FORM) TRAFFIC VIOLATION

01-03401

AUG 30 1994

J. Keith Ausbrook
Counsel to the Municipal Castings
Fair Trade Council
Collier, Shannon, Rill & Scott
3050 K. Street, N.W., Suite 400
Washington, D.C. 20007

Dear Mr. Ausbrook:

I am writing in response to your letter and as a follow up to our meeting in which you requested guidance on how the Standards for Accessible Design (Standards) issued under the Americans with Disabilities Act apply to various types of gratings used on streets and sidewalks. I apologize for our delay in responding.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities that have rights or responsibilities under the Act. Pursuant to that authority, this letter provides informal guidance to assist you in understanding the ADA. However, this technical assistance does not constitute a legal interpretation of the statute, and it is not binding on the Department.

The Standards for Accessible Design contain specific requirements that apply to gratings that are located in walking surfaces that are part of an accessible route. These provisions also apply to walking surfaces that are located in the accessible route at cross walks or curb ramps. Section 4.5.4 of the Standards requires that these gratings shall have spaces no greater than 1/2 inch wide as measured in the direction that is parallel to the dominant direction of travel. Grates may have elongated openings as long as the longer dimension is perpendicular to the dominant direction of travel. There is no restriction on the length of elongated openings perpendicular to the dominant direction of travel.

Gratings that do not meet the requirements of the Standards may be used in any areas that are not part of an accessible route or in any area adjacent to an accessible route as long as the accessible route is at least 36" wide and provides an accessible

path around the grate and meets all the requirements of an accessible route including slope and cross slope.

01-03402

Gratings that do not meet the requirements of the Standards may not be used within the accessible route. This requirement addresses the needs of wheelchair users as well as the needs of persons who walk with crutches, canes, and other mobility devices.

The Department's Standards for Accessible Design are based on the ADA Accessibility Guidelines (ADAAG) as adopted by the U.S. Architectural and Transportation Barriers Compliance Board (Access Board), 1331 F Street, N.W., Suite 1000, Washington, D.C. 20004-1111.

Proposals for changes to the ADAAG should be forwarded to Mr. David Capozzi, Director of the Office of Technical and Information Services at the Access Board.

The Access Board recently issued an interim final rule containing new guidelines for public rights-of-way. The Department of Justice issued a notice of proposed rulemaking (NPRM) on June 20, 1994, seeking comments on the Board's guidelines prior to adopting them as new Standards for State and local governments under title II. These changes may result in changes to the requirements that apply to gratings. We have enclosed a copy of the NPRM and the Access Board's interim final rule; additional copies are available to the public from the Department through calling our toll free number, 1-800-514-0301.

We hope this information is helpful to you and the Municipal Castings Fair Trade Council. I look forward to working with you in the future.

Sincerely,

John L. Wodatch
Chief
Public Access Section

Enclosures

cc: Records Chrono Wodatch Breen Lusher
N:\UDD\JOHNSONT\LUSHER

01-03403

(Handwritten) 8/30/94

The Honorable Rick Boucher
Member, U.S. House of Representatives
188 East Main Street
Abingdon, Virginia 24210

Dear Congressman Boucher:

This letter is in response to your inquiry on behalf of your constituent, XX who seeks information about the Americans with Disabilities Act (ADA).

XX states that he is a quadriplegic and is unable to sign his own name, but his father has full power of attorney to sign XX name for him. XX asks whether a securities firm that has a policy of refusing to accept clients who cannot sign their own names is in violation of the ADA.

Title III of the ADA prohibits discrimination on the basis of disability in commercial facilities and places of public accommodation, including financial institutions. Title III requires, among other things, that owners and operators of places of public accommodation make reasonable modifications to their policies, practices, and procedures, if those modifications are necessary to provide services to persons with disabilities. The only limits on this obligation are that the required modification must be reasonable and may not fundamentally alter the nature of the services provided at the place of public accommodation.

A securities firm policy of accepting only clients who can sign their own names would be subject to the reasonable modification requirement. Absent an investigation, the Department cannot render an opinion on XX specific situation. The securities firm, however, would be required to modify its policy to allow a person with a valid power of attorney to sign a document on behalf of an individual who is unable to sign his or her own name because of a disability, if such a modification is reasonable and would not fundamentally alter the nature of the firm's services.

cc: Records, Chrono, Wodatch, McDowney, Bowen, Novich, FOIA, MAF
Udd:Novich:Congress:Boucher

Title III can be enforced by private litigation, alternate dispute resolution such as mediation, or by filing a complaint with the Department of Justice. The Department is not able to investigate all the complaints of title III violations that it receives, and we have determined not to investigate this complaint. However, there are other entities that may be able to assist XX in resolving his complaint. We have enclosed a list of such entities located in Virginia.

In addition, we are enclosing copies of two status reports that detail the actions that the Civil Rights Division has undertaken to enforce titles II and III of the ADA. These reports illustrate that, although the Department of Justice is unable to investigate every complaint that it receives, we are taking strong action to enforce the law. I hope this information is useful to you in responding to your constituent.

If XX wishes to have further information about the requirements of the ADA, he may contact our ADA information line at (800) 514-0301/T.D.D. (800) 514-0383, weekdays from 10:00 a.m. to 6:00 p.m. EST.

I hope this information is useful to your constituent.

Sincerely,

Stuart J. Ishimaru
Acting Assistant Attorney General
Civil Rights Division

Enclosures

01-03405

RICK BOUCHER
9th District, Virginia
COMMITTEES
ENERGY AND COMMERCE
JUDICIARY
SCIENCE, SPACE, AND TECHNOLOGY
CHAIRMAN, SUBCOMMITTEE ON SCIENCE
ASSISTANT MAJORITY WHIP

Congress of the United States
House of Representatives
Washington, DC 20515-4609

2245 RAYBURN HOUSE OFFICE B
WASHINGTON DC 20515-4609
(202) 225-3861
(202) 225-0442 FAX
CONSTITUENT SERVICE OF:
188 EAST MAIN STREET
ABINGDON, VA 24210
(703) 628-1145
311 SHAWNEE AVENUE EAST
BIG STONE GAP, VA 24219
(703) 523-5450
112 NORTH WASHINGTON AVE
PO BOX 1258
PULASKI, VA 24301
(703) 980-4310

June 27, 1994

U. S. Department of Justice
Civil Rights Division
Public Access Section
P.O. Box 66738
Washington, D.C. 20035

Dear Sir or Madam:

Enclosed please find correspondence I received from Mr. XX of Marion, Virginia, concernign his inability to open an account with Waterhouse Securities, Inc. of New York.

XX contacted my office on June 10, 1994, and advised that he was a paraplegic, therefore, his father has his full power-of-attorney. He had been attempting to open an account with the above-mentioned company, but was told that they would not accept a full power-of-attorney and that is was necessary for him to sign his name in order to open an account.

I am concerned that XX is not being afforded the

rights of other individuals based upon his inability to use his arms. I am further concerned that a company such as Waterhouse Securities, Inc. does not have in place contingency plans to allow disabled individuals to do business with their company.

I would greatly appreciate your immediate and thorough review of this matter, and advising me of the Department's findings. Please direct your reply to my Abingdon district office.

Thanking you for your time and attention to this request, I am

Sincerely,

Rick Boucher
Member of Congress

Enclosure
RB/km
01-03406

XX
XX
Marion, VA XX
June 16, 1994

U.S. Department of Justice
Civil Rights Division
Public Access Section
P.O. Box 66738
Washington, D.C. 20035

To Whom It May Concern:

I am writing this letter at the request of Ms. Johanssen, Congressional Liaison with the Department of Justice. Congressman Rick Boucher's office had spoken to her after I contacted him concerning the following matter.

My name is XX . I was paralyzed in an auto accident in 1972. I have absolutely no use of my arms or legs, but my mind is very alert. Since the accident my father has had my full power of attorney. We have a legal document drawn up by a lawyer, notarized by a notary public, and signed by witnesses. I take care of my own business decisions and my father signs all related material, XX for XX XX Power of Attorney.

I wanted to open an account with the discount brokerage firm, Waterhouse Securities, based in New York, NY. They sent me an application, but since I cannot sign it myself, I called their customer service department several times between May 31, 1994 and June 10, 1994 to ask for advice on how to fill out the application properly. Every customer representative I spoke with asked their supervisor what I should do, and they all came back with the answer, "If you cannot sign your own name, you cannot open an account with us. We do not accept your full power of attorney." Waterhouse Securities has their own limited power of attorney, but one has to be able to sign that form himself or it will not be accepted either.

On June 10, 1994 I talked with a Regional Vice President, Mr. Eric Gerardi. I told him of the problem I was having in trying to open an account with the firm and asked if he could help. I explained to him that because of a physical disability I was unable to sign my own name. I told him my father has my full power of attorney. He gave me the same answer as before. It is not their policy to accept any full power of attorney. Therefore, I could not open an account with Waterhouse Securities, and he suggested

I try another brokerage firm.

01-03407

By this time I was frustrated and angry, so I called Congressman Rick Boucher's office to inquire about the legality of this type of treatment. They felt it was a violation of the Americans with Disabilities Act and offered to help.

I received a letter on June 15 from Congressman Boucher informing me that Ms. Johanssen requested I provide the Department of Justice with a statement that describes the conversation between the individual at Waterhouse Securities and myself, when it transpired, my physical limitations, and the manner in which I handle my financial matters.

Should a person be discriminated against because a physical disability renders him unable to sign his own name? If this is considered discrimination under the Americans with Disabilities Act can anything be done to resolve it?

The only reason I am pursuing this matter is the principle. If you would wish to contact me by phone my number is XX
Thank you for any assistance you may offer.

Respectfully Yours,
XX
FOR
XX
POWER OF ATTORNEY

Waterhouse Securities, Inc.
100 Wall Street
New York, NY 10005
(212)806-3586

Customer Service (800)934-4410

01-03408

T. 8-10-94

DJ 202-PL-819

AUG 30 1994

State of Missouri
Department of Natural Resources
Division of State Parks
P.O. Box 176
Jefferson City, Missouri 65102-0176

Dear Mr. Miles:

This is in response to your letter regarding the application of the Americans with Disabilities Act (ADA) in the context of the preservation of historic buildings.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities that have rights or responsibilities under the Act. Pursuant to that authority, this letter provides informal guidance to assist you in understanding the ADA. However, this technical assistance does not constitute a legal interpretation of the statute and it is not binding on the Department.

Your letter indicates that the Missouri Department of Natural Resources Historic Preservation Program is developing a method for addressing accessibility requirements in historic buildings. As you are aware, title III of the ADA does apply to qualified historic buildings that constitute places of public accommodation or commercial facilities. Section 4.1.7 of the ADA Standards for Accessible Design (Standards), 28 C.F.R. part 36, Appendix A, specifically addresses alterations to historic buildings. The ADA Standards, which were adopted as a final rule on July 26, 1991, are based on the ADA Accessibility Guidelines (ADAAG) initially published by the U.S. Architectural and Transportation Barriers Compliance Board.

Section 4.1.7(1) of the ADA Standards provides that, when an alteration is made to a qualified historic building, the alteration must fully comply with the requirements of the ADA Standards. Only in special circumstances may an alteration to a historic building be done according to a less accessible

standard. Such special circumstances may be found to exist only if, upon completion of the applicable process outlined in section 4.1.7(2), the State Historic Preservation Officer finds that full

cc: Records, Chrono, Wodatch, Blizard, Hill, FOIA, Friedlander
n:\udd\hille\policylt\miles2.ltr

01-03409

compliance with the ADA Standards would threaten or destroy the historic significance of the building. Only if such a finding is made may the alternative requirements of section 4.1.7(3) be used. See also 28 C.F.R. S36.405.

Your letter also raises the application of the ADA to historic buildings temporarily owned by the State of Missouri through its Historic Preservation Revolving Fund program, when no programs are being offered in those facilities.

Title II of the ADA addresses the services, programs, and activities of State and local governmental entities and instrumentalities. For existing buildings, to which no alterations are being made, title II requires that programs, services, and activities be operated so that, when viewed in their entirety, they are accessible. This standard of program accessibility does not necessarily require a public entity to alter its existing facilities if program accessibility can be achieved through other means. 28 C.F.R. S35.150. If the State of Missouri does not operate any program, service, or activity in the historic buildings it owns, title II may not require any changes to those buildings.

If, however, the State undertakes an alteration to a qualified historic building, title II may require that, to the maximum extent feasible, the altered portion of the building comply with either section 4.1.7 of the Uniform Federal Accessibility Standards (UFAS), 41 C.F.R. part 101, or section 4.1.7 of the ADA Standards.

For your further information, I am enclosing copies of the regulations implementing titles II and III of the ADA. I hope that this information is helpful to you and that this letter fully responds to your inquiry.

Sincerely,

John L. Wodatch

Chief
Public Access Section

01-03410

T. 8-10-94

AUG 30 1994

Mr. Robert C. Sweitzer
R.C. Sweitzer Enterprises Inc.
840 Alexandria Park
Fort Thomas, Kentucky 41075

Dear Mr. Sweitzer:

This is in response to your letter to Attorney General Reno regarding the Americans with Disabilities Act of 1990 (ADA). Your letter addresses two separate issues: the obligation of places of public accommodation to provide auxiliary aids to customers or clients who have vision impairments, and the clients' need for ADA education. With respect to the latter issue, you have requested the assistance of this Department in funding a non-profit association to provide ADA education and to certify "ADA inspectors."

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities that have rights or responsibilities under the Act. Pursuant to that authority, this letter provides informal guidance to assist you in understanding the ADA. However, this technical assistance does not constitute a legal interpretation of the statute, and it is not binding on the Department.

The Attorney General shares your concern that the ADA be effectively enforced and appreciates your desire to assist in such enforcement. As you noted in your letter, title III of the ADA, which covers private entities that own, operate, lease, or lease to places of public accommodation, may require covered entities to provide auxiliary aids and services if such aids and services are necessary to ensure the participation of individuals

with disabilities, unless such aids and services would fundamentally alter the nature of the entities' programs or would result in an undue burden. 28 C.F.R. S 36.303. Auxiliary aids and services for people with vision impairments may include qualified readers, taped texts, audio recordings, or Brailled or large print materials. 28 C.F.R S 36.303(b)(2).

Which auxiliary aid or service is appropriate will depend on the particular circumstances of each individual case. For example, it will depend on the needs of the individual requesting

cc: Records, Chrono, Wodatch, Blizard, Hill, FOIA, Friedlander
n:\udd\hille\policylt\sweitzr2.ltr

01-03411

an auxiliary aid. It will also depend on the particular information being communicated. Short, simple information may be adequately conveyed by simply reading the information, while lengthy or complex information may need to be conveyed by means of audiotape or Braille. In determining what type of auxiliary aid is appropriate, a public accommodation should consult with individuals with disabilities. However, the ultimate decision as to which type of auxiliary aid or service to provide is up to the public accommodation, as long as the chosen method results in effective communication.

The Attorney General also shares your concern that the public may not be sufficiently aware of the ADA's requirements. To ensure that the public has the opportunity to become educated about the ADA, the Attorney General has established a toll-free ADA information line at 800/514-0301 (voice), 800/514-0383 (TDD) and an ADA electronic bulletin board at 202/514-6193. In addition, the Department has published a Title III Technical Assistance Manual, an ADA Handbook, and an ADA Questions and Answers booklet.

The Department has also awarded technical assistance grants to direct specialized information to target audiences. To address the concerns of people who need auxiliary aids, the Department has awarded a grant to the American Foundation for the Blind and Gallaudet University - National Center for Law and Deafness to provide technical assistance regarding effective communication with persons who have vision and/or hearing impairments. Under this grant, the two organizations established telephone information lines and produced several booklets and a videotape. Those materials can be obtained by contacting the National Center for Law and Deafness at 202/651-5373. Under another grant, the National Federation of the Blind undertook a project to assist covered entities to find methods to convert visual materials into formats that are accessible to people who are visually impaired. They also produced a booklet on effective communication with people who have visual impairments.

Your proposal to establish a privately trained and funded group of ADA inspectors is innovative, but not feasible. The ADA has established a two-tiered enforcement scheme under which the Department of Justice is authorized to enforce title III through investigations, compliance reviews, and lawsuits; and private individuals are independently authorized to file their own lawsuits. The ADA does not provide any mechanism for "certifying" that places of public accommodation are in

compliance. Any purported certification by a private inspector would have no legal validity.

01-03412

While much remains to be done, the Department has made serious efforts to fulfill its goal of widespread understanding of, and full compliance with, the ADA. I hope this information is of assistance to you.

Sincerely,

John L. Wodatch
Chief
Public Access Section

01-03413

T. 9/1/94
MAF:NM:rjc
DJ XX

SEP 6 1994

XX
XX
XX
XX
XX

Dear XX

Your letter to the Department of Health and Human Services regarding the rights of non-smokers was referred to this office for reply.

The Americans with Disabilities Act (ADA) authorizes the Department of Justice to provide technical assistance to entities that are subject to the Act. This letter provides informal guidance to assist you in understanding how the ADA may apply to you. However, this technical assistance does not constitute a determination by the Department of Justice of your rights or responsibilities under the ADA and does not constitute a binding determination by the Department of Justice.

There is currently no Federal statute that absolutely bans smoking in public buildings. The ADA, however, may protect certain individuals from being denied access to a program, service, or activity because of the presence of smoke.

Under the ADA, the Department of Justice declined to state categorically that allergy or sensitivity to cigarette smoke should be recognized as a disability because, in order to be viewed as a disability under the ADA, an impairment must substantially limit one or more major life activities. An individual's respiratory or neurological functioning may be so severely affected by allergies or sensitivity to cigarette smoke that he or she will be considered disabled. Such an individual would be entitled to all of the protections afforded by the ADA.

In other cases, however, an individual's sensitivity to smoke or other environmental elements will not constitute a disability. If, for instance, an individual's major life activity of breathing is somewhat, but not substantially, impaired, the individual is not disabled and is not entitled to the protections of the statute. Thus, the determination as to whether allergies or sensitivity to smoke are disabilities covered by the

Records, CRS, Chrono, Milton, Morrow, Friedlander, FOIA
:UDD\Milton\Letter\Smoking.XX

01-03414

regulation must be made using the same case-by-case analysis that is applied to all other physical or mental impairments. (See the enclosed Title II regulation at page 35699.)

Because of the case-by-case nature of the determination, the Department of Justice ADA regulations do not mandate restrictions on smoking. It is important to note that section 501(b) of the statute merely states that the prohibition of, or the imposition of restrictions on, smoking in places of employment, transportation, and public accommodation is not precluded by the ADA. The statute does not mandate imposition of any restrictions.

If you believe that you are disabled as defined under the ADA and you can identify a particular program, service, or activity from which you are denied access because of the presence of smoke, you may either file a private suit in Federal court or send a complaint to this office for investigation.

I hope this information has been helpful to you.

Sincerely,

Merrily Friedlander
Acting Chief
Coordination and Review Section
Civil Rights Division

Enclosure

01-03415

(Handwritten)

Tuesday, 24 May, 1994
Ms. Paulette Standefer, Regional Director
Dept. of Health & Human Services
1200 Main Tower Bldg.
Dallas, Tx. 75202

Dear Ms. Standefer:

Could you please help me by informing me of all recent laws protecting the rights of non-smokers, especially as they pertain to any (if at all) rights of the non-smoking incarcerate.

I am a non-smoker & indeed react to such exposure with red, burning eyes & respiratory constriction. I have explained the condition to everyone here empowered to do anything about it. Yet, I have been placed in a pod of 50 men, 98% of whom, smoke. I suffer a constant headache & desperately need relief.

Thank you for your kind attention & help.

Respectfully,

XX
XX
XX
XX
XX
XX

01-03416

SEP 6 ILLEGIBLE

The Honorable Patsy T. Mink
U.S. House of Representatives
2135 Rayburn House Office Building
Washington, D.C. 20515-1102

Dear Congresswoman Mink:

I am responding to your inquiry regarding the requirements of the Americans with Disabilities Act (ADA) for television stations. Specifically, you ask whether television stations are required to provide voice enhancement broadcasts for persons with visual impairments and closed-captioned broadcasts for persons with hearing impairments.

The only provision of the ADA that addresses television broadcasts is Section 402, which requires television public service announcements produced or funded in whole or in part by any Federal agency or instrumentality to include closed captioning. Section 402 also provides that a television broadcast station licensee is not required to supply closed captioning for any such announcement that fails to include it. Nor can a broadcast station licensee be held liable for broadcasting such an announcement without closed captioning unless the closed caption was included with the announcement and the licensee intentionally fails to broadcast it.

I hope this information is helpful to you.

Sincerely,

Sheila F. Anthony
Assistant Attorney General

FOIA

01-03417

Congress of the United States
House of Representatives
Washington, DC 20515-1102

August 20, 1994

Ms. Sheila Foster Anthony
Assistant Attorney General
Legislative Affairs
Department of Justice
10th & Constitution, N.W.
Washington, D.C. 20530

Dear Ms. Anthony:
I am writing to inquire if the Americans with Disabilities Act (ADA) requires television stations to provide voice enhancement broadcasts for visually-impaired consumers.

Most television stations have closed-caption options for the hearing-impaired. Is this mandated by ADA or is this something that television stations provide voluntarily ?

Your assistance in clarifying what, if any, requirements exist for television broadcasts under the ADA is greatly appreciated.

Very truly yours,

PATSY T. MINK
Member of Congress

01-03418

SEP 7 ILLEGIBLE

DJ 202-PL-817

XX
Brooklyn Park, Minnesota XX

Dear XX

This letter responds to your letter regarding accessibility in multiscreen cinemas under the Americans With Disabilities Act (ADA). Specifically, your letter asks the Department to provide a legal analysis of the obligations of a multiscreen cinema in various situations.

The ADA authorizes the Department of Justice to provide technical assistance to entities that are subject to the Act. This letter provides informal guidance to assist you in understanding the ADA. However, this technical assistance does not constitute a determination by the Department of Justice of your rights or responsibilities under the ADA, and it is not binding on the Department.

The Department will not provide legal analysis of hypothetical problems. We can, however, provide you with general guidance about the obligations of places of public accommodation in general, and movie theaters in particular, under title III of the ADA. The Department's regulation implementing title III prohibits discrimination on the basis of disability by a place of public accommodation. Thus, places of public accommodation are subject to a range of nondiscrimination obligations, including requirements to make reasonable modifications in policies, practices, and procedures; to provide auxiliary aids; to remove architectural and communication barriers in existing facilities to the extent that it is readily achievable; and to design, construct, and alter facilities in compliance with the ADA Standards for Accessible Design.

In addition, section 36.305 of the Department's regulation provides that if it is not readily achievable to remove barriers in an existing facility, a place of public accommodation is required to make its goods or services accessible through any alternative method that is readily achievable. With respect to

FOIA

01-03419

multiscreen cinemas, section 36.305(c) expressly provides that if it is not readily achievable for an existing multiscreen cinema to provide physical access to all of its theaters, the cinema shall establish a film rotation schedule that provides reasonable access to all films for people who use wheelchairs, and the cinema shall provide public notice about the schedule for accessible showings.

With respect to parking facilities, any public accommodation that operates in an existing facility is subject to the requirement to remove barriers to the extent that it is readily achievable. Generally, providing accessible parking is a high priority for barrier removal. However, if it is not readily achievable for the cinema to provide accessible spaces or an accessible route from its parking lot, an alternative method of providing access may be utilized. Determination of what is readily achievable requires a case-by-case assessment of the resources available to the place of public accommodation.

Finally, you have asked if the ADA considers the safety of individuals with disabilities in making barrier removal determinations. Section 36.304(d)(2) provides that "no [barrier removal] measure shall be taken... that poses a significant risk to the health or safety of individuals with disabilities or others."

I hope this information is helpful to you.

Sincerely,

Janet L. Blizard
Supervisory Attorney

01-03420

XX Brooklyn Park, Minnesota XX

April 22, 1994

U.S. Department of Justice
Civil Rights Division
Public Access Section
P.O. Box 66738
Washington, D.C. 20035

Dear Sir or Madam:

My discussions with your personnel today on the ADA Information Line provided some very helpful information regarding access to multiscreen cinemas. The specialist I spoke to today confirmed that you will respond to written questions regarding ADA issues when presented for your analysis.

Your answers to the following questions would be instructive in interpreting Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities: Final Rule, 28 CFR Part 36.

GENERAL FACT SITUATION 1

The public accommodation is a multiscreen cinema with a total of four separate auditoriums. The theater is located inside a mall with approximately twenty other public accommodations. The entrance to the theater is located at ground level of the mall. Two of the theater auditoriums are accessible through the main entrance. The other two auditoriums are located on the basement level of the mall. These auditoriums are accessible from within the theater by a staircase. Disabled users are required to purchase tickets at the box office and travel through the mall to a public elevator, which does not meet ADA standards, (some 150 feet) ride the elevator to the basement and travel some 125 feet to the lower level theater fire doors where the individual must wait for an usher to turn off the alarm system and open the fire doors.

There are no restrooms located upstairs for upper level patrons, although there are public restrooms located in the mall proper. There is no concession stand downstairs requiring all downstairs patrons to summon help (impossible because there is no usher on duty at all times and there is no intercom system) to get back upstairs. None of the auditoriums are accessible by ADA standards.

01-03421

Question 1

Specific facts

The public accommodation was asked to make one of the upstairs auditoriums accessible to the disabled (they were free to choose the auditorium) by adding two wheelchair seating locations and one aisle side seat with a removable or retractable aisle side armrest, to rotate the movies through the accessible theater and to give notice of the movies shown in the theater.

Public accommodation response

The public accommodation responded that the changes sought were "not readily achievable" and the rotation of films was contractually impossible because movies such as Jurassic Park cannot be screened in auditoriums with less than 400 seats. (The only auditorium in the theater that has 400 seats is also the most inaccessible).

Question

Can a multiscreen cinema abrogate the requirements of Section 36.305(c) by language in a distribution contract limiting the showing of films in specific size theaters? Please explain.

GENERAL FACT SITUATION 2

The public accommodation is a multiscreen cinema with a total of four separate auditoriums. The theater is located in a free standing building constructed exclusively for that purpose. The only entrance to the building is on the west side. A 600 space parking lot is located on the south side of the building. There is a sidewalk from the parking lot to the entrance, but there is no curb cut where the sidewalk begins at the parking area. The general public uses the sidewalk for access to the theater.

There is a curb cut in front of the theater entrance located on a narrow fire road which goes around the front of the theater. The fire road is heavily used to pick up and drop off people using the theater. The only way wheelchair users can independently gain access to the theater is to follow the parking lot access to the fire road, take the fire road to the curb ramp in front on the theater (some 400 feet) and follow the sidewalk to the entrance (there is a continuous 7" curb all

the way around the parking area and adjacent to the fire access road). The dangerous nature of using the access road when traffic is present is obvious. (Please see attached drawing).

Public accommodation response

The public accommodation responded that the changes sought are "not readily achievable" and moreover that the need for a second curb ramp is unnecessary.

Question 2

Can a public accommodation be held responsible for failing to provide a curb ramp as part of an accessible route from a single parking area to the only entrance to the accommodation under these circumstance? Please explain.

Question 3

Does the ADA consider the safety of the disabled person in making accessibility determinations?

Your assistance in answering these questions is greatly appreciated.

Very truly yours

XX

01-03423

PARKING LOT (MAP)

01-03424

T. 9-1-94

DJ 202-PL-842

SEP 7 1994

Judge Craig S. Albert
Chardon Municipal Court
108 South Hambden Street
Chardon, Ohio 44024-1285

Dear Judge Albert:

This is in response to your letter regarding application of the Americans with Disabilities Act of 1990 (ADA) to renovation of the Chardon Municipal Court of Geauga County, Ohio.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities that have rights or responsibilities under the Act. Pursuant to that authority, this letter provides informal guidance to assist you in understanding the ADA. However, this technical assistance does not constitute a legal interpretation of the statute, and it is not binding on the Department.

Title II of the ADA applies to all services, programs, and activities provided or made available by a State or local government, including the operation of courts. Title II requires that whenever a covered facility, or part thereof, is altered, the altered portion of the facility must, to the maximum extent feasible, be made accessible to people with disabilities. 28 C.F.R. S 35.151(b). A public entity may choose to apply either the ADA Standards for Accessible Design (Standards), 28 C.F.R. pt. 36, Appendix A (except that the elevator exception of the ADA Standards does not apply to title II entities), or the Uniform Federal Accessibility Standards (UFAS), 41 C.F.R. pt. 101-19.6, Appendix A, as the standard for accessibility of alterations. 28 C.F.R. S 35.151(c).

Under title II, therefore, all renovated areas of the Chardon Municipal Court building must be made accessible. In addition, if the ADA Standards are applied, whenever a primary function area of the building is renovated, the path of travel to that area must also be made accessible unless the cost would be disproportionate to the cost of the alteration to the primary function area. 28 C.F.R. pt. 36, Appendix A, S 4.1.6(2). If, on

the other hand, UFAS is applied, and if the renovation is a substantial alteration, then a public entity must, in addition to

cc: Records, Chrono, Wodatch, Blizard, Hill, FOIA, Friedlander
n:\udd\hille\policylt\albert.ltr

01-03425

making the altered area accessible, provide at least one accessible route, at least one accessible entrance, and accessible toilet facilities. 41 C.F.R. pt. 101-19.6, S 4.1.6(3).

The Department of Justice does not grant waivers or exemptions from the accessibility standards. However, in applying the chosen accessibility standard to alterations, some flexibility is permitted. Under the ADA Standards, strict compliance is not required where it would be technically infeasible (i.e, where it would require removal of a load-bearing structural member or where existing physical or site constraints prevent compliance). 36 C.F.R. pt. 36, Appendix A, S 4.1.6(1)(j). Under UFAS, strict compliance is not required where it would be structurally impracticable (i.e., it would require removal of a load-bearing structural member or it would result in increased cost of 50% or more of the value of the element involved). 41 C.F.R. pt. 101-19.6, Appendix A, S 4.1.6(3). In addition, departures from the ADA Standards are permitted where the alternatives will provide substantially equivalent or greater access. 28 C.F.R. pt. 36, Appendix A, S 2.2.

For areas that are not being altered, title II requires a public entity to ensure that the services, programs, or activities provided in those areas, when viewed in their entirety, are accessible. This requirement does not necessarily require a public entity to make structural changes to unaltered areas if there are other effective means of providing program access. In choosing among means of providing program access, however, a public entity must give priority to methods that provide the most integrated setting appropriate. 28 C.F.R. S 35.150(b).

The requirements applicable to your particular situation can be found in the enclosed regulation implementing title II. I am also enclosing the regulation implementing title III of the ADA, which includes the ADA Standards for Accessible Design.

I hope that this information is helpful to you.

Sincerely,

John L. Wodatch
Chief
Public Access Section

Enclosures

01-03426

T. 9-1-94

DJ 202-PL-650

SEP 7 1994

Ms. Linda Hoke
Assistant Director
Council for Disability Rights Legal Center
208 South LaSalle, Suite 1330
Chicago, Illinois 60604

Dear Ms. Hoke:

I am writing to respond to your letter requesting a policy statement from the Department of Justice on the issue of whether carrying of a person with a mobility impairment by a place of public accommodation is a permitted alternative to readily achievable barrier removal under title III of the Americans with Disabilities Act (ADA).

The ADA authorizes the Department of Justice to provide technical assistance to entities that are subject to the Act. This letter provides informal guidance to assist you and others in understanding the rights and responsibilities of covered individuals or entities under the Act. However, this technical assistance does not constitute a determination by the Department of Justice of a particular individual's or entity's rights or responsibilities under the ADA and does not constitute a binding determination by the Department of Justice.

Title III clearly states that if barrier removal is readily achievable, then a public accommodation must remove the barrier. Where barrier removal is not readily achievable, readily achievable alternatives must be considered. Carrying an

individual with mobility impairments is permitted as an alternative to barrier removal only in manifestly exceptional cases where carrying is the only means by which accessibility may be achieved, if carrying is provided in a reliable manner, and only if all personnel who are permitted to participate in carrying an individual with a disability are formally instructed on the safest and least humiliating means of carrying. Carrying is not permitted as an alternative to structural modifications such as installation of a ramp or a chairlift in any situation where such measures would be readily achievable.

cc: Records, Chrono, Wodatch, Blizard, FOIA, Friedlander
n:\udd\blizard\adaltrs\hoke.650
01-03427

I hope that this letter provides the information you requested.

Sincerely,

John L. Wodatch
Chief
Public Access Section

01-03428

SEP 8 1994

The Honorable Barbara Boxer
United States Senator
1700 Montgomery Street
Suite 240
San Francisco, California 94111

Dear Senator Boxer:

This letter is in response to your inquiry on behalf of your constituent, XX , who asked about the applicability of the Americans with Disabilities Act (ADA) to the San Rafael Elk's Club. XX letter states that there are no ramps, handrails or other accessibility features and that he has asked the Board of Trustees to install a handrail, but they have not done so. XX also stated that he believes the Elks Club is in violation of the Americans with Disabilities Act for failing to install the items he listed.

Under title III of the ADA, an entity that owns, operates, or leases a place of public accommodation, must ensure that they remove barriers to accessibility where readily achievable to do so. Readily achievable is defined as, "easily accomplishable and able to be carried out without much difficulty or expense."

If this organization is a private club, however, it may be exempt from title III coverage. Whether a particular facility is a private club is a case-by-case determination, based on a variety of factors that have been recognized by courts. We cannot make a particular determination of whether this particular Elk's club is a private club, but some of the factors to be considered in such a determination are the following:

(1) whether the club is highly selective in choosing members;

(2) whether the club membership exercises a high degree of control over the establishment's operations;

(3) whether the organization has historically been intended to be a private club;

(4) the degree to which the establishment is opened up to non-members;

(5) the purpose of the club's existence;

(6) the breadth of the club's advertising for members;

(7) whether the club is non-profit;

(8) the degree to which the club observes formalities;

(9) whether substantial membership fees are charged;

(10) the degree to which the club receives public funding; and

(11) whether the club was created or is being used to avoid compliance with a civil rights act.

Nonetheless, private clubs are still covered by title III to the extent that they open up their establishments to the general public for a purpose that falls within one of the categories of places of public accommodation. Thus, if the Elk's Club hosts events that are open to persons other than the members and their guests, then they must make the public areas accessible during those events, to the extent it is readily achievable to do so.

I hope this information is useful to your constituent. If XX thinks that this particular Elks Club meets the criteria of a public accommodation rather than a private club, as stated above, he may file a complaint with the Department by writing a letter to the Public Access Section, P.O. Box 66738, Washington, D.C. 20035.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

Enclosures
01-03430

June 14, 1994

Mr. John Hess
% Senator Boxer
1700 Montgomery St. #240
San Francisco, Ca. 94111

Dear Mr. Hess:

Thank you for your phone conversation of June 1st and timely advice. By the way, I got a nice letter from Senator Boxer expressing her willingness of being of assistance.

The following is a short synopsis of the situation as per request.
The San Rafael Elks occupy a very steep hillside site and in order to use their facility you must go from one level to another. There are no handrails, ramps, or other safety features. If somebody slips there is not a tree, a bush, or anything to grab on to. Your could roll on concrete 20 feet and kill yourself.

On January 27, 1994, I attended a Board of Trustee meeting and at which time I apprised them of the situation and proposed installing a handrail especially between the lodge and swimming pool. They thanked me and said they would study the matter.

I attended their February meeting to ascertain the progress. No progress. They thanked me and said they still are studying the matter. I told them I hoped would comply with my wishes by May 1st.

I decided to give them a month or so to work on it. Since that time they've cancelled meetings with no prior notice, have not responded to my calls, nor have future meetings been listed. I believe they're stonewalling the issue.

It's been six month now and no action. I believe I've been reasonable and have acted in good faith. I believe they are irresponsible and negligent and also in violation of the Americans with Disability Act, specifically the part that pertains to public accommodation. They do invite the public in on a continuous basis and at a charge.

Upon your request, I respectfully ask Senator Boxer to send a letter to the Department of Justice, the enforcing agency, asking them to expedite a violation application for the ADA to me.

Thank you and Senator Boxer for being so sensitive in this matter. I sure makes me feel proud to get such service.

Yours truly,
XX
San Rafael, Ca/ .XX
XX

01-03431
T. 9-7-94

SEP 2(illegible) 1994

The Honorable Bob Graham
United States Senator
Post Office Box 3050
Tallahassee, Florida 32315

Dear Senator Graham:

This is in response to your inquiry on behalf of your constituent, Ms. Silvia Garcia, Program Coordinator of the Deaf Service Center of Palm Beach County, Inc. Ms. Garcia is concerned that health care providers are not meeting their obligation under title III of the Americans with Disabilities Act

(ADA) to provide auxiliary aids or services to persons with hearing impairments.

The Department of Justice is committed to ensure the effective implementation of the auxiliary aids requirements of title III by health care providers. We are concerned, however, that there are some significant misperceptions of the scope of these requirements that may be deterring compliance.

One of the most common misconceptions about the ADA is that health care providers are required to provide interpreters whenever they are requested. In fact, title III of the ADA requires public accommodations, including health care providers, to furnish appropriate auxiliary aids and services, including sign language interpreters, where necessary to ensure effective communication with individuals with disabilities. Health care providers should consult with their patients to determine what type of auxiliary aid or service is appropriate for particular circumstances. However, health care providers are not required to provide sign language interpreters for deaf patients upon demand. Title III of the ADA does not require a provider to accede to a patient's specific choice of auxiliary aid or service as long as the provider satisfies his or her obligation to ensure effective communication.

cc: Records, Chrono, Wodatch, Blizard, McDowney, FOIA, Friedlander
n:\udd\blizard\control\graham
01-03432

In determining what constitutes an effective auxiliary aid or service, health care providers must consider, among other things, the length and complexity of the communication involved. For instance, a note pad and written materials may be sufficient means of communication in some routine appointments or when discussing uncomplicated symptoms resulting from minor injuries. Where, however, the information to be conveyed is lengthy or complex, the use of handwritten notes may be inadequate and the use of an interpreter may be the only effective form of communication. Use of interpreter services is not necessarily

limited to the most extreme situations -- for example, a discussion of whether to undergo surgery or to decide on treatment options for cancer.

Health care professionals cannot use an unsubstantiated fear of economic loss as a basis on which to refuse to provide auxiliary aids or to refuse treatment for a person with a disability. A health care provider may not impose a surcharge on any particular individual with a disability to cover the costs of providing auxiliary aids and services. Instead, the costs should be treated like other overhead expenses that are passed on to all patients. However, the obligation to provide auxiliary aids and services is not unlimited and a health care provider is not required to provide auxiliary aids and services if doing so would result in an undue burden, that is, a significant difficulty or expense. The factors to be considered in determining whether there is an undue burden include the nature and cost of the action, the type of entity involved, and the overall financial resources of the entity.

Finally, as amended in 1990, the Internal Revenue Code permits small businesses to receive a tax credit for certain costs of compliance with the ADA. An eligible small business is one whose gross receipts do not exceed $1,000,000 or whose work force does not consist of more than 30 full-time workers. Qualifying businesses may claim a credit of up to 50 percent of eligible access expenditures that exceed $250 but do not exceed $10,250. Eligible access expenditures may include the costs of providing auxiliary aids and services to persons with disabilities.

The flexibility of the auxiliary aids requirement, the undue burden limitation, the ability to spread costs over all patients, and the small business tax credit should minimize any burden on health care professionals.

01-03433

I hope this information will be helpful to you in responding to your constituent.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

01-03434

BOB GRAHAM
FLORIDA
United States Senate
WASHINGTON, DC 20510-0903

July 27, 1994

United States Department of Justice
Division of Civil Rights
Office On the Americans with Disabilities Act
Post Office Box 66738
Washington, D.C. 20035-9998

Dear Director:

Enclosed is a letter from Ms. Silvia R. Garcia.

I would appreciate your reviewing her inquiry and providing me with your comments. Please address your reply to my state office: Post Office Box 3050, Tallahassee, Florida 32315, Attention: Xalina LaBarge.

Your cooperation and assistance are greatly appreciated. I look forward to hearing from you soon.

With kind regards,

Sincerely,

United States Senator

BG/xal

Enclosure

01-03435

June 16, 1994

Senator Bob Graham
44 W. Flagler St.
Suite 1715
Miami, FL 33130

Dear Senator Graham:

On behalf of our deaf population, I am writing to you with a concern about enforcement of the Americans with Disabilities Act of 1990 (ADA) as it applies to the use of sign language interpreters as an accommodation at a private physician's office.

As a private, non-profit agency advocating for the rights of hearing impaired individuals, the Deaf Service Center of Palm Beach County, Inc. has been contacted by many deaf individuals with the above concern. We have also been contacted by medical doctors seeking information about their compliance obligations for deaf individuals under the ADA.

Fifty per cent of the calls we receive daily in reference to ADA and communications needs for deaf individuals are related to medical situations. Our efforts to educate the general population about the ADA include the provision of telephone numbers and addresses where they can seek more specific information. One of those referral sources is the U.S. Civil Rights Office in Washington.

We continuously provide information to medical doctors in the county in reference to their obligation to deaf patients under the ADA. Nevertheless, the requests for interpreters from deaf patients have received strong resistance from the medical doctors, resulting in cancellation of appointments, cancellations of scheduled surgeries, and even some physicians dismissing their deaf patients of many years. The ADA states that covered entities shall give primary consideration to the request of the individual with the disability. The fact is that many physicians are deciding themselves that their deaf patients do not need interpreting services, disregarding the deaf patient's request.

The real issue for the physicians seems to be avoiding the cost of providing this accommodation, rather than assuring accurate communication. Many physicians claim that they cannot afford the cost of an interpreter because sometimes this cost is higher than the fee or reimbursement they will receive for the deaf patient on the one individual appointment. The ADA states that the overall revenue of the business and several other factors must be taken into consideration when determining undue burden. In addition, the tax credits and deductions available for improving accessibility should be considered.

A United Way Agency

01-03436

SEP 20 1994

Ms. Silvia R. Garcia
Program Coordinator
Deaf Service Center of Palm Beach County, Inc.
5730 Corporate Way #230
West Palm Beach, Florida 33407

Dear Ms. Garcia:

This letter is in response to the concerns raised in your recent letter about the requirements of the Americans with Disabilities Act (ADA) as they relate to the provision of qualified interpreters.

Both title II and title III of the ADA have specific language relating to the provision of auxiliary aids. Under section 36.303(c) of the title III regulation, public accommodations are required to provide appropriate auxiliary aids and services to ensure effective communications with individuals with disabilities. The language of the title II regulation is similar and has the additional requirement of giving primary consideration to the requests of individuals with disabilities as to the particular kind of auxiliary aid or service to be provided.

The auxiliary aids requirements are intended to be flexible, reflecting the variable nature of what constitutes "effective communication." In addition to the specific nature of the disability involved, factors used to determine communication effectiveness in any given circumstance include the length, complexity and significance of the information exchanged.

The definition of "qualified interpreter" contained in both the title II and title III regulations requires the ability to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary. The ADA does not require the use of a certified interpreter as long as the interpreter is "qualified."

As your letter correctly points out, certification ensures

that consumers and covered entities are utilizing the services of

FOIA

01-03437

a highly trained and skilled professional. However, interpreter services are increasingly required in settings demanding a highly specialized vocabulary. For example, course work in a computer-aided design curriculum requires facility in technological, construction and design vocabularies. Certification alone would not necessarily ensure that the standard for interpreter effectiveness would be met. There are other situations where a certified interpreter might not be qualified. For example, a family member or friend who is a certified interpreter might be available and willing to interpret, but would not be able to satisfy the impartiality requirements that are so critical in medical and legal settings. Additional discussion of this issue may be found in the enclosed Department of Justice Technical Assistance Manuals for title II (II-7.1200) and title III (III-4.3200).

I thank you for your letter and trust that this information will be useful to you and to Deaf Service Center consumers.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

Enclosures
01-03438

DJ 202-PL-874

September 23, 1994

Ms. Elizabeth M. Adler
Tedeschi, Grasso and Mortensen
100 Summer Street
Boston, Massachusetts 02110

Dear Ms. Adler:

This letter is in response to your inquiry of September 20, 1994, about the application of the Americans with Disabilities Act to amphibious vehicles and private entities that conduct tours of or on such vehicles.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist you in understanding the ADA's requirements. However, it does not constitute a legal interpretation or legal advice, and it is not binding on the Department of Justice.

Generally speaking, title III of the ADA applies to private entities that own, operate, lease, or lease to any facility or business included within one of the twelve categories of public accommodations identified in the ADA. From your description of the intended use of the vehicle in question, it appears that that the vehicle may fall into one or more of the ADA's categories of public accommodations, including the categories of places of public gathering, places of exhibition or entertainment, or places of public display or collection. See 42 U.S.C. S 12181(7)(C), (D), and (H); 28 C.F.R. S 36.104.

If the vehicle is a public accommodation, then any entity which owns or operates it must comply with the requirements of title III applicable to the owners and operators of public accommodations. Among other things, these include removing architectural barriers to access in existing facilities (including equipment, rolling stock, and other conveyances) where it is readily achievable to do so. 42 U.S.C. S 12182(b)(2)(A)(iv); 28 C.F.R. S 36.304. The steps you have described that the owner of the vehicle has already taken --

cc: Records, Chrono, Wodatch, Bowen, Contois, FOIA, MAF
Udd:Contois:PL:Adler

01-03439

widening the opening into the vehicle, and providing seats that can be removed to make space for wheelchairs -- appear to the kind of steps to remove barriers required by the ADA.

You indicated that the entrance to the vehicle is approximately six feet above the ground. The ADA does not require that any existing vehicle be retrofitted with a hydraulic or other lift. 28 C.F.R. S 36.310(b). However, if there is some alternative means of providing access into the vehicle -- by means of a ramp or otherwise -- that is readily achievable, then the owner and operator of the facility are required to provide that alternative means of access. 28 C.F.R. S 36.305. As a last resort -- and only as a last resort -- if it is readily achievable for the owner or operator of the tour to carry or otherwise assist individuals with disabilities into the vehicle safely and with dignity, then providing such assistance may be required. (Before undertaking to carry or otherwise assist individuals with disabilities into the vehicle, the owner or operator should insure that the personnel who will provide such assistance are thoroughly trained or instructed in how to provide such assistance safely and with dignity.)

Finally, you should be aware that in addition to the Department of Justice, the U.S. Department of Transportation has also promulgated regulations implementing the ADA, and that the owner and operator of the vehicle may be subject to those regulations as well. See 49 C.F.R. Part 37.

I hope this information is helpful to you in understanding the requirements of title III of the ADA.

Sincerely,

John L. Wodatch
Chief
Public Access Section

01-03440

TEDESCHI, GRASSO AND
MORTENSEN
COUNSELLORS AT LAW

ILLEGIBLE ILLEGIBLE
ILLEGIBLE ILLEGIBLE
ILLEGIBLE ILLEGIBLE
ILLEGIBLE ILLEGIBLE

September 20, 1994

VIA TELECOPIER (202) 307-119 ILLEGIBLE

Thomas M. Contois, Esq.
United States Department of Justice
Civil Rights Division
Public Access Section
P.O. Box 66738
Washington, D.C. 20035-6738

Re: Technical Advisory Assistance

Dear Atty. Contois:

Thank you again for your time on the telephone this morning during which we discussed an amphibious vehicle tour operator.

I understand that the Standards for Accessible Design do not apply to such vehicles. I further understand that the Coast

Guard or some other federal entity is currently developing applicable standards but that such standards are not yet available or effective and it is unclear when they will be available or effective. The operator in question will comply with such standards as soon as they become available.

This shall constitute a formal request for a letter from the Justice Department providing indication of the Justice Department's view of said operator's obligations, regarding the amphibious vehicles, under the Americans with Disabilities Act given that currently there are no available standards. As we discussed, local officials, from whom the operator requires approval, have indicated that they will follow the lead of the Justice Department with regard to this issue.

Time is of the essence, and I greatly appreciate your willingness to assist me to the extent possible.

Very truly yours,

Elizabeth Adler

01-03441

SEP 26 1994

The Honorable Dan Coats
United States Senator
1180 Market Tower
10 West Market Street
Indianapolis, Indiana 46204-2964

Dear Senator Coats:

This letter is in response to your inquiry on behalf of your constituents, XX , concerning alleged architectural barriers to access for persons with disabilities at a local branch of the U.S. Postal Service, fairgrounds, and restaurants and other private companies in Indiana. Each of these is subject to different Federal civil rights laws. They are discussed in turn, below.

The U.S. Postal Service, as a Federal agency, is not covered

by the Americans with Disabilities Act ("ADA"). Instead, it is covered by the Architectural Barriers Act of 1968, which requires Federal buildings to meet accessibility standards, and by the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of disability by Federal Executive agencies and the U.S. Postal Service.

The Architectural Barriers Act is enforced by the Architectural and Transportation Barriers Compliance Board ("Access Board"). XX can contact them for assistance at:

Architectural and Transportation Barriers
Compliance Board
1331 F Street, N.W.
Washington, D.C. 20004-1111
1-800-872-2253 (voice and TDD)

Additionally, your constituents can contact the U.S. Postal Service directly concerning compliance with the Rehabilitation Act, as amended, or the Architectural Barriers Act. They may address their correspondence to:

cc: Records; Chrono; Wodatch; Bowen; Mobley; McDowney; MAF;
FOIA.
udd\mobley\congress\lugar

01-03442

Architectural Barriers Compliance Program
U.S. Postal Service
475 L'Enfant Plaza, N.W., Room 4130
Washington, D.C. 20260-6422
(202) 268-3139

Assuming that the fairgrounds mentioned by your constituents are owned and operated by a State or local government, the governmental entity must comply with title II of the ADA. Title II requires governmental entities to provide access to persons with disabilities to all of its programs. This "program access" requirement means that each service provided by the government, when viewed in its entirety, must be readily accessible to and usable by persons with disabilities. In many cases, but not all, it is necessary for a governmental entity to remove architectural barriers in existing facilities to achieve program access.

If XX wish to file a complaint about the

fairgrounds or other facilities owned or operated by a State or local government, they may send their correspondence to:

Coordination and Review Section
Civil Rights Division
U.S. Department of Justice
P.O. Box 66118
Washington, D.C. 20035-6118

The restaurants mentioned by the XX as well as some other categories of private companies, are "public accommodations" as defined in title III of the ADA. Title III requires that, with respect to existing facilities, public accommodations remove barriers to access for persons with disabilities, if removal is "readily achievable," i.e., relatively inexpensive and easily accomplishable. For new construction and alterations, places of public accommodation must comply with the Standards for Accessible Design promulgated by the Department of Justice. Discussion of the title III requirements appears in the enclosed regulation at sections 36.401-402 on pages 35599-600 and 35574-75 (new construction and alterations), section 36.104 on page 35594 and pages 35553-54 (definition of "readily achievable"). There is further discussion of these issues in the enclosed Title III Technical Assistance Manual at pages 29, 43, 48, and 57.

If XX wish to file a complaint against the restaurants and other public accommodations mentioned in their letter, they may send complaints to:

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

XX should include as much information as possible in their complaints, regardless of where they are filing their complaints. At a minimum, they should give the names, addresses, and telephone numbers for the entities they feel have discriminated against people with disabilities, describe the architectural barriers or other problems as fully as possible, give relevant dates, and, if known, the names of managers or owners to whom investigative correspondence should be addressed.

It would also be helpful to include photographs or drawings of the architectural barriers, if possible.

Further information about titles II and III of the ADA is available through the Department's toll-free ADA Information Line, (800) 514-0301 (voice), or (800) 514-0383 (TDD). I hope this information is useful to you in responding to your constituent.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

Enclosures

01-03444

(handwritten) 8/3/94

Dear Senator's Lugar & Coats:

I am writing to let you know that wheelchair people don't have, lots of business people don't have so they can get in. like Post Office in Batesville Napoleon Greensburg, and restaurants can't get in them either, and the Fair ground in Osgood. can't get in the grandstand, They are all discriminating

against the handicap. It time to do some thing.

Thank You
XX

Batesville, In XX
XX

01-03445

T. 9-7-94

The Honorable J. Bennett Johnston
United States Senator
1510 One American Place
Baton Rouge, Louisiana 70825

Dear Senator Johnston:

I am writing in response to your letter on behalf of your constituent, XX , who wrote to you about a letter that he sent to the Civil Rights Division asking if the Americans with Disabilities Act (ADA) applies to State judicial proceedings.

On September 8, 1994, a member of my staff contacted XX by telephone to discuss his letter. In that conversation, we advised XX that title II of the Americans with Disabilities Act prohibits discrimination on the basis of disability in all programs, services, and activities of public entities. Therefore, title II does prohibit discrimination in the operation of a State judicial system. In addition, we told XX that if he believes that his rights under title II of the ADA have been violated, he may file a complaint by writing to the Coordination and Review Section, Civil Rights Division, U.S. Department of Justice, P.O. Box 66118, Washington, D.C. 20035-6118.

I hope that this information will be helpful to you in responding to your constituent.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

cc: Records, Chrono, Wodatch, Blizard, McDowney, FOIA, Friedlander
n:\udd\blizard\control\johnston

01-03446

August 30, 1994

The Hon. J. Bennett Johnston re: ADA/Civil Rights

Senator, United States Congress Information/Inquiry
State of Louisiana
1510 One American Place
Baton Rouge, LA 70825

Dear Sen. Johnston:

Enclosed, please find a copy of a letter dated July 16, 1994, and its attached enclosure, which I sent to the Office of the Americans with Disabilities Act (ADA) Civil Rights Division, at the U.S. Department of Justice in Washington, D.C.

I may not have had the right address for them or they may just be very busy, but I've never received any reply from them despite having mailed the letter over six weeks ago.

The matter I was attempting to inquire of them about is very important. Thus, if there's anyway your office can follow-up with the ADA Dept. of Justice division or other appropriate agency or person, to see if they got this mailing or if I need to remail it to another address or if a reply has already been sent me, etc., I would be most appreciative.

Thanking you in advance for your courtesies, I remain,

Sincerely yours,
XX

Baton Rouge, LA XX
XX

encls: (3)

01-03447

The Honorable John R. Kasich
Member, U.S. House of Representatives
200 North High Street, Suite 400
Columbus, Ohio 43215

Dear Congressman Kasich:

This letter is in response to your inquiry on behalf of your constituent, XX , concerning an alleged failure of United Student Aid Funds, Inc. ("USAF"), to forgive XX student loan. XX suggests that his loan should have been forgiven as he is permanently unemployable due to a disability.

Although XX stated in his letter that he is alleging a violation of the Americans with Disabilities Act ("ADA"), the ADA does not address the issues raised by him. Instead, he alleges that USAF has failed to comply with student loan regulations promulgated by the U.S. Department of Education. Accordingly, we suggest that XX continue to pursue this matter with the Department of Education. If he has not already done so, he may wish to call (202) 732-1213 (voice) or (202) 732-1663 (TDD), or write to the following address:

U.S. Department of Education
Office for Civil Rights
400 Maryland Avenue, S.W.
Washington, D.C. 20202-2572

Further information about titles II and III of the ADA is available through the Department's toll-free ADA Information Line, (800) 514-0301 (voice), or (800) 514-0383 (TDD). I hope this information is useful to you in responding to your constituent.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

01-03448

Wednesday, July 20, 1994

The Honorable John R. Kasich
200 North High, Fifth Floor
Columbus, OH 43215

Dear Mr. Kasich:

This letter is to seek your assistance with a case involving a violation of the Americans with Disabilities Act. This case is between myself, XX and The United Student Aid Funds Inc. I am seeking your help after exhausting other resources available to me. The following is a summary of the problem, how that problem has impacted me, and what I believe would be an equitable resolution.

I had attended Trinity Lutheran Seminary for two (2) years concluding in 1989. On July 13, 1990 I was told by my doctor that I was disabled. I made application to The Social Security Administration and was approved for disability payments on March 9, 1992. On June 25, 1991, I filled the US Department of Education physician's certification of borrower's total and permanent disability, Form 1172, with the Ohio Student Aid Commission, United Student Aid Funds, Inc., Kent State University (N.D.S.L.), and Trinity Lutheran Seminary. All of those with whom I had an outstanding student loan eventually canceled the loans based on this information and letters from my physician on his letterhead, except for United Student Aid Funds, Inc. Initially the USA Funds, Inc. rejected the Ed Form 1172, stating that my physician had checked item number 5 as no my condition was not static. They interpreted my physician's statement to mean my condition would improve. However, inspection of this form clearly indicates that my condition would become worse with standing and ambulation. In a phone conversation with USA Funds Post Claims Department. They requested me to send them a statement from my physician stating that I was permanently and totally disabled. The letter my doctor sent stated in part: " It is my opinion that the patient is unemployable at this time ... [and is] totally and permanently disabled for employment". This letter was also rejected; the reason given being that the doctors use of the phrase, " at this time", indicated that my condition would improve. Again they requested another letter from my doctor. This was sent with the offending phrase changed to: "...unemployable in any foreseeable future". Again USA Funds rejected the request to forgive the loan. Their reasoning this time was that they could only accept ED Form 1172. However according to the Request for Review Form that was sent to me by USA Funds Inc. clearly shows under section II number 6. that a physician's letter is acceptable. Further it would appear that USA Funds is attempting to collect

twice on this loan, as they state in a letter dated September 30, 1993 "This loan was guaranteed by the UNITED STUDENT AID FUNDS, ...Ed has reimbursed the UNITED STUDENT AID FUNDS for its payment on this loan". In the meantime USA Funds has submitted

the loans to numerous collection agencies and law firms. In each case I have tried to comply with both USA Funds and their collection agencies.

All these actions have adversely affected my credit rating and the ongoing harassment has contributed to my ill health. In addition to my disability, I am also a diabetic. The effects of the monumental stress this has placed me under has, according to doctors and diabetes experts, hastened the degenerative effects of the disease on organ tissue such as the eyes, liver, muscles, heart, nerve tissue and others. Finally I also have chronic clinical depression and a chemical imbalance of the brain. This condition has also been severely and adversely effected by the actions of USA Funds, Inc. In short, I believe that my life has been shortened by their harassment and discrimination.

I have sought legal advice and was told by an attorney that while I can sue under the Americans With Disabilities Act, the most that the law provides for me is to have the debt canceled and legal fees reimbursed. My lawyer also informed me that the basic cost would be $2500.00. I have as income a total of $446,00 per month from Social Security. I can barely afford to live from month to month. It is therefore impossible for me to come up with the legal fees in the first place. I also believe that to a company such as USA Funds, $2500.00 is as nothing and therefore insufficient as a punitive measure. Unless more stringent measures and higher punitive damages are levied against such companies practicing discrimination and harassment, I believe that they will continue to do what is in effect, murder the disabled citizens of this country.

I therefore would request that as resolution of this case the following would be acceptable: 1) the loans be canceled, 2) any court costs and legal fees be recovered, and 3) substantial monetary punitive damages be levied.

Should you need verification of any of this information My Social Security Number is XX . You have my permission to access any and all files pertaining to these matters. Please see enclosures for documentation of my statements. Should you have any questions, please feel free to contact me at XX
or by mail at: XX Worthington, Ohio XX Thank you for your prompt consideration and
action on this matter.

Sincerely,
XX
XX

XX

01-03450

DJ 202-PL-827

XX
Handlon Michigan Training Unit
P.O. Box 492
1728 Bluewater Highway
Ionia, Michigan 48846

Dear XX

I am writing in response to your letter requesting information about your rights as a prisoner with a disability under the Americans With Disabilities Act (ADA).

The Americans With Disabilities Act (ADA) authorizes the Department of Justice to provide technical assistance regarding rights and responsibilities under the Act. This letter provides informal guidance to assist you in understanding how the ADA might apply to your situation. However, this technical assistance does not constitute a determination by the Department of Justice of your rights under the ADA, and does not constitute a binding determination by the Department of Justice.

Enclosed please find informational materials relating to the rights of individuals with disabilities in state and local government programs, including prisons. Section 35.160 addresses specific requirements related to communication with people who have vision impairments.

You also asked what items prisoners can purchase under the ADA. The ADA is a civil rights law which prohibits discrimination on the basis of disability. As such, it does not set forth specific items that individuals can purchase. Rather, it requires public entities to provide an equal opportunity for people with disabilities to benefit from their programs,

services, and activities. For people with vision impairments, this is sometimes achieved through the provision of auxiliary aids and services (e.g. disability-related technology).

Finally, I have enclosed some information on the Civil Rights of Institutionalized Persons Act, for your reference.

FOIA

01-03451

I hope this information is helpful.

Sincerely,

Janet L. Blizard

Supervisory Attorney

Enclosures

01-03452

may 23, 1994

XX
XX
HANDLON MICHIGAN TRAINING UNIT
P.O. BOX 492
1728 BLUEWATER HIGHWAY
IONIA MI 48846

U.S . DEPT OF JUSTICE
CIVIL RIGHTS DIVISION
OFFICE OF THE ADA
P.O. BOX 66738
washington D.C 20035-9998

dear sir/madme
MY NAME IS XX I AM A INMATE AT MICHIGAN TRAINING UNIT

IN IONIA MICHIGAN 48846.

I HAVE SOME QUESTION TO ASK YOU. BEFORE I ASK THE QUESTION I

GOING TO TELL YOU ABOUT ME. I AM VISAULLY IMPAIRED (MANGAUL DEGENTATION

HIGH MYOPETA, NYSTAMIST) ALSO I HAVE MILD CP. BUT THAT DOES

NOT AFFECT ME AS THE VISUALLY INPAIRMENT . SO HERE ARE THE

QUESTION I WANT TO ASK

1. I WANT TO KNOW IS WHAT RIGHTS PRISONER HAVE UNDER THE ADA?
2. WHAT RIGHTS DOES VISAULLY IMPAIRED PRISONER HAVE?
3. WHAT ITEMS CAN PRISONERS PURSACE OR BUY UNDER THE ADA ?

I WOULD LIKE A RESPOND TO THIS LETTER PLEASE

THANK YOU FOR YOUR TIME

THANK YOU
XX
XX

XX

01-03453

OCT 4 1994

The Honorable Gary L. Ackerman
Member, U.S. House of Representatives
218-14 Northern Boulevard
Bayside, New York 11361

Dear Congressman Ackerman:

I am responding to your inquiry on behalf of your constituent, XX regarding his rights under the Americans with Disabilities Act (ADA).

XX states that he has chronic bipolar mood disorder. He indicates that his insurance company does not provide adequate coverage for chronic mental health conditions. The company has apparently denied some of his benefit claims and has advised him that he has already received the maximum yearly benefits for mental health care.

Section 501(c) of the ADA permits insurance practices that are based on or consistent with State law so long as they are not used as a subterfuge to evade the purposes of the Act. Most State laws permit companies to afford lower benefits for mental health conditions than physical health conditions. In construing another Federal statute that prohibits discrimination on the basis of disability, Section 504 of the Rehabilitation Act, the courts have held that it is not discriminatory to provide lower benefits for mental health conditions as compared to physical health conditions. See, e.g., Doe v. Colautti, 592 F.2d 704 (3d Cir. 1979). Doe v. Devine, 545 F. Supp. 576 (D.D.C. 1982), aff'd on other grounds, 703 F.2d 1319 (D.C. Cir. 1983).

I hope this information is useful to you in responding to your constituent. If he has further questions, he may wish to

cc: Records; Chrono; Wodatch; Magagna; McDowney; MAF; FOIA
udd\magagna\congress\ackerman

01-03454

call our ADA information line at 1-800-514-0301 between 11:00 a.m. and 6:00 p.m. Monday, Tuesday, Wednesday, Friday, and between 1:00 p.m. and 6:00 p.m. Thursday.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

01-03455

XX
XX
Port Washington, NY XX
XX

15 July 1994

Hon. Gary L. Ackerman
Member of Congress
229 Main Street
Huntington, NY 11743

Dear Representative Ackerman:

It has been three months since my last correspondence. Not because there is any less urgency, import or concern, not by choice, but because I have been

ill. Ill with a life threatening disease of the brain. Ill with a chronic, potentially fatal disease. Symptoms include lethargy, fatigue, physical deterioration, difficulty concentrating and remembering, impediments to productivity, inability to complete tasks, chronic pain, sleep disturbance, and financial ruin. I have become disabled, no longer able to perform major life activities including fine motor skill manual tasks, continuing education, caring for myself, and pursuit of my profession at a pre-morbid level. I require daily medication, and regular examinations and treatments by my specialty physician. I have experienced first hand the discriminatory effects of economic health care rationing. Now I am better. I can maintain a productive life at a high level of functioning given the proper treatment. But I fear a relapse, the natural history of my disease if left untreated, because my insurance company refuses to pay for medically necessary continuing care. My disease is a chronic, occasional remitting but unrelenting condition. Symptoms are present 24 hours a day, 365 days a year yet my managed care entity claims "my benefits have run out". The pain and agony are intense. The economic costs are devastating. The response is probably illegal. XX

So now we have XX as patient, who supposedly has the knowledge, skills, experience and resources to "manage" a "managed-care system". Yet it appears all for naught. Empire Mental Health Choice (EMHC) and Empire Blue Cross/Blue Shield want to deprive me of my livelihood, deny me the care necessary to maintain my health. If I don't get insurance coverage, I can no longer afford medically necessary therapy. Without proper treatment the possibility of a severe relapse is great with danger to my physical health, psychological well-being, health and safety of my family, and economic well-being. My patients may suffer as well.

01-03456

XX
XX
Port Washington, NY XX
XX

Add to this the stigmatization of my illness, chronic bipolar mood disorder

otherwise known as manic-depressive illness and it is not a pretty sight. On top of the meddling micromanagement by nameless faceless 1-800 factotums who never take responsibility or care for patients there is the unconscionable

limits on mental health care. The general arguments concerning mental health care are beyond the present scope. For my disease, indeed for any major mood disorder there is no question of the biological basis and need for parity in care with all chronic illnesses. Depression kills more people than heart attacks. As always, prevention is truly cost effective when viewed against the staggering cost of untreated illness.

So what to do? On the national level, mental health services must be included in the basic package of benefits of any health care reform. Please inform me as to what the provision of the American Health Security Act (H.R. 1200) are in this regard. Second, the Americans with Disabilities Act is a federal statute that can and should be construed to serve as an important safeguard against discriminatory effects of health care rationing. EMHC is a prototypical self-aggrandizing managed care entity, operating under a cloud of secrecy, disinformation duplicity and deceit. Representatives and employees of EMHC and Empire BC/BS have repeatedly misinformed me concerning my contract and its benefits. The sanctimonious, oft-quoted platitude; "With this payment the patient has received the maximum benefits for this type of care in this calendar year" is unfairly restrictive. It belies any knowledge of the well documented biological basis of bipolar disease, its chronicity and tendency for recurrence as well as the proven effectiveness of combined pharmacologic and psychotherapeutic treatment. People with chronic illnesses need more health care. The response is probably illegal as well. I am asking you to please investigate as to whether EMHC and Empire BC/BS are guilty of violations of the Americans with Disabilities Act, and to proceed accordingly.

Thank you again for your time and concern.

Cordially,
XX
XX

OCT 6 1994

The Honorable Dan Coats
United States Senator
1180 Market Tower
10 West Market Street

Indianapolis, Indiana 46204-2964

Dear Senator Coats:

This is in response to your inquiry on behalf of your constituent, Mr. Wallace Young of the Vincennes Aerie No. 384, Fraternal Order of the Eagles, in Vincennes, Indiana. Mr. Young has asked about requirements for accessible parking at the Vincennes Aerie.

The Vincennes Aerie may be subject to title III of the Americans with Disabilities Act (ADA), which applies to places of public accommodation. However, the Vincennes Aerie may constitute a private club and may, therefore, be exempt from the requirements of the ADA, except to the extent its facilities are made available to nonmembers as places of public accommodation. Whether the Vincennes Aerie constitutes a private club will depend on such factors as whether the members exercise a high degree of control over club operations, whether the membership selection process is highly selective, whether substantial membership fees are charged, and whether the organization is operated on a nonprofit basis.

To the extent the Vincennes Aerie may be covered by the ADA, the requirements of title III regarding existing facilities would apply. Title III requires public accommodations in existing facilities to remove architectural barriers to access if it is readily achievable to do so. Providing accessible parking spaces is a type of barrier removal that is likely to be readily achievable for many public accommodations. The ADA Standards for Accessible Design, Appendix A to the enclosed title III regulation, S 4.1.2(5), provide a table for use in determining the number of accessible parking spaces that should be provided. The number of accessible spaces needed depends upon the total number of parking spaces in the lot.

cc: Records, Chrono, Wodatch, Hill, McDowney, FOIA, Friedlander
:\udd\hille\policylt\lugar.ltr

01-03458

Mr. Young's letter indicates that the Vincennes Aerie has provided some accessible parking spaces, but has prevented people

with disabilities from parking in those spaces. The ADA requires that accessible parking spaces be designated as reserved for the use of people with disabilities. The ADA further requires covered entities to make reasonable modifications in policies, practices, or procedures when necessary to afford services to individuals with disabilities. Therefore, a covered entity may be required to alter a policy of preventing people with disabilities from using accessible spaces and to institute a policy reserving accessible spaces for the exclusive use of people with disabilities.

In addition to the ADA's requirements, the State of Indiana may have laws regarding accessible parking.

If Mr. Young wishes to have further information about the requirements of the ADA, he may contact our ADA information line at (800) 514-0301 (voice) or (800) 514-0383 (TDD).

I hope this information is useful to you in responding to your constituent.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

Enclosure

01-03459

BE A PATRON EAGLE EVERY MEMBER OWES AT LEAST ONE NEW MEMBER TO HIS AERIE EACH YEAR

Vincennes Aerie No. 384 -- Fraternal Order of Eagles
Office of the Secretary: 1325 Willow St. Business Phone 882-9301
Buffet Phone: 882-9930
VINCENNES, INDIANA

July 14, 1994

Senators Lugar & Coates
1180 Market Tower
10 West Market Street
Indianpolis, Indiana
46204

Gentlemen:

I am asking for assistance in a matter of handicapped parking. We are having problems with the Board of Trustees telling our members where to park and ordering handicapped members to move their vehicles from spaces marked for that purpose. The Trustees are the Officers who are engaging in this illegal discriminatory practice. Our Grand Aerie, or Parent Lodge, has told me that they agree with me that, since we are incorporated into a corporation that we each own this organization equally can have and are entitled to equal rights and that the Trustees cannot assume the sole jurisdiction of any of the property. I would like to know the procedure to follow if the persist in their discriminating ways.

Thank you in advance for your assistance and I am,

Sincerely,

Wallace Young, Secretary
Aerie #384, F.O.E.

01-03460

OCT 6 1994

The Honorable John R. Kasich
Member, U.S. House of Representatives
200 North High Street
Suite 400
Columbus, Ohio 43215

Dear Congressman Kasich:

This is in response to your inquiry on behalf of your constituent, XX , regarding her complaint that the Uniglobe travel agency in Columbus, Ohio, refuses to provide sign language interpreters for its customers' office visits.

Title III of the Americans with Disabilities Act (ADA) requires public accommodations, including service establishments such as travel agencies, to furnish appropriate auxiliary aids and services, including sign language interpreters, where necessary to ensure effective communication with individuals with disabilities.

Covered entities should consult with their customers to determine what type of auxiliary aid or service is appropriate for particular circumstances. However, covered entities are not required to provide sign language interpreters for deaf customers upon demand. Title III of the ADA does not require a covered entity to accede to a customer's specific choice of auxiliary aid or service as long as the entity satisfies its obligation to ensure effective communication. Often, exchanging notes or providing written materials may suffice. In determining what constitutes an effective auxiliary aid or service, covered entities must consider, among other things, the length and complexity of the communication involved.

A covered entity may not impose a surcharge on any particular individual with a disability to cover the costs of providing auxiliary aids and services. Instead, the costs should be treated like other overhead expenses that are passed on to all customers. Nor may a covered entity use a customer's request for an auxiliary aid or service as the basis for refusing to serve that individual.

cc: Records, Chrono, Wodatch, Hill, McDowney, FOIA, Friedlander
:\udd\hille\policylt\kasich.ltr

01-03461

However, the obligation to provide auxiliary aids and services is not unlimited and a covered entity is not required to provide auxiliary aids and services if doing so would result in an undue burden, that is, a significant difficulty or expense. The factors to be considered in determining whether there is an undue burden include the nature and cost of the action, the type of entity involved, and the overall financial resources of the entity. The requirements for provision of auxiliary aids and services are discussed further in the enclosed regulation implementing title III of the ADA.

If Ms. Thompson wishes to have further information about the requirements of the ADA, she may contact our ADA information line at (800) 514-0301 (voice) or (800) 514-0383 (TDD).

I hope this information will be useful to you in responding to your constituent.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

Enclosure

01-03462

28 July 94

XX
XX
Gahanna, Ohio XX
XX
XX

Honorable John R. Kasich
Federal Bld. - Room 500
200 North High Street
Columbus, Ohio 43215

Dear Congressman Kasich:

Enclosed please find a copy of a letter which was sent to the Uniglobe District Office in regard to a complaint on behalf of people with disabilities. The information copy is provided to you, along with several other agencies, as you have demonstrated support for people with disabilities in the past.

Any input you have would be greatly appreciated. Thank you for your attention to this important matter, and for support of people with disabilities in general.

Sincerely,

XX

01-03463

OCT 12 1994

The Honorable Gary L. Ackerman
Member, U.S. House of Representatives
218-14 Northern Boulevard
Bayside, New York 11361

Dear Congressman Ackerman:

This letter is in response to your inquiry on behalf of your constituent, Dr. Leon J. Cantor of Fresh Meadow, New York. Dr. Cantor has expressed concern over Metlife Empire Plan's decision to deny reimbursement for one of Dr. Cantor's patients, XX .

Under the terms of the Americans with Disabilities Act (ADA), insurance offices are places of public accommodation and, as such, may not discriminate on the basis of disability in the sale of insurance contracts or in the terms or conditions of the insurance contracts they offer. Because of the nature of the insurance business, however, consideration of disability in the sale of insurance contracts does not always constitute discrimination. An insurer or other public accommodation may underwrite, classify, or administer risks that are based on or not inconsistent with State law, provided that such practices are not used as subterfuge to evade the purposes of the ADA.

Under the ADA, an insurance company may not refuse to insure, or refuse to continue to insure, or limit the amount,

extent, or kind of coverage available to an individual, or charge a different rate for the same coverage solely because of a physical or mental impairment, except where the refusal, limitation, or rate differential is based on sound actuarial principles or is related to actual or reasonably anticipated experience.

While it is unfortunate that Metlife has refused to reimburse XX for a portion of her treatment, there is no evidence to suggest here that Metlife is violating the Americans with Disabilities Act as it relates to XX insurance coverage.

01-03464

I hope the information provided above will assist you in responding to Dr. Cantor's concerns.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

01-03465

JULY 26, 1994

METLIFE EMPIRE PLAN
GROUP NUMBER 30500
INSURED: **********
I.D. *********
DEPENDENT: SELF
MAIL NUMBERS: 4052653095 and 4062361506

ATTN: TRISH KAYSER

DEAR MS. KAYSER:

We are in receipt of your letter dated July 15, 1994, for which the Empire plan of the Metlife has declined reimbursement for the visits of March 23, 30th, April 6th,20th, May 4th and May 11th, for patient XX , who suffers with frequent sore throats. These have been documented by Strep cultures done in this office.

XX is not a Strep carrier and she has a child for which she takes care of this child. She is currently under the care of this office for her frequent sore throats and Strep Pharyngitis. In the past she has done very well medically, unfortunately at this time she is not doing well and may need more definative medical benefits in the form of surgery. At this moment she is being treated medically and necessitates follow-up care.

We feel that no insurance company should justify what is necessary or what is unnecessary when a patient participates in a insurance plan. Metlife does not negate the need for XX to see her doctor they negate the need to reimburse her appropriately. My question is: Why should a party partake in a insurance coverage when they are not reimbursed for the necessity of there visits. Nobody should dictate to a patient when, how and how frequently they see a doctor for a diagnosis and for treatment.

We feel that all reimbursements to this patient should be forthcoming and we have taken the liberty of sending a copy of this letter to Congressman Ackerman as well as the Governor of the state of New York, awaiting there reply on the behalf of XX . I remain,

Sincerely yours,

LEON J. CANTOR,M.D.,P.C.
LJC/dr

OCT 12 1994

The Honorable Howell Heflin
United States Senate
Washington, D.C. 20510-0101
Dear Senator Heflin:

This letter is in response to your inquiry on behalf of XX . The XX inquired as to whether certain tax credits are available to dentists who participate in a pilot program to provide home-based care to persons with disabilities who are unable to leave their residences. These dentists must acquire portable equipment for the program. They would like to receive tax credits to offset the high cost of the equipment. The XX have already directed their inquiry to the Internal Revenue Service ("IRS"), who responded that the tax credits are available only for expenses incurred in complying with the Americans with Disabilities Act ("ADA"). The IRS was unable to determine whether the proposed in-home services were required by the ADA and so was unable to determine whether the credit applied to expenses related to the in-home services.

The tax provision about which the XX inquire applies to "Expenditures to Provide Access to Disabled Individuals" ("Access Credit"). The Access Credit, established at 26 U.S.C. S 44, allows an eligible small business1 to claim a credit worth up to $5,000, to be reimbursed for fifty percent of certain expenditures associated with meeting the requirements of the ADA.

"Eligible access expenditures" are costs incurred, inter alia, to remove architectural barriers that would prevent a facility from being accessible to, or usable by, persons with disabilities, and to acquire or modify equipment or devices for individuals with disabilities. 26 U.S.C. SS 44 (c)(1), 4 (c)(2)(A), 44 (c)(2)(D). Expenditures are eligible, however, only to the extent that they are paid or incurred by an eligible

_____

1 A business is eligible for the Access Credit if, during the preceding taxable year, it (a) had gross receipts not exceeding $1,000,000, or (b) employed not more than 30 full-time employees.

business "for the purpose of enabling such eligible small business to comply with [the ADA]." 26 U.S.C. S 44 (c)(1). The question underlying the XX inquiry, therefore, is whether private dentists must purchase portable dental equipment and offer in-home dental care to comply with the ADA. For the reasons given below, only in limited circumstances can this question be answered in the affirmative.

Generally, title III of the ADA prohibits public accommodations, such as dentists and other health care providers, from discriminating on the basis of disability. Please see the enclosed title III regulation at sections 36.104 and 36.201, pages 35594-95, for further discussion of this issue. This prohibition of discrimination entails several specific requirements, two of which are particularly relevant here.

First, public accommodations are required to remove architectural barriers to accessibility if the barrier removal is readily achievable, i.e. easily accomplished and able to be carried out without much difficulty or expense. Please see the enclosed title III regulation at section 36.304, page 35597.

Whether barrier removal is readily achievable depends on a host of factors which include, but are not limited to, the nature and cost of the action, the overall financial resources of the site involved, the number of persons employed at the site, the existence of a parent organization, and the type of activity conducted at the site. The Department has declined to establish any kind of numerical formula for determining whether an action is readily achievable. Instead, the Department has approved a flexible case-by-case balancing of the listed factors. Please refer to the regulation at section 36.104, pages 35594 and 35553-54, for further discussion.

Second, public accommodations are required to utilize readily achievable alternatives to barrier removal when removal of barriers is itself not readily achievable. Please refer to the regulation at section 36.305, page 35598. For instance, if it were not readily achievable for the owners of a drug store to install a ramp to make the store accessible to people with mobility impairments, they could satisfy their ADA obligations by

providing home delivery of prescription drugs and other items. Please see the enclosed regulation at section 36.305, pages 35598 and 35570-71.

Generally, the ADA does not require public accommodations to provide home delivery services to their customers. However, as the prescription drug example illustrates, public accommodations may engage in home-based services as a readily achievable alternative to removing existing architectural barriers at the service providers' facility, when removing existing architectural barriers at the facility is itself not readily achievable. While
01-03468

the ADA does not require dentists to purchase portable dental equipment or to provide in-home dental care to persons with disabilities, expenses related to in-home care may be eligible for the Access Credit if they are incurred as a readily achievable alternative to removing barriers at the dentists' offices.

I have also enclosed this Department's Title III Technical Assistance Manual which was written to guide individuals and entities having rights and obligations under the Act toward a fuller understanding of the law. Pertinent discussion is found at page two (definition of a place of public accommodation), pages 28-32 (readily achievable barrier removal), and pages 37-42 (readily achievable alternatives to barrier removal).

I hope this information is useful to you in responding to your constituent.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

Enclosures
01-03469

July 17, 1994

The Honorable Howell Heflin
United States Senate
Washington, D.C.

Dear Senator Heflin,

I have been directed to your office by the IRS concerning legislative definition about tax codes and credits covering the removal of architectural barriers as defined under the Americans with Disabilities Act tax advantages for compliance with the mandate of the Act to seek to make available services for the entire handicapped population.

The First District Dental Chapter of Mobile presided over this year by Dr. Langly D.M.D. asked Dr. George Allen D.M.D. to begin the process of organizing a Dental Access Program for the homebound handicapped in our area. Dr. Allen contacted me and my husband as interested consumers to participate in formulating a design for an access program which would attempt to best address our community's particular needs in this area of outreach.

As we have begun tackling this challenge to develop a dental access program for our homebound handicapped, we have discovered that purchasing the special portable equipment, incurring the maintenance and management cost of this effort, and the calculated out of office time required to reach the homebound handicapped with dental care is an expense not specifically addressed or defined under the tax credits allotted under the Americans with Disabilities Act for the removal of architectural barriers.

For the homebound handicapped the home is the architectural barrier which denies access to dental care. To remove this architectural barrier for these handicapped citizens, home services must be provided. In the case of dental care there is completely portable dental equipment available capable of providing comprehensive dental treatment to the homebound. With this portable dental equipment and the service to attend a patient in the home, the architectural barrier to this specific group of handicapped citizen is removed. This certainly appears to comply with the intent of the Americans with Disabilities Act under the provisions outlined regarding the removal of architectural barriers. The IRS representative assigned my inquiry regarding this matter conceded our position had merit and if only under the intent of the Act might certainly qualify. But, because of lack of legislative definition and prescription concerning the issue of architectural barriers and the homebound, IRS would have to have legislative determination. I was referred to my senior representative.

01-03470

According to IRS we need a few definitions:

1) What specifically constitutes the removal of architectural barriers for the homebound handicapped with regard to tax codes and credits as outlined under the Americans with Disabilities Act?

2) What tax credits will apply for services rendered which are provided in the home for the purpose of meeting the specific needs of the homebound handicapped under the tax incentives for removal of architectural barriers as outlined in the Americans with Disabilities Act?

3) How will equipment be defined as necessary for the removal of architectural barriers for the homebound handicapped as mandated under the Americans with Disabilities Act?

In our own local effort we are finding that the reference to 'homebound handicapped' is a large umbrella which can eventually include patients from many if not all disabling conditions, particularly those which are by nature progressive.

Though our local dental chapter is being responsive to the community's need for dental care for all its handicapped citizens and all involved surely want this effort to be a success, it is to be noted that not every dentist is necessarily eager to participate in a program for the homebound handicapped. To provide care to this

special group of citizens can be time consuming reducing in office opportunities for patients and income and costly in other areas of supplies and equipment.

We have many homebound citizens in our area and though our numbers are not fully compiled, our Area Agency on Aging gives a rough estimate of 500 to 600 homebound elderly and handicapped now receiving some services through their agency alone. This, as you can see, is not an insignificant number. And though not all of these citizens are immediate candidates necessarily for homebound dental services, the number is felt to be a reasonable reflection of the kind of large numbers of patients who could ultimately benefit from homebound dental care in some capacity. To have a few dentists trying to meet such a load is a burden so great as to swamp this effort and doom it to failure quickly. As an inducement to increase participation in the effort and encourage all the dentists in our area to consider providing homebound care for some patients, permitting dentists full and fair use of tax credits offered under the already established tax credits for the removal of architectural barriers might well provide that balance and incentive to make participation cost effective.

One of the considerations mentioned by the IRS representative was a concern that such tax credits would be more costly to the public than cost effective. There are anecdotes to illustrate the cost advantages of providing ongoing preventive dental care. The mouth being a part of the body when left unattended simply does not heal itself. Disease of teeth and gums usually becomes progressively worse when untreated, and ultimately more than dental health can be compromised.
01-03471

The ensuing health problems can often be of great expense to public and private institutions, hospitals, private citizens and insurance companies forced to pay for complex treatments which could have been avoided had timely attention to the problem been available. All information to which laypeople are privy seem to consistently prove that prevention is indeed cheaper when bought by the ounce than when the pound price is extracted for the cure.

If IRS is correct in its assessment of the tax law as it stands, the special architectural barriers and considerations of the homebound handicapped seem to have been utterly overlooked in the present tax code, though stated in essense in the Americans with Disabilities Act itself. This neglect is perhaps fostered by the reality of the seclusion of the members of the homebound handicapped population who cannot be physically present during debates and organizational activities to let their unique limitations and restrictions be known. Individual health issues of the homebound handicapped population are carefully covered under the many banners provided for in the Act. But when a citizen under any of these banners becomes homebound, all become restricted by the same architectural barrier, the home

or place of residence. We truly feel we need the tax code to reflect an awareness of this particular architectural barrier and open the tax credits to include responsible and on-going efforts organized beyond regular and standard business practices to meet the needs of the homebound.

I hope this letter is satisfactory in explaining our request. If not please call XX and we will try to do better. Thanks so much for your help. We await hearing from your office on this matter.

Sincerely,
XX

Mobile, AL XX

01-03472

The Honorable Dianne Feinstein
United States Senate
331 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Feinstein:

This is in response to your inquiry on behalf of your constituent, XX , who is seeking information on the accessibility requirements for Automated Teller Machines (ATM) under the Americans with Disabilities Act (ADA).

XX indicated that, when using a new, accessible ATM at the Wells Fargo Bank in San Francisco, he experienced great difficulty in that he hit his head and hurt his back. He further stated that, because the ATM was accessible to persons with

disabilities, it was inaccessible to him.

Following a public comment period during which hundreds of individuals participated, the Department issued and adopted the ADA Standards for Accessible Design, the yardstick against which minimum accessibility is measured. As such, the Standards are based on a variety of individual reach ranges, heights, and functional levels and are a composite of the needs of the estimated 49 million persons with disabilities in the United States. Because people are so diverse, the Standards do not purport to meet the specific needs of every individual, with or without a disability. Generally speaking, the maximum height requirements specified in the ADA Standards (48 inches or 54 inches) will allow the vast majority of persons with disabilities to use an ATM, many perhaps for the first time. The Standards also permit most people without disabilities to continue to use an ATM.

The Standards also accommodate people who have less obvious disabilities such as difficulty stooping or bending. In doing so, the Standards promote a universal design approach which

addresses the needs of most people. For example, at locations where there are two or more ATM machines, only one must meet the accessibility requirements of the Standards for Accessible Design, thereby giving every consumer the choice of using whichever machine works best for him or her. It is exactly the concern expressed by XX that was a driving force in the creation of the Standards for Accessible Design and for implementing a universal design approach. The Department believes that the ADA Standards for Accessible Design provide equal opportunity for people with disabilities without denying

access for persons without disabilities.

I hope this information is useful in responding to your constituent.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

01-03474

Senator Diane Feinstein May 17, 1994
Room 331
Hart Senate Office Building
Washington, D.C. 20510-0501

Dear Senator Feinstein,

Encolsed is a copy of a letter that I have sent to Wells Fargo Bank

concerning their compliance to federal laws concerning handicapped accessibility of ATM's.

Why are special interest groups accomodated at the expense of the vast majority of others? I agree that some needs have to be worked into the design of things, but when it causes severe discomfort and possible medical expenses to others, perhaps the solution is similar to that done to adapt vehicles for paraplegic use of motor vehicles. Who pays for that modification? The end user, that's who. Why should the general public pay for the inconvenience of stooping to use a machine and risk head injuries at the same time when the number and percentage of people targeted to benefit is small?

We need to bring sanity back to our legislation and consider the negative impacts to all involved. On the surface, I would vote for the handicapped accessible act, but after suffering the impact in this case I feel we should be realistic and not go overboard in the implementation and forcing unneeded requirements on everybody just to accomodate a few.

XX

Orange, CA XX

01-03475

Wells Fargo Bank
P.O. Box 63107
San Francisco, CA 94163

May 17, 1994

Attn: Mr. Michael Sczuka:

Dear Mr. Sczuka,

I have just used your new handicapped accessible ATM's and would like to express my extreme displeasure with the machine. I inserted my card to activate the system and hit my forehead on the corner of the top frame causing a small abrasion on my scalp. Then, having to bend over to read the messages on the screen to do my transactions, my back became sore due to the excessive bending required just to operate the ATM. I am 6'-2" and do not consider myself to be extremely tall, just above average height.

I realize that you are probably just following government mandates for compliance to special interest groups, but why have the vast majority of people be inconvienced just to accomodate a few?

Is there anything that can be done to make the ATM's more useful to the average person to reduce the chances of chiropractic services being required? Maybe provide milk stools to take the strain off people's backs.

XX

Orange, CA XX

01-03476

The Honorable Phil Gramm
United States Senator
2323 Bryan Street, #1500
Dallas, Texas 75201

Dear Senator Gramm:

This letter is in response to your inquiry on behalf of your constituent, XX , concerning her experience with a dentist who allegedly refused to treat her brother, because he has tested positive for HIV. Title III of the Americans with Disabilities Act (ADA) prohibits discrimination on the basis of disability, which includes discrimination on the basis of being HIV+.

The Public Access Section of the Civil Rights Division investigates complaints brought under title III. However, we are not able to pursue each complaint to resolution or litigation, because of the large numbers of complaints we receive, and because we are authorized to seek judicial relief only in instances where there appears to be a pattern or practice of discrimination or where an issue of general public importance is involved. After thorough review and careful consideration, in light of our resources and priorities, we have decided not to open an investigation of XX complaint.

It may be helpful for XX to know that the Department recently obtained compensatory damages and civil penalties from the owners and operators of a dental office, for allegedly refusing to treat patients on the basis of their being HIV+. For your and XX information, we have attached copies of the consent order, settling that litigation, and the press release announcing the consent order.

cc: Records, Chrono, Wodatch, McDowney, Bowen, Novich, FOIA, MAF
Udd:Novich:Congress:Gramm.2

01-03477

XX should be aware that title III can be enforced through a number of other methods, including private litigation and alternative dispute resolution, such as mediation. Thus, although the Department will be unable to assist XX with her complaint, there are other entities that may be able to assist her in resolving this matter. We have enclosed a list of such entities located in Texas.

In addition, we are enclosing copies of two status reports that detail the actions that the Civil Rights Division has undertaken to enforce titles II and III of the ADA. These reports illustrate that, although the Department of Justice is unable to investigate every complaint that it receives, we are taking strong action to enforce the law.

I hope this information is of assistance to you in responding to your constituent.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

Enclosures

01-03478

March 22, 1994

Senator
Phil Gramm
Senate Russell Office Building, Room 370
Washington, DC 20510-4302

Dear Phil Gramm,

I regret to you to inform you of a medical professional, who seems to be picking and choosing who he would like to treat. My brother went to this so-called dentist to have his braces adjusted. My brother had the guts and honesty to tell this doctor that he was HIV positive, and the doctor paid my brother for his honesty by refusing to remove his braces! Isn't this discrimination? Don't I remember something about dentists being prosecuted for refusing to treat HIV patients in New Orleans?? What kind of world is this? Didn't this man take the same oath as every other doctor in this country? I am writing to you to plead that this dentist be punished to the fullest extent of the law!! My brother means everything to me, and for anyone to treat him in this manner is appalling to me!!!!!!!! You are the people that I am appealing to do something, anything, everything, to make this man pay for his ignorance! I would appreciate any and all help you can give to me, to help my brother receive the justice he deserves!!!!!!!!!

Respectfully,

XX
Dallas, Texas XX

01-03479

OCT 20 1994

XX
Nashville, Tennessee XX

Dear XX

Your letter to Mr. George Stephanopoulus has been referred to me for response. Your letter questions whether the use of medical records in the investigation and defense of claims by insurance companies constitutes discrimination on the basis of disability in violation of the Americans with Disabilities Act (ADA).

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities that have rights or responsibilities under the Act. Pursuant to that authority, this letter provides informal guidance to assist you in understanding the ADA. However, this technical assistance does not constitute a legal interpretation of the statute, and it is not binding on the Department.

The ADA prohibits discrimination on the basis of disability by places of public accommodation, including service establishments such as insurance companies. Included within this prohibition is a ban on unnecessary inquiries into the nature or existence of a disability. Examination of medical records when determining a claimant's right to compensation for an injury allegedly sustained in an automobile accident would appear to be necessary to determine the extent of injury and whether the injury was actually caused by the automobile accident or whether it was pre-existing. The policy of reviewing medical files, therefore, would not appear to violate the ADA unless medical

records were requested only from claimants with disabilities and not from claimants without disabilities.

cc: Records, Chrono, Wodatch, McDowney, Hill, Friedlander, FOIA
n:\udd\hille\policlt\ltr

01-03480

I hope this information is helpful to you.

Sincerely,

John L. Wodatch
Chief
Public Access Section

01-03481

July 19-21 Confidential

Mr. George Stephanopolus
Presidential Advisor
Room 39 Executive Offices
The White House
Washington, DC 20500

Dear Mr. Stephanopolous:

Thank you for your response to my letter of April, 1994. I never expected an answer back, but am delighted you took the time to write.

Despite the issues I wrote you about earlier, I have a much more compelling issue to bring to your attention, due to recent experiences I have encountered, which could involve millions of Americans. One matter involves the most blatant, outrageous discrimination due to disability I have ever heard of, and American insurance companies' vulgar exploitation of it. I have heard of things like this, but never encountered it personally until recently, when I was involved in a car wreck, and when I was told of a similar experience a disabled friend of mine has had with insurance companies, after she was hit in a car wreck, and the common insurance practice of targeting the disabled in a manner which I am about to relay to you.

I have reported this matter to the National Council on Disability in Washington, in hopes that this practice can be investigated and corrected. I bring it to your attention as well, because, despite the Americans with

Disabilities Act, blatant discrimination still plagues the disabled in ways you cannot imagine. Let me explain.

Recently I purchased a video at a mall a couple of blocks from where I live. I walked back out to my my car, started it up, put it in gear, and whack...

Some lady who was doing 30-35 mph cut across and through the parking zones and blindsided my car with her van. She came from exactly my blind spot, from a direction I could not have detected and came from a path that no one with any sense would have taken; she must have passed over and thru 2 parking spaces and crossed 50 or so yellow lines (breaking EVERY POSSIBLE rule of parking lot protocol) before she hit me. After reporting the incident to the police and my insurance company, by phone, I got back out to my car to find her telling the police officer that SHE was the one sitting still, and claiming that I WAS THE ONE WHO WAS SPEEDING THRU THE LOT! She had carefully re-parked her van to make it look like she was lawfully proceeding down a driving aisle. When he refused to ticket ME for reckless driving, as she wanted, she stated her intention to sue me for damages and injury. FOR A WRECK SHE, AND HER POOR DRIVING, CAUSED. This is plain evidence that litigation reforms need to take place in this country as well. But it gets worse.

The odd thing was she had her mother, (and a neighbor) with her, to corroborate her little fabricated story. I had no (convenient) ILLEGIBLE favorable witnesses, who could testify as to what really happened so if this goes to court, she would probably win due to the lack of any witnesses for me. She almost convinced the cop to write my a reckless driving ticket (until I showed the policeman the skid marks showing she was not where she told him she was, and pointed out to him that MY CAR was the one that was slammed a yard over due to the impact). He still believed most of her story because it was the word of the three of them, against my word. ILLEGIBLE ILLEGIBLE terribly outnumbered.

01-03482

surgery site, but also probably ruptured my L-5/S-1 spinal disk as well. Whatever pain I was in at the time was quadrupled by the wreck. You should have seen me; I was doubled over like a 95 year old for weeks. I now have sciatica again, and my right leg goes out from under me now and then. Since my physicians utterly refuse to allow me pain medication to control the pain, I am authorizing my neurologist to freeze my spinal nerves to death with liquid nitrogen cryogenic compounds. This, he will do over the next 12 weeks.

Unfortunately, I let it slip to my auto insurance company that my doctor insisted I get an MRI after the wreck, and when they discovered I have a disability, the insurance companies demanded to see all my confidential files from every doctor I ever saw, every pain center I've been to. Including group therapy, psych files, internists files, surgeons' records, everything. Nosy xxx's.

Do you know what they do with the confidential files, Mr. Stephanopolous? They look for dirt on the patient. NOT medical records. They are not even remotely interested in the medical data. I know. A friend of mine was just in a motor vehicle accident trial, where the insurance co's demanded all

her confidential records for a wreck that nearly killed her, and left her with permanent disability. The insurance companies shared her confidential files with the lawyers.

(Some teenage punk with a record of speeding tickets, and reckless driving tickets in 4 counties had run a stop sign doing 20+ over the speed limit and totalled her car, nearly killing her). The insurance company lawyers summoned her doctors, including her psychologist, in to court to read their entire charts on her, page by page, appointment by appointment, note by note, out loud, in court, in order to dig up any dirt they could get on her, make her look bad. For a wreck that was not her fault. Naturally they came up with some spicy stuff, because us patients think we're telling our doctors our problems in confidentiality, when they demand to know all the SCOOP on us.

What this amounts to is this: I have accumulated well over $100,000 in medical bills with all my surgeries, rehab's, etc. Doctors and rehab units have been paid major money to 'help' me. However, what this little sneaky insurance technique does is hijack MY doctors (and their records) to be used as THEIR private eyes, to suit their ends. The insurance companies use our paid professionals and their charts and files, to betray their own patients, in order to defame us and suit their own purposes. This little procedure uses the people disabled people pay major money to, to dig up the dirt on us.

What's wrong with this picture? They put my friend on trial, not the guy who nearly killed her. They put HER MEDICAL RECORDS ON TRIAL, not the reckless driver. They used her problems and medical records and disability AS A WEAPON AGAINST HER, to exonerate the teenager, and his reckless dangerous driving. The insurance companies used her disability as a weapon, a means to get at personal information to discredit, humiliate, and defame her. They used her disability as a means to assassinate her personality and credibility. In the process, they betrayed her doctors' and her privacy, comprised her confidential treatment, and violated several codes of ethics in the execution of this injustice. Worse, they took what little they found on her personal life, blew it way out of proportion, distorted it, and made up all sorts of bizarre conclusions, concocting all sorts of bizarre allegations to muck up the issue, and get the subject of the trial off the boy's careless driving and focused the trial on my disabled friend's personal life.

01-03483

court by my own words and problems, just like my friend ILLEGIBLE insurance company permission for a release of all medical files, but no personal, confidential data, and they responded with an ugly threatening letter, because they don't want the medical files, they want ability to look for the dirt, not the medical files.

Only the disabled, those with substantial medical files, those with serious diseases or injuries are vulnerable for this mistreatment. (To give you an idea of what all these files entitle them to, let me explain: I have been to 4 spinal cord injury rehab programs. In each one, the doctors & therapists ask you every little detail about your childhood, your family, your parents, their parents, your relationships, your adolescence, your

dating, every possible aspect of your personal and professional life. All sorts of stuff that is no one's business. The rehab's record all this in precise, incredible detail in the clinic charts. In essence, I have 4 unauthorized biographies floating about in these rehab programs.) Biographies that the insurance companies know contain enough stuff to stir up that their lawyers can make the disabled look like the bad guy and serve any purpose they please, whether to get their bad client off the hook, or to get a judgment placed against the patient, as in my case, for a wreck I did not cause.

The non-disabled have NO SUCH FILES that can be hijacked, and insurance companies know it. Only the disabled are subject to this kind of underhandedness. This sneaky subversion. Only the disabled are vulnerable to this kind of duplicitous sneak attack.

Regular, non-disabled folks need not fear this abuse, would never imagine that it can happen, but the disabled are set up. We are fair game for this type of technique, and that is why the insurance companies leap to get our confidential files. We are perfect stooges for them. Powerless, defenseless. It is what we get for trusting our private data with doctors.

In my case the insurance companies threatened me, to get me to sign release forms to get the files, but even if I refused to sign releases, they notified me they could obtain the files by subpoena, so I, as other disabled people, had no chance from the beginning moment I slipped and let them know I have a disability. I had no chance from the moment that woman hit my car.

It is bad enough to have been struck down by spinal disease, to lose a career, to lose my salary, be in constant pain, but to have this disgrace heaped upon you as well...like I said, I believe this is the lowest form of discrimination possible. I feel the disabled need to have someone to investigate this vile, cynical practice and its appropriateness. I ask you, sir, and our government to check into this, and its legality. This is discriminatory as all get out, and it singles out the disabled in the most gross and despicable manner. And in court, it can turn a trial of a guilt party upside down, and transform it into a trial of the victim. Our system has enough of that already. I ask you and the President to investigate this situation, not for me, but for every single disabled person in this country. The people who this game is targeted against. This is not right.

Again, thank you very much for your personal response to my letter. certainly appreciate your taking the time to write me. Best wishes for the future, and for the President's health reforms..

Regards,
XX

9-28-94

OCT 26 1994

The Honorable David E. Bonior
U.S. House of Representatives
2207 Rayburn House Office Building
Washington, D.C. 20515-2210

Dear Congressman Bonior:

This letter is in response to your inquiry on behalf of your constituent, XX . XX is an individual with a disability who asserts that individuals with disabilities should have the right to receive discounts from places of public accommodation, e.g., stores, restaurants, and movie theaters, that are comparable to the discounts frequently offered to senior citizens.

The Americans with Disabilities Act (ADA) is a comprehensive civil rights statute that prohibits discrimination on the basis of disability. Title III of the ADA requires a place of public accommodation to ensure that no individual with a disability is denied an equal opportunity to participate in its activities or to benefit from the goods, services, or advantages that it offers because of that individual's disability. However, nothing in the ADA precludes providing special benefits, similar to senior citizen discounts, for individuals with disabilities or groups of individuals with disabilities.

In the case of a senior citizen discount, eligibility is triggered by the age of the participant. As long as the discount is offered equally to senior citizens who have disabilities and those who do not, such discount programs do not violate the ADA.

I hope that this information is helpful to you in responding to XX

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

cc: Records, Chrono, Wodatch, Blizard, McDowney, FOIA, Friedlander
n:\udd\blizard\control\bonior

01-03485

MARCH 12, 1994

CONGRESSMAN DAVID BONIOR
82 MACOMB
MT CLEMENS, MI 48043

RE: HANDICAPPER'S RIGHTS

Dear Sir:

I want to bring something to your attention that I feel NEEDS to be addressed. I speak for myself (I'm totally and permanently disabled) and others like me.

Many stores, restaurants and movie theaters have a "special discount" rate for SENIOR CITIZENS. I don't knock them for doing that. I think that is wonderful.

What bothers me, is that the only difference between myself and the SENIOR CITIZEN is that I am only 39 years old.

Many SENIOR CITIZENs are still able to work, which I cannot do. They also have a much larger Social Security check than the SSD check I receive each month.

I FEEL PEOPLE SUCH AS ME, WHO CANNOT WORK, IS TOTALLY AND PERMANENTLY DISABLED AND RECEIVES A SOCIAL SECURITY CHECK SHOULD BE ENTITLED TO THIS SAME BENEFIT.

Many of the Senior Citizens who get these discounts are very well off financially.

WHAT ABOUT SOMEONE LIKE ME?

PLEASE TAKE THIS MATTER SERIOUSLY. THIS COULD BE A MEMBER OF YOUR VERY OWN FAMILY GOING THROUGH THIS. WOULDN'T YOU WANT TO SEE JUSTICE DONE?

I am thanking you in advance for handling this matter the way it deserves to be handled, by giving me MY rights.

THANK YOU,

XX

01-03486

OCT 26 1994

The Honorable William F. Clinger, Jr.
U.S. House of Representatives
2160 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Clinger:

This letter is in response to your inquiry on behalf of your constituent, XX , regarding the requirements of the Americans with Disabilities Act (ADA).

XX appears to be concerned about excessive tax money being spent to make existing public facilities accessible to persons with disabilities who are not likely ever to use them. XX does not provide specifics about any particular facility or costs involved in improving accessibility.

XX appears to misunderstand the scope of the obligations of the ADA which does not require State and local governments to bear undue financial burdens in modifying existing facilities.

Title II of the ADA prohibits State and local governments from discriminating on the basis of disability in all of their programs, services and activities. To fulfill this obligation, State and local governments are not required to make every building accessible. However, the State or local government must insure that all programs and services offered to the public are made accessible. If a particular service is ordinarily offered on the second floor of a building having no elevator, the program access requirement can be met by also offering the service in another accessible location rather than installing an elevator in the building. Even if making structural modifications to an existing building is the only possible means to provide access to a program, the ADA does not require such modifications if the State or local government can demonstrate that doing so will cause an undue administrative or financial burden.

01-03487

I hope the information provided above will assist you in responding to XX concerns.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

01-03488

XX
STATE COLLEGE, PA
XX

July 14, 1994

Rep William F Clinger Jr
2160 Rayburn House Office Building
Washington, DC 20515

Dear Representative Clinger:

I see an excessive amount of money being spent due to mandates under the A.D.A. Bill. I am not cold hearted, but it seems most of the facilities being created will never see a disabled person and that makes it a waste of a valuable resource - tax dollars. Why do you people always allow a basically good idea go to the overkill stage. We are talking about a very small percentage of our population dictating the expenditures of very large sums of money. It is outrageous to destroy and recreate. New construction-yes, repairing-yes.

What are the chances of Washington recognizing this gross injustice to taxpayers? We can't afford this law.

By the way, we have a wheel chair bound person in our family who shares these views.

Sincerely,
XX

DJ XX

XX
XX
XX
Lakeland, Florida XX

Dear XX

This is in response to your letter regarding the application of the Americans with Disabilities Act of 1990 (ADA) to a life-care non-profit retirement home sponsored by a church.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities that have rights or responsibilities under the Act. Pursuant to that authority, this letter provides informal guidance to assist you in understanding the ADA. However, this technical assistance does not constitute a legal interpretation of the statute, and it is not binding on the Department.

Your letter notes that the retirement home is sponsored by a church. Title III of the ADA exempts religious organizations or entities controlled by religious organizations from coverage. If the retirement home is operated by a religious organization, it would be exempt from the requirements of title III.

Your letter specifically questions whether the retirement home's policy of excluding wheelchairs from the common use dining room violates the ADA. Title III of the ADA prohibits discrimination on the basis of disability by places of public

accommodation. Strictly residential facilities are not places of public accommodation under the ADA. Instead, such facilities may be required to meet nondiscrimination and accessibility requirements under the Fair Housing Act. However, the retirement home addressed by your letter may be covered by the ADA if it constitutes a social service center establishment. The home may be considered a social service center establishment if it provides a significant enough level of social services such as medical care, meals, transportation, and counseling. No one of these services will automatically trigger ADA coverage. Rather, the determination of whether an entity provides a significant

cc: Records, Chrono, Wodatch, Hill, FOIA, Friedlander
n:\udd\hille\policylt\XX ltr

01-03490

enough level of social services will depend on the quantity, quality, and combination of these services.

If the retirement home is a social service center establishment covered by the ADA, it may be required to reasonably modify its policies regarding the services it provides in order to afford those services to individuals with disabilities, unless it can demonstrate that such policy modifications would fundamentally alter the nature of the services. 28 C.F.R. S 36.302. Therefore, the dining room may need to modify its policy of excluding wheelchairs. In addition, the dining room may be required to remove physical barriers to wheelchair access to the extent that such barrier removal is readily achievable, i.e., easily accomplishable and able to be carried out without much difficulty or expense.

I hope this information is helpful to you.

Sincerely,

John L. Wodatch
Chief

01-03491

DJ 202-PL-872

XX
Charlotte, North Carolina XX

Dear XX :

This is in response to your letter to Sheila Foran regarding the application of the Americans with Disabilities Act of 1990 (ADA) to a denial of medical malpractice insurance.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities that have rights or responsibilities under the Act. Pursuant to that authority, this letter provides informal guidance to assist you in understanding the ADA. However, this technical assistance does not constitute a legal interpretation of the statute, and it is not binding on the Department.

You have asked whether a recent decision to reject your application for malpractice insurance would violate the ADA. Absent an investigation, we are unable to determine whether a

violation has occurred. However, title III of the ADA prohibits discrimination on the basis of disability by places of public accommodation, including service establishments such as insurance companies. Therefore, an insurance company may be prohibited by title III from discriminating on the basis of disability in making decisions to grant or deny coverage.

An insurance company will not, however, be prohibited by the ADA from administering its benefit plan in accordance with State insurance laws. 28 C.F.R. S 36.212. Therefore, State law may also play a significant role in the determination of an insurance company's duties regarding individuals with disabilities, but such State law may not be used as a subterfuge to evade the purposes of the ADA.

cc: Records, Chrono, Wodatch, Hill, FOIA, Friedlander
n:\udd\hille\policylt\ XX ltr

01-03492

I hope this information is helpful to you.

Sincerely,

John L. Wodatch
Chief
Public Access Section

01-03493

DJ 202-PL-878

Mr. Tim Hammonds
Food Marketing Institute
800 Connecticut Avenue, N.W.
Washington, D.C. 20006-2701

Dear Mr. Hammonds:

This is in response to your letter regarding the Americans with Disabilities Act of 1990 (ADA), which prohibits discrimination on the basis of disability by places of public accommodation and commercial facilities.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities that have rights

or responsibilities under the Act. Pursuant to that authority, this letter provides informal guidance to assist you in understanding the ADA. However, this technical assistance does not constitute a legal interpretation of the statute, and it is not binding on the Department.

Your letter addresses a possible conflict between the ADA Standards for Accessible Design (Standards) and the rules of the Tennessee Board of Pharmacy regarding the height of service counters in newly constructed pharmacies. According to your letter, the Tennessee Board of Pharmacy requires such service counters to be 40 inches in height from the floor, without exception. In newly constructed pharmacies covered by title III of the ADA, however, the ADA Standards require that, at each service counter that has a cash register, a portion of the counter at least 36 inches in length be no more than 36 inches in height from the floor. 28 C.F.R. pt. 36, Appendix A, § 7.2(1).

The ADA does not preempt all State regulation affecting the accessibility of buildings to people with disabilities. States are free to enact and enforce code provisions that provide equal or greater access than the ADA Standards. 28 C.F.R. S 36.103(c). However, if State code provisions conflict with the ADA requirements in a way that results in less accessibility, the ADA requirements prevail over the conflicting State law.

cc: Records, Chrono, Wodatch, Hill, FOIA, Friedlander
n:\udd\policylt\hammonds.ltr

01-03494

To the extent that the Federal standard is irreconcilable with the State standard, therefore, a covered entity must comply with the Federal standard.

I hope this information is helpful to you.

Sincerely,

John L. Wodatch
Chief
Public Access Section

01-03495

Nov 22 1994

The Honorable Bob Goodlatte
Member, U.S. House of Representatives
2 South Main Street
Suite A, First Floor
Harrisonburg, Virginia 22801

Dear Congressman Goodlatte:

This is in response to the request by your constituent, Mr. George Bergdoll, for information on the availability of Federal funds to assist in the financing of renovations necessary to bring a facility into compliance with laws relating to accessibility for disabled individuals.

Community Development Block Grant (CDBG) funds, awarded to individual communities by the Department of Housing and Urban Development, can be used for the removal of architectural barriers. Activities eligible for assistance include special projects directed to the removal of barriers that restrict the mobility of and accessibility of elderly persons and those with disabilities. Please advise Mr. Bergdoll that each community establishes its own priorities for the use of CDBG funds. Since the funds can be used for a variety of priority projects, it is important that Mr. Bergdoll work with his community to assure that one of its priorities will be the use of some of these funds for barrier removal.

Businesses are also entitled to certain tax benefits to help pay for the cost of compliance with the Americans with Disabilities Act (ADA). As amended in 1990, the Internal Revenue Code allows a deduction of up to $15,000 per year for expenses associated with the removal of qualified architectural and transportation barriers.

The 1990 amendment also permits eligible small businesses to receive a tax credit for certain costs of compliance with the ADA. An eligible small business is one whose gross receipts do not exceed $1,000,000 or whose workforce does not consist of more than 30 full-time workers. Qualifying businesses may claim a credit of up to 50 percent of eligible access expenditures that

exceed $250 but do not exceed $10,250. Examples of eligible access expenditures include the necessary and reasonable costs of removing architectural, physical communications, and transportation barriers; providing readers, interpreters, and other auxiliary aids; and acquiring or modifying equipment or devices.

The Department of Justice has established a free telephone information service that provides technical assistance on title III of the ADA. The number is 800-514-0301 (voice) or 800 (514-9383 (TDD). The hours are 10:00 a.m. to 6:00 p.m. Monday through Friday except for Thursday, with hours of 1:00 p.m. to 6:00 p.m.

I hope this information is useful to you in responding to your constituent.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

01-03497

Memorandum

To: File

From: Phoebe Orebaugh, District Representative

Date: September 14, 1994

Re: Funds for making buildings handicapped accessible.

Mr. George Bergdoll is the Development Manager of the Massanetta Springs Conference Center, a private nonprofit organization near Harrisonburg, Virginia. He is inquiring as to whether there are any funds available from the federal government to assist in the financing of the renovations necessary in order to bring his facility into compliance with laws relating to accessibility for the handicapped.

01-03498

DJ 202-PL-681

Ms. Abby J. Cohen
Managing Attorney
Child Care Law Center
22 Second Street, Fifth Floor
San Francisco, CA 94105

Dear Ms. Cohen:

This letter is in response to your inquiry into the applicability of title III of the Americans with Disabilities Act ("ADA"), 42 U.S.C. 12181-89, to child care centers. We apologize for the delay in responding to your request.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist you in understanding the ADA's requirements. However, it does not constitute a legal interpretation or legal advice and it is not binding on the Department of Justice.

You first inquired about small child care centers, such as home-based child care programs, which, because of their small size, may not be licensed or regulated by the state. You ask what level of impact is required before a child care facility affects interstate commerce. Title III has no exemption for small facilities and size alone is not determinative of whether a particular facility affects interstate commerce. Size, however, would likely be one of the factors the court would take into account in determining whether a facility is involved in interstate commerce along with other such factors as the location of the facility, whether the facility offered to serve interstate travelers, whether products that had traveled in interstate commerce were used in the program, the extent and nature of the facility's advertising, and whether the facility was part of an industry that, as a whole, affects interstate commerce.

Your next inquiry concerns the title III exemption for religious organizations. You note that the Preamble to the title III regulation states as follows:

cc: Records; Chrono; Wodatch; Magagna; McDowney; Mobley; MAF; FOIA

When a church rents meeting space, which is not a place of worship, to a local community group or to a private independent day care center, the ADA applies to the activities of the local community group and day care center if a lease exists and consideration is paid.

You are correct that all three of these conditions (a lease, payment of consideration, and space not used for worship) are required for title III coverage of an entity using space in a building owned by a religious organization. Parts of a religious organization's facility that are used for meetings, classes, social events and the like would not be covered by title III if used exclusively by the religious organization. But where such areas are leased by a child care facility not owned or operated by the religious organization, title III applies to the child care facility but not to the religious organization as landlord.

Next, you inquire whether child care centers can maintain a fee structure based upon the level of service to be provided or based upon developmental abilities, without regard to the age of the child. Title III requires public accommodations to make reasonable modifications in policies, procedures, and practices where necessary to insure that individuals with disabilities have an equal opportunity to enjoy the goods and services of the public accommodation. No surcharge may be imposed for such modifications. In our view, a fee structure that charges extra for services that are needed only by children with disabilities -- the extra care and supervision you describe -- is discriminatory unless providing such additional service is not a "reasonable" modification.

Next, you inquire whether it is permissible to maintain an admissions requirement that children be toilet trained. Programs are not required to abandon such a requirement altogether, but must make an exception for children who are not toilet trained due to their disabilities. This does necessarily mean, however, that diapering service must be provided for such children (see discussion below). Requiring parents to identify their children as having disabilities in order to obtain a modifications of general rules is permissible.

You also inquire as to the breadth with which one should read the requirement to provide personal services to persons with disabilities when they are customarily provided to others. For instance, you ask whether school age child care programs must provide diapering services to children with disabilities when they do not provide such extensive personal assistance with toileting but generally provide other types of personal care and

supervision as an integral part of their work. Public accommodations must make reasonable modifications to their policies, practices, and procedures to accommodate persons with

disabilities. In order to determine what modifications are reasonable, one may consider many factors including, but not limited to, the following: (1) whether other non-disabled children in the program are young enough to need intermittent toileting assistance when, for instance, they have accidents; (2) whether providing toileting assistance on a regular basis would require a child care provider to leave other children unattended; and (3) whether the center would have to purchase diapering tables or other equipment. Thus, where a program serves both infants (who require diapering) and school age children, it seems reasonable to provide diapering service for a school age child with a disability even if in another classroom. If the program never provides toileting assistance to any child, however, then such a personal service would not be required for a child with a disability. Please keep in mind that even in these circumstances, the child could not be excluded from the program because he or she was not toilet trained although the program could impose a reasonable surcharge for providing diapering service.

You next inquire about title III's direct threat defense and how a child care program may determine whether the child has a medical condition, such as active infectious tuberculosis, which poses a significant health risk to others. Child care providers may ask of all applicants whether a child has any diseases that are communicable through the type of incidental contact expected to occur in child care settings. Providers may also inquire about specific conditions, such as tuberculosis, that in fact, pose a direct threat. Medical experts may and should be consulted if specific questions are to be asked, and care must be taken to insure that inquiries are made only about specific conditions that in fact pose a direct threat in the type of conditions present in the particular facility in question.

As to whether centers may ask whether children have engaged in behavior that poses a direct threat to others, centers who wish to pose this question should exercise caution when doing so. Providers may not discriminate against a child whose disability manifests itself in behavior which, while not dangerous, differs from that of his or her peers. Inquiries should focus narrowly on behaviors that currently pose a direct threat.

Your final inquiry relates to title III's prohibition against surcharges. You ask whether child care providers may impose surcharges on the parents of children with disabilities

for the additional services necessary to care for their children. Professionals who charge an hourly or daily fee for their services may do so even where it takes longer and thus costs more to service the needs of a person with a disability. In a child care setting, however, where all children are in the facility for the same number of hours, surcharges may not be imposed for providing extra or more time-consuming services if such services
01-03501

are a reasonable modification, that is, do not cause a fundamental alteration or undue burden for the provider.

If you have further questions, you may wish to consult the Arc's All Kids Count, a guide to title III's obligations written especially for child care providers. The development and distribution of this guide was prepared under a grant from the Department of Justice. Copies are available for a nominal fee by calling (817) 261-6003 (voice) or (817) 277-0553 (TDD). You may also call the Department's toll-free ADA Information Line for further guidance, (800) 514-0301 (voice), or (800) 514-0383 (TDD). I hope this information is useful to you in understanding the requirements of the ADA.

Sincerely,

John L. Wodatch
Chief
Public Access Section
01-03502

Dec 9 1994

XX
XX
Elko, Nevada XX

Dear XX

Senator Harry Reid forwarded your letter to this Department and asked us to respond to your concerns.

Your letter indicates that you are paraplegic. You state objections to the passage of gun control legislation that outlaws semi-automatic weapons because such weapons are the only types you can use due to your disability. It appears that congressional action to repeal or modify the legislation is necessary to address your concern.

You also seek a personal exemption from "dumb" wilderness laws. You indicate that you are being denied access to wilderness areas because, due to your disability, the only means of access is via a snowmobile or ATV which apparently are not permitted. It is not clear from your letter whether the areas are national or state parks. If the areas are national parks, Section 504 of the Rehabilitation Act applies and requires modification of policies and procedures where necessary to provide access to persons with disabilities, unless such modifications would create an undue financial or administrative burden or fundamentally alter the nature of the program. The same type of reasonable modification is required under title II of the Americans with Disabilities Act if the areas are state parks. You may wish to inquire of park authorities whether a modification of the vehicle policies will be made for you. We are unfamiliar with the circumstances involved, and take no position on whether the type of modification you seek is reasonable under Section 504 or title II of the ADA.

cc: Records; Chrono; Wodatch; Magagna; McDowney; MAF; FOIA
udd\magagna\congress\reid

01-03503

A copy of this response has been sent to Senator Reid.

Sincerely,

John L. Wodatch
Chief
Public Access Section

cc: Senator Harry Reid

01-03504

94 JUN 20

XX
Elko, Nevada 89801
XX

11 June 1994

Senator Harry Reid
SH-324
Hart Senate Office Bldg.
Washington, DC 20510-2803

Please be advised that the current frenzy for legislating against semi-automatics, pistol grips, barrel shroud and threaded muzzles is sheer stupidity. I am a XX paraplegic who uses a Colt AR-15 for everything from deer hunting to plinking at cans. In as much as I do not have back muscle control, as an outcome of the accident and the paraplegia, the semi-auto with a pistol grip and muzzle break are indispensable for me to be able to hold and shoot a rifle other than one of the "Youth Models" which is single shot, a short and very light weight.

The solution to the problem is to enforce the more than 22,000 existing laws and leave the law abiding citizen alone. Stop passing cosmetic and "feel good" legislation based on looks and functions of firearms, such as semi-auto, by concentrating on criminal usage and putting the scum bags in jail.

Add to that the fact that I am excluded from entering some of the best mountainous areas of my state by the enactment of the dumb wilderness laws. For me to get to some of them, it means either a gasoline powered snowmobile or an ATV. Can I be provided an exemption under the accommodations of the Americans With Disabilities Act to use what ever means necessary to get there. Thank you.

Sincerely,
XX

01-03505

Dec 13 1994

The Honorable Richard G. Lugar
United States Senator
1180 Market Tower
10 West Market Street
Indianapolis, Indiana 46204-2964

Dear Senator Lugar:

This letter is in response to your inquiry on behalf of your constituents, Mr. and Mrs. Harry Fargo, with regard to their request for a waiver of compliance with the Americans with Disabilities Act (ADA) for a building that they own. Please excuse our delay in responding to your inquiry.

The inquiry that you received from Mr. and Mrs. Fargo describes their property as an "eight unit apartment building," but does not indicate if the property is used strictly for residential purposes or if it contains business operations such as a rental office or the professional office of a health care provider. The use of the building is significant in determining if the ADA applies.

Title III of the ADA prohibits discrimination on the basis of disability by a person who owns, operates, leases, or leases to, a place of public accommodation. The Department of Justice regulation implementing title III identifies twelve categories of places of public accommodation. See, § 36.104 of the enclosed regulation. If a place of public accommodation is operated in a facility, then title III of the ADA applies to the portions of the facility that are used as the place of public accommodation. If title III applies, there is no provision in the ADA that would permit a waiver of its requirements.

If a facility is used strictly for residential purposes, then title III does not apply because strictly residential facilities are not subject to the ADA. However, multi-unit residential facilities are subject to the requirements of the

Fair Housing Act of 1968, as amended. For information about the requirements of the Fair Housing Act, Mr. and Mrs. Fargo should contact: The Office of Fair Housing and Equal Opportunity, U.S. Department of Housing and Urban Development, 451 Seventh Street, N.W., Washington, D.C. 20410-2000.

I hope that this information is helpful to you in responding to your constituents.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

Enclosure
01-03507

DEC 14 1994

DJ 202-PL-875

XX
Summit, New Jersey XX

Dear XX

This letter responds to your letter inquiring about automatic sideways-sliding doors.

The Americans With Disabilities Act (ADA) authorizes the Department of Justice to provide technical assistance to individuals and entities that have rights and responsibilities under the Act. This letter provides informal guidance to assist you in understanding the requirements of the ADA. However, this technical assistance does not constitute a determination by the Department of rights or responsibilities under the ADA, and is not binding on the Department of Justice.

Automatic doors are not required by the ADA. However, I will forward your letter to the ADA Accessibility Guidelines Advisory Committee of the U.S. Architectural and Transportation Barriers Compliance Board for consideration of your comments.

I hope this will be helpful. Thank you for writing with your ideas and observations.

Sincerely,

Janet L. Blizard
Supervisory Attorney
Public Access Section

cc: FOIA

01-03508

XX
Summit, N.J. XX
July 26, 1994

Hon. Janet Reno
Attorney-General
U.S. Justice Department
Main Building
Washington, D.C. 20530

RE: AMERICANS WITH DISABILITIES ACT
and SIDEWAYS-SLIDING DOORS

Dear Attorney General Reno:

I just read in today's newspaper of your public information campaign to alert employers to the requirements of the above law, and your Department's effective enforcement of those requirements.

One of the clumsiest things for people in wheelchairs is to open doors. For young people who have long arms which are strong, it is possible to reach up and yank the door open, but not every wheelchair-bound person who is directing his or her own wheelchair can do that. There are people who use mobilized wheelchairs who have little strength in their arms, yet, with the aid of the electric lever, can direct their chair forward/backward, etc.

Is there any discussion, or ballpark figure of the cost to convert ordinary double doors leading to building vestibules and lobbies to automatic sideways-sliding (telescoping, or paralleling into the adjacent panels?) I imagine if some effort is put into this particular type of accommodation, and there are enough potential customers for such installations among public buildings, apartment buildings, etc., enough of them can be made in various standard sizes to make the cost less then it would be if these had to be custom-designed, manufactured and installed.

With the ADA as a spur to change doorways to accommodate wheelchairs, can this particular kind of door be highlighted?

Sincerely,
XX

01-03509

DEC 14 1994

DJ 202-PL-880

Shon Merryman
Graduate Traffic Engineer
City of Carrollton
Transportation Department
P.O. Box 110535
Carrollton, Texas 75011-0535

Dear Ms. Merryman:

This letter responds to your letter inquiring about Americans With Disabilities Act (ADA) requirements for accessible residential parking in multi-family dwelling areas. Your question pertains specifically to the residential portions of the parking areas.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities that have rights and responsibilities under the Act. This letter provides informal guidance to assist you in understanding the requirements of the ADA. However, this technical assistance does not constitute a determination by the Department of rights or responsibilities under the ADA, and is not binding on the Department of Justice.

The ADA does not cover the residential portions of privately operated residential properties. Coverage may be provided, however, under the Fair Housing Amendments Act, which is enforced by the U.S. Department of Housing and Urban Development (HUD). To obtain further information about this Act, you may want to contact HUD at: (800) 795-7915 (voice) or (800) 927-9275 (TDD); or 202) 708-2618 (voice).

I hope this information is helpful to you.

Sincerely,

Janet L. Blizard
Supervisory Attorney
Public Access Section

cc: FOIA

01-03510

CARROLLTON
Transportation Department

September 22, 1994

Mr. John Wodatch
Public Access Section
Civil Rights Division
U.S. Department of Justice
P.O. Box 66738
Washington DC 20035-6738

Re: Accessible Parking Spaces for Multi-Family Residences

Dear Mr. Wodatch:

A citizen of our community phoned our department recently to inquire about accessible parking spaces in a multi-family residential parking area. Apparently, this person was told by the apartment manager prior to moving in that an accessible space would be provided for them near their residence. According to the new tenant, this promise was never carried out.

This call brought up a couple of issues which I have been unable to get resolved. The reason I am writing you is to hopefully get some clarification as to what the ADA requires or does not require as far as multi-family residential units are concerned. In this instance, I am not even sure whether the apartment owner/manager was required to provide accessible parking for residents. I know that for new apartment construction in our City, we require that accessible spaces be provided at the same rate as a retail development having the same number of spaces. However, this requirement is derived more from a strict interpretation of the Uniform Building Code rather than anything I have been able to find in the ADA requirements.

From what I have been able to gather, multi-family residential units are treated under ADA as any other type of residence would be. This type of interpretation means that multi-family parking areas are exempt from such requirements, and therefore, are not required to provide any accessible spaces.

My questions concerning ADA requirements are as follows:

1) Are apartments or any other type of multi-family development required to provide accessible parking spaces based on the overall parking requirement?

2) If so, is the property owner required to put the accessible spaces in any particular location, or can they place them wherever they want?

3) If the answer to question #1 is no, then is the property owner under any obligation to provide accessible spaces if the need arises.

The questions I have are not related to common areas, office or retail space, or any other area that could be construed as publicly accessible within the apartment community. For these areas, I understand that they fall under a different category and are therefore bound by different rules. I am strictly concerned with the ADA as it pertains to the parking provided for the residential portion of the complex only.

To my knowledge, this is the first time a question of this nature has come through our department. I would like to get it sorted out so that I can make a more timely response to our citizens in the future. I would appreciate it if you could look into this matter for me and let me know how the ADA applies to multi-family parking. Please send a written response addressed to me at:

City of Carrollton
Transportation Department
P.O. Box 110535
Carrollton, TX 75011-0535

Thanks for your help. I look forward to hearing from you soon.

Sincerely,
Shon Merryman
Graduate Traffic Engineer

01-03512

DEC 15 1994

The Honorable Phil Gramm
United States Senator
2323 Bryan Street, Suite 1500
Dallas, Texas 75201-2659

Dear Senator Gramm:

This letter is in response to your inquiry on behalf of your constituent, Richard L. Myers, concerning the lack of accessible parking for people with disabilities at Del Lago Plaza in Montgomery, Texas, where Mr. Myers' business, Lakefront Properties, Inc., is a tenant. He says that over the years he has asked the owners and managers of the office complex to provide accessible parking spaces for himself and his clients and customers. He asks whether all public office buildings are required to provide accessible parking.

Title III of the Americans with Disabilities Act requires that existing places of public accommodations -- including restaurants, stores, sales or rental establishments, travel services, and offices of lawyers or doctors -- remove architectural barriers to access where such removal is readily achievable, i.e., easily accomplishable and able to be carried out without much difficulty or expense. The Department of Justice's regulation under title III offers examples of barrier removal including installing ramps, making curb cuts in sidewalks, and creating designated accessible parking spaces. The cost of these actions and the resources of the covered entity are factors in determining what is readily achievable.

While the exact nature of Mr. Myers' business is unclear, we assume it is a real estate sales or rental office and that parking spaces are provided for his customers. If this is the case, it is possible that the landlord, the tenant, or both will be responsible for providing accessible parking. For further information, please see § III-1.2000, p.3 of the enclosed title III technical assistance manual.

cc: Records, Chrono, Wodatch, McDowney, Bowen, Breen, FOIA, MAF
Udd:Bowen:PGramm.Con:Cager

I hope this information is useful to you in understanding the requirements of the ADA. You may wish to inform your constituent that further information is available through our Americans with Disabilities Act Information Line at 800-514-0301 (Voice) or 800-514-0383 (TDD) between 10:00 a.m. and 6:00 p.m. Monday through Friday, except for Thursday between 1:00 p.m. and 6:00 p.m. EST.

Sincerely,

Loretta King
Acting Assistant Attorney General
Civil Rights Division

01-03514

REALTOR Lakefront Properties, Inc. MLS

March 15, 1994
Honorable United States Senator
Phil Gramm
United States Senate
Washington, D.C. 20510-4302

RE: Disabled Parking at 15001 Walden Road
Montgomery, Texas 77356

Dear Mr. Gramm:

I am confused! My original letter to you was in regard to Handicap Parking, which is not provided in the 15,000 square foot office building at 15001 Walden Road and never has been provided since its inception. We are tenants and have made numerous requests to have "Handicap Marked Parking Spaces" provided. The requests were made to: Phillip LeFevre, Manager and/or Lessor, located in the same building, Suite 203.

I am on "Life Support Systems" and cannot walk any great distance. Many of our clients or customers are also handicapped.

Perhaps my confusion is your letter states you have contacted officials at "The Equal Employment Opportunity Commission". Are they the government agency that handles handicap parking?

Once again, thank you for all your help.

Very truly yours,

Richard L. Myers
Lakefront Properties, Inc.

RLM/kb

01-03515

Realtor Lakefront Properties, Inc. MLS

March 1, 1994

The Honorable Senator Phil Gramm
2323 Bryan Street, Suite 1500
Dallas, TX 75201-2659

RE: Handicap Parking Office Complex
15,000 sq. ft. Air Conditioned Offices

Dear Mr. Gramm:
My corporation "Lakefront Properties, Inc.", is a tenant in the "Del Lago Plaza", 15001 Walden Road, Montgomery, Texas 77356 office complex, with approximately 15,000 square feet of air conditioned offices. We lease approximately 1500 square feet and have for a number of years. We have over the years requested the owners and/or managers of the building provide us with handicap parking spaces and have been ignored or told they are working on it. The bottom line is, we still have none and no reason to believe anything will change. The same management company also manages a shopping center near our office complex and did recently paint handicap spaces in the shopping center.

Am I mistaken, or don't all public office buildings have to provide handicap spaces for the tenants and the public for the benefit of people such as myself who are handicapped?

The manager of our building is LeFever Management Company. One of the principal owners is Henry Brooks - one of the large beer distributors in Conroe, Texas.

Mr. Gramm, any assistance you could give me on this matter would be greatly appreciated, such as what government agency should I contact and if possible, a name of the closest one to Walden, Del Lago, Conroe, Texas or Houston, Texas.

Mr. Gramm, thank you for all your assistance in past years on many matters! I look forward to your usual prompt response.

Your constituent,

Richard L. Myers
RLM/kb

01-03516

DEC 15, 1994

The Honorable Mitch McConnell
United States Senate
Washington, D.C. 20510-1702

Dear Senator McConnell:

This letter is in response to your inquiry on behalf of your constituent, XX , regarding the Americans with Disabilities Act (ADA). XX is concerned that the ADA requires public entities to use the services of interpreters, but that the Federal government does not regulate interpreter services.

The ADA is a comprehensive civil rights statute that prohibits discrimination on the basis of disability. Title II of the ADA prohibits discrimination on the basis of disability in all programs, activities, and services provided or operated by public entities, including the Pulaski County School District.

The Department of Justice regulation implementing title II, 28 C.F.R. Part 35, requires that public entities furnish appropriate auxiliary aids and services where necessary to afford an individual with a disability an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity conducted by a public entity. Sign language interpreters may be employed to meet this obligation.

In determining whether an interpreter is an appropriate auxiliary aid, factors to consider are the context in which the communication is taking place, the number of people involved, and the importance of the communication. Thus, this provision is somewhat flexible. For example, in many simple transactions, such as paying bills or filing applications, communications provided through written materials and written notes may provide effective communication. However, situations which involve more complex or extensive communications, such as a classroom discussion, may require the use of qualified interpreters, assistive listening systems or other aids or services.

cc: Records Chrono Wodatch Breen Blizard FOIA
McDowney Freidlander

A public entity is not required to take any action that it can demonstrate would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial burden and administrative burdens.

While title II requires that any interpreter used by a public entity must be "qualified," i.e., able to interpret effectively, accurately, and impartially both receptively and expressively, using any necessary specialized vocabulary, the ADA does not require an interpreter to hold a degree or to be "certified." This definition focuses on the actual ability of the interpreter in a particular interpreting context to facilitate effective communication.

XX also expressed concern regarding limited

interpreter services in her area and the expense of these services. Supply and demand in a free market is responsible for interpreter costs. The ADA has no provisions for regulating the fees of interpreting services or any other auxiliary aid or service. However, the title II regulation states that a public entity may not place a surcharge on a particular individual with a disability or any group of individuals with disabilities to cover the costs of measures, such as the provision of auxiliary aids, needed to comply with the ADA.

I hope this information will be helpful to you in responding to your constituent.

Sincerely,

Loretta King
Acting Assisting Attorney General
Civil Rights Division

01-03518

XX
Somerset, Kentucky XX

F A X C O V E R S H E E T

DATE: October 13, 1994 TIME: 4:55 PM

TO: Senator Mitch McConnell PHONE: XX
FAX: XX

FROM: XX PHONE: XX
FAX: XX

RE: Interpreters for the Deaf and ADA

Number of pages including cover sheet: 2

Message

Dear Senator McConnell,

For many years, my husband XX and I have been avid supporters of yours. I am deaf, and I met you a few years ago at XX home.

My reasons for contacting you are because I need your help regarding the ADA laws and the deaf. First, I would like to praise all the peacemakers who have brought this law for the disabled about. However, as a deaf individual, I am concerned that some areas have been overlooked and need to be brought to your attention immediately before our future is robbed by misuse of this law.

The problems I would like to discuss with you stem from the question, "How could our federal government enforce such a law when there are not ample resources to fulfill it?"

I am speaking of Interpreters for the deaf. Now that federal law requires agencies and businesses to provide the deaf with Interpreters, I am seeing too many Interpreters taking advantage of this situation by setting their own fees, deciding how they will bill, and charging for travel time and also mileage. Due to the low supply of Interpreters, there is no competition out there and it is becoming aggravating not only to the deaf community, but also those businesses who must pick up the tab. I feel there is a pressing need for the federal government to set this matter straight as it is getting out of hand. There needs to be consistency in this trade because now federal law has enforced the use of Interpreters upon our society. I understand there is a free trade act, enabling those

to run their own businesses, but federal law doesn't force someone to hire a plumber. The trade of Interpreting needs to fall into the governments hands, and not be taken lightly.
01-03519

I would like to share with you some incidents that I have experienced in just this past month. Presently, there is a child in our Pulaski County School District who is deaf and requires an Interpreter. He has been deprived of two months of education because the Interpreter that the district has been negotiating with cannot come to terms with her salary. They are offering her $12.50 per hour for a full time job with benefits. She is saying she is worth $20.00 per hour, and I can guarantee you that she is not even currently certified. If the district were to pay her that, she would be making more than the Principal of the school responsible for 1000 students, while she would be responsible for just one child. It makes me furious that this child cannot speak out for himself.

The Lexington Center has made some very impressive efforts to accommodate the hearing and visually impaired at the Rupp Arena. I worked with them on getting the recent Reba McEntire concert interpreted. It turned out to be a wonderful experience and we are looking forward to future ones as well. I had highly recommended a nationally certified Interpreter to them which they used, and she did a fine job. However, when the Interpreter billed the Center, I questioned many things which I felt were unfair. After discussing the bill with the General Manager at the Center, he decided it was best to let this time go. I have encouraged them to issue a contract for future shows, where they would be setting the rules as the employer. I am anticipating problems from the Interpreters with this idea, but there must be a way where things will not get out of control.

It is my plea that you take a look at what is going on around the ADA law. For most disabilities, the special needs are being installed to meet the requirements and only need to be updated, but with the deaf, Interpreters will always be an ongoing thing. Please set the rules if the law is to be enforced.

Also, I would like to make a suggestion about the supply of Interpreters. Since interpreting has become in such demand, why don't we make it a big part of our school's curriculum, encouraging students to go into that field like we do with other professions? Most Interpreters today know someone who is deaf and acquired their skills from them. We need to treat it as a learned profession and offer programs in colleges where degrees can be given.

Thank you for your time on this matter. I have discussed my concerns with the Kentucky Commission for the Deaf and Hearing Impaired in Frankfort, but was told that since the ADA was a federal law, they as a state agency, could not do anything. Coincidentally, the person I spoke

with was an Interpreter. I hope you will not consider this matter to be petty, as the deaf community considers it to be of utmost importance.

Sincerely,
XX
Somerset, Kentucky

T. 12/16/94
MAF:AMP:ls

DJ# XX

Ms. Adell Betts
Director
Office of Equal Rights
Federal Emergency Management
Agency
Washington, D.C. 20472

Dear Ms. Betts:

This letter is in response to your letter requesting an advisory opinion on various issues dealing with the impact of the Americans with Disabilities Act of 1990 (ADA) on the provision of shelter and mass care during and after a disaster.

In your letter, you describe American Red Cross (ARC) policies that may limit the ability of individuals with disabilities to take advantage of the disaster relief services provided by the ARC to members of the general public. Your concern arises out of the possible relationships that may arise between the ARC and local Emergency Management Agencies, which receive Federal financial assistance through your agency, the Federal Emergency Management Agency (FEMA). Specifically, you ask the following questions:

1. Is the current ARC policy a violation of Section 504 [of the Rehabilitation Act of 1973, as amended] or of Titles II or III? If so, why? If not, why not?

2. What sort of physical or other type of access is legally required in a mass care shelter?

3. Is an Emergency Management Agency in violation of these

statutes or implementing regulations by participating in any portion of shelter operations?

Given the number of interrelationships that may occur among these entities, some of which you describe in your letter, and the fact that your letter does not fully describe the legal responsibilities that apply to each, we are unable to provide a

cc: Records CRS Chrono Pecht Friedlander Breen FOIA
UDD\PECHT\TECHASST.LTR\BETTS.LTR

01-03521

comprehensive answer. We have, therefore, tried to set forth the applicable general requirements.

Emergency shelters set up by the American Red Cross are clearly places of public accommodation subject to Title III of the ADA, which prohibits discrimination against individuals on the basis of disability by any private entity (whether or not established for profit) that owns, leases (or leases to), or operates a place of public accommodation. See § 36.201 of the enclosed Title III regulation. To be considered a "place of public accommodation" under Title III of the ADA, a facility must be operated by a private entity, its operations must affect interstate commerce, and it must fall within one of the 12 categories listed in § 36.104 of the regulation. Each category includes representative examples of covered facilities. However, the examples included are meant to be illustrative, not exhaustive. Thus, a facility does not have to be specifically listed in order to be covered.

Shelters operated by the ARC would be considered "social service center establishment[s]," a category that includes senior citizen centers and homeless shelters. Such shelters may also be considered "service establishment[s]," a category that includes the professional offices of health care providers and hospitals.

As a public accommodation, that is, as an entity that operates a place of public accommodation, the ARC is fully subject to the requirements of Title III. It cannot discriminate against individuals with disabilities on the basis of disability in the full and equal enjoyment of the services it provides. See § 36.201 (a) of the Title III regulation. The ARC is free to define the type of services it will provide during emergencies. Thus, if the ARC defines its mission as providing shelter, basic nutrition, and basic medical care during times of emergency, this policy does not violate the ADA. It would, however, violate the ADA if the ARC refused to provide these same services to individuals with disabilities, such as individuals who use - wheelchairs or persons who are blind or deaf.

The ARC must also make reasonable modifications to its policies, practices, or procedures if those modifications are necessary to make its services available to persons with disabilities. See § 36.302(a) of the Title III regulation. Modifications are not required, however, when the ARC can demonstrate that making such modifications would fundamentally alter the services provided. In practice this could mean that the ARC may be required to perform some additional services for

individuals with disabilities. It is would not, however, be required to convert its shelters into comprehensive, state of the art, medical facilities.

From the ARC's Numbered Notice 5, which you have enclosed with your letter, and from your description of individuals turned away from shelters, it appears that the ARC is failing to distinguish between two classes of individuals, those with disabilities who are medically stable (for example, individuals who use mobility aids, such as wheelchairs, as a result of a past injury or illness) and individuals who may or may not have disabilities, but who are acutely ill. Barring medically stable individuals with disabilities from entrance to ARC shelters solely on the basis of their disability would, in most cases, violate Title III of the ADA.1 Failing to make reasonable modifications to shelter policies, practices, and procedures to accommodate such individuals also violates the ADA, unless the American Red Cross can demonstrate that making such modifications would result in a fundamental alteration to the service provided.

As a practical matter, this means that the ARC should not assume that all people with visible disabilities are ill and require hospitalization or specialized medical care. Shelters should, as a matter of course, be prepared to accept medically stable individuals with disabilities. This group may include, but is not limited to, people with mobility impairments, blind individuals (and their service animals), people who are deaf, individuals who have cerebral palsy, and people with muscular dystrophy and other disorders that may be degenerative, but who are not acutely ill. The ARC should be prepared to make reasonable modifications to its policies in order to accommodate such individuals. For example, shelter staff should be prepared to assist paralyzed individuals in transferring to bed and with basic health care procedures.

With respect to individuals who are acutely ill, as noted above, the ARC is not required to provide comprehensive medical facilities. In most cases, however, it would violate the ADA if ARC shelters were to deny acutely ill individuals with disabilities the right to enter shelters, while permitting acutely ill, non-disabled individuals to enter. Although the ARC may refer such individuals to hospitals or other facilities that are more capable of handling specialized medical care, it may wish to set up systems to ensure that acutely ill individuals

_____

1 The only exception to this requirement arises when an individual poses a direct threat to the health or safety of

others, and that threat cannot be eliminated by a modification of policies, practices, or procedures, or by the provision of auxiliary aids and services. See S 36.208 of the Title III regulation for the definition of the direct threat exception and for a discussion of the very limited circumstances under which it may be applicable.

are, in fact, able to reach such alternative care facilities, and that these facilities are open and operating under disaster conditions.

The American Red Cross is subject to a number of other obligations under Title III of the ADA. For example, it must remove architectural barriers in its facilities, when such removal is readily achievable. It must also provide auxiliary aids and services where necessary to ensure effective communication with individuals who have disabilities. See §§ 36.303 and 36.304 of the Title III regulation. If the ARC is a recipient of Federal financial assistance, it must comply with the funding agency's regulations implementing Section 504 of the Rehabilitation Act of 1973, as amended (Section 504). The requirements of Section 504 are substantially the same as the requirements of Title II of the ADA, which are described below.

The operations of a State or local Emergency Management Agency (EMA) are governed by Title II of the ADA, which prohibits discrimination against qualified individuals with disabilities on the basis of disability in services, programs, or activities conducted by a State or local governmental entity, such as an Emergency Management Agency. A copy of the regulation implementing Title II is enclosed for your convenience. Title II of the ADA is based on Section 504, and the following discussion is applicable to both laws.

The focus of Title II of the ADA and its implementing regulation is to ensure that, to the extent that a State or local governmental entity provides programs, services, and activities to the public, they are readily accessible to and usable by individuals with disabilities. Program access is discussed in Subpart D of the enclosed Title II regulation. Under the "program access" requirement, a public entity must operate each of its services, programs, and activities, so that when viewed in its entirety, that service, program, or activity is readily accessible to and usable by individuals with disabilities. See § 35.150(a) of the Title II regulation.

Your letter does not include a discussion of the scope of the duties legally required to be performed by EMA's or the

statutory framework under which EMA's operate. It also lacks a discussion of the relationship between the ARC and individual EMA's. If EMA's are required to arrange for emergency shelter care in their respective jurisdictions, they may either do so directly, or they may provide such services through third parties, such as the ARC. However, as a covered entity, an EMA must ensure that such third parties comply with the requirements of Title II in delivering services on its behalf.

If, however, EMA's are not obligated to provide shelter services, and do not, in fact, provide such services, they do not

violate the ADA simply by providing assistance to the ARC. However, each aspect of the sheltering process in which an EMA participates, must be performed in a nondiscriminatory manner. For example, your letter states that EMA's may participate in the selection of shelter sites. Under Title II, such sites must be selected in a nondiscriminatory manner. See § 35.130(b)(4). You also include an example in which a Florida EMA agreed to provide medical staff for a "special needs" shelter. In the latter example, the activities of the Florida EMA are basic to the provision of the service, and, consequently, the EMA would have a substantial obligation to ensure that shelter operations did not violate Title II of the ADA (and Section 504, if that EMA is a recipient of Federal financial assistance).

Thus, in response to your question, whether an EMA is in violation of Title II of the ADA is a question of fact that depends on both the EMA's statutory responsibilities and on the degree to which the EMA is involved in shelter operations. This same analysis would apply in determining whether an EMA that receives Federal financial assistance through FEMA is in violation of Section 504.

Finally, you ask what type of access is required in a mass care shelter. You note that the most frequently used facilities are schools, churches, and government buildings, such as civic centers. This question raises a unique issue because of the short-term and sporadic use of facilities.

Title III entities, such as the ARC, are required to eliminate architectural barriers in existing facilities when such barrier removal is readily achievable, that is, easily accomplishable and able to be carried out without much difficulty or expense. See § 36.304 of the Title III regulation. Title III also contains accessibility standards which must be followed when constructing or altering buildings and facilities subject to Title III. However, given the nature of the ARC's use of

buildings for emergency shelters (we are assuming that the ARC does not own or lease most shelter facilities), these portions of the Title III regulation may not be generally applicable.

Even if these specific provisions are not applicable, the ARC is obligated to comply with the general requirements of Title III found in §§ 36.201 through 36.204 of the Title III regulation. Among other things, the general requirements prohibit a public accommodation from denying individuals with disabilities the right to participate in the services the public accommodation provides and from providing such individuals with segregated or inferior services. These issues are best addressed at the planning stages by selecting, to the greatest possible extent, facilities that are physically accessible.

01-03525

If an EMA is responsible, either individually, or with the participation of the ARC, for selecting buildings to be used as shelters, it must comply with Title II of the ADA in doing so. Under the Title II regulation, it is not necessary for a public entity to make each of its existing facilities accessible, as long as it complies with Title II's "program access" requirement and ensures that its programs and activities, when viewed in their entirety, are readily accessible to and usable by individuals with disabilities. However, given the unique nature of disaster relief, it may not be sufficient to have only designated facilities accessible. Under disaster conditions it may be impossible for an individual to reach the "designated" accessible shelter or safety concerns may dictate that the individual take shelter immediately.

Under these circumstances, in selecting shelter sites, public entities (as well as private disaster relief agencies) may wish to follow the guidance for leasing buildings suggested by this Department in the Preamble to its Title II regulation. As noted in the Preamble, existing buildings leased by a public entity are not required to meet accessibility standards simply by virtue of being leased. However, at a minimum, the Department encourages public entities to lease space that complies with the minimum standard applicable to the Federal government when it leases space. That standard is discussed in the Preamble to S 35.151 of the Title II regulation. The three elements of the standard are: (i) an accessible route from an accessible entrance to the areas where the primary activities for which the building was leased take place; (ii) accessible toilet facilities; and (iii) accessible parking facilities. Selecting space that complies with this minimum standard, while not required, will greatly facilitate both a public entity's obligation to provide program access, and a private entity's obligation to avoid discrimination on the basis of disability.

I hope this information has been of assistance to you. If

you require further assistance or advice, please do not hesitate to write. The Department can also be reached through its ADA Information Line at (202) 514-0301 (Voice) and (202) 514-0383 (TDD) 1:00 p.m. to 5:00 p.m., Monday through Friday.

Sincerely,

Merrily A. Friedlander
Acting Chief
Coordination and Review Section

Civil Rights Division
Enclosures (2)

01-03526
Federal Emergency Management Agency
Washington, D.C. 20472

Ms. Stewart B. Oneglia
Chief, Coordination and Review Section
Civil Rights Division
Department of Justice
P.O. Box 66118
Washington, D.C. 20035-6118

Dear Ms. Oneglia:

This letter is a request from the Federal Emergency Management Agency (FEMA) for an advisory opinion on various issues dealing with the impact of the Americans with Disabilities Act of 1990 (ADA) on the provision of shelter and mass care during and after a disaster.

The American Red Cross (ARC) is charged with responsibility for sheltering and feeding persons displaced by disaster. This service is to be provided regardless of whether the community involved becomes a Presidentially declared disaster area. Indeed, the shelters and mass feeding facilities are open long before the formal process leading to a Presidential declaration has begun. Shelters may be located in a wide variety of buildings. The most-often used facilities are schools, churches, and government buildings such as civic centers. Except as noted below, the ARC is charged with designation of shelters, provision of supplies, and deployment of volunteer and paid staff. Supplies usually consist of a limited variety of food and an even more limited range of medical supplies. Nurses either may be volunteers or ARC professionals, and doctors normally are volunteers.

For the past several years the ARC has followed a policy that has led to the exclusion from shelters of many persons, most of whom would be considered disabled, who are frail or who have serious medical conditions. In Numbered Notice 5 to all chapters, dated March 25, 1987, the national ARC said:

The American Red Cross cannot and should not guarantee comprehensive medical services for the frail elderly, post surgical, home care patients, and others in need of specialized medical care (e.g. stroke victims, dialysis patients, or those

requiring specialized medical equipment, such as oxygen, urinary catheters, tube feeding, intravenous fluids, etc.). The health of the local community and the responsibility for the provision of care for disaster victims with such special needs rests with local public health authorities ... With the reaffirmation of current regulations and procedures affecting Red Cross health

01-03527

services in shelters, the American Red Cross and its individual chapters will not consider, approve or be responsible for the opening of shelters designated as "special needs" shelters.

In Numbered Notice 56 of January 3, 1992, ARC reiterated the policy as follows:

Because the level of care required exceeds Red Cross protocols, responsibility for care of these shelter residents rests with Public Health authorities, who are responsible for the health of the general public. This responsibility MAY NOT (emphasis in original) be delegated to Red Cross. Red Cross may augment public health staff upon request, provided sufficient local Disaster Health Services staff with the appropriate clinical skills are available; however, adequate personnel to cover our own mission must remain our priority.

Both Numbered Notices are attached.
In support of its policy, the ARC argues that these so-called "special needs" persons should go to a hospital or other medical facility instead of a shelter. Many such people, however, are not actually in need of hospitalization, and would not be admitted. Even if they required hospitalization, they might find themselves in a situation in which the medical facilities have evacuated and closed. Not all "special needs" shelters would require comprehensive medical care, but observation and some sort of support. Public health departments rarely have the staff and expertise to deal with large numbers of frail elderly or medically impaired persons.

This letter was drafted prior to the Northridge earthquake of January 1994. This office has been informed by reliable sources that few, if any, Red Cross shelters in greater Los Angeles have been accessible. Reports have come to us of people being turned away from shelters who did not have serious medical conditions, but were simply in wheelchairs.

Our interest in this subject stems from the potential relationship possible between local ARC chapters and the jurisdiction's Emergency Management Agencies (EMA's), most of which receive Federal financial assistance from FEMA through the annual Comprehensive Cooperative Agreement. That relationship varies from community to community. To cite an example from one end of the continuum, the Sarpy County, Nebraska, EMA does not participate in any aspect of sheltering, including the designation of shelter sites. By contrast, the San Francisco Office of Emergency Services is heavily involved in site

selection. The Dade County, Florida, EMA entered into an agreement with the Miami ARC to provide medical staff for "special needs" shelters during Hurricane Andrew.
01-03528

In summary, our questions are:

1. Is the current ARC policy a violation of Section 504 or of Titles II or III? If so, why? If not, why not?

2. What sort of physical or other type of access is legally required in a mass care shelter?

3. Is an EMA in violation of these statutes or implementing regulations by participating in any portion of shelter operations?

If you have questions or require further information, please call Alan Clive, Civil Rights Program Manager, at 646-3957 (V) or 646-3401 (TDD).

Sincerely,

Adell Betts
Director
Office of Equal Rights

Attachments

01-03529

N O T I C E

Date: Jan 3, 1992
Number: 56
Originating Department: Disaster Services
Intended Audience: All paid and volunteer Disaster Services staff, Chapter Chairmen and Managers, all ARC 3000 Series recipients
Subject: DISASTER HEALTH SERVICES COVERAGE IN SHELTERS

The purpose of this Numbered Notice is to provide an update and clarify issues surrounding the provision of medical and nursing services in Red Cross operated shelters. This Notice supplements Numbered Notice #5, and will delineate the roles and responsibilities of Red Cross Disaster Health Services and those of Public Health. It also provides an organizational definition of the term "special needs".

A memorandum to Disaster Services from the Office of the General Counsel, National Headquaters, concerning "special needs shelters" states the following:

"In the past we have had several discussions concerning the American Red Cross' responsibility or authority to open special needs shelters. A Numbered Notice dated March 25, 1987 was issued in an attempt to clarify that the Red Cross cannot guarantee comprehensive medical services for the frail elderly, post surgical, home care patients, and others in need of specialized medical care. That Numbered Notice reiterated long-standing Red Cross policy. The Red Cross should assist in the supplementation of these types of health care services when so requested by the local health authorities. However, the Red Cross should not hold itself out as operating special health care shelters. If a Red Cross chapter were to open such a special facility, it would be serving as a pre-hospital facility requiring access to more sophisticated services and products than are typically available at a Red Cross first aid shelter."

DISTRIBUTE AS MARKED
(Indicate Management Level) (Indicate Appropriate Service Area)

	International	
KRC Management	Communication	Nursing
Territorial Chapter	Computers and Systems	Safety
Management	Disaster	ILLEGIBLE

Blood Services Financial Accounting Supply
Management Financial Development Volunteer Office

01-03530

DHS Responsibilities in a Shelter

DHA responsibilities are limited to first aid level care of all shelter residents. The limits of this care are spelled out in the Disaster Health Services Protocols (ARC 3050P). These protocols are to be signed yearly by a local doctor, and changed, as necessary, to reflect new research findings and procedures about items listed in ARC 3050P. An example of a protocol that should be changed is the treatment for a snake bite which, in the Advanced First Aid and Emergency Care textbook, is an outdated procedure. The physician signing the Protocols cannot add responsibilities or types of treatment to those issued by national headquarters.

In addition to providing first aid care, DHS workers provide access to medical care and health services by:

* making assessments of the health needs of the shelter population.
* securing the services of a licensed mecical practitioner (M.D., D.O., dentist, opthomologist, etc) for a shelter resident needing such services. Doctors working as Red Cross volunteers in shelters are subject to the same levels of care provision as all other DHS workers, and as described in the current edition of Advanced First Aid and Emergency Care. They may make assessments, and recommend transport to a medical facility for treatment of conditions exceeding the level of care allowed by ARC 3050. Under these guidelines, doctors will be covered by Red Cross general liability insurance. Victims requiring more comprehensive medical services from a doctor should be referred to the doctor's office. If necessary, payment may be made by Red Cross based on the guidance supplied in ARC 3050.

* requesting assistance from the local EMS provider or private ambulance company for a resident who requires emergency transport to a facility which provides direct medical care.

* making arrangements through a licensed medical practitioner for replacement of prescription items needed by a shelter resident.

* through coordination with Mass Care, securing the proper types of food for residents with special dietary needs, either provided by the Mass Care function or through the dietary department of a local hospital.

DHS personnel are also responsible for acting in a liaison capacity between shelter management and nursing home and Public Health administrators.

Disaster Operations
American Red Cross National Sector Washington, D.C. 20006

Notice

Date: March 25, 1987
Number: 5
Originating Department: Disaster Operations
Intended Audience: Field Management, Disaster Services Directors and ARC 3000 Series Recipients
Subject: Policies and Procedures Affecting Health Services in Shelter Situations

A number of current trends in health care are impacting or may soon impact the provision of health services offered in Red Cross shelter situations. The regulations and procedures governing the provision of disaster health services in shelter situations are designed to promote health, to prevent disease, to treat minor illnesses and injuries and to refer for medical care the seriously ill and injured. To accomplish this, twenty-four hour medical and nursing coverage must be established for all Red Cross shelters.

The American Red Cross cannot and should not guarantee comprehensive medical services for the frail elderly, post surgical, home care patients, and others in need of specialized medical care (e.g. stroke victims, dialysis patients, or those requiring specialized medical equipment such as oxygen, urinary catheters, tube feeding, intravenous fluids, etc.).

Distribution: VP & VP/GMs,
DOH at NHQ & OHQ
Managing Directors,
FSMs,
Chapter Chairmen/Managers,
Blood Center Chairmen/Managers,
SAF Station Chairmen/Managers,
PRDs.

American Red Cross Form 6470-E
01-03532

The health of the local community and the responsibility for the provision of care for disaster victims with such special needs rests with local public health authorities. At the request of said authorities, the American Red Cross may assist in the supplementation of services at the request of and under the supervision of the local health authorities. When such a request is made, disaster health services provides a professional assessment of the health needs of shelter residents and recommends appropriate Red Cross action.

The director of the disaster relief operation, disaster health services, and the local health authorities then jointly determine the most appropriate plan of action to meet those needs. Should the solution be the opening of a temporary infirmary within the shelter, the procedures in ARC 3050 must be followed. The local public health authority must make such a request and is responsible for the supervision of personnel, provision of care and general operation of the infirmary. The Red Cross assists, supplements, and cooperates to the extent jointly agreed upon.

With the reaffirmation of current regulations and procedures affecting Red Cross health services in shelters, the American Red Cross and its individual chapters will not consider, approve or be responsible for the opening of shelters designated as "special needs" shelters. Red Cross units in areas of the country vulnerable to disasters must ensure that preparedness plans include agreements with the local public health authorities in the event that temporary infirmaries must be established within shelters. Referrals within the local community for specialized care for disaster evacuees should be determined before a disaster strikes. A Red Cross chapter may not assume financial, administrative, or medical responsibility for "special shelters".

For additional information regarding this topic, units may contact the National Director of Disaster Operations, Directors of Disaster Services at the Operations Headquarters or the following individuals:

Judy Isaacson, RN, Chief of Disaster Health Services, MOH and
Functional Lead for DHS

Patricia Snyder, RN, Volunteer Consultant for Disaster Health
Services, WHO

Patricia Watts, RN, Chief of Disaster Health Services, EOH
01-03533

The Honorable Barbara Boxer
United States Senator
1700 Montgomery Street
Suite 240
San Francisco, California 94111

Dear Senator Boxer:

This letter is in response to your inquiry on behalf of your constituent, XX . XX feels that the San Francisco Municipal Railway ("MUNI") has violated the Americans with Disabilities Act ("ADA") by not providing access for persons with disabilities in its light rail system, and by not providing paratransit. Specifically, XX states that there are no wheelchair accessible features at the train station near her home that is on the "N-Judah" line within MUNI's light rail system. In addition, XX apparently has not received any response to requests for paratransit service.

Subtitle B of title II of the ADA establishes accessibility standards for the operation of public transportation systems. The Department of Transportation is responsible for implementing subtitle B of title II and its regulations. Under title II all public entities that provide designated public transportation by means of light or rapid rail must make key stations on its system readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. See 42 U.S.C. §§ 12141(2), and 12147(b)(1) and (2); 49 C.F.R. § 37.21(a)(1) and (b), and 37.47(a). Under Department of Transportation regulations, all public entities, including MUNI, were required to designate key stations in their system and submit a plan for compliance with the ADA. Key stations include those stations serving major activity areas such as transfer stations. See 49 C.F.R. § 37.51(b). MUNI designated approximately 37 stations in its light rail system as key stations. Only these key stations are required to be accessible for persons with disabilities.

cc: Records; Chrono; Wodatch; Magagna; Pestaina; McDowney; MAF:
FOIA
udd\pestaina\sfmuni\muni.cgl

01-03534

The ADA provides that all key stations were to be accessible, with the exception of the installation of detectable warnings, by July 26, 1993. MUNI, however, received an extension of this deadline until December 1996 for 20 of its key stations because it was determined that extraordinarily expensive structural changes were necessary at these stations to improve station accessibility for riders with disabilities. Seventeen key stations were still required under the ADA to be accessible by July 26, 1993. MUNI did not have these seventeen stations fully accessible by that date. The Department of Transportation has been attempting to negotiate a voluntary compliance agreement with MUNI to bring it into full compliance as soon as possible. If these negotiations are not successful, the Department of Justice may seek relief in court.

XX does not indicate in her letter the name of the station that is located near her home. Thus we cannot determine whether it is one of the key stations required by the ADA to be accessible. If it is a key station, but it is one of the stations that MUNI received an extension on, it is not required to be accessible under the ADA until December 1996. If it is one of the seventeen stations that is presently in noncompliance with the ADA, XX has a private right of action against MUNI for any damages that she has suffered as a result of MUNI's failure to make these stations accessible by July 26, 1993.

Under the title II, every public entity operating a fixed route system must also provide paratransit or other special service to individuals with disabilities that is comparable to the level of service provided to individuals without disabilities who use the fixed route system. This paratransit requirement applies to all public fixed route transportation, with the exception of commuter bus, commuter rail, and intercity rail systems. Public entities were required to begin implementation of their paratransit plan by January 26, 1992. Full compliance is required no later than January 1997.

The Department of Transportation will be able to provide more specific information regarding the current status of MUNI's implementation of its paratransit plan, as well as standards for

eligibility for paratransit service. Accordingly, we have taken the liberty of forwarding a copy of your inquiry to that agency and have requested that they reply directly to you.

I hope this information is helpful to you in responding to your constituent.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

01-03536

XX

Pg 1 of 7 June 14, 1994-San Francisco Fact Letter

Dear Board of Supervisors and Fellow Citizens:

This letter supports the "rights" and the "laws" of the Americans with Disabilities Act. We must at all cost honor the "basic civil rights," and policy issue it affords, which is "timely transportation.

Transportation is a matter that cuts across all communities needs. As a City, State and Federal Law, now almost three year's into law, it has not been honored, to date. As a board member I have the honor of serving for citizens right's who address issues, ordinary citizens do not have to face on a daily basis. This time our protest unites with fellow San Franciscans, To do no harm and one that does not censure nor present, "unduehardship".

A city's governing leaders and agencies must plan effective lasting measures that fullfill, without discriminating health needs, mentally and physically; which protects individuals which neither "undermines efforts to educate, rehabilitate or offers employment."

As stated above, "this ADA Law, gives civil rights," and protections to individuals w/disabilities-on the basis of race, color, sex, national origin, age and religion. It guarantees equal opportunity in public accommodations, employment, 'transportation.' Also to State and local gov't services and telecommunications. This measure of this Federal Law, enforces, fair, swift effective enforcement of a "high priority

For over one year I have had my civil right's taken from me. Three blocks from my home my local tram, "N Judah" has no wheelchair accessible feature like the N,L,M,J,K, and other city electrical buses, there is no assuredness that my city favorably and legally meet my needs as a person with disabilities: Not all lines througout my city can be accessed, nor do all public transportation systems accord me safe ILLEGIBLE for my safety from the elements of

01-03537

stops discriminates even further, as they are not wheel-chair accessible
The non-existence of public phones which was once available at these stops,
further takes away my rights, which are accorded citizens on every street
block, who are able to stand, and may post haste, dial to receive any
degree of interface, including for "emergency"; for medical or legal
or law enforcement, certainly life-threatning issues. This basic need
curtails or needs just as much as public accessability to any
and all needs, are accorded the public at large.)

I have this last year not been idle, although this lack of transportation
has been at a terrible loss. It has denied me, spiritual uplift, follow-thru
for physical therapy since last March for major back surgery, and present
final diagnosis of multiple sclerosis, thorough interface with support
services
of my physicians, my therapist's, certainly the right to any health or mental
health accord, and my ability to serve appreciatively on this board, the
S.F. General Hospital Advisory Board, the Sunset Coalition (Neighborhood),
adequately raising awarness and funding for my own non-profit foundation
The Center For AND BY Victims And Survivors of Violent Trauma (& Abuse).

Para-transit, an agency under the Municipal Railway Transportation
in San Francisco, is legally bound, to answer to those within 21 days.
My initial communication, w/paratransit, stressed the priority of my
gaining any such access, with having a terminal illness, such as cancer
Aids, etc. To have to disclose any such information seems demeaning,
discriminating and "medically invasive." To be told w/o apology, and
sensitivity, that, "one only," has a disability, such as MS, and forced
to wait anywhere from 3 months to 21/2 years, is unforgiveable.
To be kept w/o the knowledge and actual situation (due to added

ILLEGIBLE
01-03538

avenues as well.) Much more injurious has been the final cut from long-term friend's, associates, and family, and extended family. I am punished by the knowledge, I cannot vote, and am put in the undignified position of being w/o just cause, a prisoner, in my own home, and community.

The final blow came from Mayor Jordan's office, and his Security Police person for City Hall, for the Mayor himself. It is especially that much more irreprehensible, as I had worked with positive action for Mayor Jordan's campaign. Mike took it upon himself to answer for the Mayor and City Hall. With each statement, he directed to my husband (a medic-and Vietnam Veteran) and myself he ended it with, "Why are you protesting"? His dialogue (not verbatim, but close to) stated:

* Why are you protesting?
    *This is the greatest country in the world!
    You, just got your diagnosis of MS, these last months.

* I told him of the difficulty of crossing a 12 lane intersection
  the difficulty of going up-hill and onto sidewalks that
    were blocked by cars, trucks, motorcycles, and of my having to
    continue out into the street.
    His comment chilled me - "I don't want to hear about
    "your difficulties." "I" just want to know, where you
    can access any bus."
    *When I told him how much our families valued
    freedom, (4 sides of our families endured communism,
    Fascism ILLEGIBLE concentration camps, genocide,

XX

"I know, I've been to Russia.") "You" just can't walk into the Mayor's
office.

* I then stated that I had written Mayor Jordan.
He asked you did? I said, yes by the "Super Highway", as President Clinton had stressed.
His comment, "I don't believe in them, I don't trust them"! He told me I would then have to go home and put into "chronological order every single incident, write down all names, places and all interface
of who or what had, had part, in my last year of "transportation difficulties." Then send it in, -wait for a return call or letter, and then proceed to make an appointment, and wait for that day
I told him people w/MS, have great difficulty with muscle tone and become very fatigued, etc.
He stated, "Oh, you have plenty of time, believe me."
I went on to state that certain public personalities were in belief of my protest and stance. I told him this was not, a political issue, but that people from all continuum were supportive and extremely needful of "Basic Transportation
I told him, that my friend, Senator Kopp had written a letter to Mr. John Stein of Muni, 2 times (once in January and again in April, of which neither were answered, & still to date, nothing
He answered, "Oh, I'm meeting Senator Kopp, tonight, for dinner."
I further told him a copy of my letter had gone to President Clinton Senator Kennedy, and he in turn, sent my letter to Senator Boxer, who sent a letter to, Mayor Jordan.
I lastly told him, I had met with the various Supervisors, Office ILLEGIBLE Hsesh, Halihan, Kennedy, etc., stating they were very supportive of my stance, and protest!
01-03540

XX

His reply -

> "Oh sure, this is election time, go to them, oh, you might even go on Monday afternoon and to the Supervisor's chamber at 4:00 pm. "They", will let you speak for 3 minutes."

Mike went on to say a few more statements, on the mayor's behalf. Mike is a policeman. He did not hit me physically, but he hit me, way past the point of acceptability. To be addressed in such a manner "on the be-half of any public official of whom our taxes, "employ", gives the name "freedom", the worst respect, from an office that enerates, "law and order".

The City Hall press when asked to take up my story, said, "We have more important issues." Again, I am worried as are my constituents, and fellow Americans in regards to the indifference and apathetic total irresponsibility of those who are healthy, are gainfully employed, and w/o the overwhelming difficulties that disabled and "handicapable" citizens face, moment to moment.

Please know that this letter has taken me through the entire night to be readied for this Board to address, with a joint letter of support. To write (handwrite) a letter is very painfull and exhausting. Yet I feel it my responsibility as an American to point out what constitutes the very framework and structure a city, state or country should and must comply with, no matter what the cost. When ILLEGIBLE

The First Amendment guarantees us the freedom to speak,
to write, to be seen, and to be heard, etc.
For 46 years, I remained in silence, to the deafining remainder of violence, abuse, torture, and being buried alive. Yet they could not kill me! I sustained injury far beyond words from infancy to 20 years of age. In the adult years, my life was dedicated to peace, (as it is today) yet, - the insufferable insensitiveness of an - uncaring world, whose abuse was just as bad at all levels of interface. Although, I am self-taught, - to date I am with a remainder of a grave learning disorder, loss of education, employment (in the ordinary sense), economical enjoyment(s), extreme depressive states, and now unable to address the further of my life due to "lack of transportation."

I have been in community outreach and support of all citizen's, since the age of 15. My efforts for the people I serve ILLEGIBLE is to offer an understanding to any/all victims & survivors, (that is stated at the highest regard and integrity) of how to turn around an adversity to positive life full-fillment. I teach people to not cope, not survive, but "live life".

Please use my name for those who are weakened by a system and a law that hold no regard for "human dignity". Use my name when you think this letter serves but one, for it is in the name of all people young and old who have no advocate, no assistance or follow thru of support in any manner, nor have the broadened horizons of health, education, employment, social, friend, or family affiliations.

01-03542

In short, we must not, and cannot curtail the avenues of "peaceful actions."
My success, in this present issue, and venture and journey of this cities life must be an action that represents this city, this state, this country, and in total, is all our success!

In closing, I will not keep silent! I have seen the ILLEGIBLE of abuse from near and far. Regardless of my losses, my lack of education, and or degree. Regardless of the "labels" others, strangers, books and physicians, as a free citizen I have the right to uphold everything that the constitution gurantees us all. At 51, the only disabling feature I feel I have is the action of not "trying to reach people in a "timely manner". Still I cannot be held responsible for any agencies, or person's, "inaction", locally or nationally, ILLEGIBLE.

The conflict comes when we sit on the fence and make no valid choices of fighting for the right's of life, liberty and the pursuit of happiness.

Thanking you, I remain most

Respectfully,
XX

01-03543

XX

June 14, 1994
San Francisco
XX

UPDATE: San Francisco, Ca. XX

As of 11:30 AM this morning, I received mail from, James Ross - Community Services - Assistant For, The Office of The Mayor of San Francisco.

At a meeting held at the Sunset Coalition this past week, I addressed Mr. Ross and those present, of the overwhelming difficulties the experiences (personally) and the unresponsiveness for the disabled, and to "Handicapable community's, of no "timely transportation".

The added issue of the Security Officer to the Mayor (City Hall & Home, & car) and his insensitivity and callous regard was expressed. I followed up my story with calling Mr. Ross for the receipt of a letter of "apology from the Mayor", and from "Mike", his Police Security Associate.

The enclosed letter is what I received. I find this to be extremely unacceptable to myself and or in receivorship of any San Francisco citizen - Disabled, or not! Please share this info. with all you know & ask them to send letters to me at above address. Please send me your letter of response and support that I may take to the air-waves, and the public at large.
Sincerely,

01-03544

United States Senate
HART SENATE OFFICE BUILDING
SUITE 112
WASHINGTON, DC 20510-0505
(202) 224-3553
May 9, 1994

The Honorable Frank M. Jordan
Mayor
City and County of San Francisco
City Hall
San Francisco, California 94102

Dear Mayor Jordan:

I have been contacted by XX regarding her concerns for access to the city bus line for people who are disabled. Ms. XX claims that her inquiries with the San Francisco Municipal Railway and Para-Transit had gone unanswered.

Senator Boxer is forwarding a copy of correspondence Ms. XX had forwarded to Senator Kennedy for your review and consideration. Any information you can provide in response to the concerns expressed by XX will be most appreciated.

Thank you for your assistance in this matter. Please respond to Senator Boxer's San Francisco office, Attention: Beatriz Rivas Rogalski.

Sincerely,

Beatriz Rivas Rogalski
Deputy Chief of Staff

BRR/ber
cc: XX

01-03545

Office of the Mayor
SAN FRANCISCO

FRANK M. JORDAN

June 9, 1994
XX
San Francisco, CA XX

Dear XX

Mayor Frank Jordan has asked that I respond to your letter concerning access to the Municipal Railway by the disabled. This letter was forwarded to the Mayor by Senator Boxer's office.

Since your concerns are of a operations nature I am forwarding a copy of your letter to Johnny Stein, the General Manager of Municipal Railway. He will respond to you directly concerning your problems paratransit.

Thank your for taking the time to express your concerns. Please feel free to contact me if I may be of assistance in the future.

Sincerely,

James Ross
Community Services Assistant

200 CITY HALL, SAN FRANCISCO, CALIFORNIA 94102
(415) 554-6141

01-03546

DEC 19 1994

The Honorable Bob Kerrey
United States Senator
7602 Pacific Street
Suite 205
Omaha, Nebraska 68114

Dear Senator Kerrey:

This is in response to your inquiry on behalf of your constituent, XX , who is concerned that the Americans with Disabilities Act (ADA) may require the installation of an elevator in his church.

Title III of the ADA prohibits discrimination on the basis of disability by places of public accommodation. Covered entities may be required, among other things, to remove barriers to access in existing buildings if it is readily achievable to do so. However, the ADA specifically exempts religious organizations and entities from its coverage. 42 U.S.C. §12187. Therefore, the ADA imposes no obligation to install an elevator upon your constituent's church.

For further information regarding the ADA, your constituent may call our ADA information line at (800) 514-0301 (voice) or (800) 514-0383 (TDD). I hope this information is helpful to you in responding to your constituent.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

Enclosure
cc: Records; Chrono; Wodatch; Hill; McDowney; FOIA; MAF.
\udd\hille\policylt\kerry.ltr

01-03547

Honorable J Robert Kerry
9/23/94. Dear Senator Kerry
It seems all that Congress
does is pass regulations
that create hardships.
Example is DISABILITIES ACT.
We have 8 parking spaces
FOR DISABLED people
8 spaces at our Church
that have not been even
used ONCE in 5 years,
yet we are short of
parking for the non-
disabled. Now we are
compelled to install a
$75,000 elevator for DIS
ABLED of which we have
none. The problem G.D. ILLEGIBLE
is the FEDERAL XX
GOV'T. Please correct. XX

01-03548

DJ 202-PL-820

DEC 19 1994

David I. McCaskey
Attorney at Law
24 West Beverley Street
PO Box 1134
Staunton, Virginia 24402-1134

Dear Mr. McCaskey:

This letter is in response to your inquiry concerning provision of auxiliary aids and services and, more specifically, your request for an individual determination of what constitutes an "undue burden" under title III of the Americans with Disabilities Act.

The Americans with Disabilities Act (ADA) authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist you in understanding the ADA's requirements. It does not, however, constitute a legal interpretation, and it is not binding on the Department.

As your letter indicates, you are both familiar with, and sensitive to, the need for the provision of auxiliary aids and services in order to ensure effective communication under title III of the ADA. The auxiliary aids requirement is intended to be flexible, reflecting the variable nature of what constitutes "effectiveness" in different circumstances. In addition to the specific nature of the disability involved, factors used to determine effectiveness in any particular situation include the length, complexity, and significance of the information being exchanged. Many lawyer-client discussions, even those which might be characterized as routine, require lengthy, complex communication that has the potential for long-term impact on the client's well-being. Further discussion of the effective communication requirement may be found on page 35567 of the enclosed title III regulation.

You are also familiar with the provisions of section 36.301(c) which require that the public accommodation absorb the costs associated with the provision of auxiliary aids and services, unless this would result in an "undue burden". As

cc: FOIA

01-03549

provided in section 36.303(f), the term "undue burden" means "significant difficulty or expense". In determining whether the provision of an interpreter or other aids or services would result in an undue burden, the legal practitioner should consider the overall financial resources of the practice, not just the fees paid for a particular appointment or service. The practitioner should weigh other factors that would minimize the degree of burden on the practice, such as the ability to spread costs throughout the general client population and the opportunity to exercise alternative measures, such as those you describe, which have the effect of further reducing the financial burden on the practice. Tax incentives, particularly tax credits for small businesses for costs incurred to provide auxiliary aids and services, are also available to you. Eligibility criteria for this credit are found in Publication 907, available from the IRS.

Your letter requests a determination from the Department of Justice that it would be an undue burden for you to provide interpreters in your situation. However, because undue burden must be determined on a case-by-case basis in light of the particular circumstances at issue, the Department of Justice does not make such determinations absent a complaint investigation. It is up to the public accommodation to determine whether providing an auxiliary aid would result in an undue burden and then to justify its determination in the event that an enforcement action is initiated by the Department of Justice or by a private individual.

I hope this information is helpful to you.

Sincerely,

John L. Wodatch
Chief
Public Access Section

01-03550

DJ 202-PL-882

DEC 20, 1994

Mr. Daniel Harkins
Thermal Design, Inc.
P.O. Box 324
Stoughton, Wisconsin 53589

Dear Mr. Harkins:

This is in response to your letter regarding the requirements of the Americans with Disabilities Act of 1990 (ADA) for newly constructed buildings.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities that have rights or responsibilities under the Act. Pursuant to that authority, this letter provides informal guidance to assist you in understanding the ADA. However, this technical assistance does not constitute a legal interpretation of the statute, and it is not binding on the Department.

Your letter asks whether the ADA requires installation of an elevator in a planned office building. According to your letter, the planned building would contain three floors containing approximately 5,000 square feet per floor. There would be exterior accessible entrances to the bottom and middle floors. There would be an interior stairway between the middle and top floors. There would be no interior route between the bottom and middle floors. Rather, to get from one floor to the other, a person must exit the building and drive or walk around the exterior of the building to the entrance to the other floor.

The Department of Justice's regulation implementing title III of the ADA requires covered entities to comply with the ADA Standards for Accessible Design (Standards). Section 4.1.3(5) of the Standards requires one accessible passenger elevator to be provided in all "multi-story" buildings unless they fall within the elevator exception. The elevator exception exempts most buildings with less than three stories. Your letter asks whether, because of the lack of an interior route between stories, your proposed building can be treated as two separate buildings; one having two stories and falling within the elevator exception and the other having only one story and not required to include an elevator.

cc: Records, Chrono, Wodatch, Blizard, Hill, FOIA, Friedlander
n:\udd\hille\policylt\harkins.ltr\young-parran

01-03551

Because your proposed office building is a single structure, it must be treated as a single "building" within the ADA definition. That proposed building will include three stories, as defined by the ADA. The ADA's elevator requirement for new construction does not depend on whether an interior route between stories is otherwise planned.

I hope this information is helpful to you and fully responds to your inquiry.

Sincerely,

John L. Wodatch
Chief
Public Access Section

01-03552

DJ 202-PL-728

Ms. Doris Phillips,
Executive Director
Living Independence for Everyone, Inc.
17-19 East Travis Street
Savannah, GA 31406

Dear Ms. Phillips:

This letter is in response to your inquiry into whether rental car companies must provide lift-equipped vans under title III of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12181-89, and the Department of Justice's implementing regulation, 28 C.F.R. pt. 36 (enclosed). We apologize for our delay in responding.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist you in understanding the ADA's requirements. However, it does not constitute a legal interpretation or legal advice and it is not binding on the Department of Justice.

Title III requires public accommodations to remove transportation barriers to access in existing vehicles where it is readily achievable to do so. 42 U.S.C. § 12182(b)(2)(A)(iv); see also 28 C.F.R. § 36.304. Congress specifically stated in the ADA, however, that companies are not required to retrofit vehicles by installing hydraulic or other lifts. Id. Moreover, companies who are in the business of renting vehicles are not required to purchase or lease lift-equipped vehicles.

It is our understanding that some of the nationwide rental companies have entered into cooperative agreements with companies who specialize in renting lift-equipped vans, making these services more generally available than they once were.

cc: Records; Chrono; Wodatch; Breen; Mobley; MAF; FOIA
udd\mobley\pletters\phillips

01-03553

I have enclosed the Department's Title III Technical Assistance Manual which was written to guide individuals and entities having rights and obligations under the Act toward a fuller understanding of the law. Pertinent discussion is found at section III-4.4000 (removal of barriers), et seq.

If you need further assistance, you may call our toll-free information line at (800) 514-0301, 1:00 p.m. to 5:00 p.m., EST, Monday through Friday.

Sincerely,

John L. Wodatch
Chief
Public Access Section

Enclosures (2):
Title III Regulation
Title III Technical Assistance Manual

01-03554

DJ 202-PL-919

Mr. Robert E. Mackensen
Department of General Services
State Historical Building Safety Board
400 P Street, 5th Floor
Sacramento, California 95814

Dear Mr. Mackensen:

This is in response to your letter regarding the application of the Americans with Disabilities Act (ADA) to alterations to historic buildings owned by State or local governments.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities that have rights or responsibilities under the Act. Pursuant to that authority, this letter provides informal guidance to assist you in understanding the ADA. However, this technical assistance does not constitute a legal interpretation of the statute, and it is not binding on the Department.

Title II of the ADA applies to State and local governments, and the departments, agencies, and instrumentalities of such governments. Title II prohibits discrimination by such public entities on the basis of disability. If a facility is altered by, or on behalf of, or for the use of a public entity in a manner that affects or could affect the usability of the facility, the altered portion of the facility must be made accessible to the maximum extent feasible. The alterations requirement is not dependent on whether the public entity operates a program in the facility. Nor does this general obligation differ according to the type of program offered.

Title II provides that alterations to historic properties must comply, to the maximum extent feasible, with either §4.1.7 of the Uniform Federal Accessibility Standards (UFAS) or §4.1.7 of the ADA Standards for Accessible Design (Standards). Both UFAS and the ADA Standards provide alternative accessibility requirements for some elements in situations where full accessibility would threaten or destroy the historic significance of the building. Neither UFAS nor the ADA Standards look to the

purpose for which the historic building is used in determining

cc: Records, Chrono, Wodatch, Hill, FOIA, Friedlander
n:\udd\hille\policylt\mack.ltr

01-03555

whether application of the alternative accessibility requirements is permissible.

For buildings that are not being altered, title II requires that program access be provided. If a historic building hosts a program of a State or local government, that program must be made accessible. If the program is not one of historic preservation, it may be possible to achieve program access by relocating the program to an accessible site and the historic building may not need to be made accessible. If, however, the program involves the historic preservation of the building itself, relocation of the program would defeat the purpose of the program. In that situation, the building would have to be made accessible unless to do so would threaten or destroy the historic significance of the building.

I hope this information is helpful to you.

Sincerely,

John L. Wodatch
Chief
Public Access Section

01-03556

t. 12/23/94
MAF:MM:AMP:jfb

171-39-0

XX
Saint Paul, Minnesota 55104
Dear XX

This is in response to your request for an official policy statement by the Department of Justice (the Department) as to whether the Department considers obesity to be a disability. While you have not specified the statute you believe to be applicable to your situation, we have analyzed your question under the Americans with Disabilities Act of 1990 (ADA). The ADA prohibits discrimination against persons with disabilities on the basis of disability by certain private employers (Title I), by State and local governmental entities (Title II), and in places of public accommodation and commercial facilities (Title III). For purposes of convenience we have referred to the provisions of our Title II regulation in responding to your letter; however, the analysis would be the same under Titles I and III.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities with rights or obligations under the Act. This letter provides informal guidance to assist you in understanding the requirements of the ADA. It does not, however, constitute a legal interpretation and is not binding on the Department.

While the following discussion focusses on the ADA, you should also be aware that disability-based discrimination is prohibited by Section 504 of the Rehabilitation Act of 1973, as amended (Section 504). Section 504 covers both recipients of Federal financial assistance and the operations of Federal executive agencies. Our analysis of the questions presented in your letter is the same under both the ADA and Section 504.

To be considered a person with a disability under the ADA, an individual must (i) have a physical or mental impairment that substantially limits one or more major life activities, (ii) have a history of such an impairment, or (iii) be regarded as having such an impairment. See § 35.104 of the enclosed Title II

regulation (Definitions).

Records CRS Chrono MAF Morrow
udd.pecht.techasst.XX .ltr

01-03557

The Title II regulation defines a physical impairment as

> Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine.

Generally, normal deviations in height, weight, or strength, that are not the result of an underlying physiological disorder are not impairments. Thus, simply being overweight is not considered an impairment. However, at some point, obesity itself may be considered an impairment. While the point at which this occurs must be considered on a case-by-case basis, it is generally accepted that morbid obesity, which is defined as body weight 100% over normal weight, is an impairment. In addition, an obese individual may have a related physiological disorder, such as hypertension or a thyroid disorder, that either causes or is caused by obesity. These physiological disorders are, by definition, impairments. Thus, an obese individual with such an impairment or impairments meets this threshold requirement without need for further inquiry.

However, it is critical to note that the mere presence of an impairment, such as morbid obesity, does not necessarily mean that a person is considered to be a person with a disability under the Act. Whether an obese individual is considered to be an individual with a disability depends upon whether the obesity substantially limits, has substantially limited, or is regarded as substantially limiting one or more major life activities. See § 35.104 of the Title II regulation. As the Equal Employment Opportunity Commission (EEOC) notes in the interpretive guidance to its regulation implementing Title I of the ADA (employment), "... except in rare circumstances, obesity is not considered a disabling impairment." 29 C.F.R. pt. 1630 app. § 1630.2(j).

If a person whose obesity is considered a disability under the ADA is discriminated against on the basis of his or her disability, that individual is covered by the ADA. But, an obese individual is not protected by the ADA when that person is discriminated against on some other basis, such as his or her appearance. Please note, however, that if an obese individual is discriminated against by an entity covered by the ADA because that entity regards the individual as substantially limited in one or more major life activities, that individual may be protected by the ADA even though he or she does not have a

substantial limitation. The "regarded as" prong of the definition of disability is discussed on page 35699 of the Title II regulation.

01-03558

There is no Federal law that protects obese individuals from discrimination on the basis of appearance. Such discrimination may be protected under State law and we suggest that you contact the appropriate agency in your State to determine the extent of the protection offered to obese individuals. You may also wish to contact the EEOC to request a copy of its Title I Technical Assistance Manual, which covers issues relating to employment and contains a copy of the Title I regulation. The EEOC can be reached at 1-800-669-3362 (voice) or 1-800-800-3302 (TDD).

I hope this information has been helpful to you.

Sincerely,

Merrily A. Friedlander
Acting Chief
Coordination and Review Section
Civil Rights Division

Enclosure

01-03559

April 5, 1993
Department of Justice
Office of Americans with Disabilities Act
Civil Rights Division
PO Box 66738
Washington, DC 20035-9998

To Whom It May Concern:

I have been advised that your agency has defined obesity as not being a disability.

Please provide me with an official policy statement for this decision, including the reasons used to make it.

Further, will you please advise me what legal protection a person who is overweight and encounters discrimination in an employment or other situation is afforded? How would an employer be able to use appearance as a factor in not hiring, not promoting, or firing an obese employee?

Thank you.

Sincerely,
XX

Saint Paul, MN 55104

01-03560

DEC 29 1994

The Honorable Phil Gramm
United States Senator
2323 Bryan Street, #1500
Dallas, Texas 75201

Dear Senator Gramm:

This is in response to your inquiry on behalf of your constituent, Dick G. Ellis, M.D., about the obligation of a health care provider, under title III of the Americans with Disabilities Act (ADA), to provide auxiliary aids or services to persons with hearing impairments. Dr. Ellis asks if the ADA requires a physician to provide interpreters on demand for patients who have hearing impairments.

The Department of Justice is committed to ensure the effective implementation of the auxiliary aids requirements of title III by health care providers. We are concerned, however, that there are some significant misperceptions of the scope of these requirements that may be deterring compliance.

One of the most common misconceptions about the ADA is that health care providers are required to provide interpreters whenever they are requested. In fact, title III of the ADA requires public accommodations, including health care providers, to furnish appropriate auxiliary aids and services, including sign language interpreters, where necessary to ensure effective communication with individuals with disabilities. Health care providers should consult with their patients to determine what type of auxiliary aid or service is appropriate for particular circumstances. However, health care providers are not required to provide sign language interpreters for deaf patients upon demand. Title III of the ADA does not require a provider to accede to a patient's specific choice of auxiliary aid or service as long as the provider satisfies his or her obligation to ensure effective communication.

01-03561

In determining what constitutes an effective auxiliary aid or service, health care providers must consider, among other things, the length and complexity of the communication involved. For instance, a note pad and written materials may be sufficient means of communication in some routine appointments or when discussing uncomplicated symptoms resulting from minor injuries. Where, however, the information to be conveyed is lengthy or complex, the use of handwritten notes may be inadequate and the use of an interpreter may be the only effective form of communication. Use of interpreter services is not necessarily limited to the most extreme situations -- for example, a discussion of whether to undergo surgery or to decide on treatment options for cancer.

Health care professionals cannot use an unsubstantiated fear of economic loss as a basis on which to refuse to provide auxiliary aids or to refuse treatment for a person with a disability. A health care provider may not impose a surcharge on any particular individual with a disability to cover the costs of providing auxiliary aids and services. Instead, the costs should be treated like other overhead expenses that are passed on to all patients. However, the obligation to provide auxiliary aids and services is not unlimited and a health care provider is not required to provide auxiliary aids and services if doing so would result in an undue burden, that is, a significant difficulty or expense. The factors to be considered in determining whether there is an undue burden include the nature and cost of the action, the type of entity involved, and the overall financial resources of the entity.

Finally, as amended in 1990, the Internal Revenue Code permits small businesses to receive a tax credit for certain costs of compliance with the ADA. An eligible small business is one whose gross receipts do not exceed $1,000,000 or whose work force does not consist of more than 30 full-time workers. Qualifying businesses may claim a credit of up to 50 percent of eligible access expenditures that exceed $250 but do not exceed $10,250. Eligible access expenditures may include the costs of providing auxiliary aids and services to persons with disabilities.

The flexibility of the auxiliary aids requirement, the undue burden limitation, the ability to spread costs over all patients, and the small business tax credit should minimize any burden on health care professionals.

I hope this information will be helpful to you in responding to your constituent.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

Enclosure

01-03563

September 6, 1994

Senator Phil Gramm
370 Russell Senate Office Bldg.
Washington, D.C. 20510

Dear Senator:

XX

I was very disturbed today to receive the enclosed three pieces of paper from a lady named Chris Sparks at the Goodrich Center for the Deaf, 2500 Lipscomb Street, Fort Worth, Texas 76110-2625. Her phone number is (817) 926-5305.

She essentially informs me that I must pay her or someone from her group $60.00 every time that they accompany a patient to my office as a result of this Disabilities Act. In view of the fact that my office charge is never more than 67% of this, how am I expected to meet this cost, even if I were to collect 100% of all office visit fees. Does this mean that I could be sued for not being willing to see non-emergency deaf patients in my office?

01-03564

It is my understanding that Federal funding for the Goodrich Center for the Deaf and others has been withdrawn and that the Disabilities Act is basically passing this on to the private sector. Is this correct?

Is it possible that I could get a copy of the vote when this bill passed. I would be interested in knowing not only the ones in Texas but from elsewhere.

XX
XX . Therefore, I really would appreciate an answer from you.

Sincerely,

Dick G. Ellis, M.D.

DGE/jp

01-03565

The Americans with Disabilities Act-Communication Accommodations Project

A Resource for Voluntary Compliance with the ADA

A JOINT PROGRAM OF

The American Foundation for the Blind
Governmental Relations Department
1615 M Street N.W., Suite 250
Washington, DC 20036
(202) 223-0101

National Center for Law and Deafness
Gallaudet University
800 Florida Avenue, N.L.
Washington, DC 20002
(202) 651-5343

MEMORANDUM ON THE OBLIGATIONS OF DOCTORS AND OTHER HEALTH CARE PROVIDERS UNDER THE AMERICANS WITH DISABILITIES ACT

Title III of the Americans with Disabilities Act (ADA) prohibits discrimination against deaf and hard of hearing people in places of public accommodation. Included within the definition of places of public accommodation is any "professional office of a health care provider," regardless of the size of the office or the number of employees. 28 C.F.R. § 36.104. The ADA therefore applies to doctors, dentists, psychiatrists and psychologists, hospitals, nursing homes and health clinics, and all other providers of mental and physical health care.

Places of public accommodation must be accessible to individuals with disabilities. For deaf and hard of hearing people, this means that they must remove barriers to communication. Doctors and health care providers must make sure that they can communicate effectively with their deaf patients and clients by providing "auxiliary aids and services" for these individuals:

> (c) Effective communication. A public accommodation shall furnish appropriate auxiliary aids and services where necessary to ensure effective communication with individuals with disabilities.

28 C.F.R. 36.303.

"Auxiliary aids and services" expressly include qualified interpreters, transcription services, and written materials, as well as the provision of telecommunications devices for the deaf (known as TDDs or text telephones), telephone handset amplifiers, television decoders and telephones compatible with hearing aids. 28 C.F.R. 36.303 (b) (1).

For individuals who use sign language, interpreters are often needed to provide safe and effective medical treatment. Unless a doctor can communicate effectively and accurately with a patient, there is a grave risk of not understanding the patient's

Funded by a Grant from the U.S. Department of Justice
01-03566

symptoms, misdiagnosing the patient's problem, and prescribing inadequate or even harmful treatment. Similarly, patients may not understand medical instructions and warnings or prescription guidelines without the provision of an interpreter.

The doctor may not charge the patient for the cost of interpreter service, either directly or by billing the patient's insurance carrier:

> A public accommodation may not impose a surcharge on a particular individual with a disability or any group of individuals with disabilities to cover the costs of measures, such as the provision of auxiliary aids, barrier removal . . . and reasonable modifications . . . that are required to provide that individual or group with the nondiscriminatory treatment required by the Act or this part.

28 C.F.R. 36.301(c).

The Justice Department regulation defines a "qualified interpreter" as follows:

> Qualified interpreter means an interpreter who is able to interpret effectively, accurately and impartially both receptively and expressively, using any necessary specialized vocabulary.

28 C.F.R. 36.104. The Justice Department warns that family members and friends may not be able to provide impartial or confidential interpreting in the medical context, even if they are skilled sign language users:

> In certain circumstances, notwithstanding that the family member or friend is able to interpret or is a certified interpreter, the family member or friend may not be qualified to render the necessary interpretation because of factors such as emotional or personal involvement or considerations of confidentiality that may adversely affect the ability to interpret 'effectively, accurately, and impartially.'

56 Fed. Reg. 35553 (July 26, 1991).

When there is a dispute between the health care provider and the deaf individual as to the appropriate auxiliary aid, the Justice Department strongly urges the doctor to consult with the

deaf person about the effectiveness of a proposed auxiliary aid. It also cautions that complex discussions, such as those about health issues, may require interpreter service if that is the

01-03567

communication method used by the deaf individual:

> The Department wishes to emphasize that public accommodations must take steps necessary to ensure that an individual with a disability will not be excluded, denied services, segregated or otherwise treated differently from other individuals because of the use of inappropriate or ineffective auxiliary aids. In those situations requiring an interpreter, the public accommodations must secure the services of a qualified interpreter, unless an undue burden would result.
>
> . . . It is not difficult to imagine a wide range of communications involving areas such as health, legal matters, and finances that would be sufficiently lengthy or complex to require an interpreter for effective communication.

56 Fed. Reg. 35566-67 (July 26, 1991). Typical examples of situations in which interpreters should be present are obtaining a medical history, obtaining informed consent and permission for treatment, explaining diagnoses, treatment and prognosis of an illness, conducting psychotherapy, communicating prior to and after major medical procedures, explaining medication, explaining medical costs and insurance issues, and explaining patient care upon discharge from a medical facility.

01-03568

DEC 29 1994

The Honorable Sam Nunn
United States Senate
303 Dirksen Senate Office Building
Washington, D.C. 20510-1001

Dear Senator Nunn:

This letter is in response to your inquiry on behalf of your constituent, XX who seeks information about the Americans with Disabilities Act (ADA).

XX states her husband is a quadriplegic and is unable to sign his own name, but that she has power of attorney to sign his name for him. XX seeks to file a complaint under the ADA against First Union Bank for allegedly refusing to recognize her husband as the executor of his mother's estate, because of his inability to sign his own name.

Title III of the ADA prohibits discrimination on the basis of disability in commercial facilities and places of public accommodation, including financial institutions. Title III requires, among other things, that owners and operators of places of public accommodation make reasonable modifications to their policies, practices, and procedures, if those modifications are necessary to provide services to persons with disabilities. The only limits on this obligation are that the required modification must be reasonable and may not fundamentally alter the nature of the services provided at the place of public accommodation.

A bank policy of refusing to transact business with persons who cannot sign their own names would be subject to the reasonable modification requirement. The bank would be required to modify its policy, in order to allow a person with a valid power of attorney to sign a document on behalf of an individual who is unable to sign his or her own name because of a disability, if such a modification is reasonable and would not fundamentally alter the nature of the bank's services.

cc: Records, Chrono, Wodatch, McDowney, Breen, Novich, FOIA, MAF

Title III can be enforced by private litigation, alternate dispute resolution such as mediation, or by filing a complaint with the Department of Justice. The Department is not able to investigate all the complaints of title III violations that it receives, and we have determined not to investigate this complaint. However, there are other entities that may be able to assist XX in resolving her complaint. We have enclosed a list of such entities located in Georgia.

In addition, we are enclosing copies of three status reports that detail the actions that the Civil Rights Division has undertaken to enforce titles II and III of the ADA. These reports illustrate that, although the Department of Justice is unable to investigate every complaint that it receives, we are taking strong action to enforce the law. I hope this information is useful to you in responding to your constituent.

If XX wishes to have further information about the requirements of the ADA, she may contact our ADA information line at (800) 514-0301 (Voice) or (800) 514-0383 (TDD) between 10:00 a.m. and 6:00 p.m. Monday through Friday, except for Thursday between 1:00 p.m. and 6:00 p.m. EST.

I hope this information is useful to your constituent.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

Enclosures

01-03570

Oct. ILLEGIBLE

U.S. Representative Mac Collins
173 N. Main St
Jonesboro, Ga 30236

Dear Sir:

I have been informed that for a complaint to be filed regarding the American Disabilities Act, I start with my congressman, therefore I bring to your attention a complaint regard ing the First Union Bank - Fayette Co, Ga, branch and my quadriplegic husband.

My husband and his brother are co-executors of their mother's will which has been probated and on file in the Fayette Co. Courthouse with me as power of attorney to pay bills, cash checks, etc. since my husband is unable to sign as he has no use of his arms and hands and his brother lives in New York.

This was researched by our lawyer, agreed on by both co-executors, and all three heirs (my husband, his brother, and sister) and accepted in probate.

Under this arrangement, my husband has "handled" all the business of settling the estate and preparing tax payment. We have had dealings with three

01-03571

Finally, on a third trip to the bank, we were able to accomplish our business by having someone hold my husband's hand and making a mark observed by two bank employees.

I hope to help prevent this from happening to anyone else by writing this. I would like to see this banking facility fined and a formal apology issued to my husband. Their inference that he is incompetent is insulting, discriminatory, and wrong. Just having handicap parking places and curb cuts does not make a place "disabled friendly"

Your attention to this matter is greatly appreciated. I have also made copies to send to my senators, my state government representatives, as well as the president of First Union Bank.

XX
Fayetteville, Ga 30214
XX

01-03572

DEC 29 1994

The Honorable Pete Peterson
U.S. House of Representatives
426 Cannon Building
Washington, D.C. 20515-0902

Dear Congressman Peterson:

This is in response to your inquiry on behalf of your constituent, Mr. Nathan Lee Head, regarding the Americans with Disabilities Act (ADA).

Mr. Head's letter expresses concern that legislation regarding accessibility of facilities to people with disabilities requires access to areas such as elevator pits, catwalks, below ground storage and lube pits.

While Florida's State law regarding accessibility may differ, the ADA generally does not require such areas to be constructed to be fully accessible. Rather, the Department of Justice's ADA Standards for Accessible Design (Standards) provide that areas used only as work areas need only be constructed to allow individuals with disabilities to approach, enter, and exit the areas. 28 C.F.R. part 36, Appendix A, § 4.1.1(3). In addition, the ADA Standards provide that accessibility is not required in non-occupiable spaces accessed only by ladders, catwalks, crawl spaces, very narrow passageways, or freight elevators and frequented only by service personnel for repair purposes. Such spaces include elevator pits, elevator penthouses, piping or equipment catwalks. 28 C.F.R. part 36, Appendix A, § 4.1.1(5)(b)(ii).

I hope this information is helpful to you in responding to your constituent.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

cc: Records, Chrono, Wodatch, Hill, McDowney, FOIA, Friedlander
n:\udd\hille\policylt\peterson.ltr\young-parran

PETE PETERSON
2D DISTRICT, FLORIDA

COMMITTEE
ON
APPROPRIATIONS
SUBCOMMITTEES:
ENERGY AND WATER
RESOURCES
AGRICULTURE AND RURAL
DEVELOPMENT

WASHINGTON OFFICE:
426 CANNON BUILDING
WASHINGTON, DC 20515-0902
(202) 225-5235

DISTRICT OFFICES:
930 THOMASVILLE ROAD, SUITE 101
TALLAHASSEE, FL 32303
(904) 561-3979

MARIANNA
(904) 526-7516

LAKE CITY
(904) 752-1088
30 WEST GOVERNMENT STREET
ROOM 203
PANAMA CITY, FL 32401
(904) 785-0812

Congress of the United States
House of Representatives
Washington, DC 20515-0902

November 21, 1994

Mr. John Wodatch
United States Department of Justice
Civil Rights Division
Public Access Section
P.O. Box 66738
Washington, D.C. 20035-6738

Dear Mr. Wodatch:

I have enclosed for your review a copy of a letter from one of my constituents, Mr. Nathan Lee Head, regarding the Americans with Disabilities Act. This letter was forwarded to my by Florida State Senator Pat Thomas.

Please keep me advised of any action which the Department will take or has already taken on the issues discussed in the letter. Your attention to this matter is greatly appreciated.

Sincerely,

Pete Peterson, M.C.

DBP:ja

01-03574

October 21, 1994

Senator Pat Thomas
220 Senate Office Bldg.
Tallahassee, Fl. 32399-1100

Mr. Thomas,

Please look into our Passage of Legislation under the Handicap Disability Act, which I am totally in favor of. However, some elments of this program should be reviewed as the intent that was written into law such as making it manditory to give handicap access to such normally dangerous areas as elevator pits, catwalks, below ground storage and lube pits. There are other areas which keep coming up in the waiver process that should be looked into as this process will show some of these areas which keep coming up and that keep being waived doing nothing except adding to the cost of doing business in Florida.

Thank You,

Nathan Lee Head,
General Contractor
RG 0049303
NLH/gd

cc/ J. Pybus, Bay County Building Dept.
Scott Clemons, House of Representatives
Robert Trammell, House of Representatives
Robert Harden, Senate
W.D. Childers, Senate
Pat Thomas, Senate

Nathan Lee Head
13510 Middle Beach Rd., Suite D
Panama City Beach, FL. 32407

01-03575

JAN 10 1995

The Honorable Robert "Bud" Cramer, Jr.
U.S. House of Representatives
1318 Longworth House Office Building
Washington, D.C. 20515-0105

Dear Congressman Cramer:

This letter is in response to your inquiry (code: 1klh) on behalf of your constituent, Robert S. Moorman, Jr. M.D., who wrote to express his concerns over certain provisions of the Americans with Disabilities Act (ADA), specifically those related to the provision of interpreter services for deaf patients.

The issues raised by Dr. Moorman relate most directly to the auxiliary aids and services provisions of title III of the ADA. Such aids and services are measures that are undertaken to ensure "effective communication" for individuals with impaired speech, hearing and/or vision, as well as those who are profoundly deaf. The auxiliary aids requirement is intended to be flexible, reflecting the variable nature of what constitutes "effectiveness" in any particular setting.

In addition to the specific nature of the disability involved, factors used to determine communication effectiveness in any given circumstance include the length, complexity and importance of the information being exchanged. In Dr. Moorman's practice, for example, printed information and the exchange of handwritten notes might provide effective communication during routine appointments to check treatment progress or where relatively minor adjustments are being made to the treatment plan. However, during appointments scheduled to discuss treatment options, particularly those involving invasive procedures; significant alterations to the treatment plan, or protocols requiring specific patient participation or follow-up activities, the use of handwritten notes or other printed materials may not prove to be effective and the use of an interpreter may be necessary. Further discussion of this point is found on page 35567 of the enclosed title III regulation.

cc: FOIA
01-03576

Ideally, the determination of which particular auxiliary aid or service will ensure effective communication in a given situation is reached through a process of consultation between patient and physician. In addition to establishing effective communications requirements, such consultation might well reduce the level of anxiety many people feel where problems with their health are concerned. This may be particularly true for those patients who communicate almost exclusively using their eyes. Not only will consultation ensure that equal services are provided to individuals with disabilities, it may also significantly reduce the costs of providing such auxiliary aids or services. The Department of Justice ADA Title III Technical Assistance Manual provides additional guidance on page 26.

Under section 36.301 (c) of the ADA title III regulation, when an interpreter or other auxiliary aid or service is necessary to ensure effective communication, the medical practitioner must absorb the cost of this aid or service, unless this would result in an undue burden. As provided in section 36.303 (f), the term "undue burden" means "significant difficulty or expense".

In determining whether providing a sign language interpreter or other auxiliary aid or service would result in an undue burden, the practitioner should consider the overall financial resources of the practice, not just the fees paid for a particular procedure or treatment session. Consideration should be given to other factors that would minimize the degree of burden on the practice, such as the ability to spread costs throughout the general patient population and the provision of tax credits for small businesses for costs incurred to provide auxiliary aids. Eligibility criteria for this credit is found in Publication 907, available from the IRS.

Although Dr. Moorman did not raise the issue in his letter to you, it is important to note that in those circumstances where interpreter services are required to ensure effective communication, the interpreter must be "qualified".

As defined in the enclosed regulation, a "qualified interpreter" has the ability to interpret "effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary." Further discussion of this issue may be found in the ADA Title III Technical Assistance Manual at III-4.3200.

01-03577

I trust that this information, along with the enclosures, will be helpful in your response to your constituent.

Sincerely,

Kerry Alan Scanlon
Acting Assistant Attorney General
Civil Rights Division

Enclosures

01-03578

ROBERT S. MOORMAN, JR., M.D., P.A., F.A.C.S.
PATRICIA MASSENGILL McCOY, M.D.

Ophthalmology

303 WILLIAMS AVENUE,S.W. * SUITE 1411 * HUNTSVILLE,ALABAMA 35801 *
(205)533-3210

November 2, 1994

Honorable Representative Robert "Bud" Cramer, Jr.
U. S. House of Representatives
1318 Longworth House Office Bldg.
Washington, D. C. 20510

Dear Bud:

I just received the enclosed letter stating that I must pay for the services of an interpreter on any deaf patient I see who may request it. The letter states that I also may not discriminate, which I presume that I cannot refuse to see such a deaf patient.

In many cases, particularly if it is a Medicare patient, my fee for the service provided would be considerably less than the fee charged by the interpreter. I cannot believe that it is the intent of Congress that I must pay out of my pocket to provide for an interpreter. If that, in deed, is the intent of Congress, I would certainly hope that we could get this part of this legislation repealed. As soon as you are through with your busy campaign, I would appreciate it if you could investigate this issue and give me your interpretation as to what I must do when a deaf patient requests an interpreter.

Sincerely,

Robert S. Moorman, Jr., M. D.

RSM/lc
01-03579

ALABAMA INSTITUTE FOR DEAF AND BLIND
Regional Center

AIDB
Established 1858

October 28, 1994

Dr. Robert S. Moorman, Jr.
303 Williams Avenue, Suite 1411
Huntsville, AL 35801

Dear Dr. Moorman:
On July 26, 1990, the Americans with Disabilities Act (ADA) was passed. This civil rights legislation enables persons with disabilities equal access and opportunity to participate fully in all life activities. For you, this means making your services accessible for all persons with disabilities.

The Alabama Institute for Deaf and Blind has been providing quality. interpreting services in the north Alabama area for the past eight years. During this time, we have been charging agencies/businesses and industry for services rendered. Medical professionals have not been charged for our services. Effective November 1, 1994, all customers will be charged $25.00/hour plus mileage for services rendered. Title III of the ADA, 28 C.F.R. 36.303 states that this charge is not to be passed to the consumer.

A qualified interpreter will help to ensure effective communication between you and the deaf patient, thereby reducing the time required for the visit. We hope you will continue providing quality care and accessibility for your deaf patients.

If you have questions or would like more information regarding services available through AIDB, please contact our office. Thank you for all your support.

Sincerely,
Frances R. Smallwood
Interpreter Coordinator

L. Diann Willis
Regional Director

2707 Artie Street,S.W., Suite 18, Huntsville, Alabama 35805-4769
(205)539-7881(Voice/TDD)
01-03580

JAN 10 1995

The Honorable Herb Kohl
United States Senator
14 West Mifflin Street
Suite 312
Madison, Wisconsin 53703

Dear Senator Kohl:

This letter is in response to your inquiry on behalf of your constituent, XX concerning the Americans with Disabilities Act (ADA) and its application to the operations of Holland America cruise lines. We apologize for the delay in responding to your inquiry.

XX letter to you states that Holland America cruise line misrepresented that the ports-of-call, facilities onboard Holland America cruise ships, and transportation services provided to and from airplanes were accessible. XX letter indicates that many of the features were inaccessible or that many accessible services were not provided.

Title III of the ADA prohibits discrimination on the basis of disability in commercial facilities and places of public accommodation. Title III requires, among other things, that owners and operators of places of public accommodation remove architectural barriers in existing facilities, where such removal is readily achievable. The Department's title III regulation, 28 C.F.R. pt. 36, defines the term "readily achievable" to mean easily accomplishable and able to be carried out without much difficulty or expense.

A cruise ship operating in U.S. waters is a place of public accommodation subject to these ADA barrier removal requirements (unless, in the case of a ship registered under a foreign flag, specific treaty prohibitions preclude enforcement). The ADA requires a cruise line to remove barriers in the facilities that they own or operate -- including at U. S. ports-of-call, onboard ships (including guestrooms), and in transportation services -- to the extent that such barrier removal is readily achievable.
01-03581

Determining whether the barrier removal requirement has been met, however, requires an assessment of several factors, including the nature and cost of the actions required, the overall financial resources of the facilities and any parent corporations, and the effect of the action on the facility's expenses and resources. Obviously, a determination of whether a cruise line has satisfied these requirements with respect to a particular vessel must be made on a case-by-case basis.

Title III can be enforced by private litigation, alternate dispute resolution such as mediation, or by filing a complaint with the Department of Justice. The Department is not able to investigate all the complaints of title III violations that it receives, and we have determined not to investigate this complaint. However, there are other entities that may be able to assist XX in resolving her complaint. We have enclosed a list of such entities located in Wisconsin.

In addition, we are enclosing copies of three status reports that detail the actions that the Civil Rights Division has undertaken to enforce titles II and III of the ADA. These reports illustrate that, although the Department of Justice is unable to investigate every complaint that it receives, we are taking strong action to enforce the law. I hope this information is useful to you in responding to your constituent.

If XX wishes to have further information about the requirements of the ADA, she may contact our ADA information line at (800) 514-0301 (Voice) or (800) 514-0383 (TDD) between 10:00 a.m. and 6:00 p.m. Monday through Friday, except for Thursday between 1:00 p.m. and 6:00 p.m. EST.

I hope this information is useful to your constituent.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

Enclosures

01-03582

October 21, 1994

The Honorable Herb Kohl
14 West Mifflin Street
Suite 312
Madison, WI 53703

RE: HELP!!! PLEASE!!!

Dear Senator Kohl:

I was told to contact you about a problem I have with Holland America Line concerning an Alaskan cruise that my handicapped parents and I took aboard the MS Noordam in July, 1994. I was grossly misinformed concerning the accessibility of the facilities for the "physically challenged passengers". Holland America misrepresented their ability to service "physically challenged passengers".

Before making any vacation decisions, I made extensive inquires concerning the availability and accessibility of the handicapped facilities aboard the MS Noordam and during the entire trip. I had my travel agent, Mrs. Michelle Lukens, Cruise Holidays, make numerous inquiries about the accessibility for handicapped passengers on this cruise.

Here is a list of some of the questions that I had Mrs. Lukens ask Holland America:

1.) What are the services available at the ports-of-call

A.) At which ports-of-call will we dock or tender
B.) Are the ports-of-call handicapped accessible
C.) Will there be any steps involved in getting off and on at the ports-of-call where we dock

2.) Is the ship handicapped accessible for someone limited to a wheelchair
A.) Does the stateroom have lips going into the room itself and the bathroom
B.) Will a wheelchair fit through the doors
C.) Is the bathroom equipped with bars for the handicapped

01-03583

D.) What are the bathing facilities in the bathroom
E.) Are the public rooms and areas accessible
F.) Can a wheelchair fit through the elevators doors
G.) Are there stairs involved in getting on and off the ship

2.) What are the services available from the airlines

A.) Are any steps involved in getting on or off the plane
B.) What are the arrangements to make connecting flights
C.) What are the bathroom facilities like

3.) Is the hotel accessibility in Anchorage

A.) Is the bathroom equipped with bars for the handicapped
B.) How do we transfer from the hotel to the airport

As you can see, I did everything in my power to insure that I had the needed information in order for me to make an intelligent decision for our vacation plans. Unfortunately, the information that I received was not actual or factual.

The major complaint I had with our cruise was the inaccessibility of any of the ports-of-call except at Juneau. Prior to making final arrangements, I had to fill out a "Special Requirements Information" Form indicating any special requirements or problems relating to my parents' history. We knew from the beginning that Sitka would be off limits for us because of the tendering service into Sitka. We knew and accepted this limitation when we decided to take the cruise. We were informed the other ports-of-call would be completely handicapped accessible for someone in a wheelchair. I do not feel that it is fair that my mother was not able to leave the MS Noordam due to the types of gang planks used to get off the ship. The gang planks were also very dangerous for my father, who has double leg prostheses.

Ketchikan was a sample of things to come. We were told by the ships' crew that they would take my mother down in her wheelchair but she would have to walk back up two flights of stairs in order to get back aboard the MS Noordam. When I went to the Front Office to check on the conditions for the following ports-of-call, I was told that except for Juneau all the rest of our stops would be made by tender service. Needless to say, by this time we were all very upset. I felt I had to let Holland America know how extremely disappointed we were. I talked to Mr. D. Verhey van Wijk, Hotel Manager. Mr. Verhey van Wijk informed me that we would

dock at Valdez and we would be able to get off the ship there. The gang plank at Valdez turned out to be so steep that my mother was afraid to go down it. I had been warned ahead of time by Mr. Verhey van Wijk that some people might not want to attempt it. Boy!! Was he right.

I found the information furnished about the room equally misleading. Although the bathroom itself was accessible, the entry ramp into the bathroom made it impossible to consider this room adequate. My mother was not able to walk up the very steep ramp into the bathroom without my assistance, even though she is able to do a minimum amount of walking. At home, my mother is able to use the bathroom by herself. Because of this situation, I was unable to leave my mother alone for any length of time. This made her feel bad because not only couldn't she visit the towns but we couldn't leave her alone for any period of time. I, myself, kept tripping over this ramp while walking around the room and I found that I could stand in the bathroom and was able to slide down the incline in my stocking feet - this should give you an idea of how bad the situation was. My father also had trouble getting into the bathroom.

The arrangements that Holland America made for its passengers to get from the hotel in Anchorage to the airport was as equally difficult for the "physically challenged passengers". You had to claim your luggage on the international side of the airport and then walk to the domestic side of the airport which was across the road from each other. Also when Holland America made the reservations for our plane flight back from Anchorage, they put us on a flight that loaded from the runway which involved having to have my mother hand-carried onto the plane. This was the final straw that broke the camel's back. My mother was so upset that she said "That it wasn't worth it. She wouldn't take another vacation." Every time you turned around, you were either upset or angry about something. You are supposed to come back from a vacation all rested up and rejuvenated, not so overjoyed that your vacation is finally over with.

We were not the only ones who felt that Holland America had misrepresented the cruise as being handicapped accessible. Mr. Russell Schmidt, who was totally wheelchair bound, found that he had received the same faulty information from Holland America. Mr. Schmidt was also told that where would be a lift-equipped bus to make the trip from Seward to Anchorage, a two and half hour bus trip. In order to make the departure from the ship an orderly affair, the passengers were assigned bus numbers. When Mr. Schmidt's number came up to leave and he asked about the lift-equipped bus, he was told "Why wasn't he there at 7 o'clock

when the special bus left." This was the attitude that we encountered during the entire trip.

I am sending you copies of the letters that I wrote to Ms Donna Franchimon, Manager Customer Relations, Holland America and Mr. Russell Schmidt concerning the gross misrepresentation of the answers to my specific questions concerning the accessibility of the facilities for the "physically challenged passengers". I am also sending a copy of the letter that my travel agent, Mrs. Lukens, wrote to Holland America listing the names and dates of the people that she talked to in order to get the answers to my questions. I am also sending you a copy of the answer that I received from Ms Judith Foley concerning my letter to Ms Franchimon.

Upon receipt of this letter, I had a very unpleasant telephone conversation with Ms Foley. She felt that "any time the ship was docked at the pier", the port-of-call was considered accessible for a handicapped person. When asked how she would feel if she wasn't able to leave the ship during the stays at the ports-of-call, she told me that we did enjoy the full benefit of all the rest of the services and activities on board the ship so what more did we want!

We made our decisions on the quantity vs quality of information that we received. I feel that Holland America is splitting hairs as far as the information that they are giving out to their prospective passengers. It is bad enough to be handicapped but to be treated this way is unforgivable.

Sincerely,

XX
Montello, WI 53949
XX

01-03586

JAN 17 1995

The Honorable Benjamin A. Gilman
U.S. House of Representatives
2185 Rayburn Office Building
Washington, D.C. 20515-3220

Dear Congressman Gilman:

This letter is in response to your inquiry on behalf of your constituent, XX concerning a request for information about the amount of time that movie theaters have to comply with the Americans with Disabilities Act (ADA). Your constituent mentions that he uses a wheelchair and feels it is unfair that he has to sit in the back of movie theaters in New City, New York, and is not able to use the rest rooms.

The ADA contains a number of requirements for physical accessibility in movie theaters. First, all new movie theaters built since January 26, 1992, must be accessible. Second, all movie theaters renovated or otherwise altered since January 26, 1992, must be altered in an accessible manner.

Third, if a movie theater is not being renovated or otherwise altered, the manager or owner must do things that are "readily achievable" to eliminate physical barriers that keep people with mobility impairments from being able to use their facilities. Readily achievable is defined as "easily accomplishable and able to be carried out without much difficulty or expense." If barrier removal is not readily achievable, the manager or owner is required to take alternative steps that are readily achievable to enable people with mobility impairments to be their customers. An example of an alternative to barrier removal would be a two-theater complex, with an accessible and an inaccessible theater, that rotates its films so that each film will be shown in the accessible theater.

cc: Records;Chrono;Wodatch;McDowney;Breen;Willis;FOIA;MAF.
N:\UDD\WILLIS\CGGILMAN\secy.johnson

01-03587

The obligation to undertake readily achievable barrier removal in existing facilities went into effect on January 26, 1992, and is a continuing obligation. If a movie theater has a number of barriers, the owner or manager may phase the barrier removal over time, if it is not readily achievable to remove all the barriers at once.

I hope this information will be useful to you in replying to your constituent.

Sincerely,

Kerry Alan Scanlon
Acting Assistant Attorney General
Civil Rights Division

01-03588

XX
New City, New York 10956
November 16, 1994

Congressman Gilman
223 Route 59
Monsey, New York 10952

Dear Congressman Gilman:

I met you at the Stardust Ball on November 4th at the Atrium Plaza. At that time, I spoke to you briefly about the movie theaters in New City not being wheelchair accessible. I was wondering how long that the theaters have to comply with the A.D.A. Law. I feel that it is unfair that I can only sit in the back of the movie theater and am not able to use the bathrooms.

It makes me feel angry that as a citizen of Rockland County, I am not treated the same way as all other paying customers.

I would appreciate your response to the problems I have outlined.

Sincerely,

XX

JT/da

01-03589

JAN 27 1995

The Honorable Barbara Boxer
United States Senator
1700 Montgomery Street
Suite 240
San Francisco, California 94111

Dear Senator Boxer:

This letter is in response to your inquiry on behalf of your constituents, XX

XX have complained that their health care insurance provider, CIGNA, has discontinued coverage for the services of a home health care aide for XX . They inquire whether this violates the Americans with Disabilities Act (ADA). It appears from the correspondence that CIGNA generally does not provide coverage for home health care aides for any policyholders, although they provided such coverage to XX for a time just after his coverage was transferred to CIGNA from another company.

The ADA prohibits discrimination on the basis of disability. It does not guarantee that persons with disabilities will be able to obtain insurance coverage for all the medical services that they need. Home health care services are presumably needed and used by persons without disabilities as well as persons with different types of disabilities than XX . An insurance company's decision not to cover home health services in these circumstances would not appear to violate the ADA.

I hope this information will be helpful to you in responding to your constituents.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

01-03590

XX
XX
NORWALK, CALIFORNIA 90650

December 1, 1994
Honorable Barbara Boxer
United States Senate
2250 E. Imperial, #545
El Segundo, California 90245

RE; Problems with Group Insurance for Insured, XX

Dear Senator Boxer:

My husband, XX , has been ill since February 2, 1992, when he contracted Guillain Barre Syndrome. This is a debilitating virus which paralyses it's victims, from one extreme to another. My husband had a very serious case. He was paralyzed completely for 5 weeks and has been in a recovery stage ever since. He is currently home after having spent nineteen months in the hospital and still is in a wheelchair.

XX insurance company changed from Pacific Mutual to CIGNA last March 1st. At that time CIGNA stated that they do not cover Home Health Aides, which he did have under the Pacific Mutual program. I debated that issue with them successfully, and they have since provided an aide for six hours each weekday although they said that it was an extra-contractural benefit. Now they want to cancel the Home Health Aide for no good reason. There have been some personnel changes with their company and I suspect that someone wants to make points by cutting expenditures. I wrote to them, appealing their decision. My appeal was based on the fact that the situation which was the basis of the decision to provide the service has not changed, as outlined in the excerpt below. All of the criteria used to authorize this service still exist.

* The Home Health Aide still helps XX with exercises. These are routine therapy exercises, not just passive, range of motion-type exercises. They are exercises which the therapists have prescribed, not just of a type which I or XX believe he needs in addition to therapy
* The Home Health Aide still helps XX get into and out of his standing frame on days when he does not have therapy.
* XX still cannot prepare his own lunch and cannot necessarily even feed himself his lunch, depending on what form it may take.
* It still is not safe for XX to be left alone all day. I cannot stay home with him. My paycheck is three-fourths of our income and we cannot make our commitments without it. So far as family help is concerned; my parents are elderly and infirm, and my father has terminal cancer, so they are unable to help; I have no sisters and only one brother who lives in

Northern California, so he is unable to help; XX family all lives out of State and they are unable to help.

* Since it is not safe for XX to be alone all day, it is entirely possible that his Physician would recommend that he go back into a care facility and THAT would COST you a great deal more than a Home Health Aide."

In addition to all of the above, I want to bring to your attention an article recently published in "Money", (October 19, 1994). I don't know if it was "Money Magazine" or something else, I only received a photocopy and it is not clear who published it. The article states that a federal appeals court ruling could prohibit insurance companies from putting caps on benefits for people with disabilities. The article states that the insurance companies could be deemed as the insured's employer because they are a contracted agent of the employer. Therefore the insurance company would be subject to the Americans with Disabilities Act. In addition, insurance carriers could be classified as a public accommodation, also subject to the A.D.A. If true, this could apply not only to the present subject, but to the physical/occupational therapy limitation which CIGNA has of sixty days, as well.

I am writing to you in the hope that you may be able to aid us in this matter. I am hoping that during this appeals process you would be able to bring pressure to bear on them to continue the Home Health Aide services. Their appeals procedure supposed takes 30 days and I mailed my appeal two days ago. CIGNA set a precedent by authorizing the benefit to begin with and now they want to cancel it. If you are able to write to them I would appreciate it. Their address for appeals is:

CIGNA HealthCare of California
Member Services Department
505 North Brand Blvd., Suite 200
Glendale, California 91203

I thank you for your time I reviewing this matter and for any efforts you may be able to make on our behalf. If you do write to them, please send us a copy. My day-time telephone number, should you need it, is XX .

Sincerely,

XX

REPSINS.DOC
01-03592

JAN 27 1995

The Honorable Corrine Brown
Member, U.S. House of Representatives
75 Ivanhoe Boulevard
Chamber of Commerce
Orlando, Florida 32802

Dear Congresswoman Brown:

This is in response to your inquiry on behalf of your constituent, XX , regarding the application of the Americans with Disabilities Act (ADA) to insurance.

The ADA prohibits discrimination on the basis of disability by places of public accommodation, including service establishments such as insurance companies. Therefore, an insurance company may be prohibited by the ADA from discriminating on the basis of disability in making decisions to grant or deny coverage, and in setting rates for types of coverage.

An insurance company will not, however, be prohibited by the ADA from administering its benefit plan in accordance with State insurance laws. 28 C.F.R. 36.212. Therefore, State law may also play a significant role in the determination of an insurance company's duties regarding individuals with disabilities, but such State law may not be used as a subterfuge to evade the purposes of the ADA.

I hope this information will be helpful to you in responding to your constituent.

Sincerely,

Deval L. Patrick

Assistant Attorney General
Civil Rights Division

01-03593

10-5-94
Honorable Bill McCollum
605 E Robinson - Suite 650
Orlando FL 32801

Dear Congressman McCollum,

I am writing you for the purpose of
seeking your assistance in the area of
disability discrimination.

I was diagnosed with Agoraphobia by my
Doctors in May. I was told that I would
never work again because my condition was
chronic & was a chemical imbalance of the brain.

My Doctors told me that my condition was of
a biological nature & not a mental state.

I took my disability believing that I would
be compensated by my Long Term Disability
Program.

I was later informed by my Ins company
that my condition was coded mental not
physical & that I would only received benefits
for 24 months.

As a mgr. with a Fortune 500 company, my
income was considerable, but my problem got
worse & I had to take my disability, but
my life has been turned around because of
this discrimination.

My belief is that if you are disabled, you
are disabled, regardless of the status -
In 24 months I will be cut off by my
Ins company and will loose everything that I
have worked so hard & long to achieve.

I will not be able to function in society
& the job market because of my disability.

The Ins company stated to me that my
company opted to put this limitation in the
policy because of "higher premiums" that would
have to be paid to cover mental/nervous
disorders - It is simply a money thing with Ins co
but people like me lives are being ruined because of
"so called mental problems" are treated in a
second class situation & are not recognized
as being just as disabling as physical problems -

Mr. Congressman, this discrimination must change. People are being hurt & lives are being destroyed because of higher premiums on Ins policies in lieu of peoples well fair.

I was told by the E.E.O.C. in Washington that this problem is being addressed and the discrimination may be changed in the future - I spoke with: Kathleen Courtney - Attorney of the Day - E.E.O.C. in Washington on 10/4/94 pH: 202-663-4652.

I am a Vietnam veteran that needs the assistance of my congressman to help me & people like me, to overcome this blanton act of discrimination who suffer from a real problem, just the same as people with physical disabilities.

Thanking you in advance for your consideration in this very important matter. We need your support to give us equality in our lives.

Sincerely,

XX
Apopka, Fl 32712
XX

01-03596

JAN 27 1995

The Honorable Henry A. Waxman
U.S. House of Representatives
2408 Rayburn Office Building
Washington, D.C. 20515-0529
Dear Congressman Waxman:

This is in response to your inquiry on behalf of your constituents, XX . They ask whether the Americans with Disabilities Act (ADA) can be interpreted to require places of public accommodations to provide baby care and diaper-changing facilities in public restrooms.

The ADA is a civil rights statute that prohibits discrimination on the basis of disability. By providing restroom facilities accessible only to able-bodied persons, public accommodations discriminate against persons with disabilities. It is for that reason that the ADA has accessibility requirements for restrooms in places of public accommodations.

Although failing to provide appropriate diapering facilities might similarly be considered discrimination against families with infants and small children, the ADA does not prohibit discrimination against such individuals unless they have

disabilities. There is only one Federal civil rights statute that protects families with children and that is the Fair Housing Act which prohibits discrimination on the basis of familial status, but only in transactions involving housing.

I hope this information will be useful to you in responding to your constituents.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

01-03597

Congress of the United States
House of Representatives
Washington, DC 20515-0529
HENRY A. WAXMAN
29th DISTRICT, CALIFORNIA

December 16, 1994

The Honorable Janet Reno
Attorney General
Department of Justice
Constitution Avenue and Tenth Street, N.W.
Washington, D.C. 20530

Dear Attorney General Reno:

Enclosed is a letter I received from constituents of mine, XX , regarding their belief that the Public Accommodations section of the Americans with Disabilities Act (ADA) should be interpreted to require the presence of baby

care and diaper-changing facilities in public restrooms. I would appreciate it if you would advise me of the applicability of the ADA in this manner.

Thank you for your attention to this matter.

With kind regards, I am

Sincerely,

HENRY A. WAXMAN
Member of Congress

HAW:lkg
01-03598

xx
XX
North Hollywood, CA 91601
XX

October 29, 1994

The Honorable Henry A. Waxman
Member, U.S. House of Representatives
8436 W. Third Street, #600
Los Angeles, CA 90048

Dear Congressman Waxman:

We are residents of your district, and wanted to relate a recent experience to you in hopes you might be able to help.

We took our eight month-old son to Universal City's CityWalk and were unpleasantly surprised to find there were no facilities in the public restrooms to change his diaper. The only choices were to change him in his stroller, or place him on the unsanitary tile floor. Perhaps some of the restaurants have changing facilities, but we didn't have time to go on a hunting expedition.

After writing to MCA Development Company which operates CityWalk and other Universal facilities, to our local elected officials, and to L.A. PARENT magazine, we received word from CityWalk that they, too, had noticed to oversight and that they plan to install diaper-changing facilities in women's and men's restrooms this fall. Hooray!

This experience got us to thinking, because Universal City is not alone in ignoring the needs of families it's seeking as customers. We've been in many "family" restaurants and other establishments throughout the greater Los Angeles area that lack these facilities, too. Please understand that we see this as a critical matter of health and safety for our children.

We would like to know whether it is possible to apply the Public Accommodations section of the Americans with Disabilities Act to require any public establishment to add baby care and diaper-changing facilities to its restrooms. It's crucial to have wheelchair access in restrooms, but shouldn't infants and children have access to sanitary and safe facilities?

At the bare minimum, establishments could install an ironing-board type "Koala Kare" changing table that folds down when needed, and a trash container to deposit dirty diapers. I'm sure these items are reasonably priced, easy to install, and the upkeep is no more than regular restroom maintenance. The "Koala Kare" boards could easily fit in the smaller restrooms of most restaurants and stores as well.

Most major department stores and shopping centers (and even Dodger Stadium!) have these facilities in the women's restrooms and even the men's restrooms. They post signs advertising the fact on the restroom entrance so customers don't have to search them out. These establishments also have comfortable couches and chairs for nursing and feeding babies. Disneyland has a special facility with all that -- plus facilities to prepare and heat baby food. That day at CityWalk, we'd have been happy to have anything besides the stroller and the dirty floor!

Congressman Waxman, during your distinguished legislative career, you have accomplished so much to improve Americans' health and the quality of our lives.
We really hope you will ask one of your staff members to look into this issue for us.

Sincerely,
XX
XX

And
XX

FEB 1 1995

The Honorable Thomas Daschle
United States Senate
317 Hart Senate Office Building
Washington, DC 20510-4103

Dear Senator Daschle:

This is in response to your inquiry on behalf of your constituents, Senator Jim Lawler and Ms. Karen Shea, regarding the obligation of health care providers, under title III of the Americans with Disabilities Act (ADA), to provide auxiliary aids or services, including sign language interpreters, to persons with hearing impairments.

The Department of Justice is committed to ensuring the effective implementation of the auxiliary aids requirements of title III by health care providers. We are concerned, however, that there are some significant misperceptions of the scope of these requirements that may be deterring compliance.

One of the most common misconceptions about the ADA is that health care providers are required to provide interpreters whenever they are requested. In fact, title III of the ADA requires public accommodations, including health care providers, to furnish appropriate auxiliary aids and services, including sign language interpreters, where necessary to ensure effective communication with individuals with disabilities. Health care providers should consult with their patients to determine what type of auxiliary aid or service is appropriate for particular circumstances. However, health care providers are not required to provide sign language interpreters for deaf patients upon demand. Title III of the ADA does not require a provider to accede to a patient's specific choice of auxiliary aid or service as long as the provider satisfies his or her obligation to ensure effective communication.

In determining what constitutes an effective auxiliary aid or service, health care providers must consider, among other

things, the length and complexity of the communication involved. For instance, a note pad and written materials may be sufficient means of communication in some routine appointments or when discussing uncomplicated symptoms resulting from minor injuries. Where, however, the information to be conveyed is lengthy or

cc: Records; Chrono; Wodatch; McDowney; Hill; MAF; FOIA
n:\udd\hille\policylt\daschle.ltr

01-03601

complex, the use of handwritten notes may be inadequate and the use of an interpreter may be the only effective form of communication. Use of interpreter services is not necessarily limited to the most extreme situations -- for example, a discussion of whether to undergo surgery or to decide on treatment options for cancer.

A health care provider may not impose a surcharge on any particular individual with a disability to cover the costs of providing auxiliary aids and services. Instead, the costs should be treated like other overhead expenses that are passed on to all patients. Nor does the ADA permit assessment of a surcharge to cover the cost of pre-arranged auxiliary aids on a patient with a disability for a cancelled appointment. However, the ADA does not prohibit a health care provider from imposing a deadline for cancellations or from charging a fee for missed appointments if the deadline is not met, as long as the deadline and fee are applied and enforced uniformly against all patients, without singling out patients with disabilities.

Health care professionals cannot use a fear of economic loss as a basis on which to refuse to provide auxiliary aids or to refuse treatment for a person with a disability. However, the obligation to provide auxiliary aids and services is not unlimited and a health care provider is not required to provide auxiliary aids and services if doing so would result in an undue burden, that is, a significant difficulty or expense. The factors to be considered in determining whether there is an undue burden include the nature and cost of the action, the type of entity involved, and the overall financial resources of the entity.

Finally, as amended in 1990, the Internal Revenue Code permits small businesses to receive a tax credit for certain

costs of compliance with the ADA. An eligible small business is one whose gross receipts do not exceed $1,000,000 or whose work force does not consist of more than 30 full-time workers. Qualifying businesses may claim a credit of up to 50 percent of eligible access expenditures that exceed $250 but do not exceed $10,250. Eligible access expenditures may include the costs of providing auxiliary aids and services to persons with disabilities.

The flexibility of the auxiliary aids requirement, the undue burden limitation, the ability to spread costs over all patients, and the small business tax credit should minimize any burden on health care professionals.

01-03602

I hope this information will be helpful to you in responding to your constituents.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

01-03603

United States Senate
Washington, DC 20510-4103

December 12, 1994

The Honorable Janet Reno
Attorney General
United States Department of Justice
Constitution Ave. and 10th St., NW
Washington, DC 20530

Dear Attorney General Reno:

Recently, I have been contacted by several constituents regarding their concerns with the Americans with Disabilities Act (ADA) requirement for interpreter services. Enclosed for your review are copies of some of the correspondence.

As you will note, some specific questions have been posed regarding interpreter services. Judging from the constituent letters, an overriding concern appears to be that when patients insist on having an interpreter, such a professional must be provided regardless of whether a need for the services is demonstrated. Furthermore, according to my constituents, an interpreter often appears for an appointment, but, without notification, the patient does not show up. In those instances, the service provider is obligated to pay the interpreter. As you might imagine, there is great concern over the costs being incurred by the providers in such instances.

According to my constituents, many providers had used alternative methods,

such as lip reading or writing instructions, which reportedly were acceptable to the clients, but now must provide an interpreter on demand. It is mentioned in the correspondence that requiring an interpreter may be viewed as an unfunded mandate and prompt providers to try and avoid treating the disabled.

I would urge your careful consideration of these concerns and comments. In addition, I would greatly appreciate your input and suggestions regarding any possible solutions. I look forward to hearing from you.

With best wishes, I am

Sincerely,

Tom Daschle
United States Senate

TAD/abg
Enclosure
01-03604

PRINTED ON RECYCLED PAPER

Senator Jim Lawler

November 26, 1994

Senator Thomas A. Daschle
317 Hart Senate Office Building
Washington, DC 20510-4103

Dear Senator Daschle:

This letter seeks information regarding the Americans with Disabilities Act and specifically if it has placed an undue burden on certain providers where there are clusters of consumers because of availability to schools or other services. I am enclosing a copy of a letter I received from Ms. Karen Shea, Central Plains Clinic in Sioux Falls, South Dakota. I also serve on the Mayor's Committee for People with Disabilities in Aberdeen. There has been discussion about this matter at these committee meetings as well.

Specifically, I would like to propose some questions about interpreter services for your consideration. Perhaps, there should be some fine tuning to this Act so it is more acceptable to the providers and still assure safety for the consumers.

1) Is it fair that providers must pay for two hours of interpreter service with no way to expense it off or to bill for recovery?

2) Many providers had a system in place such as lip-reading or writing instructions which reportedly was acceptable to many clients. Although this was working, they must now pay for an interpreter whether needed or not.

3) Is there any concern that the clients are being coached by the interpreters to request an interpreter, thus assuring full time employment for the interpreter? There are instances reported that the interpreter shows up for an appointment and the client does not and the provider still must pay for the minimum two hours of interpreter time.

4) If there are abuses, it could create a climate where the providers will be reluctant to serve the clients because they feel they are being made to pay for services that may not always be indicated. I understand they can take a write-off from their Federal Income Tax return once a minimum level of charges is reached.

I believe one must assure disadvantaged people are fully protected and that medical instructions are understood, but I also believe the providers should not be expected to absorb expenses, especially unnecessary expenses, when they cannot recover. This is another unfunded mandate on private vendors and could provide the incentive for finding ways to avoid treating the disabled.

I would appreciate if you would correspond directly with Ms. Shea and send copies to me of any information or transmittals. It just seems the Act could use some amendments and make it a better law.

Thanks for taking time to read and to respond.

Sincerely,

Senator Jim Lawler
District #3

01-03606

CENTRAL PLAINS
CLINIC LTD.

CPC#

August 23, 1994

Senator Jim Lawler
2704 NW 30th
Aberdeen, SD 57401

Dear Senator Lawler:

On April 22, 1994 in Aberdeen at the South Dakota Clinic Managers State Meeting I visited with you regarding a problem Physician's offices have with "interpreters for the deaf." You asked that I send you some information regarding this and that you would look in to this for us.

We are told that we must have an interpreter for our deaf patients whether we feel that one is needed or not if the patient wants it. Many of our deaf patients do not need one, but a lot of our deaf patients insist on having an interpreter.

In one week in June we had four patients not show up for their appointments. None of them notified us before the appointment and the interpreter was already here. Each time we had to pay the interpreter $30 for coming to our office. Many times the office visit is not much more than the price of the interpreter.

I would appreciate it very much if you could tell me what you found out about the situation.

Sincerely,

Karen Shea

1100 East 21st Street
Sioux Falls, South Dakota 57105
(605) 335-2727

Accredited by
Accreditation Association
for Ambulatory
Health Care, Inc.

01-03607

FEB 1 1995

The Honorable Phil Gramm
United States Senator
2323 Bryan Street, #1500
Dallas, Texas 75201

Dear Senator Gramm:

This is in response to your letter on behalf of your constituent, XX , regarding the Americans with Disabilities Act (ADA).

XX is seeking your assistance because a prospective tenant of a commercial space that he leases has requested that a survey of the facility be conducted to assess "ADA compliance." The survey, which was enclosed with XX letter, is based on the ADA requirements applicable to the design and construction of new facilities. XX apparently believes that the ADA requires his building to meet this standard, and he is concerned that providing full accessibility in his building would be burdensome.

It appears that XX is somewhat confused about the requirements of the ADA. Title III of the ADA prohibits discrimination on the basis of disability by places of public accommodation and it requires new or altered commercial facilities to be made accessible. Because XX has described the property in question as a "commercial space," we are assuming, for the purposes of this letter, that it is subject to title III.

With regard to buildings covered by title III, the ADA provides for three different levels of accessibility. For new construction, the ADA requires full and strict compliance with the ADA Standards for Accessible Design (Standards), 28 C.F.R. pt. 36, Appendix A. This requirement for full accessibility to newly constructed buildings and facilities is based on the fact that incorporation of accessible elements into design and

construction at the very beginning of the process, before inaccessible elements are set in concrete and wood, is relatively easy and inexpensive.

cc: FOIA

When alterations take place in an existing building, the ADA provides a somewhat less stringent standard. The ADA requires that the altered portion of the building be made accessible in accordance with the ADA Standards. This requirement is based on the fact that incorporation of accessible features into an area that is already being rebuilt is relatively simple and inexpensive. However, the ADA recognizes that structural constraints in existing buildings may prevent full compliance with the ADA Standards. Therefore, the ADA provides lesser accessibility requirements for alterations when full compliance with the ADA Standards is technically infeasible.

The ADA imposes requirements for existing buildings that are not otherwise being altered only if they fall within the twelve statutory categories of places of public accommodation. The owner or operator of such an existing place of public accommodation is only required to remove structural barriers to access to the extent that it is readily achievable to do so. Removal of a structural barrier is readily achievable if it is easily accomplishable and able to be carried out without much difficulty or expense. The Department's regulation implementing title III provides examples of, and priorities for, readily achievable barrier removal, as well as alternatives for those situations where barrier removal is not readily achievable.

Surveys such as the one attached to XX letter may be useful in identifying barriers to access in existing buildings. However, the ADA does not necessarily require that every barrier identified on such a survey be immediately corrected. Rather, the ADA's three-level system seeks to balance the needs of people with disabilities against the real constraints faced by businesses.

I am enclosing a copy of the Department's regulation

implementing title III for your further information. I hope this information is helpful to you in responding to your constituent.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

Enclosures

01-03609

Honorable Kay Bailey Hutchinson
Honorable Phil Gramm
Honorable Jack Fields

I lease commercial office space in Houston, Texas & am a constituent of yours.

I have attached for your review a section of a request for proposal by a tenant looking at one of my buildings. This section deals w/ADA compliance.

Does anyone in Washington have any idea how obtrusive ADA regulation is? Property owners are spending billions of dollars to comply w/ADA to satisfy completely the needs of a miniscule portion of the population. Buildings should provide barrier free access however ADA is so absurdly eggregious that only a bureaucratic, detached government could pass it & not understand the potential ramifications.

Something must be done to mitigate the ongoing damage

01-03610

being suffered by business
people to comply w/ADA.
What do you suggest?

Thanks

XX
Houston, TX 77068

01-03611

ADA AUDIT REPORTS
AND INSPECTION FIRMS

Aetna Corporate Leasing Services requires an ADA survey prepared by a qualified firm for all facilities being considered for occupancy by Aetna. This memorandum outlines what constitutes a qualified firm and what is required in a survey.

To be qualified, inspection firms will at a minimum meet the following criteria:

a) Firm should have either a licensed Registered Architect or Professional Engineer managing the inspection program.
b) Firm should be able to demonstrate an expertise and experience in ADA/Code Compliance work.
c) Firm should have had recent training in ADA Compliance by a reputable organization such as the AIA or BOMA.
d) Firm should be able to provide references from other clients for similar types of inspection work.

The survey will include at a minimum the following items:

a) A brief description of the property.
b) A copy of the full survey that demonstrates that all ADA-related

requirements have been reviewed.

c) A list of all non-compliant items relating to the technical elements noted in the BOMA "ADA Compliance Guidebook".

d) Pictures of non-compliant items.

e) Recommendations for corrective action.

f) Cost estimates for corrective actions.

g) Timeline for corrective actions

01-03612

ADA CHECKLIST

Building:
Address:

Parking and Access to Building YES NO

1) Is there designated compliant parking for individuals with disabilities (width: 96", aisle width: 60", clearance: 80", maximum slope: 1:50)?
   Number of compliant disabled parking spots:
   Number of disabled parking spots:
   Total number of parking spots:
2) Are accessible parking spaces located on the shortest accessible route to an accessible entrance?
3) Is there at least one accessible route (width: 36", running slope: 1:20, slip-resistant surface) to an accessible building entrance from public transportation stops?
   from accessible parking spaces?
   from sidewalks?
4) Is a curb ramp (maximum slope: 1:12, clear width: 36", slip-resistant surface, not obstructed by parked vehicles)

provided whenever an accessible route crosses a curb?

Entrances/Interior Route

5) Are at least 50% of all entrances accessible? If all entrances are not accessible, are there appropriate signs indicating the location of the nearest accessible entrance?
6) Is there at least one accessible door (clear opening: 32" with door open 90 degrees, maximum threshold height: 1/2", hardware which can be grasped by one hand) at each accessible entrance?
7) Is there at least one accessible route (width: 36", headroom: 80", running slope: 1:20, slip-resistant, clear floor space: 30" x 48" interior doors with pull pressure less than 5 lbs.) connecting accessible entrances with all accessible spaces?

Ramps

8) Are there ramps (maximum slope: 1:12, clear width: 36", level landing, cross slope: 1:50) wherever an accessible route exceeds 1:20?

Elevators

10) If the building is 2 levels high or greater, is there an elevator?

11) Are all elevators accessible (automatic operation, notification time: 5 sec, audio and visual position indicators, clear minimum: 36", depth: 51, width: 68" side opening door/80" center opening door)?

Bathrooms

12) Are there accessible bathrooms (unobstructed turning space of 60" diameter circle or T-shaped space of 60" square with 36" legs) which are located on an accessible route?

13) Within an accessible bathroom, is there at least one toilet stall which is accessible (width: 60", minimum depth: 56" to 59", outward swinging door)?

If desired, attach a sheet with explanatory comments.

Building Owner/Representative Signature:

Title:
Date:

This checklist is provided for information purposes only and does not constitute legal advice or approval regarding compliance with the Americans with Disabilities Act.

01-03613

FEB 13 1995

DJ 202-PL-865

Mr. Wilfredo Davila
Director & Chief ADA Compliance Officer
Bergen County Office on the Disabled
Administration Building
Court Plaza South
21 Main Street, West Wing, Room 113-W
Hackensack, New Jersey 07601-7000

Dear Mr. Davila:

This is in response to your letter about a public accommodation's responsibility to provide accessible parking under the Americans with Disabilities Act (ADA).

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities that have rights and responsibilities under the ADA. This letter provides informal guidance to assist you in understanding the ADA. This technical assistance, however, does not constitute a determination by the Department of Justice of any entity's rights or responsibilities under the ADA and is not binding on the Department of Justice.

In your letter you correctly noted that the Department of Justice regulation implementing title III provides that a public accommodation must remove architectural barriers in existing facilities when such removal is readily achievable, i.e., easily accomplishable and able to be carried out without much difficulty or expense. Providing accessible parking spaces is one type of architectural barrier removal. To the extent it is readily achievable, barrier removal measures must comply with the ADA's requirements for alterations, including the ADA Standards for Accessible Design.

Determining the application of these general rules to a specific place of public accommodation requires a case-by-case assessment of whether the required barrier removal is readily achievable that takes into account the following factors:

cc: FOIA

01-03614

1) The nature and cost of the action;

2) The overall financial resources of the site or sites involved; the number of persons employed at the site; the effect on expenses and resources; legitimate safety requirements necessary for safe operation, including crime prevention

measures; or any other impact of the action on the operation of the site;

3) The geographic separateness, and the administrative or fiscal relationship of the site or sites in question to any parent corporation or entity;

4) If applicable, the overall financial resources of any parent corporation or entity; the overall size of the parent corporation or entity with respect to the number of its employees; the number, type, and location of its facilities; and

5) If applicable, the type of operation or operations of any parent corporation or entity, including the composition, structure, and functions of the workforce of the parent corporation or entity.

If the public accommodation is a facility that is owned or operated by a parent entity that conducts operations at many different sites, the public accommodation must consider the resources of both the local facility and the parent entity to determine if removal of a particular barrier is "readily achievable." The administrative and fiscal relationship between the local facility and the parent entity must also be considered in evaluating what resources are available for any particular act of barrier removal.

I hope that this information is helpful to you.

Sincerely,

Janet L. Blizard
Supervisory Attorney

cc: Mr. Philip C. Hochman
Special Counsel
Bergen County Office on the Disabled
ADA Project
120 Summit Avenue
Dumont, NJ 07628

01-03615

DJ 202-PL-802

FEB 16 1995

Kenneth M. Hrechka, D.D.S.
6130 Oxon Hill Road
Oxon Hill, Maryland 20745

Dear Dr. Hrechka:

This letter is in response to your inquiry concerning your obligations to provide interpreter services for deaf patients.

The Americans with Disabilities Act (ADA) authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the ADA. This letter provides informal guidance to assist you in understanding the ADA's requirements. It does not, however, constitute a legal interpretation, and it is not binding on the Department.

The issues and concerns raised in your letter relate most directly to the auxiliary aids and services provisions of title III. Such aids and services are measures that are undertaken to ensure "effective communication" for individuals with impaired speech, hearing and/or vision, as well as those who are profoundly deaf. The auxiliary aids requirement is intended to be flexible, reflecting the variable nature of what constitutes "effectiveness" in any particular situation.

In addition to the specific nature of the disability involved, factors used to determine communication effectiveness in any given circumstance include the length, complexity and importance of the information being exchanged. In your practice, for example, printed information and the exchange of handwritten notes might provide effective communication during routine appointments to adjust wires or check treatment progress. However, during appointments scheduled to discuss treatment options, or unexpected alterations necessary to the treatment plan, the use of printed information and handwritten notes may

cc: FOIA

01-03616

not prove effective and the use of an interpreter may be necessary. Further discussion of this point is found on page 35567 of the enclosed title III regulation.

Ideally, the determination of which particular auxiliary aid or service will ensure effective communication in a given situation is reached through a process of consultation between patient and practitioner. Not only will consultation ensure that equal services are provided to individuals with disabilities, it may also significantly reduce the costs of providing such auxiliary aids or services. The enclosed Department of Justice ADA Title III Technical Assistance Manual provides additional guidance on page 26.

Under section 36.301 (c) of the ADA title III regulation, when an interpreter or other auxiliary aid or service is necessary to ensure effective communication, the medical or dental practitioner must absorb the cost of this aid or service, unless this would result in an undue burden. As provided in section 36.303(f), the term "undue burden" means "significant difficulty or expense". In determining whether providing a sign language interpreter or other auxiliary aid or service, would result in an undue burden, the practitioner should consider the overall financial resources of the practice, not just the fees paid for a particular procedure or treatment session.

Consideration should be given to other factors that would minimize the degree of burden on the practice, such as the ability to spread costs throughout the general patient population and the provision of tax credits for small businesses for costs incurred to provide auxiliary aids. Eligibility criteria for this credit are found in publication 907, available from the IRS.

Your letter also raises the question of how to obtain interpreter services. Most states have a Deaf Services Center, or similar office, which can provide referral services for you. In those circumstances where interpreter services are required to ensure effective communication, the interpreter must be "qualified".

As defined in the enclosed regulation, a "qualified interpreter" has the ability to interpret "effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary." Further discussion of this issue may be found in the ADA Title III Technical Assistance Manual at III-4.3200.

01-03617

I trust that this information, along with the enclosures, will be helpful to you and your patients with disabilities.

Sincerely,

John L. Wodatch
Chief
Public Access Section

Enclosure
Title III Regulations
Title III Technical Assistance Manual

01-03618

March 10, 1994

Association of Disabilities Act
Department of Justice
Civil Rights Division
P. O. Box 65310
Washington, DC 20025-1530

Dear Association of Disabilities Act,

I am an orthodontist, treating a woman, who is deaf. My office receptionist and I have tried to reach you by phone for over three weeks, calling every hour of the day. Apparently, your employees are overworked as your lines are always busy.

I need important information answered by you, which I can not obtain from the legal office of the American Dental Association re: disabled Americans. I operate a small professional business. I have treated deaf patients before without any difficulty. (They could read lips or we would exchange written notes). Currently, I am told I may be required to supply an interpretor for a deaf patient. Is this true? Are they available as a service through local government, social work-like organizations? Does the small business or deaf individual pay for the interpretor? Orthodontic treatment usually requires 24-36 appointment visits. The cost of a sign interpretor for this number of visits would greatly exceed all total costs I would charge, prior to considering expenses, for the orthodontic service I am providing.

I have never been asked to provide this service before. If rules and regulations exist, could I be given the existing laws along with the status number and a copy of the same.

Please, I wish to be informed of individual's, patient's, doctor's and small businessman's rights. I have been referred to you for assistance.

Thank you in advance for your time and consideration.

Sincerely,

Kenneth M. Hrechka, DDS
KMH/ms
DIPLOMATE, AMERICAN BOARD OF ORTHODONTICS
01-03619

FEB 16 1995

XX
West Des Moines, Iowa XX

Dear XX

This is in response to your letter regarding the requirements of title II of the Americans with Disabilities Act (ADA).

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities that have rights or responsibilities under the Act. Pursuant to that authority, this letter provides informal guidance to assist you in understanding the ADA. However, this technical assistance does not constitute a legal interpretation of the statute, and it is not binding on the Department.

Your letter asks, first, whether title II of the ADA permits a public school district to relocate a special education class containing a number of students with physical disabilities from an inaccessible building to a newer accessible building. Title II of the ADA prohibits public entities, including public schools, from discriminating on the basis of disability. A public school district may not afford students with disabilities opportunities that are not equal to the opportunities afforded to other students. In addition, a public school district must operate each of its programs so that, when viewed in its entirety, the program is accessible to individuals with disabilities.

Title II's program access requirement does not require a public entity to make each of its facilities physically accessible, as long as the program is accessible when viewed in its entirety. However, in determining which structures must be altered to provide physical accessibility, the equal opportunity

requirement also applies. Therefore, title II may permit relocation of a special education class to an accessible facility if the accessible facility provides opportunities and benefits that are equal to the inaccessible facility to which the students were originally assigned. In assessing the equality of the two facilities, the school district must consider such aspects as the

cc: Records, Chrono, Wodatch, Hill, FOIA, MAF
n:\udd\hille\policylt\XX

01-03620

types of programs and facilities offered and the distance from the student's homes.

Your letter next asks whether title II permits a school district to relocate an individual student from an inaccessible school to an accessible school within the district. Again, the program access and equal opportunity requirements of title II apply. Program access will permit such relocation in lieu of alterations to the inaccessible school if the accessible school provides opportunities and benefits that are equal to those of the inaccessible school.

In both situations described in your letter, if the school district is required to undertake structural alterations or other measures to provide program access, it is only required to do so to the extent such measures do not constitute a fundamental alteration of its program or an undue financial or administrative burden.

Public education of individuals with disabilities is also regulated under Section 504 of the Rehabilitation Act of 1973 and the Individuals with Disabilities Education Act (IDEA). Therefore, those statutes may also affect your school district's obligations toward students with disabilities.

I hope that this information is helpful to you.

Sincerely,

John L. Wodatch
Chief
Public Access Section

01-03621

FEB 16 1995

XX
San Antonio, TX XX

Dear XX

This letter is in response to your recent letter concerning the "Meals-on-Wheels" program. You expressed concern that the program is limited to elderly people and is not available to individuals with disabilities who are not elderly.

The Americans with Disabilities Act (ADA) authorizes the Department of Justice to provide technical assistance to individuals and entities that have rights or responsibilities under the Act. Pursuant to that authority, this letter provides informal guidance to assist you in understanding the ADA. However, this technical assistance does not constitute a legal interpretation of the statute and it is not binding on the Department.

The ADA is a civil rights statute that prohibits discrimination on the basis of disability. Title III of the ADA requires public accommodations to ensure that no individual with a disability is denied an equal opportunity to participate in its activities or to benefit from the goods, services, or advantages

that it offers because of that individual's disability. Nothing in the ADA precludes providing special benefits, similar to a "Meals-on-Wheels" program, for individuals with disabilities or groups of individuals with disabilities. However, the ADA also does not prohibit the operation of a program designed to serve only elderly people, as long as the program benefits are offered equally to senior citizens who have disabilities and those who do not.

cc: Records, Chrono, Wodatch, Blizard, FOIA, Friedlander
n:\udd\blizard\adaltrs\XX \young-parran

01-03622

I hope that this information is helpful to you.

Sincerely,

John L. Wodatch
Chief
Public Access Section

FEB 16 1995

XX

XX
XX
Cincinnati, Ohio XX

Dear XX

This is in response to your letter regarding the Americans with Disabilities Act (ADA). You have asked whether the ADA would require medical care providers to require their employees to refrain from wearing fragrances when they are providing services to a person who has multiple chemical sensitivities.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities that have rights or responsibilities under the Act. Pursuant to that authority,

this letter provides informal guidance to assist you in understanding the ADA. However, this technical assistance does not constitute a legal interpretation of the statute, and it is not binding on the Department.

A medical care facility, such as the University of Cincinnati Medical Center, may be covered under either title II or title III of the ADA. Title II prohibits discrimination on the basis of disability by State and local government entities. Title III prohibits such discrimination by places of public accommodation and commercial facilities.

Both title II and title III require covered entities to make reasonable modifications to policies, practices, and procedures when such modifications are necessary to avoid discrimination against persons with disabilities. Use of fragrances is usually a matter of personal choice by individual employees, rather than a business or employment policy. In most circumstances, it would not be "reasonable" to require an employer to regulate such personal choices by its employees.

cc: FOIA

01-03624

I hope this information is helpful to you and fully responds to your inquiry.

Sincerely,

John L. Wodatch
Chief
Public Access Section

01-03625

XX
XX
Cincinnati OH XX
XX

November 28, 1994

United States Department of Justice
Title III, ADA
P.O. Box 66738
Washington, D.C. 20035-6738

Dear Sir or Madam:

Enclosed is a letter which I recently sent to the University of Cincinnati Medical Center due to a lack of any effort on their part to accommodate my special needs.

I am disabled due to Multiple Chemical Sensitivity which I developed after years of exposure to solvents while in the printing business. Due to this condition, I become very ill when exposed to fragrances, tobacco odors, chlorine, Phenol, petroleum products and many other Volatile Organic Compounds.

I am a very reasonable person and realize that VOC's are necessary for many businesses to provide the products and services that keep our economy going. However, to request personnel of a specific department to refrain from wearing fragrances on one a specific day so that a person with MCS can have access to medical care, and to be mocked is reprehensible.

Please advise if access to medical care is covered under the Americans with Disabilities Act, and if asking medical providers to have their personnel to refrain from using fragrances on a specific day that services would be provided
to a MCS sufferer is an unreasonable request.

Sincerely,
XX
XX

01-03626

XX
XX
Cincinnati OH XX
XX

November 16, 1994
University of Cincinnati Medical Center
Mr. Jack Cook, CEO

234 Goodman Street, ML 0700
Cincinnati, Ohio 45267

Dear Mr. Cook:
I write today out of concern for all patients with disabilities having a need for access to medical services at your facilities. The perception of those being disabled and needing some special accommodations often seems to be limited to those restricted to wheel chairs or without sight; disabilities that one can be aware of quickly and visually. There are many other cases when individuals are in need of special services or accommodations that may not be so apparent. These disabilities include, but are not limited to, persons with speech problems, heart and breathing problems, which may be accommodated in most instances with a minimum of courtesy and inconvenience.

In addition to normal inhalant allergies and asthma that are suffered by many, I am disabled due to a condition most frequently called Multiple Chemical Sensitivity Syndrome, (MCS). Individuals with this condition have strong reactions to chemical exposures, usually Volatile Organic Compounds, (VOC's), which may cause a variety of symptoms including respiratory difficulties, raising of blood pressure, coughing, choking, gagging, vomiting, numbness & pains in extremities or torso, dizziness, and mental confusion along with more typical allergic symptoms. Common irritants which effect me are; perfumes and other fragrances; exhaust and petroleum products; smoke odors, active or residual, from cigars, cigarettes and fireplaces; aerosol cleaners and propellants; cleaning products including phenol and pine tar products; chlorine; alcohol; new carpeting and composite wood products. Some of these I will agree are very hard to avoid and eliminate from all environments, however irritants such as fragrances can and should be easy to avoid for allergic and irritated patients in a medical setting.

Although I have had a multitude of milder problems while attempting to receive medical care which I will lightly elaborate on a little later, the main incident which has caused me to write concerns the Oral Surgery Department and a total disregard for my needs as a disabled patient.
On the afternoon of September 27, 1994, after being advised by my dentist that I should have a tooth removed by an oral surgeon, I called the Oral Surgery Department in the Medical Subspecialties Building and explained my situation and need to have the area fragrance free for the day I would have Oral Surgery.
I truly felt that since you were a hospital setting where I had received most of my medical attention over the past few years, and all departments would have access to my medical records, that some attempt to accommodate me would be routine.
01-03627
I was promptly told in a very nasty, huffy tone, that not being able to wear perfume would be a violation of the employees personal rights. I responded to her attitude with a statement that; "I believed the Americans with Disabilities Act would consider not being able to wear perfume on one day

after being requested for a specific patient a reasonable accommodation. I felt this was especially so since this was a medical necessity, not just an inconvenience." I was quickly promised that the department head would call me back later that afternoon.

On Thursday, September 29, 1994, after my appointment at the allergy/asthma clinic on the third floor, I went down to the Oral Surgery Department to attempt to explain further what the problem was, and try to get an appointment to have my tooth removed. Upon my entry and initial start of explanation to the two receptionists, one being a black woman and one being a white woman, the black woman immediately left stating; "I'm going to get out of here!" I proceeded to try to talk to the white woman in an atmosphere of overpowering fragrance that was not relieved by the handkerchief I was trying to use to filter the air as I would inhale. Her attitude continued to prevail, as I was choking and gagging in an effort to talk to her. She finally said she would have her chief call me the following day, stating a note was still attached to her computer. Her "chief" was said to have been out for meetings the past few days which was why I had not been called back as previously promised. As I left the reception area and started to try to breathe non-contaminated air, I continued to choke and had to run to the restroom to vomit & catch my breath. Once I regained most of my composure, I went back upstairs to have a nurse in the allergy clinic check my BP and Peak Flow for comparison to before the exposure and then I left.

As of this date, I have still not received any type of contact, appointment or explanation, from anyone in the UCMC Oral Surgery Department.
In my frustration, I started calling other area Oral Surgeons the next week with an explanation of my problem and found one where a nurse was also fragrance sensitive. I had my tooth removed at his office without any additional problems.

What makes this experience even more frustrating is the fact that I have been told by other hospital employees on numerous occasions that hospital policy states perfumes are not to be worn, especially where anesthesia is in use because so many people have problems when under the effect of an anesthetic. A previous situation that was frustrating occurred on July 19, 1994, and involved the Hand Surgery Department and the Same Day Surgery Department at Holmes.

I had been scheduled for Carpal Tunnel surgery on my left wrist and had taken great pains to explain to the nurse the problems I have when exposed to perfume
and alcohol when interviewed on the phone prior to the scheduled surgery date. I also requested if at all possible to use zephryne or iodine if a topical cleaning agent was needed and to have everyone refrain from wearing perfume the morning of the surgery. After assuring me that perfume was already a no-no in a surgical area anyway, she said she would make extra notes to be sure no-one wore anything the day of my surgery. She also had me call the surgeon's

office to go over my problems and medications with his office. I spoke directly with the surgeon's nurse, after which she spoke to the doctor and called me back stating everything would be OK.

On the morning of the surgery, my first exposure that caused problems was when the assisting surgeon entered with a strong residual odor of tobacco smoke on him. He assured me that after he scrubbed and wore a mask, I wouldn't have a problem. Shortly after this, the scrub nurse came

in to take me into the OR with a very strong odor of perfume that caused immediate breathing problems. I had to ask her three times to leave because I couldn't breathe with the irritation of her perfume. Notations had been made on my chart, however this nurse had apparently been off for a few days and had not been advised. The lead surgeon then came in and canceled my surgery due to his fear of my going into respiratory distress, and the fact that I still had feeling in my fingertips most of the time.

I had actually been a little relieved for the cancellation of the surgery since I didn't feel all of my pains & cramps in my arms and hands are related to carpal tunnel. Many of them involve my forearms and upper arms and seem to frequently occur after an exposure. Although frustrated that a seemingly simple request for accommodation had not been considered important enough to see that it was carried out. The most frustrating part of this incident was the fact that billings were still sent out to Medicare and Medicaid for services that were aborted due to hospital errors.

I am also frustrated that some personnel in the Allergy/asthma Department are allowed to wear perfumes and use scented lotions. There are many others in the waiting room each Thursday with allergies that have reactions to fragrances. Their reactions may not be as severe as mine, but it's enough that they remark about it in the waiting area.

On one hand I would like to commend you on making the entire facility smoke free, however on the other hand to allow smoking just outside the doors of the buildings also presents a problem for those irritated. This is especially so for the walkway between the Main Clinic building and the Medical Subspecialties Building. Additionally, allowing vehicles to idle just outside the sliding doorways near the Outpatient Pharmacy is a problem on a regular basis when it's cool outside.

Please realize, I have to take great steps in my routine daily activities to avoid exposures that cause problems, and I always have to be aware of how I can escape to clean air should a person with cologne or perfume enter an area. I also realize that I cannot force the entire world to adapt just for me, so that I may function and travel about without risk of exposure. However, there are many individuals that have similar reactions or allergies to fragrances, and medical care is one area that should make that extra little effort to accommodate all disabilities.

I still can't believe the attitude that was displayed by the woman in the Oral Surgery Department, or that the some individuals in the Allergy Department are permitted to wear fragrances regularly when they are very aware of the problems it may cause.

Sincerely,
XX

cc Department Head, UCMC Oral Surgery Dept.
United States Department of Justice, re: ADA Title III

01-03629

FEB 17 1995

xx

XX
Tampa, Florida

Dear XX

This letter is in response to your inquiry about application of the Americans with Disabilities Act (ADA) to U.S. possessions. I apologize for the delay in our response.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist you in understanding the ADA's requirements. However, it does not constitute a legal interpretation or legal advice, and it is not binding on the Department of Justice.

Your letter inquires about whether title III of the ADA extends to the Commonwealth of Puerto Rico and the Virgin Islands. Title III, which prohibits discrimination on the basis of disability by private entities that own, operate or lease places of public accommodation, does apply to entities located in the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands. A copy of the regulation implementing title III of the ADA is enclosed for your information.

I hope this information is useful to you in understanding the requirements of the ADA.

Sincerely,

Janet L. Blizard
Supervisory Attorney

Enclosure

cc: FOIA

01-03630

June 21, 1994

U.S. Department of Justice
Civil Rights Division
Washington, D.C.

To Whom it may Concern:

I have a question concerning the Public Accomodations Section of the Americans with Disabilities Act (ADA).

Do the provisions of this law apply to the various U.S. possessions, i.e., Puerto Rico, The Virgin Islands, etc.? If so, there are a few places in these Islands that are not in compliance with this law.

I thank you for any assistance and clarification that you can offer.

Sincerely,

xx
XX
Tampa, Fl.

01-03631

DJ 202-PL-952

FEB 21 1995

John H. Chase, Esq.
General Counsel
Office of the Vermont Secretary of State
109 State Street
Montpelier, VT 05609-1101

Re: Inquiries on Vermont Professional Licensing Applications

Dear Mr. Chase:

This letter responds to your inquiry regarding the content of professional licensing applications in your State. Specifically, you have requested guidance regarding whether questions included on the Vermont Board of Nursing's licensure application form are consistent with the Americans with Disabilities Act, 42 U.S.C. SS 12101-12213 ("ADA"). According to your letter, the Office of the Vermont Secretary of State supports 33 other licensing boards which utilize similar inquiries.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist you in understanding the ADA's requirements. However, it does not constitute a legal interpretation or legal advice and it is not binding on the Department of Justice.

Two forms were appended to your letter. The first, labelled "State of Vermont Renewal Application," contains five questions. The first three questions pose no issue under the ADA. We recommend, however, that Questions 4 and 5 be revised or eliminated.

Question 4 and 5 now read:
[During the previous 2 years, have you]
4. Had a problem with substance abuse?
5. Received care for a physical or mental health problem that may cause a threat to public safety during nursing practice?

cc: Records, Chrono, Wodatch, Foran, FOIA, MAF
Udd:Foran:Vermont.ltr

To be completely consistent with the ADA, we would recommend that Question 5 be revised to read as follows:

[During the previous 2 years, have you]

5. Had, or do you now have, a physical or mental health problem that may cause a threat to public safety during nursing practice?

We recommend that Question 4 be eliminated. In its place, you may wish to substitute one or more inquiries from the attached list of questions drafted by various licensing boards and revised by the Department to comply with the ADA.1

The second form appended to your letter is untitled, but bears a caption at the top that states, "THIS PAGE IS NOT SUBJECT TO PUBLIC DISCLOSURE." There are six questions on this form, the first four of which pose no issue under the ADA. Question 5 should be revised, however, and Question 6 eliminated. Presently, Question 5 reads:

Have you had a mental, emotional or physical disability the nature of which would interfere with your ability to practice nursing competently?

The question should be revised to ask:
Do you have or have you had a mental, emotional or physical

disability the nature of which would interfere with your current ability to practice nursing competently?

Question 6 is similar to Question 5 on the first form, and like that inquiry, should be eliminated.

1 We hope that the list of questions provides you with useful examples (this list constitutes the significant portion of the conference handout referred to in your letter). Various licensing boards approached the Department for assistance in revising their professional licensure applications consistent with the ADA. Most of the questions focus on applicants' behavior and conduct, while others ask whether applicants have any condition that would currently impair their ability to practice the profession in question. You will note that some of the questions deal specifically with the practice of law. While we do not endorse these as "model questions," we have concluded that the questions do not on their face violate the ADA.
01-03633

I hope that this is helpful to you in your efforts to promulgate professional application forms consistent with the ADA. Please feel free to forward any additional materials on which you wish the Department to provide technical assistance, and to call me at (202) 616-2314 with any questions you may have.

Sincerely,

Sheila M. Foran
Attorney
Public Access Section

01-03634

SAMPLE QUESTIONS

Q. Do you have any condition or impairment that currently impairs your ability to practice law? If the answer to the above is yes, please set forth the specifics, including dates, the name and the address of any treating physician or mental health counselor.

"Medical condition or impairment" means any physiological, mental or psychological condition, impairment or disorder, including drug addiction and alcoholism.

"Ability to Practice Law" is to be construed to include the following:

a) The cognitive capacity to undertake fundamental lawyering skills such as problem solving, legal analysis and reasoning, legal research, factual investigation, organization and management of legal

work, making appropriate reasoned legal judgments, and recognizing and resolving ethical dilemmas, for example.

b) The ability to communicate legal judgments and legal information to clients, other attorneys, judicial and regulatory authorities, with or without the use of aids or devices; and

c) The capability to perform legal tasks in a timely manner.2

Q. Have you ever been involved in, reprimanded for or disciplined by an employer or education institution for misconduct including:

a. acts of dishonesty, fraud, or deceit;
b. lying on a resume, or misrepresentation;

2 The Board understands that mental health counseling or treatment is a normal part of many persons' lives and such counseling or treatment does not of itself disqualify an applicant from the practice of law. Furthermore, the Board does not wish to pry into the private affairs of applicants. However, the Board is obligated to determine whether an applicant is physically and mentally fit to practice law and therefore, must inquire into such matters to the extent necessary to make such determination. The Board is not seeking disclosure of counseling or treatment for a dramatic or upsetting event such as death, break-up of a relationship or a personal assault, even if such event does affect the applicant's ability to practice law for a limited time.

c. academic misconduct, including such acts as cheating;
d. misconduct involving student activities;
e. theft;
f. excessive absences;
g. failure to complete assignments in a timely manner;
h. actions in disregard of the health, safety and welfare of others;
i. sexual harassment;
j. neglect of financial responsibilities.

If the answer to any of the above is yes, please set forth the specifics, including date of the action; by whom taken; the name and address of the employment supervisor or academic advisor involved, if applicable and any person involved in the

investigation of your conduct.

Q. Have you ever been terminated or granted a leave of absence by an employer or withdrawn from an education institution?

If the answer to the above is yes, please set forth the specifics, including date of the action; by whom taken; the name and address of the employee's supervisor or academic advisor involved.

Q. Are you currently engaged in the illegal use of drugs?
"Illegal Use of Drugs" means the use of controlled substances obtained illegally as well as the use of controlled substances which are not obtained pursuant to a valid prescription or taken in the accordance with the directions of a license health care practitioner.

"Currently" does not mean on the day of, or even the weeks or months preceding the completion of this application. Rather, it means recently enough so that the condition or impairment may have an ongoing impact.3

3 You have a right to elect not to answer those portions of the above questions which inquire as to the illegal use of controlled substances or activity you have reasonable cause to believe that answering may expose you to the possibility of criminal prosecution. In that event, you may assert the Fifth Amendment privilege against self-incrimination. Any claim of Fifth Amendment privilege must be made in good faith. If you choose to assert the Fifth Amendment privilege, you must do so in writing. You must fully respond to all other questions on the application. Your application for licensure will be processed if you claim the Fifth Amendment privilege against self-incrimination.

Q. In the past year, have you illegally used drugs? If yes, provide details. (Illegal use of drugs means the unlawful use of one or more drugs and/or the unlawful possession or distribution of drugs. It does not include the use of drugs taken under supervision of a licensed health care professional, or other uses authorized by federal law provisions.)

Q. In the past year, have you ever been reprimanded, demoted, disciplined, terminated or cautioned by an employer? If so, please state the circumstances under which such action was taken, the date(s) such action was taken, the name(s) of persons

who took such action and the background and resolution of such action.

Q. Since the age of 18, or within the last five years (whichever period is shorter), have you ever been reprimanded, demoted, disciplined, cautioned or terminated by an employer for alleged tardiness, absenteeism or unsatisfactory job performance in your employment? If so, please state the circumstances under which such action was taken, the date(s) such action was taken, the name(s) of persons who took such action and the background and resolution of such action.

Q. Have you ever been accused of mishandling, mismanaging, or misappropriating the money or property of others? If so, please state the date of such accusations, the person(s) making such accusations, the specific accusations made, and the background and resolution of such accusations.

Q. In the past year, have you suffered memory loss or impaired judgment for any reason? If so, please explain in full.

Q. In the past year, have you failed to meet any personal or business related deadlines for any reason? If so, explain in full.

Office of the Vermont Secretary of State
Redstone Building, 26 Terrace Street

Mall: 109 State Street
Montpeller, VT 05609-1101

Donald M. Hooper
Secretary of State

Claudia Horack Bristow
Deputy Secretary of State

21 November 1994

Sheila Foran, Attorney
U.S. Department of Justice
Civil Rights Division, Public Access Section
Post Office Box 66738
Washington, DC 20035-6738

Dear Ms. Foran:

I heard you speak at this year's CLEAR Conference in Boston, on the topic of ADA compliance. At one point you remarked that your office was able to provide technical assistance on the phrasing and subject of the questions licensing boards ask on application and renewal forms.

I've enclosed copies of the questions used by the Board of Nursing in the past. Perhaps you could identify the ones most likely to be objectionable, and suggest alternatives. At the conference, you referred to a handout which unfortunately was not available. I'd appreciate a copy of that handout, assuming it would provide guidance to the Board of Nursing.

In addition to the Board of Nursing, this office supports 33 other professional licensing boards. Nearly every one uses the kind of questions found on the Nursing Board forms. I'm eager to revise as many of those questions as need revision, and I look forward to your response.

Sincerely,

John H. Chase
General Counsel

Enclosure

cc: Anita Ristau, Executive Director

01-03638

STATE OF VERMONT
RENEWAL APPLICATION

I hereby apply for the renewal of my:

Current Expiration Renewal Period Covering Renewal Fee License #

Renewals postmarked after the expiration date must include a late fee of $25.00

* The fee of $40.00 represents the renewal fee of $35.00 and a $5.00 assessment
in accordance with 3 V.S.A. S 124 (b)

** Make any changes to your address in the blank space above.

Please check (X) if you wish inactive status (no fee required):

INFORMATION NEEDED

Circle yes or no, a yes requires an explanation * during the previous 2 years, have you:

1. Applied for and been denied a nursing license in another state, or had a nursing license suspended? Yes or No
2. Been subject to a disciplinary proceedings before a state board of nursing? Yes or No
3. Been convicted of a criminal offense, other than minor traffic violations? Yes or No
4. Had a problem with substance abuse? Yes or No
5. Received care for a physical or mental health problem that may cause a threat to public safety during nursing practice? Yes or No

* If necessary, additional pages may be attached.

ADDITIONAL QUALIFICATIONS FOR RENEWAL

Respond to part A or part B

A. I have practiced nursing as defined in Chapter 4, Rule II, Administrative Rules, for at least: **
120 days (960 hrs) in the last 5 years, or 50 days (400 hrs) in the last 2 years
at
(Name of specific Agency/Institution) (City/State) (Position)

OR

B. I have completed a Board approved program for re-entry into nursing within the past five years
at
(Program Sponsor (School, Institution, or Person) (City/State) (Date)

** If private duty position - please note name, address of each patient(s), number of days and hours for each; diagnosis; nursing care provided; physician's
name and address. Attach additional papers if needed.

YOU MUST COMPLETE AND SIGN THE REVERSE SIDE OR YOUR LICENSE WILL NOT BE RENEWED

THIS PAGE NOT SUBJECT TO PUBLIC DISCLOSURE

Section III

APPLICANT'S NAME: Last First MI

Social Security # / / The disclosure of your social security number is mandatory, pursuant to 42 U.S.C. Section 405 (c)(2)(c), and will be used by the Vermont Department of Taxes in the administration of tax laws to identify persons affected by such law.

1) Have you previously applied for a license in Vermont? Yes No
If yes: under what name?

2) Have you ever applied for and been denied a nursing license in another state? Yes No

3) Do you now hold or have you ever held a Nursing License that has been subject to disciplinary proceedings before any state licensing authority or had a license revoked or limited in any way? Yes No

4) Have you ever been convicted of a criminal offense, other than a minor traffic violation? Yes No

5) Have you had a mental, emotional or physical disability the nature of which would interfere with your ability to practice nursing competently? Yes No

6) Have you ever had a problem with substance abuse? Yes No

IF THE ANSWER TO QUESTIONS (#2 thru 6) IS YES, PLEASE IDENTIFY BY NUMBER AND EXPLAIN FULLY USING SEPARATE SHEETS OF PAPER, AS NEEDED.

Section IV
STATEMENT OF APPLICANT

I hereby certify that everything in this application is true and accurate to the best of my knowledge.

Date Signature of Applicant

APPLICANT:

Attach two recent 2 x 2
passport-type pictures of

head and shoulders,
autographed with full name

Vermont Board of Nursing, 109 State Street, Montpelier, VT 05609-1106
Rev. 5/92

01-03640

FEB 22 1995

The Honorable Roscoe G. Bartlett
Member, U.S. House of Representatives
15 East Main Street, Suite 110
Westminster, Maryland 21157

Dear Congressman Bartlett:

This letter is in response to your inquiry on behalf of XX inquired whether rental car companies must provide vehicles equipped with steering knobs upon request under the Americans with Disabilities Act ("ADA").

Title III of the ADA requires rental car companies to remove transportation barriers that prevent persons with disabilities from being able to use rental cars, when doing so is readily achievable. An act of barrier removal is readily achievable when it is easily accomplishable and able to be carried out without much difficulty or expense. This analysis depends on several factors, including the nature and cost of the action, the overall financial resources available, and legitimate safety requirements needed for safe operation of the vehicle.

Rental car agencies have argued that some types of mounting hardware used to attach spinner knobs to steering wheels damage the steering wheels, rendering the cars less valuable upon resale. Others have argued that some mounting devices interfere with the proper deployment of drivers side air bags which are installed inside the steering column. Please refer to the enclosed Consumer Advisory, released on September 15, 1994, by the National Highway Traffic Safety Administration. In either case, it would not be readily achievable to equip a rental vehicle with a spinner knob.

To the extent that mounting devices are available that do not damage the steering wheel or interfere with air bag deployment, however, rental car agencies are generally required to provide spinner knobs for persons with disabilities, when

cc: Records; Chrono; Wodatch; Breen; Mobley; McDowney; MAF; FOIA
udd\mobley\congress\bartlett

01-03641

provided with sufficient notice. Spinner knobs are relatively inexpensive, easily installed, and transportable. Where spinner knobs are required by title III, companies cannot impose a surcharge for their use. Instead, the cost should be treated as an overhead expense.

I hope this information is useful to you in responding to your constituent.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

01-03642

Congress of the United States
House of Representatives
Washington DC 20515-2006

January 12, 1995

U.S. Department of Justice
Civil Disabilities Act
Public Access Department
P.O. Box 66738
Washington, D.C. 20035-6738

Dear Public Access Department:

Please find enclosed a copy of a letter from XX regarding steering knob access from rental car agencies. As you can see from the enclosures, XX was involved in an accident, and needed to rent a car. According to XX , he was denied access because the rental agencies did not have a vehicle with steering knobs. He has asked that I bring this matter to your attention.

Any assistance you may provide XX would be greatly appreciated. Please reply to 15 E. Main Street, Suite 110, Westminster, MD 21157, Attention: Deborah Hamrick.

Sincerely,

Roscoe G. Bartlett
Member of Congress

RGB:dlh
Enclosure

12-7-94

Dear Mr. Bartlett

On Saturday, November 26
I was coming down 140 from Westminster. I turned left onto Gorsuch Rd. at McDonald's. It was about eight o'clock and pitch black. After going 200-300 yds, a large doe decided to cross the road and hit my car.

My insurance paid for the damage but trying to get a rental car with a steering knob was a real predicament. Rental car agencies have cars for the disabled but they only deal with the ignition and brakes.

Medically I'm classified as a walking quadraplegic. I walk with 2 canes. Both legs were broke (left leg shattered from knee down.)

I took Driver's Education at Easy Method and the instructor recommended the steering knob. This feature allows me to make all my turns with the right arm. I really appreciate your consideration and help.

Thanks
XX

01-03644

FEB 28 1995

The Honorable Bob Graham
United States Senator
Post Office Box 3050
Tallahassee, Florida 32315

Dear Senator Graham:

This letter is in response to your inquiry on behalf of your constituent, XX , regarding an alleged lack of wheelchair accessibility in the attractions at Walt Disney World (Disney) in Orlando, Florida. Specifically, XX complains that his wife, who uses a wheelchair, was prevented from enjoying several attractions at Disney because the attractions were not accessible to individuals who use wheelchairs. XX alleges that several of these attractions had been renovated after the effective date of the Americans with Disabilities Act (ADA), and that some attractions that were not renovated could easily be made accessible to individuals who use wheelchairs. Finally, XX was concerned about Disney's imposition of certain policies that limited use of some rides to individuals who can walk.

The ADA requires public accommodations like Disney to provide "full and equal enjoyment" of their goods and services to individuals with disabilities. 42 U.S.C. S 12182 (a). Among the law's many provisions is a carefully crafted process for the development of physical access to places of public accommodation. The ADA places a relatively modest burden on existing facilities, requiring that they remove barriers to access where it is readily achievable, or "easily accomplishable and able to be carried out without much difficulty or expense." 42 U.S.C. S 12182(2) (A) (iv); 28 C.F.R. S 36.304(a). When a place of public accommodation performs alterations or when it undertakes new construction, however, the law requires strict adherence to specific standards that are intended to provide maximum physical access for persons with disabilities. 42 U.S.C. S 12183(a) (2); 28 C.F.R. S 36.401 (new construction), 28 C.F.R. S 36.402 (alterations), 28 C.F.R. S 36.406, pt. 36, App. A (Standards for Accessible Design). Entities performing alterations that are more than mere cosmetic changes must ensure that any altered areas are readily accessible to and usable by persons with

disabilities. 42 U.S.C. S 12183 (a) (2); 28 C.F.R. S 36.402. In addition, if the alterations involve areas of primary function, entities must spend up to 20% of the costs of the alterations making the path of travel to the altered areas accessible. 42 U.S.C. S 12183 (a)(2); 28 C.F.R. S 36.403. A "primary function" is a major activity for which the facility is intended and includes areas such as the lobby of a bank, the dining area of a cafeteria, and meeting rooms. 28 C.F.R S 36.403(b). The "path of travel" to an altered area is defined as an unobstructed passageway from the entrance to the facility to the altered areas, and includes areas such as restrooms, telephones, and drinking fountains. 28 C.F.R. S 36.403(e).

While the Standards do not specifically address some elements of amusement park rides, other provision of the title III regulation may require purchase or modification of equipment in order to ensure full and equal employment of the facilities and to provide an opportunity to participate in the services and facilities. 28 C.F.R. SS 36.201 and 36.202. The barrier removal requirements would also apply.

Several of the attractions identified by XX are existing, and others, allegedly, have been altered. Without a thorough investigation into the nature of the changes that need to be made in order to provide access to the existing rides, it is impossible to determine whether Disney has violated the section of the law mandating "readily achievable" barrier removal. Similarly, the United States cannot determine whether Disney has violated the alterations provisions, short of an investigation of the date on which alterations were undertaken, the nature of the alterations, and a determination of whether the alterations, if more than cosmetic, involved areas of primary function.

Finally, XX complains that his wife was not permitted onto a ride because of Disney's conclusion that she would be unable to evacuate the ride in the event of its breakdown. Public accommodations are required by the law to make all reasonable modifications in their policies, practices and

procedures that are necessary to ensure that individuals with disabilities enjoy their goods and services. 42 U.S.C. S 12182 (b)(2)(A)(ii); 28 C.F.R. S 36.302. Entities are, however, permitted to establish neutral "eligibility criteria" that are necessary for the safe operation of the place of public accommodation. 28 C.F.R. S 36.301(b). Safety requirements must be based on actual risks, and not on stereotypes or generalizations about individuals with disabilities. 28 C.F.R. pt. 36, App. B at 605. A determination of whether the alleged criteria for the rides are discriminatory would require investigation into the particular circumstances involved.

At this time, the Department has decided not to open an investigation of XX complaint. I am enclosing a copy of this Department's regulation implementing title III of the ADA and the Technical Assistance Manual that was developed to assist individuals and entities subject to the ADA to understand the requirements of title III. I hope that these materials and the discussion herein provide guidance to your constituent.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

XX
Oldsmar, FL XX
XX

December 24, 1994

Architectural & Transportation Barriers
Compliance Board
1331 F Street NW
Suite 1000
Washington, DC 20004-1111

Good Day:

This is to issue a complaint about Walt Disney World, in Orlando, reticence to make their facilities wheelchair accessible.

My wife, XX , is a paraplegic and, of course, unable to stand or walk, and must use a wheelchair for mobility. Other than being paraplegic, she is in excellent health. In February of 1993, we purchased an Annual Pass for Walt Disney World in Orlando. At that time we realized that the Magic Kingdom, the oldest theme park, would be least accessible for someone in a wheelchair. Disney-MGM Studios, the newest park, would be most accessible, and Epcot would fall somewhere in between. Our subsequent visits to the park confirmed the aforementioned.

Although we visited the park many times, we decided to return to the Magic Kingdom in early December to see the new attractions at Tomorrowland. Several of the rides in this section had been closed for upgrading, plus a new ride, the Extra "Terrorestrial" Alien Encounter were all due to open in December, 1994. Once we were in

the park we learned their newest Terrorestrial ride would be delayed in opening until February, 1995.

Since we were in the Tomorrowland area we decided to try some of the rides which had been renovated and were now opened. We tried to go onto the Tomorrowland Transit Authority but we were told that unless my wife can walk up an ascending ramp, to a moving turntable, she would not be allowed to go on this ride. Moreover, unless she could walk 2 1/2 or 3 1/2 miles in the event the ride stops functioning she is prohibited from participating on this ride. We have gone on many slow moving rides, at Disney, whereby the ride was stopped to enable her to transfer. I wonder what would have happened on Spaceship Earth if the ride stopped at the top of the Sphere, or if any of the other rides we were on were forced to a standstill. There is no way she could have walk away from any of these rides. Therefore, it follows using this logical approach that she should not be allowed on most of the rides in the park, or maybe just don't allow her in the park. When I tried to explain this to the attendants, at the Tomorrowland Transit Authority, I was told they were sorry but she cannot get on the ride.

We then went over to the Astro-Orbiter and the attendant told us unless she can move the bottom portion of her body, it would not be feasible for her to wiggle into a rather tight opening to enter

01-03648

DISNEY-MGM STUDIOS
Great Movie Ride
Backstage Studio Tour
Plus all other shows in a theatrical format

The reason Disney-MGM Studios is most accessible is simply because the preponderant number of attractions are presented in a theatrical format.

I do not understand why the new rides, or the renovated rides have not been made wheelchair accessible. I thought the American Disability Act required new construction to accommodate wheelchairs. Furthermore, if the Act does not require new or renovated attractions to accommodate wheelchairs, don't you think the premier attraction in our country should extend themselves to help those less fortunate. The following attractions have been renovated or built since the ADA act and are not wheelchair accessible:

Tomorrowland Transit Authority
Astro-Orbitor
Skyway
Splash Mountain
Spaceship Earth
The Twilight Zone Tower of Terror

We have learned to live and travel within the confines of my wife's disability. Many attractions discount their fees because we are limited to what we can see and do. When an attraction charges top dollars for entry, pays their CEO an annual salary of two hundred million dollars don't you think they should extend themselves to those who must endure life from a restrictive prospective. Maybe Disney is so big and important that they can flaunt the law of the land, and relegate the disabled to second class citizens.

It has reached the time that renting a wheelchair at a nominal cost to the handicapped, or making some rides accessible to the handicapped is just not enough. We are tired of hand-outs. We want, when it is possible, to have the same rights and pleasures as able body people. Disney's denouement to those in a wheelchair must end, and they should voluntarily or forceable make their attr actions accomodate those restricted to a wheelchair.

Cordially,

XX
cc: Walt Disney World
Tampa Tribune
WFLA-TV
National Spinal Cord Injury Association
Senator Bob Graham
Congressman Michael Bilirakis
Abilities Inc. of Florida
State Attorney General
The Honorable Eleanor Holmes Norton
Member, U.S. House of Representatives
815 15th Street, N.W., Suite 100
Washington, D.C. 20005-2201

Dear Congresswoman Norton:

This letter is in response to your inquiry on behalf of your constituent, XX , concerning her rights under the Americans with Disabilities Act of 1990 ("ADA"). XX , who states that she is "extremely overweight" states that Darrell's Barber Shop refused to provide service to her recently, telling her that she might break the barber chair.

Barber shops are subject to the nondiscrimination requirements of title III of the ADA. The ADA defines "disability" to include any physical or mental impairment that substantially limits one or more of an individual's major life activities, such as walking, seeing, hearing, speaking, breathing, learning, working, or caring for oneself. The

definition is a broad one, however, being overweight is generally not considered to be a disability that entitles an individual to protection under the ADA. Some courts have determined that an individual who is morbidly obese -- weighs either more that twice one's optimal weight or more than one hundred pounds over one's optimal weight -- may be entitled to the protections of the ADA, if an individual is substantially limited in a major life activity.

A review of the matter raised by XX indicates that there is insufficient information to determine whether she would be considered a person with a disability within the meaning of the ADA. In any event, while we would have authority under title III to investigate this matter, we could take enforcement action only where there is a pattern or practice of discrimination or discrimination involving an issue of general public importance. We have determined that action by the Department is not warranted in this matter.

01-03650

XX has other options, however, including contacting local authorities, disability rights groups, organizations that provide alternative dispute resolution services (such as arbitration or mediation), or contacting a private attorney. For your constituent's convenience, we have enclosed a list of organizations serving your area. These listings come from various sources, and our office cannot guarantee that they are current and accurate. These groups may, however, be able to refer XX to regional or national groups with a focus on the particular matter at issue here. Other contact options include the District of Columbia Bar Association and the Better Business Bureau.

You may also wish to inform XX that further

information is available through our Americans with Disabilities Act Information Line at (800) 514-0301.

I hope this information is useful to you in responding to your constituent.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

Enclosure

01-03651

Honorable Eleanor Holmes-Norton
Washington, D.C. Representative
815 15th St., N.W.
Washington, D.C. 20007

Dear Hon. Holmes-Norton:

On January 14, 1995 I placed a call to Darrell's Barber Shop to get an appointment for a haircut and eye brow arch. I spoke to the barber who cut my hair on December 10, 1994 XX and he told me to come in at 1:30 p.m. I arrived approx. 1:45 p.m. and sat while he was cutting a customer's hair. He finished with him approx. 2:05 p.m. at which time

a lady who came in after I did sat in XX chair. I was concern due to the fact I was next in line. XX came over to me and informed me that the owner requested that I not get my hair cut in his place because I might break his barber chair. I was not only shocked but hurt and humiliated. I ask XX why was he just telling me now and not on the phone when I called him, he replied by saying he didn't know at that time. He later informed that it was not of his doing it was at the owners request. XX then said he would come to my home after he get off around 5:30 p.m. and cut my hair and I gave him my address and phone number because my whole schedule was mess up so I asked that he would call me first but I never heard from him.

I am wondering why and how did the owner know I was coming if XX didn't inform him plus I believe the owner was in the shop cutting a little boy's hair at the time and did not approach me or XX and why did XX wait until he cut the customer's hair to tell me this?????

I am a African-American woman who is extremely overweight but I am still proud of who I am and at this time I am suffering a set back in emotion where I need my hair cut but I am experiencing a phobia of going into a barber shop or any hair establishment to receive services for fear of being humiliated. The most hurting factor of all, this is a BLACK Establishment.

I feel I was clearly discriminated, please can you help me???? Your immediate attention is needed in this matter.

I can be reached on XX all day every day.

Sincerely,
XX
XX

CC: Del Walters-Seven on your side
Oprah Winfrey
Dept. of Human Rights and Better Business
01-03652

JUN 15 1995

The Honorable Dianne Feinstein
United States Senator
1700 Montgomery Street, Suite 305

San Francisco, California 94111

Dear Senator Feinstein:

I am responding to your letter on behalf of your constituent, XX , who is inquiring about the application of the Americans with Disabilities Act (ADA) to the provision of accessible parking spaces at an existing place of public accommodation, and to local enforcement of laws pertaining to the provision of accessible parking spaces. Please excuse the delay in responding.

Title III of the ADA, which prohibits discrimination against persons with disabilities by public accommodations, requires the owners or operators of a place of public accommodation, such as a race track, to remove architectural barriers to access. If a public accommodation provides parking, the absence of accessible parking spaces is considered to be an architectural barrier that precludes independent use of the place of public accommodation by people with disabilities.

In removing architectural barriers, a public accommodation is required to comply with the ADA Standards for Accessible Design to the extent that it is readily achievable, that is, easily accomplishable and able to be carried out without much difficulty or expense. The requirements for accessible parking are contained in section 4.1.2(5) of the ADA Standards for Accessible Design, a copy of which is enclosed. If self-parking is provided for employees or guests of a facility, accessible parking spaces should be provided in compliance with the requirements of 4.1.2(5).

The ADA authorizes the Department of Justice to investigate alleged violations of title III. However, the ADA does not authorize the Department to pursue every complaint. The Department may seek judicial relief only in instances where there appears to be a pattern or practice of discrimination or where an issue of general public importance is involved. For cases that do not fall within those categories, the ADA relies on private

individuals to enforce their rights through litigation in Federal court. This prioritization of cases allows the Department to

focus its resources on cases that will have far-reaching effects, for example, by educating individuals and entities about their rights and responsibilities under the Act and by setting legal precedents that can make later cases simpler or even unnecessary.

Enforcement of local parking regulations is a matter governed by State or local law. The ADA does not contain provisions specifically requiring law enforcement officials to ensure that accessible parking spaces are occupied only by persons with disabilities. Decisions made by local law enforcement officials as to how to allocate scarce enforcement resources are a matter of local prosecutorial discretion that typically would not raise ADA concerns.

I hope that this information is helpful to you in responding to your constituent. As you requested, we are returning XX correspondence.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

Enclosures

01-03664

XX
SAN MATEO, CA 94402

April 6, 1995

The Honorable Dianne Feinstein,
U.S. Senator
1700 Montgomery Street, Suite 305
San Francisco, CA 94111

Dear Senator Feinstein,

I took my disabled brother, XX , to Bay Meadows Horse Racing Track in San Mateo last Friday night and we discovered that the handicapped spaces were filled with cars without DP plates or handicapped plaques. We called the San Mateo Police and Officer Michael Schlegel arrived promptly.

He stated that the parking spaces were not properly marked for handicapped parking because the law reads that there must either be a sign posted or the space must be outlined in blue markings, therefore he was unable to issue a citation.

We discovered that with the exception of a few spaces along the fence of the fairgrounds (which are some of the farthest spaces from the race track), there are no handicapped parking spaces at Bay Meadows. The spaces with the handicapped logo are apparently marked as such to allow the management to use those spaces for valet parking. This deception should be an illegal practice and it is without a doubt unethical.

It seems that Bay Meadows may be in violation of the Americans with Disabilities Act of 1990 but I have no idea of how such a law is enforced or interpreted. Any assistance that you could provide would be greatly appreciated.

Sincerely yours,

XX
cc: XX
Disabled Rights Advocates

Attachments

01-03655

JUN 15 1995

The Honorable Nancy L. Johnson
U.S. House of Representatives
343 Cannon House Office Building
Washington, D.C. 20515

Dear Congresswoman Johnson:

Your letter to the Equal Employment Opportunity Commission on behalf of your constituent, XX , has been referred to me for response. We apologize for the delay in responding.

XX letter questions a Connecticut State Department of Transportation decision to install wheelchair ramps at rural intersections as part of a project to replace old traffic lights. According to the article attached to XX letter, the Connecticut Department of Transportation believes such wheelchair ramps are required by the Americans with Disabilities Act (ADA).

Title II of the ADA prohibits discrimination on the basis of disability by State and local government entities. The ADA directed the Department of Justice to issue a regulation implementing title II. I am enclosing a copy of the Department's regulation and the Title II Technical Assistance Manual for your information.

When public entities build new facilities or alter existing facilities, the title II regulation requires that such new construction or alterations be made accessible to individuals with disabilities. The regulation allows covered entities to apply either the Uniform Federal Accessibility Standards (UFAS) or the ADA Standards for Accessible Design (Standards) as the standards for accessibility of new construction and alterations.

The Connecticut project referred to in XX letter appears to be an alteration to existing traffic signals. Merely replacing traffic signals or installing crossing buttons would not trigger an obligation to install curb ramps.

cc: Records, Chrono, Wodatch, McDowney, Blizard, Hill, FOIA
Udd:Hille:Policylt:Johnson.ltr

The title II regulation specifically addresses curb ramps at altered streets, roads, and highways. When streets are altered, ramps are required at altered intersections if they have curbs that prevent entry to or from pedestrian walkways. 28 C.F.R. S 35.151(e)(1). In addition, ramps are required when pedestrian walkways are altered. 28 C.F.R. S 35.151(e)(2). Curb ramps are not required to be installed in the absence of a pedestrian walkway. Nor are they required in the absence of a curb or other barrier between the street and the pedestrian walkway.

I hope this information is helpful to you in responding to your constituent.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

Enclosures
Title II regulation
Title II Technical Assistance Manual

01-03657

XX
No. Granby, CT. XX

14 March, 1995

The Hon. Nancy Johnson
United States House of Representatives
Washington, D.C.

Dear Representative Johnson;

Undoubtedly your staff has brought the subject of the enclosed Hartford Courant editorial to your attention.
This editorial which was published on March 14, 1995 is the second time the Courant has published an article on the subject of installing crosswalks where they will only be used by wildlife.

I guess it would be easy to simply glance at the enclosed, throw it aside and worry about more important things ..... well, an awful lot of people think this is important! I don't think it is the incident itself as much as the mindset of those who make such decisions and those who let them stand!

Don't you thing you really should do something about this sort of thing? There were an awful lot of frustrations in the past where you and your colleagues simply had to bow to the majority; but now we have a new majority, and you're it!

Now, a half million here and a half million there can begin to add up to a lot of money! You want to cut expense without reducing services, right? Well, a half million here and a half million there can really help!

You are in a position to do something about this stupid interpretation of regulations . . . or should we say "this stupid regulation"? I hope you will use your good office to get this project killed; you aught to, you know!

Very truly yours,
XX
cc: The Hartford Courant

01-03658

Publisher
DAVID S. BARRETT
The Hartford Courant Editor
Established 1764 JOHN J. ZAKARIAN
THE OLDEST CONTINUOUSLY PUBLISHED Editorial Page Editor
NEWSPAPER IN AMERICA
CLIFFORD L. TEUTSCH, Managing Editor
ELISSA PAPIRNO, Reader Representative

EDITORIALS

GOP legal reforms go too far

Although changes in this nation's overburdened system of civil justice are needed, the three legal reform bills approved by the House last week would severely limit the ability of people to sue for damages.

The measures sent to the Senate would:

* Set federal standards in product-liability cases, and require states to abide by them.

* Impose strict limits on punitive damages in all civil cases.

* Require the loser to pay the court costs and legal fees of the winner in many cases.

Last year, Connecticut Democratic Sens. Joseph I. Lieberman and Christopher J. Dodd, among others, proposed substantive but more careful changes in product-liability law.

In the GOP version, stockholders, for example, would have to prove a company or broker lied in order to prove fraud. If a stockholer failed to

win a lawsuit, he or she could be forced to pay court costs and legal fees of the defendants.

Granted, far too many frivolous lawsuits are filed by lawyers who try to force companies to settle rather than face a long and costly trial. Some lawyers maintain a stable of "professional plaintiffs" and use them to file lawsuits as soon as the stock price or dividend falls. But truly aggrieved stockholders should be able to sue for winner. And lawyers who filed what the judge ruled were frivolous lawsuits would face fines.

The bill is aimed at forcing pretrial mediated settlements, an excellent idea. It would also do away with the abused contingency-fee system, which generates about $15 billion a year for lawyers in personal-injury and product-liability lawsuits. But this reform does not provide for a fee system based on work done. It should.

The reform aimed at replacing state product-liability laws with a single federal standard and capping damage awards should be reconsidered. Limiting awards is fine, but such a law should be written carefully. In its present version, the bill could protect firms and professionals from being sued over clearly reckless or incompetent behavior.

The House Republicans, who champion empowering local governments, want to nationalize liability laws. States would be unable to enact versions tougher than the federal liability laws.

By contrast, the Lieberman-Dodd measure would protect most state liability laws and promote pretrial mediated settlements.

Reform of liability laws has been overdue. but what was tilted one way has now been tilted the other way by the House. The Senate should bring a balance to the scale of justice for plaintiffs

01-03659

JUL 7 1995

Mr. David B. Casas
Assistant City Attorney
City of San Antonio
San Antonio, Texas 78283-3966

Re: Complaint Number 204-76-35
Dear Mr. Casas:

This letter is in reference to the complaints filed against the San Antonio Riverwalk alleging that it is inaccessible to individuals with disabilities in violation of Title II of the Americans with Disabilities Act of 1990 (ADA).

Based on information received over the course of the past year, I understand that the City of San Antonio has taken the following steps to increase accessibility on the Riverwalk:

1. The narrow sidewalk around the tree on the north side of the 1968 Riverwalk extension has been widened to forty inches.

2. An elevator is planned to replace a ramp that is being removed as part of the Crockett Street Project. The elevator

will be fully accessible and will be in operation on a twenty-four hour basis.

3. A project to provide comprehensive signage along the Riverwalk has been undertaken and will be completed shortly.

4. Plans are in the works to remove steps at several junctures along the Riverwalk.

5. Criteria have been developed to assure accessible riverboats along the Riverwalk.

6. The City has abandoned plans to construct an inaccessible bridge along the Riverwalk.

Based on the foregoing information, and in anticipation of the completion of work mentioned above, we have concluded that the allegations that the San Antonio Riverwalk is inaccessible have been resolved, and we are closing our files on the case as of the date of this letter.

cc: Records, Chrono, Wodatch, Milton, FOIA
n:\udd\milton\complnts\76_35.res\sc. young-parran

01-03660

This letter does not address other potential claims of discrimination on the basis of disability that may arise from the activities of the City of San Antonio. Rather, this letter is limited to the allegations presented in the complaints made to us.

You should be aware that no one may intimidate, threaten, coerce, or engage in other discriminatory conduct against anyone because he or she has either taken action or participated in an action to secure rights protected by the ADA. Any individual alleging such harassment or intimidation may file a complaint with the Department of Justice. We would investigate such a complaint if the situation warrants.

Under the Freedom of Information Act, 5 U.S.C. S 522, we may be required to release this letter and other correspondence and records related to your complaint in response to a request from a third party. Should we receive such a request, we will safe-guard, to the extent permitted by the Freedom of Information Act and the Privacy Act, the release of information that could constitute an unwarranted invasion of other's privacy.

Sincerely,

Naomi Milton
Attorney
Disability Rights Section

cc: Mr. Anthony A. Anzalone
Mr. James R. Berg
Mr. Bob Kafka and Ms. Stephanie Thomas

01-03661

JUL 14 1995

Mr. Raymond C. Speciale
Yodice Associates
500 E Street, S.W.
Suite 930
Washington, D.C. 20024

Dear Mr. Speciale:

This is in response to your letter to Ed Miller regarding the obligation of the AOPA Air Safety Foundation (ASF) to provide sign language interpreters at aviation safety seminars. You wish to know whether ASF is required under the Americans with Disabilities Act of 1990 (ADA) to provide sign language interpreters for deaf pilots who wish to attend a free aviation safety seminar that is jointly sponsored by ASF and the Federal Aviation Administration.

Title III of the ADA prohibits discrimination on the basis of disability in all places of public accommodation and commercial facilities. Congress defined place of public accommodation as a facility that is operated by a private entity, whose operations affect commerce, and that falls within one of twelve listed categories. One of those categories covers "places of education". 42 U.S.C. 12181, 28 CFR 36.104. Thus, your analysis of section 36.309 is not determinative. As a place of public accommodation, ASF is required to comply with section 36.303 of the ADA, which requires that:

> A public accommodation shall take those steps that may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless the public accommodation can demonstrate that taking those steps would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations being offered or would result in an undue burden . . . . A public accommodation shall furnish appropriate auxiliary aids and services where necessary to ensure effective communication with individuals with disabilities.

cc: Records; Chrono; Wodatch; Milton; FOIA
n:\udd\milton\letters\interp.spe\sc. young-parran

The term auxiliary aids and services includes qualified interpreters, notetakers, computer-aided transcription services, written materials, etc.

A fundamental alteration is a modification that is so significant that it alters the essential nature of the goods, services, facilities, privileges, advantages, or accommodations offered. An undue burden is defined as "significant difficulty or expense." Among the factors to be considered in determining whether an action would result in an undue burden are the nature and cost of the action; the overall financial resources of the site or sites involved; the number of persons employed at the site; the effect on expenses and resources; and the administrative or fiscal relationship of the site or sites in question to any parent corporation or entity.

You assert that ASF is a non-profit entity with limited resources and that the cost of providing interpreters would hamper ASF's ability to provide the same number of free seminars it provides today. While it may be that the provision of interpreters at all seminars would be an undue burden to ASF, you should bear in mind that if a public accommodation determines that providing a particular auxiliary aid or service would result in a fundamental alteration or undue burden, it is not necessarily relieved from its obligations under the ADA. The public accommodation must still provide an alternative auxiliary aid or service that would not result in an undue burden or fundamental alteration but that would ensure effective communication to the maximum extent possible, if such alternatives are available.

I hope this information has been helpful to you.

Sincerely,

John L. Wodatch
Chief
Disability Rights Section

01-03663

JUL 21 1995

Technical assistance review of
proposed amendments to the
Maine Human Rights Act

John L. Wodatch
Chief
Disability Rights Section

Eve L. Hill
Attorney
Disability Rights Section

I. Background and Recommendation

By letter dated January 11, 1995, the Maine Human Rights Commission (Commission) requested the Department's comments on proposed amendments to the Maine Human Rights Act(law). The proposed amendments are intended to incorporate requirements of title III of the Americans with Disabilities Act (ADA) into the Maine law.

Since the letter was sent, the amendments have been submitted to the State legislature and hearings have been completed. The amendments are currently being addressed by the legislature's Judiciary Committee. Staff of the Commission are anxious to receive our comments in order to address them in working sessions with the Judiciary Committee.

Todd Andersen and I have reviewed the Maine law and the proposed amendments. This review indicates that a number of potential problems exist in the proposed amendments as they are currently drafted. I recommend that we point out the major issues and encourage the Commission to address them in its work with the Judiciary Committee and then to submit the final code for certification. A proposed draft response to the Commission is attached. It is important that we move quickly in order to respond before the proposed amendments are finalized. If we wait until they are finalized it will be much more difficult to make the needed changes.

II. Analysis

Maine's approach is significantly different from the approaches taken by the other jurisdictions whose codes we have reviewed. Rather than create its own accessibility code, Maine has chosen to incorporate the ADA construction standards into its human rights code and involve the Fire Marshall in the enforcement of that code. This is more similar to the ADA's

approach than to a building code approach. This approach was most likely chosen because Maine has no pre-existing statewide building code. Instead, the cities that have adopted building

cc: Records, Chrono, Wodatch, Hill, FOIA
n:\udd\hille\maine\tal.mem\sc. young-parran
01-03664

codes use the Building Officials and Code Administrators International (BOCA) code. The State Fire Marshall apparently applies the National Fire Protection Association (NFPA) code.

A. Current Law

The Maine Human Rights Act prohibits discrimination on the basis of race, color, sex, disability, religion, ancestry, national origin, or familial status. It covers employment, housing, public accommodations, credit extension, and education. A person who feels he or she has been discriminated against may file a complaint with the Commission within six months after the discrimination occurs. The Commission will investigate and, if it finds discrimination, it may file suit seeking injunctive relief, reinstatement, back pay, damages, civil penalties, and attorneys' fees. The individual may also sue on his or her own behalf, without seeking relief through the Commission.

The law currently includes accessibility requirements for new construction and alterations of places of public accommodation (defined as places open to the general public) and places of employment (undefined) when the construction or alteration costs exceed $100,000. It currently uses American National Standards Institute (ANSI) standard A117.1-1986 as its construction standard. It requires covered construction or alterations to comply with the ANSI accessibility requirements for accessible routes, doors, detectable warnings at doors to hazardous areas, parking spaces, and toilet stalls.

The only review mechanism currently in place is a requirement that the builder obtain a certificate from a design professional stating that the plans comply. The builder must submit the certification and the plans to the Fire Marshall and to the municipality where the building is located. The Fire Marshall can provide technical assistance, but it is unclear whether he or she has any authority to actually require compliance. This authority may be addressed in the fire code, which has not been submitted.

B. Proposed Amendments

The proposed amendments are intended to make the Maine law more consistent with the ADA, while retaining the current State law remedies. While the proposed amendments do improve the Maine law as it applies to new construction and alterations, several significant issues remain.

1. Inspection

There is no statewide across-the-board system of building inspection in Maine and the proposed amendments do not attempt to create one. The proposed amendments require a covered builder to

obtain a design professional's certification of compliance if the construction or alteration cost is $50,000 or more. The builder must provide the building plans and the certification to the Fire Marshall and the municipality where the building is located. It is not clear whether the Fire Marshall has any ability to prevent construction if the plans do not comply.

In addition, all newly constructed restaurants, hotels, government buildings, and schools must submit plans to the Fire Marshall, who must certify compliance before a municipality may issue a building permit. If the municipality in which such a building is located conducts inspections, the proposed amendments require it to include accessibility as part of its inspection.

Builders of buildings that do not fall within the two categories described above may seek voluntary review by the Fire Marshall.

Approval by the Fire Marshall will constitute rebuttable evidence of compliance with the Maine law. This provision refers only to mandatory review by the Fire Marshall, not to voluntary submissions. We need to consider whether a situation in which Fire Marshall approval constitutes rebuttable evidence with State law and compliance with State law, in turn, constitutes rebuttable evidence of ADA compliance gives too much authority to the Fire Marshall. Because the evidence is rebuttable, and because areas of real discretion (e.g., waivers) are not certified, I recommend that we accept this. I believe it is essentially just an explicit statement of actual practice under most building inspection and permitting systems.

We must also consider whether certification should be available for codes under which not all buildings are subject to mandatory plan review/inspection and under which the Fire Marshall may not have authority to prevent construction of non-complying buildings that he or she does review. Although the limitations on Fire Marshall review will limit the effectiveness of certification somewhat, the unreviewed buildings will still be legally required to comply and noncompliance will give rise to an additional State law cause of action. Furthermore, notice by the Fire Marshall that a plan does not comply may persuade builders to comply, even if the Fire Marshall cannot prevent construction.

We have several options in this regard. We could:

a) limit the effect of any future certification determination to construction costing over $50,000 and, therefore, reviewed by the Fire Marshall;

b) limit the effect of any future certification determination to construction that is both reviewed and approved

by the Fire Marshall (i.e., restaurants, hotels, public buildings, and schools);

c) provide technical assistance indicating that the code is equivalent while refusing certification because of the lack of enforcement; or

d) apply any future certification determination to the entire code.

Although any of these options may be justified, I recommend that we not limit any certification determination based on the limits of Fire Marshall review. Although one of the purposes of certification is to increase pre-construction review of buildings, other purposes include increasing ease of compliance for builders and increasing the level of enforcement and the number of available remedies. By incorporating the ADA requirements into the State law and by providing a State law cause of action with appropriate enforcement mechanisms and remedies, the State of Maine has accomplished most of the purposes of certification. In addition, by providing for some review, the State has also addressed the remaining purpose of certification to a large extent.

2. Alterations

The proposed amendments require altered areas in existing buildings to comply with ADAAG to the maximum extent feasible. The proposed amendments also require alterations costing over $100,000 that affect areas normally open to the public to meet the requirements of ADAAG § 4.3 (accessible routes), § 4.13 (doors), § 4.29.3 (detectable warnings at hazardous areas), § 4.1.2 (parking), and § 4.17 (toilet stalls). These requirements must be met "regardless of cost." This requirement appears to be in addition to the general requirement that altered areas and paths of travel must be made accessible. This understanding needs to be confirmed. It is also unclear whether the builder must meet the five requirements for every area in the building or just those serving the altered area or only one of

each.

Some of the five requirements referenced for large alterations are only technical provisions of ADAAG, without scoping. This is true of § 4.13 (doors). Because the ADAAG scoping provision is not referenced, the Maine requirement would appear to require all doors to comply. This exceeds the ADA. In addition, the Maine reference to § 4.17 provides its own scoping, requiring one standard stall and requiring that all additional stalls in the same toilet room be accessible as well. This also exceeds the ADA. It is unclear whether the proposed amendments actually intend to exceed the ADA in these ways. The requirement

for parking, on the other hand, refers only to the ADA scoping provision without technical specifications.

The proposed amendments also provide a path of travel requirement for alterations to primary function areas. The path of travel requirement is split into two provisions; one for alterations over $100,000 and one for smaller alterations. In the provision for large alterations, the 20% cost limit is correctly addressed, as are priorities for providing access. The provision for smaller alterations simply requires an accessible path of travel when it is "not disproportionate to the overall alterations in terms of cost and scope." It needs to be made clear that the same standards of disproportionality apply to small alterations as apply to large ones.

The proposed path of travel requirement for large alterations includes a prohibition against evasion of the obligations "by performing a series of small alterations...." The evasion provision does not specify the three-year time period used by the ADA. The path of travel provision for small alterations does not address evasion at all.

The proposed amendments exceed the requirements of the ADA by requiring any reconstruction affecting 80% or more of the internal structure to be treated as new construction.

3. Waivers

The proposed amendments provide a waiver procedure for builders of facilities subject to mandatory plan review (restaurants, hotels, etc.). The Fire Marshall may grant a waiver if compliance would be structurally impracticable. Certification will not apply to such a waiver. The waiver is confusing, however, when applied with the referenced ADAAG standard of construction. ADAAG already includes a structural

impracticability exception that applies without the need to formally seek a waiver.

For two-story buildings not to be used by a public entity, the Fire Marshall may waive accessibility requirements if installation of an elevator would be technically infeasible or would result in excessive and unreasonable costs without any substantial benefit to individuals with disabilities. Shopping centers, shopping malls, offices of health care providers, and transportation stations are ineligible for the elevator waiver. If this waiver is limited to the elevator requirement and does not waive any other requirements, it is more stringent than the ADA elevator exception, which generally does not require elevators in two-story buildings. However, it is not clear that the waiver is limited to the elevator requirement only.

In addition, this waiver provision does not make sense as it is used. Because the proposed amendments incorporate ADAAG, including the elevator exemption for two-story buildings, there is no need for a waiver for two-story buildings. If the proposed amendments are not intended to adopt the ADAAG elevator exception, they must be more explicit.

4. Conflicts

One significant problem may be conflicts between the ADA building standards incorporated in the Maine law and the standards in municipalities' local building codes. In addition, the NFPA code may conflict. It is unclear how such conflicts have been addressed in the past.

5. Covered facilities

The proposed amendments add a definition of "commercial facilities" as "facilities that are intended for nonresidential use." The definition, itself, is equivalent. However, the term is only used in the context of alterations (public accommodations and commercial facilities must comply). In the context of new construction, public accommodations and "places of employment" are covered. The term "places of employment" is not defined.

Although the term "places of employment" may provide sufficient coverage, it should be defined. More importantly, it is problematic to use two different terms to define coverage of alterations and new construction. The scope of coverage for both requirements should be the same.

6. Defenses

The proposed amendments define "readily achievable" and "undue hardship." However, the proposed amendments do not use these terms. Including these unused definitions in the law will cause confusion and may lead builders to believe they have defenses that do not, in fact, exist.

7. "Disability"

The proposed amendments extend protection to people with disabilities, people with records of disabilities, and people who are regarded as having disabilities. However, the amendments retain the current definition of "disability," which is limited to disabilities "caused by bodily injury, accident, disease, birth defect, environmental conditions or illness." The ADA does not limit the definition based on causation, but, instead, looks to the effect of the impairment. In addition, the current Maine definition provides that it includes conditions diagnosed as "substantial" by a health care provider. The ADA does not require medical assessment of substantiality.

8. "Place of public accommodation"

The proposed amendments alter the definition of "place of public accommodation" to more closely resemble the ADA definition. The new definition significantly exceeds the twelve ADA categories by covering elevators in small residential facilities, State and local government buildings, and "any establishment which in fact caters to, or offers its goods, facilities or services to, or solicits or accepts patronage from, the general public."

9. Existing buildings

The Maine law includes requirements for accessibility of public accommodations and places of employment that were constructed between 1974 and 1982. For existing public accommodations, it requires:

a) at least one public walk at least 48 in. wide with no greater than 1:12 slope;

b) a 32 in. wide doorway at the primary entrance that is "operable by a single effort;"

c) at least one stall in rest room facilities that is at least 4 ft. wide and 5 ft. deep, with an out-swinging or sliding 32 in. door, with 33 in. high handrails on each side, and with a 20 in. high toilet;

d) knurled door handles on doors to dangerous areas that are not intended for normal use;

e) one reserved parking space for every 25 provided

(no technical specification provided).

For existing places of employment, it requires compliance with the above requirements for walks, entries, restrooms, and doors (but not parking).

Although certification does not address barrier removal, it needs to be made clear that these requirements will exceed the ADA's barrier removal requirement for some facilities, but will not meet the requirement for other facilities. Further, buildings built before 1974 must comply with the ADA's barrier removal requirements as well.

In addition, because the basic accessibility standard for barrier removal is the new construction/alteration standard, the technical specifications provided are not sufficient. For example, they do not address maneuvering clearance at doors or design of parking spaces. In addition, by requiring the 48 in. alternate stall, the Maine law limits design choices more than the ADA does.

These provisions are unclear and the intended application is uncertain. This intent must be clarified.

01-03670

10. Effective date

The Maine law contains construction requirements for buildings begun before the enactment of the amendments. The amendments create a separate section (4594-F) applicable to construction and alterations after January 1, 1995. Any certification determination must make clear that only the amended section is subject to certification.

11. Incorporation of ADAAG

The proposed amendments adopt ADAAG as the construction standard. They need to refer to the ADA Standards instead. In addition, they need to consider whether they will automatically incorporate any future amendments that the Department of Justice makes to the ADA Standards or whether, instead, they will individually consider each such amendment.

01-03671

JUL 21 1995

Ms. Alberta C. Frost
Director
Child Nutrition Division
Food and Nutrition Service
United States Department of Agriculture
3101 Park Center Drive
Alexandria, Virginia 22302

Dear Ms. Frost:

This letter is in response to your letter to the Coordination and Review Section of the Civil Rights Division requesting comments on the Department of Agriculture's guide to feeding children with special health care needs in schools. We apologize for the delay in responding. We understand that you have proceeded with an initial mailing of the guide and submit these views for your use for future mailings of the guide.

On March 1, 1995, the Civil Rights Division reassigned the

responsibility for interagency policy coordination with respect to issues arising under the Americans with Disabilities Act of 1990 (ADA), and section 504 of the Rehabilitation Act of 1973, as amended (section 504), to the Disability Rights Section. The Disability Rights Section has reviewed the draft that you provided to the Coordination and Review Section. Our comments and recommendations are as follows:

1. Under paragraph II. A. Physician's Statement for Child with Disabilities, the guide includes in the list of things that the physician's statement must identify "the major life activity affected by the disability." In this context, this is a legal, rather than a medical determination, because it is a statement that the child is eligible to claim the protection of the ADA and section 504. We do not think that it is appropriate to require a physician to make this determination.

Furthermore, the Department of Agriculture reimburses schools for food substitutions made for children who do not have a disability on the basis of a certification of special dietary needs by health care professionals other than physicians. Therefore, we question whether it is necessary to require a physician's certification of any child's dietary need.

cc: Records, Chrono, Wodatch, Milton, FOIA
n:\udd\milton\letters\doaguide.fro\sc. young-parran
01-03672

The process for making determinations of special dietary needs are no different because the special need is the result of an impairment that is legally regarded as a disability. Thus, the determination should be able to be made by a licensed medical authority (physician, physician's assistant, nurse practitioner, registered nurse, etc.) of the family's choosing, whether or not the special need is the result of a condition that qualifies as a disability under the ADA or section 504. Alternatively, you could elect to require determinations of special dietary needs for all children to be made by a physician.

2. Under paragraph III. A. School Responsibilities, the guide requires that substitutions for students with disabilities be based on a prescription written by a licensed physician. In medical terminology, a prescription is a physician's written instruction for preparation and administration of a medication. If you retain a requirement for a physician's certification of a child's dietary needs, we would suggest that you substitute the word "order" or "instructions" for "prescription."

3. In the subsection of paragraph III. A. headed Individualized Education Program (IEP), the guide states that "a child with diabetes may be certified by a physician as needing special dietary accommodations, but probably would not be in special education nor have an IEP." Because a child with diabetes is just as likely to be in special education as any other child, we would alter that sentence to say that a child with diabetes would not necessarily be in special education.

4. The first paragraph under III. B. Funding Issues states that schools may not charge children with disabilities who require food modifications "more than they charge other children for Program meals or snacks." It should be noted that schools may not charge children with disabilities more than they charge other children for any meals or snacks that are part of the meal program provided to all students.

5. Section 504 of the Rehabilitation Act has been amended to read "disability" rather than "handicap" and "individual with a disability" rather than "handicapped individual." These changes should be incorporated in the first paragraph of IV. A. School's responsibility for accommodating children with disabilities.

6. The third paragraph of IV. A. states that title II of the ADA "requires equal availability and accessibility in State and local government programs and services." More accurately, title II prohibits discrimination on the basis of disability in

the services, programs, and activities of State and local government entities.

01-03673

7. Also in the third paragraph of IV. A., the guide states that title II "reiterates the statutory prohibition of the Rehabilitation Act of 1973 against discrimination on the basis of disability by programs receiving Federal funding." This might incorrectly be read to mean that title II is also limited to federally assisted programs.

8. The fourth paragraph of IV. A. states that title III of the ADA "extends public accommodations requirements to privately owned facilities. . ." More accurately, title III extends accessibility requirements to privately owned places of public accommodation.

9. In the response to the first situation posed under paragraph V. Situations and Responses, you may want to point out that the school must allow the child to bring his or her own juice and drink it whenever necessary to meet the prescribed schedule.

10. In the response to situation 9 under paragraph V., you may wish to make clear that the school can provide separate facilities for disabled children as long as the children have a choice between using those facilities and the facilities provided for all of the children.

11. In the glossary section, paragraph VII, you may wish to amend the entry on the Americans with Disabilities Act as noted in paragraph 6, above.

I hope this information has been helpful to you. If you have any questions, please feel free to call Naomi Milton at (202) 514-9807.

Sincerely,

John L. Wodatch
Chief
Disability Rights Section

01-03674

JUL 21 1995

Ms. Patricia E. Ryan
Executive Director
Maine Human Rights Commission
State House Station 51
Augusta, Maine 04333-0051

Dear Ms. Ryan:

This letter is in response to your letter requesting that the Department of Justice preliminarily review the proposed amendments to the Maine Human Rights Act (law) and provide technical assistance regarding their equivalency to the new construction and alterations requirements of title III of the Americans with Disabilities Act (ADA).

Our preliminary review of the Maine law indicates that you have made significant progress toward an ADA-equivalent law. We appreciate your efforts, as well as your patience in awaiting our response. Our review has also raised several potential problems and ambiguities, described in detail below.

In order to provide a timely response, we have limited our review to major issues that might arise if the Maine law were submitted for a certification determination pursuant to the regulation implementing title III. 28 C.F.R. § 36.601 et seq. Our analysis is not intended to address comprehensively all potential ways in which the Maine law compares with the ADA's construction requirements.

We have reviewed only the new construction and alterations provisions of the Maine law. Certification does not apply to other aspects of human rights laws. In addition, we have evaluated the Maine law's consistency with title III of the ADA only. Certification does not apply to facilities subject to title II of the ADA or to purely residential facilities.

cc: Records, Chrono, Wodatch, Hill, FOIA
n:\udd\hille\maine\tal.ltr\sc. young-parran

01-03675

1. General Concerns

The limited availability of plan review and pre-construction enforcement does not prevent certification but it does significantly limit builders' ability to take advantage of the full benefits of certification. For example, without any mechanism for official approval by the Fire Marshall, builders of facilities other than restaurants, hotels, government buildings, and schools will have to specifically prove compliance with the State law before they can gain the benefit of certification's rebuttable evidence of ADA compliance. In addition, lack of mandatory plan review will increase the burdens on individuals and on the Commission to enforce the law through litigation. Increased mandatory plan review could avoid such litigation as well the increased costs of providing accessible features after construction is completed.

2. Ambiguous Provisions

A number of the provisions of the Maine law are unclear. While these issues will not necessarily prevent certification, clarification would facilitate our review.

a. Enforcement

The Fire Marshall's authority regarding voluntary submissions (costing less then $50,000) and submissions of plans for buildings other than restaurants, hotels, government buildings, and schools, is unclear. The Maine law does not specify whether the Fire Marshall has a duty to identify violations or what the Fire Marshall's responsibility is when a violation is found.

b. Alterations

The requirements for alterations impose five specific requirements for alterations costing over $100,000 that affect areas open to the public. It is unclear whether these requirements must be met in addition to the general requirement that the altered area and the path of travel be accessible. In addition, it is unclear whether the builder must satisfy the five requirements for every area of the building, for only the altered area, or for some other number of areas.

Because the requirement for accessible doors refers only to technical specifications without scoping, it is unclear how many doors are required to be accessible. Because the requirement for toilet stalls requires all the stalls in a toilet room to be

accessible, it substantially exceeds the ADA's general requirement that one stall be accessible. Finally, because the requirement for parking refers only to the ADA scoping provision
01-03676

without technical specifications, it does not require the reserved space to be usable by individuals with disabilities.

The Maine law's path of travel requirement is split into two provisions; one for alterations over $100,000 and one for smaller alterations. In the provision for large alterations, the 20% cost limit is correctly addressed, as are priorities for providing access. The provision for smaller alterations simply requires an accessible path of travel when it is "not disproportionate to the overall alterations in terms of cost and scope." It needs to be made clear that the same standard of disproportionality (20%) applies to small alterations as applies to large ones.

c. Waivers

Certification will not apply to waivers of ADA requirements that may be granted by reviewing officials. Therefore, if a builder applies for a waiver of an ADA accessibility requirement for an element of a building, he or she will not be entitled to certification's rebuttable evidence of compliance for that element.

The Maine law's waiver provision for structural impracticability is an example of an uncertified waiver provision. This waiver provision does, however, create an ambiguity that needs to be addressed. The ADA Standards, which are incorporated into the Maine law as the required construction standard, already include an exception for structural impracticability (S 4.1.1(5)). Therefore, the need for the additional waiver in the Maine law is unclear.

The Maine law also provides a waiver for two-story buildings if installation of an elevator would be technologically infeasible or would result in undue costs. It is not clear whether this waiver would eliminate all accessibility requirements for eligible buildings, or whether it will only lift the elevator requirement. If it lifts requirements other than the elevator requirement, this waiver is less stringent than the ADA, which requires upper floors to be accessible in non-elevator buildings. If it lifts only the elevator requirement, this waiver exceeds the ADA, which generally does not require an elevator in two-story buildings. Because waivers are uncertified, these differences between the Maine law and the ADA will not prevent certification.

More significantly, it is not clear how Maine's elevator waiver provision is to be reconciled with the incorporated ADA

Standards. Because the ADA Standards include an elevator exception for two-story buildings, the Maine elevator waiver seems unnecessary. If the intent of the Maine law is not to

01-03677

incorporate the ADA elevator exception, that intent needs to be clarified.

d. Effective date

Any future certification determination would be limited to the amended law's requirements in effect as of the date of the determination (i.e., the provisions applicable to construction after January 1, 1995). Certification would not apply to the law's provisions applicable before the 1995 amendments. Because those provisions are still included in the Maine law and have not been repealed, there may be some confusion on this point. It would be more clear if the Maine law explicitly stated that those earlier provisions were no longer in effect.

e. Incorporation of "ADAAG"

The proposed amendments incorporate the ADA Accessibility Guidelines (ADAAG) as the applicable construction standard. It would be more correct to refer to the "ADA Standards for Accessible Design," which are codified at 28 C.F.R. Part 36, Appendix A. This reference more accurately describes the standards adopted and enforced under the ADA, as distinct from the unenforceable guidelines on which the standards are based.

It is unclear how the Maine law will address future amendments to the ADA Standards for Accessible Design, i.e., whether such amendments will automatically be incorporated into the Maine law.

3. Specific Problems

a. Conflicts

There may be conflicts between the requirements of the Maine law and the requirements of other building-related codes (e.g., municipal building codes, fire protection codes). It is unclear how such conflicts will be resolved.

b. Covered facilities

The Maine law requires places of public accommodation and "places of employment" to comply with the new construction requirements. Although "places of employment" may provide equivalent coverage, the term needs to be defined (i.e., whether it will include volunteer organizations).

In addition, the Maine law's alterations requirements apply

to places of public accommodation and "commercial facilities." The scope of coverage for new construction and alterations is the same under the ADA. The use of two different terms in the Maine

law indicates that the scope of coverage differs for new construction and alterations.

c. Defenses

The proposed amendments add definitions of "readily achievable" and "undue hardship." However, those terms do not appear to be used in the Maine law. Inclusion of those definitions may lead builders to believe they have defenses that are not really available.

d. "Disability"

The Maine law limits the definition of covered disabilities to those caused by certain listed events. The ADA determines coverage based on the extent of a disability's effect on an individual's major life activities, not on its cause. In addition, the Maine law appears to rely on diagnosis by a health care provider in order to determine whether a person's disability is covered. The ADA does not restrict coverage to only those disabilities that are medically diagnosed.

I hope these comments are helpful to you in preparing the final Maine law and that you will soon be in a position to submit a request for certification of the Maine law. We would be happy to discuss our comments with you at your convenience. Feel free to call Eve Hill at (202) 307-0663 to arrange such a discussion.

Sincerely,

John L. Wodatch
Chief
Disability Rights Section

cc: Mr. Lawrence W. Roffee
Executive Director
U.S. Architectural & Transportation
Barriers Compliance Board

01-03679

JUL 26 1995

Mr. Robert L. Kuiken
Administrative Assistant
Summit County's Disabled Citizens Program
47 North Main Street, 2-148
Akron, Ohio 44308-1991

Dear Mr. Kuiken:

Thank you for your kind words about my presentation at the Cleveland City Club. It was a beneficial trip for me. Your letter asks the Department of Justice to take action to compel companies that operate gas stations to provide a "full service" option for their customers.

The Department is responsible for enforcing title III of the Americans with Disabilities Act (ADA), which prohibits discrimination on the basis of disability by places of public accommodation, including gas stations. Title III requires places of public accommodation to ensure that the services that are provided to clients or customers are accessible to people with disabilities. However, title III does not require any place of public accommodation to fundamentally alter the nature of its business to provide different services, even if those services might better meet the needs of people with disabilities. Therefore, the ADA does not require gas stations to provide full service to any customer.

The ADA does require existing gas stations that are not otherwise being altered to remove architectural barriers to the extent that it is readily achievable to remove them. The Department of Justice regulation implementing title III requires such barrier removal to comply with the ADA Standards for Accessible Design (Standards) for each altered element if it is readily achievable.
01-03680

If a self-service gas station determines that it is not readily achievable to redesign gas pumps to enable people with disabilities to use them, the gas station is not required to make physical modifications to the gas pumps. However, the gas station is required to provide its services to individuals with disabilities through any readily achievable method, such as providing refueling service upon request to an individual with a disability at self-service prices. A service station is not required to provide refueling service to individuals with disabilities at any time when it is operating exclusively on a remote control basis with a single cashier.

In our view, the ADA does not prohibit the operation of gas stations on a self-service basis. Therefore, the Department is unable to take further action in response to your request.

I have included the Division's most recent status reports on ADA enforcement for your information.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

Enclosures

01-03681

Tim Davis, County Executive Patrick A. McGrath, Director
County of Summit
Department of Human Services
Disabled Citizens Program
"Making A Difference"

Deval Patrick, 3/31/95
Assistant Attorney General
Civil Rights Division
Department of Justice
P.O. Box 66738
Washington, D.C. 20035-6738

Dear Mr. Patrick,

First I want to congratulate you on the fine job you did speaking at the Cleveland City Club Form. I was fortunate to be able to sit in on that meeting. I have also read an article in the Disability Rights Education & Defense Fund News (DREDF) where you were the keynote speaker on Nov. 10, 1994 at their fifteenth year celebration. With your background in civil rights for all people I feel confident that we have the right person as Assistant Attorney General for Civil Rights.

There is also another reason for me contacting you and requesting your guidance and help in resolving an issue that is of major concern to me and many of other people with limited mobility in keeping their independence.

The ability to drive yourself to work, to go shopping, travel, and/or other activities that we do everyday, is a necessity that people have long depended on. Just look at the number of cars & trucks on the highways. However this activity is slowly being taken away from many of us who can no longer buy gas without having someone with us that is able bodied.

More and more gas stations around the country are becoming "Self-Service" only gas stations. Just ask your friends that have disabilities how difficult it is to get gas today. This means that if we do need to get gas, we have to find a gas station with at least one full service pump. The trend by the oil companies is to eliminate "Full-Service" altogether, in order to save money. This is taking the opportunity of living independently and keeping a job next to impossible.

I have been working on this problem for over a year now, asking and getting support from other disability groups but we need to do more. I wrote a letter to Janet Reno, who is suppose to be in charge of the DOJ, pointing out the problem we are having. I received a response that is like receiving no answer at all (enclosed). I have also written to many of our Congressmen and Senators, as well as President Clinton, and have received letters that amount to a pat on the head

and nothing else in the way of what actions could be taken to overcome this discriminatory policy that the oil companies have in place towards people with limited mobility.
01-03682

Many of our senior citizens have also told me they too are having a hard time pumping gas because of limited strength and problems with mobility and/or dexterity that they have because of their age and changes in their bodies.

I am hoping that with your help and guidance, and that of the members of other disability organizations, we might find a solution to this problem. Perhaps we need to file a class action suite against a major oil company to have them change their policies so people have a choice between Self-Service or Full-Service at their stations. At one time this was available, but few stations, as I pointed out before, still offer this option.

I know that the oil industries have a number of lobbyist on Capitol Hill, which will make this a difficult task, to say the least. I feel that they believe they are above the law and that the principals and policies of the Americans With Disabilities Act does not include them or their gas stations.

Enclosed is a copy one of the articles that I had in our "Newsletter" that went out to over 3,000 people and organizations that work for the benefit of people with disabilities. Also a copy of a letter I sent to the local Newspapers, from which I got a number of phone calls thanking me for putting into words what they were also facing with this discriminatory policy.

I am also writing a letter to Marilyn Golden at DREDF and ask for her opinions and ideas concerning this matter. I hope I get more of a response from you than what I got from Merrily A. Friedlander, Acting Chief Coordinator and Review Section, Civil Rights Division. Someone at DOJ has to step up and take charge of situations that threaten the very intent of the Disability Rights Laws that have been passed to help protect people with disabilities and afford them equal opportunities in this Country.

Thank you for taking time to read this and also for any help and guidance you might be able to give me as I continue to fight for the rights of people with disabilities. I'm looking forward to hearing from you in regards to this matter.

Respectfully Submitted,

Robert L. Kuiken, Administrative Assistant

Summit County's Disabled Citizens Program
47 North Main Street, 2-148
Akron, Ohio 44308-1991
(216) 643-7364 / Fax (216) 643-7742

01-03683

Att'n General Janet Reno
U.S. Department of Justice
Main Justice Building
10th Street & Constitution Ave. N.W.
Washington, DC 20530

Ms. Reno,

I have enclosed a letter which I have recently sent to the Department of Justice in Washington D.C. which I hope, with their help, will cause the owners of the self-service gas stations to make some policy changes so people with disabilities that drive and have mobility problems will not be stranded along the highway because of not having access to a gas station that will pump their gas for them.

This has happen to me recently as I was returning to Akron from Columbus, Ohio. Fortunately I was able to get a truck driver to pump my gas for me at a self-service station. Even if I was able to exit my car, I would not have been able to reach the pumps from my wheelchair or the controls to turn the pumps on. I also noticed that there were no ramps or curb cuts leading into the building where I would have had to pay for my gas.

People with disabilities that do try to lead an independent life style should not be discriminated against because of the designs of the gas stations or the policies that do not permit the workers to assist you in buying gas.

I have brought this issue up at different meetings that I have attended and I have the support of "The National Association of the Physically Handicapped", The Disability Network of Ohio-Solidarity", "The Summit County Committee on Employment of the Handicapped" as well as several other disabled drivers that I have spoken to.

My hopes is that you will support my efforts in trying to stop the discrimination of people with disabilities that drive by trying to change some of the policies that the oil companies have concerning self-service gas stations. If you could discuss this matter with other legislative advisors and those you work with in the U.S. Department of Justice and ask for their support, perhaps we can correct this act of discrimination.

Thank you for your support and for the great job you and your colleagues are doing by working with and supporting is-

sues of interest to people with disabilities. Keep up the good work.

Respectfully,
Robert L. Kuiken
Summit County's
Disabled Citizens Program

Dear Editor,

I am writing this letter to alert you to a major economic disaster that is being brought on by the major oil companies in our Nation and in your area.

This is being brought about by having more and more of their gas stations become "Self-Service" only. By doing this they have singled out people with disabilities that drive and eliminated their ability to get gas at their stations. This action will eventually lead to them not being able to go to work, or shopping, or many other activities that would require them to drive. This not only affects the person with a disability but also their families, their employers, the store where they do their shopping, etc.

This policy also will have an effect on several "million dollar" corporations that manufacture driving aides and lifts for vans, not to mention the companies that install this equipment. The elimination of access to gasoline would eventually put these companies out of business. This would affect all the people that they employ plus all their families. This domino effect hurts us all.

In Ohio there is a law that states "if a gas station offers full-service and self-service, people with disabilities that drive can get served at the self-service price. The oil companies policies have eliminated the full-service pumps which bypasses this law.

They have also eliminated any extra help, which leaves only one person to handle the money. This policy puts that one person in a dangerous position should something go wrong or a robbery takes place. This policy puts the employee's life in danger. Police departments have realized this problem but seem powerless over the oil companies clout. The Oil companies greed which drives them to eliminating extra employees while charging high prices for their products.

The Americans With Disabilities Act of 1990 provides equal access to products being offered to the general public by businesses. The oil companies choose to ignore this federal law.

It also upsets me when I see our senior citizens that drive, standing our in the rain & snow trying to pump their own gas, without having the option to get full-service if they choose to. Also men & women with their good cloths on taking the chance of spilling gas on themselves, just so the oil companies can make more money.

I think it is past time for people to take a stand and demand

the option to get full-service at gas stations again, if they choose to. When is the last time anyone at a gas station has offered to wash your car's windshields, check your oil, water and other fluids under your car hood?

It is time to contact the oil companies, your local legislators, federal legislators, congressman, senators, the attorney general's office, the Department of Justice, and the Department of Commerce and let them know how you feel about having the choice of Full-Service at gas stations in your areas.

Thank You for your time and your support on this important issue of concern to people with disabilities that drive.

Robert L Kuiken

Your
TICKET
to Independence

by Margaret A. Johnson, O.T.R./L.

Regaining the ability to drive is a basic part of independent living.

When you were 16 years old, you excitedly and nervously prepared for the behind-the-wheel portion of your driver's test. Passing the exam was your ticket to independence. No more riding shotgun with the folks or listening to backseat drivers giving orders. You were on your own-and what a good feeling this was!

Injuries or disease can affect you mentally, physically, and emotionally-to the point of temporarily or permanently impairing driving. But, because your physical capabilities have changed, does this mean you must ride shuttles and carpool? Certainly not!

How do you go about learning what you may need if you are unable to drive a conventional vehicle? The first step is to acquire a doctor's referral for evaluation by an occupational therapist (OT) or driver rehabilitation specialist knowledgeable in the medical field.

I am an OT who was a driving evaluator for several years. When I worked with clients, I first assessed their mental, physical, and emotional status.

Adequate vision is crucial for drivers, and we provided a thorough screening. Inone case, the result of a man's testing was far below the state's minimum standard for visual acuity. The client was asked to return for completion of the evaluation after he had visited his eye doctor. The physician found a hemorrhage in the man's eye: early discovery and laser treatment saved his vision. The client went on to successfully drive again.

Following an eye test, you are screened in the areas of cognition and perception. Are you able to think quickly? Do you have good judgment and decision-making skills? One young woman drove without mishap for 20 minutes, but as we neared completion of the in-vehicle assessment, something told me to extend the length of the route. In the next block, she failed to brake when two pedestrians crossed her path. I stopped the vehicle and questioned her about this serious mistake. She said she saw the women, but "it just didn't register."

Evaluators also test your muscles and movement for stregnth, coordination, range of motion, and endurance. Strong muscle-spasms can interfere with safe driving; many times a change in medications may be a solution. Independent car-transfer was a grueling process for one man, whose legs had severe spasms; he was breathless and exhausted before he even turned on the ignition.

Balance is an important consideration for driving. Can you maintain an upright sitting posture while making a sharp evasive right or left turn? It certainly defeats the confidence of

PN Paraplegia News April 1995
01-03686

drivers who, on sharp curves suddenly find themselves staring at the kneecaps of those in the passenger seat. OTs can evaluate your hand function and recommend a chest restraint adapted so you can apply the strap, even if you can't use your fingers.

The final test is the actual in-vehicle assessment. The car is equipped with a reversible set of hand controls, various steering devices, a right and left-sided turn signal, and a left foot accelerator. Following demonstration and instruction, you begin to drive in a safe empty parking

PHOTO with the help of "driver" Laura Schleiger. Occupational Therapist Margaret Johnson demonstrates an in-vehicle assessment.

PHOTO In the Adapted Driving Program at Good Samaritan Regional Medical Center in Phoenix, Nick Mereles learns to transfer to the driver's seat of the facility's adapted van.

PHOTO An adapted Driving Program van acquaints Mereles with equipment and vehicle modifications.

PHOTO FROM TOP: As part of Good Samaritan's program, Charles Mascari's training includes stowing his chair behind the driver's seat.

01-03687

lot. After an increase in confidence and ability, you drive in residential areas and finally go into more complex traffic--but only if you feel comfortable.

Your evaluation is then typed up and, with the required state forms, sent to your physician for review. You visit one of a list of recommended reputable vendors, where the prescribed adapted automobile equipment is installed. You may need further training at a local licensed driving school that has personnel skilled in instruction with adapted controls. At some facilities, OTs conduct this training.

Once your controls are installed and you are proficient in their use, the therapist gives you final approval. You must have a state test for effectiveness in using the special equipment. Your driver's license receives a code that denotes an adaptive-equipment-use restriction similar

to the one for people who wear glasses.

OTs and your vendor can help suggest appropriate vans or automobiles. Installation of hand controls is difficult in extremely small vehicles; some compact vans may not have room for you and your particular form of mobility. Many car manufacturers offer rebates for purchasing hand controls or other adaptive equipment.

If your needs cannot be met in an adapted automobile, you will be referred to a facility that has specialized adapted vans. Vehicles of this type allow you to experiment with using a lift for access and with various interchangeable steering devices. A raised roof or dropped floor accommodates drivers in wheelchairs. These vans even have interchangeable steering wheels and lever-operated accelerators and brakes.

The Association of Driver Educators for the Disabled (ADED), an international organization, is devoted to the support of professionals working in the field of driver education and transportation-equipment modification. ADED's goal is to maximize transportation options for people with disabilities because driving is an earned privilege--for all of us.

Margaret A. Johnson, formerly an occupational therapist in the Driver Evaluation Program at Vanderbilt University Medical Center, Nashville, is now coordinator of Occupational Therapy at Nashville Rehabilitation Hospital. For assistance in locating an evaluation center in your area, contact ADED at (608) 884-8833/ 884-4851 (fax).

for Evaluation--Then for Independence

Driver-evaluation is performed at many sites around the country. Examples are the programs at Vanderbilt University Medical Center, Nashville, and at Samaritan Rehabilitation Institute. Good Samaritan Regional Medical Center, in Phoenix.

Margaret A. Johnson (author of "Your Ticket to Independence") worked for eight years in the Driver Evaluation Program at Vanderbilt University Medical Center. "Clients were always surprised at how thorough the evaluations were," she recalls. "Many of them remembered their original driver's exams, in which

they answered some questions, took a 20-minute ride, and received their licenses. They had no idea our assessment was two or three hours long."

Driver-evaluation programs emphasize safety as well as defensive driving. "I told clients to always use restraints (seat belts, etc.) and to raise their headrests to provide more protection." Johnson says. "Many of them received spinal-cord and head injuries because their headrests weren't properly adjusted."

According to Johnson, some clients are afraid evaluators will take away their driver's licenses. "I'm not employed by the state, and I don't have the authority to do something like that," she would tell them. After putting this fear to rest, she'd get on with the business at hand: putting qualified drivers with disabilities back on the road again.

According to Carol Blanc, O.T.R., a driver-rehabilitation specialist, the Adapted Driving Program at the Arizona facility annually processes 100-130 people whose disabilities range from head and spinal-cord injury to amputation, stroke, arthritis, and neurological diseases and problems. Clients must be of legal driving age and have a physician's referral and a valid Arizona driver's license or permit.

The length of the course depends on client disability and previous driving experience. Fees are charged by the hour; some insurance companies assist with these costs. Participants also receive help with obtaining their driver's licenses.

For more information about the driving programs mentioned in this article, contact:

Adapted Driving Program
Samaritan Rehabilitation Institute
Good Samaritan Regional Medical Center
Phoenix
(602) 239-4757

Vanderbilt University Medical Center
Rehab Services
Nashville
(615) 322-0100

Margaret Johnson
Nashville Rehabilitation Hospital
(615) 226-4330

01-03688

Tim Davis, County Executive Patrick A. McGrath, Director

County of Summit
Department of Human Services
Disabled Citizens Program
"Making A Difference"

Deval Patrick, 3/31/95
Assistant Attorney General
Civil Rights Division
Department of Justice
P.O. Box 66738
Washington, D.C. 20035-6738

Dear Mr. Patrick,

First I want to congratulate you on the fine job you did speaking at the Cleveland City Club Form. I was fortunate to be able to sit in on that meeting. I have also read an article in the Disability Rights Education & Defense Fund News (DREDF) where you were the keynote speaker on Nov. 10, 1994 at their fifteenth year celebration. With your background in civil rights for all people I feel confident that we have the right person as Assistant Attorney General for Civil Rights.

There is also another reason for me contacting you and requesting your guidance and help in resolving an issue that is of major concern to me and many of other people with limited mobility in keeping their independence.

The ability to drive yourself to work, to go shopping, travel, and/or other activities that we do everyday, is a ne--cessity that people have long depended on. Just look at the number of cars & trucks on the highways. However this activity is slowly being taken away from many of us who can no longer buy gas without having someone with us that is able bodied.

More and more gas stations around the country are becoming "Self-Service" only gas stations. Just ask your friends

that have disabilities how difficult it is to get gas today. This means that if we do need to get gas, we have to find a gas station with at least one full service pump. The trend by the oil companies is to eliminate "Full-Service" altogether, in order to save money. This is taking the opportunity of living independently and keeping a job next to impossible.

I have been working on this problem for over a year now, asking and getting support from other disability groups but we need to do more. I wrote a letter to Janet Reno, who is suppose to be in charge of the DOJ, pointing out the problem we are having. I received a response that is like receiving no answer at all (enclosed). I have also written to many of our Congressmen and Senators, as well as President Clinton, and have received letters that amount to a pat on the head and nothing else in the way of what actions could be taken to overcome this discriminatory policy that the oil companies have in place towards people with limited mobility.

47 N. Main Street. 2-148 Akron Ohio 44308 phone: (216) 643-7257

Many of our senior citizens have also told me they too are having a hard time pumping gas because of limited strength and problems with mobility and/or dexterity that they have because of their age and changes in their bodies.

I am hoping that with your help and guidance, and that of the members of other disability organizations, we might find a solution to this problem. Perhaps we need to file a class action suite against a major oil company to have them change their policies so people have a choice between Self-Service or Full-Service at their stations. At one time this was available, but few stations, as I pointed out before, still offer this option.

I know that the oil industries have a number of lobbyist on Capitol Hill, which will make this a difficult task, to say the least. I feel that they believe they are above the law and that the principals and policies of the Americans With Disabilities Act does not include them or their gas stations.

Enclosed is a copy one of the articles that I had in our "Newsletter" that went out to over 3,000 people and organizations that work for the benefit of people with disabilities. Also a copy of a letter I sent to the local Newspapers, from which I got a number of phone calls thanking me for putting into words what they were also facing with this discriminatory policy.

I am also writing a letter to Marilyn Golden at DREDF and ask for her opinions and ideas concerning this matter. I hope I get more of a response from you than what I got from Merrily A. Friedlander, Acting Chief Coordinator and Review

Section, Civil Rights Division. Someone at DOJ has to step up and take charge of situations that threaten the very intent of the Disability Rights Laws that have been passed to help protect people with disabilities and afford them equal opportunities in this Country.

Thank you for taking time to read this and also for any help and guidance you might be able to give me as I continue to fight for the rights of people with disabilities. I'm looking forward to hearing from you in regards to this matter.

Respectfully Submitted,

Robert L. Kuiken, Administrative Assistant
Summit County's Disabled Citizens Program
47 North Main Street, 2-148
Akron, Ohio 44308-1991
(216) 643-7364 / Fax (216) 643-7742

01-03871
Att'n General Janet Reno
U.S. Department of Justice
Main Justice Building
10th Street & Constitution Ave. N.W.
Washington, DC 20530

Ms. Reno,

I have enclosed a letter which I have recently sent to the Department of Justice in Washington D.C. which I hope, with their help, will cause the owners of the self-service gas stations to make some policy changes so people with disabilities that drive and have mobility problems will not be stranded along the highway because of not having access to a gas station that will pump their gas for them.

This has happen to me recently as I was returning to Akron from Columbus, Ohio. Fortunately I was able to get a truck driver to pump my gas for me at a self service station. Even if I was able to exit my car, I would not have been able to reach the pumps from my wheelchair or the controls to turn the pumps on. I also noticed that there were no ramps or curb cuts leading into the building where I would have had to pay for my gas.

People with disabilities that do try to lead an independent life style should not be discriminated against because of the design of the gas stations or the policies that do not permit the workers to assist you in buying gas

I have brought this issue up at different meetings that I have attended and I have the support of "The National As-

sociation of the Physically Handicapped", The Disability Network of Ohio-Solidarity", "The Summit County Committee on Employment of the Handicapped" as well as several other disabled drivers that I have spoken to.

My hopes is that you will support my efforts in trying to stop the discrimination of people with disabilities that drive by trying to change some of the policies that the oil companies have concerning self-service gas stations. If you could discuss this matter with other legislative advisors and those you work with in the U.S. Department of Justice and ask for their support, perhaps we can correct this act of discrimination.

Thank you for your support and for the great job you and your colleagues are doing by working with and supporting issues of interest to people with disabilities. Keep up the good work.

Respectfully,
Robert L. Kuiken
Summit County's
Disabled Citizens Program
47 N Main St., 2-148
Akron, Ohio 4430a-1991

01-03872
Dear Editor,

I am writing this letter to alert you to a major economic disaster that is being brought on by the major oil companies in our Nation and in your area.

This is being brought about by having more and more of their gas stations become "Self-Service" only. By doing this they have singled out people with disabilities that drive and eliminated their ability to get gas at their stations. This action will eventually lead to them not being able to go to work, or shopping, or many other activities that would require them to drive. This not only affects the person with a disability but also their families, their employers, the store where they do their shopping, etc.

This policy also will have an effect on several "million dollar" corporations that manufacture driving aides and lifts for vans, not to mention the companies that install this equipment. The elimination of access to gasoline would eventually put these companies out of business. This would affect all the people that they employe plus all their families. This domino effect hurts us all.

In Ohio there is a law that states "if a gas station offers

full-service and self-service, people with disabilities that drive can get served at the self-service price. The oil companies policies have eliminated the full-service pumps which bypasses this law.

They have also eliminated any extra help, which leaves only one person to handle the money. This policy puts that one person In a dangerous position should something go wrong or a robbery takes place. This policy puts the employee's life in danger. Police departments have realized this problem but seem powerless over the oil companies clout. The Oil companies greed which drives them to eliminating extra employees while charging high prices for their products.

The Americans With Disabilities Act of 1990 provides equal access to products being offered to the general public by businesses. The oil companies choose to ignore this federal law.

It also upsets me when I see our senior citizens that drive, standing our in the rain & snow trying to pump their own gas, without having the option to get full-service if they choose to. Also men & women with their good cloths on taking the chance of spilling gas on themselves, just so the oil companies can make more money.

I think it is past time for people to take a stand and demand the option to get full-service at gas stations again, if they choose to. When is the last time anyone at a gas station has offered to wash your car's windshields, check your oil, water and other fluids under your car hood?

It is time to contact the oil companies, your local legislators, federal legislators, congressman, senators, the attorney general's office, the Department of Justice, and the Department of Commerce and let them know how you feel about having the choice of Full-Service at gas stations in your areas.

Thank You for your time and your support on this important issue of concern to people with disabilities that drive.

Robert L Kuiken

01-03873

Your
TICKET
to Independence

by Margaret A. Johnson, O.T.R./L.

Regaining the ability to drive is a
basic part of independent living.

When you were 16 years old, you excitedly and nervously prepared for the behind-the-wheel portion of your driver's test Passing the exam was your ticket to independence. No more riding shotgun with the folks or listening to backseat drivers giving orders. You were on your own-and what a good feeling this was!

Injuries or disease can affect you mentally, physically, and

emotionally-to the point of temporarily or permanently impairing driving. But, because your physical capabilities have changed,does this mean you must ride shuttles and carpool? Certainly not!

How do you go about learning what you may need if you are unable to drive a conventional vehicle? The first step is to acquire a doctor's referral for evaluation by an occupational therapist (OT) or driver rehabilitation specialist knowledgeable in the medical field.

I am an OT who was a driving evaluator for several years. When I worked with clients, I first assessed their mental, physical, and emotional status.

Adequate vision is crucial for drivers, and we provided a thorough screening. In one case, the result of a man's testing was far below the state's minimum standard for visual acuity. The client was asked to return for completion of the evaluation after he had visited his eye doctor. The physician found a hemorrhage in the man's eye: early discovery and laser treatment saved his vision. The client went on to successfully drive again.

Following an eye test you are screened in the areas of cognition and perception. Are you able to think quickly? Do you have good judgment and decision-making skills? One young woman drove without mishap for 20 minutes, but as we neared completion of the in-vehicle assessment, something told me to extend the length of the route. In the next block, she failed to brake when two pedestrians crossed her path. I stopped the vehicle and questioned her about this serious mistake. She said she saw the women, but "it just didn't register."

Evaluators also test your muscles and movement for strength, coordination, range of motion, and endurance. Strong muscle-spasms can interfere with safe driving; many times a change in medications may be a solution. Independent car-transfer was a grueling process for one man, whose legs had severe spasms; he was breathless and exhausted before he even turned on the ignition. Balance is an important consideration for driving. Can you maintain an upright sitting posture while making a sharp evasive right or left turn? It certainly defeats the confidence of

(PHOTO CAPTION)
With the help of "driver" Laura Schleiger, Occupational
Therapist Margaret Johnson demonstrates in-vehicle assessment.

(PHOTO CAPTION)
In the Adapted Driving Program at Good Samaritan Regional

Medical Center in Phoenix, Nick Mereles learns to transfer to the driver's seat of the facility's adapted van.

(PHOTO CAPTION)
An Adapted Driving Program van acquaints Mereles with equipment and vehicle modifications.

drivers who are on sharp curves suddenly find themselves staring at the kneecaps of those in the passenger seat. OTs can evaluate your hand function and recom-mend a chest restraint adapter so you can apply the strap, even if you can't use your fingers.

The final test is the actual in-vehicle assessment. The car is equipped with a reversible set of hand controls, various steering devices, a right- and left-sided turn signal, and a left-foot accelerator. Following demonstration and instruction, you begin to drive in a safe, empty park-

(PHOTO CAPTION)
FROM TOP: As part of Good Samaritan's Program, Charles Mascari's training includes stowing his chair behind the driver's seat.

01-03875

ing lot. After an increase in confidence and ability, you drive in residential areas and finally go into more complex traffic-but only if you feel comfortable.

Your evaluation is then typed up and, with the required

state forms, sent to your physician for review. You visit one of a list of recommended reputable vendors, where the prescribed adapted automobile equipment is installed. You may need further training at a local licensed driving school that has personnel skilled in instruction with adapted controls. At some facilities, OTs conduct this training. Once your controls are installed and you are proficient in their use, the therapist gives you final approval. You must have a state test for effectiveness in using special equipment. Your driver's license receives a code that denotes adaptive-equipment-use restriction similar to the one for people who wear glasses.

OTs and your vendor can help suggest appropriate vans or automobiles. Installation of hand controls is difficult in extremely small vehicles; some compact vans may not have room for you and your particular form of mobility. Many car manufacturers offer rebates for purchasing hand controls or other adaptive equipment..

If your needs cannot be met in an adapted automobile, you will be referred to a facility that has specialized adapted vans. Vehicles of this type allow you to experiment with using a lift for access and with various interchangeable steering devices. A raised roof or dropped in floor accommodates drivers in wheelchairs. These vans even have interchangeable steering wheels and lever-operated accelerators and brakes.

The Association of Driver Educators for the Disabled(ADED), an intenational organization, is devoted to the supportof professionals working in the field of driver education and transportation-equipment modification. ADED's goal to maximize transportation options for people with disabilities because driving is an earned privilege-for all of us.

Margaret A. Johnson, formerly an occupational therapist in the Driver Evaluation Program at Vanderbilt University Medical Center, Nashville, is now coordinator of Occupational Therapy at Nashville Rehabilitation Hospital. For assistance locating an evaluation center in your area, contact ADED at (608) 884-8833 / 884-4851 (fax).

for Evaluation-Then
for Independence

Driver-evaluation is performed at many sites around the country. Examples are the programs at Vanderbilt University Medical Center., Nashville, and at Samaritan Rehabilitation Institute. Good Samaritan Regional Medical Center, in Phoenix. Margaret A. Johnson (author of "Your Ticket to Independence") worked for eight years in the Driver Evaluation Program at Vanderbilt University Medical Center. "Clients were always surprised at how thorough the evaluations were," she recalls. "Many of them remembered their original driver's exams, in which they answered some questions, took a 20-minute ride,

and received their licenses. They had no idea our assessment was two or three hours long."

Drivers-evaluation programs emphasize safety as well as defensive driving. "I told clients to always use restraints (seat belts, etc.) and to raise their headrests to provide more protection," Johnson says. "Many of them received spinal-cord and head injuries because their headrests weren't properly adjusted."

According to Johnson, some clients are afraid evaluators will take away their driver's licenses. "I'm not employed by the state, and I don't have the authority to do something like that," she would tell them. After putting this fear to rest, she'd get on with the business at hand: putting qualified drivers with disabilities back on the road again.

According to Carol Blanc, 0.T.R., a driver-rehabilitation specialist, the Adapted Driving Program at the Arizona facility annually processes 100- 130 people whose disabilities range from head and spinal-cord injury to amputation, stroke, arthritis, and neurological diseases and problems. Clients must be of legal age and have a physician's referral and a valid Arizona driver's license or permit.

The length of the course depends on client disability and previous driving experience. Fees are charged by the hour; some insurance assist with these costs. Participants also receive help with obtaining their driver's licenses.

For more information about the driving programs mentioned in this article, contact:

Adapted Driving Program
Samaritan Rehabilitation Institute
Good Samaritan Regional Medical Center
Phoenix
(602) 239-4757

Vanderbilt University
Medical Center
Rehab Services
Nashville
(615) 322-0100

Margaret Johnson
Nashville Rehabilitation Hospital
(615) 226-4330

XX
XX
Tucson, Arizona XX

Dear XX

I am responding to your letter regarding the accessibility of gas stations to people with disabilities. Your letter asks the Department of Justice to take action to compel companies that operate gas stations to provide a "full service" option for their customers. Please excuse our delay in responding.

The Department of Justice is responsible for enforcing title III of the Americans with Disabilities Act (ADA), which prohibits discrimination on the basis of disability by places of public accommodation, including gas stations. The ADA requires existing gas stations that are not otherwise being altered to remove architectural barriers to the extent that it is readily achievable to remove them. The Department of Justice regulation implementing title III requires such barrier removal to comply with the ADA Standards for Accessible Design (Standards) for each altered element if it is readily achievable.

If a self-service gas station determines that it is not readily achievable to redesign gas pumps to enable people with disabilities to use them, the gas station is not required to make physical modifications to the gas pumps. However, the gas station is required to provide its services to individuals with disabilities through any readily achievable method, such as providing refueling service upon request to an individual with a disability at self-service prices. A service station is not required to provide refueling service to individuals with disabilities at any time when it is operating exclusively on a remote control basis with a single cashier and, under no circumstances, does the ADA require a self-service gas station to initiate a full-service operation.

cc: Records, Chrono, Wodatch, Blizard, FOIA
n:\udd\blizard\drsltrs\
01-03689

Because no Federal civil rights law enforced by this Division prohibits the operation of gas stations on a self-service basis, we can take no further action in response to your request.

Sincerely,

John L. Wodatch
Disability Rights Section
Civil Rights Division

Enclosures

01-03690

AUG 18 1995

The Honorable John D. Leshy
Solicitor
Office of the Solicitor
U.S. Department of the Interior
1849 C Street, N.W.
Washington, D.C. 20240

Dear Mr. Leshy:

Since my last letter to you on the subject of leaf-burning, your staff has asked a number of questions about our approach. Your inquiries have caused us to review our position. This letter, then, is in further response to the draft letter of findings that was submitted to us for review. I apologize for the delay and hope it has not inconvenienced your enforcement efforts under the Americans with Disabilities Act ("ADA"). This letter will clarify the Department's position on this issue.

The draft letter of findings addresses whether the City of Moline, Illinois1 has violated title II of the ADA by allowing leaf-burning by its citizens. The Department of the Interior has determined that the practice of leaf-burning may adversely affect people with asthma and other respiratory disabilities. Although the City has voluntarily enacted a total ban on leaf-burning effective May 1, 1995, the draft letter of findings finds a violation of title II in the City's failure to modify the practice of leaf-burning during the interim period before the effective date of the ban. The letter makes three arguments in support of its conclusion: (1) that leaf-burning is a program of the City under 28 C.F.R. § 35.130(a); (2) that leaf-burning is part of an "arrangement" between the City and its citizens under 28 C.F.R. § 35.130(b)(3)(i); and (3) that leaf-burning is a barrier to access by people with disabilities to other programs of the City in violation of 28 C.F.R. § 35.149.

Upon further review, we have refined our view of the issue. However, we still do not concur with the positions taken in the Department of the Interior's letter. We believe that argument

cc: Records, Chrono, Wodatch, Hill, McDowney, FOIA
n:\udd\hille\leafburn\leafdoi.ltr\sc. young-parran

1 The letter of findings also mentions East Moline and Rock Island, Illinois, and Davenport, Iowa, but does not provide a factual assessment of the complaints against those cities.
01-03691

two, above, does not apply to the current situation. The letter does not indicate any formal or informal agreement or arrangement between the City and its citizens under which the citizens have agreed to provide a leaf-burning service for the City. While an arrangement need not necessarily be evidenced by a formal agreement or similar documentation in order to be governed by 28 C.F.R. § 35.130(b) (3) (i), a mere incidental benefit to a public entity is not sufficient to indicate such an arrangement.

Similarly, argument three is too broad. Such an argument would potentially extend the City's program access obligations to any barriers found along the path from a City resident's home to a municipal program, regardless of whether those barriers were created by the City or were within its control. Section 35.149 of the title II regulation, which is limited to the "public entity's facilities," was not intended to go that far.

Finally, the first argument, that leaf-burning is a program of the City under 28 C.F.R. § 35.130(a), while possibly appropriate in some circumstances, does not appear applicable here. The ADA was intended to eliminate discrimination by public entities in their programs, services, and activities. The leaf-burning activities described in the draft letter of findings, however, are not conducted by or on behalf of a public entity, but rather constitute purely private activity on the part of City residents. As such, those activities are not subject to title II of the ADA.

If, on the other hand, a public entity requires leaf-burning by its citizens or contracts with its citizens to provide leaf-burning services for the public entity, then leaf-burning may constitute a program of the public entity under title II. Merely allowing leaf-burning, though, generally would not transform leaf-burning into a public program.

Therefore, in reviewing pending and future complaints regarding leaf-burning, we would recommend that the Department of the Interior assess whether the leaf-burning is done by or on behalf of the public entity or is required by the public entity. If it is, the public entity would be required to make reasonable modifications to the leaf-burning program, such as providing advance notice of dates and locations of leaf-burning. If it is not, the leaf-burning activity, itself, will most likely not be covered by title II.

01-03692

I hope this is helpful to you in resolving complaints based on leaf-burning. If you have further questions, please feel free to call Eve Hill at (202) 307-0663.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

01-03693

SEP 26 1995

The Honorable Frank D. Lucas
Member, U.S. House of Representatives
P.O. Box 3612
Enid, Oklahoma 73702

Dear Congressman Lucas:

This letter is in response to your inquiry on behalf of your constituent, XX regarding the inaccessibility of the streets, sidewalks, and Post Office in Garber, Oklahoma. XX complains that the curbs are too high and the sidewalks too uneven for the use of persons with disabilities and that the door into the Post Office is not accessible to persons with disabilities.

Several Federal laws prohibit discrimination on the basis of disability. Title II of the ADA prohibits discrimination on the basis of disability in any of the services, programs, or activities of State and local governments. A public entity's services, programs, or activities, when viewed in their entirety, must be readily accessible to and usable by individuals with disabilities. This standard, known as "program accessibility," applies to all existing facilities of a public entity. Public entities, however, are not necessarily required to make each of their existing facilities accessible. In addition, a public entity does not have to take any action that it can demonstrate would result in a fundamental alteration in the nature of its program or activity or in undue financial and administrative burdens.

Installation of curb ramps to provide access to existing pedestrian walkways on existing streets that are not otherwise being altered may be necessary in order to provide access to the "program" of using public streets and walkways.

Title II of the ADA further requires that public entities maintain in operable working condition those features, including sidewalks and streets, that are required to be readily accessible

cc: Records; Chrono; Wodatch; Milton; McDowney; FOIA
udd\milton\congress\curbs&po.luc
01-03694

to and usable by persons with disabilities. A complaint that a State or local government has violated title II may be filed by writing a detailed letter to the Department of Justice, Civil Rights Division, Disability Rights Section, P.O. Box 66738, Washington, D.C. 20035-6738.

The Architectural Barriers Act requires accessibility in all Federal buildings, including U.S. postal facilities, that are designed, constructed, or altered after 1968. Complaints alleging violations of the Architectural Barriers Act may be sent to: Judith A. Haslam, Director, Office of Compliance and Enforcement, Architectural and Transportation Barriers Compliance Board, 1331 F Street, N.W., Washington, D.C. 20004-1111 ((202) 272-5435).

In addition, all Federal government entities (including the United States Postal Service) must comply with section 504 of the Rehabilitation Act of 1973. Section 504 regulations require that newly constructed or altered facilities be constructed to be readily accessible to and usable by individuals with disabilities. For existing facilities, the regulations require that all programs and services provided by the government entity be accessible. A section 504 complaint may be filed by writing a detailed letter to: Ursula D. Hennessy, Acting Manager, Architectural Barriers Compliance Program, United States Postal Service, 475 L'Enfant Plaza, S.W., Room 4130, Washington, D.C. 20260-6422 ((202) 268-3139).

I hope this information is helpful to you in responding to your constituent.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

01-03695

XX
Garber, Okla
XX

The Honorable Frank Lucas

Dear Mr Lucas

I am writting because of a problem that has existed in this town for as long as I have lived here. I wrote the D.O.J. and D.O.T. several years ago, only to have my letters sent back and forth between the two departments for about 3 years. The last time they sent me a letter saying they were sending it back to which ever I wrote them and told them I would be dead before they got off their you know whats and did anything.

One of my stepsons suggested I contact Brad Edwards from tv 4 in OkC which I did and they suggested I contact you since the city of Garber is in violation of several Federal Laws. Mr Edwards is going to also follow up on my progress and help if I have any problems.

The probleme which I am writting about have to do with the sidewalks in downtown Garber. The curbs in some places are about 12 to 18 inches high making it difficult for the elderly and handicapped to get one a sidewalk, and then the sidewalks are dangerous even for someone who isn't handicapped. Anyone in a wheelchair or other means of handicapped transportation can't get down a sidewalk in this town. I even have difficulty with my grandson stroller. This makes it difficult for anyone to even get into a business in town. During the winter the elderly have a very hard time getting into the stores, because of the curbs being so high and the streets being slick.

The other problem is the post office which at last check was a Federal agent, is impossible for the handicapped to get into. Oh they just build a realy nice ramp but anyone in a wheelchair or other divice can't get in to the post office. We have one man who has to sit and wait for someone to open the door for him so he can get in and out.

Mr. Edwards office informed me that both of these violate the handicapped regulations. But everyone figures if they just ignore it that no one will have to do anything at all about it.

Our city council sure isn't going to do anything about it because they don't want to they don't have to worry about it. I heard for I know the last 10 yrs that they are going to do something about it and as long as no one makes a big deal out of it they arn't going to do anything.

I'm tired of people putting me off about this. My husband will be 80 yrs old in Nov. he can't even walk down the sidewalks in town nor the streets around our house because they keep filling holes up with large large gravel. I have even twisted my ankle on this stuff and on the sidewalks in town. Why should we be forced to drive 20 miles to Enid to walk in the mall when we are paying taxes in this town to keep our streets and sidewalks useable.

I could have written my state rep. but I know they would have only sent us to you so I just bypassed him and came straight to you I hope you will be able to get this problem taken care of. Our state senator MR Long is from Garber and a lot of good it does to have him around. This problem has been here since he was living here and he did nothing about it

Thank you for your time

Sincerely

XX

01-03696

XX
XX
Garber, Okla XX
XX

AUG 02 1995

The Honorable Frank Lucas

Dear Mr. Lucas

I am writting because a problem that has existed in this town for as long as I have lived here. I wrote the D.O.J. and D.O.T. several years ago, only to have my letters sent back and forth between the two departments for about 3years. The last time they sent me a letter saying they were sending it back to which ever I wrote them and told them I would be dead before they got off their you know whats and did anything.

One of my stepsons suggested I contact Brad Edwards from tv 4 in OkC which I did and they suggested I contact you since the city of Garber is in violation of several Federal Laws. Mr. Edwards is going to also follow up on my progress and help if I have any problems.

The problem which I am writing about have to do with the sidewalks in downtown Garber. The curbs in some places are about 12 to 18 inches high making it difficult for the elderly and handicapped to get one a sidewalk, and then the sidewalks are dangerous even for someone who isn't handicapped. Anyone in a wheelchair or other means of handicapped transportation can't get down a sidewalk in this town. I even have difficulty with my grandson stroller. This makes it difficult for anyone to even get into a business in town. During the winter the elderly have a very hard time getting into the stores, because of the curbs being so high and the streets being slick.

The other problem is the post office which at last check was a Federal agent, is impossible for the handicapped to get into. Oh they just build a really nice ramp but anyone in a wheelchair or other divice can't get in to the post office. We have one man who has to sit and wait for someone to open the door for him so he can get in and out.

Mr. Edwards office informed me that both of these violate the handicapped regulations. But everyone figures if they just ignore it that no one will have to do anything at all about it.

Our city council sure isn't going to do anything about it because they don't want to they don't have to worry about it. I heard

for I know the last 10 yrs that they are going to do something about it and as long as no one makes a big deal out of it they aren't going to do anything.

I'm tired of people putting me off about this. My husband will be 80 yrs old in Nov. he can't even walk down the sidewalks in town nor the streets around our house because they keep filling holes up with large large gravel. I have even twisted my ankle on this stuff and on the sidewalks in town. Why should we be forced to drive 20 miles to Enid to walk in the mall when we paying taxes in this town to keep our streets and sidewalks useable.

I could have written my state rep. But I know they would have only sent us to you so I just bypassed him and came straight to you I hope you will be able to get this problem taken care of. Our state senator MR Long is from Garber and a lot of good it does have him around. This problem has been here since he was living here and he did nothing about it

Thank you for your time

Sincerely,

XX

01-03891

OCT 5 1995

The Honorable Norma Cantu
Assistant Secretary for Civil Rights
U.S. Department of Education
330 C Street, S.W.
Suite 5000
Washington, D.C. 20202-1100

Dear Ms. Cantu:

This letter addresses your inquiry regarding the provision of sign language interpreters to college students. You asked if the Americans with Disabilities Act (ADA) would permit a college to require students who are not clients of State vocational rehabilitation agencies to apply to such agencies in order to reimburse the college for the costs of needed sign language interpreters or other auxiliary aids.

Title III of the ADA requires private institutions of higher education to provide auxiliary aids and services, including qualified interpreters, to students where necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services. 28 CFR S 36.303. Title II of the ADA requires public institutions of higher education to furnish appropriate auxiliary aids and services, including qualified interpreters, where necessary to afford an individual with a disability an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity conducted by the institution. 28 CFR S 35.160. Section 504 of the Rehabilitation Act also requires postsecondary schools that receive federal financial

assistance to provide appropriate auxiliary aids. 34 CFR S 104.44(d). None of these regulations require an entity to take any action that it can demonstrate would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial or administrative burdens. A college's obligation to provide auxiliary aids, however, is not dependent on the availability of vocational rehabilitation or other funding.

cc: Records; Chrono; Wodatch; Blizard; Milton; FOIA
n:\udd\milton\rsa.3\sc. young-parran
01-03697

The Federal regulations implementing titles II and III expressly prohibit the imposition of a surcharge on a particular individual with a disability or any group of individuals with disabilities to cover the costs of measures, such as the provision of interpreters or other auxiliary aids or services, that are required to provide an individual or group with the nondiscriminatory treatment required by the ADA. 28 CFR SS 35.130(f), 36.301(c). Requiring a student with a hearing impairment or other disability to apply for participation in the vocational rehabilitation program could impose a direct financial obligation on the student if a State vocational rehabilitation agency has established, as permitted by program regulations in 34 CFR 361.47(a), a financial need test on the provision of certain auxiliary aids, such as interpreter services or reader services, whereby the student is required to pay part of the cost of the needed services.

Even if a State vocational rehabilitation agency has not established such a financial need test, the student may expend considerable time and effort in meeting the procedural requirements for receiving services. Before any services can be initiated, the Rehabilitation Act requires a formal application for services, an eligibility determination, which may involve a comprehensive assessment of the individual's vocational aptitudes and interests, functional capacities, personality and interpersonal skills, and medical condition if existing data is determined to be insufficient. Then the applicant and the vocational rehabilitation counselor jointly must develop an individualized written rehabilitation program identifying all services needed to achieve a particular outcome. Requiring a student with a disability to complete this process as a prerequisite to obtaining auxiliary aids that Federal law requires the postsecondary institution to provide, imposes a burden on students with disabilities that is not imposed on other students. In our view, this expenditure of time and effort may be quantified as a cost imposed on the student as a precondition to the provision of a required auxiliary aid; therefore, it is prohibited by the ADA.

No different result should be reached under section 504 because the Department of Education regulation implementing section 504 expressly requires covered postsecondary institutions to provide auxiliary aids for students with disabilities. 34 CFR S 104.44(d). This clearly requires covered entities to ensure that auxiliary aids are provided to qualified students with disabilities regardless of their financial need or the availability of outside funding. U.S. v. Bd. of Trustees for the

Neither the ADA nor section 504 prohibits a postsecondary institution from encouraging eligible students to take advantage of any benefits available to them, including participation in a vocational rehabilitation program. However, the decision to participate must be made voluntarily by the student. A postsecondary institution may not require a student to apply for benefits, it may not withhold payment for required auxiliary aids while the student's vocational rehabilitation eligibility is being determined, and it may not refuse to fund any portion of the cost of required auxiliary aids that is not covered by the vocational rehabilitation program in States where a financial need test is applied to vocational rehabilitation clients.

I hope this information is helpful to you in resolving this issue.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

cc: The Honorable Judith E. Heumann
Assistant Secretary for Special Education and
Rehabilitative Services
U.S. Department of Education
01-03699

OCT 11 1995

The Honorable Strom Thurmond
United States Senate
217 Russell Office Building
Washington, D.C. 20510-4001

Dear Senator Thurmond:

Your letter to the Department of Labor on behalf of your constituent, Edwin Poulnot, III (your case number 5206230003), was referred to the Department of Justice for reply. Mr. Poulnot has questions about existing retail space that he is trying to sublease to another tenant. Mr. Poulnot wished to know his obligations under the Americans with Disabilities Act of 1990 (ADA). Please excuse our delay in responding.

The ADA does not establish specific requirements regarding alterations that must be made to existing facilities for the purpose of accessibility, if alterations are not otherwise planned. Title III of the ADA, which applies to places of public accommodation and commercial facilities, simply requires that places of public accommodation, including sales and rental establishments, remove architectural and communication barriers to the extent that it is readily achievable to do so. Such barriers must be removed from all public areas of the place of public accommodation, including restrooms. Congress defined the term "readily achievable" to mean "easily accomplishable and able to be carried out without much difficulty or expense."

In determining whether an action is readily achievable, the factors to be considered include: 1) the nature and cost of the action needed; 2) the overall financial resources of the entity; 3) the number of persons employed by the entity; 4) the effect which complying will have on the entity's expenses and resources; 5) legitimate safety requirements necessary for safe operation; 6) the impact otherwise of the action upon operation of the site; 7) the relationship of the entity to any parent corporation or entity; and 8) the overall financial resources, size, and types of operations of any parent corporation or entity.

cc: Records; Chrono; Wodatch; McDowney; Milton; FOIA
n:\udd\congress\achvable.thu\sc. young-parran
01-03700

The Department of Justice regulation implementing title III of the ADA requires that measures taken to remove barriers must comply with the ADA Standards for Accessible Design unless such compliance is not readily achievable. If it is not readily achievable to remove barriers in an existing facility that is not otherwise being altered, then barrier removal is not required. However, where barrier removal is not readily achievable, the public accommodation must nonetheless make its goods, services, or facilities available through alternative methods, such as curbside service, home delivery, or relocation of activities, where those methods are readily achievable.

Thus, businesses such as retail stores may need to adjust their layout of racks and shelves in order to permit wheelchair access, but they are not required to do so if it would result in a significant loss of selling space. However, the store is still required to make the goods and services that are located along inaccessible aisles available to individuals with disabilities through alternative methods. For example, the store could instruct a clerk to retrieve inaccessible merchandise, if it is readily achievable to do so.

Finally, please note that both the landlord and the tenant of a retail establishment are public accommodations and have full responsibility for complying with all ADA title III requirements applicable to that place of public accommodation. The title III regulation permits the landlord and the tenant to allocate responsibility, in the lease, for complying with particular provisions of the regulation. However, any allocation made in a lease or other contract is only effective as between the parties, and both landlord and tenant remain fully liable for compliance with all provisions of the ADA relating to that place of public accommodation.

I hope this information will be helpful to you in responding to your constituent.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

01-03701

KERRISONS
*DOWNTOWN--260 KING ST. CHARLESTON, S.C. 29401
*ST. ANDREWS CENTER
*NORTHWOODS MALL FOUNDED IN

Mr. John Payne
Office Sen. J. Strom Thurmond
Washington, D.C.

FAX 202-224-1300

Dear Mr. Payne I am writing you to ask your help in clarifying the implications of the Disability Act on a property that I am trying to sublease to another tenant.

This building is 26,500 square feet and is located in the City of Charleston. It was constructed in 1966, and is free standing within a strip center. It has wheel chair ramps at the front and rear doors. We are presently offering public rest rooms for male and female. These restrooms are small and do not have access for wheel chairs. The rooms are quite small and have two stalls in the mens room and four stalls in the womens area. Store aisles in the main aisles are about five feet, but in the interior aisles the width varies according to the department.

My question is, what do we have to do (if anything) to conform to the Disabilities Act.

Any information which you can obtain for us would be sincerely appreciated.

July 25, 1995 Sincerely,

Edwin Poulnot, III
President
Fax. 803-722-4045

01-03702

OCT 12 1995

XX
XX
West Bowdoin, Maine 04287

Dear XX

I have been asked to respond to your letter to President Clinton regarding the case of Abbott v. Bragdon.

As you know, the case involves a dentist, Dr. Bragdon, who has refused to provide in-office dental treatment to patients (and in particular, Ms. Sidney Abbott) who are HIV-positive. Ms. Abbott alleges that Dr. Bragdon has violated the Americans with Disabilities Act (ADA). The United States became involved in the case after Dr. Bragdon alleged that the ADA is unconstitutional.

The ADA is a civil rights statute enacted to protect the civil rights of individuals with disabilities. Under the law, health care providers, including dentists, are required to treat patients without discriminating on the basis of an individual's disability. Persons who are HIV-positive are individuals with disabilities, and so they are protected from discrimination on that basis. However, the ADA would not require a health care provider to treat an individual with a disability if doing so would create a direct threat to health or safety.

In this case, Dr. Abbott's argument that it is not safe to treat patients who are HIV-positive in his dental office is not based on scientific fact. The Centers for Disease Control, the American Dental Association and other authorities as well as every court to address this issue have uniformly concluded that providing routine in-office dental care to individuals who are HIV positive does not require any special procedures or expertise and does not endanger the health or safety of the treating dentist.

cc: Records, Chrono, Wodatch, McDowney, Blizard, FOIA
n:\udd\blizard\drsltrs\hiv\abbott\sc. young-parran
01-03703

The United States' position on this matter and a discussion of the scientific evidence are more fully developed in the Motion for Summary Judgment and Memorandum which we filed with the court on September 19, 1995. A copy of this document, as well as the accompanying Statement of Uncontested Facts, are enclosed for your information.

We hope that this responds to your concerns.

Sincerely,

John L. Wodatch
Chief
Disability Rights Section

Enclosures
01-03704

XX

7/23/95

Dear President Clinton:

It has come to my attention that there is a lawsuit pending against a dentist in Bangor, M Dr. Randon Brandon, by an HIV + woman because Dr. Brandon (in the intrests of her health as well as the health of the rest of her patients) wants to treat her in the hospital. I have also learned that six lawyers from Att. General Janet Reno's office have been assigned to her case.

As a citizen and taxpayer I am appalled that with all the crime and drugs in this nation the Dept. of Justice has nothing better to do than to harass a law abiding citizen like Dr. Brandon and I would hope that you would put an end to this foolishness.

Very truly yours,

XX

01-03705

OCT 9 1995

The Honorable Bob Filner
Member, U.S. House of Representatives
333 F Street, Suite A
Chula Vista, California 91910

Dear Congressman Filner:

This is in response to your inquiry on behalf of your constituents, XX .
We apologize for our delay in responding.

XX are complaining about their treatment at the Hometown Buffet Restaurant in Chula Vista and they inquire whether their rights have been violated. XX uses a wheelchair and requires assistance for toileting. At the Hometown Buffet, a problem arose when XX attempted to use the ladies' room with his wife's assistance. It appears that a female customer objected to XX presence in the ladies' room and the assistant manager subsequently advised the XX to wait outside the restroom until it was unoccupied before entering to use the toilet. The XX note, however, that a woman with a child, an "older boy," were apparently allowed to use the ladies' room without incident. The XX further allege that they were told to sit at a table in the restaurant nearest the door, and were advised that this policy was in effect "in case a wheelchair person became ill."

Title III of the Americans with Disabilities Act prohibits discrimination against individuals with disabilities by places of public accommodation, including restaurants such as the Hometown Buffet. Among other things, the ADA requires public accommodations to make "reasonable modifications" in its policies, practices, and procedures where necessary to afford an individual with a disability an equal opportunity to enjoy the goods and services offered by the public accommodation. Designating restrooms for separate use by men and women is a policy or practice subject to the reasonable modification requirement. It appears from the XX account that the restaurant was willing to modify its general rules and allow

cc: Records; Chrono; Wodatch; Magagna; McDowney; FOIA
udd\magagna\congress\filner
01-03706

XX to use the ladies' room with his wife's assistance so long as the privacy of other patrons was respected. Without knowing more, the restaurant's position appears to be reasonable.

More problematic is the restaurant's rule that patrons using wheelchairs sit only near exit doorways. While a public accommodation may impose legitimate safety rules, it cannot make assumptions about the capabilities of individuals with disabilities or provide services in a segregated manner.

Under title III, individuals have a private right of action to enforce their rights in federal court. The ADA also authorizes the Department of Justice to investigate complaints against places of public accommodation and to take enforcement action where there is a pattern or practice of discrimination or discrimination involving an issue of general public importance. The Department has undertaken a vigorous enforcement program under the ADA which is described in the attached report. Unfortunately, however, we are not able to investigate every meritorious complaint we receive. We have reviewed the information provided by the XX and determined not to investigate this incident. The XX may wish to pursue their rights in federal court. We have also enclosed a list of agencies in California that may be able to provide some assistance in this manner.

I hope this information will be helpful to you in responding to your constituents.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

Enclosures

01-03707

August 3, 1995

Rep. Bob Filner
333 F Street
Chula Vista CA 91910

Dear Bob:

RE: Violation of ADA

My husband, XX , is disabled by a stroke, uses a wheelchair, and can barely stand by himself. He must be pulled up from the chair and steadied when we are in a public bathroom. He cannot go alone. This had never been a problem for us these last 12 years wherever we went in the U.S; that is, until ----

On July 24, 1995 at between 4:30 and 5:00 p.m., we were in the womens' room at the Hometown Buffet, 651 Palomar St., Chula Vista, CA 91911. We are regular customers, going to the Hometown Buffets 2 or 3 times a week for at least two years. We are known, and greet the manager, XX , when we see her.

The Palomar St. store is heavily patronized by Mexican shoppers, being near the border; almost all the employees are bilingual, Spanish being the first language spoken there.

While we were waiting for the wide stall to become vacant, I observed a woman looking angrily at us. She left, and then in came a bus-girl to say "You don't belong in here". I told her to go away. Shortly in came the Asst. Manager, another Mexican, and told us that we could use the room, but that we had to leave and wait outside with an escort from the restaurant until the room was emptied. Then we would be permitted in and all others would be barred from entering until we had left.

We had already been waiting for over 10 minutes. There is no blue symbol on the door to designate wheelchair use, and while the customers can use the other three stalls, we cannot. Another woman slipped in before I could maneuver the chair to the opening, the area where we had to wait being at hinges to the door. I noticed one woman had an older boy with her, whom we Americans would send to the mens' room.

01-03708

I called the company's main office the next morning (address below) and related my account to XX . The day after that, Mgr. Diane Stoops called me and apologized for the scene and humiliation to my husband. But she did mention she knew of this new restriction. I asked her to let me know what her company was going to do, but she has not yet called me with that information.

Another point: One of the hostesses, Erika, told me we had to sit near the exit doorway in case a wheelchair person became ill, and that we should wait at the side of the line of people until a table came empty near the door. But there are 3 exits, not just one. The second and third time she seated, I refused to wait for a table in the one area she said we had to sit. She was angry, said these were her orders.

What are our rights? Americans have not been offended by our use of either mens' or womens' rooms. This appears to be a case of cultural clash - they are imposing their standards from across the border. If my disabled husband cannot come into the bathroom without elaborate procedure, why should their older boys come in and out at will? And it is clear the customers do not connect the wide stall for use by a person in a wheelchair.

Sincerely,
XX
XX
XX
San Diego, CA 92154
(619) 690-0714

Hometown Corporate Office
9171 Towne Centre Drive
San Diego CA
(619) 546-9096
Fax Line 546-0179
Attention: XX

01-03709

Mr. Richard Kuchnicki
President
Council of American Building Officials
5203 Leesburg Pike
Falls Church, Virginia 22041

Dear Mr. Kuchnicki:

This letter is in response to your request that the Department of Justice review the American National Standards Institute's (ANSI) standard A117.1 (1992 ed.) and the Board for the Coordination of the Model Codes' (BCMC) recommended accessibility provisions and evaluate their consistency with the new construction and alterations requirements of the Americans with Disabilities Act (ADA). The efforts of ANSI, BCMC, and the other model code groups involved in drafting the BCMC/ANSI standards are highly commendable.

I apologize for the delay in responding to your request and I thank you for your patience during the review process. We have attempted to conduct a comprehensive and detailed evaluation of the BCMC/ANSI standards that we hope will assist you in the ongoing development of the 1997 edition of ANSI A117.1. The Architectural and Transportation Barriers Compliance Board has also reviewed the submitted standards and their comments are addressed in our evaluation.

Our analysis of the submitted BCMC/ANSI standards is discussed in detail in the enclosed side-by-side comparison. That comparison contains the ADA new construction and alterations requirements in the left column, the comparable ANSI A117.1 provisions in the second column, the comparable BCMC provisions in the third column, and the Department's comments in the right column. Although the ANSI and BCMC provisions occupy separate columns, the Department's comments generally treat both codes as a single combined code, rather than analyzing each individually. This is based on our understanding that BCMC section 1.3 adopts the ANSI standard to provide its technical specifications. In some instances, however, the ANSI and BCMC codes contain differing requirements for a single element. In these instances, the intent of the drafters is unclear and, therefore, the provisions have been addressed separately.

cc: Records, Chrono, Wodatch, Blizard, Hill

We have identified several areas where the requirements of the BCMC/ANSI standards are not equivalent to the ADA requirements. These areas are identified in the side-by-side comparison by the characters "N.E." Other sections are designated as "P.N.E.," meaning "possibly not equivalent." Further clarification regarding the intent and meaning of such sections may resolve the potential problems identified in the comparison.

Most of the substantial areas of nonequivalency appear to involve scoping issues, rather than technical specifications. While the side-by-side comparison should give you a comprehensive picture of the areas of concern, I would like to highlight some of the major differences between the BCMC/ANSI standards and the ADA requirements. These differences are as follows:

A. Global Issues

1. "Non-code" Issues

The BCMC/ANSI standards provide that a number of elements covered by the ADA Standards are "inappropriate for incorporation into a building code." Therefore, the BCMC/ANSI standards do not impose any accessibility requirements on those elements. The "non-code" items include:

automatic teller machines
express check-out aisles
library magazine displays
permanent signage
public telephones
temporary raised platforms
self-service shelves and display units
smoking/non-smoking dining areas
telecommunication devices for the deaf
transient lodging notification devices

Many of these items can be regulated by building code officials and, therefore, must be included in any building code in order for the code to be considered equivalent to the ADA.

Furthermore, those few items that may be beyond the scope of building officials' inspections must nevertheless meet the ADA requirements. Therefore, scoping and technical requirements should, at least, be provided as advisory Appendix material in building codes so builders have notice of the requirements.

2. Historic Preservation

The ANSI and BCMC standards each address historic preservation. It is unclear how the drafters intended to mesh the two.

The ANSI standard addresses historic preservation only in the Appendix. In addition, the ANSI process is significantly different from the process mandated by the ADA. Congress specifically required the ADA Standards to include historic preservation provisions equivalent to those in the Uniform Federal Accessibility Standards, which require consultation with the appropriate historic preservation official whenever a building is covered by the National Historic Preservation Act. The ANSI process permits the building official to act without consultation with the appropriate preservation official. In addition, the ADA specifically provides modified standards to be applied when full accessibility would threaten historic preservation. The ANSI standard does not specify such modified standards and, thus, leaves it to the discretion of the building official to balance accessibility and historic preservation.

The BCMC standard does not refer to the ANSI standard

regarding historic preservation. The BCMC standard will allow application of "alternate provisions" whenever the historic character of a building would be "adversely affected" by accessibility. This standard is not equivalent to the ADA Standards, which apply modified accessibility requirements only when full accessibility would "threaten or destroy" the historic character of a building. In addition, the BCMC standard fails to specify what "alternate provisions" are to be applied and, thus, leaves it to the discretion of the building official.

2. Building Classification

The BCMC/ANSI standards rely on traditional building code classifications of buildings. Such classification systems may not completely overlap with ADA coverage. Therefore, in some cases, the BCMC/ANSI standards may not meet the ADA requirements for some types of buildings. The statutory language of the ADA requires coverage of all public accommodations and commercial

facilities. The equivalency of the scope of application of the BCMC/ANSI standards cannot be assessed without the applicable building code. The BCMC/ANSI standards also rely on building codes to define alterations, entrances, and stories. The equivalency of these definitions, therefore, cannot be assessed at this time.

3. Mainstreaming

The BCMC/ANSI standards take the position that the accessibility of some elements of buildings is a matter of concern for all occupants, not just for occupants with disabilities. Therefore, the BCMC/ANSI standards do not provide scoping for these elements, and leave it to the general building code to require all such elements to be accessible. Such "mainstreamed" elements include ramps, stairs, and doors.

While mainstreaming of such elements is a laudable goal, the lack of scoping in the submitted BCMC/ANSI standards prevents the Department from finding equivalency. In order to assess the equivalency of mainstreamed elements, the applicable building code must be reviewed.

B. Major Scoping and Technical Issues

1. Alterations and Additions (4.1.5; 4.1.6)

The BCMC/ANSI standards' requirement for provision of an accessible path of travel to alterations is unclear. The BCMC/ANSI standards do not define "path of travel" and, therefore, the more common meaning may be applied, rather than the meaning established by the statutory language of the ADA. In addition, the BCMC/ANSI standards do not address the potential problem of a series of small alterations to which the path of travel requirement may not apply individually. The ADA addresses this problem by requiring consideration of the cost of all alterations made during the prior three years for which no path of travel was provided. The BCMC/ANSI standards also fail to require that, if full accessibility of the path of travel would exceed 20% of the cost of the alteration, the builder must spend 20% toward partial accessibility. Problems with the BCMC/ANSI standards' technical provisions for alterations are addressed in the side-by-side comparison.

The BCMC/ANSI standards do not specifically address additions. Therefore, it is unclear whether additions will be treated as alterations or as new construction.

2. Special Application Sections (5-10)

The BCMC/ANSI standards do not address unique accessibility requirements in medical facilities, business and mercantile facilities, libraries, transient lodging, and transportation facilities. Some of the ADA's requirements for such facilities are adequately addressed by the general provisions of the BCMC/ANSI standards, but many are not. Specific problems with the BCMC/ANSI standards' general technical specifications as applied to the ADA's special occupancies are addressed in the side-by-side comparison.

3. Transient Lodging (9)

The BCMC/ANSI standards' scoping for hotels is seriously inadequate. The BCMC/ANSI standards exempt all hotels with less than 6 rooms. The ADA exempts such hotels only if the owner is in residence. In addition, the BCMC/ANSI standards require 1 accessible room for the first 30 rooms and then 1 more accessible room for each additional 100 rooms. This is not equivalent to

the ADA requirements for accessible rooms. Also, the BCMC/ANSI standards do not require dispersion of accessible rooms.

The disparity between the BCMC/ANSI standards and the ADA requirements is increased by the fact that the BCMC/ANSI standards only require that roll-in showers be provided in half of the accessible rooms, instead of requiring additional accessible rooms with roll-in showers.

The following chart illustrates the disparity between the ADA scoping requirements and the BCMC/ANSI requirements. (Chart has been formatted to accomodate ASCII text)

No. of rooms	ADA Accessible Rms	ADA Accessible Rms + Roll-in Shower Rms	BCMC Accessible Rms (1/2 of these are Roll-in Shower Rms)
1 to 25	1	1	1
26 to 50	2	2	(26-30: 1) (30-50: 2)
51 to 75	3	4	2
76 to 100	4	5	2
101 to 150	5	7	(101-130: 2) (131-150: 3)
151 to 200	6	8	3
201 to 300	7	10	(201-230: 3) (231-300: 4)
301 to 400	8	12	(301-330: 4) (331-400: 5)

401 to 500	9	14	(401-430: 5) (431-500: 6)
501 to 1000	2% of total (=10-20)	15-19	6-9
1001 and over	20 plus 1 for each 100 over 1000	24 + 1 for each 100	(1001-1030: 9) (>1030: 10 + 1 for each 100)

Although the scoping for rooms accessible to people with hearing impairments is equivalent, the BCMC/ANSI standards only require visual alarms in those rooms. The ADA requires both visual alarms and visual notification devices.

01-03714

The BCMC/ANSI standards do not specifically address homeless shelters and other social service establishments. It is unclear whether these facilities would be subject to the general requirements for transient lodging, for residences, or would not be covered at all.

4. Work Areas (4.1.1(3))

The BCMC/ANSI standards exempt "areas where work cannot reasonably be performed by persons having a severe impairment" from accessibility requirements. This is not equivalent to the ADA Standards, which require limited accessibility to all work areas. The BCMC/ANSI provision requires building code officials to determine what the requirements of the job are and whether individuals with disabilities could perform them. Building officials are not in a position to make such employment decisions. The BCMC/ANSI restriction is contrary to one of the major purposes of the ADA, which is to increase employment opportunities for people with disabilities.

5. Parking and passenger Loading Zones (4.1.2(5))

The BCMC/ANSI standards' scoping for lots with 5 or fewer

parking spaces requires 1 accessible space, but does not require the space to be designated as reserved for individuals with disabilities. The BCMC/ANSI standards do not provide scoping for accessible passenger loading zones.

6. Portable Toilets (4.1.2(6))

The BCMC/ANSI standards do not provide specific scoping for portable toilets. It is unclear whether they are covered as temporary structures.

7. Elevators (4.1.3(5); 4.10)

The BCMC/ANSI standards do not provide that required elevators must serve all levels. In addition, the BCMC/ANSI standards appear to require only elevators on accessible routes to be accessible. The ADA requires all passenger elevators to be accessible.

The BCMC/ANSI standards permit recessed buttons on control panels. Such buttons make activation more difficult for individuals with limited manual dexterity, who must use an open hand or closed fist. The BCMC/ANSI standards also permit a 54 inch reach range for emergency communication. Although a 54 inch side reach range is generally acceptable, some people cannot reach that high. The ADA provides a 48 inch maximum height because emergency communication may be a life-or-death issue. The BCMC/ANSI standards also relax requirements for alterations to elevators.

8. Entrances (4.1.3(8); 4.14)

The BCMC/ANSI standards do not require at least one accessible ground floor entrance and do not require accessible entrances in the same number as required exits. The BCMC/ANSI standards provide a blanket exemption for service entrances, even if a service entrance is the only entrance.

9. Areas of Refuge (4.1.3(9); 4.3.11)

The BCMC/ANSI standards appear never to require more than two areas of rescue assistance. The ADA requires areas of rescue assistance in a number equal to the number of inaccessible required exits. In addition, the BCMC/ANSI standards fail to require two-way communication in buildings with less than five stories and permit two-way communication to rely exclusively on voice communication.

10. Drinking Fountains (4.1.3(10; 4.15)

The BCMC/ANSI standards fail to address fountains that are accessible to people who have difficulty bending. The BCMC/ANSI standards also allow a lower clear knee space for fountains on cantilevered arms. This lower space may make it more difficult for people to use the fountains.

11. Signage (4.1.3(16); 4.30)

The BCMC/ANSI standards' scoping for signage is not equivalent for parking spaces, accessible entrances, and accessible toilet and bathing facilities. The BCMC/ANSI standards also fail to provide scoping for room signage and to require directional signage for TDDs. The BCMC/ANSI standards fail to require sans serif or simple serif typeface and to require clear approach to within three inches of room signs.

12. Accessible Seating (4.1.3(10); 4.33)

The BCMC/ANSI standards require dispersion of accessible seating only "where necessary for line of sight" and permit dispersion to be based on availability of an accessible route. This would appear to allow a builder to avoid dispersion by providing only a few accessible routes.

The BCMC/ANSI standards' scoping of accessible seats is deficient for spaces with more than 500 seats. The ADA requires 6 accessible seats plus 1 for each increase of 100. The BCMC/ANSI standards require 6 accessible seats plus only 1 for each increase of 200.

13. Ramps (4.8)

The BCMC/ANSI standards allow slopes steeper than 1:12 in new construction, while the ADA allows them only in alterations. The BCMC/ANSI standards' requirements would not require handrails on long shallow ramps, where the ADA would require rails.

14. Stairs (4.9)

The BCMC/ANSI standards permit winders, circular stairs, and open risers on "accessible" stairs. The ADA does not. The BCMC/ANSI handrail requirements fail to address recessed rails and structure strength and may not require handrail extension at the bottom of stairs.

15. Doors (4.13)

The BCMC/ANSI standards permit revolving doors to be part of an accessible route if they comply with S 4.13. Merely complying with S 4.13 is insufficient to make a revolving door accessible. Rather, the dimensions and movement of the door, itself, must also be addressed. In addition, the BCMC/ANSI standards generally fail to require sufficient maneuvering clearances at doors.

16. Water Closets (4.16)

The BCMC/ANSI standards permit a 24 inch, rather than a 36 inch, grab bar behind the toilet in some circumstances in new construction. The ADA does not.

17. Showers (4.21)

The BCMC/ANSI standards do not require a folding seat in roll-in showers. In addition, they allow a 2 1/2 inch gap between the back of the seat and the wall. The ADA only allows 1 1/2 inches in order to limit the risk of arms slipping through the gap during transfers.

18. Toilet Rooms (4.22)

The BCMC/ANSI standards allow doors to swing into clear space. This problem may be offset by the BCMC/ANSI standards' greater clear space requirements. However, in individual toilet rooms, where the extra clear space is not required, the in-swinging door is clearly not equivalent.

19. Sinks (4.24)

The BCMC/ANSI standards allow knee clearance under accessible sinks to be a little as 17 inches deep. The ADA requires a 19 inch minimum clearance depth.

20. Storage (4.25)

The BCMC/ANSI standards address distance from wheelchairs to clothes rods and shelves. The permissible reach heights must be reduced as the distance from the rod or shelf increases.

21. Alarms (4.28)

The BCMC/ANSI standards address accessibility only of required alarms. The ADA requires accessibility whenever alarms are provided, not just when they are required. In addition, the

BCMC/ANSI standards' requirements regarding placement of signals and flash rate are problematic. The standards allow visible signals to be higher and, thus, more easily obscured by smoke and the standards' lower flash intensity and higher number of appliances may increase the risk of triggering seizures.

Additional technical and scoping problems are addressed in the side-by-side comparison.

I hope this evaluation is helpful to you in your efforts to create a model accessibility standard that is equivalent to the ADA requirements. My staff would be happy to meet with you to discuss the evaluation. If you would like to arrange such a meeting, or if you have any questions, please call Eve Hill at (202) 307-0663.

I hope that you will continue to work with the Department to achieve an ADA-equivalent accessibility model. To that end, we will be happy to review any proposed changes to the BCMC/ANSI standards and assess their equivalency to the ADA requirements. Such review may help adopting jurisdictions to evaluate the standards' equivalency to the ADA and to make any changes needed to ensure complete equivalency. In addition, once an equivalent model is completed, the Department's review will provide assurance of equivalency for jurisdictions adopting the code and will allow the Department to review certification submissions by such jurisdictions more quickly.

Sincerely,
John L. Wodatch
Chief
Disability Rights Section

Enclosure

01-03718

ADA Title III Requirements

1 PURPOSE

This document sets guidelines for accessibility to places of public accommodation and commercial facilities by individuals with disabilities. These guidelines are to be applied during the design, construction, and alteration of such buildings and facilities to the extent required by

regulations issued by Federal agencies, including the Department of Justice, under the Americans with Disabilities Act of 1990.

CABO/ANSI A117.1-1992

1 Purpose and Application

1.1* Purpose
The specifications in this standard make buildings and facilities accessible to and usable by people with such physical disabilities as the inability to walk, difficulty walking, reliance on walking aids, blindness and visual impairment, deafness and hearing impairment, in coordination, reaching and manipulation disabilities, lack of stamina, difficulty interpreting and reacting to sensory information, and extremes of physical size based generally upon adult dimensions. Accessibility and usability allow a person with a physical disability to independently get to, enter and use a building or facility.

This standard provides specifications for elements that are used in making functional spaces accessible. For example, it specifies technical requirements for making doors, routes, seating, and other elements accessible. These accessible elements are used to design accessible functional spaces such as classrooms, hotel rooms, lobbies, or offices.

This standard is for adoption by government agencies and by organizations setting model codes to achieve uniformity in the technical design criteria in building codes and other regulations. This standard is also used by non-governmental parties as technical design guidelines or requirements to make buildings and facilities accessible to and usable by persons with physical disabilities.

BCMC

1.2 This document sets minimum requirements for the application of standards for facility accessibility by people with physical disabilities, which includes those with sight impairment, hearing impairment and mobility impairment. It shall be interpreted to mandate access for all persons, including but not limited to occupants, employees, consumers, students, spectators, participants and visitors.

1.3 Details, dimensions and construction specifications for

items herein shall comply with the requirements set forth in the American National Standards Institute standard CABO/ANSI A117.1-1992, "Accessible and Usable Buildings and Facilities."

1.4 Maintenance of Facilities. Any building, facility, dwelling unit, or site which is constructed or altered to be accessible or adaptable under this document shall be maintained accessible and/or adaptable during its occupancy.

Comments*

E.

E.

Exceeds - Exceeds ADA Standards
E - Equivalent to ADA Standards
N.E. - Not equivalent to ADA Standards
P.N.E. - Potentially not equivalent to ADA Standards
N.C. - Section is not comparable

ADA/ANSI/BCMC Requirements - October 13, 1995

01-03719

ADA Title III Requirements

2 GENERAL

2.1 Provisions for Adults. The specifications in these guidelines are based upon adult dimensions and anthropometrics.

2.2 Equivalent Facilitation. Departures from particular technical and scoping requirements of this guideline by the use of other designs and technologies are permitted where the alternative designs and technologies used will provide substantially equivalent or greater access to and usability of the facility.

CABO/ANSI A117.1-1992

2 Recommendations to Adopting Authorities

2.1 Administration
This standard does not establish which occupancy or building types are covered and the extent to which each type is covered. Such requirements for application of this standard shall be specified by the adopting authority, including which and how many functional spaces and elements are to be made accessible within each building type, as described in 2.2 through 2.4.

2.2 Number of Spaces and Elements
The administrative authority adopting this standard shall specify the actual number of spaces and elements or establish procedures for determining them based on, but not limited to:
- population to be served
- availability to occupants, employees, customers, and visitors
- distances and time required to use the accessible elements
- provision of equal opportunity and treatment under law

2.3* Remodeling
The specifications in this standard are based upon the functional requirements of persons with physical disabilities. The administrative authority adopting this standard shall specify the extent to which it is to cover remodeling, alteration, or rehabilitation within its jurisdiction.

2.4 Review Procedures
To promote effective compliance with the requirements of this standard, the administrative authority adopting it should establish a review and approval procedure for construction projects that come under its jurisdiction.

See 1.1 Purpose
BCMC

Comments*
N.C. Note: Scoping issue.
E.
No equivalent provision. However, if used with a building code, the building code's waiver provisions will be uncertifiable.

3 MISCELLANEOUS INSTRUCTIONS AND DEFINITIONS

3.1 Graphic Conventions. Graphic conventions are shown in Table 1. Dimensions that are not marked minimum or maximum are absolute, unless otherwise indicated in the text or captions.

Table 1
Graphic Conventions

Convention	Description
36/915	Typical dimension line showing U.S. customary units (in inches) above the line and SI units (in millimeters) below
9/230	Dimensions for short distances indicated on extended line
9/230	Dimension line showing alternate dimensions required
36/916	Direction of approach
max	Maximum
min	Minimum
	Boundary of clear floor area
	Centerline

3.2 Dimensional Tolerances. All dimensions are subject to conventional building industry tolerances for field

conditions.

3.3 Notes. The text of these guidelines does not contain

notes or footnotes. Additional information, explanations, and advisory materials are located in the Appendix. Paragraphs marked with an asterisk have related non-mandatory material in the Appendix. In the Appendix, the corresponding paragraph numbers are preceded by an A.

CABO/ANSI A117.1-1992

3 Graphics, Dimensions, Referenced Standards, and Definitions

3.1 Graphic Conventions
Graphic conventions used in the illustrations are shown in Table 3.1. Dimensions that are not marked "minimum," "maximum," or "nominal" are absolute, unless otherwise indicated in the text or captions.

Table 3.1 - Graphic conventions
Convention
36/915

9/230
28/710 36/915
max
min.

Description
Typical dimension line showing U.S. customary units (in inches) above the line and SI units (in millimeters) below
Dimensions for short distances indicated on arrow
Dimension line showing range of dimensions
Direction of approach
Maximum
Minimum
Boundary of clear floor area
Centerline

3.2 Dimensions

All dimensions are subject to conventional industry tolerances. Millimeter equivalents for dimensions 3 in and larger have been rounded off to the nearest multiple of 5.

ANSI Appendix A - Additional Information

This appendix contains additional information that is intended to help the user understand the minimum requirements of the standard or to design or regulate the construction of buildings or facilities for greater accessibility and usability. The subsection numbers correspond to the sections or subsections of the standard to which the material relates and are, therefore, not consecutive (for example, A4.2.1 contains additional information relevant to 4.2.1). Sections in the standard for which additional material appears in this Appendix have been indicated by an asterisk. All figures referenced in this appendix are contained in Appendix B and are designated Fig. BAxxx.

BCMC
Comments*
E.
E.
E.
E.
3
ADA/ANSI/BCMC Requirements - October 13, 1995
01-03721
ADA Title III Requirements
3.4 General Terminology.
comply with. Meet one or more specifications of these guidelines.
if, if... then. Denotes a specification that applies only when the conditions described are present.
may. Denotes an option or alternative.
shall. Denotes a mandatory specification or requirement.
should. Denotes an advisory specification or recommendation.

3.5 Definitions.

Access Aisle. An accessible pedestrian space between elements, such as parking spaces, seating, and desks, that provides clearances appropriate for use of the elements.

Accessible. Describes a site, building, facility, or portion thereof that complies with these guidelines.

Accessible Element. An element specified by these guidelines (for example, telephone, controls, and the like).

Accessible Route. A continuous unobstructed path connecting all accessible elements and spaces of a building or facility. Interior accessible routes may include corridors, floors, ramps, elevators, lifts, and clear floor space at fixtures. Exterior accessible routes may include parking access aisles, curb ramps, crosswalks at vehicular ways, walks, ramps, and lifts.

Accessible Space. Space that complies with these guidelines.

CABO/ANSI A117.1-1992

3.3 Referenced American National Standards

The following American National Standards are referenced in this document.

ANSI/BHMA A156.10-1991, Power Operated Pedestrian Doors

ANSI/BHMA A156.19-1990, Power Assist and Low Energy Power Operated Doors

ASME/ANSI A17.1-1990, Safety Code for Elevators and Escalators (including Addenda ASME/ANSI A17.1a-1991)

3.4 Definitions
For the purpose of this standard, the terms listed in 3.4 have the indicated meaning.

access aisle: An accessible pedestrian space between elements, such as parking spaces, seating, and desks, that provides clearances appropriate for use of the elements.

accessible: Describes a site, building, facility, or portion thereof that complies with this standard and that can be approached, entered, and used by persons with physical disabilities.

accessible route: A path connecting all accessible elements and spaces in a building or facility that is usable by persons with physical disabilities.

Comments*

Not comparable. ADA Standards reference the same or previous versions of these ANSI Standards.

Not addressed.
E.
E.
P.N.E. if limitation to "physical disabilities" is strictly applied.
Not addressed.
E.
Not addressed. Term not used.

ADA Title III Requirements

Adaptability. The ability of certain building spaces and elements, such as kitchen counters, sinks, and grab bars, to be added or altered so as to accommodate the needs of individuals with or without disabilities or to accommodate the needs of persons with different types or degrees of disability.

Addition. An expansion, extension, or increase in the gross floor area of a building or facility.

Administrative Authority. A governmental agency that adopts or enforces regulations and guidelines for the design, construction, or alteration of buildings and facilities.

Alteration. An alteration is a change to a building or facility made by, on behalf of, or for the use of a public accommodation or commercial facility, that affects or could affect the usability of the building or facility or part thereof. Alterations include, but are not limited to, remodeling, renovation, rehabilitation, reconstruction, historic restoration, changes or rearrangement of the

structural parts or elements, and changes or rearrangement in the plan configuration of walls and full-height partitions. Normal maintenance, reroofing, painting or wallpapering, or changes to mechanical and electrical systems are not alterations unless they affect the usability of the building or facility.

Area of Rescue Assistance. An area, which has direct access to an exit, where people who are unable to use stairs may remain temporarily in safety to await further instructions or assistance during emergency evacuation.

Assembly Area. A room or space accommodating a group of individuals for recreational, educational, political, social, or amusement purposes, or for the consumption of food and drink.

Automatic Door. A door equipped with a power-operated mechanism and controls that open and close the door automatically upon receipt of a momentary actuating signal. The switch that begins the automatic cycle may be a photoelectric device, floor mat, or manual switch (see power-assisted door).

Building. Any structure used and intended for supporting or sheltering any use or occupancy.

CABO/ANSI A117.1-1992

adaptability: The capability of certain building spaces and elements, such as kitchen counters, sinks, and grab bars, to be altered or added so as to accommodate the needs of persons with and without disabilities, or to accommodate the needs of persons with different types or degrees of disability.
adaptable dwelling unit: An accessible dwelling unit which has been designed for adaptability.
administrative authority: A jurisdictional body that adopts or enforces regulations and standards for the design, construction, or operation of buildings and facilities.
authority having jurisdiction: See administrative authority.
automatic door:* A door operated with power mechanisms and controls.

A3.4 automatic door: The switch that begins the cycle for an automatic door is a photo electric device, floor mat, sensing device, or manual switch mounted on an area near

the door itself (see power assisted door).

BCMC

Area of Refuge - an area with direct access to an exit or an elevator where persons unable to use stairs can remain temporarily in safety to await instructions or assistance during emergency evacuation.

Comments*

E.
N.C.
N.E. Cannot be assessed without the applicable building code.
E.
N.E. Cannot be assessed without the applicable building code.
E.
N.E. Cannot be assessed without the applicable building code.
E.
N.E. Cannot be assessed without the applicable building code.

5

ADA/ANSI/BCMC Requirements - October 13, 1995

01-03723

ADA Title III Requirements

Circulation Path. An exterior or interior way of passage from one place to another for pedestrians, including, but not limited to, walks, hallways, courtyards, stairways, and stair landings.

Clear. Unobstructed.

Clear Floor Space. The minimum unobstructed floor or ground space required to accommodate a single, stationary wheelchair and occupant.

Closed Circuit Telephone. A telephone with dedicated line(s) such as a house phone, courtesy phone or phone that must be used to gain entrance to a facility.

Commercial Facilities. (28 C.F.R. § 36.104). Commercial

facilities means facilities --
(1) Whose operations will affect commerce;
(2) That are intended for nonresidential use by a private entity; and
(3) That are not -

(i) Facilities that are not covered or expressly exempted from coverage under the Fair Housing Act of 1968, as amended (42 U.S.C. 3601-3631);
(ii) Aircraft; or
(iii) Railroad locomotives, railroad freight cars, railroad cabooses, commuter or intercity passenger rail cars (including coaches, dining cars, sleeping cars, lounge cars, and food service cars), and any other railroad cars described in section 242 of the Act or covered under title II of the Act, or railroad rights-of-way. For purposes of this definition, "rail" and "railroad" have the meaning given the term "railroad" in section 202(e) of the Federal Railroad Safety Act of 1970 (45 U.S.C. 431(e)).

Commercial facilities located in private residences. (28 C.F.R.
§ 36.401(b)).
(1) When a commercial facility is located in a private residence, the portion of the residence used exclusively as a residence is not covered by this subpart, but that portion used both for the commercial facility and for residential purposes is covered by the new construction and alterations requirements of this subpart.
(2) The portion of the residence covered under paragraph (b)(1) of this section extends to those elements used to enter the commercial facility, including the homeowner's front sidewalk, if any, the door or entryway, and hallways; and those portions of the residence, interior or exterior, available to or used by employees or visitors of the commercial facility, including restrooms.

CABO/ANSI A117.1-1992
circulation path:* An exterior or interior way of passage from one place to another for pedestrians.
A3.4 circulation path: Examples include walks, hallways, courtyards, stairways, and stair landings.
clear: Unobstructed.
See ANSI 4.2.4.

BCMC

Comments*

E.
E.
Not addressed.
Not addressed. BCMC coverage does not depend on commercial facility.

Not addressed.

6

ADA/ANSI/BCMC Requirements - October 13, 1995

01-03724

ADA Title III Requirements

Common Use. Refers to those interior and exterior rooms, spaces, or elements that are made available for the use of a restricted group of people (for example, occupants of a homeless shelter, the occupants of an office building, or the guests of such occupants).

Cross Slope. The slope that is perpendicular to the

direction of travel (see running slope).

Curb Ramp. A short ramp cutting through a curb or built up to it.

Detectable Warning. A standardized surface feature built in or applied to walking surfaces or other elements to warn visually impaired people of hazards on a circulation path.

Disability. (28 C.F.R. § 36.104). Disability means, with respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment.

Dwelling Unit. A single unit which provides a kitchen or food preparation area, in addition to rooms and spaces for living, bathing, sleeping, and the like. Dwelling units include a single family home or a townhouse used as a transient group home; an apartment building used as a shelter; guestrooms in a hotel that provide sleeping accommodations and food preparation areas; and other similar facilities used on a transient basis. For purposes of these guidelines, use of the term "Dwelling Unit" does not imply the unit is used as a residence.

CABO/ANSI A117.1-1992

common use:* Those rooms, spaces, or elements that are made available for use of a specific group of people.

A3.4 common use: These are the spaces and elements that are made available for the use of residents of an apartment building, the occupants of an office building, or the guests of such residents or occupants.

counter slope: Any slope opposing the running slope of a curb ramp or ramp.

cross slope: The slope of a pedestrian way that is perpendicular to the direction of travel (see running slope).

curb ramp: A short ramp cutting through a curb or built up to it.
detectable: Perceptible by one or more of the senses.

See 1.1 Purpose.

dwelling unit:* A single unit of residence that provides a kitchen or food preparation area, in addition to rooms and spaces for living, bathing, sleeping, and the like.

A3.4 dwelling unit: A single-family home is a dwelling unit, and dwelling units are to be found in such housing types as townhouses and apartment buildings.

BCMC

See 1.2.

Comments*

E.

N.C.

E.

E.

P.N.E. ADA's only use of this word is in the phrase "detectable warning" where it is addressing the needs of only visually impaired persons. Therefore, this definition should include only senses other than sight.

N.E.

ANSI E. Although different, for purposes of building design the definition does not reduce access (see also "Person with a Disability").

BCMC N.E. BCMC is too narrow.

P.N.E. The difference in these definitions relates to the lack of special technical provisions for transient lodging. See ADA Standards 9.0.

01-03725

Egress, Means of. A continuous and unobstructed way of exit travel from any point in a building or facility to a public way. A means of egress comprises vertical and horizontal travel and may include intervening room spaces, doorways, hallways, corridors, passageways, balconies, ramps, stairs, enclosures, lobbies, horizontal exits, courts and yards. An accessible means of egress is one that complies with these guidelines and does not include stairs, steps, or escalators. Areas of rescue assistance or evacuation elevators may be included as part of accessible means of egress.

Element. An architectural or mechanical component of a building, facility, space, or site, e.g., telephone, curb ramp, door, drinking fountain, seating, or water closet.

Entrance. Any access point to a building or portion of a building or facility used for the purpose of entering. An entrance includes the approach walk, the vertical access leading to the entrance platform, the entrance platform itself, vestibules if provided, the entry door(s) or gate(s), and the hardware of the entry door(s) or gate(s).

Facility. All or any portion of buildings, structures, site improvements, complexes, equipment, roads, walks, passageways, parking lots, or other real or personal property located on a site.

Ground Floor. Any occupiable floor less than one story above or below grade with direct access to grade. A building or facility always has at least one ground floor and may have more than one ground floor as where a split level entrance has been provided or where a building is built into a hillside.

Marked Crossing. A crosswalk or other identified path intended for pedestrian use in crossing a vehicular way.

CABO/ANSI A117.1-1992

egress, means of: A continuous and unobstructed way of travel from any point in a building or facility to a public way.

element:* An architectural or mechanical component of a building, facility, space or site that is used in making spaces accessible.

A3.4 element: Examples of elements are telephones, curb ramps, doors, drinking fountains, seating, and water closets.

facility: All or any portion of a building, structure, or area, including the site on which such building, structure, or area is located, wherein specific services are provided or activities are performed.

housing:* A building, facility, or portion thereof, that contains one or more dwelling units or sleeping accommodations, excluding inpatient health care facilities and detention/correctional facilities.

A3.4 housing: Examples are one- and two-family dwellings, multifamily dwellings, group homes, hotels, motels, dormitories, and mobile homes.

marked crossing: A crosswalk or other identified path intended for pedestrian use in crossing a vehicular way.

BCMC

2.1 Accessible Means of Egress - a path of travel, usable by a mobility impaired person, that leads to a public way.

Comments*

ANSI E. Note: Although the definition in ANSI does not address accessible means of egress, the standard, in general, does.

BCMC N.E. Access is limited to "mobility impaired persons."

E. Assuming "used in making spaces accessible" means "affecting accessibility."

P.N.E. Without a definition, "entrance" may be interpreted narrowly to not require accessibility of all elements covered by the ADA.

P.N.E. It is unclear how limiting "wherein specific services..." is intended to be.

Maximum Extent Feasible. (28 C.F.R. § 36.402(c)). The phrase, "to the maximum extent feasible," as used in this section, applies to the occasional case where the nature of an existing facility makes it virtually impossible to comply fully with applicable accessibility standards through a planned alteration. In these circumstances, the alteration shall provide the maximum physical accessibility feasible. Any altered features of the facility that can be made accessible shall be made accessible. If providing accessibility in conformance with this section to individuals with certain disabilities (e.g., those who use wheelchairs) would not be feasible, the facility shall be made accessible to persons with other types of disabilities (e.g., those who use crutches, those who have impaired vision or hearing, or those who have other impairments).

Mezzanine or Mezzanine Floor. That portion of a story which is an intermediate floor level placed within the story and having occupiable space above and below its floor.

Multifamily Dwelling. Any building containing more than two dwelling units.

Occupiable. A room or enclosed space designed for human occupancy in which individuals congregate for amusement, educational or similar purposes, or in which occupants are engaged at labor, and which is equipped with means of egress, light, and ventilation.

Operable Part. A part of a piece of equipment or appliance used to insert or withdraw objects, or to activate, deactivate, or adjust the equipment or appliance (for example, coin slot, pushbutton, handle).

Path of Travel. (28 C.F.R. S 36.403(e)).

(1) A "path of travel" includes a continuous, unobstructed way of pedestrian passage by means of

which the altered area may be approached, entered, and exited, and which connects the altered area with an exterior approach (including sidewalks, streets, and parking areas or an entrance to the facility, and other parts of the facility

(2) An accessible path of travel may consist of walks and sidewalks, curb ramps and other interior or exterior pedestrian ramps; clear floor paths through lobbies, corridors, rooms, and other improved areas; parking access aisles; elevators and lifts; or a combination of these elements.

(3) For the purposes of this part, the term "path of travel" also includes the restrooms, telephones, and drinking fountains serving the altered area.

CABO/ANSI A117.1-1992

multifamily dwelling: Any building containing more than two dwelling units.
operable part:* A part of a piece of equipment or appliance used to insert or withdraw objects, or to activate, deactivate, or adjust the equipment or appliance.

A3.4 operable part: Examples of operable parts are telephone coin slots, push buttons, and handles.

BCMC

Comments*
Not addressed.
N.E. Cannot be assessed without the applicable building code.
E.
Not addressed.
E.
N.E.

ADA Title III Requirements
Person with a Disability. (28 C.F.R. S 36.104). Disability means, with respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment.

Place of Public Accommodation. (28 C.F.R. § 36.104). Place of public accommodation means a facility, operated by a private entity, whose operations affect commerce and fall within at least one of the following categories -

(1) An inn, hotel, motel, or other place of lodging, except for an establishment located within a building that contains not more than five rooms for rent or hire and that is actually occupied by the proprietor of the establishment as the residence of the proprietor;
(2) A restaurant, bar, or other establishment serving food or drink;
(3) A motion picture house, theater, concert hall, stadium, or other place of exhibition or entertainment;
(4) An auditorium, convention center, lecture hall, or other place of public gathering;
(5) A bakery, grocery store, clothing store, hardware store, shopping center, or other sales or rental establishment;
(6) A laundromat, dry-cleaner, bank, barber shop, beauty shop, travel service, shoe repair service, funeral parlor, gas station, office of an accountant or lawyer, pharmacy, insurance office, professional office of a health care provider, hospital, or other service establishment;

(7) A terminal, depot, or other station used for specified public transportation;

(8) A museum, library, gallery, or other place of public display or collection;

(9) A park, zoo, amusement park, or other place of recreation;

(10) A nursery, elementary, secondary, undergraduate, or postgraduate private school, or other place of education;

(11) A day care center, senior citizen center, homeless shelter, food bank, adoption agency, or other social service center establishment; and

(12) A gymnasium, health spa, bowling alley, golf course, or other place of exercise or recreation.

CABO/ANSI A117.1-1992

parking space:* Any space for parking vehicles.
A3.4 parking space: This includes parking spaces that are located in parking garages, on streets and in lots.
See 1.1 Purpose.

BCMC
See 1.2.

Comments*
N.C.
ANSI E. ANSI's coverage is limited to "physical disabilities." However, the list of examples is sufficiently broad to cover those disabilities significantly affected by building design.
BCMC N.E. BCMC's coverage is limited to "physical disabilities" and its list of examples does not provide sufficient coverage.
Not addressed. BCMC coverage does not depend on public accommodation.

Power-assisted Door. A door used for human passage with a mechanism that helps to open the door, or relieves the opening resistance of a door, upon the activation of a switch or a continued force applied to the door itself.

Primary Function. (28 C.F.R. S 36.403(b)). A "primary function" is a major activity for which the facility is intended. Areas that contain a primary function include, but are not limited to, offices and other work areas in which the activities of the public accommodation or other private entity using the facility are carried out. Mechanical rooms, boiler rooms, supply storage rooms, employee lounges or locker rooms, janitorial closets, entrances, corridors, and restrooms are not areas containing a primary function.

Professional Office of a Health Care Provider. (28 C.F.R. S 36.401(d)(i)). A location where a person or entity, regulated by a State to provide professional services related to the physical or mental health of an individual, makes such services available to the public. The facility housing the "professional office of a health care provider"

only includes floor levels housing at least one health care provider, or any floor level designed or intended for use by at least one health care provider.

Public Use. Describes interior or exterior rooms or spaces that are made available to the general public. Public use may be provided at a building or facility that is privately or publicly owned.

Ramp. A walking surface which has a running slope greater than 1:20.

Running Slope. The slope that is parallel to the direction of travel (see cross slope).
Service Entrance. An entrance intended primarily for delivery of goods or services.

Signage. Displayed verbal, symbolic, tactile, and pictorial information.

Site. A parcel of land bounded by a property line or a designated portion of a public right-of-way.

Site Improvement. Landscaping, paving for pedestrian and vehicular ways, outdoor lighting, recreational facilities, and the like, added to a site.

CABO/ANSI A117.1-1992

power-assisted door:* A door used for human passage, with a mechanism that helps to open the door, or to relieve the opening resistance of the door.
A3.4 power-assisted door: The power assist is provided upon the activation of a switch or the use of continued force applied to the door itself. If the switch or door is released, such doors immediately begin to close or close completely within 3 to 30 seconds (see automatic door).
Primary Function is a major function for which the facility is intended.
public use:* Describes rooms or spaces that are made available to the general public.
A3.4 public use: Public use is often provided at a building or facility that is privately or publicly owned.
ramp: A walking surface that has a running slope steeper than 1:20.
running slope: The slope of a pedestrian way that is parallel to the direction of travel (see cross slope).

signage: Displayed textual, symbolic, tactile and pictorial information.
site: A parcel of land bounded by a property line or a designated portion of a public right-of-way.
site improvements:* Features added to a site.
A3.4 site improvements: This includes features such as landscaping, pedestrian and vehicular pathways, outdoor lighting, and recreational facilities.

BCMC
Comments*

E.
E.
Not addressed. Should be defined for the purposes of the elevator exception.
E.
E.
E.
Not addressed.
E.
E.
E.

ADA Title III Requirements
Sleeping Accommodations. Rooms in which people sleep; for example, dormitory and hotel or motel guest rooms or suites.
Space. A definable area, e.g., room, toilet room, hall, assembly area, entrance, storage room, alcove, courtyard, or lobby.
Specified Public Transportation. (28 C.F.R. S 36.104). Transportation by bus, rail, or any other conveyance (other than by aircraft) that provides the general public with general or special service (including charter service) on a regular and continuing basis.
Story. That portion of a building included between the upper surface of a floor and upper surface of the floor or roof next above. If such portion of a building does not include occupiable space, it is not considered a story for

purposes of these guidelines. There may be more than one floor level within a story as in the case of a mezzanine or mezzanines.
Structural Frame. The structural frame shall be considered to be the columns and the girders, beams, trusses and spandrels having direct connections to the columns and all other members which are essential to the stability of the building as a whole.
Tactile. Describes an object that can be perceived using the sense of touch.
ILLEGIBLE Telephone. Machinery or equipment that employs interactive graphic (i.e., typed) communications through the transmission of coded signals across the standard telephone network. Text telephones can include, for example, devices known as TDDs (telecommunication display devices or telecommunication devices for deaf persons) or computers.

CABO/ANSI A117.1-1992

sleeping accommodations:* Rooms intended for sleeping purposes.
A3.4 sleeping accommodations: Dormitories and hotel or motel guest rooms are examples.
tactile: Describes an object that can be perceived using the sense of touch.
temporary:* Applies to facilities that are not of permanent construction but are extensively used or essential for public use for a given (short) period of time.
A 3.4 temporary: Examples are temporary classrooms or classroom buildings at schools and colleges. Other examples are movable facilities at the perimeter of a major construction site to permit accessible and safe passage past the site. Structures directly associated with the actual processes of major construction, such as portable toilets, scaffolding, rigging, and trailers are not included.
telecommunications device for the deaf (TDD):* Machinery or equipment that employs interactive graphic communications through the transmission of coded signals across the standard telephone network.
A3.4 telecommunications device for the deaf (TDD): TDD's include telecommunications display devices, telecommunication devices for deaf persons, text telephones or computers.

BCMC

Comments*

E.
Not addressed.
Not addressed.
N.E. Cannot be assessed without

the applicable building code.
P.N.E. Scoping issue - related to
technical infeasibility in alterations.
E.
E. (See ADA Standard S4.1.1(4)).
ANSI E.
BCMC N.E. BCMC designates
TDDs as "not appropriate for
incorporation into a building code."

ADA Title III Requirements

Transient Lodging. A building, facility, or portion thereof, excluding inpatient medical care facilities, that contains one or more dwelling units or sleeping accommodations. Transient lodging may include, but is not limited to, resorts, group homes, hotels, motels, and dormitories (see Place of Public Accommodation).

Vehicular Way. A route intended for vehicular traffic, such

as a street, driveway, or parking lot.
Walk. An exterior pathway with a prepared surface intended for pedestrian use, including general pedestrian areas such as plazas and courts.
4 ACCESSIBLE ELEMENTS AND SPACES: SCOPE AND TECHNICAL REQUIREMENTS
4.1 Minimum Requirements
4.1.1* Application.
(1) General. All areas of newly designed or newly constructed buildings and facilities required to be accessible by 4.1.2 and 4.1.3 and altered portions of existing buildings and facilities required to be accessible by 4.1.6 shall comply with these guidelines, 4.1 through 4.35, unless otherwise provided in this section or as modified in a special application section.

CABO/ANSI A117.1-1992

vehicular way:* A route provided for vehicular traffic.
A3.4 vehicular way: Examples are streets, driveways, and parking lots.
walk:* An exterior pathway with a prepared surface for pedestrian use.
A3.4 walk: This includes general pedestrian areas such as plazas and courts.
4 Accessible Elements and Spaces
4.1 Basic Components
Accessible sites, facilities, and buildings, including public-use, employee-use, and common-use spaces in housing facilities, shall, where required, provide accessible elements and spaces conforming with Section 4.
1.2 Application
Provisions of this standard are suitable for:
- the design and construction of new buildings and facilities, including both spaces and elements, site improvements, and public walks
- remodeling, alteration, and rehabilitation of existing construction
- permanent, temporary, and emergency conditions

BCMC

2.2 The following additional terms are defined in CABO/ANSI A117.1. Where these terms are used in this report, such terms shall have the meaning ascribed to them in CABO/ANSI A117.1.
accessible accessible route adaptability
detectable detectable warning dwelling unit
element facility site
1.0 SCOPE
1.1 All buildings and structures, including their associated sites and facilities, shall be accessible with accessible

means of egress for people with physical disabilities as required in these provisions.

EXCEPTIONS:

1. Areas where work cannot reasonably be performed by persons having a severe impairment (mobility, sight or hearing) are not required to have the specific features providing accessibility to such persons.

2. Group R3 buildings and accessory structures and their associated site facilities.

3. Group U structures.

EXCEPTIONS:

1. In Group U agricultural buildings, access is required to paved work areas and areas open to the general public.

2. Access is required to private garages or carports which contain accessible parking.

4. Temporary structures, sites, and equipment directly associated with the construction process such as construction site trailers, scaffolding, bridging or material hoists.

5. Buildings and facilities or portions thereof not required to be accessible in 3.0, 4.0, 5.0 and 6.0.

Comments*

N.E. Needs to be addressed. Also, needs to be distinguished from traditional code categories.

E.

E.

See above.

General provision - E.

Exception 1 - N.E. See ADA Standards 4.1.1(3) for analogous provision.

Exception 2 - N.E. to the extent R3 includes transient lodging.

Exception 3 - E.

Exception 4 - E.

Exception 5 - P.N.E.

ADA Title III Requirements

4.1.1 (2) Application Based on Building Use. Special application sections 5 through 10 provide additional requirements for restaurants and cafeterias, medical care facilities, business and mercantile, libraries, accessible transient lodging, and transportation facilities. When a building or facility contains more than one use covered by a special application section, each portion shall comply with the requirements for that use.

4.1.1 (3)* Areas Used Only by Employees as Work Areas. Areas that are used only as work areas shall be designed and constructed so that individuals with disabilities can approach, enter, and exit the areas. These guidelines do not require that any areas used only as work areas be constructed to permit maneuvering within the work area or be constructed or equipped (i.e., with racks or shelves) to be accessible.

4.1.1 (4) Temporary Structures. These guidelines cover temporary buildings or facilities as well as permanent facilities. Temporary buildings and facilities are not of permanent construction but are extensively used or are essential for public use for a period of time. Examples of temporary buildings or facilities covered by these guidelines include, but are not limited to: reviewing stands, temporary classrooms, bleacher areas, exhibit areas, temporary banking facilities, temporary health screening services, or temporary safe pedestrian passageways around a construction site. Structures, sites and equipment directly associated with the actual processes of construction, such as scaffolding, bridging, materials hoists, or construction trailers are not included.

4.1.1 (5) General Exceptions.

(a) In new construction, a person or entity is not required to meet fully the requirements of these guidelines where that person or entity can demonstrate that it is structurally impracticable to do so. Full compliance will be considered structurally impracticable only in those rare circumstances when the unique characteristics of terrain prevent the incorporation of accessibility features. If full compliance with the requirements of these guidelines is structurally impracticable, a person or entity shall comply with the requirements to the extent it is not structurally impracticable. Any portion of the building or facility which can be made accessible shall comply to the extent that it is not structurally impracticable.

CABO/ANSI A117.1-1992

1.2 Application

Provisions of this standard are suitable for: ...

- permanent, temporary, and emergency conditions
A3.4 temporary: Examples are temporary classrooms or classroom buildings at schools and colleges. Other examples are movable facilities at the perimeter of a major construction site to permit accessible and safe passage past the site. Structures directly associated with the actual processes of major construction, such as portable toilets, scaffolding, rigging, and trailers are not included.
temporary:* Applies to facilities that are not of permanent construction but are extensively used or essential for public use for a given (short) period of time.

BCMC

5.0 SPECIAL OCCUPANCY REQUIREMENTS
5.1 General
In addition to the general provisions herein, the following requirements for specific occupancies shall apply.
1.1 EXCEPTIONS:
1. Areas where work cannot reasonably be performed by persons having a severe impairment (mobility, sight or hearing) are not required to have the specific features providing accessibility to such persons.
3. Group U structures.
EXCEPTIONS:
1. In group U agricultural buildings, access is required to paved work areas and areas open to the general public.
2. Access is required to private garages or carports which contain accessible parking.
1.1 EXCEPTIONS:
4. Temporary structures, sites, and equipment directly associated with the construction process such as construction site trailers, scaffolding, bridging or material hoists.

Comments*

See discussion at special application sections. See also BCMC 1.1, Exception 2 (N.E. - exempts Group R3 buildings from accessibility requirements).
Exception 1 - N.E. Building official is not qualified to make employment decision. ADA does not permit such an exception.
E.
Exceeds in that BCMC does not provide such a general exception. BCMC's specific exceptions are N.E. (see above).

ADA Title III Requirements

28 C.F.R. S 36.401(c)(3). If providing accessibility in conformance with this section to individuals with certain disabilities (e.g., those who use wheelchairs) would be structurally impracticable, accessibility shall nonetheless be ensured to persons with other types of disabilities (e.g., those who use crutches or who have sight, hearing, or mental impairments) in accordance with this section.

4.1.1 (5) (b) Accessibility is not required to (i) observation galleries used primarily for security purposes; or (ii) in non-occupiable spaces accessed only by ladders, catwalks, crawl spaces, very narrow passageways, or freight (non-passenger) elevators, and frequented only by service personnel for repair purposes; such spaces include, but are not limited to, elevator pits, elevator penthouses, piping or equipment catwalks.

4.1.2 Accessible Sites and Exterior Facilities: New Construction. An accessible site shall meet the following minimum requirements:

(1) At least one accessible route complying with 4.3 shall be provided within the boundary of the site from public transportation stops, accessible parking spaces, passenger loading zones if provided, and public streets or sidewalks, to an accessible building entrance.

(2) At least one accessible route complying with 4.3 shall connect accessible buildings, accessible facilities, accessible elements, and accessible spaces that are on the same site.

4.1.2 (3) All objects that protrude from surfaces or posts into circulation paths shall comply with 4.4.

4.1.2 (4) Ground surfaces along accessible routes and in accessible spaces shall comply with 4.5.

CABO/ANSI A117.1-1992

4. Accessible Elements and Spaces

4.1 Basic Components

Accessible sites, facilities, and buildings, including public-use, employee-use, and common-use spaces in housing facilities, shall, where required, provide accessible elements and spaces conforming with Section 4.

BCMC

3.1 Accessible Route
3.1.1 Accessible routes within the site shall be provided from public transportation stops, accessible parking and accessible passenger loading zones, and public streets or sidewalks to the accessible building entrance they serve.
3.1.2 At least one accessible route shall connect accessible spaces, elements, facilities and buildings that are on the same site. Where only one accessible route is provided, it shall not pass through kitchens, storage rooms, restrooms, closets or similar spaces.
3.1.3 Where floor levels are required to be connected by an accessible route, and an interior path of travel is provided between the levels, the accessible route between the levels shall also be interior.
14.0 PROTRUDING OBJECTS
14.1 Horizontal Projections. Objects projecting from walls with their leading edges located more than 27 and not more than 80 inches above the finished floor shall protrude no more than 4 inches into walks, corridors, passageways, or aisles. Free-standing objects mounted on posts or pylons may overhang 12 inches maximum where located more than 27 and not more than 80 inches above the ground or finished floor.
14.2 Headroom. There shall be a minimum headroom of 6 ft 8 inches from the walking surface to the lowest part of any structural member, fixture or furnishing.

Comments*

Not addressed.

Exceeds if lack of an exception means usual accessibility standards apply to non-occupiable space.

3.1.1 & 3.1.2 - E.

3.1.3 - Exceeds.

E.

P.N.E. Neither ANSI nor BCMC scopes this requirement. However, ANSI 4.5.1 reaches the same result.

ADA Title III Requirements

4.1.2 (5) (a) If parking spaces are provided for self-parking by employees or visitors, or both, then accessible spaces complying with 4.6 shall be provided in each such parking area in conformance with the table below. Spaces required by the table need not be provided in the particular lot. They may be provided in a different location if equivalent or greater accessibility in terms of distance from an accessible entrance, cost and convenience is ensured.

Total Parking in Lot	Required Minimum Number of Accessible Spaces
1 to 25	1
26 to 50	2
51 to 75	3
76 to 100	4
101 to 150	5
151 to 200	6
201 to 300	7
301 to 400	8
401 to 500	9
501 to 1000	2 percent of total
1001 and over	20, plus 1 for each 100 over 1000

Except as provided in (b), access aisles adjacent to accessible spaces shall be 60 in (1525 mm) wide minimum.

4.1.2 (5) (b) One in every eight accessible spaces, but not less than one, shall be served by an access aisle 96 in (2440 mm) wide minimum and shall be designated "van accessible" as required by 4.6.4. The vertical clearance at such spaces shall comply with 4.6.5. All such spaces may be grouped on one level of a parking structure.

EXCEPTION: Provision of all required parking spaces in conformance with "Universal Parking Design" (see appendix A4.6.3) is permitted.

4.1.2 (5) (c) If passenger loading zones are provided, then at least one passenger loading zone shall comply with 4.6.6.

CABO/ANSI A117.1-1992

BCMC

3.2 Parking Facilities

3.2.1 Number of Accessible Parking Spaces

3.2.1.1 Two percent of parking spaces provided for R2 apartments occupancies required to have accessible/adaptable dwelling units shall be accessible. Where parking is provided within or beneath a building, accessible parking spaces shall also be provided within or beneath the building.

3.2.1.3 In occupancies not included in 3.2.1.1 and 3.2.1.2, accessible spaces shall be provided in conformance with Table 3.2.

TABLE 3.2

Total Parking Spaces Provided	Required Minimum Number of Accessible Spaces
1 to 5	1*
6 to 25	1
26 to 50	2
51 to 75	3
76 to 100	4
101 to 150	5
151 to 200	6
201 to 300	7
301 to 400	8
401 to 500	9
501 to 1000	2% of total
more than 1000	20, plus 1 for each 100 over 1000

* The accessible space shall be provided but need not be designated as reserved for physically disabled. See 7.0.

3.2.1.4 For every eight or fraction of eight accessible parking spaces, at least one shall be a van accessible parking space.

Comments*

N.E. regarding designation and reservation of accessible space in lots with 5 or fewer spaces.

E. Lack of exception does not affect accessibility adversely.

N.E. No scoping provided by ANSI or BCMC.

01-03734

ADA Title III Requirements

4.1.2 (5) (d) At facilities providing medical care and other services for persons with mobility impairments, parking spaces complying with 4.6 shall be provided in accordance with 4.1.2(5)(a) except as follows:

(i) Outpatient units and facilities: 10 percent of the total number of parking spaces provided serving each such outpatient unit or facility;

(ii) Units and facilities that specialize in treatment or services for persons with mobility impairments: 20 percent of the total number of parking spaces provided serving each such unit or facility.

4.1.2 (5) (e)* Valet parking: Valet parking facilities shall provide a passenger loading zone complying with 4.6.6 located on an accessible route to the entrance of the facility. Paragraphs 5(a), 5(b), and 5(d) of this section do not apply to valet parking facilities.

4.1.2 (6) If toilet facilities are provided on a site, then each such public or common use toilet facility shall comply with 4.22. If bathing facilities are provided on a site, then each such public or common use bathing facility shall comply with 4.23.

For single user portable toilet or bathing units clustered at a single location, at least 5% but no less than one toilet

unit or bathing unit complying with 4.22 or 4.23 shall be installed at each cluster whenever typical inaccessible units are provided. Accessible units shall be identified by the International Symbol of Accessibility.
EXCEPTION: Portable toilet units at construction sites used exclusively by construction personnel are not required to comply with 4.1.2(6).

CABO/ANSI A117.1-1992

BCMC

3.2.1.2 Ten percent of parking spaces provided for medical outpatient facilities shall be accessible. Twenty percent of parking spaces provided for medical facilities that specialize in treatment or services for persons with mobility impairments shall be accessible.
6.1 Toilet and Bathing Facilities
6.1.1 Toilet rooms and bathing facilities shall be accessible. At least one of each type fixture or element in each accessible toilet room and bathing facility shall be accessible.
EXCEPTIONS:
1. A toilet room or bathing facility for a single occupant and not for common or public use shall be permitted to be adaptable.
2. Dwelling units, guest rooms and patient toilet rooms, unless required by 5.0 to be accessible or adaptable.

Comments*

E.

E. No exemption - accessible spaces required at valet parking. But no requirement for passenger loading zone. Still considered equivalent because self-parking standards would be applicable in all new construction, even if building owner later decided to do valet parking.

P.N.E. Portable toilets not addressed (because not "code" issue) per se. Since temporary structures, other than those associated with construction, are covered, perhaps all portable toilets at a site would have to be accessible. (Section 7.1 seems to assume they are required to be accessible).

ADA Title III Requirements

4.1.2 (7) Building Signage. Signs which designate permanent rooms and spaces shall comply with 4.30.1, 4.30.4, 4.30.5 and 4.30.6. Other signs which provide direction to, or information about, functional spaces of the building shall comply with 4.30.1, 4.30.2, 4.30.3, and 4.30.5. Elements and spaces of accessible facilities which shall be identified by the International Symbol of Accessibility and which shall comply with 4.30.7 are:

(a) Parking spaces designated as reserved for individuals with disabilities;

(b) Accessible passenger loading zones;

(c) Accessible entrances when not all are accessible (inaccessible entrances shall have directional signage to indicate the route to the nearest accessible entrance);

(d) Accessible toilet and bathing facilities when not all are

accessible.
4.1.3 Accessible Buildings: New Construction. Accessible buildings and facilities shall meet the following minimum requirements:
(1) At least one accessible route complying with 4.3 shall connect accessible building or facility entrances with all accessible spaces and elements within the building or facility.
4.1.3 (2) All objects that overhang or protrude into circulation paths shall comply with 4.4.
4.1.3 (3) Ground and floor surfaces along accessible routes and in accessible rooms and spaces shall comply with 4.5.
4.1.3 (4) Interior and exterior stairs connecting levels that are not connected by an elevator, ramp, or other accessible means of vertical access shall comply with 4.9.

CABO/ANSI A117.1-1992

4. Accessible Elements and Spaces
4.1 Basic Components
Accessible sites, facilities, and buildings, including public-use, employee-use, and common-use spaces in housing facilities, shall, where required, provide accessible elements and spaces conforming with Section 4.

BCMC

7.0 SIGNS
7.1 Required accessible elements shall be identified by the International Symbol of Accessibility at the following locations:
1. Accessible parking spaces required by 3.2.1, except where the total parking spaces provided are five or less.
2. Accessible passenger loading zones.
3. Accessible areas of refuge. See 9.6.
4. Accessible portable toilet and bathing units.
7.2 Inaccessible building entrances, inaccessible public toilets and bathing facilities and elevators not serving an accessible route shall be provided with directional signage indicating the route to the nearest like accessible element.
3.1.2 At least one accessible route shall connect accessible spaces, elements, facilities and buildings that are on the same site. Where only one accessible route is provided, it shall not pass through kitchens, storage rooms, restrooms, closets or similar spaces.
EXCEPTIONS:
1. A single accessible route shall be permitted to pass through a kitchen or storage room in an accessible or adaptable dwelling unit.
2. In other than the offices of health care providers, transportation facilities and airports, and multitenant Group

M occupancies, floors that are above and below accessible levels, and that have an aggregate area of not more than 3000 square feet, and an aggregate occupant load of not more than 50, need not be served by an accessible route from an accessible level.
14.1 Horizontal Projections. Objects projecting from walls with their leading edges located more than 27 and not more than 80 inches above the finished floor shall protrude no more than 4 inches into walks, corridors, passageways, or aisles. Free-standing objects mounted on posts or pylons may overhang 12 inches maximum where located more than 27 and not more than 80 inches above the ground or finished floor.
14.2 Headroom. There shall be a minimum headroom of 6 ft 8 inches from the walking surface to the lowest part of any structural member, fixture or furnishing.

Comments*

7.1 - 1. N.E. because of lack of parking designation where total number is less than 5.
3. N.E. Leaves out accessible entrances.
4. N.E. Only addresses portable toilets.
7.2 - N.E. No scoping provided for room signage. Requirement for directional signage is unclear regarding what the technical standard is (ANSI 4.28).
E. (elevator exception addressed separately below).
E. for scoping (see technical discussion at S 4.4).
N.E. Not addressed.
N.E. BCMC does not address because "mainstreamed" into building codes.

ADA Title III Requirements

4.1.3 (5)* One passenger elevator complying with 4.10 shall serve each level, including mezzanines, in all multi-story buildings and facilities unless exempted below. If more than one elevator is provided, each full passenger elevator shall comply with 4.10.
4.1.3 (5) EXCEPTION 1: Elevators are not required in facilities that are less than three stories or that have less

than 3000 square feet per story unless the building is a shopping center, a shopping mall, or the professional office of a health care provider, or [a terminal, depot, or other station used for specified public transportation, or an airport passenger terminal. In such a facility, any area housing passenger services, including boarding and debarking loading and unloading baggage claim, dining facilities, and other common areas open to the public, must be on an accessible route from an accessible entrance (28 C.F.R. S 36.401(d)(2)(ii))].

The elevator exemption set forth in this paragraph does not obviate or limit in any way the obligation to comply with the other accessibility requirements established in section 4.1.3. For example, floors above or below the accessible ground floor must meet the requirements of this section except for elevator service. If toilet or bathing facilities are provided on a level not served by an elevator, then toilet or bathing facilities must be provided on the accessible ground floor. In new construction if a building or facility is eligible for this exemption but a full passenger elevator is nonetheless planned, that elevator shall meet the requirements of 4.10 and shall serve each level in the building. A full passenger elevator that provides service from a garage to only one level of a building or facility is not required to serve other levels.

CABO/ANSI A117.1-1992

BCMC

3.1.2 At least one accessible route shall connect accessible spaces, elements, facilities and buildings that are on the same site.

6.2.1 All passenger elevators on an accessible route shall be accessible.

EXCEPTION: Elevators within a dwelling unit.

18.0 Elevators

Passenger elevators shall comply with ASME/ANSI A17.1 and CABO/ANSI A117.1 (4.10).

3.1.2 EXCEPTION:

2. In other than the offices of health care providers, transportation facilities and airports, and multitenant Group M occupancies, floors that are above and below accessible levels, and that have an aggregate area of not more than 3000 square feet, and an aggregate occupant load of not more than 50, need not be served by an accessible route from an accessible level.

Comments*

3.1.2 - P.N.E. This may be acceptable if all levels and mezzanines in a building are

required to be accessible. If they are not, then BCMC would not require elevator service.
6.2.1 - P.N.E. Does not require elevator service to each level. May be misconstrued to suggest that elevators in a separate bank that is not accessible may be newly constructed as inaccessible. ADA requires all new elevators to be accessible, regardless of whether they are on an accessible route.
P.N.E. BCMC elevator exemption more stringent in the respect that floor area limit applies to all buildings, even those with fewer than 3 floors, and even floors that meet the floor size limit are only exempt if they have aggregate occupant load of 50 or less. However, it needs to be made clear that all floors must be less than 3000 square feet, not just the inaccessible floors.

ADA Title III Requirements

28 C.F.R. S 36.401(d)(ii). Shopping center or shopping mall means --

(A) A building housing five or more sales or rental establishments; or

(B) A series of buildings on a common site, either under common ownership or common control or developed either as one project or as a series of related projects, housing five or more sales or rental establishments. For purposes of this section, places of public accommodation of the types listed in paragraph (5) of the definition of "place of public accommodation" in section 36.104 are considered sales or rental establishments. The facility housing a "shopping center or shopping mall" only includes floor levels housing at least one sales or rental establishment, or any floor level designed or intended for use by at least one sales or rental establishment.

4.1.3 (5) EXCEPTION 2: Elevator pits, elevator penthouses, mechanical rooms, piping or equipment catwalks are exempted from this requirement.

4.1.3 (5) EXCEPTION 3: Accessible ramps complying with 4.8 may be used in lieu of an elevator.

4.1.3 (5) EXCEPTION 4: Platform lifts (wheelchair lifts) complying with 4.11 of this guideline and applicable state or local codes may be used in lieu of an elevator only under the following conditions:

(a) To provide an accessible route to a performing area in an assembly occupancy.

(b) To comply with the wheelchair viewing position line-of-sight and dispersion requirements of 4.33.3.

(c) To provide access to incidental occupiable spaces and rooms which are not open to the general public and which house no more than five persons, including but not limited to equipment control rooms and projection booths.

(d) To provide access where existing site constraints or other constraints make use of a ramp or an elevator infeasible.

4.1.3 (6) Windows: (Reserved).

CABO/ANSI A117.1-1992

BCMC

6.2.2 Platform (wheelchair) lifts shall not be part of a required accessible route in new construction.

Comments*

Not addressed. Equivalence of BCMC's "multitenant Group M occupancies" provision will depend on building code.

P.N.E. Not addressed as elevator

exemptions.
Exceeds.
20 ADA/ANSI/BCMC Requirements - October 13, 1995
01-03738
ADA Title III Requirements
4.1.3 (7) Doors:
(a) At each accessible entrance to a building or facility, at least one door shall comply with 4.13.
(b) Within a building or facility, at least one door at each accessible space shall comply with 4.13.
(c) Each door that is an element of an accessible route shall comply with 4.13.
(d) Each door required by 4.3.10, Egress, shall comply with 4.13.
4.1.3 (8) In new construction, at a minimum, the requirements in (a) and (b) below shall be satisfied independently:
(a) (i) At least 50% of all public entrances (excluding those in (b) below) must be accessible. At least one must be a ground floor entrance. Public entrances are any entrances that are not loading or service entrances.
4.1.3 (8) (a) (ii) Accessible entrances must be provided in a number at least equivalent to the number of exits required by the applicable building/fire codes. (This paragraph does not require an increase in the total number of entrances planned for a facility.)
4.1.3 (8) (a) (iii) An accessible entrance must be provided to each tenancy in a facility (for example, individual stores in a strip shopping center).
One entrance may be considered as meeting more than one of the requirements in (a). Where feasible, accessible entrances shall be the entrances used by the majority of people visiting or working in the building.
4.1.3 (8) (b) (i) In addition, if direct access is provided for pedestrians from an enclosed parking garage to the building, at least one direct entrance from the garage to the building must be accessible.
(ii) If access is provided for pedestrians from a pedestrian tunnel or elevated walkway, one entrance to the building from each tunnel or walkway must be accessible.
One entrance may be considered as meeting more than one of the requirements in (b).
Because entrances also serve as emergency exits whose proximity to all parts of buildings and facilities is essential, it is preferable that all entrances be accessible.
CABO/ANSI A117.1-1992
BCMC
15.0 DOORS

15.1 Doorway Width. Doorways shall have a minimum clear width of 32 inches.
EXCEPTIONS:
1. Doorways not required for means of egress in Group R2 and R3 occupancies.
2. Group I3 occupancies.
3. Storage closets less than 10 sq ft in area.
4. Revolving doors.
5. Interior egress doorways within a dwelling unit not required to be adaptable or accessible shall have a minimum clear width of 29 3/4 inches.
4.0 ACCESSIBLE ENTRANCES
4.1 Each building and structure, and each separate tenancy within a building or structure, shall be provided with at least one entrance which complies with the accessible route provisions of CABO/ANSI A117.1. Not less than 50% of the entrances shall be accessible.
EXCEPTION: Loading and service entrances.
4.1 ... and each separate tenancy ...
4.2 When a building or facility has entrances which normally serve accessible parking facilities, transportation facilities, passenger loading zones, taxi stands, public streets and sidewalks, or accessible interior vertical access, then at least one of the entrances serving each such function shall comply with the accessible route provisions of CABO/ANSI A117.1.

Comments*

E. All doors (without limitations) are required to be accessible under BCMC.
EXCEPTIONS:
2. P.N.E. institutional occupancy - access required.
3. P.N.E. when door meant for passage.
4. E.
5. N.E. to the extent this exempts dwelling units in transient lodging.
N.E. BCMC does not require a ground floor entrance.
N.E. Not addressed.
P.E.
N.E. because not fully addressed with regard to tunnels, walkways.

4.1.3 (8) (c) If the only entrance to a building, or tenancy

in a facility, is a service entrance, that entrance shall be accessible.
4.1.3 (8) (d) Entrances which are not accessible shall have directional signage complying with 4.30.1, 4.30.2, 4.30.3 and 4.30.5, which indicates the location of the nearest accessible entrance.
4.1.3 (9)* In buildings or facilities, or portions of buildings or facilities, required to be accessible, accessible means of egress shall be provided in the same number as required for exits by local building/life safety regulations. Where a required exit from an occupiable level above or below a level of accessible exit discharge is not accessible, an area of rescue assistance shall be provided on each such level (in a number equal to that of inaccessible required exits). Areas of rescue assistance shall comply with 4.3.11. A horizontal exit, meeting the requirements of local building/life safety regulations, shall satisfy the requirement for an area of rescue assistance.
EXCEPTION: Areas of rescue assistance are not required in buildings or facilities having a supervised automatic sprinkler system.

CABO/ANSI A117.1-1992
BCMC

7.2 In accessible building entrances, inaccessible public toilets and bathing facilities and elevators not serving an accessible route shall be provided with directional signage indicating the route to the nearest like accessible element.
8.0 ACCESSIBLE MEANS OF EGRESS
8.1 All required accessible spaces shall be provided with not less than one accessible means of egress. Where more than one means of egress is required from any required accessible space, each accessible portion of the space shall be served by not less than two accessible means of egress.
8.2 Each accessible means of egress shall be continuous from each required accessible occupied area to a public way and shall include accessible routes, ramps, exit stairs, elevators, horizontal exits or smoke barriers.
8.2.1 An exit stair to be considered part of an accessible means of egress shall have a clear width of at least 48 inches between handrails and shall either incorporate an area of refuge within an enlarged story-level landing or shall be accessed from either an area of refuge complying with 9.0 or a horizontal exit.
EXCEPTIONS:
1. Exit stairs serving a single dwelling unit or guest room.
2. Exit stairs serving occupancies protected throughout by an approved automatic sprinkler system.

3. The clear width of 48 inches between handrails is not required for exit stairs accessed from a horizontal exit.

Comments*

P.N.E. Not addressed (blanket exemption for service entrances.)

Is a service entrance treated as a public entrance when it is the only entrance provided?

E. for entrances.

8.1 - N.E. "Limit" of two not equivalent, especially in very large facilities where four exits may be required by building/life safety regulations.

8.2 - Allowing exit stairs is problem. "Exit stairs that are part of an area of refuge" or "exit stair complying with 8.2.1" would be better.

8.2.1 - E. Generally. Slightly different in that 48" wide stairs may be part of an accessible means of egress.

01-03740

ADA Title III Requirements
CABO/ANSI A117.1-1992
BCMC

8.2.2 An elevator to be considered part of an accessible means of egress shall comply with the requirements of Section 211 of ASME/ANSI A17.1 and standby power shall be provided. The elevator shall be accessed from either an area of refuge complying with 9.0 or a horizontal exit.

EXCEPTION: Elevators are not required to be accessed by an area of refuge or a horizontal exit in occupancies equipped throughout with an automatic sprinkler system.

8.3 In buildings where a required accessible floor is four or more stories above or below a level of exit discharge serving that floor, at least one elevator shall be provided to comply with 8.2.2 and shall serve as one required accessible means of egress.

EXCEPTION: In fully sprinklered buildings, the elevator shall not be required on floors provided with a horizontal exit and located at or above the level of exit discharge.

8.4 Platform (wheelchair) lifts shall not serve as part of an accessible means of egress.

EXCEPTION: Within a dwelling unit.

9.0 AREAS OF REFUGE

9.1 Every required area of refuge shall be accessible from the space it serves by an accessible means of egress. The maximum travel distance from any accessible space to an area of refuge shall not exceed the travel distance

permitted for the occupancy. Every required area of refuge shall have direct access to an exit complying with 8.2.1 or an elevator complying with 8.2.2. Where an elevator lobby is used as an area of refuge, the elevator shaft and lobby provided to comply with 8.2.2 shall be pressurized to comply with the requirements for smokeproof enclosures, except where elevators are in an area of refuge formed by a horizontal exit or smoke barrier.
EXCEPTION: Areas of refuge are not required in open parking garages.
(9.2 through 9.9 are technical provisions. See ADA Standards/ANSI.)
4.3.9* Egress. Accessible routes serving any accessible space or element shall also serve as a means of egress for emergencies or connect to an accessible area of refuge.

Comments*

E.
E.
E.

23 ADA/ANSI/BCMC Requirements - October 13, 1995
01-03741

ADA Title III Requirements
4.1.3 (10)* Drinking Fountains:
(a) Where only one drinking fountain is provided on a floor there shall be a drinking fountain which is accessible to individuals who use wheelchairs in accordance with 4.15 and one accessible to those who have difficulty bending or stooping. (This can be accommodated by the use of a "hi-lo" fountain; by providing one fountain accessible to those who use wheelchairs and one fountain at a standard height convenient for those who have difficulty bending; by providing a fountain accessible under 4.15 and a water cooler; or by such other means as would achieve the required accessibility for each group on each floor.)
(b) Where more than one drinking fountain or water cooler is provided on a floor, 50% of those provided shall comply with 4.15 and shall be on an accessible route.
4.1.3 (11) Toilet Facilities: If toilet rooms are provided, then each public and common use toilet room shall comply with 4.22. Other toilet rooms provided for the use of occupants of specific spaces (i.e., a private toilet room for the occupant of a private office) shall be adaptable. If bathing rooms are provided, then each public and common use bathroom shall comply with 4.23. Accessible toilet

rooms and bathing facilities shall be on an accessible route.

4.1.3 (12) Storage, Shelving and Display Units:

(a) If fixed or built-in storage facilities such as cabinets, shelves, closets, and drawers are provided in accessible spaces, at least one of each type provided shall contain storage space complying with 4.25. Additional storage may be provided outside of the dimensions required by 4.25.

4.1.3 (12) (b) Shelves or display units allowing self-service by customers in mercantile occupancies shall be located on an accessible route complying with 4.3. Requirements for accessible reach range do not apply.

4.1.3 (13) Controls and operating mechanisms in accessible spaces, along accessible routes, or as parts of accessible elements (for example, light switches and dispenser controls) shall comply with 4.27.

CABO/ANSI A117.1-1992

4.25 Operable Parts of Equipment and Appliances.

*General. Operable parts of equipment and appliances in accessible spaces, along accessible routes, or as part of accessible elements shall comply with 4.25.

BCMC

6.3 Drinking Fountains

At least 50% of drinking fountains, but not less than one, provided on every floor shall be accessible.

6.1.1 Toilet rooms and bathing facilities shall be accessible. At least one of each type fixture or element in each accessible toilet room and bathing facility shall be accessible.

EXCEPTIONS:

1. A toilet room or bathing facility for a single occupant and not for common or public use shall be permitted to be adaptable.

2. Dwelling units, guest rooms and patient toilet rooms, unless required by 5.0 to be accessible or adaptable.

6.4 Storage and Locker Facilities

Where storage facilities such as cabinets, shelves, closets, lockers and drawers are provided in required accessible or adaptable spaces, at least one of each type shall contain storage space complying with A117.1 (4.23).

6.8 Controls, Operating Mechanisms and Hardware

Controls, operating mechanisms and hardware, including switches that control lighting, ventilation or electrical outlets, in accessible spaces, along accessible routes or as parts of accessible elements, shall be accessible.

Comments*

N.E. Need to address fountains for

people who have difficulty bending or stooping.
E.
E.
P.N.E. Lack of requirement may be construed as permitting inaccessible floor levels (i.e. platforms) in mercantile occupancies. BCMC states that self-service shelves and display units are "inappropriate for incorporation into a building code." Spaces for these shelves must be required to be on an accessible route.
E.

01-03742

ADA Title III Requirements

4.1.3 (14) If emergency warning systems are provided, then they shall include both audible alarms and visual alarms complying with 4.28. Sleeping accommodations required to comply with 9.3 shall have an alarm system complying with 4.28. Emergency warning systems in medical care facilities may be modified to suit standard health care alarm design practice.
4.1.3 (15) Detectable warnings shall be provided at locations as specified in 4.29.
4.1.3 (16) Building Signage:
(a) Signs which designate permanent rooms and spaces shall comply with 4.30.1, 4.30.4, 4.30.5 and 4.30.6.
(b) Other signs which provide direction to or information about functional spaces of the building shall comply with 4.30.1, 4.30.2, 4.30.3, and 4.30.5.

EXCEPTION: Building directories, menus, and all other signs which are temporary are not required to comply.

CABO/ANSI A117.1-1992

BCMC

19.0 ALARM SYSTEMS

Required fire protective signalling systems shall include visible alarm-indicating appliances in public and common areas.

6.5 Detectable Warnings

Transit platform edges bordering a drop-off and not protected by platform screens or guardrails shall have a detectable warning.

EXCEPTION: Bus stops.

7.0 SIGNS

7.1 Required accessible elements shall be identified by the International Symbol of Accessibility at the following locations:

1. Accessible parking spaces required by 3.2.1, except where the total parking spaces provided are five or less.
2. Accessible passenger loading zones.
3. Accessible areas of refuge. See 9.6.
4. Accessible portable toilet and bathing units.

7.2 Inaccessible building entrances, inaccessible public toilets and bathing facilities and elevators not serving an accessible route shall be provided with directional signage indicating the route to the nearest like accessible element.

16.5 Stair Sign

Each door to an exit stairway shall have tactile signage stating EXIT and complying with CABO/ANSI A117.1 (4.28).

Comments*

P.N.E. Addresses only required fire protection signals. If extra (non-required) signals are provided, they must also include strobes.

N.E. No scoping for tactile signage other than "exit." This only addresses signs on required accessible elements. Does not require signs on all permanent rooms and spaces to be accessible and, in fact, BCMC says such permanent signage is "inappropriate for incorporation into a building code."

4.1.3 (17) Public Telephones:
(a) If public pay telephones, public closed circuit telephones, or other public telephones are provided, then they shall comply with 4.31.2 through 4.31.8 to the extent required by the following table:

Number of each type of telephone provided on each floor	Number of telephones required to comply with 4.31.2 through 4.31.81
1 or more single unit	1 per floor
1 bank 2	1 per floor
2 or more banks 2	1 per bank. Accessible unit may be installed as a single unit in proximity (either visible or with signage) to the bank. At least one public telephone per floor shall meet the requirements for a forward reach telephone 3.

1 Additional public telephones may be installed at any height. Unless otherwise specified, accessible telephones may be either forward or side reach telephones.
2 A bank consists of two or more adjacent public telephones, often installed as a unit.
3 EXCEPTION: For exterior installations only, if dial tone first service is available, then a side reach telephone may be installed instead of the required forward reach telephone (i.e., one telephone in proximity to each bank shall comply with 4.31).
4.1.3 (17) (b)* All telephones required to be accessible and complying with 4.31.2 through 4.31.8 shall be equipped with a volume control. In addition, 25 percent, but never less than one, of all other public telephones provided shall be equipped with a volume control and shall be dispersed among all types of public telephones, including closed circuit telephones, throughout the building or facility. Signage complying with applicable provisions of 4.30.7 shall be provided.

CABO/ANSI A117.1-1992 BCMC Comments*
N.E. Not addressed. BCMC considers telephones "not appropriate for incorporation into a building code."
N.E.

4.1.3 (17) (c) The following shall be provided in accordance with 4.31.9:

(i) if a total number of four or more public pay telephones (including both interior and exterior phones) is provided at a site, and at least one is in an interior location, then at least one interior public text telephone shall be provided.
(ii) if an interior public pay telephone is provided in a stadium or arena, in a convention center, in a hotel with a convention center, or in a covered mall, at least one interior public text telephone shall be provided in the facility.
(iii) if a public pay telephone is located in or adjacent to a hospital emergency room, hospital recovery room, or hospital waiting room, one public text telephone shall be provided at each such location.
4.1.3 (17) (d) Where a bank of telephones in the interior of a building consists of three or more public pay telephones, at least one public pay telephone in each such bank shall be equipped with a shelf and outlet in compliance with 4.31.9(2).
4.1.3 (18) If fixed or built-in seating or tables (including, but not limited to, study carrels and student laboratory stations), are provided in accessible public or common use areas, at least five percent (5%), but not less than one, of the fixed or built-in seating areas or tables shall comply with 4.32. An accessible route shall lead to and through such fixed or built-in seating areas, or tables.

CABO/ANSI A117.1-1992

BCMC

6.6 Fixed or Built-in Seating or Tables
Where fixed or built-in seating or tables are provided, at least 5%, but no fewer than one, shall be accessible. In eating and drinking facilities, such seating or tables shall be distributed throughout the facility.
3.1.2 At least one accessible route shall connect accessible spaces, elements, facilities and buildings that are on the same site.

Comments*

N.E.
N.E.
E.
27 ADA/ANSI/BCMC Requirements - October 13, 1995
01-03745

ADA Title III Requirements

4.1.3 (19)* Assembly areas:
(a) In places of assembly with fixed seating accessible wheelchair locations shall comply with 4.33.2, 4.33.3, and

4.33.4 and shall be provided consistent with the following table:

Capacity of Seating in Assembly Areas	Number of Required Wheelchair Locations
4 to 25	1
26 to 50	2
51 to 300	4
301 to 500	6
over 500	6, plus 1 additional space for each total seating capacity increase of 100

In addition, one percent, but not less than one, of all fixed seats shall be aisle seats with no armrests on the aisle side, or removable or folding armrests on the aisle side. Each such seat shall be identified by a sign or marker. Signage notifying patrons of the availability of such seats shall be posted at the ticket office. Aisle seats are not required to comply with 4.33.4.

4.1.3 (19) (b) This paragraph applies to assembly areas where audible communications are integral to the use of the space (e.g., concert and lecture halls, playhouses and movie theaters, meeting rooms, etc.). Such assembly areas, if (1) they accommodate at least 50 persons, or if they have audio-amplification systems, and (2) they have fixed seating, shall have a permanently installed assistive listening system complying with 4.33. For other assembly areas, a permanently installed assistive listening system, or an adequate number of electrical outlets or other supplementary wiring necessary to support a portable assistive listening system shall be provided. The minimum number of receivers to be provided shall be equal to 4 percent of the total number of seats, but in no case less than two. Signage complying with applicable provisions of 4.30 shall be installed to notify patrons of the availability of a listening system.

CABO/ANSI A117.1-1992

BCMC

5.0 SPECIAL OCCUPANCY REQUIREMENTS

5.1 General

In addition to the general provisions herein, the following requirements for specific occupancies shall apply.

5.2 Group A Assembly

5.2.1 In Group A1, A2, and A5 occupancies wheelchair spaces for each assembly area shall be provided in accordance with Table 5.2. Removable seats shall be permitted in the wheelchair spaces. When the number of seats exceeds 300, wheelchair spaces shall be provided in more than one location. Dispersion of wheelchair locations

shall be based on the availability of accessible routes to various seating areas, including seating at various levels in multilevel facilities.

5.2.3 In Group A3 occupancies the total floor area allotted for seating and tables shall be accessible.

EXCEPTIONS:

1. Where necessary for line of sight, requirements of 5.2.1 for number and dispersion of wheelchair spaces shall be applied.

TABLE NO. 5.2

WHEELCHAIR SPACES REQUIRED IN ASSEMBLY AREAS

Capacity of Seating in Assembly Area	Number of Required Wheelchair Spaces
4 to 25	1
26 to 50	2
51 to 300	4
301 to 500	6
over 500	6 plus 1 for each 200 over 500

5.2.2 Stadiums, theaters, auditoriums, lecture halls and similar areas having fixed seating and which are equipped with audio amplification systems or have an occupant load of 50 or more persons shall have a listening system complying with CABO/ANSI A117.1 (4.32) for at least 4% of the seats, but not less than two receivers. Such assembly areas not equipped with audio amplification systems or with an occupant load less than 50 shall have a permanently installed assistive listening system, or an adequate number of electrical outlets or other supplementary wiring necessary to support a portable assistive listening system. Signage shall be provided to notify patrons of the availability of a listening system.

Comments*

5.1 - N.E. Accessible route is required by ADA Standards - dispersion requirement not dependent on "availability" of accessible route. This "availability" language makes it sound like builders can escape the dispersion requirement simply by choosing to make only a few accessible routes available.

5.2.1 - N.E. No requirement for aisle seats.

5.2.3 - P.N.E. Group A3 occupancies with fixed seats must provide wheelchair spaces in the same proportion as other assembly

occupancies.
N.E. ADA (for over 500) requires 6
plus 1 additional space for each
total seating capacity increase of
100.
E.

28 ADA/ANSI/BCMC Requirements - October 13, 1995

01-03746

ADA Title III Requirements

4.1.3 (20) Where automated teller machines are provided, each machine shall comply with the requirements of 4.34 except where two or more are provided at a location, then only one must comply.
EXCEPTION: Drive-up-only automated teller machines are not required to comply with 4.34.2 and 4.34.3.
4.1.3 (21) Where dressing and fitting rooms are provided for use by the general public, patients, customers or employees, 5 percent, but never less than one, of dressing rooms for each type of use in each cluster of dressing rooms shall be accessible and shall comply with 4.35. Examples of types of dressing rooms are those serving different genders or distinct and different functions as in different treatment or examination facilities.
4.1.4 (Reserved).
4.1.5 Accessible Buildings: Additions. Each addition to an existing building or facility shall be regarded as an alteration. Each space or element added to the existing building or facility shall comply with the applicable provisions of 4.1.1 to 4.1.3, Minimum Requirements (for New Construction) and the applicable technical specifications of 4.2 through 4.35 and sections 5 through 10. Each addition that affects or could affect the usability of an area containing a primary function shall comply with 4.1.6(2).
28 C.F.R. S 36.402(a)(1). Alterations. Any alteration to a place of public accommodation or a commercial facility shall be made so as to ensure that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

CABO/ANSI A117.1-1992

1.2 Application
Provisions of this standard are suitable for:
- the design and construction of new buildings and facilities, including both spaces and elements, site improvements, and public walks
- remodeling, alteration, and rehabilitation of existing construction

- permanent, temporary, and emergency conditions
2.3* Remodeling
The specifications in this standard are based upon the functional requirements of persons with physical disabilities. The administrative authority adopting this standard shall specify the extent to which it is to cover remodeling, alteration, or rehabilitation within its jurisdiction.

BCMC

6.7.1 Dressing and Fitting Rooms
Where dressing or fitting rooms are provided, at least 5%, but not less than one, in each group of rooms serving distinct and different functions shall be accessible.
11.1.1 Each element or space of a building or facility that is altered shall comply with these provisions, unless technically infeasible. Where full compliance is technically infeasible, the element or space shall be made accessible to the extent to which it is not technically infeasible.
EXCEPTION: Where these provisions require that an element or space be on an accessible route, the altered element or space is not required to be on an accessible route, unless required by 11.1.2.
11.0 EXISTING BUILDINGS
11.1 Alterations
11.1.1 Each element or space of a building or facility that is altered shall comply with these provisions, unless technically infeasible. Where full compliance is technically infeasible, the element or space shall be made accessible to the extent to which it is not technically infeasible.
EXCEPTION: Where these provisions require that an element or space be on an accessible route, the altered element or space is not required to be on an accessible route, unless required by 11.1.2. (Alteration to area of primary function.)
11.2 Change of Occupancy
Provisions for new construction shall apply to existing buildings that undergo a change of use group, unless technically infeasible.

Comments*

N.E. Not addressed. BCMC considers these "not appropriate for incorporation into a building code."

E. Not specifically addressed. Unclear whether an addition constitutes an alteration.

ANSI P.N.E. Although ANSI states that it is applicable/suitable for

alterations, specific scoping
provisions are not addressed.
However, specific technical
exceptions or variations are
included in some technical sections.
An entire section, ANSI 4.10.2,
was created for existing elevators.
BCMC 11.1 - E.
11.2 - Exceeds. ADA does not
address change of use group.

01-03747

ADA Title III Requirements

4.1.6 (1) (g) In alterations, the requirements of 4.1.3(9), 4.3.10 and 4.3.11 do not apply.

4.1.6 (1) (h)* Entrances: If a planned alteration entails alterations to an entrance, and the building has an accessible entrance, the entrance being altered is not required to comply with 4.1.3(8), except to the extent required by 4.1.6(2). If a particular entrance is not made accessible, appropriate accessible signage indicating the location of the nearest accessible entrance(s) shall be installed at or near the inaccessible entrance, such that a person with disabilities will not be required to retrace the approach route from the inaccessible entrance.

4.1.6 (1) (i) If the alteration work is limited solely to the electrical, mechanical, or plumbing system, or to hazardous material abatement, or automatic sprinkler retrofitting, and does not involve the alteration of any elements or spaces required to be accessible under these guidelines, then 4.1.6 (2) does not apply.

4.1.6 (1) (j) EXCEPTION: In alteration work, if compliance with 4.1.6 is technically infeasible, the alteration shall provide accessibility to the maximum extent feasible. Any elements or features of the building or facility that are being altered and can be made accessible shall be made accessible within the scope of the alteration.

Technically Infeasible. Means, with respect to an alteration of a building or a facility, that it has little likelihood of being accomplished because existing structural conditions would require removing or altering a load-bearing member which is an essential part of the structural frame; or because other existing physical or site constraints prohibit modification or addition of elements, spaces, or features which are in full and strict compliance with the minimum requirements for new construction and which are necessary to provide accessibility.

CABO/ANSI A117.1-1992

BCMC
11.1.3 The following scoping provisions shall apply for alterations to existing buildings and facilities:
8. Accessible means of egress are not required in alterations to existing buildings and facilities.
11.1.2 Exception 3. Alterations to mechanical systems, electrical systems, installations or alteration of fire protection systems, and abatements of hazardous materials.
11.1.1 Each element or space of a building or facility that is altered shall comply with these provisions, unless technically infeasible. Where full compliance is technically infeasible, the element or space shall be made accessible to the extent to which it is not technically infeasible.
EXCEPTION: Where these provisions require that an element or space be on an accessible route, the altered element or space is not required to be on an accessible route, unless required by 11.1.2.
TECHNICALLY INFEASIBLE - an alteration of a building or a facility that has little likelihood of being accomplished because existing structural conditions would require removing or altering a load-bearing member which is an essential part of the structural frame, or because other existing physical or site constraints prohibit modification or addition of elements, spaces, or features which are in full and strict compliance with the minimum requirements for new construction and which are necessary to provide accessibility.
Comments*
E.
Not addressed. Lack of this exception possibly exceeds the ADA.
E.
E.
E.
31 ADA/ANSI/BCMC Requirements - October 13, 1995
01-03748
ADA Title III Requirements
4.1.6 (1) (k) EXCEPTION:
(i) These guidelines do not require the installation of an elevator in an altered facility that is less than three stories or has less than 3,000 square feet per story unless the building is a shopping center, a shopping mall, the professional office of a health care provider, or [a terminal, depot, or other station used for specified public transportation, or an airport passenger terminal (28 C.F.R S 36.404(a))].

(ii) The exemption provided in paragraph (i) does not obviate or limit in any way the obligation to comply with the other accessibility requirements established in these guidelines. For example, alterations to floors above or below the ground floor must be accessible regardless of whether the altered facility has an elevator. If a facility subject to the elevator exemption set forth in paragraph (i) nonetheless has a full passenger elevator, that elevator shall meet, to the maximum extent feasible, the accessibility requirements of these guidelines.
28 C.F.R. S 36.404 (a) (2). For purposes of this section, shopping center or shopping mall means --

(A) A building housing five or more sales or rental establishments; or

(B) A series of buildings on a common site, connected by a common pedestrian access route above or below the ground floor, that is either under common ownership or common control or developed either as one project or as a series of related projects, housing five or more sales or rental establishments. For purposes of this section, places of public accommodation of the types listed in paragraph (5) of the definition of "place of public accommodation" in section 36.104 are considered sales or rental establishments. The facility housing a "shopping center or shopping mall" only includes floor levels housing at least one sales or rental establishment, or any floor level designed or intended for use by at least one sales or rental establishment.

CABO/ANSI A117.1-1992

BCMC

3.1.2 EXCEPTION: 2. In other than the offices of health care providers, transportation facilities and airports, and multitenant Group M occupancies, floors that are above and below accessible levels, and that have an aggregate area of not more than 3000 square feet, and an aggregate occupant load of not more than 50, need not be served by an accessible route from an accessible level.

Comments*

P.N.E. BCMC elevator exception is more stringent in that it does not exempt buildings with less than 3 floors and it imposes an additional occupant load limit on small buildings. However, it needs to be made clear that all floors must be less than 3000 square feet, not just the inaccessible floors.
Other accessibility requirements not

addressed specifically; however, the exception applies only to a connecting accessible route (i.e., elevator, lift, ramp).
Not addressed. Whether the BCMC provision for "multitenant Group M occupancies" is equivalent depends on building codes.

01-03749

ADA Title III Requirements

4.1.6 (2) Alterations to an Area Containing a Primary Function: In addition to the requirements of 4.1.6(1), an alteration that affects or could affect the usability of or access to an area containing a primary function shall be made so as to ensure that, to the maximum extent feasible, the path of travel to the altered area and the restrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities, unless such alterations are disproportionate to the overall alterations in terms of cost and scope (as determined under criteria established by the Attorney General). (See 28 C.F.R S 36.403).
28 C.F.R. S 36.403(c)(2). For the purposes of this section, alterations to windows, hardware, controls, electrical outlets, and signage shall not be deemed to be alterations that affect the usability of or access to an area containing a primary function.
28 C.F.R. S 36.403(d). Landlord/tenant: If a tenant is making alterations as defined in Section 36.402 that would trigger the requirements of this section, those alterations by the tenant in areas that only the tenant occupies do not trigger a path of travel obligation upon the landlord with respect to areas of the facility under the landlord's authority, if those areas are not otherwise being altered.
28 C.F.R. S 36.403(f). Disproportionality.
(1) Alterations made to provide an accessible path of travel to the altered area will be deemed disproportionate to the overall alteration when the cost exceeds 20% of the cost of the alteration to the primary function area.
28 C.F.R. S 36.403(g). Duty to provide accessible features in the event of disproportionality.
(1) When the cost of alterations necessary to make the path of travel to the altered area fully accessible is disproportionate to the cost of the overall alteration, the path of travel shall be made accessible to the extent that it can be made accessible without incurring disproportionate

costs.

CABO/ANSI A117.1-1992

BCMC

11.1.2 Where an alteration affects the usability of, or access to, an area containing a primary function, an accessible route to the primary function area shall be provided. The accessible route to the primary function area shall include any restrooms or drinking fountains serving the primary function area.

EXCEPTIONS:

1. The costs of providing the accessible route need not exceed 20% of the costs of the alterations affecting the primary function area.

2. Alterations to windows, hardware, operating controls, electrical outlets and signage.

3. Alterations to mechanical systems, electrical systems, installations or alteration of fire protection systems, and abatement of hazardous materials.

4. Alterations undertaken for the primary purpose of increasing the accessibility of an existing building, facility or element.

11.1.2 Exception 2. Alterations to windows, hardware, operating controls, electrical outlets and signage.

11.1.2 Exception 1. The cost of providing the accessible route need not exceed 20% of the costs of the alterations affecting the primary function area.

Comments*

P.N.E. Need more detail regarding what is required to be included in path of travel.

Exception 1 - P.N.E. No mention of making the path of travel accessible to extent that costs are not greater than 20%, or series of smaller alterations. Need clarification.

Exception 2 - E.

Exception 3 - E.

Exception 4 - E. to 36.304 (d)(i) Barrier Removal.

E.

Not addressed.

E.

N.E. - Not addressed.

33 ADA/ANSI/BCMC Requirements - October 13, 1995

01-03750

ADA Title III Requirements

28 C.F.R. S 36.403(h). Series of smaller alterations.

(1) The obligation to provide an accessible path of travel

may not be evaded by performing a series of small alterations to the area served by a single path of travel if those alterations could have been performed as a single undertaking.

(2) (i) If an area containing a primary function has been altered without providing an accessible path of travel to that area, and subsequent alterations of that area, or a different area on the same path of travel, are undertaken within three years of the original alteration, the total cost of alterations to the primary function areas on that path of travel during the preceding three year period shall be considered in determining whether the cost of making that path of travel accessible is disproportionate.

4.1.6 (3) Special Technical Provisions for Alterations to Existing Buildings and Facilities:

(a) Ramps: Curb ramps and interior or exterior ramps to be constructed on sites or in existing buildings or facilities where space limitations prohibit the use of a 1:12 slope or less may have slopes and rises as follows:

(i) A slope between 1:10 and 1:12 is allowed for a maximum rise of 6 inches.

(ii) A slope between 1:8 and 1:10 is allowed for a maximum rise of 3 inches. A slope steeper than 1:8 is not allowed.

4.1.6 (3) (b) Stairs: Full extension of handrails at stairs shall not be required in alterations where such extensions would be hazardous or impossible due to plan configuration.

4.1.6 (3) (c) Elevators:

(i) If safety door edges are provided in existing automatic elevators, automatic door reopening devices may be omitted (see 4.10.6).

CABO/ANSI A117.1-1992

4.8.2* Slope and Rise. ...Curb ramps and ramps constructed on existing sites or existing buildings or facilities shall be permitted to have slopes and rises as shown in Table 4.8.2 provided space limitations prohibit use of a 1:12 slope or less.

Table 4.8.2

Allowable Ramp Dimensions for Construction in Existing Sites, Buildings and Facilities

Slope"	Maximum Rise
Steeper than 1:10 but not steeper than 1:8	3 in 75 mm
Steeper than 1:12 but not steeper than 1:10	6 in 150 mm

"A slope steeper than 1:8 shall not be permitted.

4.10.2 Elevators - Existing

4.10.2.1 General. Existing passenger elevators that are required to be accessible shall comply with 4.10.2 and with 4.10.1.2, 4.10.1.5, 4.10.1.7 through 4.10.1.11, and 4.10.1.14. All elevators that are programmed to respond to the same hall call control as the required accessible elevator shall comply with the requirements of 4.10.2.

BCMC

17.1 Slope

Maximum slope in the direction of travel shall be 1:12. Maximum cross slope shall be 1:48.

EXCEPTIONS:

1. Maximum slope in direction of travel shall be 1:8 for a 3-inch rise maximum and 1:10 for a 6-inch rise maximum.

Comments*

N.E.- Not addressed.

ANSI E.

BCMC Exception 1 - N.E. "Where space limitations prohibit the use of a 1:12 slope..." is critical phrase. Not addressed. Mainstreamed requirements for new construction require extensions on only one side.

N.E. ANSI does not require altered elevators to comply with 4.10.1.6 (reopening devices), regardless of whether safety door edges are provided.

01-03751

ADA Title III Requirements

4.1.6 (3) (c) (ii) Where existing shaft configuration or technical infeasibility prohibits strict compliance with 4.10.9, the minimum car plan dimensions may be reduced by the minimum amount necessary, but in no case shall the inside car area be smaller than 48 in by 48 in.

(iii) Equivalent facilitation may be provided with an elevator car of different dimensions when usability can be demonstrated and when all other elements required to be accessible comply with the applicable provisions of 4.10. For example, an elevator of 47 in by 69 in (1195 mm by 1755 mm) with a door opening on the narrow dimension, could accommodate the standard wheelchair clearances shown in Figure 4.

CABO/ANSI A117.1-1992

4.10.2 Elevators-Existing

4.10.2.1 General. Existing passenger elevators that are required to be accessible shall comply with 4.10.2 and with 4.10.1.2, 4.10.1.5, 4.10.1.7 through 4.10.1.11, and

4.10.1.14. All elevators that are programmed to respond to the same hall call control as the required accessible elevator shall comply with the requirements of 4.10.2.
4.10.1.9* Inside Dimensions of Elevator Cars. The inside dimensions of elevator cars shall provide space for wheelchair users to enter the car, maneuver within reach of controls, and exit from the car. The clearance between the car platform sill and the edge of any hoistway landing shall be 1 1/4 in (32 mm) maximum.
4.10.2 Existing Elevators
4.10.2.1 General. Existing passenger elevators that are required to be accessible shall comply with 4.10.2 and with 4.10.1.2, 4.10.1.5, 4.10.1.7 through 4.10.1.11, and 4.10.1.14. All elevators that are programmed to respond to the same hall call control as the required accessible elevator shall comply with the requirements of 4.10.2.
4.10.2.2 Call Buttons. The top of the hall call buttons shall be located vertically between 35 in (890 mm) and 54 in (1370 mm) above the floor when the appropriate floor area specified in 4.2.5 or 4.2.6 is provided. The button that designates the up direction shall be located above the button that designates the down direction.
4.10.2.3 Hall Signals. A visible and audible signal shall be provided at each hoistway entrance to indicate which car is answering a call, except that in-car signals complying with 4.10.1.4 shall be acceptable. Audible signals shall sound once for the up direction and twice for the down direction, or shall have verbal annunciators that state the word "up" or "down." If hall signals are added, they shall comply with 4.10.1.4.
4.10.2.4 Door Operation. Power operated horizontally sliding car and hoistway doors opened and closed by automatic means shall comply with 4.10.1.6. Existing manually operated hoistway swing doors shall comply with 4.13.5 and 4.13.11. A power operated car door that opens and maintains a 32 in (815 mm) minimum clear width shall be provided. Closing of the car door shall not be initiated until the hoistway door is closed. Car gates are prohibited.

BCMC
Comments*

N.E. Not limited to technical infeasibility. Also, no minimum of 48 by 48.

N.E. If applied to alterations, this allows greater variation from accessibility requirements than ADA permits.

4.10.2.2 - N.E. Visual signal not required. No restriction for protruding objects below buttons. ADA Standards do not specifically relax these requirements. Reach ranges okay as substitute for 42 inch centerline.
4.10.2.3 - N.E. because no height requirements and no element size requirements.
4.10.2.4 - Generally equivalent to 4.1.6 (3) (c). But, if swinging hoistway doors are allowed, the hardware also should comply and there should be maneuvering space complying with 4.13.6.
4.10.2.5 - N.E. Allows recessed buttons.

ADA Title III Requirements
4.1.6 (3) (d) Doors:
(i) Where it is technically infeasible to comply with clear opening width requirements of 4.13.5, a projection of 5/8

in maximum will be permitted for the latch side stop.
4.1.6 (3) (d) (ii) If existing thresholds are 3/4 in high or less, and have (or are modified to have) a beveled edge on each side, they may remain.
4.1.6 (3) (e) Toilet Rooms:
(i) Where it is technically infeasible to comply with 4.22 or 4.23, the installation of at least one unisex toilet/bathroom per floor, located in the same area as existing toilet facilities, will be permitted in lieu of modifying existing toilet facilities to be accessible. Each unisex toilet room shall contain one water closet complying with 4.16 and one lavatory complying with 4.19, and the door shall have a privacy latch.

CABO/ANSI A117.1-1992

4.10.2.5 Car Controls. Elevator control panels shall have the following features:
4.10.2.5.1 Car control buttons shall be 3/4 in (19 mm) minimum in their smallest dimension. Control buttons shall be raised, flush or recessed.
4.10.2.5.2 When the car operating panel is changed, control buttons shall comply with 4.10.1.12.1.
4.10.2.5.3 All control buttons shall comply with 4.10.1.12.2.
Exception: When existing car operating panel construction precludes locating tactile markings to the left of the controls, markings shall be placed as near to the control panel as possible.
4.10.2.5.4 All floor buttons shall be located 54 in (1370 mm) maximum above the floor for parallel approach and 48 in (1220) maximum above the floor for front approach. When the panel is changed, emergency controls, including the emergency alarm, shall comply with 4.10.1.12.3.
4.10.2.5.5 Location of controls shall comply with 4.10.1.12.4.
4.10.2.5.6 When a new car operating panel conforming to the requirements of 4.10.1.12 is provided, existing car operating panel(s) not conforming to 4.10.1.12 are not required to be removed.
4.10.2.6 Car Position Indicators. When a new car position indicator is installed, the indicator shall comply with 4.10.1.13.
4.10.2.7 Identification. Elevators that comply with this standard shall be clearly identified with the international symbol of accessibility, unless all elevators in the building are accessible. See Fig. 4.28.8.1.

BCMC

11.1.3 The following scoping provisions shall apply for alterations to existing buildings and facilities:

1. Where it is technically infeasible to alter existing toilet rooms or bathing facilities to be accessible, at least one accessible unisex toilet/bathroom shall be provided and shall be located on the same floor and in the same area as the existing toilet/bathrooms. Each unisex toilet/bath room shall contain one accessible water closet and lavatory, and the door shall be lockable from within the room.

Comments*

P.N.E. BCMC gives builder discretion to decide what to do when full compliance is infeasible.

P. Exceeds BCMC does not provide such an exception to accessibility.

E.

01-03753

ADA Title III Requirements

4.1.6 (3) (e) (ii) Where it is technically infeasible to install a required standard stall (Fig. 30(a)), or where other codes prohibit reduction of the fixture count (i.e., removal of a water closet in order to create a double-wide stall), either alternate stall (Fig. 30 (b)) may be provided in lieu of the standard stall.

4.1.6 (3) (e) (iii) When existing toilet or bathing facilities are being altered and are not made accessible, signage complying with 4.30.1, 4.30.2, 4.30.3, 4.30.5, and 4.30.7 shall be provided indicating the location of the nearest accessible toilet or bathing facility within the facility.

4.1.6 (3) (f) Assembly Areas:

(i) Where it is technically infeasible to disperse accessible seating throughout an altered assembly area, accessible seating areas may be clustered. Each accessible seating area shall have provisions for companion seating and shall be located on an accessible route that also serves as a means of emergency egress.

(ii) Where it is technically infeasible to alter all performing areas to be on an accessible route, at least one of each type of performing area shall be made accessible.

4.1.6 (3) (g) Platform Lifts (Wheelchair Lifts): In alterations, platform lifts (wheelchair lifts) complying with 4.11 and applicable state or local codes may be used as part of an accessible route. The use of lifts is not limited to the four conditions in Exception 4 of 4.1.3(5).

4.1.6 (3) (h) Dressing Rooms: In alterations where technical infeasibility can be demonstrated, one dressing room for each sex on each level shall be made accessible. Where only unisex dressing rooms are provided, accessible

unisex dressing rooms may be used to fulfill this requirement.

CABO/ANSI A117.1-1992

BCMC

11.1.3 2. Where existing toilet or bathing facilities are being altered and are not made accessible, directional signage shall be provided indicating the location of the nearest accessible toilet or bathing facility within the facility.

11.1.3 3. Where it is technically infeasible to disperse accessible seating throughout an altered assembly area, accessible seating areas may be clustered. Each accessible seating area shall have provisions for companion seating and shall be located on an accessible route that also serves as an accessible means of egress.

4. Where it is technically infeasible to alter all performing areas to be on an accessible route, at least one of each type of performing area shall be made accessible.

11.1.3 5. Platform (wheelchair) lifts, installed in accordance with ASME/ANSI A17.1, Part 20, may be used as part of an accessible route.

11.1.3 6. Where it is technically infeasible to alter existing dressing rooms to be accessible in accordance with 6.7.1, not less than one accessible dressing room shall be provided on the same level as the inaccessible dressing rooms. Where separate dressing rooms are provided for each sex, not less than one accessible dressing room for each sex shall be provided.

11.2 Change of Occupancy

Provisions for new construction shall apply to existing buildings that undergo a change of use group, unless technically infeasible.

Comments*

Not addressed. This needs to be made clear.

P.N.E. Need to specify that signage must be accessible.

E.

E.

E.

Exceeds. Change of occupancy is not mentioned specifically in ADA. But, if alterations occur as a result of change of occupancy, 4.1.6 governs.

01-03754

ADA Title III Requirements

4.1.7 Accessible Buildings: Historic Preservation.

(1) Applicability:

(a) General Rule. Alterations to a qualified historic building or facility shall comply with 4.1.6 Accessible Buildings: Alterations, the applicable technical specifications of 4.2 through 4.35 and the applicable special application sections 5 through 10 unless it is determined in accordance with the procedures in 4.1.7(2) that compliance with the requirements for accessible routes (exterior and interior), ramps, entrances, or toilets would threaten or destroy the historic significance of the building or facility in which case the alternative requirements in 4.1.7(3) may be used for the feature.

CABO/ANSI A117.1-1992

1.2 Application

Provisions of this standard are suitable for:

- the design and construction of new buildings and facilities, including both spaces and elements, site improvements, and public walks
- remodeling, alteration, and rehabilitation of existing construction
- permanent, temporary, and emergency conditions

A2.3 Historic Buildings and Facilities 1)2)3)

Accessibility in historic buildings and facilities, that are required to be made accessible and usable by persons with disabilities, should be accomplished in a manner that maintains the significant historic fabric and historic aspects of such buildings and facilities.

If the historic fabric or historic aspects are threatened or destroyed by strict compliance with the provisions of this standard, reasonably equivalent access and use may be accomplished by using the concepts in A2.3. Reasonably equivalent access and use means that the entry to, and use of, a building or facility by persons with disabilities is achieved with standards or measurements which are individually tailored to the historic building or facility.

1) Historic aspects are the particular features of the historic site, building or facility that gives it its historic significance, such as historic background, noteworthy architecture, unique design, works of art, memorabilia, and artifacts.

2) Historic fabric consists of the original materials and portions of the building intact when exposed or as they appeared and were used in the past.

3) Historic buildings are buildings and facilities that are eligible for listing or are listed in the National Register of Historic Places, or such properties designated as historic under a statute of the appropriate state or local government body.

BCMC

11.3 Historic Buildings

These provisions shall apply to buildings and facilities designated as historic structures that undergo alterations or a change in use group, unless technically infeasible. If the historic character of the building is adversely affected, alternate provisions may be accepted.

Comments*

ANSI N.E. ANSI sets out a process in the appendix that is quite different from ADA Standards. (See 4.1.7 (2)). Further, all technical provisions are in the appendix and are, therefore, advisory only. Further, ANSI leaves it up to adopting authority to decide whether provisions apply. Adopting authority could be a model code or local/state code. Following comments address the ANSI provisions as if they were mandatory.

BCMC N.E. Alternate provisions not specified. Also, "adversely affected" is not as stringent as ADA's "threaten or destroy" standard for when alternate provisions may be used.

01-03755

ADA Title III Requirements

4.1.7 (1) (b) Definition. A qualified historic building or facility is a building or facility that is:

(i) Listed in or eligible for listing in the National Register of Historic Places; or

(ii) Designated as historic under an appropriate State or local law.

CABO/ANSI A117.1-1992

A2.3 Historic Buildings and Facilities. ...Should the above still be deemed to destroy the historic fabric or historic aspect, additional consideration may be given to the following:

1. Deviations should be on an item-by-item or case-by-case basis.

2. Interpretive exhibits and/or equal services of significant historic aspects which do not comply with this standard are provided for the public in a location fully accessible to and usable by persons with disabilities,

including people with hearing and sight impairment.

3. Services are provided in an accessible location equal to those provided in the locations which do not comply with this standard.

4. The owner/designer has provided written documentation stating the reasons for the consequent exemption. Such statement shall include the opinions and/or comments of a representative local group of persons with disabilities and be submitted to the administrative authority for approval.

A2.3 fn. 3 Historic buildings are buildings and facilities that are eligible for listing or are listed in the National Register of Historic Places, or such properties designated as historic under a statute of the appropriate state or local government body.

BCMC
Comments*

ANSI E.

BCMC N.E. Not addressed.

39 ADA/ANSI/BCMC Requirements - October 13, 1995

01-03756

ADA Title III Requirements

4.1.7 (2) Procedures.

(a) Alterations to Qualified Historic buildings and Facilities Subject to Section 106 of the National Historic Preservation Act:

(i) Section 106 Process. Section 106 of the National Historic Preservation Act (16 U.S.C. 470 f) requires that a Federal agency with jurisdiction over a Federal, federally assisted, or federally licensed undertaking consider the effects of the agency's undertaking on buildings and facilities listed in or eligible for listing in the National Register of Historic Places and give the Advisory Council on Historic Preservation a reasonable opportunity to comment on the undertaking prior to approval of the undertaking.

(ii) ADA Application. Where alterations are undertaken to a qualified historic building or facility that is subject to section 106 of the National Historic Preservation Act, the Federal agency with jurisdiction over the undertaking shall follow the section 106 process. If the State Historic Preservation Officer or Advisory Council on Historic Preservation agrees that compliance with the requirements for accessible routes (exterior and interior), ramps, entrances, or toilets would threaten or destroy the historic significance of the building or facility, the alternative requirements in 4.1.7(3) may be used for the feature.

4.1.7 (2) (b) Alterations to Qualified Historic Buildings and

Facilities Not Subject to Section 106 of the National Historic Preservation Act. Where alterations are undertaken to a qualified historic building or facility that is not subject to section 106 of the National Historic Preservation Act, if the entity undertaking the alterations believes that compliance with the requirements for accessible routes (exterior and interior), ramps, entrances, or toilets would threaten or destroy the historic significance of the building or facility and that the alternative requirements in 4.1.7(3) should be used for the feature, the entity should consult with the State Historic Preservation Officer. If the State Historic Preservation Officer agrees that compliance with the accessibility requirements for accessible routes (exterior and interior), ramps, entrances or toilets would threaten or destroy the historical significance of the building or facility, the alternative requirements in 4.1.7(3) may be used.
4.1.7 (2) (c) Consultation With Interested Persons. Interested persons should be invited to participate in the consultation process, including State or local accessibility officials, individuals with disabilities, and organizations representing individuals with disabilities.

CABO/ANSI A117.1-1992

A2.3 Historic Buildings and Facilities. ...Should the above still be deemed to destroy the historic fabric or historic aspect, additional consideration may be given to the following:

1. Deviations should be on an item-by-item or case-by-case basis.

2. Interpretive exhibits and/or equal services of significant historic aspects which do not comply with this standard are provided for the public in a location fully accessible to and usable by persons with disabilities, including people with hearing and sight impairment.

3. Services are provided in an accessible location equal to those provided in the locations which do not comply with this standard.

4. The owner/designer has provided written documentation stating the reasons for the consequent exemption. Such statement shall include the opinions and/or comments of a representative local group of persons with disabilities and be submitted to the administrative authority for approval.

See above.

Appendix A2.3. ...Such statement shall include the opinions and/or comments of a representative local group of persons with disabilities and be submitted to the administrative authority for approval.

BCMC
Comments*
ANSI See 4.1.7, above.
BCMC N.E. Not addressed.
ANSI N.E. Process does not require consultation with state Historic Preservation Office or certified designee, below.
BCMC N.E. Not addressed.
ANSI E.
BCMC Not addressed.

01-03757

ADA Title III Requirements
4.1.7 (2) (d) Certified Local Government Historic Preservation Programs. Where the State Historic Preservation Officer has delegated the consultation responsibility for purposes of this section to a local government historic preservation program that has been certified in accordance with section 101(c) of the National Historic Preservation Act of 1966 (16 U.S.C. 470a (c)) and implementing regulations (36 CFR 61.5), the responsibility may be carried out by the appropriate local government body or official.
4.1.7 (3) Historic Preservation: Minimum Requirements:
(a) At least one accessible route complying with 4.3 from a site access point to an accessible entrance shall be provided.
EXCEPTION: A ramp with a slope no greater than 1:6 for a run not to exceed 2 ft (610 mm) may be used as part of an accessible route to an entrance.
4.1.7 (3) (b) At least one accessible entrance complying with 4.14 which is used by the public shall be provided.
EXCEPTION: If it is determined that no entrance used by the public can comply with 4.14, then access at any entrance not used by the general public but open (unlocked) with directional signage at the primary entrance

may be used. The accessible entrance shall also have a notification system. Where security is a problem, remote monitoring may be used.
4.1.7 (3) (c) If toilets are provided, then at least one toilet facility complying with 4.22 and 4.1.6 shall be provided along an accessible route that complies with 4.3. Such toilet facility may be unisex in design.
4.1.7 (3) (d) Accessible routes from an accessible entrance to all publicly used spaces on at least the level of the accessible entrance shall be provided. Access shall be provided to all levels of a building or facility in compliance with 4.1 whenever practical.
4.1.7 (3) (e) Displays and written information, documents, etc., should be located where they can be seen by a seated person. Exhibits and signage displayed horizontally (e.g., open books), should be no higher than 44 in (1120 mm) above the floor surface.

CABO/ANSI A117.1-1992

See above.
Appendix A2.3. ...If compliance with 4.8 cannot be achieved, a ramp meeting the criteria in Table A2.3(a) may be used as part of an accessible route at an entrance.

Table A2.3(a)
Maximum Slopes

Max. Slope	Maximum Rise	Maximum Run
1:9	16 in (405 mm)	12 ft (4 m)
1:6	4 in (100 mm)	2 ft (2 m)

Appendix A2.3. ...In the absence of an entrance used by the public complying with 4.14, then access at any entrance not used by the public but open (unlocked) with directional signs at the principal entrance may be used.

BCMC
Comments*

ANSI Not addressed.
BCMC Not addressed.
ANSI N.E. Technical provision allows a steep ramp for longer distance than 4.1.7(3).
BCMC N.E. to all provisions of 4.1.7(3) because no alternate requirements specified.
ANSI E.
Not addressed.
Not addressed.
N.E. Not addressed.

4.2 Space Allowance and Reach Ranges.
4.2.1* Wheelchair Passage Width. The minimum clear width for single wheelchair passage shall be 32 in (815 mm) at a point and 36 in (915 mm) continuously (see Fig. 1 and 24(e)).
Figure 1 of the ADA Standards. Minimum Clear Width for Single Wheelchair.
The minimum clear passage width for a single wheelchair passage shall be 32 in (815 mm) at a point for a maximum depth of 24 in (610 mm).
4.2.2 Width for Wheelchair Passing. The minimum width for two wheelchairs to pass is 60 in (1525 mm) (see Fig. 2).
4.2.3* Wheelchair Turning Space. The space required for a wheelchair to make a 180-degree turn is a clear space of 60 in (1525 mm) diameter (see Fig. 3(a)) or a T-shaped space (see Fig. 3(b)).
Figure 3 of the ADA Standards. Wheelchair Turning Space.
3(b) T-Shaped Space for 180 degree Turns. The T-shaped space is created by the perpendicular intersection of two routes. Each route must be a minimum of 36 in (915 mm) in width. The route forming the top of the "T" must extend at least 12 in (305 mm) beyond the intersection in each direction and the route forming the base of the "T" must extend at least 24 in (610 mm) beyond the intersection. The "T" fits within a 60 in (1525 mm) square.

CABO/ANSI A117.1-1992

Appendix A2.3. ...Nominal minimum door leaf widths are shown in Table A2.3(b).

Table A2.3(b)
Nominal Minimum Door Leaf Widths

Min Corridor/Room	Min Door Leaf Width
36 in (915 mm)	34 in (865 mm)
40 in (1015 mm)	32 in1" (815 m)

1) When the door provides 31 in (785 mm) clear opening in its full open position.

4.2.1* Wheelchair Passage Width. The clear width of a passageway for a single wheelchair shall be 32 in (815 mm) minimum for a passageway length of 24 in (610 mm) maximum and 36 in (915 mm) minimum for a passageway longer than 24 in (610 mm). See Fig. B4.2.1.
4.2.2 Width for Wheelchair Passing. The width for two wheelchairs to pass shall be 60 in (1525 mm) minimum. See Fig. B4.2.2.
4.2.3* Wheelchair Turning Space. The space required for a wheelchair to make a 180-degree turn shall be a clear

space of 60 in (1525 mm) diameter minimum or a T-shaped space within a 60 in (1525 mm) minimum square with arms 36 in (915 mm) wide minimum and 60 in (1525 mm) long minimum. See Fig. B4.2.3. Wheelchair turning space shall be permitted to include knee and toe clearance in accordance with 4.2.4.3.

4.2.4.3 Knee and Toe Clearances. Knee clearance shall be 25 in (635 mm) in depth maximum, 30 in (760 mm) wide minimum, and 27 in (685 mm) high minimum. Toe clearance shall be 6 in (150 mm) deep maximum and 9 in (230 mm) high minimum.

BCMC
Comments*

E.
E.
P.N.E. because no dimension is established for the base of the T. The reference to 4.2.4.3 could allow the base of the T to be 30 inches when the ADA requires it to be 36 inches.

01-03759

ADA Title III Requirements

4.2.5* Forward Reach. If the clear floor space only allows forward approach to an object, the maximum high forward reach allowed shall be 48 in (1220 mm). The minimum low forward reach is 15 in (380 mm). If the high forward reach is over an obstruction, reach and clearances shall be as shown in Fig. 5(b).

Figure 5 of the ADA Standards. Forward Reach.

5(b) Maximum Forward Reach over an Obstruction. The maximum depth of an obstruction with knee space below is 25 in (635 mm). When the obstruction is less than 20 in (510 mm) deep, the

maximum high forward reach is 48 in (1220 mm). When the depth of the obstruction is greater than 20 in (510 mm), the maximum high forward reach is 44 in (1120 mm).

4.2.6* Side Reach. If the clear floor space allows parallel approach by a person in a wheelchair, the maximum high side reach allowed shall be 54 in (1370 mm) and the low side reach shall be no less than 9 in (230 mm) above the floor (Fig. 6(a) and (b)). If the side reach is over an obstruction, the reach and clearances shall be as shown in Fig. 6(c).

Figure 6 of the ADA Standards. Side Reach.

6(a) Clear Floor Space - Parallel Approach, and 6(b) High and Low Side Reach Limits. The clear floor space is located a maximum of 10 in (255 mm) from the wall.

6(c) Maximum Side Reach over Obstruction. If the depth of the obstruction is 24 in (610 mm) and the maximum height of the obstruction is 34 in (865 mm), the maximum high side reach over the obstruction is 46 in (1170 mm).

CABO/ANSI A117.1-1992

4.2.5 Forward Reach

4.2.5.1 Unobstructed. If the clear floor space allows only forward approach to an object and is unobstructed, the high forward reach permitted shall be 48 in (1220 mm) maximum and the low forward reach shall be 15 in (380 mm) minimum above the floor. See Fig. B4.2.5.1.

4.2.5.2 Obstructed. If the high forward reach is over an obstruction, reach depth and heights shall comply with Table 4.2.5.2. See Fig. B4.2.5.2.

Table 4.2.5.2

Reach Limits for Obstructed Forward Reach1)

	in	mm	in	mm
Reach Depth	0 20	0-510	20-25	510-635
Reach Height	48	1220	44	1120

1) The clear floor space extending under an obstruction shall be equal to or greater than the reach depth for a maximum of 25 in (635 mm).

4.2.6 Side Reach*

4.2.6.1 Unobstructed. If the clear floor space allows a parallel approach by a person in a wheelchair, the high side reach permitted shall be 54 in (1370 mm) maximum and the low side reach shall be 15 in (380 mm) minimum above the floor. See Fig. B4.2.6.1

4.2.6.2 Obstructed. If the side reach is over an obstruction, the high reach shall be 46 in (1170 mm) maximum providing the:

- the height of the obstruction from the floor or ground is

34 in (865 mm) maximum, and
- the depth of the obstruction is 24 in (610 mm) maximum. See Fig. B4.2.6.2.

BCMC
Comments*

E.
Exceeds ADA standards (15 inch low side reach).

01-03760

ADA Title III Requirements

4.3 Accessible Route.

4.3.1* General. All walks, halls, corridors, aisles, skywalks, tunnels, and other spaces that are part of an accessible route shall comply with 4.3.

4.3.2 Location.

(1) At least one accessible route within the boundary of the site shall be provided from public transportation stops, accessible parking, and accessible passenger loading zones, and public streets or sidewalks to the accessible building entrance they serve. The accessible route shall, to the maximum extent feasible, coincide with the route for the general public.

(2) At least one accessible route shall connect accessible buildings, facilities, elements, and spaces that are on the same site.

(3) At least one accessible route shall connect accessible building or facility entrances with all accessible spaces and elements and with all accessible dwelling units within the building or facility.

(4) An accessible route shall connect at least one accessible entrance of each accessible dwelling unit with those exterior and interior spaces and facilities that serve the accessible dwelling unit.

CABO/ANSI A117.1-1992

4.3 Accessible Route

4.3.1* General. Accessible routes shall comply with 4.3.

A4.3 Accessible Route

A4.3.1 General. Walks, paths, halls, corridors, aisles and other elements and spaces are part of an accessible route.

4.3.2 Components

4.3.2.1 Accessible routes shall consist of one or more of the following components: Walking surfaces with a slope not steeper than 1:20, marked crossings at vehicular ways, clear floor space at accessible elements, access aisles, ramps, curb ramps and elevators.

4.3.2.2 All components of an accessible route shall comply with the applicable portions of this standard.

BCMC

3.1.1 Accessible routes within the site shall be provided from public transportation stops, accessible parking and accessible passenger loading zones, and public streets or sidewalks to the accessible building entrance they serve.

3.1.2 At least one accessible route shall connect accessible spaces, elements, facilities and buildings that are on the same site. Where only one accessible route is provided, it shall not pass through kitchens, storage rooms, restrooms, closets or similar spaces.

EXCEPTIONS:

1. A single accessible route shall be permitted to pass through a kitchen or storage room in an accessible or adaptable dwelling unit.

3.1.3 Where floor levels are required to be connected by an accessible route, and an interior path of travel is provided between the levels, the accessible route between the levels shall also be interior.

Comments*

E. (possibly even exceeds because BCMC does not allow lifts as a component of an accessible route).

3.1.1 - P.N.E. "... coincide with the route for the general public" missing.

3.1.2 - E.

3.1.3 - E.

01-03761

ADA Title III Requirements

4.3.3 Width. The minimum clear width of an accessible route shall be 36 in (915 mm) except at doors (see 4.13.5 and 4.13.6). If a person in a wheelchair must make a turn around an obstruction, the minimum clear width of the accessible route shall be as shown in Fig. 7(a) and (b).

Figure 7 of the ADA Standards. Accessible Route.

7(a) 90 degree turn. A 90 degree turn can be made from a 36 in (915 mm) wide passage into another 36 in (915 mm) passage if the depth of each leg is a minimum of 48 in (1220 mm) on the inside dimensions of the turn.

7(b) Turns around an Obstruction. A U-turn around an obstruction less than 48 in (1220 mm) wide may be made if the width of the passages approaching and exiting the turn is a minimum of 42 in (1065 mm) and the base of the U-turn space is a minimum of 48 in (1220 mm) wide.

4.3.4 Passing Space. If an accessible route has less than

60 in (1525 mm) clear width, then passing spaces at least 60 in by 60 in (1525 mm by 1525 mm) shall be located at reasonable intervals not to exceed 200 ft (61 m). A T-intersection of two corridors or walks is an acceptable passing place.

4.3.5 Head Room. Accessible routes shall comply with 4.4.2.

4.3.6 Surface Textures. The surface of an accessible route shall comply with 4.5.

4.3.7 Slope. An accessible route with a running slope greater than 1:20 is a ramp and shall comply with 4.8. Nowhere shall the cross slope of an accessible route exceed 1:50.

4.3.8 Changes in Levels. Changes in levels along an accessible route shall comply with 4.5.2. If an accessible route has changes in level greater than 1/2 in (13 mm), then a curb ramp, ramp, elevator, or platform lift (as permitted in 4.1.3 and 4.1.6) shall be provided that complies with 4.7, 4.8, 4.10, or 4.11, respectively. An accessible route does not include stairs, steps, or escalators. See definition of "egress, means of" in 3.5.

4.3.9 Doors. Doors along an accessible route shall comply with 4.13.

CABO/ANSI A117.1-1992

4.3.3* Width. Clear width of an accessible route shall be 36 in (915 mm) minimum, except at doors (see 4.13.5). See Fig. B4.3.3(a). Clear width of the accessible route with turns around an obstruction less than 48 in (1220 mm) wide shall have a clear space of 42 in by 48 in (1065 mm by 1220 mm) minimum. See Fig 4.3.3(b).

4.3.4* Passing Space. An accessible route with a clear width less than 60 in (1525 mm) shall provide passing spaces at intervals of 200 ft (61 m) maximum. These passing spaces shall be either a 60 in by 60 in (1525 mm by 1525 mm) minimum space, or an intersection of two corridors or walks which provide a T-shaped turning space complying with 4.2.3.

4.3.5 Surface Texture. Surface textures of an accessible route shall comply with 4.5.

4.3.6 Slope. Portions of an accessible route with running slopes steeper than 1:20 are ramps and shall comply with 4.8. The cross slope of an accessible route shall not be steeper than 1:48.

4.3.7 Changes in Level. Changes in level along an accessible route shall comply with 4.5.2.

4.3.8 Doors. Doors that are part of an accessible route shall comply with 4.13.

BCMC

15.3.1 The floor surface on both sides of a door shall be at the same elevation. The floor surface over which the door swings shall extend from the door in the closed position a distance equal to the door width.
EXCEPTIONS:
1. Exterior doors not on an accessible route.
2. Variations in elevation due to differences in finish materials, but not more than 1/2 inch.

Comments*

P.E. The text does not match figure.
E.
Note: Addressed in 4.4.
E.
E. 1:48 is equivalent to 1:50.
2.08% vs. 2.0% is not a significant difference.
ANSI E.
BCMC P.N.E. Fig. 25 requires maneuvering clearance (with flat surface) to be wider than the door width because people need to be able to get out of the way of the door swing.
Exception 2 - N.E. Unless reference to slope of bevel is mentioned.
E.

01-03762

ADA Title III Requirements

4.3.11.1 (6) When approved by the appropriate local authority, an area or a room which is separated from other portions of the building by a smoke barrier. Smoke barriers shall have a fire-resistive rating of not less than one hour and shall completely enclose the area or room. Doors in the smoke barrier shall be tight-fitting smoke- and draft-control assemblies having a fire-protection rating of not less than 20 minutes and shall be self-closing or automatic closing. The area or room shall be provided with an exit directly to an exit enclosure. Where the room or area exits into an exit enclosure which is required to be of more than one-hour fire-resistive construction, the room or area shall have the same fire-resistive construction, including the same opening protection, as required for the adjacent exit enclosure.
(7) An elevator lobby when elevator shafts and adjacent lobbies are pressurized as required for smokeproof enclosures by local regulations and when complying with

requirements herein for size, communication, and signage. Such pressurization system shall be activated by smoke detectors on each floor located in a manner approved by the appropriate local authority. Pressurization equipment and its duct work within the building shall be separated from other portions of the building by a minimum two-hour fire-resistive construction.

4.3.11.2 Size. Each area of rescue assistance shall provide at least two accessible areas each being not less than 30 inches by 48 inches (760 mm by 1220 mm). The area of rescue assistance shall not encroach on any required exit width. The total number of such 30-inch by 48-inch (760 mm by 1220 mm) areas per story shall be not less than one for every 200 persons of calculated occupant load served by the area of rescue assistance.

EXCEPTION: The appropriate local authority may reduce the minimum number of 30-inch by 48-inch (760 mm by 1220 mm) areas to one for each area of rescue assistance on floors where the occupant load is less than 200.

4.3.11.3* Stairway Width. Each stairway adjacent to an area of rescue assistance shall have a minimum clear width of 48 inches between handrails.

CABO/ANSI A117.1-1992

To facilitate an adequate degree of understanding about the use of areas of refuge and about the associated assisted egress procedures, information should be provided to those using the facilities. The exact content of the information, its format (e.g., as a set of instructions), its distribution (e.g., either posted in the area of refuge or otherwise transmitted to users) must be determined on a case-by-case basis. The information must be tailored to the specific facility, its emergency plan, and the intended audience.

BCMC

8.2.2 An elevator to be considered part of an accessible means of egress shall comply with the requirements of Section 211 of ASME/ANSI A17.1 and standby power shall be provided. The elevator shall be accessed from either an area of refuge complying with 9.0 or a horizontal exit.

EXCEPTION: Elevators are not required to be accessed by an area of refuge or a horizontal exit in occupancies equipped throughout with an automatic sprinkler system.

9.2 Each area of refuge shall be sized to accommodate one wheelchair space of 30 by 48 inches for each 200 occupants or portion thereof, based on the occupant load of the area of refuge and all areas served by the area of refuge. Such wheelchair spaces shall not reduce the

required means of egress width.
9.3 Access to any of the required wheelchair spaces in an area of refuge shall not be obstructed by more than one adjoining wheelchair space.
8.2.1 An exit stair to be considered part of an accessible means of egress shall have a clear width of at least 48 inches between handrails and shall either incorporate an area of refuge within an enlarged story-level landing or shall be accessed from either an area of refuge complying with 9.0 or a horizontal exit.
EXCEPTIONS:
1. Exit stairs serving a single dwelling unit or guest room.
2. Exit stairs serving occupancies protected throughout by an approved automatic sprinkler system.
3. The clear width of 48 inches between handrails is not required for exit stairs accessed from a horizontal exit.

Comments*

See above.

E. for total wheelchair spaces required. N.E. because BCMC fails to require 2 wheelchair spaces per area of refuge.

E.

01-03763

ADA Title III Requirements

4.3.11.4* Two-way Communication. A method of two-way communication, with both visible and audible signals, shall be provided between each area of rescue assistance and the primary entry. The fire department or appropriate local authority may approve a location other than the primary entry.
4.3.11.5 Identification. Each area of rescue assistance shall be identified by a sign which states "AREA OF RESCUE ASSISTANCE" and displays the international symbol of accessibility. The sign shall be illuminated when exit sign illumination is required. Signage shall also be installed at all inaccessible exits and where otherwise necessary to clearly indicate the direction to areas of rescue assistance. In each area of rescue assistance, instructions on the use of the area under emergency conditions shall be posted adjoining the two-way communication system.

CABO/ANSI A117.1-1992
BCMC

9.5 Every area of refuge shall be provided with a two-way communication system between the area of refuge and a central control point.
EXCEPTION: Buildings four stories or less in height.
9.6 In each area of refuge provided with a two-way emergency communication system, instructions on the use of the area under emergency conditions shall be posted adjoining the communication system. The instructions shall include:

1. Directions to other means of egress,

2. Advice that persons able to use the exit stairs do so as soon as possible unless they are assisting others,

3. Information on planned availability of assistance in the use of stairs or supervised operation of elevators and how to summon such assistance, and

4. Directions for use of the emergency communication system.

9.7 Each area of refuge shall be identified by a sign stating AREA OF REFUGE and the International Symbol of Accessibility. The sign shall be located at each door providing access to the area of refuge. The sign shall be illuminated as required for exit signs where exit sign illumination is required. Tactile signage complying with CABO/ANSI A117.1 (4.28) shall be located at each door to an area of refuge.

9.8 At all exits and elevators serving a required accessible space, but not providing an approved accessible means of egress, signage shall be installed indicating the location of accessible means of egress.

Comments*

9.5 - N.E. Needs visual and audible signals.

9.5 Exception - N.E. (No exemption regarding number of stories in ADA).

9.6 - Not comparable.

E.

01-03764

ADA Title III Requirements

4.4 Protruding Objects.

4.4.1* General. Objects projecting from walls (for example, telephones) with their leading edges between 27 in and 80 in (685 mm and 2030 mm) above the finished floor shall protrude no more than 4 in (100 mm) into walks, halls, corridors, passageways, or aisles (see Fig. 8(a)). Objects mounted with their leading edges at or below 27 in (685 mm) above the finished floor may protrude any amount (see Fig. 8(a) and (b)). Free-standing objects mounted on posts or pylons may overhang 12 in (305 mm) maximum from 27 in to 80 in (685 mm to 2030 mm) above the ground or finished floor (see Fig. 8(c) and (d)). Protruding objects shall not reduce the clear width of an accessible route or maneuvering space (see Fig. 8(e)).

4.4.2 Head Room. Walks, halls, corridors, passageways, aisles, or other circulation spaces shall have 80 in (2030 mm) minimum clear head room (see Fig. 8(a)). If vertical clearance of an area adjoining an accessible route is reduced to less than 80 in (nominal dimension), a barrier to warn blind or visually-impaired persons shall be provided (see Fig. 8(c-1)).

Figure 8 of the ADA Standards. Protruding Objects.

8(c-1) Overhead Hazards. As an example, the

diagram illustrates a stair whose underside descends across a pathway. Where the headroom is less than 80 in (2030 mm), protection is offered by a railing which can be no higher than 27 in (685 mm) to ensure detectability.

4.5 Ground and Floor Surfaces.

4.5.1* General. Ground and floor surfaces along accessible routes and in accessible rooms and spaces including floors, walks, ramps, stairs, and curb ramps, shall be stable, firm, slip-resistant, and shall comply with 4.5.

CABO/ANSI A117.1-1992

4.4 Protruding Objects*

Protruding objects shall comply with 4.4.

4.4.1 Objects with leading edges located more than 27 in and not more than 80 in (685 mm and 2030 mm) above the floor shall protrude from the wall 4 in (100 mm) maximum. See Fig. B4.4(a).

4.4.2 The protrusion of objects with leading edges located 27 in (685 mm) or less above the floor shall not be limited. See Fig. B4.4(a).

4.4.3 Free-standing objects mounted on posts or pylons shall be permitted to overhang 12 in (305 mm) maximum when located more than 27 in (685 mm) and not more than 80 in (2030 mm) above the ground or floor. See Fig. B4.4(b). Where a sign or other obstruction is mounted between posts or pylons and the clear distance between the posts or pylons is greater than 12 in (305 mm), the lowest edge of such sign or obstruction shall be either 27 in (685 mm) maximum or 80 in (2030 mm) minimum above the adjacent ground or floor surface. See Fig. B4.4(c).

4.4.5 Protruding objects shall not reduce the clear width required for accessible routes. See Fig. B4.4(e).

4.4.4 Guardrails or other barriers shall be provided when vertical clearance of an area adjoining an accessible route is less than 80 in (2030 mm) high. Leading edge of such guardrail or barrier shall be located 27 in (685 mm) maximum above the floor. See Fig. B4.4(c) and (d).

4.5 Ground and Floor Surfaces

4.5.1* General. Ground and floor surfaces of accessible routes and in accessible rooms and spaces, shall be stable, firm, and slip resistant, and shall comply with 4.5.

BCMC

14.1 Horizontal Projections. Objects projecting from walls with their leading edges located more than 27 and not more than 80 inches above the finished floor shall protrude no more than 4 inches into walks, corridors, passageways, or aisles. Free-standing objects mounted on

posts or pylons may overhang 12 inches maximum where located more than 27 and not more than 80 inches above the ground or finished floor.

14.2 Headroom. There shall be a minimum headroom of 6 ft 8 inches from the walking surface to the lowest part of any structural member, fixture or furnishing.

Comments*

E.

E.

E.

50 ADA/ANSI/BCMC Requirements - October 13, 1995

01-03765

ADA Title III Requirements

4.5.2 Changes in Level. Changes in level up to 1/4 in (6 mm) may be vertical and without edge treatment (see Fig. 7(c)). Changes in level between 1/4 in and 1/2 in (6 mm and 13 mm) shall be beveled with a slope no greater than 1:2 (see Fig. 7 (d)). Changes in level greater than 1/2 in (13 mm) shall be accomplished by means of a ramp that complies with 4.7 or 4.8.

4.5.3* Carpet. If carpet or carpet tile is used on a ground or floor surface, then it shall be securely attached; have a firm cushion, pad, or backing, or no cushion or pad; and have a level loop, textured loop, level cut pile, or level cut/uncut pile texture. The maximum pile thickness shall be 1/2 in (13 mm) (see Fig. 8(f)). Exposed edges of carpet shall be fastened to floor surfaces and have trim along the entire length of the exposed edge. Carpet edge trim shall

comply with 4.5.2.
4.5.4 Gratings. If gratings are located in walking surfaces, then they shall have spaces no greater than 1/2 in (13 mm) wide in one direction (see Fig. 8 (g)). If gratings have elongated openings, then they shall be placed so that the long dimension is perpendicular to the dominant direction of travel (see Fig. 8 (h)).
4.6 Parking and Passenger Loading Zones.
4.6.1 Minimum Number. Parking spaces required to be accessible by 4.1 shall comply with 4.6.2 through 4.6.5. Passenger loading zones required to be accessible by 4.1 shall comply with 4.6.5 and 4.6.6.
4.6.2 Location. Accessible parking spaces serving a particular building shall be located on the shortest accessible route of travel from adjacent parking to an accessible entrance. In parking facilities that do not serve a particular building, accessible parking shall be located on the shortest accessible route of travel to an accessible pedestrian entrance of the parking facility. In buildings with multiple accessible entrances with adjacent parking, accessible parking spaces shall be dispersed and located closest to the accessible entrances.

CABO/ANSI A117.1-1992

4.5.2* Changes in Level.
4.5.2.1 Changes in level of 1/4 in (6 mm) high maximum shall be permitted to be vertical and without edge treatment. See Fig. B4.5(a).
4.5.2.2 Changes in level between 1/4 in (6 mm) high minimum and 1/2 in (13 mm) high maximum shall be beveled with a slope not steeper than 1:2 maximum, as shown in Fig. B4.5(b).
4.5.2.3 Changes in level greater than 1/2 in (13 mm) shall be accomplished by a curb ramp, ramp or elevator that complies with 4.7, 4.8 or 4.10, respectively.
4.5.3* Carpet. Carpet or carpet tile used on a ground or floor surface shall be securely attached and shall have a firm cushion, pad, or backing or no cushion or pad. Carpet or carpet tile shall have a level loop, textured loop, level cut pile, or level cut/uncut pile texture. Pile height shall be 1/2 in (13 mm) maximum. Exposed edges of carpet shall be fastened to floor surfaces and shall have trim along the entire length of the exposed edge. Carpet edge trim shall comply with 4.5.2.
4.5.4. Gratings. Gratings located in accessible routes and spaces shall have openings no greater than 1/2 in (13 mm) wide in one direction. Gratings with elongated openings shall be placed so that the long dimension is perpendicular to the dominant direction of travel.

4.6 Parking Spaces and Passenger Loading Zones
4.6.1* General. Accessible parking spaces shall comply with 4.6.2. Accessible passenger loading zones shall comply with 4.6.3. Accessible parking spaces, access aisles and passenger loading zones shall have surface slopes not steeper than 1:48 in all directions. Access aisles serving accessible parking spaces or passenger loading zones shall be at the same level as the spaces or loading zones they serve.

BCMC

3.2.2 Accessible parking spaces shall be located on the shortest accessible route of travel from adjacent parking to an accessible building entrance. In parking facilities that do not serve a particular building, accessible parking spaces shall be located on the shortest route to an accessible pedestrian entrance of the parking facility.
3.2.3 In buildings with multiple accessible entrances with adjacent parking, accessible parking spaces shall be dispersed and located near the accessible entrances.
EXCEPTION: In multilevel parking structures, accessible van parking spaces shall not be required to be located on more than one level.

Comments*

E.
E.
E.
Exceeds. 1:48 is equivalent to 1:50. 2.08% vs. 2.0% is not a significant difference.
3.2.2. E.
3.2.3. P.N.E. Requires spaces to be "near" accessible entrance. ADA requires that they be "closest" to the entrances.
Exception - E. (see ADA Standard 4.1.2(5)(b)).

51 ADA/ANSI/BCMC Requirements - October 13, 1995
01-03766

ADA Title III Requirements

4.6.3* Parking Spaces. Accessible parking spaces shall be at least 96 in (2440 mm) wide. Parking access aisles shall be part of an accessible route to the building or facility entrance and shall comply with 4.3. Two accessible parking spaces may share a common access aisle (see Fig. 9). Parked vehicle overhangs shall not reduce the clear width of an accessible route. Parking spaces and access aisles shall be level with surface slopes not exceeding 1:50 (2%) in all directions.

Figure 9 of the ADA Standards. Dimensions of Parking Spaces.

The access aisle shall be a minimum of 60 in (1525 mm) wide for cars or a minimum of 96 in (2440 mm) wide for vans. The accessible route connected to the access aisle shall be a minimum of 36 in (915 mm) wide.

4.6.4* Signage. Accessible parking spaces shall be designated as reserved by a sign showing the symbol of accessibility (see 4.30.7). Spaces complying with 4.1.2(5)(b) shall have an additional sign "Van-Accessible" mounted below the symbol of accessibility. Such signs shall be located so they cannot be obscured by a vehicle parked in the space.

4.6.5* Vertical Clearance. Provide minimum vertical clearance of 114 in (2895 mm) at accessible passenger loading zones and along at least one vehicle access route to such areas from site entrance(s) and exit(s). At parking spaces complying with 4.1.2(5)(b), provide minimum vertical clearance of 98 in (2490 mm) at the parking space and along at least one vehicle access route to such spaces from site entrance(s) and exit(s).

4.6.6 Passenger Loading Zones. Passenger loading zones shall provide an access aisle at least 60 in (1525 mm) wide and 20 ft (240 in)(6100 mm) long adjacent and parallel to the vehicle pull-up space (see Fig. 10). If there are curbs between the access aisle and the vehicle pull-up space, then a curb ramp complying with 4.7 shall be provided. Vehicle standing spaces and access aisles shall be level with surface slopes not exceeding 1:50 (2%) in all directions.

4.7 Curb Ramps.

4.7.1 Location. Curb ramps complying with 4.7 shall be provided wherever an accessible route crosses a curb.

CABO/ANSI A117.1-1992

4.6.2* Parking Spaces. Parking spaces for persons with disabilities shall be 96 in (2440 mm) wide minimum and shall have an adjacent access aisle 60 in (1525 mm) wide minimum. See Fig. B4.6.2. Parking access aisles shall be part of the accessible route to the building or facility entrance and shall comply with 4.3. Two accessible parking spaces shall be permitted to share a common access aisle. Parked vehicle overhangs shall not reduce the clear width of an accessible circulation route.

4.6.2* . . . Accessible parking spaces shall be identified by a sign showing the international symbol of accessibility complying with 4.28.8. Signs shall not be obscured by a vehicle parked in the space.

4.6.3 Passenger Loading Zones. ...Vertical clearance of

114 in (2895 mm) minimum shall be provided at accessible passenger loading zones and along vehicle access routes to such areas from site entrances.

4.6.4* Van Parking Space. Accessible parking spaces for vans used by persons with disabilities shall have a height of 98 in (2490 mm) minimum at the space and along the vehicular route thereto and shall have an access aisle 96 in (2440 mm) wide minimum.

4.6.3 Passenger Loading Zones. Passenger loading zones shall provide an access aisle 60 in (1525 mm) wide minimum and 20 ft (6 m) long minimum adjacent and parallel to the vehicle pull-up space and at the same level as the roadway. See Fig. B4.6.3. Access aisle and vehicle pull-up space shall be at the same level with a slope not steeper than 1:48. Passenger loading zone access aisles shall be part of the accessible route of travel to the building or facility entrance and shall comply with 4.3.

4.7 Curb Ramps

4.7.1 Location. Curb ramps complying with 4.7 shall be provided wherever an accessible route crosses a curb.

BCMC
Comments*

E. (Slope limit of 1:48 in ANSI 4.6.1 above). 1:48 is equivalent to 1:50. 2.08% vs. 2.0% is not a significant difference.

N.E. No equivalent provision for "van-accessible" sign.

Exceeds. ANSI requires 114 in. height along all vehicle access routes to the loading zones, whereas ADA only requires one.

E.

E.

ADA Title III Requirements

4.7.2 Slope. Slopes of curb ramps shall comply with 4.8.2. The slope shall be measured as shown in Fig. 11. Transitions from ramps to walks, gutters, or streets shall be flush and free of abrupt changes. Maximum slopes of adjoining gutters, road surface immediately adjacent to the curb ramp, or accessible route shall not exceed 1:20.

Figure 11 of the ADA Standards. Measurement of Curb Ramp Slopes.

The ramp slope is a ratio expressed as the vertical rise divided by the horizontal run. The adjoining slope at walk or street shall not exceed 1:20.

4.7.3 Width. The minimum width of a curb ramp shall be 36 in (915 mm), exclusive of flared sides.

4.7.4 Surface. Surfaces of curb ramps shall comply with 4.5.

4.7.5 Sides of Curb Ramps. If a curb ramp is located where pedestrians must walk across the ramp, or where it is not protected by handrails or guardrail, it shall have flared sides; the maximum slope of the flare shall be 1:10 (see Fig. 12(a)). Curb ramps with returned curbs may be used where pedestrians would not normally walk across the ramp (see Fig. 12 (b)).

Figure 12 of the ADA Standards. Sides of Curb Ramps.

12(a) Flared Sides. If the landing depth at the top of a curb ramp is less than 48 in (1220 mm), then the slope of the flared side shall not be steeper than 1:12.

4.7.6 Built-up Curb Ramps. Built-up curb ramps shall be located so that they do not project into vehicular traffic lanes (see Fig. 13.

4.7.7 Detectable Warnings. A curb ramp shall have a detectable warning complying with 4.29.2. The detectable warning shall extend the full width and depth of the curb ramp. [Suspended until July 26, 1996. 28 C.F.R. S 36.407.]

4.7.8 Obstructions. Curb ramps shall be located or protected to prevent their obstruction by parked vehicles.

4.7.9 Location at Marked Crossings. Curb ramps at marked crossings shall be wholly contained within the markings, excluding any flared sides (see Fig. 15).

CABO/ANSI A117.1-1992

4.7.2 Slope. Slopes of curb ramps shall comply with 4.8.2. The slope shall be measured as the vertical rise relative to the horizontal run. See Fig. B4.7.2. Counter slopes of adjoining gutters and road surfaces immediately adjacent to the curb ramp or accessible route shall not be steeper than 1:20. Transitions from ramps to walks, gutters or streets shall be flush.

4.7.3 Width. Curb ramps shall be 36 in (915 mm) wide minimum, exclusive of flared sides.
4.7.4 Surface. Surfaces of curb ramps shall comply with 4.5.
4.7.5 Sides of Curb Ramps. Curb ramps located where pedestrians must walk across the ramp shall have flared sides. Slope of flares shall not be steeper than 1:10. See Fig. B4.7.5(a). Where the width of the walking surface at the top of the ramp and parallel to the run of the ramp is less than 48 in (1220 mm) wide, the flared sides shall have a slope not steeper than 1:12. Curb ramps with returned curbs shall be permitted where pedestrians would not normally walk across the ramp. See Fig. B4.7.5(b).
4.7.6 Built-Up Curb Ramps. Built-up curb ramps shall be located so that they do not protrude into vehicular traffic lanes or into parking space access aisles. Flare shall not be steeper than 1:10. See Fig. B4.7.6.
4.7.7 Obstructions. Curb ramps shall be located or protected to prevent their obstruction by parked vehicles.
4.7.9 Location at Marked Crossings. Curb ramps at marked crossing shall be wholly contained within the markings, excluding any flared sides. See Fig. B4.7.9.

BCMC
Comments*

E.
E.
E.
E.
E.
E.
E.

4.7.10 Diagonal Curb Ramps. If diagonal (or corner type) curb ramps have returned curbs or other well-defined edges, such edges shall be parallel to the direction of pedestrian flow. The bottom of diagonal curb ramps shall have 48 in (1220 mm) minimum clear space as shown in Fig. 15 (c) and (d). If diagonal curb ramps are provided at marked crossings, the 48 in (1220 mm) clear space shall be within the markings (see Fig. 15(c) and (d)). If diagonal curb ramps have flared sides, they shall also have at least a 24 in (610 mm) long segment of straight curb located on each side of the curb ramp and within the marked crossing (see Fig. 15(c)).

4.7.11 Islands. Any raised islands in crossings shall be cut through level with the street or have curb ramps at both sides and a level area at least 48 in (1220 mm) long between the curb ramps in the part of the island intersected by the crossings (see Fig. 15(a) and (b)).

4.8 Ramps.

4.8.1* General. Any part of an accessible route with a slope greater than 1:20 shall be considered a ramp and shall comply with 4.8.

4.8.2* Slope and Rise. The least possible slope shall be used for any ramp. The maximum slope of a ramp in new construction shall be 1:12. The maximum rise for any run shall be 30 in (760 mm) (see Fig. 16). Curb ramps and ramps to be constructed on existing sites or in existing buildings or facilities may have slopes and rises as shown as allowed in 4.1.6(3)(a) if space limitations prohibit the use of a 1:12 slope or less (see 4.1.6).

Figure 16 of the ADA Standards. Components of a Single Ramp Run and Sample Ramp Dimensions.

If the slope of a ramp is between 1:12 and 1:16, the maximum rise shall be 30 in (760 mm) and the maximum horizontal run shall be 30 ft (9 m). If the slope of the ramp is between 1:16 and 1:20, the maximum rise shall be 30 in (760 mm) and the maximum horizontal run shall be 40 ft (12 m).

4.8.3 Clear Width. The minimum clear width of a ramp shall be 36 in (915 mm).

CABO/ANSI A117.1-1992

4.7.10 Diagonal Curb Ramps. Diagonal (or corner-type) curb ramps with returned curbs or other well-defined edges shall have the edges parallel to the direction of pedestrian flow. Bottoms of diagonal curb ramps shall have 48 in (1220 mm) minimum clear space. See Fig. B4.7.9(c) and (d). Diagonal curb ramps provided at marked crossings shall provide the 48 in (1220 mm) minimum clear space within the markings. See Fig. B4.7.9(c) and (d). Diagonal curb ramps with flared sides shall have a segment of straight curb 24 in (610 mm) long minimum located on each side of the curb ramp and within the marked crossing. See Fig. B4.7.9(c).

4.7.11 Islands. Raised islands in crossings shall be cut through level with the street or have curb ramps at both sides, and a level area 48 in (1220 mm) minimum by 36 in (915 mm) wide minimum, in the part of the island intersected by the crossing. See Fig. 4.7.9(a) and (b).

4.8 Ramps

4.8.1* General. A slope steeper than 1:20 shall be considered a ramp and shall comply with 4.8.

4.8.2* Slope and Rise. Ramps in new construction shall have a slope not steeper than 1:12. The rise for any ramp run shall be 30 in (760 mm) maximum. See Fig. B4.8.2. Curb ramps and ramps constructed on existing sites or existing buildings or facilities shall be permitted to have slopes and rises as shown in Table 4.8.2 provided space limitations prohibit use of a 1:12 slope or less.

4.8.3 Clear Width. The clear width of a ramp shall be 36 in (915 mm) minimum. See Fig. B4.8.3.

BCMC

17.1 Slope. Maximum slope in the direction of travel shall be 1:12. Maximum cross slope shall be 1:48.

EXCEPTIONS:

1. Maximum slope in direction of travel shall be 1:8 for a 3-inch rise maximum and 1:10 for a 6-inch rise maximum.
2. Aisles in Group A occupancies in accordance with Item 95 of the BCMC Means of Egress Report.

17.2 Rise. Maximum rise for a single ramp run shall be 30 inches.

EXCEPTION: Aisles in Group A occupancies in accordance with Item 95 of the BCMC Means of Egress Report.

Comments*

E.

E.

ANSI E. for technical requirement.

BCMC P.N.E. BCMC does not specifically scope ramps. However,

ANSI appears to require all ramps,
or at least all ramps in accessible
routes, to comply.
ANSI E.
BCMC 17.1 - 1. N.E. for new
construction. E. for alterations.
2. N.E. if aisle is part of accessible
route.
17.2 - P.N.E. The ADA Standards
limit both the rise and the length of
ramps. BCMC limits only the rise.
E.

ADA Title III Requirements

4.8.4* Landings. Ramps shall have level landings at bottom and top of each ramp and each ramp run. Landings shall have the following features:

(1) The landing shall be at least as wide as the ramp run leading to it.

(2) The landing length shall be a minimum of 60 in (1525 mm) clear.

(3) If ramps change direction at landings, the minimum landing size shall be 60 in by 60 in (1525 mm by 1525 mm).

(4) If a doorway is located at a landing, then the area in front of the doorway shall comply with 4.13.6.

4.8.5* Handrails. If a ramp run has a rise greater than 6 in (150 mm) or a horizontal projection greater than 72 in (1830 mm), then it shall have handrails on both sides. Handrails are not required on curb ramps or adjacent to seating in assembly areas. Handrails shall comply with 4.26 and shall have the following features:

4.8.5 (1) Handrails shall be provided along both sides of ramp segments. The inside handrail on switchback or dogleg ramps shall always be continuous.

4.8.5 (2) If handrails are not continuous, they shall extend at least 12 in (305 mm) beyond the top and bottom of the ramp segment and shall be parallel with the floor or ground surface (see Fig. 17).

4.8.5 (3) The clear space between the handrail and the wall shall be 1-1/2 in (38 mm).

4.8.5 (4) Gripping surfaces shall be continuous.

4.8.5 (5) Top of handrail gripping surfaces shall be mounted between 34 in and 38 in (865 mm and 965 mm) above ramp surfaces.

4.8.5 (6) Ends of handrails shall be either rounded or returned smoothly to floor, wall, or post.

4.8.5 (7) Handrails shall not rotate within their fittings.

CABO/ANSI A117.1-1992

4.8.4 Landings. Ramps shall have level landings at bottom and top of each run. Landings shall have the following features:

-landing width shall be at least as wide as the widest ramp run leading to it.

-landing length shall be 60 in (1525 mm) minimum clear.

-ramps that change direction at landings shall have a 60 in by 60 in (1525 mm by 1525 mm) minimum landing.

-doorways located at a landing shall have an area in front of the doorway which shall comply with 4.13.6.

4.8.5 Handrails. Ramps with a rise greater than 6 in (150 mm) or a run greater than 72 in (1830 mm) shall have handrails complying with 4.3.10 and 4.3.11.

4.3.10* Handrails. Handrails for stairs and ramps shall comply with 4.3.10.

4.3.10.1 Handrails shall be provided on both sides of stairs and ramps.

Exception: Aisle stairs and aisle ramps provided with a handrail either at the side or within the aisle width.

4.3.10.2 Handrails shall be continuous within the full length of each stair flight or ramp run.

Exception: Handrails in aisles serving seating.

4.3.10.3 Inside handrails on switchback or dogleg stairs or ramps shall be continuous between flights or runs. See Fig. B4.3.10.3. Other handrails shall comply with 4.3.11 and 4.4.

Exception: Handrails in aisles serving seating.

4.3.11* Handrail Extensions. Handrails for stairs and ramps shall have extensions complying with 4.3.11.

Exception: Continuous handrails at the inside turn of stairs and ramps.

4.3.11.1 Ramp handrails shall extend horizontally 12 in (305 mm) minimum beyond the top and bottom of ramp runs. Such extension shall return to a wall, guard or the walking surface, or shall be continuous to the handrail of an adjacent ramp run. See Fig. B4.3.11.1.

4.3.10.5 Clear space between handrail and wall shall be 1 1/2 in (38 mm) minimum.

4.3.10.6 Gripping surfaces shall be continuous, without interruption by newel posts, other construction elements, or obstructions.

4.3.10.4 Top of gripping surfaces of handrails shall be 34 in (865 mm) minimum and 38 in (965 mm) maximum vertically above stair nosings and ramp surfaces. Handrails shall be at a consistent height above stair nosings and ramp surfaces.

BCMC

17.3 Landings. Ramps shall have landings at the top, bottom and at doors opening onto the ramp. Slope of landings shall not be steeper than 1:48.

17.4 Handrails. Ramps steeper than 1:20 shall be provided with handrails along both sides of a ramp segment and shall conform with the requirements in 16.4.1, 16.4.2 and 16.4.3. If handrails are not continuous, they shall extend at least 12 inches beyond the top and bottom of the ramp segment and shall be parallel with the floor or ground surface.

EXCEPTIONS:

1. Handrails are not required when the total rise is 6 inches or less.
2. Aisles in Group A occupancies in accordance with Item 96 of the BCMC Means of Egress Report.

4.7.8 Handrails. Handrails are not required on curb ramps.

17.5 Handrails. . . .If handrails are not continuous, they shall extend at least 12 inches beyond the top and bottom of the ramp segment and shall be parallel with the floor or ground surface.

Comments*

ANSI E.

BCMC (Mainstream) N.E. to ADA Standards 4.8.4(3) (change of direction).

ANSI E.

BCMC 17.4 - N.E. BCMC allows no rails on > 72 inch ramp as long as rise is < 6 inches - e.g. a 1:15 ramp that is 85 inches long has < 6 inch rise but is longer than 72 inches - ADA would require rails and BCMC would not.

Exception 2

P.E. if only "adjacent to seating."

4.7.8 - E.

17.5 - E.

01-03770

4.8.6 Cross Slope and Surfaces. The cross slope of ramp surfaces shall be no greater than 1:50. Ramp surfaces shall comply with 4.5.

4.8.7 Edge Protection. Ramps and landings with drop-offs shall have curbs, walls, railings, or projecting surfaces that prevent people from slipping off the ramp. Curbs shall be a minimum of 2 in (50 mm) high (see Fig. 17).

4.8.8 Outdoor Conditions. Outdoor ramps and their approaches shall be designed so that water will not accumulate on walking surfaces.

4.9 Stairs.

4.9.1* Minimum Number. Stairs required to be accessible by 4.1 shall comply with 4.9.

4.9.2 Treads and Risers. On any given flight of stairs, all steps shall have uniform riser heights and uniform tread widths. Stair treads shall be no less than 11 in (280 mm) wide, measured from riser to riser (see Fig. 18(a)). Open risers are not permitted.

4.9.3 Nosing. The undersides of nosing shall not be

abrupt. The radius of curvature at the leading edge of the tread shall be no greater than 1/2 in (13 mm). Risers shall be sloped or the underside of the nosing shall have an angle not less than 60 degrees from the horizontal. Nosing shall project no more than 1-1/2 in (38 mm) (see Fig. 18).

CABO/ANSI A117.1-1992

4.3.10.8 Handrails, and any wall or other surfaces adjacent to them, shall be free of any sharp or abrasive elements. Edges shall have 1/8 in (3.2 mm) minimum radius.

4.3.10.9 Handrails shall not rotate within their fittings.

4.8.6* Cross Slope and Surfaces. Cross slope of ramp surfaces shall not be steeper than 1:48. Ramp surfaces shall comply with 4.5.

4.8.7 Edge Protection. Ramps and landings shall have curbs, walls, or railings that prevent people from traveling off the ramp or landing or shall protrude 12 in (305 mm) minimum beyond the inside face of the railing. Curbs or barriers shall be 4 in (100 mm) high minimum. See Fig. B4.8.3.

4.8.8 Outdoor Conditions. Outdoor ramps and approaches to them shall be designed so that water will not accumulate on walking surfaces.

4.9 Stairs

4.9.1 General. Accessible stairs shall comply with 4.9.

4.9.2 Treads and Risers

4.9.2.1 Dimensions. All steps on a flight of stairs shall have uniform riser heights and uniform tread depth. Risers shall be 7 in (180 mm) maximum and 4 in (100 mm) high minimum. Treads shall be 11 in (280 mm) deep minimum, measured from riser to riser. See Fig. B4.9.2.1.

4.9.2.2 Open Risers. Open risers are not permitted.

4.9.3 Nosings. Undersides of nosings shall not be abrupt. The radius of curvature at the leading edge of tread shall be 1/2 in (13 mm) maximum. Risers shall be sloped or the underside of the nosing shall have an angle 60 degrees minimum from the horizontal. Nosings shall protrude 1 1/2 in (38 mm) maximum. See Fig. B4.9.2.1.

BCMC

17.1 Slope. Maximum slope in the direction of travel shall be 1:12. Maximum cross slope shall be 1:48.

17.6 Slip Resistance. Ramps shall have a slip resistant surface.

17.5 Drop-Offs. Ramps and landings with drop-offs shall have a curb with a minimum 4-inch height, wall, railing or a guardrail.

17.7 Water Accumulation. Exterior ramps and landings shall be designed so water will not accumulate on their

surfaces.
16.0 STAIRS
16.1 Treads and Risers. In Group R3 occupancies, riser heights shall be 7 inches maximum and 4 inches minimum. Tread depths shall be 11 inches minimum. The minimum depth of a winder is limited to 6 inches and the tread shall have a minimum depth of 11 inches at 12 inches from the narrower end.
Circular stairways shall be permitted as an egress element providing the minimum tread depth measured 12 inches from the narrower end of the tread is not less than 11 inches and the smaller radius is not less than twice the width of the stairway.
[Other tread/riser provisions in the BCMC Means of Egress Report remain unchanged.]
16.3 Leading Edge of Tread. The radius of curvature at the leading edge of the tread shall be no greater than 1/2 inch. Bevelling of nosings shall not exceed 1/2 inch. Risers shall be vertical or sloped from the underside of the leading edge of the tread above at an angle not more than 30 degrees from the vertical. The leading edge of tread shall project not more than 1 1/2 inches beyond the tread below.

Comments*

ANSI E.
BCMC Mainstreaming 17.1 - E.
17.6 - N.E. Firm and stable need to be addressed.
ANSI E..
BCMC Exceeds regarding curb height.
E.
E.
ANSI Exceeds ADA Standards: Restrictions on riser height.
BCMC N.E. for stairs required to comply with ADA Standards 4.9. ADA does not permit winders, circular stairs, or open risers.
ANSI E.
BCMC E. (However, language regarding "bevelling" unclear without illustration.)

ADA Title III Requirements

4.9.4 Handrails. Stairways shall have handrails at both sides of all stairs. Handrails shall comply with 4.26 and shall have the following features:

4.9.4 (1) Handrails shall be continuous along both sides of stairs. The inside handrail on switchback or dogleg stairs shall always be continuous (see Fig. 19(a) and (b)).

4.9.4 (2) If handrails are not continuous, they shall extend

at least 12 in (305 mm) beyond the top riser and at least 12 in (305 mm) plus the width of one tread beyond the bottom riser. At the top, the extension shall be parallel with the floor or ground surface. At the bottom, the handrail shall continue to slope for a distance of the width of one tread from the bottom riser; the remainder of the extension shall be horizontal (see Fig. 19(c) and (d)). Handrail extensions shall comply with 4.4.
4.9.4 (3) The clear space between handrails and wall shall be 1-1/2 in (38 mm).
4.9.4 (4) Gripping surfaces shall be uninterrupted by newel posts, other construction elements, or obstructions.
4.9.4 (5) Top of handrail gripping surface shall be mounted between 34 in and 38 in (865 mm and 965 mm) above stair nosing.
4.9.4 (6) Ends of handrails shall be either rounded or returned smoothly to floor, wall or post.
4.9.4 (7) Handrails shall not rotate within their fittings.

CABO/ANSI A117.1-1992

4.9.4 Handrails. Handrails shall comply with 4.3.10 and 4.3.11.
4.3.10* Handrails. Handrails for stairs and ramps shall comply with 4.3.10.
4.3.10.1 Handrails shall be provided on both sides of stairs and ramps.
Exception: Aisle stairs and aisle ramps provided with a handrail either at the side or within the aisle width.
4.3.10.2 Handrails shall be continuous within the full length of each stair flight or ramp run.
Exception: Handrails in aisles serving seating.
4.3.10.3 Inside handrails on switchback or dogleg stairs or ramps shall be continuous between flights or runs. See Fig. B4.3.10.3. Other handrails shall comply with 4.3.11 and 4.4.
Exception: Handrails in aisles serving seating.
4.3.10.5 Clear space between handrail and wall shall be 1 1/2 in (38 mm) minimum.
4.3.10.6 Gripping surfaces shall be continuous, without interruption by newel posts, other construction elements, or obstructions.
4.3.10.4 Top of gripping surfaces of handrails shall be 34 in (865 mm) minimum and 38 in (965 mm) maximum vertically above stair nosings and ramp surfaces. Handrails shall be at a consistent height above stair nosings and ramp surfaces.
4.3.10.8 Handrails, and any wall or other surfaces adjacent to them, shall be free of any sharp or abrasive elements. Edges shall have 1/8 in (3.2 mm) minimum

radius.
4.3.10.9 Handrails shall not rotate within their fittings.

BCMC

16.4 Handrails.
16.4.1 Stairways shall have handrails on each side.
EXCEPTIONS:
1. Aisle stairs in accordance with Item 96 of the BCMC Means of Egress Report provided with a handrail either at the side or within the aisle width.
2. Stairs within dwelling units, spiral stairs and aisle stairs serving seating only on one side may have a handrail on one side only.
16.4.4 At locations where handrails are not continuous between flights, the handrails shall extend horizontally at least 12 inches beyond the top riser and continue to slope for the depth of one tread beyond the bottom riser.
EXCEPTIONS:
1. Handrails within a dwelling unit shall extend from the top riser to the bottom riser.
2. Aisle handrails in Group A occupancies in accordance with Item 96 of the BCMC Means of Egress Report.
16.4.5 Clear space between handrail and wall shall be a minimum of 1 1/2 inches.
16.4.3 Gripping surfaces shall be continuous, without interruption by newel posts or other obstructions.

Comments*

ANSI E.
BCMC 16.4.1 - Exception 1 -
P.N.E.
Exception 2 - E. except for
dwelling units covered by ADA.
16.4.4 - N.E. BCMC does not
require the 12 inch extension at
bottom.
Exception 1 - E. except for
dwelling units covered by ADA.
Exception 2 - P.N.E.

ADA Title III Requirements

4.9.5 Detectable Warnings at Stairs. (Reserved).

4.9.6 Outdoor Conditions. Outdoor stairs and their approaches shall be designed so that water will not accumulate on walking surfaces.

4.10 Elevators.

4.10.1 General. Accessible elevators shall be on an accessible route and shall comply with 4.10 and with the ASME A17.1-1990, Safety Code for Elevators and Escalators. Freight elevators shall not be considered as meeting the requirements of this section unless the only elevators provided are used as combination passenger and freight elevators for the public and employees.

CABO/ANSI A117.1-1992

4.3.11* Handrail Extensions. Handrails for stairs and ramps shall have extensions complying with 4.3.11. Exception: Continuous handrails at the inside turn of stairs and ramps.

4.3.11.1 Ramp handrails shall extend horizontally 12 in (305 mm) minimum beyond the top and bottom of ramp runs. Such extension shall return to a wall, guard or the walking surface, or shall be continuous to the handrail of an adjacent ramp run. See Fig. B4.3.11.1.

4.3.11.2 At the top of a stair flight, handrails shall extend horizontally above the landing for 12 in (305 mm) minimum beginning directly above the first riser nosing. Such extension shall return to a wall, guard or the walking surface, or shall be continuous to the handrail of an adjacent stair flight. See Fig. B4.3.11.2.

4.3.11.3 At the bottom of a stair flight, handrails shall extend at the slope of the stair flight for a horizontal distance equal to one tread depth beyond the last riser nosing. Such extension shall continue with a horizontal extension complying with 4.3.11(4) or shall return to a wall, guard or the walking surface. See Fig. B4.3.11.3.

4.3.11.4 At the bottom of a stair flight, where a guard or wall is located so as to permit a 12 in (305 mm) minimum horizontal extension of the handrail, in addition to the extension required by 4.3.11(3), such a 12 in (305 mm) minimum extension shall be provided. The height of this extension shall equal the height of the handrail above the stair nosing. Such extension shall return to a wall, guard or the walking surface, or shall be continuous to the handrail of an adjacent stair flight. See Fig. B4.3.11.4.

4.9.5 Outdoor Conditions. Outdoor stairs and approaches to them shall be designed so that water will not accumulate on walking surfaces.

4.10 Elevators

4.10.1 New Elevators

4.10.1.1* General. Accessible passenger elevators shall comply with 4.10 and ASME/ANSI A17.1. Freight elevators shall not be considered as meeting the requirements of this section unless the only elevators provided are used as combination passenger and freight elevators.

BCMC

18.0 ELEVATORS

Passenger elevators shall comply with ASME/ANSI A17.1 and CABO/ANSI A117.1 (4.10).

Comments*

E. Generally equivalent.

EXCEPT

4.3.11.4 - N.E. Although this exception avoids protrusions into circulation space, at least a 4 in. extension or extension around a corner should be required.

E.

E.

01-03773

4.10.2 Automatic Operation. Elevator operation shall be automatic.

Each car shall be equipped with a self-leveling feature that will automatically bring the car to floor landings within a tolerance of 1/2 in (13 mm) under rated loading to zero loading conditions. This self-leveling feature shall be automatic and independent of the operating device and shall correct the overtravel or undertravel.

4.10.3 Hall Call Buttons. Call buttons in elevator lobbies and halls shall be centered at 42 in (1065 mm) above the floor. Such call buttons shall have visual signals to indicate when each call is registered and when each call is answered. Call buttons shall be a minimum of 3/4 in (19 mm) in the smallest dimension. The button designating the up direction shall be on top (see Fig. 20)). Buttons shall be raised or flush. Objects mounted beneath hall call buttons shall not project into the elevator lobby more than 4 in (100 mm).

4.10.4 Hall Lanterns. A visible and audible signal shall be provided at each hoistway entrance to indicate which car is answering a call. Audible signals shall sound once for the up direction and twice for the down direction or shall have verbal annunciators that say "up" or "down." Visible signals shall have the following features:

(1) Hall lantern fixtures shall be mounted so that their centerline is at least 72 in (1830 mm) above the lobby floor (see Fig. 20).

(2) Visual elements shall be at least 2-1/2 in (64 mm) in the smallest dimension.

(3) Signals shall be visible from the vicinity of the hall call button (see Fig. 20). In-car lanterns located in cars, visible from the vicinity of hall call buttons, and conforming to the above requirements, shall be acceptable.

4.10.5 Raised and Braille Characters on Hoistway Entrances. All elevator hoistway entrances shall have raised and Braille floor designations provided on both jambs. The centerline of the characters shall be 60 in (1525 mm) above finish floor. Such characters shall be 2 in (50 mm) high and shall comply with 4.30.4.

Permanently applied plates are acceptable if they are permanently fixed to the jambs (see Fig. 20).

CABO/ANSI A117.1-1992

4.10.1.2 Automatic Operations. Elevator operation shall be automatic. Each car shall be equipped with a self-leveling feature that will automatically bring the car to floor landings within a tolerance of 1/2 in (13 mm) under rated loading to zero loading conditions. This self-leveling feature shall be automatic and independent of the operable part and shall correct for overtravel or undertravel.

4.10.1.3 Call Buttons. Call buttons in elevator lobbies and halls shall be centered at 42 in (1065 mm) above the floor, as shown in Fig. B4.10.1. Such call buttons shall have visual signals to indicate when each call is registered and when each call is answered. Call buttons shall be 3/4 in (19 mm) minimum in the smallest dimension. The button that designates the up direction shall be located above the button that designates the down direction. Objects located beneath hall call buttons shall protrude into the elevator lobby 4 in (100 mm) maximum.

4.10.1.4 Hall Signals. A visible and audible signal shall be provided at each hoistway entrance to indicate which car is answering a call and the direction of travel, except that in-car signals located in cars, visible from the floor area adjacent to the hall call buttons, and conforming to the requirements of this subsection, shall be acceptable. Audible signals shall sound once for the up direction and twice for the down direction, or shall have verbal annunciators that state the word "up" or "down." Visible signals shall have the following features:

- Hall signal fixtures shall be centered at 72 in (1830 mm) minimum above the lobby floor. See Fig. B4.10.1.
- The visible signal elements shall be 2 1/2 in (63 mm) minimum in the smallest dimension.
- Signals shall be visible from the floor area adjacent to the hall call button.

4.10.1.5* Tactile Signage on Hoistway Entrances. Raised character and Braille floor designations shall be provided on both jambs of elevator hoistway entrances and shall be centered at 60 in (1525 mm) above the floor. See Fig. B4.10.1. Such characters shall be 2 in (51 mm) high nominal and shall comply with 4.28.6.

BCMC

Comments*

E.

N.E. ANSI allows recessed buttons which are not allowed in ADA Standards. Raised or flush buttons

allow people with limited manual dexterity to activate them with an open hand or closed fist.
E.
E.
59 ADA/ANSI/BCMC Requirements - October 13, 1995
01-03774

ADA Title III Requirements

4.10.6* Door Protective and Reopening Device. Elevator doors shall open and close automatically. They shall be provided with a reopening device that will stop and reopen a car door and hoistway door automatically if the door becomes obstructed by an object or person. The device shall be capable of completing these operations without requiring contact for an obstruction passing through the opening at heights of 5 in and 29 in (125 mm and 735 mm) above finish floor (see Fig. 20). Door reopening devices shall remain effective for at least 20 seconds. After such an interval, doors may close in accordance with the requirements of ASME A17.1-1990.

4.10.7* Door and Signal Timing for Hall Calls. The minimum acceptable time from notification that a car is answering a call until the doors of that car start to close shall be calculated from the following equation:

T = D/(1.5 ft/s) or T = D/(445 mm/s)

where T total time (in seconds) and D distance (in feet or millimeters) from a point in the lobby or corridor 60 in (1525 mm) directly in front of the farthest call button controlling that car to the centerline of its hoistway door (see Fig. 21). For cars with in-car lanterns, T begins when the lantern is visible from the vicinity of hall call buttons and an audible signal is sounded. The minimum acceptable notification time shall be 5 seconds.

4.10.8 Door Delay for Car Calls. The minimum time for elevator doors to remain fully open in response to a car call shall be 3 seconds.

CABO/ANSI A117.1-1992

4.10.1.6* Door Protective and Reopening Device. Elevator doors shall open and close automatically. Elevator

doors shall be provided with a reopening device that shall stop and reopen a car door and hoistway door automatically if the door becomes obstructed by an object or person. The device shall be activated by sensing an obstruction passing through the door opening at 5 in and at 29 in (125 mm and 735 mm) above the floor. The device shall not require physical contact to be activated, although contact may occur before the door reverses. Door reopening devices shall remain effective for 20 seconds minimum.

4.10.1.7* Door and Signal Timing for Hall Calls. The minimum acceptable time from notification that a car is answering a call until the doors of that car start to close shall be calculated from one of the following equations:

T =

OR

T = = 5 seconds minimum

where T = total time in seconds and D = distance (in feet or millimeters) from the point in the lobby or corridor 60 in (1525 mm) directly in front of the farthest call button controlling that car to the centerline of its hoistway door. For cars with in-car signals, T begins when the signal is visible from the point 60 in (1525 mm) directly in front of the farthest hall call button and the audible signal is sounded.

4.10.1.8 Door Delay for Car Calls. Elevator doors shall remain fully open in response to a car call for 3 seconds minimum.

BCMC
Comments*

E.

E.

E.

01-03775

ADA Title III Requirements

4.10.9 Floor Plan of Elevator Cars. The floor area of elevator cars shall provide space for wheelchair users to enter the car, maneuver within reach of controls, and exit from the car. Acceptable door opening and inside dimensions shall be as shown in Fig. 22. The clearance between the car platform sill and the edge of any hoistway landing shall be no greater than 1-1/4 in (32 mm).

Figure 22 of the ADA Standards. Minimum Dimensions of Elevator Cars.

22(a) Illustrates an elevator with a door providing a 36 in (915 mm) minimum clear width, in the middle of the elevator. The width of the elevator car is a minimum of 80 in (2030 mm). The depth of the elevator car measured from the back wall to the elevator door is a minimum of 54 in (1370 mm). The depth of the elevator car measured from the back wall to the control panel is a minimum of 51 in (1291 mm).

22(b) Illustrates an elevator with door providing a minimum 36 in (915 mm) clear width, located to one side of the elevator. The width of the elevator car is a minimum of 68 in (1730 mm). The depth of the elevator car measured from the back wall to the elevator door is a minimum of 54 in (1370 mm). The depth of the elevator

car measured from the back wall to the control panel is a minimum of 51 in (1291 mm).
4.10.10 Floor Surfaces. Floor surfaces shall comply with 4.5.
4.10.11 Illumination Levels. The level of illumination at the car controls, platform, and car threshold and landing sill shall be at least 5 footcandles (53.8 lux).

CABO/ANSI A117.1-1992

4.10.1.9* Inside Dimensions of Elevator Cars. The inside dimensions of elevator cars shall provide space for wheelchair users to enter the car, maneuver within reach of controls, and exit from the car. The clearance between the car platform sill and the edge of any hoistway landing shall be
1 1/4 in (32 mm) maximum.
4.10.1.10 Floor Surfaces. Floor surfaces in elevator cars shall comply with 4.5.
4.10.1.11 Illumination Levels. The level of illumination at the car controls, platform, and car threshold and landing sill shall be 5 footcandles (53.8 lux) minimum.

BCMC

Comments*

E.
E.
E.

01-03776

ADA Title III Requirements

4.10.12* Car Controls. Elevator control panels shall have the following features:
(1) Buttons. All control buttons shall be at least 3/4 in (19 mm) in their smallest dimension. They shall be raised or flush.
(2) Tactile, Braille, and Visual Control Indicators. All control buttons shall be designated by Braille and by raised standard alphabet characters for letters, Arabic characters for numerals, or standard symbols as shown in Fig. 23(a), and as required in ASME A17.1-1990. Raised and Braille characters and symbols shall comply with 4.30. The call button for the main entry floor shall be designated by a raised star at the left of the floor designation (see Fig. 23(a)). All raised designations for control buttons shall be placed immediately to the left of the button to which they apply. Applied plates, permanently attached, are an acceptable means to provide raised control designations. Floor buttons shall be provided with visual indicators to show when each call is registered. The visual indicators

shall be extinguished when each call is answered.
(3) Height. All floor buttons shall be no higher than 54 in (1370 mm) above the finish floor for side approach and 48 in (1220 mm) for front approach. Emergency controls, including the emergency alarm and emergency stop, shall be grouped at the bottom of the panel and shall have their centerlines no less than 35 in (890 mm) above the finish floor (see Fig. 23(a) and (b)).
Figure 23 of the ADA Standards. Car Controls.
23(a) Panel Detail. The diagram illustrates the symbols used for the following control buttons: main entry floor, door closed, door open, emergency alarm, and emergency stop. The diagram further states that the octagon symbol for the emergency stop shall be raised but the X (inside the octagon) is not.
(4) Location. Controls shall be located on a front wall if cars have center opening doors, and at the side wall or at the front wall next to the door if cars have side opening doors (see Fig. 23(c) and (d)).
CABO/ANSI A117.1-1992
4.10.1.12* Car Controls. Elevator control panels shall have the following features:
4.10.1.12.1 Control buttons shall be 3/4 in (19 mm) minimum in their smallest dimension. Control buttons shall be raised, flush, or recessed.
Control buttons shall be arranged with numbers in ascending order. When two or more columns of buttons are provided they shall read from left to right. See Fig. B4.10.1.12(a).
4.10.1.12.3 Floor buttons shall be located 54 in (1370 mm) maximum above the floor for parallel approach and 48 in (1220 mm) maximum for front approach. Emergency controls, including the emergency alarm, shall be grouped at the bottom of the panel. Emergency control buttons shall have their centerlines 35 in (890 mm) minimum above the floor. See Fig. B4.10.1.12(c).
4.10.1.12.4 Controls shall be located on a front wall if cars have center opening doors, and at the side wall or at the front wall next to the door if cars have side opening doors.
BCMC
Comments*
N.E. ADA requires raised or flush buttons so they can be activated by an open hand or closed fist. ANSI fails to require Braille designation.
Paragraph about arrangement of control buttons exceeds ADA.

ADA Title III Requirements
4.10.13* Car Position Indicators. In elevator cars, a visual car position indicator shall be provided above the car control panel or over the door to show the position of the elevator in the hoistway. As the car passes or stops at a floor served by the elevators, the corresponding numerals shall illuminate, and an audible signal shall sound. Numerals shall be a minimum of 1/2 in (13 mm) high. The audible signal shall be no less than 20 decibels with a frequency no higher than 1500 Hz. An automatic verbal announcement of the floor number at which a car stops or which a car passes may be substituted for the audible

signal.
4.10.14* Emergency Communications. If provided, emergency two-way communication systems between the elevator and a point outside the hoistway shall comply with ASME A17.1-1990. The highest operable part of a two-way communication system shall be a maximum of 48 in (1220 mm) from the floor of the car. It shall be identified by a raised symbol and lettering complying with 4.30 and located adjacent to the device. If the system uses a handset then the length of the cord from the panel to the handset shall be at least 29 in (735 mm). If the system is located in a closed compartment the compartment door hardware shall conform to 4.27, Controls and Operating Mechanisms. The emergency intercommunication system shall not require voice communication.
4.11 Platform Lifts (Wheelchair Lifts).
4.11.1 Location. Platform lifts (wheelchair lifts) permitted by 4.1 shall comply with the requirements of 4.11.
4.11.2* Other Requirements. If platform lifts (wheelchair lifts) are used, they shall comply with 4.2.4, 4.5, 4.27, and ASME A17.1 Safety Code for Elevators and Escalators, Section XX, 1990.
4.11.3 Entrance. If platform lifts are used then they shall facilitate unassisted entry, operation, and exit from the lift in compliance with 4.11.2.
4.12 Windows.
4.12.1* General. (Reserved).
4.12.2* Window Hardware. (Reserved).
CABO/ANSI A117.1-1992
4.10.1.13* Car Position Indicators. In elevator cars, both audible and visible car floor location indicators shall be provided.
4.10.1.13.1 Visible. Indicator shall be located above the car control panel or above the door. Numerals shall be 1/2 in (13 mm) minimum. As the car passes or stops at a floor served by the elevator, the corresponding character shall illuminate.
4.10.1.13.2 Audible. Indicator shall be 20 decibels minimum with a frequency of 1500 Hz maximum above ambient. Indicator shall be either an audible signal which sounds when the car passes a floor and when a car stops at a floor served by the elevator, or an automatic verbal announcement which announces the floor at which the car has stopped.
4.10.1.14* Emergency Communications. If provided, car emergency signaling devices between the elevator and a point outside the hoistway shall comply with ASME/ANSI

A17.1. The highest operable part of a two-way communication system shall be 54 in (1370 mm) maximum above the floor for parallel approach and 48 in (1220 mm) maximum above the floor for front approach. If the device is located in a closed compartment, the compartment door hardware shall comply with 4.25. The device shall be identified by raised symbols and lettering complying with 4.28 and located adjacent to the device. If the system uses a handset, the cord from the panel to the handset shall be 29 in (735 mm) long minimum. The car emergency signaling device shall not be limited to voice communication. If instructions for use are provided, essential information shall be presented in both tactile and visual form.

4.11 Wheelchair Lifts

Wheelchair lifts, if provided, shall comply with ASME/ANSI A17.1 and with 4.2.4, 4.5 and 4.25. Wheelchair lifts shall not require an attendant for operation.

4.12 Windows*

Windows that are required to be operable by occupants in accessible spaces shall have locks, cranks and other window hardware that comply with 4.25.

BCMC

Comments*

E.

N.E. ANSI allows a 54 inch side reach to highest operable part.

P.N.E. ADA Standards require unassisted entry, operation and exit. This is not the same as "shall not require an attendant for operation." One might still have to go into building to hunt for a key.

Exceeds.

01-03778

ADA Title III Requirements

4.13 Doors.

4.13.1 General. Doors required to be accessible by 4.1 shall comply with the requirements of 4.13.

4.13.2 Revolving Doors and Turnstiles. Revolving doors or turnstiles shall not be the only means of passage at an accessible entrance or along an accessible route. An accessible gate or door shall be provided adjacent to the turnstile or revolving door and shall be so designed as to facilitate the same use pattern.
4.13.3 Gates. Gates, including ticket gates, shall meet all applicable specifications of 4.13.
4.13.4 Double-Leaf Doorways. If doorways have two independently operated door leaves, then at least one leaf shall meet the specifications in 4.13.5 and 4.13.6. That leaf shall be an active leaf.
4.13.5 Clear Width. Doorways shall have a minimum clear opening of 32 in (815 mm) with the door open 90 degrees, measured between the face of the door and the opposite stop (see Fig. 24(a), (b), (c), and (d)). Openings more than 24 in (610 mm) in depth shall comply with 4.2.1 and 4.3.3 (see Fig. 24 (e)).
EXCEPTION: Doors not requiring full user passage, such as shallow closets, may have the clear opening reduced to 20 in (510 mm) minimum.
CABO/ANSI A117.1-1992
4.13 Doors
4.13.1 General. Accessible doors shall comply with the requirements of 4.13.
4.13.2 Revolving Doors and Turnstiles. Accessible revolving doors or turnstiles shall comply with 4.13.
4.13.3 Gates. Gates, including ticket gates, shall comply with 4.13.
4.13.4. Double-Leaf Doorways. At least one of the active leaves of doorways with two independently operated leaves serving non-storage areas shall comply with 4.13.5 and 4.13.6.
4.13.5 Clear Width. Doorways shall have a clear opening of 32 in (815 mm) minimum with door open 90 degrees. Clear opening shall be measured between the face of door and stop. See Fig. B4.13.5. Openings more than 24 in (610 mm) deep shall comply with 4.2.1 and 4.3.3.
BCMC
15.1 Doorway Width. Doorways shall have a minimum clear width of 32 inches.
EXCEPTIONS:
1. Doorways not required for means of egress in Group R2 and R3 occupancies.
2. Group I3 occupancies.
3. Storage closets less than 10 sq ft in area and less than or equal to 24 inches in depth.
4. Revolving doors.

5. Interior egress doorways within a dwelling unit not required to be adaptable or accessible shall have a minimum clear width of 29 3/4 inches.

Comments*

E.

N.E. The ADA prohibits revolving doors as accessible entrances or as part of the only means of passage at accessible routes. Although an accessible revolving door might constitute equivalent facilitation, merely complying with 4.13 will not make a revolving door accessible. The dimensions, speed, and weight of the door itself must also be addressed.

E.

P.N.E. Allows storage areas to have double-leaf doors that are not accessible. This is alright if limited to small closets.

ANSI E.

BCMC 15.1 E. except exceptions:

2. P.N.E.

3. E.

4. E.

5. N.E. to the extent this exempts dwelling units in transient lodging.

ADA Title III Requirements
4.13.6 Maneuvering Clearances at Doors. Minimum maneuvering clearances at doors that are not automatic or power-assisted shall be as shown in Fig. 25. The floor or ground area within the required clearances shall be level and clear.
EXCEPTION: Entry doors to acute care hospital bedrooms for in-patients shall be exempted from the requirement for space at the latch side of the door (see dimension "x" in Fig. 25) if the door is at least 44 in (1120 mm) wide.
Figure 25 of the ADA Standards. Maneuvering Clearances at Doors. NOTE: All doors in alcoves shall comply with the clearances for front approaches.
25(a) Front Approaches - Swinging Doors. Front approaches to pull side of swinging doors shall have maneuvering space that extends 18 in (455 mm) minimum beyond the latch side of the door and 60 in (1525 mm) minimum perpendicular to the doorway.
Front approaches to push side of swinging doors, if equipped with both closer and latch, shall have maneuvering space that extends 12 in (305 mm) minimum beyond the latch side of the door and 48 in (1220 mm) minimum perpendicular to the doorway.
Front approaches to push side of swinging doors, if not equipped with latch and closer, shall have maneuvering space that is the same width as door opening and extends 48 in (1220 mm) minimum perpendicular to the doorway.
CABO/ANSI A117.1-1992
4.13.6 Maneuvering Clearances at Doors. Minimum maneuvering clearances shall comply with 4.13.6.
4.13.6.15 Floor or ground surfaces within the required maneuvering spaces shall have a slope not steeper than 1:48 and shall be clear.
4.13.6.14 Doors in alcoves shall comply with 4.13.6.1, 4.13.6.2 and 4.13.6.7, clearances for front approach.
4.13.6.16 Doors to hospital bedrooms shall be exempt from the requirement for space at the latch side of door provided the door is 44 in (1120 mm) wide minimum.
4.13.6.1 Front approaches to pull side of swinging doors shall have maneuvering space that extends 18 in (455 mm) minimum beyond the latch side of the door and 60 in (1525 mm) minimum perpendicular to the doorway. See Fig. B4.13.6(a).
4.13.6.2 Front approaches to push side of swinging doors,

equipped with both closer and latch, shall have maneuvering space that extends 12 in (305 mm) minimum beyond the latch side of the door and 48 in (1220 mm) minimum perpendicular to the doorway. See Fig. B4.13.6(a).

4.13.6.3 Front approaches to push side of swinging doors, not equipped with latch and closer, shall have maneuvering space that is the same width as door opening and extends 48 in (1220 mm) minimum perpendicular to the doorway. See Fig. B4.13.6(a).

BCMC

15.3.1 The floor surface on both sides of a door shall be at the same elevation. The floor surface over which the door swings shall extend from the door in the closed position a distance equal to the door width.

EXCEPTIONS:

1. Exterior doors not on an accessible route.
2. Variations in elevation due to differences in finish materials, but not more than 1/2 inch.

Comments*

ANSI 4.13.6 - E. (exceeds because no exemption given for automatic doors.)

4.13.6.14 - P.N.E. More specific than ADA Standards but not sure language is correct. 4.13.6.7 is not a front approach and this requirement conflicts with perpendicular dimension of 4.13.6.1. Need to drop the reference to 4.13.6.7.

4.13.6.15 - E.

4.13.6.16 - N.E. Exemption is given to all hospital bedrooms not just acute care bedrooms.

BCMC N.E. Does not provide sufficient maneuvering space.

E.

ADA Title III Requirements

25(b) Hinge Side Approaches. Hinge-side approaches to pull side of swinging doors shall have maneuvering space that extends 36 in (915 mm) minimum beyond the latch side of the door if 60 in (1525 mm) minimum is provided perpendicular to the doorway or maneuvering space that extends 42 in (1065 mm) minimum beyond the latch side of the door if 54 in (1370 mm) minimum is provided perpendicular to the doorway.

Hinge-side approaches to push side of swinging doors, if not equipped with both latch and closer, shall have a maneuvering space of 54 in (1370 mm) minimum parallel to the doorway, extending from the latch side to beyond the hinge side, and 42 in (1065 mm) minimum perpendicular to the doorway. (1220 mm) minimum perpendicular to the doorway.

Hinge side approaches to push side of swinging doors, if equipped with both latch and closer, shall have maneuvering space of 54 in (1370 mm) minimum parallel to the doorway, extending from the latch side to beyond the hinge side, and 48 in (1220 mm) minimum perpendicular to the doorway.

25(c) Latch Side Approaches -- Swinging Doors.

Latch-side approaches to pull side of swinging doors that have closers shall have maneuvering space that extends 24 in (610 mm) minimum beyond the latch side of the door and 54 in (1370 mm) minimum perpendicular to the doorway.

Latch-side approaches to pull side of swinging doors, if not equipped with closers, shall have maneuvering space that extends 24 in (610 mm) minimum beyond the latch side of the door and 48 in (1220 mm) minimum perpendicular to the doorway.

Latch-side approaches to push side of swinging doors that have closers shall have maneuvering space that extends 24 in (610 mm) minimum parallel to the doorway

beyond the latch side of the door and 48 in (1220 mm) minimum perpendicular to the doorway.
Latch-side approaches to push side of swinging doors, if not equipped with closers, shall have maneuvering space that extends 24 in (610 mm) minimum parallel to the doorway beyond the latch side of the door and 42 in (1065 mm) minimum perpendicular to the doorway.
CABO/ANSI A117.1-1992
4.13.6.4 Hinge-side approaches to pull side of swinging doors shall have maneuvering space that extends 36 in (915 mm) minimum beyond the latch side of the door if 60 in (1525 mm) minimum is provided perpendicular to the doorway, or shall have maneuvering space that extends 42 in (1065 mm) minimum beyond the latch side of the door if 54 in (1370 mm) minimum is provided perpendicular to the doorway. See Fig. B4.13.6(b).
4.13.6.5 Hinge-side approaches to push side of swinging doors, not equipped with both latch and closer, shall have a maneuvering space of 54 in (1370 mm) minimum, parallel to the doorway and 42 in (1065 mm) minimum, perpendicular to the doorway. See Fig. B4.13.6(b).
4.13.6.6 Hinge-side approaches to push side of swinging doors, equipped with both latch and closer, shall have maneuvering space of 54 in (1370 mm) minimum, parallel to the doorway, 48 in (1220 mm) minimum perpendicular to the doorway. See Fig. B4.13.6(b).
4.13.6.7 Latch-side approaches to pull side of swinging doors, with closers, shall have maneuvering space that extends 24 in (610 mm) minimum beyond the latch side of the door and 54 in (1370 mm) minimum perpendicular to the doorway. See Fig. B4.13.6(c).
4.13.6.8 Latch-side approaches to pull side of swinging doors, not equipped with closers, shall have maneuvering space that extends 24 in (610 mm) minimum beyond the latch side of the door and 48 in (1220 mm) minimum perpendicular to the doorway. See Fig. B4.13.6(c).
4.13.6.9 Latch-side approaches to push side of swinging doors, with closers, shall have maneuvering space that extends 24 in (610 mm) minimum parallel to the doorway beyond the latch side of the door and 48 in (1220 mm) minimum perpendicular to the doorway. See Fig. B4.13.6(c).
4.13.6.10 Latch-side approaches to push side of swinging doors, not equipped with closers, shall have maneuvering space that extends 24 in (610 mm) minimum parallel to the doorway beyond the latch side of the door and 42 in (1065 mm) minimum perpendicular to the doorway. See

Fig. B4.13.6(c).
BCMC
Comments*
N.E. In #5 and #6, ANSI fails to specify that the 54 in. must be measured from the latch side.
E.
66 ADA/ANSI/BCMC Requirements - October 13, 1995
01-03781

ADA Title III Requirements
25(d) Front Approach - Sliding Doors and Folding Doors. Front approaches to sliding doors and folding doors shall have maneuvering space that is the same width as the door opening extending 48 in (1220 mm) minimum perpendicular to the doorway.
25(e) Slide-side approaches to sliding doors and folding doors shall have a maneuvering space of 54 in (1370 mm) minimum parallel to the doorway, extending from the latch side to beyond the hinge side, and 42 in (1065 mm) minimum perpendicular to the doorway.
25(f) Latch Side Approach - Sliding Doors and Folding Doors. Latch-side approaches to sliding doors and folding doors shall have a maneuvering space that extends 24 in (610 mm) minimum beyond the latch side of the door and extends 42 in (1065 mm) minimum perpendicular to the doorway.
4.13.7 Two Doors in Series. The minimum space between two hinged or pivoted doors in series shall be 48 in (1220 mm) plus the width of any door swinging into the space. Doors in series shall swing either in the same direction or away from the space between the doors (see Fig. 26).
4.13.8* Thresholds at Doorways. Thresholds at doorways shall not exceed 3/4 in (19 mm) in height for exterior sliding doors or 1/2 in (13 mm) for other types of doors. Raised thresholds and floor level changes at accessible doorways shall be beveled with a slope no greater than 1:2 (see 4.5.2).

4.13.9* Door Hardware. Handles, pulls, latches, locks, and other operating devices on accessible doors shall have a shape that is easy to grasp with one hand and does not require tight grasping, tight pinching, or twisting of the wrist to operate. Lever-operated mechanisms, push-type mechanisms, and U-shaped handles are acceptable designs. When sliding doors are fully open, operating hardware shall be exposed and usable from both sides. Hardware required for accessible door passage shall be mounted no higher than 48 in (1220 mm) above finished floor.

4.13.10* Door Closers. If a door has a closer, then the sweep period of the closer shall be adjusted so that from an open position of 70 degrees, the door will take at least 3 seconds to move to a point 3 in (75 mm) from the latch, measured to the leading edge of the door.

CABO/ANSI A117.1-1992

4.13.6.11 Front approaches to sliding doors and folding doors shall have maneuvering space that is the same width as the door opening and shall extend 48 in (1220 mm) minimum perpendicular to the doorway. See Fig. B4.13.6(d).

4.13.6.12 Slide-side approaches to sliding doors and folding doors shall have a maneuvering space of 54 in (1370 mm) minimum, parallel to the doorway, and 42 in (1065 mm) minimum, perpendicular to the doorway. See Fig. B4.13.6(e).

4.13.6.13 Latch-side approaches to sliding doors and folding doors shall have a maneuvering space that extends 24 in (610 mm) minimum beyond the latch side of the door and extends 42 in (1065 mm) minimum perpendicular to the doorway. See Fig. B4.13.6(f).

4.13.7 Two Doors in Series. Space between two hinged or pivoted doors in series shall be 48 in (1220 mm) minimum plus the width of any door swinging into the space. Doors in series shall swing either in same direction or away from space between doors. See Fig. B4.13.7.

4.13.8* Thresholds at Doorways. Thresholds, if provided, at doorways shall be 1/2 in (13 mm) high maximum except that thresholds for exterior residential sliding doors shall be 3/4 in (19 mm) high maximum. Raised thresholds and floor level changes shall comply with 4.5.2.

4.13.9* Door Hardware. Handles, pulls, latches, locks, and other operable parts on accessible doors shall have a shape that is easy to grasp with one hand and does not require tight grasping, tight pinching, or twisting of the wrist to operate. Such hardware shall be mounted within reach ranges specified in 4.2. When sliding doors are in

the fully open position, operating hardware shall be exposed and usable from both sides.
4.13.10* Door Closers. Door closers shall be adjusted so that from an open position of 90 degrees, the time required to move the door to an open position of 12 degrees will be 5 seconds minimum.
BCMC
15.3.2 Thresholds at doorways shall not exceed 3/4 inch in height for exterior residential sliding doors or 1/2 inch for other doors. Raised thresholds and floor level changes greater than 1/4 inch at doorways shall be beveled with a slope no greater than 1:2.
15.2 Hardware.
15.2.1 Door handles, pulls, latches, locks and other operating devices shall be at a maximum height of 48 inches.
15.2.2 The operating devices shall be capable of operating with one hand and shall not require tight grasping, tight pinching, or twisting of the wrist to operate.
EXCEPTION: Hardware for doors within or serving a single dwelling unit that is not required to be accessible or adaptable by 5.0.
Comments*
N.E. In #12, ANSI fails to specify
that the 54 in. is measured from
the latch side.
E.
ANSI E.
BCMC E.
ANSI E.
BCMC Exception - P.N.E. for
dwelling units in transient lodging.
Exceeds.
ADA Requires +/- 13.6 in/sec
ANSI = +/- 9.8 in/sec --
(considerably slower)

ADA Title III Requirements
4.13.11* Door Opening Force. The maximum force for pushing or pulling open a door shall be as follows:
(1) Fire doors shall have the minimum opening force allowable by the appropriate administrative authority.
(2) Other doors.
(a) exterior hinged doors: (Reserved)
(b) interior hinged doors: 5 lbf (22.2N)
(c) sliding or folding doors: 5 lbf (22.2N)
These forces do not apply to the force required to retract latch bolts or disengage other devices that may hold the door in a closed position.
4.13.12* Automatic Doors and Power-Assisted Doors. If an automatic door is used, then it shall comply with ANSI/BHMA A156.10-1985. Slowly opening, low-powered, automatic doors shall comply with ANSI

A156.19-1984. Such doors shall not open to back check faster than 3 seconds and shall require no more than 15 lbf (66.6N) to stop door movement. If a power-assisted door is used, its door-opening force shall comply with 4.13.11 and its closing shall conform to the requirements in ANSI A156.19-1984.

4.14 Entrances.

4.14.1 Minimum Number. Entrances required to be accessible by 4.1 shall be part of an accessible route complying with 4.3. Such entrances shall be connected by an accessible route to public transportation stops, to accessible parking and passenger loading zones, and to public streets or sidewalks if available (see 4.3.2(1)). They shall also be connected by an accessible route to all accessible spaces or elements within the building or facility.

CABO/ANSI A117.1-1992

4.13.11* Door-Opening Force. Fire doors shall have the minimum opening force allowable by the appropriate administrative authority. The required force for pushing open or pulling open doors other than fire doors shall be as follows:

- interior hinged door: 5.0 lb (22.2 N) maximum
- sliding/folding door: 5.0 lb (22.2 N) maximum

These forces do not apply to the force required to retract latch bolts or disengage other devices that hold the door in a closed position.

4.13.12 Automatic Doors. Automatic doors shall comply with ANSI/BHMA A156.10.

4.13.13 Power-Assisted Doors and Low-Energy Power-Operated Doors. Power-assisted doors shall comply with ANSI/BHMA A156.19. The time required for such doors to open to the back check position shall be 3 seconds minimum. The force required to stop door movement shall be 15 lb (66.6 N) maximum.

4.13.14* Door Surface. The bottom 12 in (305 mm) of all doors except automatic doors, power assisted doors, and sliding doors shall have a smooth uninterrupted surface to allow the door to be opened by a wheelchair footrest without creating a trap or hazardous condition. When narrow stile and rail doors are used, a 12 in (305 mm) high minimum, smooth panel, extending the full width of the door, shall be installed on the push side(s) of the door which will allow the door to be opened by a wheelchair footrest without creating a trap or hazardous condition. Cavities created by kick plates shall be capped.

4.14 Entrances

Accessible entrances to a building or facility shall comply

with 4.3. They shall be connected by an accessible route to all accessible spaces or elements within the building or facility.
BCMC
15.2.3 Opening forces shall not exceed the following:
1. Interior side-swinging doors without closers - 5 lb.
2. Sliding or folding doors - 5 lb.
3. Other side-swinging doors:
Latch release - 15 lb.
Static opening - 30 lb.
Swing opening - 15 lb.
4. Special locking - 15 lb.
3.1.1 Accessible routes within the site shall be provided from public transportation stops, accessible parking and accessible passenger loading zones, and public streets or sidewalks to the accessible building entrance they serve.
Comments*
ANSI E.
BCMC E.
E.
Exceeds.
ANSI N.E. ANSI does not specifically address exterior elements, public streets, parking and passenger loading zones. See also 4.3.2 (1) where these are also deleted. Route to accessible parking is addressed in ANSI 4.6.2., but route is not addressed in passenger loading zone.
BCMC N.E. BCMC does not specifically require all accessible entrances to be part of accessible routes.
Together, ANSI and BCMC are E.

ADA Title III Requirements
4.14.2 Service Entrances. A service entrance shall not be the sole accessible entrance unless it is the only entrance to a building or facility (for example, in a factory or garage).
4.15 Drinking Fountains and Water Coolers.
4.15.1 Minimum Number. Drinking fountains or water coolers required to be accessible by 4.1 shall comply with

4.15.
4.15.2* Spout Height. Spouts shall be no higher than 36 in (915 mm), measured from the floor or ground surfaces to the spout outlet (see Fig. 27(a)).
4.15.3 Spout Location. The spouts of drinking fountains and water coolers shall be at the front of the unit and shall direct the water flow in a trajectory that is parallel or nearly parallel to the front of the unit. The spout shall provide a flow of water at least 4 in (100 mm) high so as to allow the insertion of a cup or glass under the flow of water. On an accessible drinking fountain with a round or oval bowl, the spout must be positioned so the flow of water is within 3 in (75 mm) of the front edge of the fountain.
4.15.4 Controls. Controls shall comply with 4.27.4. Unit controls shall be front mounted or side mounted near the front edge.
CABO/ANSI A117.1-1992
4.15 Drinking Fountains and Water Coolers
4.15.1* General. When fixed, accessible drinking fountains and water coolers shall comply with 4.4 and 4.15.
4.15.2 Spouts.
4.15.2.1* Height. Spout outlets shall be 36 in (915 mm) maximum above the floor. See Fig. B4.15.2.1.
4.15.2.2* Location. Spouts of drinking fountains and water coolers arranged for parallel approach shall be located 3 in (75 mm) maximum from the front edge. Spouts of cantilevered drinking fountains and water coolers with knee and toe clearances, shall be located 15 in (380 mm) minimum from the vertical support and 5 in (125 mm) maximum from the front edge.
4.15.2.3 Flow. Spouts shall provide a flow of water 4 in (100 mm) high minimum so as to allow the insertion of a cup or glass under the flow of water. Measured horizontally, relative to the front face of the unit, the angle of the water stream from spouts located within 3 in (75 mm) of the front of the unit shall be 30 degrees maximum and spouts located between 3 in and 5 in (75 mm and 125 mm) from the front shall be 15 degrees maximum. See Fig. B4.15.2.3.
4.15.3 Operable Parts. Operable parts shall be located at or near the front edge of the fountain or water cooler and shall comply with 4.25.4.
BCMC
4.1 Each building and structure, and each separate tenancy within a building or structure, shall be provided with at least one entrance which complies with the

accessible route provisions of CABO/ANSI A117.1. Not less than 50% of the entrances shall be accessible.
EXCEPTION: Loading and service entrances.
Comments*
N.E. Exempts all loading and service entrances.
E.
E.
N.E. This requires the spout to be within 3". ADA requires the flow to be within 3" for oval or round bowls. Figure B4.15.2.3 shows 45 degrees, not 30 degrees maximum of text.
E.

ADA Title III Requirements
4.15.5 Clearances.
(1) Wall- and post-mounted cantilevered units shall have a clear knee space between the bottom of the apron and the floor or ground at least 27 in (685 mm) high, 30 in (760 mm) wide, and 17 in to 19 in (430 mm to 485 mm) deep (see Fig. 27(a) and (b)). Such units shall also have a minimum clear floor space 30 in by 48 in (760 mm by 1220 mm) to allow a person in a wheelchair to approach the unit facing forward.
Figure 27 of the ADA Standards. Drinking Fountains and Water Coolers.
27(a) Spout Height and Knee Clearance. The 27 in (685 mm) high minimum clear knee space must be free of equipment or obstructions for a minimum of 8 in (205 mm) extending from the front edge of the fountain back toward the wall. In addition, a minimum 9 in (230 mm) high toe clearance space must be provided extending back toward the wall to a distance no more than 6 in (150 mm) from the back wall. The toe clearance space must be free of equipment or obstructions.
4.15.5 (2) Free-standing or built-in units not having a clear space under them shall have a clear floor space at least 30 in by 48 in (760 mm by 1220 mm) that allows a person in a wheelchair to make a parallel approach to the unit (see Fig. 27(c) and (d)). This clear floor space shall comply with 4.2.4.
4.16 Water Closets.
4.16.1 General. Accessible water closets shall comply with 4.16.
CABO/ANSI A117.1-1992
4.15.4 Clearances
4.15.4.1 Knee and Toe Clearances. Wall-mounted or post-mounted cantilevered units shall extend 17 in (430 mm) minimum from the vertical support. Clear knee space shall be provided in accordance with 4.2.4.3. The clear knee space shall be 8 in (205 mm) in depth minimum at 27 in (685 mm) minimum above the floor or ground, and 11 in (280 mm) in depth minimum at 9 in (230 mm) minimum above the floor or ground. Clear toe space shall be provided in accordance with 4.2.4.3. See Fig. B4.15.2.1. Where the basin and spout assembly is supported on a cantilevered arm 8 in (205 mm) wide maximum, the clear space between the bottom of the arm and floor shall be 25 in (635 mm) minimum.
4.15.4.2 Floor Space. Forward approach units shall comply with 4.2. Units in alcoves shall comply with 4.2.4.4. See Fig. B4.15.2.1(b). Units not having the

necessary knee and toe clearance or clear space under them shall comply with 4.2.4 and have a clear floor space that allows a person in a wheelchair to make a parallel approach to the unit.

4.17 Water Closets

4.17.1 General. Accessible water closets shall comply with 4.17. Water closets shall be mounted adjacent to a side wall or partition. The distance from the side wall or partition to the centerline of the water closet shall be 18 in (455 mm). Water closets in dwelling units shall comply with 4.33.3.2.

BCMC
Comments*

N.E. regarding 2 in. lower knee clearance for basins on cantilevered arms.

E. Except that dwelling units in transient lodging would not be in compliance using 4.33.3.2.

ADA Title III Requirements

4.16.2 Clear Floor Space. Clear floor space for water closets not in stalls shall comply with Fig. 28. Clear floor space may be arranged to allow either a left-handed or right-handed approach.

Figure 28 of the ADA Standards. Clear Floor Space at Water Closets.

For a side or front approach, the water closet must be located along the back wall and the centerline of the water closet must be 18 in (455 mm) from the side wall with the side grab bar.

For a front approach/transfer, there must be a clear floor space at the water closet that is a minimum 48 in (1220 mm) in width (parallel to the back wall) and a minimum of 66 in (1675 mm) in length. If there is no stall, an accessible lavatory may overlap the clear floor space at the back wall as long as a minimum 18 in (455 mm) clearance is maintained between the centerline of the water closet and the nearest edge of the lavatory.

For a side approach/transfer, there must be a clear floor space at the water closet that is a minimum of 48 in (1220 mm) in width (parallel to the back wall) and a minimum of 56 in (1420 mm) in length. If there is no stall, an accessible lavatory may overlap the clear floor space at the back wall as along as a minimum 18 in (455 mm) clearance is maintained between the centerline of the water closet and the nearest edge of the lavatory.

For a forward and side approach or for a lateral transfer, there must be a clear floor space at the water closet that is a minimum of 60 in (1525 mm) in width (parallel to the back wall) and a minimum of 56 in (1420 mm) in length. There must be a clear floor space of 42 in (1066 mm) minimum from the centerline of the water closet to the nearest obstruction/wall. A lavatory may not overlap this clear space.

4.16.3* Height. The height of water closets shall be 17 in to 19 in (430 mm to 485 mm), measured to the top of the toilet seat. Seats shall not be sprung to return to a lifted position.

CABO/ANSI A117.1-1992

4.17.2* Clear Floor Space. Clear floor space for water closets not in stalls shall be 48 in (1220 mm) minimum in front of the water closet and 42 in (1065 mm) from the center line of the water closet on the side not adjacent to the wall. See Fig. B4.17.2.

4.17.3* Height. The top of water closet seats shall be 17 in to 19 in (430 mm to 485 mm) above the floor. Seats shall not be sprung to return to a lifted position. See Fig. B4.17.3.

BCMC
Comments*

Exceeds. ADA Standards do not require 48 inch minimum in front of water closet. ADA Standards allow the lavatory to be in clear floor space. It appears ANSI does not.

E.

ADA Title III Requirements

4.16.4* Grab Bars. Grab bars for water closets not located in stalls shall comply with 4.26 and Fig. 29. The grab bar behind the water closet shall be 36 in (915 mm) minimum.

Figure 29 of the ADA Standards. Grab Bars at Water Closets.

29(a) Back Wall. A 36 in (915 mm) minimum length grab bar, mounted 33-36 in (840-915 mm) above the finish floor, is required behind the water closet. The grab bar must extend at least 12 in (305) from the centerline of the water closet toward the side wall and at least 24 in (610 mm) from the centerline of the water closet toward the open side.

29(b) Side Wall. A 42 in (1065 mm) minimum length grab bar is required on the side wall, spaced a maximum of 12 in (305 mm) from the back wall and extending a minimum of 54 in (1370 mm) from the back wall at a height of 33-36 in (840-915 mm).

4.16.5* Flush Controls. Flush controls shall be hand operated or automatic and shall comply with 4.27.4. Controls for flush valves shall be mounted on the wide side of toilet areas no more than 44 in (1120 mm) above the floor.

4.16.6 Dispensers. Toilet paper dispensers shall be installed within reach, as shown in Fig. 29(b). Dispensers that control delivery, or that do not permit continuous paper flow, shall not be used.

Fig. 29(b) ...The toilet paper dispenser shall be mounted below the grab bar, at a minimum height of 19 in (485 mm).

4.17 Toilet Stalls.

4.17.1 Location. Accessible toilet stalls shall be on an accessible route and shall meet the requirements of 4.17.
4.17.2 Water Closets. Water closets in accessible stalls shall comply with 4.16.

CABO/ANSI A117.1-1992

4.17.4* Grab Bars. Grab bars for water closets shall comply with 4.24. Grab bars shall be provided on the rear and side walls adjacent to the water closet.
4.17.4.1 Side wall grab bar shall be 42 in (1065 mm) long minimum, located 12 in (305 mm) maximum from the rear wall and extending 54 in (1370 mm) minimum from the rear wall. See Fig. B4.17.3.
4.17.4.2 The rear wall grab bar shall be 24 in (610 mm) long minimum, centered on the water closet. Where space permits, the bar shall be 36 in (915 mm) long minimum, with the additional length provided on the transfer side of the water closet. See Fig. B4.17.4.
4.17.5* Flush Controls. Flush controls shall be hand operated or automatic and shall comply with 4.25.4. Hand operated controls for flushometers shall be mounted 44 in (1120 mm) maximum above the floor on the wide side of the toilet stall.
4.17.6 Dispensers. Toilet paper dispensers shall comply with 4.25.4 and shall be installed between 7 in and 9 in (180 mm and 230 mm) in front of the water closet. The outlet of the dispenser shall be located between 15 in and 48 in (380 mm and 1220 mm) above the floor. There shall be a clearance of 1 1/2 in (38 mm) minimum below and 12 in (305 mm) minimum above the grab bar. Dispensers shall not be of a type that control delivery, or that do not allow continuous paper flow.
4.18 Toilet Stalls
4.18.1 General. Accessible toilet stalls shall comply with 4.18.
4.18.2 Water Closets. Water closets in accessible toilet stalls shall comply with 4.17.

BCMC

Comments*

4.17.4 - E.

4.17.4.1 - E.

4.17.4.2 - N.E. ANSI permits a 24 inch grab bar behind the water closet where space does not allow a 36 inch grab bar. However, there will be no space limitations in new construction.

E.

E.

ADA Title III Requirements

4.17.3* Size and Arrangement. The size and arrangement of the standard toilet stall shall comply with Fig. 30(a), Standard Stall. Standard toilet stalls with a minimum depth of 56 in (1420 mm) (see Fig. 30(a)) shall have wall-mounted water closets. If the depth of a standard toilet stall is increased at least 3 in (75 mm), then a floor-mounted water closet may be used. Arrangements shown for standard toilet stalls may be reversed to allow either a left- or right-hand approach. Additional stalls shall be provided in conformance with 4.22.4.

EXCEPTION: In instances of alteration work where provision of a standard stall (Fig. 30(a)) is technically infeasible or where plumbing code requirements prevent combining existing stalls to provide space, either alternate stall (Fig. 30(b)) may be provided in lieu of the standard stall.

Figure 30 of the ADA Standards. Toilet Stalls.

30(a) Standard Stall. The minimum width of the stall is 60 in (1525 mm). The centerline of the water closet is 18 in (455 mm) from the side wall. The location of the door is in front of the clear space and diagonal to the water closet, with a maximum stile width of 4 in (100 mm). An alternate door location is permitted to be on the

adjacent side of the stall also diagonal to the water closet with a maximum stile width of 4 in (100 mm). The minimum width of the standard stall shall be 60 in (1525 mm). If a wall mounted water closet is used, the depth of the stall is required to be a minimum of 56 in (1420 mm). If a floor mounted water closet is used, the depth of the stall is required to be a minimum of 59 in (1500 mm). A grab bar at least 36 in (965 mm) long shall be located behind the water closet, with one end no further than 6 in (150 mm) from the inside corner of the stall. Another grab bar shall extend at least 52 in (1320 mm) along the side wall, with one end no more than 12 in (305 mm) from the back wall.

CABO/ANSI A117.1-1992

4.18.3* Wheelchair Accessible Stalls.

4.18.3.1 Wheelchair accessible stalls shall be 60 in (1525 mm) wide minimum and 56 in (1420 mm) deep minimum for wall hung water closets and 59 in (1500 mm) deep minimum for floor mounted water closets. See Fig. B4.18.3.1.

4.18.3.2 If the door swings into the stall, the required depth shall be increased by 36 in (915 mm) minimum. See Fig. B4.18.3.2.

4.18.3.3 Arrangements shown for stalls shall be permitted for left-hand or right-hand approach.

4.18.3.4 In wheelchair accessible stalls, the front partition and at least one side partition shall provide a toe clearance of 9 in (230 mm) minimum above the floor. Toe clearance is not required in stalls greater than 60 in (1525 mm) deep.

BCMC

Comments*

E.

73 ADA/ANSI/BCMC Requirements - October 13, 1995

01-03788

ADA Title III Requirements

30(a-1) Standard Stall (end of row). If a standard stall is provided at the end of a row of stalls, and if the length of the stall is extended at least a minimum of 36 in (915 mm) beyond the required minimum length, the door (if located on the side of the stall) may swing into the stall. Two grab bars are located in the rear and the side of the water closet.

30(b) Alternate Stalls. Two alternate stalls are permitted; one alternate stall is required to be 36 in (915 mm) wide. The other alternate stall is required to be a minimum of 48 in (1220 mm) wide. In either alternate stall, if a wall mounted water closet is used, the depth of the stall is required to be a minimum of 66 in (1675 mm). If a floor mounted water closet is used, the depth of the stall is required to be a minimum of 69 in (1745 mm). The

36 in (915 mm) wide stall shall have parallel grab bars on the side walls. The 48 in (1220 mm) minimum stall shall have a grab bar behind the water closet and one on the side wall next to the water closet. Grab bars are mounted 33-36 in (840-915 mm) above the finish floor. In both alternate stalls, the centerline of the water closet is 18 in (455 mm) from a side wall. In both alternate stalls, the grab bars along the sides of the water closets shall extend at least 54 in (1370 mm) from the back wall and shall have one end no further than 12 in (305 mm) from the back wall.

30(c) Rear Wall of Standard Stall. Grab bars located behind the water closet shall be at least 36 in (915 mm) in length. All grab bars shall be located 33-36 in (840-915 mm) above the finish floor.

30(d) Side Walls. Side grab bars shall be located 33-36 in (840-915 mm) above the finish floor and shall be no more than 12 in (305 mm) from the rear wall. Grab bars shall be at least 40 in (1015 mm) long or at least 42 in (1065 mm) long for alternate stalls. Water closet seat heights shall be between 17 in (430 mm) and 19 in (485 mm). Toilet paper dispensers shall be below the grab bar and at least 19 in (485 mm) above the floor and no further than 36 in (915 mm) from the rear wall.

4.17.4 Toe Clearances. In standard stalls, the front partition and at least one side partition shall provide a toe clearance of at least 9 in (230 mm) above the floor. If the depth of the stall is greater than 60 in (1525 mm), then the toe clearance is not required.

CABO/ANSI A117.1-1992

4.18.3.4 In wheelchair accessible stalls, the front partition and at least one side partition shall provide a toe clearance of 9 in (230 mm) minimum above the floor. Toe clearance is not required in stalls greater than 60 in (1525 mm) deep.

BCMC

Comments*

See comments above.

E.

01-03789

ADA Title III Requirements

4.17.5* Doors. Toilet stall doors, including door hardware, shall comply with 4.13. If toilet stall approach is from the latch side of the stall door, clearance between the door side of the stall and any obstruction may be reduced to a minimum of 42 in (1065 mm) (Fig. 30).

4.17.6 Grab Bars. Grab bars complying with the length and positioning shown in Fig. 30(a), (b), (c), and (d) shall

be provided. Grab bars may be mounted with any desired method as long as they have a gripping surface at the locations shown and do not obstruct the required clear floor area. Grab bars shall comply with 4.26.

4.18 Urinals.

4.18.1 General. Accessible urinals shall comply with 4.18.

4.18.2 Height. Urinals shall be stall-type or wall-hung with an elongated rim at a maximum of 17 in (430 mm) above the finish floor.

4.18.3 Clear Floor Space. A clear floor space 30 in by 48 in (760 mm by 1220 mm) shall be provided in front of urinals to allow forward approach. This clear space shall adjoin or overlap an accessible route and shall comply with 4.2.4. Urinal shields that do not extend beyond the front edge of the urinal rim may be provided with 29 in (735 mm) clearance between them.

4.18.4 Flush Controls. Flush controls shall be hand operated or automatic, and shall comply with 4.27.4, and shall be mounted no more than 44 in (1120 mm) above the finish floor.

4.19 Lavatories and Mirrors.

4.19.1 General. The requirements of 4.19 shall apply to lavatory fixtures, vanities, and built-in lavatories.

4.18.5 Doors. Toilet stall doors shall comply with 4.13, except that if the approach is to the latch side of the stall door, the clearance between the door side of the stall and any obstruction shall be 42 in (1065 mm) minimum. The door shall be hinged 4 in (100 mm) maximum from the partition farthest from the water closet. A handle complying with 4.13.9 shall be placed on the inner side of the door near the pivot point or self-closing hinges shall be provided.

4.18.6 Grab Bars.

4.18.6.1 General. Grab bars shall comply with 4.24.

4.18.6.2 Wheelchair Accessible Stalls. A side-wall grab bar complying with 4.17.4.1, located on the wall closest to the water closet, and a rear-wall grab bar complying with 4.17.4.2 shall be provided. See Fig. B4.18.3.1.

4.18.7* Coat Hooks and Shelves. Coat hooks provided within toilet stalls shall be 54 in (1370 mm) maximum above the floor. When provided, a fold down shelf shall be located between 40 in (1015 mm) minimum and 48 in (1220 mm) maximum above the floor.

4.19 Urinals*

4.19.1 General. Accessible urinals shall comply with 4.19.

4.19.2 Height. Urinals shall be of the stall type or wall hung with the rim at 17 in (430 mm) maximum above the

floor.
4.19.3 Clear Floor Space. Clear floor space 30 in by 48 in (760 mm by 1220 mm) minimum shall be provided in front of urinals to allow forward approach. This clear space shall comply with 4.2.4. Privacy shields shall not extend beyond the front edge of the urinal rim, unless they are 30 in (760 mm) minimum apart.
4.19.4 Flush Controls. Flush controls shall be hand operated or automatic. Hand operated flush controls, shall be mounted between 15 in (380 mm) minimum and 44 in (1120 mm) maximum above the floor and shall comply with 4.25.4.
4.20 Lavatories and Sinks
4.20.1 General. Accessible lavatory fixtures, sinks, vanities, and built-in lavatories shall comply with 4.20.

BCMC
Comments*

E.
N.E. Note: 4.17.4.2 allows 24 inch grab bar on rear wall, see above. ADA Standards 4.16.4
N.E. 54 in. will be too high when only a forward approach is possible.
E.
P.N.E. ADA prohibits shields beyond rim no matter how far apart. Plus ANSI puts no limits on shields that DO NOT project beyond the rim.
Exceeds. ANSI establishes a minimum height for flush controls.
E.

ADA Title III Requirements

4.19.2 Height and Clearances. Lavatories shall be mounted with the rim or counter surface no higher than 34 in (865 mm) above the finish floor. Provide a clearance of at least 29 in (735 mm) above the finish floor to the bottom of the apron. Knee and toe clearance shall comply with Fig. 31.

Figure 31 of the ADA Standards. Lavatory Clearances.

The minimum knee clearance must be free of equipment or obstructions for a minimum of 8 in (205 mm) extending from the front edge of the lavatory back toward the wall. This knee clearance must be 29 in (735 mm) high at the front of the lavatory and no less than 27 in (685 mm) high at a point 8 in (205 mm) back. In addition, a minimum 9 in (230 mm) high toe clearance must be provided extending back toward the wall to a distance no more than 6 in (150 mm) from the back wall. The toe clearance space must be free of equipment or obstructions.

4.19.3 Clear Floor Space. A clear floor space 30 in by 48 in (760 mm by 1220 mm) complying with 4.2.4 shall be provided in front of a lavatory to allow forward approach. Such clear floor space shall adjoin or overlap an accessible route and shall extend a maximum of 19 in (485 mm) underneath the lavatory (see Fig. 32).

Figure 32 of the ADA Standards. Clear Floor Space at Lavatories.

The minimum depth of the lavatory is 17 in (430 mm).

4.19.4 Exposed Pipes and Surfaces. Hot water and drain pipes under lavatories shall be insulated or otherwise configured to protect against contact. There shall be no sharp or abrasive surfaces under lavatories.

4.19.5 Faucets. Faucets shall comply with 4.27.4. Lever-operated, push-type, and electronically controlled mechanisms are examples of acceptable designs. If self-closing valves are used the faucet shall remain open for at least 10 seconds.

CABO/ANSI A117.1-1992

4.20.2 Height

4.20.2.1* Lavatories. Lavatories shall be mounted with the rim 34 in (865 mm) maximum above the floor and with a clearance of 29 in (735 mm) minimum from the floor to the bottom of the apron.

4.20.3 Clearances.

4.20.3.1 Knee and Toe Clearances. Fixtures shall extend 17 in (430 mm) minimum from the wall. Clear knee space shall be provided in accordance with 4.2.4.3. Clearance

between the bottom of the front edge of the apron and the floor shall be 29 in (735 mm) minimum. The clear knee space shall be 8 in (205 mm) in depth minimum at 27 in (685 mm) minimum above the floor or ground and 11 in (280 mm) in depth minimum at 9 in (230 mm) minimum above the floor or ground. Clear toe space shall be provided in accordance with 4.2.4.3. The dip of the overflow shall be ignored when checking the clearances. See Fig. B4.20.3.1.

4.20.3.2 Clear Floor Space. Clear floor space shall comply with 4.2.4. Clear floor space, 30 in by 48 in (760 mm by 1220 mm) minimum, shall be provided in front of a lavatory or sink to allow a forward approach and shall extend 19 in (485 mm) maximum under the lavatory or sink. See Fig. B4.20.3.2.

4.20.4* Exposed Pipes and Surfaces. Water supply and drain pipes under lavatories or sinks shall be insulated or otherwise configured to protect against contact. See Fig. B4.20.3.1. There shall be no sharp or abrasive surfaces under lavatories and sinks.

4.20.5* Faucets. Faucets shall comply with 4.25.4. Self-closing faucets, when used, shall remain open for 10 seconds minimum.

BCMC
Comments*

4.20.2 - E. for lavatories (sinks addressed below at ADA 4.24).

E.

E.

E.

ADA Title III Requirements

4.19.6* Mirrors. Mirrors shall be mounted with the bottom edge of the reflecting surface no higher than 40 in (1015 mm) above the finish floor (see Fig. 31).

4.20 Bathtubs.

4.20.1 General. Accessible bathtubs shall comply with 4.20.

4.20.2 Floor Space. Clear floor space in front of bathtubs shall be as shown in Fig. 33.

Figure 33 of the ADA Standards. Clear Floor Space at Bathtubs.

33(a) With Seat in Tub. If the approach is parallel to the bathtub, a 30 in (760 mm) minimum width by 60 in (1525 mm) minimum length clear space is required alongside the bathtub. If the approach is perpendicular to the bathtub, a 48 in (1220 mm) minimum width by 60 in (1525 mm) minimum length clear space is required. An accessible lavatory is permitted within the clear space at the foot end of the tub.

33(b) With Seat at Head of Tub. If the approach is parallel to the bathtub, a 30 in (760 mm) minimum width by 75 in (1905 mm) minimum length clear space is required alongside the bathtub. The seat width shall be 15 in (380 mm), measured from the back wall to the front of the seat, and shall extend the full width of the tub. An accessible lavatory is permitted within the clear space at the foot end of the tub.

4.20.3 Seat. An in-tub seat or a seat at the head end of the tub shall be provided as shown in Fig. 33 and 34. The structural strength of seats and their attachments shall comply with 4.26.3. Seats shall be mounted securely and shall not slip during use.

CABO/ANSI A117.1-1992

4.16.6* Mirrors. Mirrors, mounted above lavatories or sinks, shall have the bottom edge of the reflecting surface 38 in (965 mm) maximum above the floor. See Fig. B4.20.3.1.

Full length mirrors used in conjunction with wheelchair accessible dressing rooms shall be 18 in (455 mm) wide minimum and shall be mounted with the bottom edge 18 in

(455 mm) high maximum above the floor and the top edge 72 in (1830 mm) high minimum. Mirrors shall be located in a position affording a view to a person seated on a bench or a wheelchair, as well as to a person in a standing position.

4.21 Bathtubs

4.21.1 General. Accessible bathtubs shall comply with 4.21. Bathtubs in dwelling units shall comply with 4.33.3.4.

4.21.2 Floor Space. Clear floor space in front of bathtubs shall be 30 in by 60 in (760 mm by 1525 mm) minimum for a parallel approach and 48 in by 60 in (1220 mm by 1525 mm) minimum for a forward approach to a tub without a seat at the head of the tub. When a seat is provided at the head of the tub, the clear space shall be 30 in by 93 in (760 mm by 2360 mm) minimum. Lavatories complying with 4.10.2.1** shall be permitted at the foot end of the clear space. See Fig. B4.21.2.

[** Existing Elevators -- General]

4.21.3* Seat. A removable in-tub seat or a permanent seat at the head end of the tub shall be provided. See Fig. B4.21.2 and B4.21.4. Permanent seats located at the head of the tub shall be 15 in (380 mm) wide minimum. Seats shall be built-in or mounted securely and shall not slip during use. The structural strength of seats and their attachments shall comply with 4.24.3.

BCMC

Comments*

Exceeds regarding the 38 in. dimension.

E.

Exceeds regarding the 93 in. dimension.

TYPO: (Should be 4.20.2.1)

E.

01-03792

ADA Title III Requirements

4.20.4 Grab Bars. Grab bars complying with 4.26 shall be provided as shown in Fig. 33 and 34.

Figure 34 of the ADA Standards. Grab Bars at Bathtubs.

34(a) With Seat in Tub. At the foot of the tub, the grab bar shall be 24 in (610 mm) minimum in length measured from the outer edge of the tub. On the back wall, two grab bars are required. The grab bars mounted on the back (long) wall shall be a minimum 24 in (610 mm) in length located 12 in (305 mm) maximum from the foot of the tub and 24 in (610 mm) maximum from the head of the tub. One grab bar on the back wall shall be located 9 in (230 mm) above the rim of the tub. The other shall be 33 to 36 in (840 mm to 915 mm) above the bathroom floor. At the head of the tub, the grab bar shall be a minimum of 12 in (305 mm) in length measured from the outer edge of the tub.

34(b) With Seat at Head of Tub. At the foot of the tub, the grab bar shall be a minimum of 24 in (610 mm) in length measured from the outer edge of the tub. On the back wall, two grab bars are required. The grab bars mounted on the back wall shall be a minimum of 48 in (1220 mm) in length located a maximum of 12 in (305 mm) from the foot of the tub and a maximum of 15 in (380 mm) from the head of the tub. Heights of grab bars are as described above. No horizontal grab bar should be placed at the head of the tub.

4.20.5 Controls. Faucets and other controls complying with 4.27.4 shall be located as shown in Fig. 34.

Figure 34 of the ADA Standards. Grab Bars at Bathtubs.

Controls are required to be located in an area between the open edge and the midpoint of the tub

("offset") and to be located at the foot of the tub.
4.20.6 Shower Unit. A shower spray unit with a hose at least 60 in (1525 mm) long that can be used both as a fixed shower head and as a hand-held shower shall be provided.
4.20.7 Bathtub Enclosures. If provided, enclosures for bathtubs shall not obstruct controls or transfer from wheelchairs onto bathtub seats or into tubs. Enclosures on bathtubs shall not have tracks mounted on their rims.

CABO/ANSI A117.1-1992

4.21.4 Grab Bars. Grab bars shall comply with 4.24 and unless otherwise required shall be 33-36 in (840-915 mm) above the floor.
4.21.4.1 For bathtubs with permanent seats, a grab bar 48 in (1220 mm) long minimum shall be installed on the back wall 15 in (380 mm) maximum from the head end wall and 12 in (305 mm) maximum from the foot end wall.
4.21.4.2 For bathtubs without permanent seats, a grab bar 24 in (610 mm) long minimum shall be installed on the back wall 24 in (610 mm) maximum from the head end wall and 12 in (305 mm) maximum from the foot end wall. A grab bar 12 in (305 mm) long minimum shall be installed on the head end wall at the front edge of the tub.
4.21.4.3 For bathtubs with or without permanent seats, a grab bar 24 in (610 mm) long minimum shall be installed on the foot end wall at the front edge of the tub. On the back wall a bar of the same length as the higher bar shall be provided 9 in (230 mm) above the rim of the tub. See Fig. B4.21.4.
4.21.5 Controls. Faucets and other controls shall comply with 4.25.4. Controls shall be located between the rim of the tub and the grab bar at the foot of the tub. See Fig. B4.21.4.
4.21.6 Shower Unit. A shower spray unit shall be provided with a hose, 60 in (1525 mm) long minimum, that can be used as a fixed shower head or as a hand-held shower. If an adjustable-height shower head mounted on a vertical bar is used, the bar shall be installed so as not to obstruct the use of grab bars.
4.21.7 Bathtub Enclosures. Enclosures for bathtubs shall not obstruct controls or transfer from wheelchairs onto bathtub seats or into tubs. Enclosures shall not have tracks mounted on the bathtub rim.

BCMC
Comments*

E.
N.E. ADA Standards require the controls to be offset toward the

outside of the tub to facilitate
operation. (Shown correctly in Fig.
B4.21.4.)
E.
E.

ADA Title III Requirements

4.21 Shower Stalls.

4.21.1* General. Accessible shower stalls shall comply with 4.21.

4.21.2 Size and Clearances. Except as specified in 9.1.2, shower stall size and clear floor space shall comply with Fig. 35(a) or (b). The shower stall in Fig. 35(a) shall be 36 in by 36 in (915 mm by 915 mm). Shower stalls required by 9.1.2 shall comply with Fig. 57(a) or (b). The shower stall in Fig. 35(b) will fit into the space required for a bathtub.

Figure 35 of the ADA Standards. Shower Size and Clearances.

35(a) 36 in by 36 in (915 mm by 915 mm) Stall (Transfer Shower). The clear floor space shall be a minimum of 48 in (1220 mm) in length by a minimum of 36 in (915 mm) in width and allow for a parallel approach. The clear floor space shall extend 12 in (305 mm) beyond the shower wall on which the seat is mounted.

35(b) 30 in by 60 in (760 mm by 1525 mm) Stall (Roll-in Shower). The clear floor space alongside the shower shall be a minimum of 60 in (1220 mm) in length by a minimum of 36 in (915 mm) in width. If the controls are located on the back (long) wall, they must be a

maximum of 27 in (685 mm) from a side wall. An accessible lavatory may be located in the clear floor space at the end of the shower.

CABO/ANSI A117.1-1992

4.21.8 Rim Height. Bathtub rims shall be 17 in to 19 in (430-480 mm) measured from floor to top of rim.

4.22 Shower Stalls

4.22.1* General. Accessible shower stalls shall comply with 4.22.

4.22.2 Size and Clearances.

4.22.2.1* Transfer-Type Showers. Transfer-type shower stalls shall be 36 in by 36 in (915 mm by 915 mm) inside finished dimension with clear floor space of 36 in (915 mm) wide minimum by 48 in (1220 mm) long minimum measured from the control wall. See Fig. B4.22.2.1.

4.22.2.2* Roll-in Type Showers. Roll-in type shower stalls shall be 30 in by 60 in (760 mm by 1525 mm) inside finished dimension minimum with clear floor space of 36 in wide by 60 in long (915 mm by 1525 mm) minimum. Lavatories complying with 4.20.2.1 shall be permitted at either end of the clear space. See Fig. B4.22.2.2.

BCMC

Comments*

P.N.E. Specifying this height can make the tub difficult for some people to use. Many people cannot step over such a high tub rim and can be "trapped" in tubs. This 17-19 inch is significantly higher than the typical 14 - 16 inch tub.

E.

E. for transfer showers. However, the drawings fail to reflect that the 48 inch and 60 inch dimensions are minimums.

P.N.E. for roll-in showers. ANSI would appear to allow more than one lavatory in the clear space.

01-03794

ADA Title III Requirements

4.21.3 Seat. A seat shall be provided in shower stalls 36 in by 36 in (915 mm by 915 mm) and shall be as shown in Fig. 36. The seat shall be mounted 17 in to 19 in (430 mm to 485 mm) from the bathroom floor and shall extend the full depth of the stall. In a 36 in by 36 in (915 mm by 915 mm) shower stall, the seat shall be on the wall opposite the controls. Where a fixed seat is provided in a 30 in by 60 in minimum (760 mm by 1525 mm) shower stall, it shall be a folding type and shall be mounted on the wall adjacent to the controls as shown in Fig. 57. The structural strength of seats and their attachments shall comply with 4.26.3.

Figure 36 of the ADA Standards. Shower Seat Design.

An L-shaped shower seat shall be provided, extending the full depth of the stall. The seat shall be

located 1-1/2 in (38 mm) maximum from the wall. The front of the seat (nearest to the opening) shall extend a maximum 16 in (330 mm) from the wall. The back of the seat (against the back wall) shall extend a maximum of 23 in (582 mm) from the side wall and shall be a maximum of 15 in (305 mm) deep.

4.21.4 Grab Bars. Grab bars complying with 4.26 shall be provided as shown in Fig. 37.

Figure 37 of the ADA Standards. Grab Bars at Shower Stalls.

37(a) 36 in by 36 in (915 mm by 915 mm) Transfer Stall. An L-shaped grab bar shall be provided, located along the full depth of the control wall (opposite the seat) and halfway (18 in (455 mm)) along the back wall. The grab bar shall be mounted 33-36 in (840-915 mm) above the shower floor.

37(b) 30 in by 60 in (760 mm by 1525 mm) Roll-in Stall. A U-shaped grab bar that wraps around the stall shall be provided. The grab bar shall be 33-36 in (840-915 mm) high.

CABO/ANSI A117.1-1992

4.22.3* Seat. A folding or non-folding seat shall be provided in transfer-type shower stalls and shall be L-shaped as shown in Fig. B4.22.3. The seat shall be mounted 17 in to 19 in (430 mm to 485 mm) above the bathroom floor and shall extend the full depth of the stall. The rear edge of the seat shall be 2 1/2 in (64 mm) maximum and the front edge 15 to 16 in (380 to 405 mm) from the seat wall. The "L" portion of the seat shall be 1 1/2 in (38 mm) maximum from the back wall and be 14 to 15 in (355 to 380 mm) from the back wall to the inner edge of the seat. The front edge of the "L" shall be 22 to 23 in (560 to 585 mm) from the seat wall. The seat shall be on the wall opposite the controls. The structural strength of seats and their attachments shall comply with 4.24.3.

4.22.4 Grab Bars. Grab bars shall comply with 4.24.

4.22.4.1 Transfer Type Showers. Grab bar shall be extended across the control wall and back wall to a point 18 in (455 mm) from the control wall. See Fig. B4.22.4(a).

4.22.4.2 Roll-in Type Showers. Grab bars shall be provided on the three walls of the shower. See Fig. B4.22.4(b).

BCMC

Comments*

N.E. This section should address folding seats in roll-in showers or it

can't be scoped. Also, a 2 1/2 inch gap along the back edge of the seat is far in excess of the 1 1/2 inches allowed in ADA Standards. It is easier for a hand to fall through a 2 1/2 inch space, which is a problem if you are leaning on that hand to transfer. Also, once having fallen through, an arm may get stuck between the seat and the wall.
E. But see discussion at ADA 9.1.2.

ADA Title III Requirements
4.21.5 Controls. Faucets and other controls complying with 4.27.4 shall be located as shown in Fig. 37. In shower stalls 36 in by 36 in (915 mm by 915 mm), all controls, faucets, and the shower unit shall be mounted on the side wall opposite the seat.
Figure 37 of the ADA Standards. Grab Bars at Shower Stalls.

37(a) 36 in by 36 in (915 mm by 915 mm) Transfer Stall. The controls shall be placed in an area between 38-48 in (965-1220 mm) above the floor. The controls and spray unit shall be within 18 in (455 mm) of the front of the shower.

37(b) 30 in by 60 in (760 mm by 1525 mm) Roll-in Stall. The controls shall be placed in an area between 38-48 in (965-1220 mm) above the floor. Controls shall be located on the back (long) wall 27 in (685 mm) from the side wall. The shower head and control area may be located on the back wall or on either side wall.

4.21.6 Shower Unit. A shower spray unit with a hose at least 60 in (1525 mm) long that can be used both as a fixed shower head and as a hand-held shower shall be provided.

EXCEPTION: In unmonitored facilities where vandalism is a consideration, a fixed shower head mounted at 48 in (1220 mm) above the shower floor may be used in lieu of a hand-held shower head.

4.21.7 Curbs. If provided, curbs in shower stalls 36 in by 36 in (915 mm by 915 mm) shall be no higher than 1/2 in (13 mm). Shower stalls that are 30 in by 60 in (760 mm by 1525 mm) minimum shall not have curbs.

4.21.8 Shower Enclosures. If provided, enclosures for shower stalls shall not obstruct controls or obstruct transfer from wheelchairs onto shower seats.

CABO/ANSI A117.1-1992

4.22.5 Controls. Faucets and other controls shall comply with 4.25.4. Controls in roll-in showers shall be located on the back wall 38-48 in (965-1220 mm) above the shower floor, as shown in Fig. B4.22.4(b). In transfer-type shower stalls, all controls, faucets, and the shower unit shall be mounted on the side wall opposite the seat 38 in to 48 in (965-1220 mm) above the shower floor. See Fig. B4.22.4(a).

4.22.6* Shower Unit. A shower spray unit shall be provided with a hose 60 in (1525 mm) long minimum that can be used as a fixed shower head or as a hand-held shower. In transfer type showers, the controls and shower unit shall be located on the control wall within 15 in (380 mm), left or right, of the centerline of the seat. In roll-in type showers, shower spray units mounted on the back wall shall be mounted 27 in (685 mm) maximum from the side wall. If an adjustable-height shower head mounted on a vertical bar is used, the bar shall be installed so as not to obstruct the use of grab bars.

4.22.7 Thresholds. Thresholds in shower stalls shall be 1/2 in (13 mm) high maximum in accordance with 4.5.

4.22.8 Shower Enclosures. Enclosures for shower stalls shall not obstruct controls or obstruct transfer from wheelchairs onto shower seats.

BCMC Comments*

E.

N.E. Allowing controls to be either left or right of centerline makes it very difficult to turn on water and adjust temperature BEFORE making transfer.

E.

E.

ADA Title III Requirements

4.22 Toilet Rooms.

4.22.1 Minimum Number. Toilet facilities required to be accessible by 4.1 shall comply with 4.22. Accessible toilet rooms shall be on an accessible route.

4.22.2 Doors. All doors to accessible toilet rooms shall comply with 4.13. Doors shall not swing into the clear floor space required for any fixture.

4.22.3* Clear Floor Space. The accessible fixtures and controls required in 4.22.4, 4.22.5, 4.22.6, and 4.22.7 shall be on an accessible route. An unobstructed turning space complying with 4.2.3 shall be provided within an accessible toilet room. The clear floor space at fixtures and controls, the accessible route, and the turning space may overlap.

CABO/ANSI A117.1-1992

4.16 Toilet, Bath, Dressing and Shower Rooms and Bathing Facilities.

4.16.1 General. Accessible toilet rooms, bathrooms, bathing facilities, dressing rooms and shower rooms shall comply with 4.16.

4.16.2* Doors. All doors to accessible toilet rooms, bathrooms, bathing facilities, and shower rooms shall comply with 4.13. Doors shall not swing into the clear floor space required for any fixture unless the toilet or bathroom is for individual use only, or a clear floor space complying with 4.2.4.1 is provided beyond the arc of the door swing within the room.

4.16.3* Clear Floor Space. Accessible fixtures and controls shall comply with 4.17 through 4.22. An unobstructed turning space complying with 4.2.3 and 4.2.4.1 shall be provided within an accessible room. The clear floor spaces at fixtures and operable parts, the accessible route, and the turning space shall be permitted to overlap.

BCMC

3.1.2 At least one accessible route shall connect accessible spaces, elements, facilities and buildings that are on the same site. Where only one accessible route is provided, it shall not pass through kitchens, storage rooms, restrooms, closets or similar spaces.

6.1.1 Toilet rooms and bathing facilities shall be accessible. At least one of each type fixture or element in each accessible toilet room and bathing facility shall be accessible.

EXCEPTIONS:

1. A toilet room or bathing facility for a single occupant and not for common or public use shall be permitted to be

adaptable.
2. Dwelling units, guest rooms and patient toilet rooms, unless required by 5.0 to be accessible or adaptable.

Comments*

E.
P.N.E. This appears to raise the risk that people could be injured by the door swing and a dead power chair could block the door. Even if the toilet room is used by only one person at a time, he/she may not be able to close the door behind him/her after entering.
However, when considered with all the clear space and maneuvering space and turning space requirements that exceed the ADA, it may be acceptable, as long as there is no relaxation of requirements for maneuvering space at door or of extra large clear floor space at toilet. Need to confirm our understanding of the other requirements.
This is still N.E. for individual use bath and toilet rooms because they are exempt from additional space requirements.
E.

ADA Title III Requirements

4.22.4 Water Closets. If toilet stalls are provided, then at least one shall be a standard toilet stall complying with 4.17; where 6 or more stalls are provided, in addition to the stall complying with 4.17.3, at least one stall 36 in (915 mm) wide with an outward swinging, self-closing door and parallel grab bars complying with Fig. 30(d) and 4.26 shall be provided. Water closets in such stalls shall comply with 4.16. If water closets are not in stalls, then at least one shall comply with 4.16.

4.22.5 Urinals. If urinals are provided, then at least one shall comply with 4.18.

4.22.6 Lavatories and Mirrors. If lavatories and mirrors are provided, then at least one of each shall comply with 4.19.

4.22.7 Controls and Dispensers. If controls, dispensers, receptacles, or other equipment are provided, then at least one of each shall be on an accessible route and shall comply with 4.27.

4.23 Bathrooms, Bathing Facilities, and Shower Rooms.

4.23.1 Minimum Number. Bathrooms, bathing facilities, or shower rooms required to be accessible by 4.1 shall comply with 4.23 and shall be on an accessible route.

CABO/ANSI A117.1-1992

4.18.4* Ambulatory Accessible Stalls. Ambulatory accessible stalls shall be 36 in (915 mm) wide maximum and 60 in (1525 mm) deep minimum. See Fig. B4.18.3.2.

4.16.6* Mirrors. Mirrors, mounted above lavatories or sinks, shall have the bottom edge of the reflecting surface 38 in (965 mm) maximum above the floor. See Fig. B4.20.3.1. Full length mirrors used in conjunction with wheelchair accessible dressing rooms shall be 18 in (455 mm) wide minimum and shall be mounted with the bottom edge 18 in (455 mm) high maximum above the floor and the top edge 72 in (1830 mm) high minimum. Mirrors shall be located in a position affording a view to a person seated on a bench or a wheelchair, as well as to a person in a standing position.

4.16.4 Controls and Dispensers. Accessible operable parts, dispensers, receptacles, or other equipment shall comply with 4.25.

4.16 Toilet Rooms, Bathrooms, Bathing Facilities, and Shower Rooms

4.16.1 General. Accessible toilet rooms, bathrooms, bathing facilities, and shower rooms shall comply with 4.16.

BCMC

6.1.2 Where toilet stalls are provided in a toilet room or bathing facility, a wheelchair accessible toilet stall shall be provided. Where six or more toilet stalls are provided in a toilet room or bathing facility, at least one ambulatory accessible stall shall be provided in addition to the wheelchair accessible stall.

6.1.1 Toilet rooms and bathing facilities shall be accessible. At least one of each type fixture or element in each accessible toilet room and bathing facility shall be accessible.

EXCEPTIONS:

1. A toilet room or bathing facility for a single occupant and not for common or public use shall be permitted to be adaptable.

2. Dwelling units, guest rooms and patient toilet rooms, unless required by 5.0 to be accessible or adaptable.

6.1.1 Toilet rooms and bathing facilities shall be accessible. At least one of each type fixture or element in each accessible toilet room and bathing facility shall be accessible.

EXCEPTIONS:

1. A toilet room or bathing facility for a single occupant and not for common or public use shall be permitted to be adaptable.

2. Dwelling units, guest rooms and patient toilet rooms, unless required by 5.0 to be accessible or adaptable.

6.1.1 Toilet rooms and bathing facilities shall be accessible. At least one of each type fixture or element in each accessible toilet room and bathing facility shall be accessible.

EXCEPTIONS:

1. A toilet room or bathing facility for a single occupant and not for common or public use shall be permitted to be adaptable.

2. Dwelling units, guest rooms and patient toilet rooms, unless required by 5.0 to be accessible or adaptable.

3.1.2 At least one accessible route shall connect accessible spaces, elements, facilities and buildings that are on the same site. Where only one accessible route is provided, it shall not pass through kitchens, storage rooms, restrooms, closets or similar spaces.

Comments*

N.E. 4.18.4 does not require an outward swinging, self-closing door or establish a toilet seat height requirement as required by ADA Standards. 4.18.4 requires 36" maximum stall width where ADA requires 36" absolute width.
E.
E.
E.
E.

83

ADA/ANSI/BCMC Requirements - October 13, 1995

01-03798

ADA Title III Requirements

4.23.2 Doors. Doors to accessible bathrooms shall comply with 4.13. Doors shall not swing into the floor space required for any fixture.

4.23.3* Clear Floor Space. The accessible fixtures and controls required in 4.23.4, 4.23.5, 4.23.6, 4.23.7, 4.23.8, and 4.23.9 shall be on an accessible route. An unobstructed turning space complying with 4.2.3 shall be provided within an accessible bathroom. The clear floor spaces at fixtures and controls, the accessible route, and the turning space may overlap.

4.23.4 Water Closets. If toilet stalls are provided, then at least one shall be a standard toilet stall complying with 4.17; where 6 or more stalls are provided, in addition to the stall complying with 4.17.3, at least one stall 36 in (915 mm) wide with an outward swinging, self-closing door and parallel grab bars complying with Fig. 30(d) and 4.26 shall be provided. Water closets in such stalls shall comply with 4.16. If water closets are not in stalls, then at least one shall comply with 4.16.

4.23.5 Urinals. If urinals are provided, then at least one shall comply with 4.18.

4.23.6 Lavatories and Mirrors. If lavatories and mirrors are provided, then at least one of each shall comply with 4.19.

CABO/ANSI A117.1-1992

4.16.2* Doors. All doors to accessible toilet rooms, bathrooms, bathing facilities, and shower rooms shall comply with 4.13. Doors shall not swing into the clear floor space required for any fixture unless the toilet or bathroom is for individual use only, or a clear floor space complying with 4.2.4.1 is provided beyond the arc of the door swing within the room.

4.16.3* Clear Floor Space. Accessible fixtures and controls shall comply with 4.17 through 4.22. An unobstructed turning space complying with 4.2.3 and 4.2.4.1 shall be provided within an accessible room. The clear floor spaces at fixtures and controls, the accessible route, and the turning space shall be permitted to overlap.
4.18.4* Ambulatory Accessible Stalls. Ambulatory accessible stalls shall be 36 in (915 mm) wide maximum and 60 in (1525 mm) deep minimum. See Fig. B4.18.4.
4.16.6* Mirrors. Mirrors, mounted above lavatories or sinks, shall have the bottom edge of the reflecting surface 38 in (965 mm) maximum above the floor. See Fig. B4.20.3.1. Full length mirrors used in conjunction with wheelchair accessible dressing rooms shall be 18 in (455 mm) wide minimum and shall be mounted with the bottom edge 18 in (455 mm) high maximum above the floor and the top edge 72 in (1830 mm) high minimum. Mirrors shall be located in a position affording a view to a person seated on a bench or a wheelchair, as well as to a person in a standing position.

BCMC

3.1.2 At least one accessible route shall connect accessible spaces, elements, facilities and buildings that are on the same site. Where only one accessible route is provided, it shall not pass through kitchens, storage rooms, restrooms, closets or similar spaces.
6.1.2 Where toilet stalls are provided in a toilet room or bathing facility, a wheelchair accessible toilet stall shall be provided. Where six or more toilet stalls are provided in a toilet room or bathing facility, at least one ambulatory accessible stall shall be provided in addition to the wheelchair accessible stall.
6.1.1 Toilet rooms and bathing facilities shall be accessible. At least one of each type fixture or element in each accessible toilet room and bathing facility shall be accessible.
EXCEPTIONS:
1. A toilet room or bathing facility for a single occupant and not for common or public use shall be permitted to be adaptable.
2. Dwelling units, guest rooms and patient toilet rooms, unless required by 5.0 to be accessible or adaptable.
6.1.1 Toilet rooms and bathing facilities shall be accessible. At least one of each type fixture or element in each accessible toilet room and bathing facility shall be accessible.
EXCEPTIONS:
1. A toilet room or bathing facility for a single occupant

and not for common or public use shall be permitted to be adaptable.
2. Dwelling units, guest rooms and patient toilet rooms, unless required by 5.0 to be accessible or adaptable.

Comments*

E. (But see above at ADA 4.22.2)
E.
ANSI N.E. 4.18.4 does not require self-closing door or establish toilet seat height as required in the ADA Standards. ANSI requires 36 inch maximum width, while ADA requires 36 inches absolute.
BCMC N.E. - Need reference to accessible water closet.
E.
E.

ADA Title III Requirements

4.23.7 Controls and Dispensers. If controls, dispensers, receptacles, or other equipment are provided, then at least one of each shall be on an accessible route and shall comply with 4.27.
4.23.8 Bathing and Shower Facilities. If tubs or showers are provided, then at least one accessible tub that complies with 4.20 or at least one accessible shower that complies with 4.21 shall be provided.
4.23.9* Medicine Cabinets. If medicine cabinets are provided, at least one shall be located with a usable shelf no higher than 44 in (1120 mm) above the floor space. The floor space shall comply with 4.2.4.
4.24 Sinks.
4.24.1 General. Sinks required to be accessible by 4.1 shall comply with 4.24.
4.24.2 Height. Sinks shall be mounted with the counter or rim no higher than 34 in (865 mm) above the finish floor.

CABO/ANSI A117.1-1992

4.16.4 Controls and Dispensers. Accessible controls, dispensers, receptacles, or other equipment shall comply with 4.25.
4.16.5* Medicine Cabinets. Accessible medicine cabinets shall be located with a usable shelf 44 in (1120 mm)

maximum above the floor. The floor space shall comply with 4.2.4.

4.20 Lavatories and Sinks

4.20.1 General. Accessible lavatory fixtures, sinks, vanities, and built-in lavatories shall comply with 4.20.

4.20.2 Height

4.20.2.2 Sinks. Sinks shall be mounted with the counter or rim 34 in (865 mm) maximum above the floor. Sinks shall be 6 1/2 in (165 mm) deep maximum. Sinks in kitchens of accessible dwelling units shall comply with 4.33.4.5.

BCMC

6.1.1 Toilet rooms and bathing facilities shall be accessible. At least one of each type fixture or element in each accessible toilet room and bathing facility shall be accessible.

EXCEPTIONS:

1. A toilet room or bathing facility for a single occupant and not for common or public use shall be permitted to be adaptable.

2. Dwelling units, guest rooms and patient toilet rooms, unless required by 5.0 to be accessible or adaptable.

6.1.1 Toilet rooms and bathing facilities shall be accessible. At least one of each type fixture or element in each accessible toilet room and bathing facility shall be accessible.

EXCEPTIONS:

1. A toilet room or bathing facility for a single occupant and not for common or public use shall be permitted to be adaptable.

2. Dwelling units, guest rooms and patient toilet rooms, unless required by 5.0 to be accessible or adaptable.

6.1.1 Toilet rooms and bathing facilities shall be accessible. At least one of each type fixture or element in each accessible toilet room and bathing facility shall be accessible.

EXCEPTIONS:

1. A toilet room or bathing facility for a single occupant and not for common or public use shall be permitted to be adaptable.

2. Dwelling units, guest rooms and patient toilet rooms, unless required by 5.0 to be accessible or adaptable.

6.1.1 Toilet rooms and bathing facilities shall be accessible. At least one of each type fixture or element in each accessible toilet room and bathing facility shall be accessible.

EXCEPTIONS:

1. A toilet room or bathing facility for a single occupant

and not for common or public use shall be permitted to be adaptable.
2. Dwelling units, guest rooms and patient toilet rooms, unless required by 5.0 to be accessible or adaptable.

Comments*

E.
E.
E.
E.
E. Except for error in 4.33.4.5 that calls for fixed counter height at 34 inches MINIMUM.

ADA Title III Requirements

4.24.3 Knee Clearance. Knee clearance that is at least 27 in (685 mm) high, 30 in (760 mm) wide, and 19 in (485 mm) deep shall be provided underneath sinks.
4.24.4 Depth. Each sink shall be a maximum of 6-1/2 in (165 mm) deep.
4.24.5 Clear Floor Space. A clear floor space at least 30 in by 48 in (760 mm by 1220 mm) complying with 4.2.4 shall be provided in front of a sink to allow forward approach. The clear floor space shall be on an accessible route and shall extend a maximum of 19 in (485 mm) underneath the sink (see Fig. 32).
4.24.6 Exposed Pipes and Surfaces. Hot water and drain pipes exposed under sinks shall be insulated or otherwise configured so as to protect against contact. There shall be no sharp or abrasive surfaces under sinks.

4.24.7 Faucets. Faucets shall comply with 4.27.4. Lever-operated, push-type, touch-type, or electronically controlled mechanisms are acceptable designs.
4.25 Storage.
4.25.1 General. Fixed storage facilities such as cabinets, shelves, closets, and drawers required to be accessible by 4.1 shall comply with 4.25.
4.25.2 Clear Floor Space. A clear floor space at least 30 in by 48 in (760 mm by 1220 mm) complying with 4.2.4 that allows either a forward or parallel approach by a person using a wheelchair shall be provided at accessible storage facilities.

CABO/ANSI A117.1-1992

4.20.3 Clearances.
4.20.3.1 Knee and Toe Clearances. Fixtures shall extend 17 in (430 mm) minimum from the wall. Clear knee space shall be provided in accordance with 4.2.4.3. Clearance between the bottom of the front edge of the apron and the floor shall be 29 in (735 mm) minimum. The clear knee space shall be 8 in (205 mm) in depth minimum at 27 in (685 mm) minimum above the floor or ground and 11 in (280 mm) in depth minimum at 9 in (230 mm) minimum above the floor or ground. Clear toe space shall be provided in accordance with 4.2.4.3. The dip of the overflow shall be ignored when checking the clearances. See Fig. B4.20.3.1.
4.20.2.2 Sinks. Sinks shall be mounted with the counter or rim 34 in (865 mm) maximum above the floor. Sinks shall be 6 1/2 in (165 mm) deep maximum. Sinks in kitchens of accessible dwelling units shall comply with 4.33.4.5.
4.20.3.2 Clear Floor Space. Clear floor space shall comply with 4.2.4. Clear floor space, 30 in by 48 in (760 mm by 1220 mm) minimum, shall be provided in front of a lavatory or sink to allow a forward approach and shall extend 19 in (485 mm) maximum under the lavatory or sink. See Fig. B4.20.3.2.
4.20.4* Exposed Pipes and Surfaces. Water supply and drain pipes under lavatories or sinks shall be insulated or otherwise configured to protect against contact, as shown in Fig. B4.20.3.1. There shall be no sharp or abrasive surfaces under lavatories and sinks.
4.20.5* Faucets. Faucets shall comply with 4.25.4. Self-closing faucets, when used, shall remain open for 10 seconds minimum.
4.23 Storage
4.23.1 General. Accessible storage facilities including cabinets, shelves, closets, lockers and drawers shall

comply with 4.23.
4.23.2 Clear Floor Space. A clear floor space complying with 4.2.4 that allows either a forward or parallel approach by a person using a wheelchair shall be provided at accessible storage facilities.

BCMC Comments*

N.E. ADA requires 19 inch depth of clear floor space at sink, not 17-19 inches.

E.
E.
E.
E.
E.
E.

ADA Title III Requirements

4.25.3 Height. Accessible storage spaces shall be within at least one of the reach ranges specified in 4.2.5 and 4.2.6 (see Fig. 5 and Fig. 6). Clothes rods or shelves shall be a maximum of 54 in (1370 mm) above the finish floor for a side approach. Where the distance from the wheelchair to the clothes rod or shelf exceeds 10 in (255 mm) (as in closets without accessible doors) the height

and depth to the rod or shelf shall comply with Fig. 38(a) and Fig. 38(b).

Figure 38 of the ADA Standards. Storage Shelves and Closets.

38(a) Shelves. If the clear floor space allows a parallel approach by a person in a wheelchair and the distance between the wheelchair and the shelf exceeds 10 in (255 mm), the maximum high side reach shall be 48 in (1220 mm) above the floor and the low side reach shall be a minimum of 9 in (230 mm) above the floor. The shelves can be adjustable. The maximum distance from the user to the middle shelf shall be 21 in (535 mm).

38(b) Closets. If the clear floor space allows a parallel approach by a person in a wheelchair and the distance between the wheelchair and the clothes rod exceeds 10 in (255 mm), the maximum high side reach shall be 48 in (1220 mm). The maximum distance from the user to the clothes rod shall be 21 in (535 mm).

4.25.4 Hardware. Hardware for accessible storage facilities shall comply with 4.27.4. Touch latches and U-shaped pulls are acceptable.

4.26 Handrails, Grab Bars, and Tub and Shower Seats.

4.26.1* General. All handrails, grab bars, and tub and shower seats required to be accessible by 4.1, 4.8, 4.9, 4.16, 4.17, 4.20 or 4.21 shall comply with 4.26.

CABO/ANSI A117.1-1992

4.23.3 Height. Accessible storage spaces shall be within at least one of the reach ranges specified in 4.2.5 and 4.2.6. Clothes rods shall be 54 in (1370 mm) maximum above the floor. See Fig. B4.23.

4.23.4 Hardware. Hardware for accessible storage facilities shall comply with 4.25.4.

4.24 Grab Bars, and Tub and Shower Seats

4.24.1* General. Grab bars and tub and shower seats in accessible toilet or bathing facilities shall comply with 4.24.

BCMC

Comments*

N.E. ANSI text does not include the 10" limitation on side reach height for clothes rods. ANSI also removes the 21" max reach limitation in ADA Standards Fig. 38.

E.

E.

ADA Title III Requirements

4.26.2* Size and Spacing of Grab Bars and Handrails. The diameter or width of the gripping surfaces of a handrail or grab bar shall be 1-1/4 in to 1-1/2 in (32 mm to 38 mm), or the shape shall provide an equivalent gripping surface. If handrails or grab bars are mounted adjacent to a wall, the space between the wall and the grab bar shall be 1-1/2 in (38 mm) (see Fig. 39(a), (b), (c), and (e)). Handrails may be located in a recess if the recess is a maximum of 3 in (75 mm) deep and extends at least 18 in (455 mm) above the top of the rail (see Fig. 39(d)).

CABO/ANSI A117.1-1992

4.24.2 Grab Bars.

4.24.2.1 Size and Spacing of Grab Bars. The diameter or width of the gripping surfaces of a grab bar shall be 1 1/4 - 1 1/2 in (32-38 mm), or the shape shall provide an equivalent gripping surface. If grab bars are mounted adjacent to a wall, the space between the wall and the grab bar shall be
1 1/2 in (38 mm). See Fig. B4.24.2.1.

4.24.2.2 Position of Grab Bars. Grab bars shall be mounted in a horizontal position, 33-36 in (840-915 mm) above the floor, except where a supplemental grab bar is installed in relation to a fixture rim or surface.

4.24.2.3 Surface Hazards. Grab bars and any wall or other surfaces adjacent to grab bars shall be free of sharp or abrasive elements. Edges shall have a radius of 1/8 in (3 mm) minimum.

4.24.2.4 Fittings. Grab bars shall not rotate within their fittings.

4.24.2.5* Method of Mounting. Grab bars shall be mounted in any manner that provides a gripping surface at the locations specified in this standard and that does not obstruct the required clear floor space.

4.3.10.7 Handrails shall have a circular cross section with an outside diameter of 1 1/4 in (32 mm) minimum and 2 in (51 mm) maximum, or shall provide equivalent graspability in accordance with the following requirement. Handrails with other shapes shall be permitted provided they have a perimeter dimension of 4 in (100 mm) minimum and 6 1/4 in (160 mm) maximum, and provided their largest cross-section dimension is 2 1/4 in (57 mm) maximum.

BCMC

16.4.2 Handrails shall have either a circular cross section with a diameter of 1 1/4 inches to 2 inches, or shall provide equivalent graspability. Handrails with other shapes shall be permitted if they have a perimeter dimension of at least 4 inches but not greater than 6 1/4

inches and if their largest cross section dimension does not exceed 2 1/4 inches. Edges shall have a minimum radius of 1/8 inch.

Comments*

N.E. ANSI does not address grab bars in a recess. They are, therefore, allowed with no special constraints or design requirements. Grab bars in a recess may be unusable.

E.

ADA Title III Requirements

4.26.3 Structural Strength. The structural strength of grab bars, tub and shower seats, fasteners, and mounting devices shall meet the following specification:

(1) Bending stress in a grab bar or seat induced by the maximum bending moment from the application of 250 lbf (1112N) shall be less than the allowable stress for the material of the grab bar or seat.

(2) Shear stress induced in a grab bar or seat by the application of 250 lbf (1112N) shall be less than the allowable shear stress for the material of the grab bar or seat. If the connection between the grab bar or seat and its mounting bracket or other support is considered to be fully restrained, then direct and torsional shear stresses shall be totaled for the combined shear stress, which shall not exceed the allowable shear stress.

(3) Shear force induced in a fastener or mounting device from the application of 250 lbf (1112N) shall be less than the allowable lateral load of either the fastener or mounting device or the supporting structure, whichever is the smaller allowable load.

(4) Tensile force induced in a fastener by a direct tension force of 250 lbf (1112N) plus the maximum moment from the application of 250 lbf (1112N) shall be less than the allowable withdrawal load between the fastener and the supporting structure.

(5) Grab bars shall not rotate within their fittings.

4.26.4 Eliminating Hazards. A handrail or grab bar and any wall or other surface adjacent to it shall be free of any sharp or abrasive elements. Edges shall have a minimum radius of 1/8 in (3.2 mm).

4.27 Controls and Operating Mechanisms.

4.27.1 General. Controls and operating mechanisms required to be accessible by 4.1 shall comply with 4.27.

4.27.2 Clear Floor Space. Clear floor space complying with 4.2.4 that allows a forward or a parallel approach by a person using a wheelchair shall be provided at controls, dispensers, receptacles, and other operable equipment.

CABO/ANSI A117.1-1992

4.24.3 Structural Strength. Allowable stresses in bending,

shear and tension shall not be exceeded for materials used when a vertical or horizontal force of 250 lb (1112N) is applied at any point on the grab bar, seat, fastener, mounting device or supporting structure.

4.24.2.4 Fittings. Grab bars shall not rotate within their fittings.

4.24.2.3 Surface Hazards. Grab bars and any wall or other surfaces adjacent to grab bars shall be free of sharp or abrasive elements. Edges shall have a radius of 1/8 in (3 mm) minimum.

4.25 Operable Parts of Equipment and Appliances

4.25.1* General. Operable parts of equipment and appliances in accessible spaces, along accessible routes, or as part of accessible elements shall comply with 4.25.

4.25.2 Clear Floor Space. Clear floor space complying with 4.2.4 that allows a forward or a parallel approach by a person using a wheelchair shall be provided at operable parts of equipment and appliances.

BCMC

6.8 Controls, Operating Mechanisms and Hardware

Controls, operating mechanisms and hardware, including switches that control lighting, ventilation or electrical outlets, in accessible spaces, along accessible routes or as parts of accessible elements, shall be accessible.

Comments*

E.

E.

E.

E.

ADA Title III Requirements

4.27.3* Height. The highest operable part of controls, dispensers, receptacles, and other operable equipment shall be placed within at least one of the reach ranges specified in 4.2.5 and 4.2.6. Electrical and communications system receptacles on walls shall be mounted no less than 15 in (380 mm) above the floor.

EXCEPTION: These requirements do not apply where the use of special equipment dictates otherwise or where electrical and communications systems receptacles are not normally intended for use by building occupants.

4.27.4 Operation. Controls and operating mechanisms shall be operable with one hand and shall not require tight grasping, pinching, or twisting of the wrist. The force required to activate controls shall be no greater than 5 lbf (22.2 N).

4.28 Alarms.

4.28.1 General. Alarm systems required to be accessible by 4.1 shall comply with 4.28. At a minimum, visual signal appliances shall be provided in buildings and facilities in each of the following areas: restrooms and any other general usage areas (e.g., meeting rooms), hallways, lobbies, and any other area for common use.

4.28.2* Audible Alarms. If provided, audible emergency alarms shall produce a sound that exceeds the prevailing equivalent sound level in the room or space by at least 15 dbA or exceeds any maximum sound level with a duration of 60 seconds by 5 dbA, whichever is louder. Sound levels for alarm signals shall not exceed 120 dbA.

CABO/ANSI A117.1-1992

4.25.3* Height. Operable parts of equipment and appliances shall be placed within one or more of the reach

ranges specified in 4.2.5 and 4.2.6.
Exception: Electrical and communications-system receptacles on walls shall be mounted 15 in (380 mm) minimum above the floor unless the use of special equipment requires location at a different position.
4.25.4 Operation. Operable parts of equipment and appliances shall be operable with one hand and shall not require tight grasping, pinching, or twisting of the wrist. The force required to activate controls shall be 5 lb (22.2 N) maximum.
4.26 Alarms
4.26.1* General. Accessible emergency warning systems shall include both audible alarm signals complying with 4.26.2 and visible signaling appliance complying with 4.26.3.
4.26.2* Audible Alarm Signals. Audible emergency alarms shall produce a sound that exceeds the prevailing equivalent sound level in the room or space by 15 decibels minimum, or exceeds any maximum sound level with a duration of 30 seconds minimum by 5 decibels minimum, whichever is louder. Sound levels for alarm signals shall be 120 decibels maximum.

BCMC

19.0 ALARM SYSTEMS
Required fire protective signaling systems shall include visible alarm-indicating appliances in public and common areas.

Comments*

E.
E.
N.E. Addresses only "required" systems. ADA says, "if provided. . ." Also, no minimum requirement for locations of visual alarms except "public and common areas."
E.

ADA Title III Requirements

4.28.3* Visual Alarms. Visual alarm signal appliances shall be integrated into the building or facility alarm system. If single station audible alarms are provided then single station visual alarm signals shall be provided. Visual alarm signals shall have the following minimum photometric and location features:

(1) The lamp shall be a xenon strobe type or equivalent.

(2) The color shall be clear or nominal white (i.e., unfiltered or clear filtered white light).

(3) The maximum pulse duration shall be two-tenths of one second (0.2 sec) with a maximum duty cycle of 40 percent. The pulse duration is defined as the time interval between initial and final points of 10 percent of maximum signal.

(4) The intensity shall be a minimum of 75 candela.

(5) The flash rate shall be a minimum of 1 Hz and a maximum of 3 Hz.

(6) The appliance shall be placed 80 in (2030 mm) above the highest floor level within the space or 6 in (152 mm) below the ceiling, whichever is lower.

(7) In general, no place in any room or space required to have a visual signal appliance shall be more than 50 ft (15 m) from the signal (in the horizontal plane). In large rooms

and spaces exceeding 100 ft (30 m) across, without obstructions 6 ft (2 m) above the finish floor, such as auditoriums, devices may be placed around the perimeter, spaced a maximum 100 ft (30 m) apart, in lieu of suspending appliances from the ceiling.

(8) No place in common corridors or hallways in which visual alarm signaling appliances are required shall be more than 50 ft (15 m) from the signal.

CABO/ANSI A117.1-1992

4.26.3* Visible Signaling Appliances. Visible signaling appliances shall have the following photometric and location features.

4.26.3.1 General Features

4.26.3.1.1 Lamp shall be xenon strobe type producing a clear or nominal white light.

4.26.3.1.2 Flash rate shall be 0.33 Hz minimum and 3 Hz maximum.

4.26.3.1.3 Wall mounted visible signaling appliances shall be 80 in (2030 mm) minimum and 96 in (2440 mm) maximum above the floor.

Exception: Portable visible signaling appliances which incorporate smoke detectors shall be wall mounted 4 in (100 mm) minimum and 12 in (305 mm) maximum from the ceiling.

4.26.3.2 Awake Mode

4.26.3.2.1 For rooms and similar spaces that are not intended for sleeping, visible signaling appliances shall be located in accordance with Table 4.26.3.2.1. The separation between adjacent appliances shall not exceed 100 ft (30 m). The minimum square room size contained in Table 4.26.3.2.1 that entirely encompasses the area of the room, or subdivision of the room into multiple square areas, shall be used to determine the required number and intensity of appliances in accordance with Table 4.26.3.2.1.

4.26.3.2.2 For corridors 20 ft (6 m) wide maximum, visible signaling appliances shall be located in accordance with Table 4.26.3.2.2. In these corridors, visible signaling appliances shall be located 15 ft (5 m) maximum from the end of the corridor, with a separation of 100 ft (30 m) maximum between appliances. For corridors more than 20 ft (6 m) wide, visible signaling appliances shall be located in accordance with Table 4.26.3.2.1.

BCMC

Comments*

N.E. No pulse duration maximum.

1/3 Hz is lower than permitted by ADA.

ADA requires 6" minimum from the ceiling. ANSI's 4 inch minimum from ceiling allowed in exception will allow fixture to be more easily obscured by smoke.
N.E. The lower intensity (.33 Hz rather than 1 hz in ADA) allowed by ANSI plus the placement requirements could easily result in too many appliances too close together. These overlapping flashes would increase the flash rate, which could potentially trigger seizures.

ADA Title III Requirements
CABO/ANSI A117.1-1992

4.26.3.2.3 The light output for visible signaling appliances shall conform to Table 4.26.3.2.1 or 4.26.3.2.2, depending on room size or corridor length. For corridors, visible signaling appliances shall be rated 15 candela (cd) minimum.
4.26.3.2.4 The signal shall be visible, directly or by reflection, from any point in the room or space.

Table 4.26.3.2.1
Room spacing allocation

Max room size ft	One light cd	Two lights opposite walls cd	One light per wall cd
20 x 20	15	-	-
30 x 30	30	15	-

40 x 40	60	30	15
50 x 50	95	60	30
60 x 60	135	95	30
70 x 70	185	110	60
80 x 80	-	140	95
90 x 90	-	180	95
100 x 100	-	-	95
110 x 110	-	-	135
120 x 120	-	-	160
130 x 130	-	-	185

Note: The values in column two for "One light" are based on locating the visible signaling appliance at the half-way distance of the longest wall. In square rooms, the "Maximum Room Size" shall be determined by: (a) The distance from the appliance to the farthest opposite wall; or (b) Twice the distance from the appliance to the farthest adjacent wall, whichever is greater.

Table 4.26.3.2.2

Corridor spacing allocation

Corridor length (20 foot Maximum Width) ft	Minimum number of 15 cd visible appliances required
less equal to 30	1
>30 - 130	2
>130 - 230	3
>230 - 330	4
>330 - 430	5
>430 - 530	6

BCMC Comments*
N.E. See above and below. Note: Too many devices in rooms increase flash rates and risk of seizures.
N.E. See above.

ADA Title III Requirements

4.28.4* Auxiliary Alarms. Units and sleeping accommodations shall have a visual alarm connected to the building emergency alarm system or shall have a standard 110-volt electrical receptacle into which such an alarm can be connected and a means by which a signal from the building emergency alarm system can trigger such an auxiliary alarm. When visual alarms are in place the

signal shall be visible in all areas of the unit or room. Instructions for use of the auxiliary alarm or receptacle shall be provided.

4.29 Detectable Warnings.

4.29.1 General. Detectable warnings required by 4.1 and 4.7 shall comply with 4.29.

4.29.2* Detectable Warnings on Walking Surfaces. Detectable warnings shall consist of raised truncated domes with a diameter of nominal 0.9 in (23 mm), a height of nominal 0.2 in (5 mm) and a center-to-center spacing of nominal 2.35 in (60 mm) and shall contrast visually with adjoining surfaces, either light-on-dark, or dark-on-light. The material used to provide contrast shall be an integral part of the walking surface. Detectable warnings used on interior surfaces shall differ from adjoining walking surfaces in resiliency or sound-on-cane contact.

4.29.3 Detectable Warnings on Doors To Hazardous Areas. (Reserved).

4.29.4 Detectable Warnings at Stairs. (Reserved).

4.29.5 Detectable Warnings at Hazardous Vehicular Areas. If a walk crosses or adjoins a vehicular way, and the walking surfaces are not separated by curbs, railings, or other elements between the pedestrian areas and vehicular areas, the boundary between the areas shall be defined by a continuous detectable warning which is 36 in (915 mm) wide, complying with 4.29.2. [Suspended until July 26, 1996. 28 C.F.R. S 36.407.]

4.29.6 Detectable Warnings at Reflecting Pools. The edges of reflecting pools shall be protected by railings, walls, curbs, or detectable warnings complying with 4.29.2. [Suspended until July 26, 1996. 28 C.F.R. S 36.407.]

CABO/ANSI A117.1-1992

4.26.3.3 Asleep Mode

4.26.3.3.1 In rooms intended for sleeping where visible signal appliances are provided, they shall be actuated by the building alarm system and by the room smoke detector. The visible signaling appliance shall provide a light output of 110 candela minimum.

4.26.3.3.2 Where used in a single station portable or hardwired system, the alarm shall be a combination single station smoke detector and visible signaling appliance. The visible signaling appliance shall provide a light output of 177 candela minimum. The visible signaling appliance shall be powered by the building electrical system or by a standard 110-120 volt receptacle that is not subject to loss of power by a wall switch.

4.26.3.3.3 All portable alarm appliances shall have an

individual printed instruction card, either available with the alarm appliance or posted on the room door of each sleeping room or space where the portable alarm plug receptacles are located.

BCMC Comments*

P.N.E. No scoping of when visible alarms are required.

Technical provisions exceed ADA Standards.

N.E.

N.E.

N.E.

N.E.

N.E.

N.E.

ADA Title III Requirements

4.29.7 Standardization. (Reserved).

4.30 Signage.

4.30.1* General. Signage required to be accessible by 4.1 shall comply with the applicable provisions of 4.30.

CABO/ANSI A117.1-1992

4.27 Detectable Warnings - Standardization*

Where required, detectable warnings shall be standard within a building, facility, site or complex of buildings.

A4.27 Detectable Warnings - Standardization

Recognition of, and quick response to, detectable warnings is maximized by standardization of material as well as surface texture and color. Provision of too many detectable and tactile warnings or failure to standardize such warnings weakens their usefulness. Detectable and tactile warnings are also visual signals to guide dogs, since dogs are trained to respond to a large variety of visual cues.

4.28 Signage

4.28.1* General. Accessible signage shall comply with 4.28.2, 4.28.3, and 4.28.5. Tactile signage shall comply with 4.28.2, 4.28.5, 4.28.6 and 4.28.7.

A4.28.1 General. Much of the information in 4.28 was developed to assist the large number of people who are visually impaired but have some residual sight. In building complexes where finding locations independently on a routine basis is a necessity (for example, college campuses), tactile maps or prerecorded instructions are very helpful to visually impaired people. Several maps and auditory instruction have been developed and tested for specific applications. The type of map or instructions used are based on the information to be communicated, which depends highly on the type of buildings or users. Tactile signage is used where permanent signs identify the following rooms and spaces.

-Hotel guest rooms
-Tenant space entrances
-Entrances to apartment units
-Patient rooms in medical facilities
-Classrooms and offices in schools and colleges
-Common use areas
-Rest rooms
-Areas of refuge

Landmarks easily distinguished by visually impaired individuals are useful as orientation cues. Such cues include changes in illumination level, bright colors, unique patterns, wall murals, location of special equipment, or other architectural features (for example, an exterior view).

Many people with disabilities have limitations in movement of their head and reduced peripheral vision. Thus, signage position perpendicular to the path of travel is easiest for them to notice. People generally distinguish signage within an angle of 30 degrees to either side of the centerline of their face without moving their head.

BCMC

Comments*

E.

94

ADA/ANSI/BCMC Requirements - October 13, 1995

01-03809

ADA Title III Requirements

4.30.2* Character Proportion. Letters and numbers on signs shall have a width-to-height ratio between 3:5 and 1:1 and a stroke-width-to-height ratio between 1:5 and 1:10.

4.30.3 Character Height. Characters and numbers on signs shall be sized according to the viewing distance from which they are to be read. The minimum height is measured using an upper case X. Lower case characters are permitted.

Height Above Finished Floor	Minimum Character Height
Suspended or Projected Overhead in compliance with 4.4.2	3 in (75 mm) minimum

4.30.4* Raised and Brailled Characters and Pictorial Symbol Signs (Pictograms). Letters and numerals shall be raised 1/32 in, upper case, sans serif or simple serif type and shall be accompanied with Grade 2 Braille. Raised characters shall be at least 5/8 in (16 mm) high, but no higher than 2 in (50 mm). Pictograms shall be accompanied by the equivalent verbal description placed directly below the pictogram. The border dimension of the pictogram shall be 6 in (152 mm) minimum in height.

4.30.5* Finish and Contrast. The characters and background of signs shall be eggshell, matte, or other non-glare finish. Characters and symbols shall contrast with their background -- either light characters on a dark background or dark characters on a light background.

CABO/ANSI A117.1-1992

4.28.2* Character Proportion. Letters and numbers on signs shall have a width-to-height ratio between 3:5 and 1:1 and a stroke-width-to-height ratio between 1:5 and 1:10, utilizing an upper-case "X" for measurement.

4.28.3* Character Height. Letter and number heights for signs of various sizes shall conform to Table 4.28.3. Exception: Character heights shall be 5/8 in (16 mm) high minimum for building directories.

Table 4.28.3

Letter and Number Heights

Height above floor/ground	Minimum character height

More than 80 in (2030 mm) 3 in (75 mm)
More than 60 in (1525 mm) but not more than 80 in (2030 mm) 2 in (51 mm)
More than 48 in (1220 mm) but not more than 60 in (1525 mm) 1 in (25 mm)

4.28.4* Pictograms. Where pictograms are required, they shall have a 6 in (150 mm) minimum size measured at the border. Where text descriptors for pictograms are required, they shall comply with the tactile character provisions of 4.28.6 and 4.28.7.

4.28.6* Tactile Characters or Symbols. Raised characters, symbols and Braille shall comply with 4.28.6.1 and 4.28.6.2.

4.28.6.1 Raised Characters and Symbols. Characters and symbols on tactile signs shall be raised 1/32 in (0.8 mm) minimum. Raised characters and symbols shall be in uppercase characters. Raised characters and symbols shall be 5/8 in (16 mm) high minimum, and 2 in (51 mm) maximum. Raised characters and symbols shall be accompanied by Braille in accordance with 4.28.6.2.

4.28.6.2 Braille. Braille shall be separated 1/2 in (13 mm) minimum from the corresponding raised characters or symbols. Braille provided in accordance with 4.10.1.12 shall be placed 3/16 in (5 mm) minimum below the corresponding raised characters or symbols. Braille shall be Grade II and shall conform to Specification #800, National Library Service, Library of Congress.

4.28.5* Finish and Contrast. The characters and background of signs shall be eggshell, matte, or other non-glare finish. Characters and symbols shall contrast with their background, with either light characters on a dark background or dark characters on a light background.

BCMC Comments*

E. Exceeds.

ANSI N.E. ANSI fails to require sans serif or simple serif typeface.

BCMC P.N.E. ANSI gives technical provision for required pictograms only and does not require text descriptions to accompany pictograms. Therefore, BCMC needs to provide scoping for pictograms and accompanying text.

E.

ADA Title III Requirements

4.30.6 Mounting Location and Height. Where permanent identification is provided for rooms and spaces, signs shall be installed on the wall adjacent to the latch side of the door. Where there is no wall space to the latch side of the door, including at double leaf doors, signs shall be placed on the nearest adjacent wall. Mounting height shall be 60 in (1525 mm) above the finish floor to the centerline of the sign. Mounting location for such signage shall be so that a person may approach within 3 in (76 mm) of signage without encountering protruding objects or standing within the swing of a door.

4.30.7* Symbols of Accessibility

(1) Facilities and elements required to be identified as accessible by 4.1 shall use the international symbol of accessibility. The symbol shall be displayed as shown in Fig. 43(a) and (b).

Figure 43 of the ADA Standards. International Symbols.

43(a) Proportions, International Symbol of Accessibility. The diagram illustrates the International Symbol of Accessibility on a grid background.

43(b) Display Conditions, International Symbol of Accessibility. The symbol contrast shall be light on dark or dark on light.

(2) Volume Control Telephones. Telephones required to have a volume control by 4.1.3(17)(b) shall be identified by a sign containing a depiction of a telephone handset with radiating sound waves.

(3) Text Telephones. Text telephones required by 4.1.3(17)(c) shall be identified by the international TDD symbol (Fig. 43(c)). In addition, if a facility has a public text telephone, directional signage indicating the location

of the nearest text telephone shall be placed adjacent to all banks of telephones which do not contain a text telephone. Such directional signage shall include the international TDD symbol. If a facility has no banks of telephones, the directional signage shall be provided at the entrance (e.g., in a building directory).

(4) Assistive Listening Systems. In assembly areas where permanently installed assistive listening systems are required by 4.1.3(19)(b) the availability of such systems shall be identified with signage that includes the international symbol of access for hearing loss (Fig. 43(d)).

4.30.8* Illumination Levels. (Reserved).

4.31 Telephones.

4.31.1 General. Public telephones required to be accessible by 4.1 shall comply with 4.31.

CABO/ANSI A117.1-1992

4.28.7* Location of Tactile Signage. Tactile signage shall be located alongside the door on the latch side and shall be mounted at 60 in (1525 mm) above the adjacent finished floor to the centerline of the sign. In locations having double doors, tactile signs shall be mounted to the right of the right hand door. Where there is no wall space on the latch side of the door, including double leaf doors, signs shall be placed on the nearest adjacent wall.

4.28.8* Symbols of Accessibility.

4.28.1 International Symbol of Accessibility. Where the international symbol of accessibility is required, it shall be proportioned and displayed as shown in Fig. 4.28.8.1.

4.28.8.4 Volume Controlled Telephones. Where telephones are required to have volume controls, they shall be identified by a sign containing a depiction of a telephone handset with radiating sound waves, such as is shown in Fig. 4.28.8.4.

4.28.8.2 International Symbol of Telecommunication Devices for the Deaf (TDD). Where telecommunication devices for the deaf are required, they shall be identified by the international telecommunications device for the deaf symbol and proportioned as shown in Fig. 4.28.8.2.

4.28.8.3 Assistive Listening Systems. Where permanently installed assistive listening systems are required, they shall be identified by the international symbol of access for hearing loss proportioned and displayed as shown in Fig. 4.28.8.3.

4.29 Telephones

4.29.1 General. Accessible public telephones and related equipment shall comply with 4.29.

BCMC

Comments*

N.E. ANSI deleted the provision requiring placement of room signage to allow a person to approach within 3 inches of the sign.
N.E. Directional signage for TDDs/TTs is not required by ANSI.
E.

ADA Title III Requirements

4.31.2 Clear Floor or Ground Space. A clear floor or ground space at least 30 in by 48 in (760 mm by 1220 mm) that allows either a forward or parallel approach by a person using a wheelchair shall be provided at telephones (see Fig. 44). The clear floor or ground space shall comply with 4.2.4. Bases, enclosures, and fixed seats shall not impede approaches to telephones by people who use wheelchairs.
Figure 44 of the ADA Standards. Mounting Heights and Clearances for Telephones.

44(a) Side Reach Possible. If a parallel approach is provided at a telephone in an enclosure, the wing walls and shelf may extend beyond the face of the telephone a maximum of 10 in (255 mm). The wing walls and shelf may not overlap the required clear space. The controls shall be located no higher than 54 in (1370 mm) above the floor and the wing walls shall extend downward to 27 in (685 mm) or less above the floor.

44(b) Forward Reach Required. If a front approach is provided at a telephone with an enclosure, the shelf may extend beyond the face of the telephone a maximum of 20 in (510 mm) into the required clear floor space. Wing walls may extend beyond the face of the

telephone a maximum of 24 in (610 mm). If wing walls extend more than 24 in (610 mm) beyond the face of the telephone, an additional 6 in (150 mm) in width of clear floor space shall be provided, creating a clear floor space of 36 in by 48 in (910 mm by 1220 mm). Wing walls shall extend downward to 27 in (685 mm) or less above the floor. The highest operable part shall be located no higher than 48 in (1220 mm) above the floor.

4.31.3* Mounting Height. The highest operable part of the telephone shall be within the reach ranges specified in 4.2.5 or 4.2.6.

4.31.4 Protruding Objects. Telephones shall comply with 4.4.

4.31.5 Hearing Aid Compatible and Volume Control Telephones Required by 4.1.

(1) Telephones shall be hearing aid compatible.

(2) Volume controls, capable of a minimum of 12 dbA and a maximum of 18 dbA above normal, shall be provided in accordance with 4.1.3. If an automatic reset is provided then 18 dbA may be exceeded.

4.31.6 Controls. Telephones shall have pushbutton controls where service for such equipment is available.

CABO/ANSI A117.1-1992

4.29.2 Clear Floor Space or Ground Space. Clear floor or ground space shall be provided at each accessible public telephone in accordance with 4.29.2.1 or 4.29.2.2. The required clear space shall comply with 4.2.4 and shall not be restricted by bases, enclosures, and fixed seats.

4.29.2.1 Parallel Approach. Where a parallel approach by a person in a wheelchair is provided, the clear floor space or ground space shall be 30 in deep by 48 in wide (760 mm by 1220 mm) minimum. The distance from the edge of the telephone enclosure to the face of the telephone unit shall be 10 in (255 mm) maximum. See Fig. B4.29.2.1.

4.29.2.2 Forward Approach. Where a forward approach by a person in a wheelchair is provided, the clear floor space or ground space shall be 48 in (1220 mm) deep minimum. Where the distance from the edge of the telephone enclosure to the face of the telephone unit is 24 in (610 mm) maximum, the clear space shall be 30 in (760 mm) wide minimum. Where the distance from the edge of the telephone enclosure to the face of the telephone unit is 24 in (610 mm) minimum, the clear space shall be 36 in (915 mm) wide minimum. The distance from the front edge of a counter within the enclosure to the face of the telephone unit shall be 20 in (510 mm) maximum. See Fig. B4.29.2.2.

4.29.3* Mounting Height. The highest operable parts that are essential to the use of the telephone shall be located within the reach ranges specified in 4.2.5 or 4.2.6.
4.29.4 Protruding Objects. Telephones, enclosures, and related equipment shall comply with 4.4.
4.29.5 Hearing-aid Compatible and Volume Controlled Telephones. Telephones shall be hearing-aid compatible. Volume control shall be capable of increasing the volume within the range of 12 db minimum and 18 db maximum above the nonamplified mode, except that the 18 db maximum shall not apply where an automatic reset is provided.
4.29.6 Controls. Accessible telephones shall have push button controls where service for such equipment is available.

BCMC
Comments*

E.
P.N.E. ANSI needs to address that the clear space must extend under the counter at least to the depth of the face of the phone. This is shown on the illustration but not in text.
E.
E.
E.
E.

97
ADA/ANSI/BCMC Requirements - October 13, 1995
01-03812

ADA Title III Requirements

4.31.7 Telephone Books. Telephone books, if provided, shall be located in a position that complies with the reach ranges specified in 4.2.5 and 4.2.6.
4.31.8 Cord Length. The cord from the telephone to the handset shall be at least 29 in (735 mm) long.
4.31.9* Text Telephones Required by 4.1.
(1) Text telephones used with a pay telephone shall be permanently affixed within, or adjacent to, the telephone enclosure. If an acoustic coupler is used, the telephone cord shall be sufficiently long to allow connection of the text telephone and the telephone receiver.
(2) Pay telephones designed to accommodate a portable text telephone shall be equipped with a shelf and an electrical outlet within or adjacent to the telephone enclosure. The telephone handset shall be capable of

being placed flush on the surface of the shelf. The shelf shall be capable of accommodating a text telephone and shall have 6 in (152 mm) minimum vertical clearance in the area where the text telephone is to be placed.

(3) Equivalent facilitation may be provided. For example, a portable text telephone may be made available in a hotel at the registration desk if it is available on a 24-hour basis for use with nearby public pay telephones. In this instance, at least one pay telephone shall comply with paragraph 2 of this section. In addition, if an acoustic coupler is used, the telephone handset cord shall be sufficiently long so as to allow connection of the text telephone and the telephone receiver. Directional signage shall be provided and shall comply with 4.30.7.

4.32 Fixed or Built-in Seating and Tables.

4.32.1 Minimum Number. Fixed or built-in seating or tables required to be accessible by 4.1 shall comply with 4.32.

4.32.2 Seating. If seating spaces for people in wheelchairs are provided at fixed tables or counters, clear floor space complying with 4.2.4 shall be provided. Such clear floor space shall not overlap knee space by more than 19 in (485 mm) (see Fig. 45).

Figure 45 of the ADA Standards. Minimum Clearances for Seating and Tables.

If wheelchair seating is beside fixed seats, clear floor space 30 in by 48 in (760 mm by 1220 mm) minimum must be provided. If wheelchair seating is across the front of fixed seating, the minimum required clear floor space is 42 in by 48 in (1065 mm by 1220 mm). An accessible route to wheelchair seating must be provided.

CABO/ANSI A117.1-1992

4.29.7 Telephone Directories. Telephone directories, if provided, shall be located in accordance with 4.2.

4.29.8 Cord Length. Accessible telephones shall be equipped with a handset cord length of 29 in (735 mm) minimum.

4.29.9 Telecommunications Device for the Deaf (TDD).

4.29.9.1 Where used with a pay telephone, telecommunications devices for the deaf shall be permanently affixed within, or adjacent to, the telephone enclosure. If an acoustic coupler is used, the telephone cord shall be sufficiently long to allow connection of the TDD and the telephone receiver.

4.29.9.2 Where pay telephones designed to accommodate a portable TDD are provided, they shall be equipped with a shelf and an electrical outlet within or adjacent to the telephone enclosure. The telephone handset shall be

capable of being placed flush on the surface of the shelf. The shelf shall be capable of accommodating a TDD and shall have a 6 in (150 mm) high minimum vertical clearance above the area where the TDD is to be located.

4.31 Seating, Tables, Work Surfaces, and Service Counters

4.31.1 General. Accessible fixed or built-in seating, benches, tables, service counters or work surfaces shall comply with 4.16.6 and 4.31.

4.31.2.1 Seating. Accessible seating spaces provided at tables, service counters, or work surfaces for people in wheelchairs shall have a clear floor space complying with 4.2.4. Such clear floor space shall overlap knee space by not more than 19 in (485 mm). See Fig. B4.31.2.

4.31.2.2 Benches. Accessible benches shall be 20 in to 24 in (510 mm to 610 mm) wide by 42 in to 48 in (1065 mm to 1220 mm) long fixed to a wall along the longer dimension. The bench shall be mounted 17 in to 19 in (430 mm to 480 mm) above the floor. Clear floor space shall be provided in accordance with 4.2.4. The structural strength of the benches shall conform to 4.24. Where installed in wet locations the surface of the bench shall be slip resistant and water shall not accumulate upon the surface.

BCMC Comments*

E.

E.

E.

E.

ANSI E. for technical specification.

BCMC N.E. There is no requirement to provide accessible seating at counters, as there is in the ADA.

ADA Title III Requirements

4.32.3 Knee Clearances. If seating for people in wheelchairs is provided at tables or counters, knee spaces at least 27 in (685 mm) high, 30 in (760 mm) wide, and 19 in (485 mm) deep shall be provided (see Fig. 45).

4.32.4* Height of Tables or Counters. The tops of accessible tables and counters shall be from 28 in to 34 in (710 mm to 865 mm) above the finish floor or ground.

4.33 Assembly Areas.
4.33.1 Minimum Number. Assembly and associated areas required to be accessible by 4.1 shall comply with 4.33.
4.33.2* Size of Wheelchair Locations. Each wheelchair location shall provide minimum clear ground or floor spaces as shown in Fig. 46.
Figure 46 of the ADA Standards. Space Requirements for Wheelchair Seating Spaces in Series.

46(a) Forward or Rear Access. If seating space for two wheelchair users is accessed from the front or rear, the minimum space required is 48 in (1220 mm) deep by 66 in (1675 mm) wide.

46(b) Side Access. If seating space for two wheelchair users is accessed from the side, the minimum space required is 60 in (1525 mm) deep by 66 in (1675 mm) wide.

4.33.3* Placement of Wheelchair Locations. Wheelchair areas shall be an integral part of any fixed seating plan and shall be provided so as to provide people with physical disabilities a choice of admission prices and lines of sight comparable to those for members of the general public. They shall adjoin an accessible route that also serves as a means of egress in case of emergency. At least one companion fixed seat shall be provided next to each wheelchair seating area. When the seating capacity exceeds 300, wheelchair spaces shall be provided in more than one location. Readily removable seats may be installed in wheelchair spaces when the spaces are not required to accommodate wheelchair users.
EXCEPTION: Accessible viewing positions may be clustered for bleachers, balconies, and other areas having sight lines that require slopes of greater than 5 percent. Equivalent accessible viewing positions may be located on levels having accessible egress.
4.33.4 Surfaces. The ground or floor at wheelchair locations shall be level and shall comply with 4.5.

CABO/ANSI A117.1-1992

4.31.3 Knee Clearances. Accessible seating for people in wheelchairs at tables, service counters, and work surfaces shall have knee spaces 27 in (685 mm) high minimum, 30 in (760 mm) wide minimum, and 19 in (485 mm) deep minimum. See Fig. B4.31.2.
4.31.4* Height of Work Surfaces and Service Counters. The tops of accessible portions of tables, service counters, tray slides and work surfaces shall be from 28-34 in (710 mm to 865 mm) from the floor or ground.
4.32 Auditorium and Assembly Areas
4.32.1 General. Accessible viewing positions in

auditorium and assembly areas with fixed seating shall comply with 4.32.
4.32.2* Size of Wheelchair Locations.
4.32.2.1 Wheelchair locations with forward or rear access shall provide clear ground or floor spaces of 33 in (840 mm) wide by 48 in (1220 mm) deep minimum. See Fig. B4.32.2(a).
4.32.2.2 Wheelchair locations with side access shall provide minimum clear ground or floor spaces of 33 in (840 mm) wide and 60 in (1525 mm) deep. See Fig. B4.32.2(b).
4.32.3* Placement of Wheelchair Locations.
4.32.3.1 At least one wheelchair location shall accommodate two wheelchairs minimum.
4.32.3.2 Wheelchair locations shall be adjacent to an aisle. They shall also be adjacent to a fixed or removable seat located such that each wheelchair location has, immediately to one side, a fixed or removable seat.
4.32.3.3 Wheelchair locations shall provide lines of sight comparable to those of all viewing areas.
4.32.4 Aisles. Ramps serving as aisles adjacent to seating areas shall be permitted to have a running slope not steeper than 1:8 where such slope is required to maintain adequate sightlines. Such ramped aisles shall be permitted as an accessible route to seating areas, to performing areas adjacent to seating, and as means of egress from such areas.
4.32.5 Surfaces. Ground or floor surfaces at wheelchair locations shall have a slope not steeper than 1:48 and shall comply with 4.5.

BCMC

5.2.1 In Group A1, A2, and A5 occupancies wheelchair spaces for each assembly area shall be provided in accordance with Table 5.2. Removable seats shall be permitted in the wheelchair spaces. When the number of seats exceeds 300, wheelchair spaces shall be provided in more than one location. Dispersion of wheelchair locations shall be based on the availability of accessible routes to various seating areas, including seating at various levels in multilevel facilities.

Comments*

E.
E.
E.
E.
N.E. ANSI uses the term "aisle" in 4.32.3.2 instead of "accessible route that also serves as a means

of egress" in the ADA Standards.
See 4.32.4 below. ANSI allows
aisles 1:8 to serve as accessible
routes, etc. See comments at ADA
Standards 4.1.3(19).
E.

ADA Title III Requirements

4.33.5 Access to Performing Areas. An accessible route shall connect wheelchair seating locations with performing areas, including stages, arena floors, dressing rooms, locker rooms, and other spaces used by performers.

4.33.6* Placement of Listening Systems. If the listening system provided serves individual fixed seats, then such seats shall be located within a 50 ft (15 m) viewing distance of the stage or playing area and shall have a complete view of the stage or playing area.

4.33.7* Types of Listening Systems. Assistive listening systems (ALS) are intended to augment standard public address and audio systems by providing signals which can be received directly by persons with special receivers or their own hearing aids and which eliminate or filter background noise. The type of assistive listening system appropriate for a particular application depends on the characteristics of the setting, the nature of the program, and the intended audience. Magnetic induction loops, infra-red and radio frequency systems are types of listening systems which are appropriate for various applications.

4.34 Automated Teller Machines.

4.34.1 General. Each automated teller machine required to be accessible by 4.1.3 shall be on an accessible route and shall comply with 4.34.

4.34.2 Clear Floor Space. The automated teller machine shall be located so that clear floor space complying with 4.2.4 is provided to allow a person using a wheelchair to make a forward approach, a parallel approach, or both, to the machine.

4.34.3 Reach Ranges.

(1) Forward Approach Only. If only a forward approach is possible, operable parts of all controls shall be placed within the forward reach range specified in 4.2.5.

CABO/ANSI A117.1-1992

4.32.6* Placement of Listening Systems. Individual fixed seats, served by a listening system, shall be located within a 50 ft (15 m) distance of the stage or playing area and shall have a complete view of the stage or playing area. In a motion picture theater, individual fixed seats, served by a listening system, shall be located any place within the auditorium that has a complete view of the screen.

4.32.7 Types of Listening Systems. Induction loops, infrared systems, FM and AM radio frequency systems,

hard-wired earphones, and other equivalent devices shall be permitted as acceptable listening systems.
4.30 Automatic Teller Machines
4.30.1 Mounting. Accessible automatic teller machines shall be mounted so that all features requiring user activation comply with 4.2.5 or 4.2.6. Clear floor space shall comply with 4.2.4. Input into machines shall be made possible by tactile markings, and private audible output shall be made available so that the machine can be used entirely without vision.
4.30.2 Display Screen. Where print appears on the display screen, the automatic teller machine video display screen shall use san serif print that is a minimum of 18 point size, and shall contrast with the background by a minimum of 70 percent. Where the automatic teller machine is designed to be used by pedestrians, the video display screen shall be placed so that the lower edge shall be at a height of 38 in (965 mm) maximum off the ground or be adjustable.
4.24.1* General. Operable parts of equipment and appliances in accessible spaces, along accessible routes, or as part of accessible elements shall comply with 4.25.
See 4.30 above.
BCMC
3.1.2 At least one accessible route shall connect accessible spaces, elements, facilities and buildings that are on the same site. Where only one accessible route is provided, it shall not pass through kitchens, storage rooms, restrooms, closets or similar spaces.
Comments*
Note: No specific provision but general language should cover this.
There is no exception.
E.
E.
E. See separate sections below.
E.
E. Although less detailed, the ANSI standard is within the general reach ranges.
100
ADA/ANSI/BCMC Requirements - October 13, 1995
01-03815

4.34.3(2) Parallel Approach Only. If only a parallel approach is possible, operable parts of controls shall be placed as follows:

(a) Reach Depth Not More Than 10 in (255 mm). Where the reach depth to the operable parts of all controls as measured from the vertical plane perpendicular to the edge of the unobstructed clear floor space at the farthest protrusion of the automated teller machine or surround is not more than 10 in (255 mm), the maximum height above the finished floor or grade shall be 54 in (1370 mm).

(b) Reach Depth More Than 10 in (255 mm). Where the reach depth to the operable parts of any control as measured from the vertical plane perpendicular to the edge of the unobstructed clear floor space at the farthest protrusion of the automated teller machine or surround is more than 10 in (255 mm), the maximum height above the finished floor or grade shall be as follows:

Reach Depth		Maximum Height	
In	Mm	In	Mm
10	255	54	1370
11	280	53 1/2	1360
12	305	53	1345
13	330	52 1/2	1335
14	355	51 1/2	1310
15	380	51	1295
16	405	50 1/2	1285
17	430	50	1270
18	455	49 1/2	1255
19	485	49	1245
20	510	48 1/2	1230
21	535	47 1/2	1205
22	560	47	1195
23	585	46 1/2	1180
24	610	46	1170

4.34.3(3) Forward and Parallel Approach. If both a

forward and parallel approach are possible, operable parts of controls shall be placed within at least one of the reach ranges in paragraphs (1) or (2) of this section.

(4) Bins. Where bins are provided, for envelopes, waste paper, or other purposes, at least one of each type provided shall comply with the applicable reach ranges in paragraph (1), (2), or (3) of this section.

EXCEPTION: Where a function can be performed in a substantially equivalent manner by using an alternate control, only one of the controls needed to perform that function is required to comply with this section. If the controls are identified by tactile markings, such markings shall be provided on both controls.

4.34.4 Controls. Controls for user activation shall comply with 4.27.4.

CABO/ANSI A117.1-1992

BCMC

Comments*

E.

101

ADA/ANSI/BCMC Requirements - October 13, 1995

01-03816

ADA Title III Requirements

4.34.5 Equipment for Persons with Vision Impairments. Instructions and all information for use shall be made accessible to and independently usable by persons with vision impairments.

4.35 Dressing and Fitting Rooms.

4.35.1 General. Dressing and fitting rooms required to be accessible by 4.1 shall comply with 4.35 and shall be on an accessible route.

4.35.2 Clear Floor Space. A clear floor space allowing a person using a wheelchair to make a 180-degree turn shall be provided in every accessible dressing room entered through a swinging or sliding door. No door shall swing into any part of the turning space. Turning space shall not be required in a private dressing room entered through a curtained opening at least 32 in (815 mm) wide if clear floor space complying with section 4.2 renders the dressing room usable by a person using a wheelchair.

4.35.3 Doors. All doors to accessible dressing rooms shall be in compliance with section 4.13.

4.35.4 Bench. Every accessible dressing room shall have a 24 in by 48 in (610 mm by 1220 mm) bench fixed to the wall along the longer dimension. The bench shall be mounted 17 in to 19 in (430 mm to 485 mm) above the finish floor. Clear floor space shall be provided alongside the bench to allow a person using a wheelchair to make a parallel transfer onto the bench. The structural strength of the bench and attachments shall comply with 4.26.3.

Where installed in conjunction with showers, swimming pools, or other wet locations, water shall not accumulate upon the surface of the bench and the bench shall have a slip-resistant surface.

4.35.5 Mirror. Where mirrors are provided in dressing rooms of the same use, then in an accessible dressing room, a full-length mirror, measuring at least 18 in wide by 54 in high (460 mm by 1370 mm), shall be mounted in a position affording a view to a person on the bench as well as to a person in a standing position.

CABO/ANSI A117.1-1992

See 4.30 above.

4.16 Toilet, Bath, Dressing and Shower Rooms and Bathing Facilities.

4.16.1 General. Accessible toilet rooms, bathrooms, bathing facilities, dressing rooms and shower rooms shall comply with 4.16.

4.16.3* Clear Floor Space. Accessible fixtures and controls shall comply with 4.17 through 4.22. An unobstructed turning space complying with 4.2.3 and 4.2.4.1 shall be provided within an accessible room. The clear floor spaces at fixtures and operable parts, the accessible route, and the turning space shall be permitted to overlap.

4.16.2* Doors. All doors to accessible toilet rooms, bathrooms, bathing facilities, and shower rooms shall comply with 4.13. Doors shall not swing into the clear floor space required for any fixture unless the toilet or bathroom is for individual use only, or a clear floor space complying with 4.2.4.1 is provided beyond the arc of the door swing within the room.

4.31.2.2 Benches. Accessible benches shall be 20 in to 24 in (510 mm to 610 mm) wide by 42 in to 48 in (1065 mm to 1220 mm) long fixed to a wall along the longer dimension. The bench shall be mounted 17 in to 19 in (430 mm to 480 mm) above the floor. Clear floor space shall be provided in accordance with 4.2.4. The structural strength of the benches shall conform to 4.24. Where installed in wet locations the surface of the bench shall be slip resistant and water shall not accumulate upon the surface.

4.16.6* Mirrors. Mirrors, mounted above lavatories or sinks, shall have the bottom edge of the reflecting surface 38 in (965 mm) maximum above the floor. See Fig. B4.20.3.1. Full length mirrors used in conjunction with wheelchair accessible dressing rooms shall be 18 in (455 mm) wide minimum and shall be mounted with the bottom edge 18 in (455 mm) high maximum above the floor and

the top edge 72 in (1830 mm) high minimum. Mirrors shall be located in a position affording a view to a person seated on a bench or a wheelchair, as well as to a person in a standing position.

BCMC Comments*

E.

E.

N.E. ANSI should address encroachment of door swing on turning space.

P.N.E. 4.16.2 does not mention dressing rooms.

ANSI N.E. Dimensions of the bench vary from ADA Standards.

BCMC N.E. BCMC/ANSI requires dressing rooms to be accessible, but does not require accessible dressing rooms to have benches.

E.

ADA Title III Requirements

5 RESTAURANTS AND CAFETERIAS

5.1* General. Except as specified or modified in this section, restaurants and cafeterias shall comply with the requirements of 4.1 to 4.35. Where fixed tables (or dining counters where food is consumed but there is no service) are provided, at least 5 percent, but not less than one, of the fixed tables (or a portion of the dining counter) shall be accessible and shall comply with 4.32 as required in 4.1.3(18). In establishments where separate areas are designated for smoking and non-smoking patrons, the required number of accessible fixed tables (or counters) shall be proportionally distributed between the smoking and non-smoking areas. In new construction, and where practicable in alterations, accessible fixed tables (or counters) shall be distributed throughout the space or facility.

5.2 Counters and Bars. Where food or drink is served at counters exceeding 34 in (865 mm) in height for consumption by customers seated on stools or standing at

the counter, a portion of the main counter which is 60 in (1525 mm) in length minimum shall be provided in compliance with 4.32 or service shall be available at accessible tables within the same area.

5.3 Access Aisles. All accessible fixed tables shall be accessible by means of an access aisle at least 36 in (915 mm) clear between parallel edges of tables or between a wall and the table edges.

5.4 Dining Areas. In new construction, all dining areas, including raised or sunken dining areas, loggias, and outdoor seating areas, shall be accessible. In non-elevator buildings, an accessible means of vertical access to the mezzanine is not required under the following conditions: 1) the area of mezzanine seating measures no more than 33 percent of the area of the total accessible seating area; 2) the same services and decor are provided in an accessible space usable by the general public; and, 3) the accessible areas are not restricted to use by people with disabilities. In alterations, accessibility to raised or sunken dining areas, or to all parts of outdoor seating areas is not required provided that the same services and decor are provided in an accessible space usable by the general public and are not restricted to use by people with disabilities.

Figure 53 of the ADA Standards. Food Service Lines.

The clear width of the food service line shall be measured from the leading edge of the tray slide.

CABO/ANSI A117.1-1992

4.31.4* Height of Work Surfaces and Service Counters. The tops of accessible portions of tables, service counters, tray slides and work surfaces shall be from 28-34 in (710-865 mm) from the floor or ground.

4.3.3* Width. Clear width of an accessible route shall be 36 in (915 mm) minimum, except at doors (see 4.13.5). See Fig. B4.3.3(a). Clear width of the accessible route with turns around an obstruction less than 48 in (1220 mm) wide shall have a clear space of 42 in by 48 in (1065 mm by 1220 mm) minimum. See Fig 4.3.3(b).

BCMC

5.2.3 In Group A3 occupancies the total floor area allotted for seating and tables shall be accessible.

EXCEPTIONS:

1. Where necessary for line of sight, requirements of 5.2.1 for number and dispersion of wheelchair spaces shall be applied.

2. In buildings without elevators, an accessible route to a mezzanine dining area is not required, provided that the mezzanine contains less than 25% of the total area and

the same services are provided in the accessible area.
5.2.3 In Group A3 occupancies the total floor area allotted for seating and tables shall be accessible.
5.2.3 In Group A3 occupancies the total floor area allotted for seating and tables shall be accessible.
EXCEPTIONS:
1. Where necessary for line of sight, requirements of 5.2.1 for number and dispersion of wheelchair spaces shall be applied.
2. In buildings without elevators, an accessible route to a mezzanine dining area is not required, provided that the mezzanine contains less than 25% of the total area and the same services are provided in the accessible area.

Comments*

Exception 1 - N.E. Does not mention outdoor seating or fixed tables. Requires dispersion only "where necessary".
N.E. Does not require 60" length.
E. Although not specific, the general provision of 4.3.3 would appear to apply here.
Exception 1 - N.E. Does not mention outdoor seating or fixed tables. Also, it appears to require dispersion only "where necessary."

ADA Title III Requirements

5.5 Food Service Lines. Food service lines shall have a minimum clear width of 36 in (915 mm), with a preferred clear width of 42 in (1065 mm) to allow passage around a person using a wheelchair. Tray slides shall be mounted no higher than 34 in (865 mm) above the floor (see Fig. 53). If self-service shelves are provided, at least 50 percent of each type must be within reach ranges specified in 4.2.5 and 4.2.6.
5.6 Tableware and Condiment Areas. Self-service shelves and dispensing devices for tableware, dishware, condiments, food and beverages shall be installed to

comply with 4.2 (see Fig. 54).
Figure 54 of the ADA Standards. Tableware Areas.
The maximum height is 54 in (1370 mm).
5.7 Raised Platforms. In banquet rooms or spaces where a head table or speaker's lectern is located on a raised platform, the platform shall be accessible in compliance with 4.8 or 4.11. Open edges of a raised platform shall be protected by placement of tables or by a curb.
5.8 Vending Machines and Other Equipment. Spaces for vending machines and other equipment shall comply with 4.2 and shall be located on an accessible route.
5.9 Quiet Areas. (Reserved).
CABO/ANSI A117.1-1992
4.31.4* Height of Work Surfaces and Service Counters. The tops of accessible portions of tables, service counters, tray slides and work surfaces shall be from 28-34 in (710-865 mm) from the floor or ground.
4.23.1 General. Accessible storage facilities including cabinets, shelves, closets, lockers and drawers shall comply with 4.23.
4.23.2 Clear Floor Space. A clear floor space complying with 4.2.4 that allows either a forward or parallel approach by a person using a wheelchair shall be provided at accessible storage facilities.
4.23.3 Height. Accessible storage spaces shall be within at least one of the reach ranges specified in 4.2.5 and 4.2.6. Clothes rods shall be 54 in (1370 mm) maximum above the floor. See Fig. B4.23.
BCMC
Comments*
P.N.E. No scoping provided.
N.E. regarding width of food service lines and self-service shelves.
P.N.E. No scoping provided.
P.N.E. Scoping issue. Further, edge protection is not addressed.
N.E.

ADA Title III Requirements
6 MEDICAL CARE FACILITIES
6.1 General. Medical care facilities included in this section are those in which people receive physical or medical treatment or care and where persons may need assistance in responding to an emergency and where the period of stay may exceed twenty-four hours. In addition to the requirements of 4.1 through 4.35, medical care facilities

and buildings shall comply with 6.
6.1 (1) Hospitals - general purpose hospitals, psychiatric facilities, detoxification facilities -- At least 10 percent of patient bedrooms and toilets, and all public use and common use areas are required to be designed and constructed to be accessible.
6.1 (2) Hospitals and rehabilitation facilities that specialize in treating conditions that affect mobility, or units within either that specialize in treating conditions that affect mobility -- All patient bedrooms and toilets, and all public use and common use areas are required to be designed and constructed to be accessible.
6.1 (3) Long term care facilities, nursing homes -- At least 50 percent of patient bedrooms and toilets, and all public use and common use areas are required to be designed and constructed to be accessible.
6.1 (4) Alterations to patient bedrooms.
(a) When patient bedrooms are being added or altered as part of a planned renovation of an entire wing, a department, or other discrete area of an existing medical facility, a percentage of the patient bedrooms that are being added or altered shall comply with 6.3. The percentage of accessible rooms provided shall be consistent with the percentage of rooms required to be accessible by the applicable requirements of 6.1(1), 6.1(2), or 6.1(3), until the number of accessible patient bedrooms in the facility equals the overall number that would be required if the facility were newly constructed. (For example, if 20 patient bedrooms are being altered in the obstetrics department of a hospital, 2 of the altered rooms must be made accessible. If, within the same hospital, 20 patient bedrooms are being altered in a unit that specializes in treating mobility impairments, all of the altered rooms must be made accessible.) Where toilet/bathrooms are part of patient bedrooms which are added or altered and required to be accessible, each such patient toilet/bathroom shall comply with 6.4.

CABO/ANSI A117.1-1992

BCMC

5.3.1 In Group 12 general purpose hospitals, psychiatric facilities and detoxification facilities, at least 10%, but not less than one, of the patient sleeping rooms and their bathing and toilet facilities shall be accessible.
5.3.2 In Group 12 hospitals and rehabilitation facilities that specialize in treating conditions that affect mobility, or units within either that specialize in treating conditions that affect mobility, 100% of the patient rooms and their bathing and toilet facilities shall be accessible.

5.3.3 In Group 11 occupancies and 12 nursing homes, at least 50%, but not less than one, of the patient sleeping rooms and their bathing and toilet facilities shall be accessible.

5.3.4 In Group 13 occupancies, at least 5%, but not less than one, of the resident units and their bathing and toilet facilities shall be accessible for each 100 resident units or fraction thereof.

Comments*

E.

N.E. No specific provisions.

ADA Title III Requirements

6.1 (4) (b) When patient bedrooms are being added or altered individually, and not as part of an alteration of the entire area, the altered patient bedrooms shall comply with 6.3, unless either: a) the number of accessible rooms provided in the department or area containing the altered patient bedroom equals the number of accessible patient bedrooms that would be required if the percentage requirements of 6.1(1), 6.1(2), or 6.1(3) were applied to that department or area; or b) the number of accessible patient bedrooms in the facility equals the overall number that would be required if the facility were newly constructed. Where toilet/bathrooms are part of patient bedrooms which are added or altered and required to be accessible, each such toilet/bathroom shall comply with 6.4.

6.2 Entrances. At least one accessible entrance that complies with 4.14 shall be protected from the weather by canopy or roof overhang. Such entrances shall incorporate a passenger loading zone that complies with 4.6.6.

6.3 Patient Bedrooms. Provide accessible patient bedrooms in compliance with 4.1 through 4.35. Accessible patient bedrooms shall comply with the following:

(1) Each bedroom shall have a door that complies with 4.13.

EXCEPTION: Entry doors to acute care hospital bedrooms for in-patients shall be exempted from the requirement in 4.13.6 for maneuvering space at the latch side of the door if the door is at least 44 in (1120 mm) wide.

(2) Each bedroom shall have adequate space to provide a maneuvering space that complies with 4.2.3. In rooms with 2 beds, it is preferable that this space be located between beds.

(3) Each bedroom shall have adequate space to provide a minimum clear floor space of 36 in (915 mm) along each side of the bed and to provide an accessible route complying with 4.3.3 to each side of each bed.

CABO/ANSI A117.1-1992

4.13.6.16 Doors to hospital bedrooms shall be exempt from the requirement for space at the latch side of door provided the door is 44 in (1120 mm) wide minimum.

BCMC

5.3.5 In Group 12 occupancies, at least one accessible entrance shall include a passenger loading zone complying with CABO/ANSI A117.1.

Comments*

N.E. BCMC does not address

weather protection.
N.E. The ADA Standards 6.3(1) exception applies only to "acute care" hospital bedrooms. ANSI 4.13.6.16 gives exemption to all hospital bedrooms.

ADA Title III Requirements

6.4 Patient Toilet Rooms. Where toilet/bath rooms are provided as a part of a patient bedroom, each patient bedroom that is required to be accessible shall have an accessible toilet/bath room that complies with 4.22 or 4.23 and shall be on an accessible route.

7 BUSINESS AND MERCANTILE

7.1 General. In addition to the requirements of 4.1 to 4.35, the design of all areas used for business transactions with the public shall comply with 7.

CABO/ANSI A117.1-1992

BCMC

5.3.1 In Group 12 general purpose hospitals, psychiatric facilities and detoxification facilities, at least 10%, but not less than one, of the patient sleeping rooms and their bathing and toilet facilities shall be accessible.

5.3.2 In Group 12 hospitals and rehabilitation facilities that specialize in treating conditions that affect mobility, or units within either that specialize in treating conditions that affect mobility, 100% of the patient rooms and their bathing and toilet facilities shall be accessible.

5.3.3 In Group 11 occupancies and 12 nursing homes, at least 50%, but not less than one, of the patient sleeping rooms and their bathing and toilet facilities shall be accessible.

Comments*

E.

P.N.E. No specific scoping.

ADA Title III Requirements

7.2 Sales and Service Counters, Teller Windows, Information Counters.

(1) In department stores and miscellaneous retail stores where counters have cash registers and are provided for sales or distribution of goods or services to the public, at least one of each type shall have a portion of the counter which is at least 36 in (915 mm) in length with a maximum height of 36 in (915 mm) above the finish floor. It shall be on an accessible route complying with 4.3. The accessible counters must be dispersed throughout the building or facility. In alterations where it is technically infeasible to provide an accessible counter, an auxiliary counter meeting these requirements may be provided.

(2) At ticketing counters, teller stations in a bank, registration counters in hotels and motels, box office ticket counters, and other counters that may not have a cash register but at which goods or services are sold or distributed, either:

(i) a portion of the main counter which is a minimum of 36 in (915 mm) in length shall be provided with a maximum height of 36 in (915 mm); or

(ii) an auxiliary counter with a maximum height of 36 in (915 mm) in close proximity to the main counter shall be provided; or

(iii) equivalent facilitation shall be provided (e.g., at a hotel registration counter, equivalent facilitation might consist of: (1) provision of a folding shelf attached to the main counter on which an individual with disabilities can write, and (2) use of the space on the side of the counter or at the concierge desk, for handing materials back and forth).

All accessible sales and service counters shall be on an accessible route complying with 4.3.

(3)* Assistive Listening Devices. (Reserved).

CABO/ANSI A117.1-1992

4.31.4* Height of Work Surfaces and Service Counters. The tops of accessible portions of tables, service counters, tray slides and work surfaces shall be from 28 in to 34 in (710 mm to 865 mm) from the floor or ground.

BCMC

6.7.2 Counters and Windows. Where customer sales and service counters or windows are provided, a portion of the counter, or at least one window, shall be accessible.

Comments*

P.N.E. BCMC does not require 36" length.

ADA Title III Requirements

7.3* Check-out Aisles.

(1) In new construction, accessible check-out aisles shall be provided in conformance with the table below:

Total Check-out Aisles of Each Design	Minimum Number of Accessible Check-out Aisles Of Each Design
1 - 4	1
5 - 8	2
8 - 15	3
over 15	3, plus 20% of additional aisles

EXCEPTION: In new construction, where the selling space is under 5000 square feet, only one check-out aisle is required to be accessible.

EXCEPTION: In alterations, at least one check-out aisle shall be accessible in facilities under 5000 square feet of selling space. In facilities of 5000 or more square feet of selling space, at least one of each design of check-out aisle shall be made accessible when altered until the number of accessible check-out aisles of each design equals the number required in new construction. Examples of check-out aisles of different "design" include those which are specifically designed to serve different functions. Different "design" includes but is not limited to the following features - length of belt or no belt; or permanent signage designating the aisle as an express lane.

(2) Clear aisle width for accessible check-out aisles shall comply with 4.2.1 and maximum adjoining counter height shall not exceed 38 in (965 mm) above the finish floor. The top of the lip shall not exceed 40 in (1015 mm) above the finish floor.

7.3 (3) Signage identifying accessible check-out aisles shall

comply with 4.30.7 and shall be mounted above the check-out aisle in the same location where the check-out number or type of check-out is displayed.

7.4 Security Bollards. Any device used to prevent the removal of shopping carts from store premises shall not prevent access or egress to people in wheelchairs. An alternate entry that is equally convenient to that provided for the ambulatory population is acceptable.

CABO/ANSI A117.1-1992

4.31.5 Checkout Counters. Checkout counter surfaces shall be 38 in (965 mm) maximum above the finished floor. The top of the counter edge protection shall be 40 in (1015 mm) maximum above the finished floor.

BCMC

6.7.3 Check-out Aisles. Accessible check-out aisles shall be installed in accordance with Table 6.7. Traffic control devices, security devices and turnstiles located in accessible check-out aisles or lanes shall be accessible.

TABLE NO. 6.7

REQUIRED CHECK-OUT AISLES

Minimum Number of Total Check-out Aisles	Accessible Check-Out Aisles
1-4	1
5-8	2
9-15	3
Over 15	3, plus 1 for each additional 5 over 15

6.7.3 Check-out Aisles. Accessible check-out aisles shall be installed in accordance with Table 6.7. Traffic control devices, security devices and turnstiles located in accessible check-out aisles or lanes shall be accessible.

TABLE NO. 6.7

REQUIRED CHECK-OUT AISLES

Minimum Number of Total Check-out Aisles	Accessible Check-Out Aisles
1-4	1
5-8	2
9-15	3
Over 15	3, plus 1 for each additional 5 over 15

Comments*

P.N.E. No requirement for accessible route.

No signage requirements.

P.N.E. Need to ensure that bollards are considered "security devices." Also, need to address security devices in accessible routes other

ADA Title III Requirements

8. LIBRARIES.

8.1 General. In addition to the requirements of 4.1 to 4.35, the design of all public areas of a library shall comply with 8, including reading and study areas, stacks, reference rooms, reserve areas, and special facilities or collections.

8.2 Reading and Study Areas. At least 5 percent or a minimum of one of each element of fixed seating, tables, or study carrels shall comply with 4.2 and 4.32. Clearances between fixed accessible tables and between study carrels shall comply with 4.3.

8.3 Check-Out Areas. At least one lane at each check-out area shall comply with 7.2(1). Any traffic control or book security gates or turnstiles shall comply with 4.13.

8.4 Card Catalogs and Magazine Displays. Minimum clear aisle space at card catalogs and magazine displays shall comply with Fig. 55. Maximum reach height shall comply with 4.2, with a height of 48 in (1220 mm) preferred irrespective of approach allowed.

8.5 Stacks. Minimum clear aisle width between stacks shall comply with 4.3, with a minimum clear aisle width of 42 in (1065 mm) preferred where possible. Shelf height in stack areas is unrestricted (see Fig. 56).

CABO/ANSI A117.1-1992

4.31.5 Checkout Counters. Checkout counter surfaces shall be 38 in (965 mm) maximum above the finished floor. The top of the counter edge protection shall be 40 in (1015 mm) maximum above the finished floor.

BCMC

Comments*

P.N.E. No specific scoping.

P.N.E. No specific scoping.

N.E. No specific scoping provisions. Technical provision is not equivalent with surface at 38 inches rather than 36 inches as in 7.2.(1).

N.E. No specific scoping. Technical provisions are not equivalent because ANSI reach requirements would apply and ADA is more restrictive here.

P.N.E. No specific scoping.

01-03825

ADA Title III Requirements

9. ACCESSIBLE TRANSIENT LODGING.

(1) Except as specified in the special technical provisions of this section, accessible transient lodging shall comply with the applicable requirements of 4.1 through 4.35. Transient lodging includes facilities or portions thereof used for sleeping accommodations, when not classed as a medical care facility.

9.1 Hotels, Motels, Inns, Boarding Houses, Dormitories, Resorts and Other Similar Places of Transient Lodging.

9.1.1 General. All public use and common use areas are required to be designed and constructed to comply with section 4 (Accessible Elements and Spaces: Scope and Technical Requirements).

EXCEPTION: Sections 9.1 through 9.4 do not apply to an establishment located within a building that contains not more than five rooms for rent or hire and that is actually occupied by the proprietor of such establishment as the residence of such proprietor.

CABO/ANSI A117.1-1992

BCMC

1.1 All buildings and structures, including their associated sites and facilities, shall be accessible with accessible means of egress for people with physical disabilities as required in these provisions.

EXCEPTIONS:

1. Areas where work cannot reasonably be performed by persons having a severe impairment (mobility, sight or hearing) are not required to have the specific features providing accessibility to such persons.

2. Group R3 buildings and accessory structures and their associated site facilities.

3. Group U structures.

EXCEPTIONS:

1. In Group U agricultural buildings, access is required to paved work areas and areas open to the general public.

2. Access is required to private garages or carports which contain accessible parking.

4. Temporary structures, sites, and equipment directly associated with the construction process such as construction site trailers, scaffolding, bridging or material hoists.

5. Buildings and facilities or portions thereof not required to be accessible in 3.0, 4.0, 5.0 and 6.0.

5.4.2 In Group R2 occupancies containing more than 20 dwelling units, at least 2%, but not less than one, of the dwelling units shall be adaptable. All dwelling units on a site shall be considered to determine the total number of adaptable units.

Comments*

P.N.E. No specific scoping.

N.E. Not specifically addressed.

ADA Title III Requirements

9.1.2 Accessible Units, Sleeping Rooms, and Suites. Accessible sleeping rooms or suites that comply with the requirements of 9.2 (Requirements for Accessible Units, Sleeping Rooms, and Suites) shall be provided in conformance with the table below. In addition, in hotels, of 50 or more sleeping rooms or suites, additional accessible sleeping rooms or suites that include a roll-in shower shall also be provided in conformance with the table below. Such accommodations shall comply with the requirements of 9.2, 4.21, and Figure 57(a) or (b).

Number of Rooms	Accessible	Rooms with

	Rooms	Roll-in Showers
1 to 25	1	
26 to 50	2	
51 to 75	3	1
76 to 100	4	1
101 to 150	5	2
151 to 200	6	2
201 to 300	7	3
301 to 400	8	4
401 to 500	9	4, plus one for
501 to 1000	2% of total	each additional
1001 and over	20 plus 1 for each	100 over 400
	100 over 1000	

Figure 57 of the ADA Standards. Roll-in Shower with Folding Seat.

57(a) Where a fixed seat is provided in a 30 in minimum by 60 in (716 mm by 1220 mm) minimum shower stall, the controls and spray unit on the back (long) wall shall be located a maximum of 27 in (685 mm) from the side wall where the seat is attached.

57(b) An alternate 36 in by 60 in (915 mm by 1220 mm) minimum shower stall is permitted. The width of the stall opening shall be a minimum of 36 in (915 mm) clear located on a long wall at the opposite end of the shower from the controls. The shower seat shall be 24 in (610 mm) minimum in length by 16 in (330 mm) minimum in width and may be rectangular in shape. The seat shall be located next to the opening to the shower and adjacent to the end wall containing the shower head and controls.

CABO/ANSI A117.1-1992

4.22.2.2 Roll-in Type Showers. Roll-in type shower stalls shall be 30 in by 60 in (760 mm by 1525 mm) inside finished dimension minimum with clear floor space of 36 in wide by 60 in long (915 mm by 1525 mm) minimum....

4.22.3 Seat. A folding or non-folding seat shall be provided in transfer-type shower stalls....

BCMC

5.4.1 In Group R1 occupancies containing 6 or more guest rooms, one for the first 30 guest rooms and one additional for each additional 100 guest rooms or fraction thereof shall be accessible. In hotels with more than 50 sleeping rooms or suites, roll-in type showers shall be provided in one-half, but not less than one, of the required accessible sleeping rooms or suites.

Comments*

N.E.

1) No requirement for owner on premises for bed & breakfast with

five or fewer rooms. BCMC exempts 6-room facilities. ADA does not.
2) Scoping requirements for accessible guest rooms far below ADA.
3) Roll-in showers included, not additional: e.g. under ADAAG, hotel with 310 rooms has 8 accessible rooms with tub or shower, plus 4 rooms with roll-in showers for a total of 12.
Under BCMC hotel with 310 rooms has 2 accessible rooms with tub or shower, 2 rooms with roll-in showers for a total of 4 (1/30 + 3/280).
BCMC does not require combination roll-in/ transfer shower. Regular roll-in shower will not necessarily satisfy ADA requirements for hotels (see below).
N.E. for transient lodging combination showers. A folding seat must be provided in such showers.

ADA Title III Requirements
9.1.3 Sleeping Accommodations for Persons with Hearing Impairments. In addition to those accessible sleeping rooms and suites required by 9.1.2, sleeping rooms and

suites that comply with 9.3 (Visual Alarms, Notification Devices, and Telephones) shall be provided in conformance with the following table:

Number of Elements	Accessible Elements
1 to 25	1
26 to 50	2
51 to 75	3
76 to 100	4
101 to 150	5
151 to 200	6
201 to 300	7
301 to 400	8
401 to 500	9
501 to 1000	2% of total
1001 and over	20 plus 1 for each 100 over 1000

9.1.4 Classes of Sleeping Accommodations.

(1) In order to provide persons with disabilities a range of options equivalent to those available to other persons served by the facility, sleeping rooms and suites required to be accessible by 9.1.2 shall be dispersed among the various classes of sleeping accommodations available to patrons of the place of transient lodging. Factors to be considered include room size, cost, amenities provided, and the number of beds provided.

(2) Equivalent Facilitation. For purposes of this section, it shall be deemed equivalent facilitation if the operator of a facility elects to limit construction of accessible rooms to those intended for multiple occupancy, provided that such rooms are made available at the cost of a single occupancy room to an individual with disabilities who requests a single-occupancy room.

CABO/ANSI A117.1-1992

BCMC

10.0 ALARM SYSTEMS

In Group R1 occupancies, all required accessible guest rooms plus an additional number of guest rooms in accordance with the table below shall be provided with a visible and audible alarm-indicating appliance, activated by both the in-room smoke detector and the building fire protective signaling system.

Number of Rooms	Rooms with Visual and Audible Alarms
6 to 25	1
26 to 50	2
51 to 75	3
76 to 100	4
101 to 150	5

151 to 200	6
201 to 300	7
301 to 400	8
401 to 500	9
501 to 1000	2% of total
1001 & over	20, plus 1 for each 100 over 1000

Comments*

N.E. None required if less than or equal to 6 rooms, even if not owner-occupied. BCMC exempts 6-room facilities. Also, no requirement for notification or telephone devices.

N.E. Does not require dispersion.

ADA Title III Requirements

9.1.5 Alterations to Accessible Units, Sleeping Rooms, and Suites. When sleeping rooms are being altered in an existing facility, or portion thereof, subject to the requirements of this section, at least one sleeping room or suite that complies with the requirements of 9.2 (Requirements for Accessible Units, Sleeping Rooms, and Suites) shall be provided for each 25 sleeping rooms, or fraction thereof, of rooms being altered until the number of such rooms provided equals the number required to be accessible with 9.1.2. In addition, at least one sleeping room or suite that complies with the requirements of 9.3 (Visual Alarms, Notification Devices, and Telephones) shall be provided for each 25 sleeping rooms, or fraction thereof, of rooms being altered until the number of such rooms equals the number required to be accessible by 9.1.3.

9.2 Requirements for Accessible Units, Sleeping Rooms and Suites.

9.2.1 General. Units, sleeping rooms, and suites required to be accessible by 9.1 shall comply with 9.2.

9.2.2 Minimum Requirements. An accessible unit, sleeping room or suite shall be on an accessible route complying with 4.3 and have the following accessible elements and spaces.

(1) Accessible sleeping rooms shall have a 36 in (915 mm) clear width maneuvering space located along both sides of a bed, except that where two beds are provided, this requirement can be met by providing a 36 in (915 mm) wide maneuvering space located between the two beds.

(2) An accessible route complying with 4.3 shall connect all accessible spaces and elements, including telephones, within the unit, sleeping room, or suite. This is not intended to require an elevator in multi-story units as long as the spaces identified in 9.2.2(6) and (7) are on accessible levels and the accessible sleeping area is suitable for dual occupancy.

(3) Doors and doorways designed to allow passage into and within all sleeping rooms, suites or other covered units shall comply with 4.13.

CABO/ANSI A117.1-1992

4.33 Dwelling Units

4.33.1* General. Accessible dwelling units shall comply with 4.33.

4.33.2* Adaptability. Both adaptable dwelling units and units in which fixtures are permanently installed within the heights specified in 4.33.3 and 4.33.4 shall be considered accessible dwelling units.

BCMC

3.1.2 At least one accessible route shall connect accessible spaces, elements, facilities and buildings that are on the same site. Where only one accessible route is provided, it shall not pass through kitchens, storage rooms, restrooms, closets or similar spaces.
EXCEPTIONS:
1. A single accessible route shall be permitted to pass through a kitchen or storage room in an accessible or adaptable dwelling unit.
15.1 Doorway Width. Doorways shall have a minimum clear width of 32 inches.
EXCEPTIONS:
1. Doorways not required for means of egress in Group R2 and R3 occupancies.
2. Group I3 occupancies.
3. Storage closets less than 10 sq ft in area.
4. Revolving doors.
5. Interior egress doorways within a dwelling unit not required to be adaptable or accessible shall have a minimum clear width of 29 3/4 inches.

Comments*

Exceeds by not providing this exception to the general requirements for alterations.
N.E. ANSI has no specific technical requirements for transient housing. However, the provisions for dwelling units could be applied to some facility types, i.e., "time share" apartments and family shelters. BCMC is N.E. because it has not scoped these requirements.
N.E. Specific provisions for accessible units not addressed.

ADA Title III Requirements

9.2.2 (4) If fixed or built-in storage facilities such as cabinets, shelves, closets, and drawers are provided in accessible spaces, at least one of each type provided shall contain storage space complying with 4.25. Additional storage may be provided outside of the dimensions required by 4.25.

(5) All controls in accessible units, sleeping rooms, and suites shall comply with 4.27.

9.2.2 (6) Where provided as part of an accessible unit, sleeping room, or suite, the following spaces shall be accessible and shall be on an accessible route:

(a) the living area.

(b) the dining area.

(c) at least one sleeping area.

(d) patios, terraces, or balconies.

EXCEPTION: The requirements of 4.13.8 and 4.3.8 do not apply where it is necessary to utilize a higher door threshold or a change in level to protect the integrity of the unit from wind/water damage. Where this exception results in patios, terraces or balconies that are not at an accessible level, equivalent facilitation shall be provided. (E.g., Equivalent facilitation at a hotel patio or balcony might consist of providing raised decking or a ramp to provide accessibility).

CABO/ANSI A117.1-1992

BCMC

6.4 Storage and Locker Facilities

Where storage facilities such as cabinets, shelves, closets, lockers and drawers are provided in required accessible or adaptable spaces, at least one of each type shall contain storage space complying with A117.1 (4.23).

6.8 Controls, Operating Mechanisms and Hardware

Controls, operating mechanisms and hardware, including switches that control lighting, ventilation or electrical outlets, in accessible spaces, along accessible routes or as

parts of accessible elements, shall be accessible.

Comments*

E.

N.E. Not addressed.

115

ADA/ANSI/BCMC Requirements - October 13, 1995

01-03830

ADA Title III Requirements

9.2.2 (6)(e) at least one full bathroom (i.e., one with a water closet, a lavatory, and a bathtub or shower).

CABO/ANSI A117.1-1992

4.33.3* Bathrooms. Accessible bathrooms shall comply with 4.33.3.

4.33.3.1 Doors. Doors shall not swing into the clear floor space required for any fixture unless the toilet or bathroom is for individual use only, or a clear floor space complying with 4.2.4.1 is provided beyond the arc of the door swing within the room.

4.33.3.2 Water Closets

4.33.3.2.1 Water closets shall be located in the corner of the adaptable bathroom. See Fig. B4.33.3.2. A 48 in (1220 mm) minimum clear space shall be provided in front of the bowl and from the side wall. The distance from the centerline of water closet to accessible lavatory shall be 18 in (455 mm) minimum and from the centerline of the water closet to the wall shall be 18 in (455 mm). The clear space shall be permitted at either side of the water closet.

4.33.3.2.2 Water closet height shall be from 15 in (380 mm) minimum to 19 in (485 mm) maximum, measured from the floor to the top of the toilet seat.

4.33.3.2.3 Grab bars complying with 4.24 shall be installed, or structural reinforcement or other provisions shall be made that will allow installation of grab bars meeting these requirements.

4.33.3.2.4 The toilet paper dispenser shall comply with 4.16.4.

4.33.3.3 Lavatory, Mirrors, and Medicine Cabinets

4.33.3.3.1 The lavatory shall comply with 4.20.

4.33.3.3.2 Medicine cabinets provided under the lavatory shall provide, or shall be removable to provide, the clearances specified in 4.20.2.
4.33.3.3.3 Medicine cabinets provided above the lavatory shall comply with 4.16.5.
4.33.3.3.4 Mirrors shall comply with 4.16.6.
4.33.3.4 Bathtubs. Where a bathtub is provided, it shall have the following features:
4.33.3.4.1 Clear floor space at bathtubs shall comply with 4.21.2.

BCMC

6.1.1 Toilet rooms and bathing facilities shall be accessible. At least one of each type fixture or element in each accessible toilet room and bathing facility shall be accessible.
EXCEPTIONS:
1. A toilet room or bathing facility for a single occupant and not for common or public use shall be permitted to be adaptable.
adaptable.
2. Dwelling units, guest rooms and patient toilet rooms, unless required by 5.0 to be accessible or adaptable.

Comments*

ANSI N.E. ANSI allows adaptability and does not require a turning space in residential bathrooms.
BCMC E.

ADA Title III Requirements

9.2.2 (6) (f) if only half baths are provided, at least one half bath.

9.2.2 (6) (g) carports, garages or parking spaces.

CABO/ANSI A117.1-1992

4.33.3.4.2 A removable in-tub seat or permanent seat at the head end of the tub shall be provided in compliance with 4.21.3. The structural strength of seats and their attachments shall comply with 4.24.3. In-tub seats shall be capable of being mounted securely and shall not slip during use.

4.33.3.4.3 Grab bars shall be installed in compliance with 4.21.4, or structural reinforcement shall be made that will allow installation of grab bars meeting these requirements.

4.33.3.4.4 Faucets and other controls shall comply with 4.21.5.

4.33.3.4.5 A shower spray unit shall be provided in compliance with 4.21.6.

4.33.3.5 Showers. Where a shower is provided, it shall comply with 4.22.

Exception 1. In lieu of providing a seat, the wall opposite the controls in a shower stall shall be structurally reinforced the full depth of the stall at a height from 16 in to 20 in (405 mm to 510 mm) measured from the

bathroom floor, to allow for the installation of a shower seat.
Exception 2. Structural reinforcement shall be permitted that will allow installation of grab bars complying with 4.22.4.
4.33.3.6 Clear Floor Space. Clear floor space at fixtures shall be permitted to overlap.

BCMC
Comments*

See above.
N.E. Specific elements not required.

ADA Title III Requirements
9.2.2 (7) Kitchens, Kitchenettes, or Wet Bars. When provided as accessory to a sleeping room or suite, kitchens, kitchenettes, wet bars, or similar amenities shall be accessible. Clear floor space for a front or parallel approach to cabinets, counters, sinks, and appliances shall be provided to comply with 4.2.4. Countertops and sinks shall be mounted at a maximum height of 34 in (865 mm) above the floor. At least fifty percent of shelf space in cabinets or refrigerator/freezers shall be within the reach ranges of 4.2.5 or 4.2.6 and space shall be designed to allow for the operation of cabinet and/or appliance doors so that all cabinets and appliances are accessible and usable. Controls and operating mechanisms shall comply with 4.27.

CABO/ANSI A117.1-1992
4.33.4 Kitchens. Accessible kitchens and their components shall comply with the requirements of 4.33.4.
4.33.4.1 Clearance. Where counters provide the knee clearances specified in 4.20.2, clearances between those

counters and all opposing base cabinets, countertops, appliances, or walls in kitchens shall be 40 in (1015 mm) minimum, except in U-shaped kitchens, where such clearances shall be 60 in (1525 mm) minimum.

4.33.4.2 Clear Floor Space. A clear floor space 30 in by 48 in (760 mm by 1220 mm) minimum complying with 4.2.4 that allows either a forward or a parallel approach by a person in a wheelchair shall be provided at all appliances in the kitchen, including the range or cooktop, oven, refrigerator/freezer, dishwasher, and trash compactor. Laundry equipment located in the kitchen shall comply with 4.33.5.

4.33.4.3 Operable Parts. All operable parts in kitchens shall comply with 4.25.

4.33.4.4 Work Surfaces. At least one 30 in (760 mm) wide minimum section of counter shall provide a work surface that complies with the following requirements. See Fig. B4.33.4.4.

4.33.4.4.1 The counter shall be adjustable or replaceable as a unit at variable heights between 28 in and 36 in (710 mm and 915 mm), measured from the floor to the top of the counter surface, or shall be mounted at a fixed height of 34 in (865 mm) maximum, measured from the floor to the top of the counter surface.

4.33.4.4.2 Base cabinets, if provided, shall be removable under the full 30 in (760 mm) minimum frontage of the counter. The finished floor shall extend under the counter to the wall.

4.33.4.4.3 Counter thickness and supporting structure shall extend 2 in (51 mm) maximum over the required clear area.

BCMC
Comments*

P.N.E. No scoping of elements. However, technical detail exceeds the ADA Standards. If applied to transient housing these provisions would provide greater access in general than the ADA Standards.

ADA Title III Requirements
CABO/ANSI A117.1-1992

4.33.4.4.4 A clear floor space of 30 in by 48 in (760 mm by 1220 mm) minimum shall allow a forward approach to the counter. The clear floor space shall be permitted to extend 19 in (485 mm) maximum underneath the counter. The knee space shall have a clear width of 30 in (760 mm) minimum.

4.33.4.4.5 There shall be no sharp or abrasive surfaces under such counters.

4.33.4.5* Sink. The sink and surrounding counter shall comply with the following requirements. See Fig.

B4.33.4.5.
4.33.4.5.1 The sink and surrounding counter shall be adjustable or replaceable as a unit at variable heights between 28 in and 36 in (710 mm and 915 mm), measured from the finished floor to the top of the counter surface or sink rim, or shall be mounted at a fixed height of 34 in (865 mm) minimum, measured from the finished floor to the top of the counter surface or sink rim.
4.33.4.5.2 Where sinks are installed to be adjustable in height, rough-in plumbing shall be located to accept connections of supply and drain pipes for sinks mounted at the height of 28 in (710 mm).
4.33.4.5.3 The depth of a sink bowl shall be 6 1/2 in (165 mm) maximum. Only one bowl of double-bowl or triple-bowl sinks needs to meet this requirement.
4.33.4.5.4 Faucets shall comply with 4.25.4.
4.33.4.5.5 Base cabinets, if provided, shall be removable under the full 30 in (760 mm) minimum frontage of the sink and surrounding counter. The finished flooring shall extend under the counter to the wall.
4.33.4.5.6 Counter thickness and supporting structure shall extend 2 in (51 mm) maximum over the required clear space.
4.33.4.5.7 A clear floor space of 30 in by 48 in (760 mm by 1220 mm) minimum shall allow forward approach to the sink. The clear floor space shall be permitted to extend 19 in (485 mm) maximum underneath the sink. The knee space shall have a clear width of 30 in (760 mm) minimum.

BCMC
Comments*

See above.

ADA Title III Requirements
CABO/ANSI A117.1-1992

4.33.4.5.8 Water supply pipes and drain pipes under sinks shall be protected in accordance with 4.20.4
4.33.4.6* Ranges and Cooktops. Ranges and cooktops shall comply with 4.33.4.2 and 4.33.4.3. If ovens or cooktops have knee spaces underneath, they shall be insulated or otherwise protected on the exposed contact

surfaces for protection against burns, abrasions, or electrical shock. The clear floor space shall be permitted to overlap the knee space, if provided, by 19 in (485 mm) maximum. The location of controls for ranges and cooktops shall not require reaching across burners.
4.33.4.7* Ovens. Ovens shall comply with 4.33.4.2 and 4.33.4.3. Ovens shall be of the self-cleaning type or be located adjacent to an adjustable height counter with a 30 in (760 mm) wide minimum knee space below. See Fig. B4.33.4.7. For side-opening ovens, the door latch side shall be next to the open counter space, and there shall be a pull-out shelf under the oven extending the full width of the oven and pulling out 10 in (255 mm) minimum when fully extended. Ovens shall have controls on front panels. Controls shall be permitted to be located on either side of the door.
4.33.4.8* Refrigerator/Freezers. Refrigerators and freezers shall comply with 4.33.4.2 and 4.33.4.3. Side-by-side combination freezer and refrigerator appliances shall have at least 50 percent of the freezer space and at least 50 percent of the refrigerator space located 54 in (1370 mm) maximum above the floor. Other combination refrigerators and freezers shall have at least 50 percent of the freezer space and 100 percent of the refrigerator space and controls 54 in (1370 mm) maximum above the floor. Freezers with less than 100 percent of the storage volume within the limits specified in 4.2.5 or 4.2.6 shall be the self-defrosting type.
4.33.4.10* Kitchen Storage.
4.33.4.10.1 Cabinets, drawers, and shelf storage areas shall comply with 4.23.
4.33.4.10.2 At least one shelf of all cabinets and storage shelves mounted above work counters shall be 48 in (1220 mm) maximum above the floor. See Fig. B4.33.4.4.
4.33.4.10.3 Door pulls or handles for wall cabinets shall be mounted as close to the bottom of cabinet doors as possible. Door pulls or handles for base cabinets shall be mounted as close to the top of cabinet doors as possible.
BCMC Comments*
See above.
See above.

ADA Title III Requirements

9.2.2(8) Sleeping room accommodations for persons with hearing impairments required by 9.1 and complying with 9.3 shall be provided in the accessible sleeping room or

suite.
9.3 Visual Alarms, Notification Devices and Telephones.
9.3.1 General. In sleeping rooms required to comply with this section, auxiliary visual alarms shall be provided and shall comply with 4.28.4. Visual notification devices shall also be provided in units, sleeping rooms and suites to alert room occupants of incoming telephone calls and a door knock or bell. Notification devices shall not be connected to auxiliary visual alarm signal appliances. Permanently installed telephones shall have volume controls complying with 4.31.5; an accessible electrical outlet within 4 ft (1220 mm) of a telephone connection shall be provided to facilitate the use of a text telephone.
9.3.2 Equivalent Facilitation. For purposes of this section, equivalent facilitation shall include the installation of electrical outlets (including outlets connected to a facility's central alarm system) and telephone wiring in sleeping rooms and suites to enable persons with hearing impairments to utilize portable visual alarms and communication devices provided by the operator of the facility.
9.4 Other Sleeping Rooms and Suites. Doors and doorways designed to allow passage into and within all sleeping units or other covered units shall comply with 4.13.5.

CABO/ANSI A117.1-1992

BCMC

10.0 ALARM SYSTEMS
In Group R1 occupancies, all required accessible guest rooms plus an additional number of guest rooms in accordance with the table below shall be provided with a visible and audible alarm-indicating appliance, activated by both the in-room smoke detector and the building fire protective signaling system.

Number of Rooms	Rooms with Visual and Audible Alarms
6 to 25	1
26 to 50	2
51 to 75	3
76 to 100	4
101 to 150	5
151 to 200	6
201 to 300	7
301 to 400	8
401 to 500	9
501 to 1000	2% of total
1001 & over	20, plus 1 for each 100 over 1000

10.0 ALARM SYSTEMS

In Group R1 occupancies, all required accessible guest rooms plus an additional number of guest rooms in accordance with the table below shall be provided with a visible and audible alarm-indicating appliance, activated by both the in-room smoke detector and the building fire protective signaling system.

Number of Rooms	Rooms with Visual and Audible Alarms
6 to 25	1
26 to 50	2
51 to 75	3
76 to 100	4
101 to 150	5
151 to 200	6
201 to 300	7
301 to 400	8
401 to 500	9
501 to 1000	2% of total
1001 & over	20, plus 1 for each 100 over 1000

15.1 Doorway Width. Doorways shall have a minimum clear width of 32 inches.

EXCEPTIONS:

1. Doorways not required for means of egress in Group R2 and R3 occupancies.
2. Group I3 occupancies.
3. Storage closets less than 10 s ft in area.
4. Revolving doors.
5. Interior egress doorways within a dwelling unit not required to be adaptable or accessible shall have a minimum clear width of 29 3/4 inches.

Comments*

N.E. No requirement for notification or telephone devices.

N.E. No requirement for notification or telephone devices.

E.

Exception 5 - N.E. for dwelling units in transient lodging.

ADA Title III Requirements

9.5 Transient Lodging in Homeless Shelters, Halfway Houses, Transient Group Homes, and Other Social Service Establishments.

9.5.1 New Construction. In new construction all public use and common use areas are required to be designed and constructed to comply with section 4. At least one of each type of amenity (such as washers, dryers and similar equipment installed for the use of occupants) in each common area shall be accessible and shall be located on an accessible route to any accessible unit or sleeping accommodation.

EXCEPTION: Where elevators are not provided as allowed in 4.1.3(5), accessible amenities are not required on inaccessible floors as long as one of each type is provided in common areas on accessible floors.

9.5.2 Alterations.

(1) Social service establishments which are not homeless shelters:

(a) The provisions of 9.5.3 and 9.1.5 shall apply to sleeping rooms and beds.

(b) Alteration of other areas shall be consistent with the new construction provisions of 9.5.1.

CABO/ANSI A117.1-1992

BCMC

Comments*

P.N.E. Not specifically addressed.

N.E. Scoping and technical details - specific provisions not addressed.

ADA Title III Requirements

9.5.2 (2) Homeless shelters. If the following elements are altered, the following requirements apply:

(a) at least one public entrance shall allow a person with mobility impairments to approach, enter and exit including a minimum clear door width of 32 in (815 mm).

(b) sleeping space for homeless persons as provided in the scoping provisions of 9.1.2 shall include doors to the sleeping area with a minimum clear width of 32 in (815 mm) and maneuvering space around the beds for persons with mobility impairments complying with 9.2.2(1).

(c) at least one toilet room for each gender or one unisex toilet room shall have a minimum clear door width of 32 in (815 mm), minimum turning space complying with 4.2.3, one water closet complying with 4.16, one lavatory complying with 4.19 and the door shall have a privacy latch; and if provided, at least one tub or shower shall comply with 4.20 or 4.21, respectively.

(d) at least one common area which a person with mobility impairments can approach, enter and exit including a minimum clear door width of 32 in (815 mm).

(e) at least one route connecting elements (a), (b), (c) and (d) which a person with mobility impairments can use including minimum clear width of 36 in (915 mm), passing space complying with 4.3.4, turning space complying with 4.2.3 and changes in levels complying with 4.3.8.

(f) homeless shelters can comply with the provisions of (a)-(e) by providing the above elements on one accessible floor.

9.5.3 Accessible Sleeping Accommodations in New Construction. Accessible sleeping rooms shall be provided in conformance with the table in 9.1.2 and shall comply with 9.2 Accessible Units, Sleeping Rooms and Suites (where the items are provided). Additional sleeping rooms that comply with 9.3 Sleeping Accommodations for Persons with Hearing Impairments shall be provided in conformance with the table provided in 9.1.3.

In facilities with multi-bed rooms or spaces, a percentage of the beds equal to the table provided in 9.1.2 shall comply with 9.2.2(1).

CABO/ANSI A117.1-1992

BCMC

5.4.1 In Group R1 occupancies containing 6 or more guest rooms, one for the first 30 guest rooms and one additional for each additional 100 guest rooms or fraction thereof shall be accessible. In hotels with more than 50 sleeping rooms or suites, roll-in type showers shall be provided in one-half, but not less than one, of the required accessible sleeping rooms or suites.

Number of Rooms	Rooms with Visual and Audible Alarms
6 to 25	1
26 to 50	2
51 to 75	3
76 to 100	4
101 to 150	5
151 to 200	6
201 to 300	7
301 to 400	8
401 to 500	9
501 to 1000	2% of total
1001 & over	20, plus 1 for each 100 over 1000

Comments*

P.N.E. Not addressed.

See 9.1, above.

ADA Title III Requirements

10 TRANSPORTATION FACILITIES

10.1 General. Every station, bus stop, bus stop pad, terminal, building or other transportation facility, shall comply with the applicable provisions of 4.1 through 4.35, sections 5 through 9, and the applicable provisions of this section. The exceptions for elevators in 4.1.3(5) exception 1 and 4.1.6(l)(k) do not apply to a terminal, depot, or other station used for specified public transportation, or an airport passenger terminal, or facilities subject to Title II.

10.2 Bus Stops and Terminals.

10.2.1 New Construction.

(1) Where new bus stop pads are constructed at bus stops, bays or other areas where a lift or ramp is to be deployed, they shall have a firm, stable surface; a minimum clear length of 96 inches (measured from the curb or vehicle roadway edge) and a minimum clear width of 60 inches (measured parallel to the vehicle roadway) to the maximum extent allowed by legal or site constraints; and shall be connected to streets, sidewalks or pedestrian paths by an accessible route complying with 4.3 and 4.4. The slope of the pad parallel to the roadway shall, to the extent practicable, be the same as the roadway. For water drainage, a maximum slope of 1:50 (2%) perpendicular to the roadway is allowed.

(2) Where provided, new or replaced bus shelters shall be installed or positioned so as to permit a wheelchair or mobility aid user to enter from the public way and to reach a location, having a minimum clear floor area of 30 inches by 48 inches, entirely within the perimeter of the shelter. Such shelters shall be connected by an accessible route to

the boarding area provided under paragraph (1) of this section.

(3) Where provided, all new bus route identification signs shall comply with 4.30.5. In addition, to the maximum extent practicable, all new bus route identification signs shall comply with 4.30.2 and 4.30.3. Signs that are sized to the maximum dimensions permitted under legitimate local, state or federal regulations or ordinances shall be considered in compliance with 4.30.2 and 4.30.3 for purposes of this section.

EXCEPTION: Bus schedules, timetables, or maps that are posted at the bus stop or bus bay are not required to comply with this provision.

CABO/ANSI A117.1-1992

BCMC

1.1 All buildings and structures, including their associated sites and facilities, shall be accessible with accessible means of egress for people with disabilities as required in these provisions.

Comments*

N.E. Not addressed. Although transportation facilities will be covered by BCMC's general provisions, those provisions will not address the features and elements unique to such facilities.

N.E. Not addressed.

10.2.2 Bus Stop Siting and Alterations.

(1) Bus stop sites shall be chosen such that, to the maximum extent practicable, the areas where lifts or ramps are to be deployed comply with section 10.2.1(1) and (2).

(2) When new bus route identification signs are installed or old signs are replaced, they shall comply with the requirements of 10.2.1(3).

10.3 Fixed Facilities and Stations.

10.3.1 New Construction. New stations in rapid rail, light rail, commuter rail, intercity bus, intercity rail, high speed rail, and other fixed guideway systems (e.g., automated guideway transit, monorails, etc.) shall comply with the following provisions, as applicable.

10.3.1 (1) Elements such as ramps, elevators or other circulation devices, fare vending or other ticketing areas, and fare collection areas shall be placed to minimize the distance which wheelchair users and other persons who cannot negotiate steps may have to travel compared to the general public. The circulation path, including an accessible entrance and an accessible route, for persons with disabilities shall, to the maximum extent practicable, coincide with the circulation path for the general public.

Where the circulation path is different, signage complying with 4.30.1, 4.30.2, 4.30.3, 4.30.5, and 4.30.7(1) shall be provided to indicate direction to and identify the accessible entrance and accessible route.

10.3.1 (2) In lieu of compliance with 4.1.3(8), at least one entrance to each station shall comply with 4.14, Entrances. If different entrances to a station serve different transportation fixed routes or groups of fixed routes, at least one entrance serving each group or route shall comply with 4.14, Entrances. All accessible entrance shall, to the maximum extent practicable, coincide with those used by the majority of the general public.

10.3.1 (3) Direct connections to commercial, retail, or residential facilities shall have an accessible route complying with 4.3 from the point of connection to boarding platforms and all transportation system elements used by the public. Any elements provided to facilitate future direct connections shall be on an accessible route connecting boarding platforms and all transportation system elements used by the public.

CABO/ANSI A117.1-1992

BCMC

3.1.2 At least one accessible route shall connect accessible spaces, elements, facilities and buildings that are on the same site...

4.1 Each building and structure, and each separate tenancy within a building or structure, shall be provided with at least one entrance which complies with the accessible route provisions of CABO/ANSI A117.1. Not less than 50% of the entrances shall be accessible.

3.1.2 At least one accessible route shall connect accessible spaces, elements, facilities and buildings that are on the same site...

4.1 Each building and structure, and each separate tenancy within a building or structure, shall be provided with at least one entrance which complies with the accessible route provisions of CABO/ANSI A117.1. Not less than 50% of the entrances shall be accessible.

Comments*

N.E. Not addressed.

N.E. Not addressed.

P.N.E. BCMC needs to address "coincide with the circulation path for the general public."

Exceeds by requiring 50% rather than just one, to be accessible.

However, P.N.E. because BCMC fails to require one at each entrance

serving each group of routes.
E.

ADA Title III Requirements

10.3.1 (4) Where signs are provided at entrances to stations identifying the station or the entrance, or both, at least one sign at each entrance shall comply with 4.30.4 and 4.30.6. Such signs shall be placed in uniform locations at entrances within the transit system to the maximum extent practicable.

EXCEPTION: Where the station has no defined entrance, but signage is provided, then the accessible signage shall be placed in a central location.

10.3.1 (5) Stations covered by this section shall have identification signs complying with 4.30.1, 4.30.2, 4.30.3, and 4.30.5. Signs shall be placed at frequent intervals and shall be clearly visible from within the vehicle on both sides when not obstructed by another train. When station identification signs are placed close to vehicle

windows (i.e., on the side opposite from boarding) each shall have the top of the highest letter or symbol below the top of the vehicle window and the bottom of the lowest letter or symbol above the horizontal mid-line of the vehicle window.

10.3.1 (6) Lists of stations, routes, or destinations served by the station and located on boarding areas, platforms, or mezzanines shall comply with 4.30.1, 4.30.2, 4.30.3, and 4.30.5. A minimum of one sign identifying the specific station and complying with 4.30.4 and 4.30.6 shall be provided on each platform or boarding area. All signs referenced in this paragraph shall, to the maximum extent practicable, be placed in uniform locations within the transit system.

10.3.1 (7)* Automatic fare vending, collection and adjustment (e.g., add-fare) systems shall comply with 4.34.2, 4.34.3, 4.34.4, and 4.34.5. At each accessible entrance such devices shall be located on an accessible route. If self-service fare collection devices are provided for the use of the general public, at least one accessible device for entering, and at least one for exiting, unless one device serves both functions, shall be provided at each accessible point of entry or exit. Accessible fare collection devices shall have a minimum clear opening width of 32 in; shall permit passage of a wheelchair; and, where provided, coin or card slots and controls necessary for operation shall comply with 4.27. Gates which must be pushed open by wheelchair or mobility aid users shall have a smooth continuous surface extending from 2 inches above the floor to 27 inches above the floor and shall comply with 4.13. Where the circulation path does not coincide with that used by the general public, accessible fare collection systems shall be located at or adjacent to the accessible point of entry or exit.

CABO/ANSI A117.1-1992

BCMC

Comments*

N.E. Not addressed.

N.E. Not addressed.

N.E. Not addressed.

N.E. Not addressed.

ADA Title III Requirements

10.3.1 (8) Platform edges bordering a drop-off and not protected by platform screens or guard rails shall have a detectable warning. Such detectable warnings shall comply with 4.29.2 and shall be 24 inches wide running the full length of the platform drop-off.

10.3.1 (9) In stations covered by this section, rail-to-platform height in new stations shall be coordinated with

the floor height of new vehicles so that the vertical difference, measured when the vehicle is at rest, is within plus or minus 5/8 inch under normal passenger load conditions. For rapid rail, light rail, commuter rail, high speed rail, and intercity rail systems in new stations, the horizontal gap, measured when the new vehicle is at rest, shall be no greater than 3 in. For slow moving automated guideway "people mover" transit systems, the horizontal gap in new stations shall be no greater than 1 in.
EXCEPTION 1: Existing vehicles operating in new stations may have a vertical difference with respect to the new platform within plus or minus 1-1/2 in.
EXCEPTION 2: In light rail, commuter rail and intercity rail systems where it is not operationally or structurally feasible to meet the horizontal gap or vertical difference requirements, mini-high platforms, car-borne or platform-mounted lifts, ramps or bridge plates, or similar manually deployed devices, meeting the applicable requirements of 36 C.F.R. part 1192, or 49 C.F.R. part 38 shall suffice.
10.3.1 (10) Stations shall not be designed or constructed so as to require persons with disabilities to board or alight from a vehicle at a location other than one used by the general public.
10.3.1 (11) Illumination levels in the areas where signage is located shall be uniform and shall minimize glare on signs. Lighting along circulation routes shall be of a type and configuration to provide uniform illumination.
10.3.1 (12) Text Telephones: The following shall be provided in accordance with 4.31.9:
(a) If an interior public pay telephone is provided in a transit facility (as defined by the Department of Transportation) at least one interior public text telephone shall be provided in the station.
(b) Where four or more public pay telephones serve a particular entrance to a rail station and at least one is in an interior location, at least one interior public text telephone shall be provided to serve that entrance. Compliance with this section constitutes compliance with section 4.1.3(17)(c).

CABO/ANSI A117.1-1992
BCMC
Comments*

N.E. Not addressed.
N.E. Not addressed.
N.E. Not addressed.
N.E. Not addressed.
N.E. Not addressed.

10.3.1 (13) Where it is necessary to cross tracks to reach boarding platforms, the route surface shall be level and flush with the rail top at the outer edge and between rails, except for a maximum 2-1/2 inch gap on the inner edge of each rail to permit passage of wheel flanges. Such crossings shall comply with 4.29.5. Where gap reduction is not practicable, an above-grade or below-grade accessible route shall be provided.

10.3.1 (14) Where public address systems are provided to convey information to the public in terminals, stations, or other fixed facilities, a means of conveying the same or equivalent information to persons with hearing loss or who are deaf shall be provided.

10.3.1 (15) Where clocks are provided for use by the general public, the clock face shall be uncluttered so that its elements are clearly visible. Hands, numerals, and/or digits shall contrast with the background either light-on-dark or dark-on-light. Where clocks are mounted overhead, numerals and/or digits shall comply with 4.30.3. Clocks shall be placed in uniform locations throughout the facility and system to the maximum extent practicable.

10.3.1 (16) Where provided in below grade stations, escalators shall have a minimum clear width of 32 inches. At the top and bottom of each escalator run, at least two contiguous treads shall be level beyond the comb plate before the risers begin to form. All escalator treads shall be marked by a strip of clearly contrasting color, 2 inches in width, placed parallel to and on the nose of each step. The strip shall be of a material that is at least as slip resistant as the remainder of the tread. The edge of the tread shall be apparent from both ascending and descending directions.

10.3.1 (17) Where provided, elevators shall be glazed or have transparent panels to allow an unobstructed view both in to and out of the car. Elevators shall comply with 4.10.

EXCEPTION: Elevator cars with a clear floor area in which a 60 inch diameter circle can be inscribed may be substituted for the minimum car dimensions of 4.10, Fig. 22.

10.3.1 (18) Where provided, ticketing areas shall permit persons with disabilities to obtain a ticket and check baggage and shall comply with 7.2.

CABO/ANSI A117.1-1992

4.31.4* Height of Work Surfaces and Service Counters. The tops of accessible portions of tables, service counters, tray slides and work surfaces shall be from 28 in to 34 in

(710 mm to 865 mm) from the floor or ground.

BCMC

6.7.2 Counters and Windows. Where customer sales and service counters or windows are provided, a portion of the counter, or at least one window, shall be accessible.

Comments*

N.E. Not addressed.

N.E. Not addressed.

N.E. Not addressed.

N.E. Not addressed.

See comments at ADA S 4.1.3 (5), above.

N.E. regarding transparent panels.

P.N.E. BCMC/ANSI does not require 36" length.

10.3.1 (19) Where provided, baggage check-in and retrieval systems shall be on an accessible route complying with 4.3, and shall have space immediately adjacent complying with 4.2. If unattended security barriers are provided, at least one gate shall comply with 4.13. Gates which must be pushed open by wheelchair or mobility aid users shall have a smooth continuous surface extending from 2 inches above the floor to 27 inches above the floor.

10.3.2 Existing Facilities: Key Stations.

[Not reproduced because key stations are covered by title II of the ADA only and, therefore, section 10.3.2 is inapplicable to title III entities.]

10.3.3 Existing Facilities: Alterations.

(1) For the purpose of complying with 4.1.6(2) Alterations to an Area Containing a Primary Function, an area of primary function shall be as defined by applicable provisions of 49 C.F.R. 37.43(c) (Department of Transportation's ADA Rule) or 28 C.F.R. 36.403 (Department of Justice's ADA Rule).

10.4 Airports.

10.4.1 New Construction.

(1) Elements such as ramps, elevators or other vertical circulation devices, ticketing areas, security checkpoints, or passenger waiting areas shall be placed to minimize the distance which wheelchair users and other persons who cannot negotiate steps may have to travel compared to the general public.

10.4.1 (2) The circulation path, including an accessible entrance and an accessible route, for persons with disabilities shall, to the maximum extent practicable, coincide with the circulation path for the general public. Where the circulation path is different, directional signage complying with 4.30.1, 4.30.2, 4.30.3 and 4.30.5 shall be provided which indicates the location of the nearest accessible entrance and its accessible route.

10.4.1 (3) Ticketing areas shall permit persons with disabilities to obtain a ticket and check baggage and shall comply with 7.2.

4.31.4* Height of Work Surfaces and Service Counters. The tops of accessible portions of tables, service counters, tray slides and work surfaces shall be from 28 in to 34 in (710 mm to 865 mm) from the floor or ground.

BCMC

3.1.2 At least one accessible route shall connect accessible spaces, elements, facilities and buildings that are on the same site...

3.1.2 At least one accessible route shall connect accessible spaces, elements, facilities and buildings that are on the same site...

6.7.2 Counters and Windows. Where customer sales and service counters or windows are provided, a portion of the counter, or at least one window, shall be accessible.

Comments*

N.E. Not addressed.

Not addressed.

P.N.E. BCMC needs to address minimizing travel distance.

P.N.E. BCMC needs to address "coincide with the circulation path for the general public."

P.N.E. BCMC/ANSI does not require 36" length.

10.4.1 (4) Where public pay telephones are provided, and at least one is at an interior location, a public text telephone shall be provided in compliance with 4.31.9. Additionally, if four or more public pay telephones are located in any of the following locations, at least one public text telephone shall also be provided in that location:

(a) a main terminal outside the security areas;
(b) a concourse within the security areas; or
(c) a baggage claim area in a terminal.

Compliance with this section constitutes compliance with section 4.1.3(17)(c).

10.4.1 (5) Baggage check-in and retrieval systems shall be on an accessible route complying with 4.3, and shall have space immediately adjacent complying with 4.2.4. If unattended security barriers are provided, at least one gate shall comply with 4.13. Gates which must be pushed open by wheelchair or mobility aid users shall have a smooth continuous surface extending from 2 inches above the floor to 27 inches above the floor.

10.4.1 (6) Terminal information systems which broadcast information to the general public through a public address system shall provide a means to provide the same or equivalent information to persons with a hearing loss or who are deaf. Such methods may include, but are not limited to, visual paging systems using video monitors and computer technology. For persons with certain types of hearing loss such methods may include, but are not limited to, an assistive listening system complying with 4.33.7.

10.4.1 (7) Where clocks are provided for use by the general public the clock face shall be uncluttered so that

its elements are clearly visible. Hands, numerals, and/or digits shall contrast with their background either light-on-dark or dark-on-light. Where clocks are mounted overhead, numerals and/or digits shall comply with 4.30.3. Clocks shall be placed in uniform locations throughout the facility to the maximum extent practicable.
10.4.1 (8) Security Systems. (Reserved).
10.5 Boat and Ferry Docks. (Reserved).
CABO/ANSI A117.1-1992
BCMC
Comments*
N.E. Not addressed.
N.E. Not addressed.
N.E. Not addressed.
N.E. Not addressed.
130
ADA/ANSI/BCMC Requirements - October 13, 1995
01-03845

OCT 25 1995

The Honorable Richard J. Durbin
Member, U.S. House of Representatives
P.O. Box 790
Springfield, Illinois 62705

Dear Congressman Durbin:

I am responding to your inquiry on behalf of your constituents, Dr. Kermit W. Bell and Reverend Paul D. Frazier, regarding the elevator exemption in the Americans with Disabilities Act of 1990 (ADA). Dr. Bell and Reverend Frazier wish to know whether an elevator must be installed in the medical facility being constructed in Calhoun County, Illinois. We apologize for our delay in responding.

The Americans with Disabilities Act (ADA) authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist your constituent in understanding the ADA's requirements. It does not, however, constitute a legal interpretation and it is not binding on the Department.

The ADA and the Department's ADA Standards for Accessible Design require an elevator to serve each level of newly constructed or altered buildings. An exception to that

requirement exempts privately owned and operated buildings that are less than three stories or that have less than 3000 square feet per story unless the building is a shopping center, a shopping mall, or the professional office of a health care provider. Congress, in enacting the ADA, specifically required that elevators be installed in the newly constructed offices of professional health care providers in recognition of the importance of providing access to health care for people with disabilities.

The Department has provided further interpretation of this provision in its Technical Assistance Manual for title III of the ADA. The manual explains that, where a physician has offices on an accessible floor of a two-story building and the other floor

cc: Records; Chrono; Wodatch; Milton; McDowney; FOIA
udd\milton\congress\elev_dr.dur

01-03846

Congress of the United States
House of Representatives
Washington, DC 20515-1520
September 18, 1995

Mr. Deval L. Patrick
Assistant Attorney General For the Civil Rights Division
U.S. Department of Justice
PO Box 65808
Washington, D.C. 20035-5808

Dear Mr. Patrick:

I am writing on behalf of my constituents Dr. Kermit W. Bell and Reverend Paul D. Frazier of the Calhoun Medical Center Board in Hardin, Illinois.

The only medical facility in Calhoun County was destroyed in the Flood of 1993. The community is now in the process of rebuilding. The community is planning to build a two story building to house its medical facilities -- the upper level to be used for the medical center and the lower level to be used for storage and public meetings. Both levels are accessible separately by entrances to outside parking lots.

The Medical Center Board has been advised that an elevator should be installed in the building to meet ADA requirements. They have contacted my office in an attempt to appeal this decision.

The Medical Center Board states that the added cost of this elevator has resulted in the downsizing of the medical center itself and the elimination of many needed medical features. The Board feels that a state-of-the-art medical facility is needed to guarantee quality medical service to its patients and to attract much needed physicians to this rural area.

The Medical Center Board contends that both levels of the building are accessible to the handicapped from the outside parking lots on each level. Therefore, the elevator is unnecessary.

I respectfully request that this matter be examined further and a decision be made regarding the necessity of this elevator in order to meet ADA requirements.

If you have any questions, please feel free to contact Wendy Feezel in my Springfield, Illinois office at P.O. Box 790, Springfield, Illinois 62705 or telephone #217/492-4062. I would also appreciate being kept apprised of the status of this inquiry.

Thank you for your attention to this matter, and I await your response.

Sincerely,
Richard J. Durbin
Member of Congress

01-03847

RJD:wf
cc: Dr. Kermit Bell
Reverend Paul Frazier
01-03848

OCT 25 1995

The Honorable Donald A. Manzullo
U.S. House of Representatives
426 Cannon House Office Building
Washington, D.C. 20515-1316

Dear Congressman Manzullo:

This letter responds to your inquiry seeking information about the liability of contractors and architects under title III of the Americans with Disabilities Act of 1990.

The Americans with Disabilities Act of 1990 ("ADA") authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist your constituent in understanding the ADA's requirements. However, it does not constitute a legal interpretation, and it is not binding on the Department.

Title III of the ADA prohibits a variety of forms of discrimination against individuals with disabilities. One of its provisions -- section 302 of the Act, 42 U.S.C. 12182 -- applies to public accommodations and prohibits any party that owns, leases, leases to, or operates a public accommodation from engaging in several forms of discrimination on the basis of disability (including, for instance, maintaining discriminatory eligibility criteria, failing to provide auxiliary aids and services when necessary for the participation of an individual with a disability, and failing to remove architectural barriers to access where it is readily achievable to do so).

Another provision of title III -- section 303 of the Act, 42 U.S.C. 12183 -- applies to public accommodations and commercial facilities, and defines illegal discrimination to include failures to design and construct new public accommodations or new commercial facilities to be readily accessible to and usable by individuals with disabilities.

(Handwritten) FOIA
01-03849

Under this section, parties who participate in this type of unlawful discrimination, such as an architect or contractor, may be found jointly liable for violating the ADA. I have enclosed for your information a copy of the Department of Justice's Technical Assistance (TA) manual for title III. Section III-5.1000 of the TA manual discusses, on page 46, liability for violations of the ADA's architectural standards for new construction.

I hope this information will assist you in responding to your constituent.

Sincerely,
Deval L. Patrick
Assistant Attorney General
Civil Rights Division

Enclosure
01-03850

Congress of the United States
House of Representatives
Washington, DC 20515-1316

September 11, 1995

The Honorable Janet Reno
Attorney General
Department of Justice
Tenth and Constitution Ave., N.W.
Washington, D.C. 20530

Dear Attorney General Reno:

I am writing to you on behalf of a consituent who has requested information regarding DOJ enforcement of the Americans With Disabilities Act.

Specifically, I am interested in obtaining information pertaining to liability of contractors and architects with regards to public accomodations found to be in violation of ADA requirements. While I was of the understanding that liability was limited to owners, operators, lessors and lessees of places of public accomodation, my constituent is concerned that contractors involved in the construction of public accomodations may be held jointly liable for non-compliance with ADA guidlines.
I would appreciate your assitance in clarifying this issue.

Sincerely,

Donald A. Manzullo
U.S. Congressman
16th District, Illinois
DAM:trw
01-03851

NOV 21 1995

The Honorable Cass Ballenger
Member, U.S. House of Representatives
P.O. Box 1830
Hickory, North Carolina 28603

Dear Congressman Ballenger:

I am responding to your letter on behalf of your constituent, XX who is concerned about provisions for students with disabilities in public schools. Specifically, XX would like to know whether the Americans with Disabilities Act (ADA) requires the provision of access to all public school activities and facilities, including the assembly area stage. Please excuse our delay in responding.

Title II of the ADA prohibits discrimination on the basis of disability in State and local government services. Sections 35.149 and 35.150 of the Department's title II regulation (enclosed) require accessibility to programs, services, and activities in facilities existing on the effective date of the statute, January 26, 1992. The principal focus of the program accessibility standard is access to programs, services, and activities, as opposed to access to physical structures. Therefore, not every area of an existing school facility would have to be made accessible, as long as there is access to a school's programs, services, or activities.

For existing facilities, every building does not necessarily have to be made accessible if all of the programs located inside that building can be made accessible by alternative means. Section 35.150 (b) (1) of the title II regulation does not require that a school district eliminate structural barriers if it provides access to its programs through alternative methods such as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, or any other methods that result in making the services, programs, or activities readily accessible to and usable by individuals with disabilities.

cc: Records, Chrono, Wodatch, McDowney, Milton, FOIA
n:\udd\milton\congress\existfac.bal\sc. young-parran
01-03852

If structural alterations are necessary to provide program accessibility, such alterations must be undertaken unless the public entity can demonstrate that the alterations would cause a fundamental change to its program or that the cost of the alterations would result in undue financial and administrative burdens. 28 C.F.R. S 35.150(a) (3). Where an action would result in such a change or such burdens, the public entity must take any other action that would not result in such change or such burdens but would nevertheless ensure that individuals with disabilities receive the benefits or services provided by the entity.

Thus, in situations where a school has an inaccessible stage and students with mobility impairments must be on the stage, in order to meet its program accessibility obligations, the school district may choose to move the event from the inaccessible stage to an accessible location or make the stage accessible to persons with disabilities. If making the stage accessible would result in a fundamental change in the events or would constitute an undue financial or administrative burden, then the school district would be required to move all such events to an accessible location.

I hope this information assists you in responding to your constituent.

Sincerely,
Deval L. Patrick
Assistant Attorney General
Civil Rights Division

Enclosure
01-03853

Congress of the United States
House of Representatives
Washington, DC 20515-3310

September 20, 1995

Mr. Deval L. Patrick
Asst. Attorney General
U.S. Department of Justice
PO Box 65808
Washington, DC 20035-5808
Dear Mr. Patrick:

My constituent, XX has
contacted my office about provisions for the handicapped in pubic schools as it relates to the Americans With Disabilities Act (ADA).

XX says that the schools in his district do have provisions for the handicapped to enter and exit the school building and classrooms, but that during assembly sessions the handicapped students cannot access the stage to receive diplomas or awards unless they are carried up by someone. He would like to know if the ADA regulations provides access to handicapped students to all school activities and facilities.

I would appreciate any information you may wish to offer that would assist me in responding tomy constituent. Please address your response to my Hickory District Office, P.O. Box 1830, Hickory, NC 28603.

Thank you for your time and attention to this matter.

Sincerely,
Cass Ballenger
Member of Congress
CB/gse
01-03854 This stationery printed on paper made of recycled fibers.

NOV 21 1995

The Honorable Paul McHale
Member, U.S. House of Representatives
26 East Third Street
Bethlehem, Pennsylvania 18015-1392

Dear Congressman McHale:

This letter is in response to your inquiry on behalf of your constituent, XX , regarding the curb ramp that was recently installed in front of her house by the Borough of Slatington, Pennsylvania. XX complains that the curb ramp has decreased the value of her home, is a danger to pedestrians, and should not have been installed as it was. In addition, Ms. Parisi is concerned that the installation of the curb ramp does not comply with the Americans with Disabilities Act (ADA).

Title II of the ADA, which prohibits discrimination on the basis of disability by State and local government entities, requires the installation of curb ramps to provide access to pedestrian walkways on new or altered streets. In addition, title II may require the installation of curb ramps to provide access to existing pedestrian walkways on streets that are not otherwise being altered in order to provide access to the program of using public streets and walkways. The Federal regulation implementing title II requires public entities to conduct a "self-evaluation" to determine where it is necessary to install curb ramps to existing pedestrian walkways and to develop and implement a "transition plan" to establish a schedule for the installation of these curb ramps.

Under the ADA, local officials are required to comply with either section 4.7 of the ADA Standards for Accessible Design or section 4.7 of the Uniform Federal Accessibility Standards when they install curb ramps. These standards establish technical specifications for the construction of a curb ramp; they do not specify the location of a curb ramp. Therefore, nothing in the ADA regulation prohibits the installation of the curb ramp in the location selected by the Borough.

(HANDWRITTEN) FOIA

XX other concerns are not governed by the ADA. These issues are matters that are appropriately addressed under State law. Because there are no statutes which the Department of Justice, or any other federal agency, enforces that apply to XX complaint, this Department will take no action on this matter. We recommend that XX consult with private legal counsel to assist her in seeking to secure her rights.

I hope this information is helpful to you in responding to your constituent.

Sincerely,
Deval L. Patrick
Assistant Attorney General
Civil Rights Division

01-03856

Congress of the United States
House of Representatives
Washington, DC 20515-3815
September 20, 1995

Sally Conway
Equal Opportunity Specialist
U.S. Department of Justice
P.O. Box 66738
Washington, DC 20035-6738

Dear Ms. Conway:

I am enclosing a letter from my constituent, XX regarding the installation of an accessibility ramp near her property in Slatington, PA. The Borough of Slatington has stated that the ramp was required under the Americans with Disabilities Act (ADA).

XX raises several questions in her letter. Her main concern is that she believes the placement of the ramp does not meet ADA guidelines. She claims the ramp is 26 feet from the corner of the crosswalk. Enclosed is a picture of the ramp for your review.

In accordance with all applicable law, regulation and/or agency policy, would you please investigate this matter on behalf of XX . Please respond to my Staff Assistant, Mr. Andrew Ferraro, at my Bethlehem office.

Thank you for your cooperation in this matter.

Sincerely,

Paul McHale
Member of Congress

PMcH:af
Enc.

PRINTED ON RECYCLED PAPER

XX
September 8, 1995

Congressman Paul McHale
c/o Mr. Andrew Ferraro
1603 Lehigh Street
Easton, PA 18042

Dear Congressman McHale,

Re: Questionable Handicap Ramp Installation

I have documented this issue in full for your review.

I had an unfortunate experience recently and I need your help in fixing the problem. On Monday, 8/21, I came home from work at 5:00 p.m. to find my front pavement removed. I immediately questioned my neighbor and was informed that she received a letter from the Borough of Slatington stating that they were putting in handicap ramps at the crosswalks. (Attachment A)

Since I do not live on a corner lot, I did not receive a copy of the letter. I immediately called the Borough of Slatington and left a message for Mr. Stephen Sechriest, Borough Manager, stating my concern.

After closer inspection of the remaining pavement, I found my home sustained additional damage from the heavy machinery they used to remove my pavement. The pavement that is directly in front of my home shifted away from the porch. Also, there was a drain pipe that ran under my sidewalk which was destroyed when they lifted the pavement. I called and left a message for someone to contact me immediately.

On Tuesday, 8/22 at 8:00 a.m., I met with XX at my home to discuss my concern. I told him that I never received a letter from the borough stating what they planned on doing and he said "sorry". I told him due to the location of the ramp if he continued to install it I would get water on my pavement. He said "no, I wouldn't". I informed him that this location (second house in from the corner) is not a crossing. He said "there was no other place to put the ramp". He stated that because of the drain basket at the corner and because of my neighbor's front steps, he would have to install the ramp in front of my home. I informed him that they broke the drain pipe that extended under the pavement and he replied that they (the contractor) would fix it.

On the same day, I went to work and contacted Attorney Robert Donatelli. He is representing me on this case. He instructed me to get a copy of my deed and to contact the Mayor of Slatington. I got in touch with Mayor R. Keegan and explained the situation. He said he would look into it and get back to me on 8/23.

When I got home that evening, I noticed that the borough inserted a plastic PVC pipe into the neck of the damaged drain pipe. (attachment B) I tested the drain pipe to see if it leaked by dropping a bucket of water from the second story of my home and found that it was not sealed properly and it leaked.

On Wednesday, 8/23, Mayor Keegan informed me that he and Mr. Sechriest and 2 Council members visited my home at 8:00 a.m. to discuss the issue. They said that due to the corner drain basket and the steps in front of my neighbors house, they had to put the handicap ramp in front of my house. Mayor Keegan agreed that it was wrong to install the ramp in front of my house, since my house is the second house from the corner. A person would have to go into the street and travel over 26 feet to get to the ramp that they were installing.
01-03858

Mayor Keegan agreed that I should seek Legal action.

Mayor Keegan said he would contact the Council members and call me that evening. He returned my call and informed me that he contacted Gary Phillips, Borough Councilman, and told him to halt the pouring and re-look the situation. The Mayor told Phillips that the repaired pipe leaked. That evening, I called Gary Phillips and he said that they will not pour per the Mayor. Gary Phillips told me to document my issues and send them to the Borough. (see Attachment B)

I received a call on Tuesday, 8/24 at 7:00 p.m. from XX stating that there would be a Council Meeting on 8/28 and that my issue would be reviewed.

On Monday, 8/28, I attended that meeting and the Council members voted 4 to 3 to continue to install the handicap ramp in front of my home. The Mayor could not vote, however, he agreed with me that it should not be placed in front of my home. At the meeting, I requested that a picture be taken of the pipe and asked how they planned to fix it.

They poured the cement on Monday, 8/30. It is an eye sore! I feel it has decreased the value of my home. It will be dangerous in the winter. It is dangerous now because of the steep slope.

On Friday, 9/1, I requested the meeting minutes from the 8/28/95 meeting from Mr. Sechriest he said that it would take up to two months to get them.

I contacted Mayor Keegan and told him that I would not receive the meeting minutes for two months.

He returned my call and stated that XX will work on providing them to me soon as soon as he can. He did not have a secretary and was backed up.

I need your help! Please review the pictures that I have attached and see for yourself. The handicap ramp is 26.3 feet from the corner. It extends 13' 10" over my property. I believe they could have investigated other alternatives. For instance, they could have increased the level of the blacktop or installed a new drain or re-worked the present drain area.

Mayor Keegan stated that he would support my issue in full and said he would contact Representative McHale if I needed assistance.

Please get in touch with me at your earliest convenience. I can be reached at work between the hours of 7:00 a.m. and 4:00 p.m. at phone number 610-712-6423 or during the evening hours at 767-9790.

Sincerely,

XX

Copy to:
R. Keegan - Mayor of Slatington
01-03859

SEP 6 1995

The Honorable Owen Pickett
Member, U.S. House of Representatives
2710 Virginia Beach Boulevard
Virginia Beach, Virginia 23452

Dear Congressman Pickett:

This is in response to your letter on behalf of your constituent, XX regarding the requirements of the Americans with Disabilities Act (ADA).

Specifically, XX inquires about ADA requirements for automatic door openers. The ADA Standards for Accessible Design set forth the ADA standards for new construction and alterations of places of public accommodations and commercial facilities. The Standards, located in Appendix A of the title III regulations, are enclosed with this letter. As you will note, the Standards do not require that newly constructed or altered buildings have automatic door openers. Rather, they require that if automatic doors are provided, they must comply with section 4.13.12. Additionally, other requirements for doors (section 4.13), such as maneuvering clearances, hardware, and pull force (on interior doors), must be followed.

Finally, because the title III rule does not require that existing places of public accommodation (such as the stores to which XX refers) exceed the new construction requirements, existing facilities would not be required to install an automatic door opener.

cc: Records, Chrono, Wodatch, McDowney, Gracer, FOIA
n:\udd\gracer\tapicket\sc. young-parran

01-03892

I hope this information is helpful to you in responding to your constituent. In addition, the Department operates an ADA information line (800-514-0301 (voice) or 800-514-0383 (TDD)). Members of the Disability Rights Section staff are available to answer questions on the information line on Monday, Tuesday, Wednesday, and Friday from 10:00 a.m. to 6:00 p.m., Eastern time. on Thursday, the information line is staffed from 1:00 p.m. to 6:00 p.m.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

Enclosure

01-03893

SEP 7 1995

XX
XX
Seattle, Washington XX

Dear XX

I am responding to your letter to President Clinton regarding the variance you requested to close off the open concrete staircase leading into your basement. You complain that the City of Seattle will not grant you a variance although you need to close off the staircase because of your disability.

Title II of the Americans with Disabilities Act of 1990 (ADA) prohibits discrimination against qualified individuals with disabilities on the basis of disability by State and local governments. Section 35.130(a) of the Department of Justice's Title II regulation (enclosed) provides that no qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity. Section 35.130(b)(7) of the Title II rule states that a public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity or result in undue financial or administrative burdens.

Thus, the city of Seattle may be required to grant a variance to you if a variance is necessary to avoid

discrimination on the basis of disability, unless Seattle can demonstrate that granting the variance would result in undue financial or administrative burdens.

cc: Records; Chrono; Wodatch; Milton; McDowney; FOIA
udd\nilton\letters\variance.xx

01-03897

I am enclosing a copy of the Department's Title II Technical Assistance Manual for your information. I hope this information is helpful to you.

Sincerely,

John L. Wodatch
Chief
Disability Rights Section
Civil Rights Division

01-03898

(Handwritten) XX
XX
Virginia Beach, VA XX

July 20

Honorable Owen Picket

I have been able to walk
almost normally until recent

Due to Post Polio syndrome
I tire very quickly when I walk
a distance. Because of this
I purchased a scooter an
had my van outfitted wit
a battery powered lift.

This has given me the
independence I have bee
used too.

There is one problem. Many
of the places I would like
go do not have automatic
door openers and doors
are usually too heavy for
me and I need to get some-
one to open them for me

01-03894

-2-

I think that places (that) are Handicapped accessible should have automatic doors.

Someone should be checking the large place that can well afford them.

I would appreciate if you would have someone do this.

Thank You
XX

01-03895

A few places I have noticed recently.

Rite Aid
Revco
Norfolk Zoo (one bldg)
Larkspur Pool
K Mart
Some department stores
Nauticus

(Handwritten)
ADDRESS: XX
XX
SEATTLE, WA. XX

April 23, 95

Dear President Clinton,

I am so sick of the city of Seattle, WA. My name is XX (b)(6). The right side of my body is paralyzed due to a head injury, documented by a 5 pg. Social Security Report.

My husband and I brought a 1916 house that sits right on the alley. It had open concrete stairs, existing, that sit 36" from

the alley. I was scared to death of them. They go down tot he ground to the basement. When we bought the house the stair well had no support.

Because of my stability, double vision, poor walking conditions due to my paralysis my husband put a wood door height entry way over the steps. He did this because the stairs were already there, they had absolutely no support, and because of my disability he covered them.

I am so tired of trying to explain this story, DCLU, Dept. of Construction and Land Use says "tear it down." My husband said, "it provides support for my wife's disability." The Dept. said, "OK, provide doctor's proof of her disability, and you can keep the entry way." We did.

The Dept. for 4 months has harassed us. Even if we pay their $1,430 variance fee,

01-03899

we are not sure we can keep it. I need the entry way for my disability. If there wasn't that reason behind the shelter WE WOULD NOT HAVE BUILT IT.

My constitutional rights are being broken. The mayor won't even see me about this issue. I've been to his office 4 times. His staff won't even make an appointment for me to see Norm Rice.

DCLU won't budge. They keep coming up with stupid reasons. This has gotten so dumb I can't even make sense out of it.

My husband and I have been both head injured. We are doing our best. We have explained and re explained the entry way. Again, our last letter, after 4, didn't get through to them. Now, they want us to get a lawyer. We can't afford a lawyer. Let alone anymore missed work trying to solve this or beating our heads against a brick wall.

We've written letters, had our entry way and my disability publicized in a name brand Seattle newspaper, the PI, other people have written letters in support of the entry way and me, phone calls in support. We've been to the complaint dept. at Norm Rice's office, we've been to city council, Senator Patty Murray's office, Governor Mike Lowery's Office, the Coalition of Citizen's with disabilities,

Neighborhood Council.

01-3900

I am really getting fed up, 4 months of this torment. Last week, I had to come home from work, April 18th, due to an excruciating head ache. I can not take the pressure DCLU is inflicting on me. My safety, peace of mind, every aspect of my total life is so very important for me to function in this world due to my disability. Every single part of my life has to be enhanced due to my disablement otherwise I fall apart.

I have a very supportive husband, I live 5 blocks from work, this house is 1 1/2 blocks from a bus stop, I work in a disabled job program which has been tailored for my conditions.

I usually can cope, but this problem we are having with DCLU is breaking me down. Seattle is disregarding my disability. I don't understand.

I could go on & on & on. It's pretty bad when I have to rely on the highest power in the country about this matter. The state of Wa., mostly the city of Seattle, "keeps" throwing their hands up

and saying "DCLU is the final authority," I don't know where to turn anymore.

This is getting ridiculous! I thought we lived in America, where when you had a problem like I am having "you could take it to the so called government, which is supposed

01-3901

to be BY THE PEOPLE AND FOR THE PEOPLE" and they would help you right the wrong being done.

The mayor, Norm Rice, won't even see me and the rest have said, "it's out of our jurisdiction." Will you, President Clinton, help me? My constitutional rights as a disabled person are being broken and I want to know why! I WANT TO LEGALLY KEEP OUR ENTRY WAY BECAUSE WE PUT IT UP FOR MY DISABILITY.

The house is illegal, the stairs are illegal, but that's how it has been since 1916. I am sending a packet along about our case. Please help me! I need to live in that house without pressure.

Thank you,

XX

01-3902

SEP 14 1995

The Honorable Michael Bilirakis
Member, U.S. House of Representatives
4111 Land O' Lakes Boulevard, Suite 306
Land O' Lakes, Florida 34639

3802

Dear Representative Bilirakis:

This responds to your letter on behalf of your constituent, XX who inquired about requirements for accessible medical exam tables under the Americans with Disabilities Act (ADA). Although it is not explicitly stated, we infer that XX is asking about the ADA requirements that apply to private physicians. We apologize for our delay in responding.

Title III of the ADA prohibits discrimination on the basis of disability by places of public accommodation, including the professional offices of health care providers. Physicians covered by title III are required to provide people with disabilities full and equal enjoyment of the services that they offer. To ensure that people with disabilities are not excluded from participation because a facility is inaccessible to them, title III requires places of public accommodation to remove barriers to the extent that it is readily achievable to do so. The statute defines "readily achievable" as "easily accomplishable and able to be carried out without much difficulty or expense." If barrier removal is not readily achievable, then places of public accommodation must use any readily achievable alternative methods of providing services to people with disabilities.

To assist members of the public to understand their rights and responsibilities under the ADA, the Department of Justice has published technical assistance manuals that explain the ADA regulations. We have enclosed a copy of the Division's title III Technical Assistance Manual that you may wish to provide to XX. In addition, XX may wish to contact the Department's toll-free ADA information line (800-514-0301 (voice)

cc: Records; Chrono; Wodatch; Gracer; McDowney; FOIA
udd\gracer\tabilira.2

01-03903

or 800-514-0383 (TDD)) for assistance. Members of the Disability

Rights Section staff are available to answer questions on the information line on Monday, Tuesday, Wednesday, and Friday from 10:00 a.m. to 6:00 p.m., Eastern time. On Thursday, the information line is staffed from 1:00 p.m. to 6:00 p.m.

I hope this is helpful in responding to XX.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

Enclosure

01-03904

SEP 14 1995

The Honorable Bill Paxon
Member, U.S. House of Representatives
5500 Main Street
Williamsville, New York 14221

Dear Congressman Paxon:

I am responding to your inquiry on behalf of your constituent, William Reemtsen, City Manager of the City of Batavia, New York. Mr. Reemtsen asked whether the Americans with Disabilities Act (ADA) requires a municipal government to ensure that accessible seating locations in newly constructed stadiums provide sightlines over standing spectators for people who use wheelchairs. Mr. Reemtsent's letter also asked you to determine the source of a single-page document containing this requirement that was provided to Mr. Reemtsen by the Eastern Paralyzed Veterans of America (EPVA) to enable him to determine if this is a "new" ADA requirement, or merely a preference of the EPVA.

The document enclosed with Mr. Reemtsen's letter was copied from the 1994 supplement to the Department of Justice Title III Technical Assistance Manual. The Department initially published this manual in 1992 to assist people to understand their rights and responsibilities under the ADA. A copy of the Technical Assistance Manual is enclosed for your reference. The manual does not establish "new" requirements; it explains the requirements that are now published.

In this specific instance, the Technical Assistance Manual is addressing the requirement found in section 4.33.3 of the ADA Standards for Accessible Design, which provides that --

> wheelchair areas shall be an integral part of any fixed seating plan and shall be provided so as to provide people with physical disabilities a choice of admission prices and lines of sight comparable to those for members of the general public.

28 C.F.R. pt. 36, App. A, 4.33.3. The Technical Assistance Manual explains that in order to provide a "comparable" line of sight for a person using a wheelchair in an assembly area, such as a sports stadium, where it can be reasonably predicted that spectators will stand to observe the events that are occurring, it is necessary to ensure a line of sight over standing spectators from wheelchair locations.

For your information, I am enclosing copies of the Department's regulations implementing titles II and III of the ADA and the Department's Technical Assistance Manuals. If Mr. Reemtsen has additional questions, he may contact the Department's ADA information line (800-514-0301 (voice) or 800-514-0383 (TDD)). Members of the Disability Rights Section staff are available to answer questions on the information line from 10:00 a.m. to 6:00 p.m., Eastern time, on Monday, Tuesday, Wednesday, and Friday. On Thursday, the information line is staffed from 1:00 p.m. to 6:00 p.m.

I hope that this information will assist you in responding to your constituent.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

Enclosures

CITY OF BATAVIA

GEORGE A SPINNEGAN
CHRISTINE M. FIX
DAVID E. KLEIN
10 West Main Street
Batavia, New York 14020
(716) 343-8180
FAX: (716) 343-9221
COUNCIL MEMBERS
BARRY W. BOWER
(Illegible) M. MAGUIRE
KENNETH F. WITT
EDWARD DELANEIRO, JR
STEPHEN R. BRECKENRIDGE
ROSE MARY CHRISTIAN

July 14, 1995

Congressman William Paxon
5500 Main Street
Williamsville, NY 14221

RE: American's for Disabilities Act Requirements as they Apply to the Dwyer Stadium Grandstand Construction Project in the City of Batavia

Dear Congressman Paxon:

The purpose of this letter is to request your assistance in clarifying certain ADA requirements as they apply to the City of Batavia's Dwyer Stadium grandstand project. Recently, Highland Associates, the City's design architect, told us that the Eastern Paralyzed Veteran's Association (EPVA, had informed the (Highland Associates) that there were new American's with Disabilities Act requirements with which Dwyer Stadium would have to comply.

Specifically, the new requirement according to EPVA applies to elevation for persons who are wheelchair bound.

Highland Associates has been attempting to determine if what EPVA has been telling them is in fact a new ADA requirement or if it is simply a non-mandatory standard that EPVA is advancing. The City's architect has provided us with some documentation describing the wheelchair seating elevation specifications, which I have enclosed with this letter.

Can you please tell us if this is in fact an ADA specification with which the City must comply or is this simply a non-mandatory standard which the Eastern Paralyzed Veteran's Association is attempting to have incorporated in the stadium?

We would appreciate your response at your earliest possible convenience, in as much as this is one of last issues that has to be resolved so that the City can go to bid in a timely manner and be able to meet the construction deadline. If you need any clarification on this request, please telephone me at (716) 343-8180. Thank you for your assistance.

Very truly yours,

William Reemtsen
City Manager

01-03907

III-7.4300 Parking.

A.[Insert the following before the first sentence of this section, p. 60.]

If self-parking is provided for employees or guests of a public accommodation accessible parking spaces must be provided in compliance with ADA

B. [Insert the following text before the paragraph beginning "If valet parking...?" P.61]

Accessible parking spaces must be located on the shortest accessible route of travel to the facility's entrance. Accessible parking spaces and the required accessible route should be located where individuals with disabilities do not have to cross vehicular lanes or pass behind vehicles to have access to the entrance. If it is necessary to cross vehicle lane because for example, local fire engine access requirements prohibit parking immediately adjacent to a building, then a marked crossing should be used as part of the accessible route to the entrance.

III-7.5000 Building New construction.

III-7.5170 Telephones.

[Insert the following text to the paragraph 6 of this section, p. 63.]

Moreover, if any of the public pay telephones provided in these locations are coin-operated, then a TDD or text telephone that can be used with a coin-operated telephone must be provided. If all of the public pay telephones provided in these locations are card-operated only, then it is permissible to provide a TDD or text telephone that can be used only with card operated telephones.

III-7.5180 Assembly areas.

[Insert the following text before the sentence beginning "Finally, wheelchair seating..." p.64]

In addition to requiring companion seating and dispersion of wheelchair locations ADAAG requires that wheelchair locations provide people with disabilities lines of sight comparable to those for members of the general public. Thus in assembly areas where spectators can be expected to stand during the event or show being viewed, the wheelchair locations must provide lines of sight over spectators who stand. This can accomplished in many ways including placing wheelchair locations at the front of the seating sections, or by providing sufficient additional elevation for wheelchair locations placed at the rear of seating sections to allow those spectators to see over the spectators who stand in front of them.

III-7800 Special facility types

SEP 14 1995

The Honorable Rick Santorum
United States Senator
Suite 250 Landmarks Building
One Station Square
Pittsburgh, Pennsylvania 15219

Dear Senator Santorum:

This is in response to your inquiry on behalf of your constituent, Mr. William J. Spagnol, regarding closed captioning of local government meetings. Mr. Spagnol wishes to know the obligations of municipalities to provide closed captioning for the broadcast of local government meetings on public access television channels.

Section 35.160(a) of the Department of Justice's regulation implementing title II of the Americans with Disabilities Act of 1990 (ADA) requires that a public entity take appropriate steps to ensure that communications with members of the public with disabilities are as effective as communications with others. Section 35.160(b) requires the furnishing of appropriate auxiliary aids and services in order to afford individuals with

disabilities equal access to communications and requires that primary consideration shall be given to the requests of individuals with disabilities in determining what type of auxiliary aid or service is necessary. Auxiliary aids and services, as defined in section 35.104, may include open or closed captioning of video presentation.

Audio portions of television and videotape programming produced by public entities are subject to the requirement to provide effective communication for individuals with hearing impairments. Closed captioning of such programs is sufficient to meet this requirement. Please note, however, that the obligation to provide effective communication does not require a public entity to take any action that it can demonstrate would result in a fundamental alteration in the nature of its services, programs, or activities, or in undue financial and administrative burdens.

01-03909

I hope this information is helpful to you in responding to your constituent.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

01-03910

MUNICIPALITY OF BETHEL PARK
Municipal Building 5100 West Library Avenue Bethel Park, PA 15102
(412)831-6800 FAX (412)83l-8675

July 18, 1995

The Honorable Rick Santorum
U. S. Senate
One Station Square
Pittsburgh, PA 15219

RE: Bethel Park - Closed Captioned Television

Dear Senator Santorum:

It is my understanding that inquiries have been made to the United States Department of Justice concerning the obligations of municipalities to provide closed-captioning for the broadcast of local government meetings on public access television channels. Any information that you could provide concerning this matter would greatly be appreciated.

On behalf of Bethel Park Municipal Council and Mayor Hoffman, thank you very much for your assistance.

Sincerely,

William Spagnol
Manager

WJS:dao

cc: Judith Miller

01-03911

SEP 14 1995

The Honorable Bob Wise
Member, U.S. House of Representatives
Elk Office Center
4710 Chimney Drive
Charleston, West Virginia 25302-4804

Dear congressman Wise:

This is in response to your inquiry on behalf of your constituent, XX ,concerning the accessibility

of polling places. XX complains that XX polling place, in the Cedar Grove School Building, is not accessible to persons using wheelchairs. We apologize for our delay in responding.

Title II of the Americans with Disabilities Act requires "program accessibility," rather than facility access, for existing buildings and facilities. A public entity must operate each program, service, or activity so that the service, program, or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities, but a public entity is not necessarily required to make each of its existing facilities accessible. 28 C.F.R. 35.150 (the Department of Justice's regulation implementing Title II, 28 C.F.R. pt. 35). Removal of architectural barriers is one method of providing access to programs and activities in existing facilities, but other methods are also permitted if they provide program access. West Virginia is required to make its voting activities accessible through whatever effective means it deems appropriate. Thus, XX polling place need not necessarily be accessible if other means are provided for voters with disabilities to cast their ballots on the day of the election (curbside voting procedures, for example).

The Voting Accessibility for the Elderly and Handicapped Act (Voting Access Act) requires that all polling places for Federal elections be accessible. The Voting Access Act does not apply, however, to a polling place if the chief election officer of the State determines that no accessible place is available and it is

cc: Records; Chrono; Wodatch; Milton; McDowney; FOIA
udd\milton\congress\voting.wis

01-03912

not possible to make one temporarily accessible and that any voter in need of an accessible polling place, upon advance request, will be assigned to an accessible polling place or will be provided with an alternative means for casting a ballot on the day of the election.

Curbside or other alternative voting procedures are a permissible alternative to accessible voting places, however, only if they are an effective method of providing access to the program or activity. Thus, if the Commission failed to follow its procedures for curbside voting, or otherwise denied an individual with a disability the opportunity to vote, it would be in violation of title II and the Voting Access Act.

I hope this information is helpful to you in responding to your constituent.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

01-03913

Nov 29, 1995

The Honorable Barbara Cubin

U.S. House of Representatives
Washington, D.C. 20515-5001

Dear Congresswoman Cubin:

This is in response to your letter on behalf of your constituent, Ms. Ann Snow, regarding the application of the Americans with Disabilities Act (ADA) to an alteration of the Weston County Memorial nursing home. Please excuse our delay in responding.

We assume that the Weston County Memorial nursing home is a State or local government entity. Title II of the ADA prohibits discrimination on the basis of disability by such entities. The Department of Justice's regulation implementing title II requires that when a covered entity alters a facility, the altered area must, to the maximum extent feasible, be made accessible to individuals with disabilities. 28 C.F.R. S 35.151(b). The regulation allows covered entities to apply either the ADA Standards for Accessible Design (Standards), 28 C.F.R. pt. 36, Appendix A, or the Uniform Federal Accessibility Standards (UFAS), 41 C.F.R. pt. 101-19.6, Appendix A, as the accessibility standard for the altered area. 28 C.F.R. S 35.151(c).

Title II does not require that the altered facility be completely retrofitted to satisfy the applicable accessibility standard. Instead, only the altered area generally needs to be made accessible. ADA Standards S 4.1.6; UFAS S 4.1.6. The addition of eight bedrooms to the nursing home described by Ms. Snow would, therefore, require only those added bedrooms, with their associated toilet and bathing facilities, to be fully accessible. It would not require unaltered portions of the building to be made accessible.

The ADA Standards differ somewhat from the UFAS regarding what portion of the altered rooms must be made accessible. Under the ADA Standards, if the altered rooms constitute an entire

wing, department, or unit, only a percentage of the altered rooms must be accessible. ADA Standards S 6.1(4)(a). The percentage to be applied is the same percentage applicable to newly constructed facilities; in this case 50%. ADA Standards S 6.1(3). If the rooms are being altered individually, the ADA Standards require them all to be made accessible. ADA Standards S 6.1(4)(b). In both cases the ADA Standards would require an accessible path of travel from the entrance to the altered rooms. ADA Standards S 4.1.6(2).

The UFAS requires all the altered rooms to be made accessible. UFAS S 4.1.6(1)(a). The UFAS would only require an accessible entrance and accessible route to the altered area if the alteration were "substantial" (costing over 50% of the value of the building). UFAS S 4.1.6(3).

I hope this information is helpful to you in responding to your constituent.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

01-04082

WESTON
COUNTY
MEMORIAL
hospital and manor
1124 WASHINGTON BOULEVARD
NEWCASTLE, WYOMING 82701
HOSPITAL (307) 746-4491 MANOR
746-2793

August 24, 1995

Elaine McCauley
District Representative to
Congresswoman Barbara Cubin
2015 federal Building
Cheyenne, WY 82001

Dear Ms. McCauley:

It was a pleasure to meet you following the Medicare meeting in Newcastle last week. At that time I briefly mentioned our concerns over compliance with the ADA and with meeting state regulations at the nursing home. I would like to provide you with more detailed information and request Mrs. Cubin's assistance in containing costs for this project.

State regulations require an upgrade to the ventilation system at the nursing home. A needs assessment survey resulted in the decision to add another eight beds to the nursing home while remodeling for the ventilation upgrade. The total project cost including interest was estimated to be just under $3,000,000. In March, an election was held for a 1% capital facilities sales tax (that included several other community projects) that, with a 60% voter turnout, was defeated by 90 votes. We are working with the Wyoming Office of Health Quality on the state regulations in an effort to reduce costs where possible before bringing it before the voters again.

One concern I have over the cost of this project is the ADA space requirements Which necessitate the demolition of a portion of the nursing home (22 beds) in order to achieve a net gain of eight beds. The Uniform Federal Accessibility Standards in Appendix IV, section 4.1.4 (b) state that ADA space requirements for Long Term Care Facilities apply to "At least 50% of patient toilets and bedrooms; all public use, common use of areas which may result in employment of physically handicapped persons". The costs of demolition and reconstruction of existing rooms adds greatly to the total project cost.

Weston Manor has been owned and operated by the county since 1975. For twenty years we have provided quality care for the residents. We could continue to provide the same quality care in this section of the nursing home without the expense of extensive ADA remodeling. Ten beds were added in a 1990 project and this addition met ADA requirements. If the ADA space requirements were applied only to new construction and not 50% of the entire facility, we could meet the state ventilation requirements and add eight beds at a much more reasonable cost.

We currently have 51 beds with an average occupancy rate of 95-98%. The demolition and reconstruction would result in the need to relocate the twenty two residents. Since we could not
accommodate the total number (in hospital swing beds) at one time, the project would need to be completed in phases which would also add to additional construction costs.

Any assistance or advice you can give us in reducing construction costs in relation to ADA compliance would be appreciated. If you need additional information, please contact me.

Sincerely,

Ann Snow
Administrator

01-04084

Nov 29, 1995

The Honorable Frank S. Turner
Maryland House of Delegates
6284 Light Point Place
Columbia, Maryland 21045

Dear Mr. Turner:

This letter is in response to your inquiry to Robert Silverstein, Minority Staff Director for the United States Senate, Committee on Labor and Human Resources, Subcommittee of Disability Policy. Mr. Silverstein forwarded to this office your letter regarding questions raised by the Howard County Family Care Association concerning the Federal and State role in protecting children living with AIDS or HIV and also protecting non-disabled children. Please excuse our delay in responding.

As you note, many child care and early education providers are concerned about the possible risk of HIV transmission in child care settings, such as when children collide while playing. Specifically, you first ask whether the ADA provides legal protection to caretakers who enroll children living with AIDS or HIV in their programs, if another child becomes infected due to routine contact with a child with AIDS or HIV. Secondly, you ask what States can do to protect children from obtaining HIV while in school.

The Centers for Disease Control and Prevention (CDC) reports that while some people fear that HIV might be transmitted through casual contact, scientific evidence proves otherwise. For your reference, we have enclosed a copy of the CDC's "Facts About The Human Immunodeficiency Virus and Its Transmission," published in May 1994. As reported in this article, HIV can be spread through

sexual contact with an infected person, by sharing needles and/or syringes with someone who is infected, or, less commonly, through transfusions of infected blood or blood clotting factors. Babies born to HIV-infected women may become infected before of during

cc: Records; Chrono; Wodatch; McDowney; Mobley; FOIA.
\udd\mobley\congress\turner

01-04085

birth, or through breast-feeding after birth. There is a single incidence in which HIV was transmitted from a dentist infected by HIV to his patients. There are no other reported instances in which HIV has been spread in commercial settings. In fact, only in very rare instances has HIV been transmitted between family members in a household setting. These transmissions are believed to have resulted from contact between skin or mucous membranes and infected blood. There are no reported cases in which a child has acquired HIV or AIDS through exposure to the disease at a child care facility or school.

In all settings, including child care facilities and educational institutions, the CDC recommends that certain universal precautions should be taken to prevent exposure to the blood of persons who are living with HIV or whose infection and risk status are unknown. These precautions may also be effective in preventing transmission of other diseases, such as hepatitis. For example, gloves should be worn during contact with blood or other bodily fluids that could possibly contain blood, such as urine, feces, or vomit. Cuts, sores, or breaks on both the caregiver's and children's exposed skin should be covered with bandages. Hands and other parts of the body should be washed immediately after contact with blood or other body fluids, and surfaces soiled with blood should be disinfected appropriately. Practices that increase the likelihood of blood contact, such as sharing toothbrushes, should be avoided. To the extent that needles and other sharp instruments are used for medical procedures, they should be used according to the manufacturer's instructions and disposed of in puncture-proof containers that are kept out of the reach of children and visitors.

The Americans with Disabilities Act of 1990 (ADA) prohibits State and local governments, as well as the owners and operators of child care facilities and other places of public accommodation, from imposing eligibility criteria that screen out or tend to screen out persons with disabilities, unless necessary to prevent a direct threat to the health or safety of others. A direct threat is a significant risk to others that cannot be eliminated or reduced to an acceptable level by reasonable modifications to the public accommodation's policies, practices, or procedures or by the provision of appropriate auxiliary aids or services. The determination that someone poses a direct threat should be based on the best available objective evidence rather than generalizations or stereotypes. Based on the CDC's findings as articulated above, private and public child care and educational institutions cannot exclude from their programs children who are living with HIV or AIDS, because abundant scientific evidence suggests that there is almost no risk that the disease will be transmitted through the types of contact that occur in these settings.
01-04086

For more information regarding AIDS or HIV, you may call the CDC National AIDS Hotline, 1-800-342-2437, 1-800-344-7432 (Spanish), or 1-800-243-7889 (TDD). You may also wish to contact the CDC National AIDS Clearinghouse, P.O. Box 6003, Rockville, Maryland 20849-6003. The Clearinghouse can provide you with technical assistance materials such as "The AIDS Prevention Guide: The Facts About HIV Infection and AIDS," or "Facts About Adolescents and HIV/AIDS," or posters such as "You Won't Get AIDS from Hide 'N Seek," or "You Won't Get AIDS From A Public Pool." Each of these costs 10 cents per copy or is free.

I hope this information will be helpful to you in responding to the Howard County Family Child Care Association and other constituents.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

Enclosure

01-04087

HOUSE OF DELEGATES
ANNAPOLIS, MARYLAND 21401-1991
FRANK S. TURNER
LEGISLATIVE DISTRICT 13A
HOWARD COUNTY
June 13, 1995
JUDICIARY COMMITTEE

ANNAPOLIS OFFICE:
209 LOWE HOUSE OFFICE BUILDING
ANNAPOLIS, MARYLAND 21401-1991
(410) 341-3205

DISTRICT LEGISLATIVE OFFICE:
6284 LIGHT POINT PLACE
COLUMBIA, MARYLAND 21045
(301) 596-7619

Mr. Bobby Silverstein, Staff Director
Sub-Committee on Disabilities
113 Hart Senate Office Building
Washington, D.C. 20510

Dear Mr. Silverstein:

The Howard County Family Child Care Association requested that I contact you concerning the Federal and State role in protecting children with aids or who have tested HIV positive. In addition, these providers are also concerned with protecting children who do not have aids related

Since aids is protected by the Disabilities Act, many providers are concerned about the possible risk of blood exchange if two children collide while playing. What legal protection would a provider and the children have under the Disabilities Act and second, what can a state like Maryland do to protect its children from a related incident in school?

Thank you very much for your help in addressing these concerns. I look forward to your reply.

Very truly yours,

Frank S. Turner
Delegate, District 13A

FST:cld

cc: Wafa Sturdivant, President
Howard County Family Child Care Association

01-04088

DEC 4, 1995

XX

Dear XX :

I am responding to your letter to President Clinton regarding section 35 of the general business law of the State of New York, as amended in 1991. Please excuse the delay in responding.

As we understand it, section 35 permits cities with a population in excess of one million people to apply laws governing street vendors to disabled veterans on the same basis as those laws apply to others. You complain that section 35 has taken away the jobs of disabled veterans in New York City.

The Disability Rights Section of the Civil Rights Division is responsible, among other things, for the implementation of

title II of the Americans with Disabilities Act (ADA), which prohibits discrimination on the basis of disability by public entities, including State and local governments. Under title II, public entities are required to ensure that people with disabilities have the opportunity to participate in, or benefit from, the programs, services, and activities that the public entity provides. Title II does not require a public entity to establish programs that provide benefits for people with disabilities that are not available to others. Because section 35 of the general business law of the State of New York subjects persons with disabilities to the same requirements applied to others, it does not appear to violate the ADA. Therefore, the Department of Justice is unable to assist you in this matter.

Sincerely,

John L. Wodatch
Chief
Disability Rights Section

01-04089
August 26, 1995
The Honorable William Clinton
President of the United States
1600 Pennsylvania Avenue
Washington, DC 20500

Dear President Clinton:
The disabled veterans of New York City have been betrayed! We have been betrayed by the Legislature of New York State, the governor, the City of New York and it's mayor for the recent passage of a permanent law that allows and encourages the discrimination of the state's disabled veterans who had chosen to earn their livelihoods as vendors. Please note that it was the effort of street vendors in the 19th and early 20th centuries who founded such retail giants as Macy's. Gimbels and Fortunoff among others. Of course, these were American white and European

immigrants who had the opportunity to succeed as street vendors.

Back in 1894 the New York State Legislature passed a law allowing disabled veterans to peddle their merchandise throughout the state without restriction. In 1991, the rich and powerful Fifth Avenue Association led by it's President, Tom Cusick, bought the support of the legislature through the deep pockets of the organization and via many lies, distortions and half-truths (concerning we disabled veteran vendors) and had a law passed which severely restricted the opportunity to make a living of the disabled veterans of New York City. This bill had a four year sunset provision. On July 1, the bill was made permanent.

Prior to the passage of the law in 1991, more than forty disabled veterans had been able to work themselves from a state of homelessness thanks to the opportunity provided by that law. With the passage they were suddenly thrust back into that tragic state of homelessness. Still others were forced onto the welfare roles because they were no longer able to earn enough in the streets to provide for themselves and their families. At least five others are now dead as a result of the legislation. One committed suicide because he was no longer able to provide for his family.

The jobs promised by the Fifth Avenue Association of Doormen, Stock Clerks and Security Guards paid no more than poverty-level wages of twice minimum wage. After taxes, these men could not afford to care for their families or offer their children any hope for the future. As a result of this legislation, many families were torn apart! Further, those few vets who chose to accept the positions offered by the Fifth Avenue Association members were dismissed from those jobs within a few weeks of their hiring. It is an acknowledged fact that many Vietnam vets were so emotionally scarred from the war in Vietnam that they are very limited in their ability to do much more than survive. So, peddling was just about all many of them could do and do well.
01-04090
Thus, several of the few who took the jobs with Fifth Avenue Association members, were just incapable of handling the traditional job. For others, there are indications that the working conditions were so poor that they were literally driven from the job. I suspect that Fifth Avenue Association members were told to hire these vets for a few weeks, then terminate them.
In my case, I was promised a Manager In Training position with XX in September 1992. That 12 week training was to lead to either a Manager position in a small XX or an Assistant Manager position in a XX . In nearly three years, I have yet to receive that training. In spite of the

years of managerial experience I have as an Officer in the Air Force, a MBA degree and years of experience as a manager following my graduate study, XX has failed to make good on its agreement with me. I, on the other hand have gone above and beyond the agreement for XX . I have developed and created several programs including two successful seminar series for my store which have significantly increased sales, store traffic and the store's stature in the community. Yet, over the past year and a half, numerous persons have been accepted into the Manager In Training program and have received a portion of their training in our store. Further, several members of the staff from my store have been selected to receive the management training. I continue to be passed over. I think there is a blatant breach of contract in this case. From the very beginning, it was clear that there was no intent to fulfill the agreement. In fact, the intent seemed to be to get rid of me as quickly as possible. It didn't happen (for I needed the job so badly) and I have contributed more to that store than anyone including the manager.

The legislation that has wreaked such havoc and damage on our lives is extremely discriminatory. It discriminates against the disabled veterans in New York City (the law applies only to those cities with populations with one million or more); it discriminates against those who were disabled in service to this nation. It is also racially discriminatory in that 50% of the veterans affected are Black and another 25% are Latino. Of course, most of the minority veterans in New York State live in New York City. So, it seems that we were singled out! The Fifth Avenue Association wanted to get us off as many New York City streets as possible. With its money, power and political influence, it was successful.

In the four years prior to permanent passage of the bill, neither New York State nor New York City has done anything to ease the transition from street vendor to other occupations for us. In fact, I have sought employment at both levels of government and the private sector with no success. In the four year period, I have applied for well over three hundred jobs, with no success. At this point, I am sure that age has been a major factor and for me now, health is an issue.

01-04091

The effects of the legislation and XX failure to live up to it's agreement with me have been devastating. Not only have I struggled to survive financially - after having earned a very decent living as a vendor - but it has adversely affected my health. XX

XX . It was all a result of the stress, tension and emotional anger caused by the mean-spirited, callous and bigoted actions of the Fifth Avenue Association, New York State and New York City.

It has been extremely painful as well as angering, devastating and disappointing that I served my nation in time of war, was injured and I am now deprived me of the opportunity to live my dreams.

As I look back on my life as an American in this nation, I regret my having served in this nation's military. When I was twenty-two, I was accepted to study French at the University of Caen, in Caen, France. I had saved my money for tuition and expenses for a year there and had purchased my travel ticket on the Sitmar Lines. Three weeks prior to my departure date, my draft board denied me permission to leave the country. Had I known then or had a premonition that this nation would treat me (and other disabled veterans) with such disdain and disregard and thus deprive us of opportunities that it affords people from throughout the world, I would have defied the draft board and proceeded to France or gone to Canada or Sweden or some other country. Mr. President, I am ashamed of having served this nation. I recall very vividly my strong opposition to the Vietnam War and my many letters expressing that opposition to my Congressman, William Clay while I was in combat training and in Vietnam.

In our desperate attempts to fight our unbeatable foe, the Fifth Avenue Association, we have sent letters to several members of your cabinet hoping to find some guidance, some compassion, some concern and assistance. Unfortunately, we have found none. Several of us wrote letters to Mr. Jessie Brown seeking his assistance and guidance. There was never a response. We wrote to Attorney General Reno because of possible legal violations in this legislation. Again, nothing. With the lack of response and apparent lack of concern about our plight, we realize that it doesn't pay to be poor and a minority in this nation and that there is no dignity in being a veteran and having fought for this nation. Especially, when we come up against the desires of the wealthy and powerful such as the members of the Fifth Avenue Association.

With the recent passage of Congressional legislation and Supreme Court decisions which have set civil rights efforts back by at least thirty years, we minority members of the nation who served in Vietnam are now at an age in our lives where there is little hope for the future. We have not asked for governmental handouts nor do we want them. All we want is the opportunity/right restored to earn a decent living, to lead respectable lives and

to have reasonably secure and comfortable retirements.

Mr. Clinton, I hope this letter doesn't fall on deaf ears. I only

have a few years left in this world and I would like to be in a position to enjoy what remains of them. That of course includes having an opportunity to retire with security. I certainly do not wish to have to work for the remainder of my life, but to close it out peacefully, quietly and without the anxiety of struggling to work in order to survive. Thus, I appeal to you for your help in getting the Justice Department involved in the investigation of the discriminatory law in New York State. I also encourage you to have the Department of Veterans Affairs do what is necessary to protect this nation's veterans from the predatory efforts of the rich and powerful business organizations that would drive out small businesses (as we were as street vendors) in what may very well be monopolistic efforts.

One final note Mr. President: I have been concerned about the sorry state of parenting in this nation. As a result of this concern, I have developed a business plan (I do want my own business) for the development of a business which specializes in taking parenting seminars to the business place. In addition, I have written the script for a parenting video designed primarily for Black parents with a more all-inclusive one to follow. While the project has been acclaimed for its potential value to helping teach good parenting techniques, through the use of real life scenes, I lack the capital to get the project off the ground. In fact, one of the effects of the legislation was to cost me all of my savings (part of which was to use to help capitalize my business idea) including my retirement. So, I am frantically trying to raise money for this project. Because I have no money, I am having great difficulty raising the necessary capital. I so believe in the value of this idea that I am compelled to continue my efforts to bring the idea to fruition.

I am accompanying several documents with this letter including a copy of my resume and the contract with XX . I do hope you will be able to give my requests some consideration and assist me in gaining justice in a very unjust situation.

I wish you the very best for the remainder of this term in office and also in your campaign for a second term. I have always been impressed with your compassion for all people and your commitment to doing what is just and right.

Sincerely,

XX

01-04093

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

DEC 18, 1995

XX
North Royalton, Ohio 44133

Dear XX

On April 20, 1995, we received your complaint of discrimination against the City of North Royalton, Ohio. In your complaint, you alleged that various North Royalton city officials have discriminated against you on the basis of disability by failing to expedite or otherwise establish or amend policies and procedures that would result in the installation of a city (Cleveland) water main along Cady Road.

Under the Americans with Disabilities Act (ADA), this Department is authorized to investigate alleged violations of title II, which prohibits discrimination on the basis of disability by public entities. Pursuant to our title II authority, we opened your complaint (DOJ XX) after determining it was complete and timely filed.

Staff from the Disability Rights Section, Civil Rights Division, has now thoroughly reviewed your allegations. Based on that review, we are administratively closing your complaint with this office because your allegations are not sufficient to state a claim that the ADA has been violated. Under title II, a public entity may not deny services to individuals on the basis of disability, if it makes those services available to other citizens. Generally, however, it is not required to provide special programs, services, or privileges for individuals with disabilities if it does not provide them for individuals without disabilities. With respect to your allegations, the response by North Royalton officials to your requests to expedite the installation of city water along Cady Road does not violate the ADA because both persons with disabilities and persons without disabilities are subjected to the same requirements. While we understand your concerns about water quality and the benefits of obtaining city water in your residential area, the nature of North Royalton's response to your initiatives is insufficient to constitute discrimination under the law.

The Department of Justice will take no further action in this matter and has administratively closed your complaint as of the date of this letter. You have the right to file a private lawsuit in the appropriate United States District Court under title II, and do not need any approval letter from the Department of Justice before proceeding. Generally, title II has provisions for the prevailing party to recover attorney fees and court costs.

You also may seek to resolve your complaint by continuing to consult with the State or local authorities involved, disability rights organizations, or organizations that provide alternative dispute resolution services (such as mediation or negotiation). We have enclosed a list of organizations serving your area. These groups may be able to identify resources available to provide you with assistance. The local or State bar association also may be able to give the names of private attorneys or mediation services. The mediation process and information on securing a local mediator are summarized in the enclosed brochure "Want to Resolve Your ADA Complaint? Consider Mediation."

To assist members of the public to understand their rights and responsibilities under the ADA, the Department of Justice operates an ADA information line (800-514-0301 (voice) or 800-514-0383 (TDD)). Members of the Disability Rights Section staff are available to answer questions on the information line on Monday, Tuesday, Wednesday, and Friday from 10:00 a.m. to 6:00 p.m., Eastern time. On Thursday, the information line is staffed from 1:00 p.m. to 6:00 p.m.

I hope this information is helpful to you.

Sincerely,

John L. Wodatch
Chief
Disability Rights Section

Enclosures

01-04095

DEC 21, 1995

The Honorable Mike DeWine
United States Senator
200 North High Street, Room 405
Columbus, Ohio 43215

Dear Senator DeWine:

I am responding to your request concerning the complaint filed with the Department of Justice by your constituent, XX . She alleged that North Royalton city officials discriminated against her on the basis of disability in their responses to her requests for installation of a city water main in her residential area. Please excuse the delay in responding.

Enclosed is a copy of our recent letter to XX following review of her complaint pursuant to our authority under title II of the Americans with Disabilities Act. It explains our determinations regarding this matter.

We hope this information will assist you in responding to your constituent.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

Enclosure

01-04096

October 13, 1995

Senator Mike DeWine
200 N. High Street, Room 405
Columbus, Ohio 43215

Dear Senator DeWine:

I am writing to request that you make an urgent inquiry to the Department of Justice in Washington concerning a complaint I filed against the city of N. Royalton for discrimination and failure to modify policy and procedure under Title II A.D.A. Law. I have had to live without water in my home for almost a year because of methane gas in the well water which causes life threatening problems because of my disability.

I will be pleased to furnish your staff with any additional information and I am sure my physician would be willing to do the same.

Thank you for your kind assistance.

Sincerely,

XX

01-04097

October 13, 1995

To:

George V. Voinovich, Governor, State of Ohio
Peter Somani, M.D., Director Ohio Department of Health
Donald R. Schregardus, Director, Ohio EPA
Timothy Horrigan, Health Commissioner, Cuyahoga County Board of Health

From: XX

Citizen, State of Ohio, City of N. Royalton in Cuyahoga County

As you all know, I have been involved in a very difficult situation because there are explosive levels of methane gas in my well water (it ignites with a match and causes me to black out). I received absolutely no help from any of the above agencies toward the resolution of this problem (regardless of what you may hear or what has been put in the paperwork). The only resolution to this problem is to replace my well water with a city water line (which is four or five houses away from me and within 1200 ft.) and all of the above agencies deny any responsibility and fail to cite the city of N. Royalton for health and safety hazards.

I filed with the Environmental Board of Review who is now investigating and hopefully they can let me know who is in charge and who does have the authority.
In the meantime, I can only say that I am shocked by the amount of time and money being spent by all of the above agencies to fight me in their attempts to dismiss my "case" with the EBR. IF JUST A FRACTION OF THE TIME AND TAXPAYER MONEY (for attorneys, briefs, pleadings, hearings, etc.) BEING SPENT TO FIGHT ME WAS USED INSTEAD TO ASSIST ME, THE PROBLEM OF NOT HAVING A WATER LINE IN FRONT OF MY HOME WOULD BE RESOLVED BY NOW.

I would like to ask all of you what you would like to have done if you were to find yourself in this appalling situation? And then I would like to ask you - will you do just that for me? In addition, I am legally disabled with MCS - Multiple Chemical Sensitivity) and exposures to methane gas place me in a life threating position.

There is no sense in spending any more tax dollars and ignoring the fact that all Ohio citizens should be covered under the Safe Drinking Water Act and that disabled persons have special needs. Will you all please give me your help and support? The City of N. Royalton will not provide its citizens with water lines (even though we are willing to be assessed for it). Someone must mandate the city of N. Royalton to furnish us the water lines. The city's own rules say they will accept a mandate from the EPA or the Board of Health to furnish us with one and I am at a loss as to understand why they are not being mandated to do so? Anyone can call the local poison control center and learn of the many health effects caused by exposure to methane gas, including

cyanosis!

XX XX
01-04098

DEC 11 1995

The Honorable Bill Emerson
Member, U.S. House of Representatives
The Federal Building
339 Broadway
Cape Girardeau, Missouri 63701

Dear Congressman Emerson:

I am responding to your letter on behalf of your constituent, Sheriff Bill Ferrell, who is concerned about accessibility requirements for persons with disabilities. Please excuse our delay in responding.

Sheriff Ferrell is concerned that retrofitting the Scott County administrative offices and jail in order to make them accessible would constitute an undue financial burden on the County. Title II of the Americans with Disabilities Act (ADA) prohibits discrimination on the basis of disability in State and local government services. Sections 35.149 and 35.150 of the Department's title II regulation (enclosed) require accessibility to programs, services, and activities in facilities existing on the effective date of the statute, January 26, 1992. The principal focus of the program accessibility standard is access to programs, services, and activities, as opposed to access to physical structures. Therefore, not every area of an existing county jail or administrative office building would have to be made accessible, as long as there is access to the buildings' programs, services, and activities.

For existing facilities, every building does not necessarily have to be made accessible if all of the programs located inside that building can be made accessible by alternative means. Section 35.150(b)(1) of the title II regulation does not require that a local government eliminate structural barriers to all its facilities if it provides access to its programs through alternative methods such as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, or any other methods that result in making the services, programs, or activities readily accessible to and usable by individuals with disabilities.

cc: Records, Chrono, Wodatch, McDowney, Milton, FOIA
n:\udd\milton\congress\existfac.eme\sc. young-parran

01-04099

If structural alterations are necessary to provide program accessibility, such alterations must be undertaken unless the public entity can demonstrate that the alterations would cause a fundamental change to its program or that the cost of the alterations would result in undue financial and administrative burdens. 28 C.F.R. S 35.150(a)(3). The decision that any proposed alterations would result in a fundamental change or in undue financial and administrative burdens must be made by the head of the public entity or his or her designee after considering all the resources available for use in the funding and operation of the service, program, or activity. Where an action would result in such a fundamental change or undue burdens, the public entity must take any other action that would not result in such change or such burdens but would nevertheless ensure that individuals with disabilities receive the benefits or services provided by the entity.

I hope this information assists you in responding to your constituent.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

Enclosure
01-04100

DEC 11 1995

XX
Apopka, Florida XX

Dear XX

I have been asked to respond to your recent letter to Attorney General Janet Reno with respect to the current practice of CD-ROM manufacturers to produce programs that provide information to the user through speech and sound rather than text. You have asked the Attorney General to intercede with the manufacturers of these products to ensure that these products are made accessible to people with hearing impairments.

Your letter was referred to me because the Disability Rights Section of the Civil Rights Division is responsible for implementing the Attorney General's authority to enforce titles II and III of the Americans with Disabilities Act (ADA), which prohibit discrimination on the basis of disability by State and local governments and public accommodations and commercial facilities. We also enforce title I of the ADA in cases that allege disability-based employment discrimination by public entities. These ADA enforcement responsibilities are assigned to the Attorney General as the nation's chief law enforcement officer and head of the Department of Justice.

In enforcing the ADA, this Department represents the law enforcement interest of the United States. The Department is not authorized to act as an attorney for, or representative of, any individual. After carefully reviewing your letter, we have determined that no action by the Department is appropriate because you have not alleged a violation of the ADA or any other Federal statute that is enforced by this Department.

However, the World Institute on Disability is working on a project regarding accessibilty of multimedia technology. For more information on their efforts, you may contact Betsy Baya at (510) 01-04101

251-4355. Additional resouces on this subject are also available from the National Center for Accessible Media at 125 Western Avenue, Boston, Massachusetts 02134, (617) 492-9258 (Voice or TDD).

I regret that we cannot assist you in this matter.

Sincerely,

John L. Wodatch
Chief
Disability Rights Section

cc: Records; Chrono; Wodatch; McDowney; Blizard; FOIA
n:\udd\blizard\drsltrs\not_ada\XX \young-parran

01-04105

XX
XX
XX

Tuesday, September 26, 1995

Ms. Janet Reno
Attorney General
The United States of America
The US Justice Department
1600 Pennsylvania Ave.
Washington, DC

To: Ms. Reno Attorney General

I would like to tell you about something which is sweeping across this nation at alarming rate: the hearing impaired do not seem to qualify for rights nor even simple courtesy. Do not get me wrong, I'm no longer claiming prejudice, because "prejudice implies a deliberate bias" as CD-ROM Today editor, Chris Lombardi pointed out to me. It's people not thinking before they act that cuts out millions of Americans each year. People do not think, and this is poor marketing on their part.

My complaint is with manufactures of CD-ROMs (Compact Disk - Read Only Memory). CDs make loading and playing of large programs much easier. But the trend is to have speech and/or sound required and ignore displaying text to explain the sound so that the hearing impaired may use the CD.

Programs like Sierra On-line's King's Quest VII: The Princess Bride or the company's upcoming Phantasmagoria and Virgin Electronics' The 7th Guest, 11th Hour, and Kyrondia, are all found on CD-ROMs but they have no text for the hearing impaired to play. I find it particularly unfortunate that Sierra On-Line dropped the text options from their games - (an explanation of the option follows later on in my letter). Virgin never had the option.

The Americans with Disabilities Act (ADA) changed much of what is perceived today as being "politically correct" but people such as myself are still working on improving what people perceive. I feel comfortable speaking from a deaf man's prospective. My hearing loss is profound; 100%.

I've had some amusing experiences where in my hearing-ear dog has been presumed to be a seeing-eye dog, but the problem I wish to address in this letter is that makers of CD-ROMs don't seem to understand there's more to the enjoyment of their product than seeing pretty pictures and hearing music and talk. In my case and that of many potential users, we also need to read what's going on.

01-04106

On the verge of the 21st Century I notice something which, if not addressed soon, will leave millions of hearing impaired children behind their peers because they don't have equal access to a new form of informational media.

Allow me to explain my reasoning. It is a fact that trends begin in the computer gaming industry. Sound cards were originally meant to enhance the enjoyment of games. Today it is difficult to buy a computer without a sound card, or find a commercial program that doesn't use one. Today, Microsoft Office and 20th Century Video Almanac not to mention numerous encyclopedias, (Compton's New World, Microsoft Encarta, Groiler's etc.) and "edutainment" programs (Mathblaster, Reading Rabbit, etc.) use sound extensively. Extensive use of sound is now linked with the enhanced graphics found in more and more software.

And what about text on CD-ROM's? Most people have seen it. In the infancy of CD- ROM programs, companies used "balloons" to show what was being said, like what we see in the comics. Later Sierra On-Line developed this as an option: that text may be turned on or, if preferred, off and sound only may be enjoyed by the user. Naturally, though the hearing impaired user will keep the text on for full enjoyment. So, when you think about it, text begins to "sound" more important than previously thought.

There are rumors circulating that Microsoft Word will include, in its next version for CD-ROM users, the capability to have "help" speak out loud. Will this program retain the option of Cue Cards popping up to provide the text of the advice for the hearing impaired? How about future editions of encyclopedias?

Will Dr. Martin Luther King, Jr.'s "I Have a Dream" speech only be read to them and not written out? If so, a significant number of hearing impaired children will have to go to an antiquated paper book for information. There are children today who use CD-ROM-based products to practice their spelling, language- learning skills, math and other subjects. But deaf children cannot participate due to the lack of text. In the future, will text be added?

Perhaps the manufacturers of educational and entertainment oriented CD-ROMs don't realize that text for an entire program will take up less space than the music in the closing credits. The scripts for these programs were written down at one point. It would be a simple matter to merge the two programs.

I've discovered through personal experience that many CD-ROM programs are useless to the hearing impaired because important audible parts of them are not also available in text. I've spent over $600 and have had trouble returning the programs when I realized that they lacked text. I've had to stop buying such programs unless I am 100% certain that text is available on them, and unfortunately this is something that usually isn't clearly indicated.

Computers are priceless to anyone who wishes to enter the society of the future. Our schools, hospitals, banks, industry and others are using them to increase productivity and encourage creativity. The hearing impaired want to be part of that revolution.

The ADA mandates that the concerns of the hearing impaired be taken into

account in every-day services. It seems to me that manufacturers of CD-ROMs don't realize how

01-04107

important their products are becoming. I would like to help them understand this, but I'm not sure how to go about this. All I ask is that your organization talk to these companies.

I would like to resolve this as quickly as possible and avoid bad publicity for these companies. Unfortunately, they have not replied to my comments and I suspect though that if they "hear" from you, they will be inclined to take the concerns of the hearing impaired more seriously. After all, it's a matter of dollars and good sense.

Sincerely,
XX

01-04108

DEC 11 1995

The Honorable Olympia J. Snowe
United States Senator
3 Canal Plaza, Suite 601
P.O. Box 188
Portland, Maine 04112

Dear Senator Snowe:

This is in response to your inquiry on behalf of your constituent, XX , concerning the enforcement of Federal disability rights laws in her area. XX is concerned that Federal laws are being ignored and that some businesses are choosing to comply with State laws instead.

Please note, initially, that local law enforcement and building code officials do not have authority to enforce Federal disability rights laws such as the Americans with Disabilities Act (ADA) or the Rehabilitation Act of 1973. When both a State law and a Federal disability rights law apply to a certain facility, both laws must be followed, and thus the more stringent provisions of the two laws must be met. If State law provisions differ from the ADA requirements in a way that results in less accessibility, then an entity subject to the construction requirements of the ADA is required to comply with the Federal standard. To the extent that the Federal standard is irreconcilable with the State standard, a covered entity must comply with the Federal standard.

As the article enclosed with XX letter notes, the Department of Justice is attempting to address the potential problem of overlapping State and Federal law through the ADA certification process. Under this program, State and local governments may submit their building codes to the Department for certification that the codes' requirements meet or exceed the requirements of the ADA. If such certification is granted for a State or local code, an entity whose building is built in compliance with the certified code will be able to rely on the certified code as "rebuttable evidence" of compliance with the ADA. Thus, such certification, although not a guarantee against findings of noncompliance, would allow builders to rely on their State or local codes and on the local systems of preliminary

investigation, approval, and enforcement, rather than having to

cc: Records, Chrono, Wodatch, McDowney, Milton, FOIA
n:\udd\milton\congress\tosue.sno\sc. young-parran
01-04109

do independent reviews of both the local and Federal laws. The State of Maine has applied for such certification and its submission is under review by the Department.

In the event that a covered entity undertakes construction that violates the Federal disability rights laws, XX has several enforcement options. First, she may file a complaint with this office by sending her allegations in writing to the Disability Rights Section, Civil Rights Division, U.S. Department of Justice, P.O. Box 66738, Washington, D.C. 20035-6738. As an alternative to investigation by a Federal agency, XX may file a lawsuit in the appropriate Federal district court. She would not need any approval letter from the Department of Justice before proceeding. XX also may seek to resolve her complaints through alternative dispute resolution. The enclosed brochure describes such processes.

I hope this information is helpful to you in responding to your constituent.

Sincerely,
Deval L. Patrick
Assistant Attorney General
Civil Rights Division

Enclosure
01-04110

To: Honorable Senate Snowe
From: XX
Re:Handicap Accessability
Dear Senator Snowe,

I live in XX
accident that left me a Quadriplegic. I am having problems with towns and businesses making sidewalks and ramps accessible so people with disabilities can get around better. The laws are there but there is no one to enforce them. State laws and the federal laws are so different that some businesses are going by state laws and are not following federal laws.

There is a Restaurant in XX that did a lot of remodeling and was told by the code enforcement office and the Fire Marshall's office that she didn't meet Federal Laws. She told them she chose to go by the State Laws only. I contacted an Attorney and he has been talking with her and she still say she didn't break any Federal Laws. She put in a new door and steps but no ramp.

The town of XX wouldn't make their town accessible until I called the Maine Civil Liberties Union. They said I had a case against XX . They got an Attorney for me and XX decided to do the work instead of going to court. I have been working with the City of XX and they are trying to get all their sidewalk done. Some people with disables give up and won't fight for their rights. The laws are there and we shouldn't have to fight to get something done. There needs to be someone to enforce the laws. There is a Fire Inspector and Plumming Inspector but no one to force the handicapped laws. I talked to Brian Trask about it and he agrees with me. He said he can tell people what has to be done but he can't go and make them do it. I don't know if you can help but maybe you know someone who can. I'm sending you a copy of Opening More Doors. I circled enforcement changes so you can check into it.

Thank You,
XX

01-04111

DEC 13 1995

The Honorable Trent Lott
United States Senate
487 Russell Senate Office Building
Washington, D.C. 20510-2403

Dear Senator Lott:

I am responding to your letter on behalf of your constituent, Mr. Thomas Matthews, regarding requirements under the Americans with Disabilities Act (ADA).

According to Mr. Matthews' letter, he is an attorney representing an individual who is deaf in a trial about a speeding ticket. The court has informed him that he must provide an interpreter for his client during the trial. Mr. Matthews proposes to use a 15-year-old who has a deaf parent as the interpreter.

Title III of the ADA prohibits people who own or operate places of public accommodation, such as attorneys, from discriminating on the basis of disability in the provision of their services. In addition, title II of the ADA prohibits State and local government entities, such as courts, from discriminating on the basis of disability in their programs, services, and activities.

Both title II and title III require covered entities to ensure effective communication with the participants in their programs or services, including participants with hearing impairments, unless doing so would cause a fundamental alteration of the program or service or would result in an undue burden. 28 C.F.R. SS 35.160-164; 28 C.F.R. S 36.303. Therefore, unless it would cause a fundamental alteration or undue burden, Mr. Matthews must provide necessary auxiliary aids, including, if necessary, qualified sign language interpreters to ensure effective communication in his out-of-court communications with his client. In-court communications, however, fall within the

jurisdiction of the court and, therefore, are covered by title II. The court must ensure effective communication through appropriate auxiliary aids, including, if necessary, qualified sign language interpreters, for such in-court proceedings, unless to do so would cause a fundamental alteration or undue burden.

A sign language interpreter is not a necessary auxiliary aid in all situations. In some contexts, other auxiliary aids may be adequate. In determining what constitutes an effective auxiliary aid or service, covered entities must consider, among other things, the length and complexity of the communication involved. A note pad and written materials may be sufficient means for short, uncomplicated communications. Where, however, the information to be conveyed is lengthy or complex, the use of handwritten notes may be inadequate and the use of an interpreter may be the only effective form of communication. Use of interpreter services is not necessarily limited to the most extreme situations. The enclosed Technical Assistance Manuals address this issue at II-7.1000 and III-4.3200.

In order to satisfy the effective communication requirement of the ADA, any sign language interpreter that is provided must be qualified. Although an interpreter need not be certified, he or she must be able to effectively sign to the individual who is deaf what is being said by the hearing person and to effectively voice to the hearing person what is being signed by the individual who is deaf. The interpreter must be able to accomplish these communications effectively, accurately, and impartially. In some contexts, such as some legal proceedings, this may require knowledge of the applicable specialized vocabulary.

I hope this information is helpful to you in responding to your constituent.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

Enclosures
01-04113

Thomas M. Matthews, Jr.
Attorney At Law
116 W. College Avenue
Wiggins, Mississippi 39577
Telephone:
601-928-9997
Or:
601-928-9998
Fax:
601-928-6132

October 18, 1995

Honorable Trent Lott
245 E. Capitol Street
Suite 226
Jackson, MS 39201

Honorable Thad Cochran
P. O. Box 22581
Jackson, MS 39205

Honorable Gene Taylor
2424 14th Street
Gulfport, MS 39501

Dear Sirs:

I was just called by the Justice Court Clerk and advised that through the Mississippi Attorney General's Office she was told that because of the Americans With Disabilities Act we must provide an interpreter for a deaf individual who wants a trial on his speeding ticket. Our search of Stone County has revealed that we may be able to use a 15 year old who has a deaf parent; otherwise, we will have to hire someone from outside the county.

I just wanted you to know that we are all well in South Mississippi and are trying to live up to our obligations under that great shielf provided by Washington that protects us all.

I am,

Sincerely yours,

THOMAS M. MATTHEWS, JR.

TMM:sbp
01-04114

DEC 13 1995

Mr. David F. Tufaro
Executive Vice President
Summit Properties
1629 Thames Street
Suite 200
Baltimore, Maryland 21231

Dear Mr. Tufaro:

I am responding to your letter to Attorney General Reno commenting on the Americans with Disabilities Act (ADA) as applied to public libraries. You state that improvements cannot be made to the Roland Park Public Library in Baltimore City because any alterations would have to be in compliance with the ADA, which would be prohibitively expensive. Please excuse the delay in responding.

Title II of the ADA prohibits discrimination on the basis of disability in State and local government services. The Department of Justice's regulation implementing title II (enclosed) attempts to balance the rights of individuals with disabilities to participate in government programs, services, and activities, with government entities' legitimate concerns about cost and administrative difficulty. To achieve this balance, the title II regulation provides flexible, performance-based standards of accessibility for programs occurring in existing facilities, where the cost of physical accessibility may be high. For new or altered facilities, on the other hand, where access can often be provided without significantly increased cost, the title II regulation requires newly constructed or altered areas to meet specific standards of accessible construction set out in the ADA Standards for Accessible Design (Standards) or the Uniform Federal Accessibility Standards (UFAS).

Sections 35.149 and 35.150 of the title II regulation require accessibility to State and local government programs,

services, and activities in facilities existing on the effective date of the statute, January 26, 1992. The principal focus of the program accessibility standard is access to programs, services, and activities, as opposed to access to physical structures. Therefore, not every area of an existing public library would have to be made accessible, as long as there is access to the library's programs, services, and activities.

For existing facilities, every building does not necessarily have to be made accessible if all of the programs located inside that building can be made accessible by alternative means. Section 35.150(b)(1) of the title II regulation does not require that a public library eliminate structural barriers if it provides access to its programs through alternative methods such as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, or any other methods that result in making the services, programs, or activities readily accessible to and usable by individuals with disabilities.

Thus, for instance, if a public library's open stacks are located on upper floors having no elevator, as an alternative to making the upper floors accessible, library staff may retrieve books for patrons who use wheelchairs as long as the aides are available during the operating hours of the library. Or, if a public library has an entrance with several steps, the library can make its services accessible in several ways. It may construct a simple wooden ramp quickly and at relatively low cost. Alternatively, individuals with mobility impairments may be provided access to the library's services through a bookmobile, by special messenger service, through use of clerical aides, or by any other method that makes the resources of the library "readily accessible." Priority should be given, however, to methods that offer library services to individuals with and without disabilities in the same setting.

If structural alterations are necessary to provide program accessibility, such alterations must be undertaken. However, a public entity does not have to take any action that it can demonstrate would result in a fundamental alteration in the nature of its program or activity or in undue financial and administrative burdens. This determination can only be made by the head of the public entity or his or her designee and must be accompanied by a written statement of the reasons for reaching that conclusion. The determination that undue burdens would result must be based on all resources available for use in the

program. If an action would result in such an alteration or such burdens, the public entity must take any other action that would not result in such an alteration or such burdens but would
01-04116

nevertheless ensure that individuals with disabilities receive the benefits and services of the program or activity.

You have correctly noted that if Baltimore City undertakes structural alterations in order to provide program accessibility or for any other reason, the title II regulation requires that the altered areas comply with either the ADA Standards or the UFAS. The Department of Justice believes this approach will ensure full accessibility to people with disabilities in the long term while allowing State and local governments to control and minimize short-term costs.

Your letter also raises issues pertaining to the implementation of the Fair Housing Act. Please note that the Fair Housing Act is enforced by the Department of Housing and Urban Development. If you wish to contact that agency regarding the law, you may write to: Ms. Bonnie Milstein, Director, Office of Program Compliance and Disability Rights, Department of Housing and Urban Development, 451 7th Street, S.W., Room 5112, Washington, D.C 20410.

I hope this information is helpful.

Sincerely,

John L. Wodatch
Chief
Disability Rights Section
Civil Rights Division

Enclosure
01-04117

SUMMIT
PROPERTIES November 10, 1995

The Honorable Janet Reno
Attorney General of the United States
U.S. Department of Justice
Constitution Avenue & 10th Street, N.W.
Washington, D.C. 20530

Re: American Disabilities Act

Dear Attorney General Reno:

I read the article that you and former Attorney General Dick Thornburgh wrote, celebrating the fifth anniversary of the American Disabilities Act. While the intent of ADA is clearly positive, your general statement does not square with the facts. I am going to cite some specific examples.

I live in Baltimore City. I have served on the Board of the Friends of the Roland Park Public Library in Baltimore City. This is a two story library sitting in the midst of our community. Although it is a small branch of the Enoch Pratt Public Library System, it is one of the most heavily utilized libraries in the City's system. We have many older citizens of the community who use the library on a regular basis, and many students come here after school gets out in the afternoon. The Friends of the Library was formed several years ago to help address some physical deterioration of the building because of the City's shortage of money, and also to enhance certain resources of the library, i.e. magazine subscriptions and book collections. The library is in need of both renovation and expansion. The building consists of a basement, a ground floor which you have to access by steps, and a second floor. The building is part of a one hundred year old residential community which has been designated a historic district. The library staff and the City are of the view based on ADA that improvements to the building cannot be made without complying with ADA, which would be prohibitively expensive.

Your statement in the article that you wrote suggests that if there were librarians available to assist handicapped persons that making the building handicap accessible would not be required. As you well know, Baltimore, like many other communities, does not have adequate funds to service current needs. It is doubtful that one would believe that there are adequate librarians available to provide handicap needs. In any event, who is going to make that determinaton? Can the City make that judgment by itself. or is that

01-04118

going to be determined in Court when somebody files a lawsuit on behalf of a handicap person? Baltimore can ill afford to have to spend additional money on making a building like this accessible to the physically handicapped. I should add that the library system has recently built a library specifically for handicapped persons adjacent to the main library.

Your examples of how matters are being interpreted reasonably are all well and good. However, that in fact is not the way that decisions are made. There is unlimited opportunity for second guessing. A private owner might determine that a building cannot be made handicap accessible without an inordinate amount of expense. The local jurisdiction, state or federal government may make the determination that judgment is incorrect. A handicapped person or group representing handicapped persons might bring a lawsuit, which could result in substantial amounts of liability and punitive damages. The law and regulations leave it very uncertain as to who is handicapped and what is a reasonable effort made to accommodate handicapped persons. It is left wide open and subject to litigation. This is not in the best interest of society.

I am going to turn to another area with similar requirements to the ADA that applies to multifamily housing. That is the Fair Housing Act of 1988. This statute, which preceded ADA, imposed stringent requirements on multifamily housing to make new properties handicap accessible. At least the good thing about this law is that it was not applied retroactively. It applied to building permits being issued after a certain date. The law requires that all elevator apartment buildings allow wheelchair handicap accessibility to 100 percent of the apartments and through 100 percent of the apartments. This includes kitchens, bathrooms, and balconies, as well as all doorways. For non-elevator multifamily buildings, all ground floor units have to be accessible to the wheelchair handicapped. The problem arises with sites with a lot of steepness, and there is a whole set of regulations determing the percentage of accessibility required based on the natural steepness of the site. The law has added considerable cost to new apartments, which is the sector of housing serving the lower echelon of income groups in this country, by requiring wider doorways and doors, larger kitchens, larger bathrooms, and much more grading of sites to accommodate the requirements. Moreover, it has been an anti- environmental piece of legislation in that it has required a lot more removal of trees than we would otherwise have done under normal circumstances.

Prior to the federal law being passed, most states had their own requirements for handicap accessible units which were on the order of 2 percent, 4 percent or 5 percent of all of the apartments in an apartment community. The multifamily industry never had sufficient demand to fill the handicap units before the federal law was passed. We tried to get this message across to Congress and ultimately to HUD charged with preparing the regulations implementing the new law, but nobody would listen. The argument was that wheelchair and handicap people should be able to go to the top of the

mountain. That may be a noble goal but is not a rationale for the kind of federal requirements that were imposed at any expense.
01-04119

Since the new federal law went into effect, the National Association of Home Builders has done a survey which has shown that the number of handicap persons occupying apartment units is not any higher than it was before. That is also something that we have been telling HUD and our elected members of Congress. The survey showed that out of 695,214 apartments less than 1% are occupied by disabled persons. A copy of the NAHB survey is attached.

The issue from the experience of people who are in the business of developing and managing apartments is one of affordability for handicap persons, not accessibility. So the solution imposed by Congress on behalf of certain elements of the handicap community was the wrong one, and it was a very expensive one. If Congress had been willing and open minded enough to listen to the people who manage apartments on a regular basis, they would have known the real statistics and the nature of the problem. I might add that only a portion of the handicap community pushed for the legislation.

The net result of the handicap legislation adopted under the fair housing law is just another reason in the litany of reasons the cost of housing have been increased for everybody, making it less affordable to all persons, both handicapped and non-handicapped alike, and we have not in fact, accommodated anymore handicapped persons. It is not an untypical case of federal legislation which, though well intentioned in the broad scheme of things, achieves nothing and in fact imposes greater costs on society (and I might add this does not show up in the federal budget). Further, it leaves the impression that people have been helped without in fact having helped them. To top it all off, when the facts are in, nobody in Congress or the Administration has the integrity or the strength to recommend changes in the legislation to correct the errors.

My hope, by writing this letter is that you will play the role of a leader and be an advocate for changes that improve the various forms of handicap legislation I have discussed here.

Sincerely yours,

David F. Tufaro
Executive Vice President

DFT/rmc
01-04120

DEC 21 1995

The Honorable Charles H. Taylor
U.S. House of Representatives
231 Cannon Building
Washington, D.C. 20515-3311

Dear Congressman Taylor:

This letter is in response to your inquiry on behalf of your constituent, XX , regarding the broken sidewalk at Central Elementary School in Haywood County, North Carolina. XX wishes to know whether the school could be required to repair the sidewalk under the Americans with Disabilities Act of 1990 (ADA).

Title II of the ADA prohibits discrimination against qualified individuals with disabilities on the basis of disability in all programs, activities, and services provided by or on behalf of State and local governments. The Department of Justice's title II regulation prohibits a public entity from denying the benefits of such programs, activities, and services to qualified individuals with disabilities because the entity's facilities are inaccessible to or unusable by individuals with disabilities.

A public entity is required to provide "program access," i.e., the entity is required to operate each service, program, or activity it provides so that, when viewed in its entirety, the service, program, or activity is readily accessible to and usable by individuals with disabilities. Providing program access does not necessarily require a public entity to make each of its facilities fully accessible. For example, program access can be achieved by the relocation of services from inaccessible to accessible buildings or by the assignment of aides to program beneficiaries. In addition, a public entity is not required to take any action that it can demonstrate would result in a fundamental alteration in the nature of its services, programs, or activities or in undue financial and administrative burdens.

cc: Records, Chrono, Wodatch, McDowney, Milton, FOIA
n:\udd\milton\congress\sidewalk.tay\sc. young-parran
01-04121

With respect to the situation you describe, title II of the ADA requires public entities to maintain in operable working condition those features of facilities that are required for program access and over which the public entities have control. Therefore, if a public entity has responsibility for, or authority over, sidewalks or other public walkways, and if such sidewalks or walkways are necessary to ensure accessibility to the entity's programs, services, or activities, then the public entity has an obligation to maintain the sidewalks or walkways in usable working condition.

I hope this information is helpful to you in responding to your constituent.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

01-04122

XX
October 17, 1995

Congressman Charles H. Taylor
U.S. House of Representatives
516 Cannon Building
Washington, DC 20515

Dear Congressman Taylor:

On XX fell and broke XX arm at Central Elementary School in Haywood County. XX fell on a broken sidewalk that has been in need of repair for quite some time.

We attempted to recoup our medical expenses from the school's liability insurance carrier, North Carolina School Boards Insurance Trust, who denied our request under the laws of contributory negligence. We were told by Terrance Sullivan of the North Carolina General Assembly that even though the school was negligent, they were not obligated to pay medical expenses as they are protected by the laws of contributory negligence.

We are of the opinion that the school system uses contributory negligence to exempt themselves from the responsibility and expense of maintaining a safe school environment.

Even though contributory negligence has taken away the incentive for the schools to repair this sidewalk, can they be coerced to make the necessary repairs under the Americans with Disabilities Act on the grounds that they deny safe access for the blind and visually impaired?

Sincerely,
XX

01-04123

DEC 28 1995

The Honorable Kay Bailey Hutchison
United States Senator
Suite 1160, LB 606
10440 N. Central Expressway
Dallas, Texas 75231-2223

Dear Senator Hutchison:

I am responding to your inquiry on behalf of the City of Richmond, Texas, with respect to the application of the Americans with Disabilities Act of 1990 (ADA) to the city's library. The library forwarded to you a letter to one of its patrons, XX XX in which it stated its position that it was not required to provide a TDD for patrons with hearing impairments at its public pay telephones because it only provided three such pay telephones.

Title II of the ADA prohibits discrimination on the basis of disability by public entities. The Department of Justice has published a regulation implementing title II that sets out the obligations of public entities under the ADA. In addition, the Department has published a Title II Technical Assistance Manual to further explain these requirements. Copies of these documents are enclosed for your reference.

Title II requires newly constructed or altered facilities to be constructed or altered in a manner that provides accessibility for individuals with disabilities in accordance with either the ADA Standards for Accessible Design (Standards) or the Uniform Federal Accessibility Standards (UFAS). As the library has correctly indicated to XX for most facilities, including libraries, the ADA Standards only require provision of a public TDD when the facility provides four or more public pay telephones.

FOIA
01-04127

If your consituents want further information about the ADA, they may contact the Department's ADA information line (800-514-0301 (voice) or 800-514-0383 (TDD)) Monday, Tuesday, Wednesday, and Friday from 10:00 a.m. to 6:00 p.m., Eastern time. On Thursday, the information line is staffed from 1:00 p.m. to 6:00 p.m.

I hope this information is useful to you in responding to your constituents. As requested, I am returning your constituents' correspondence.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

Enclosures
01-04128

CITY OF RICHARDSON
City Council
Gary A. Slagel
Mayor
September 28, 1995 John Murphy
Mayor Pro Tem
John F. Sweeden
Tom Rohm
Jim Shepherd
Carol Wilson
Bob Nusser

Bill Keffler
City Manager

XX
Garland, TX XX

Dear XX

This is in response to your letter of September 22, 1995 regarding the fact that our City Library's pay telephones are not equipped with Telecommunications Devices for the Deaf (TDDs). We regret that you were inconvenienced in this matter. However, our Library is not in violation of the Americans with Disabilities Act (ADA). We are properly guided by the Department of Justice's ADA Title II Technical Assistance Manual, which directs that a TDD would be required if the Library had a total of four or more pay telephones. The Richardson Public Library has a total of three pay telephones.

As required, we do have a TDD to enable hearing impaired patrons and citizens to call our Library for information. That TDD is for use by Library employees with the Library's business telephones, but would be made available to a patron for an emergency call, as Ms. Klobe stated. As a business line would be used, we are understandably reluctant to make it available as a public access service for business which is not Library related.

We are quite willing, however, to pursue possible placement of a permanently installed TDD with one of the pay telephones as a matter of convenience to patrons. We appreciate the information sheet you provided on one possible vendor. Our Purchasing Department will determine if there are alternative suppliers, to assure the most cost effective decision will be made.

P.O. Box 830309
Richardson, TX
75083-0309
214-238-4100

Again, we regret that you were inconvenienced during your visit to our Library. If we may be of further service, please feel free to contact Julianne Lovelace, Director of Library Services, on 238-4002.

Sincerely,

Bill Keffler
City Manager

CC: The Honorable Phil Gramm, U.S. Senator, Texas
The Honorable Kay Bailey Hutchison, U.S. Senator, Texas
The Honorable Sam Johnson, U.S. House of Representatives, Texas
The Honorable Gary Slagel, Mayor
The Honorable John Murphy, Mayor Pro Tem
The Richardson News

01-04130

XX
Garland, Texas XX
September 22, 1995

Mr. Bill Keffler, City Manager
City Hall of Richardson
411 W. Arapaho Street
Richardson, Texas 75080

Dear Mr. Keffler:
I am requesting a full investigation on the matter with the Richardson Public Library on 900 Civic Centre Drive why a pay telephone booth equipped with a Telecommunication Device for the Deaf (TDD) is not installed at this library and for the possible violations of Americans with Disabilities Act of 1990 (ADA) for denying the accessibility to the deaf and hard of hearing individuals.

On September 20, 1995 at 6:50 PM, I took my son to this library for his homework. When I needed to make a telephone call, I was looking for a pay telephone booth equipped with TDD in the lobby. Unfortunately, the TDD was not available. I asked a desk clerk if there was any TDD available in this library. She said we had one by the reference desk on the second floor. However, she asked Elaine Klobe, head librarian to see if I could use the TDD. She said that I would not be able to use this TDD, and she quoted "THE TDD IS NOT FOR PUBLIC USE, BUT IF IT IS AN EMERGENCY, I SHOULD LET YOU USE IT WITH MY PHONE". This remark really insulted and humiliated me. It was not very professional for Ms. Klobe to treat the library patrons with this kind of remark.

Also, I have noticed this library is being renovated. Apparently, the library has met all requirements of ADA EXCEPT it fails to meet the needs for the deaf/hard of hearing individuals. I am enclosing a copy of a motorized TDD for the pay telephone booth which I believe it will be more beneficial to all deaf/hard of hearing individuals. The name of company is ULTRATEC, and the address is 450 Science Drive, Madison, Wisconsin 53711. The telephone number is (608) 238-5400, or the fax number is (608) 238-3008.

Your immediate response on this matter will be greatly appreciated.

Sincerely yours,
XX

Enclosure

cc: The Honorable Phil Gramm, U. S. Senator, Texas
The Honorable Kay Bailey Hutchison, U. S. Senator, Texas
The Honorable Sam Johnson, U. S. House of Representative, District 3, Texas

The Honorable Gary A. Slagel, Mayor, Richardson
The Honorable John Murphy, Mayor Pro Tem, Richardson
Richardson Daily News
01-04131

XX
Garland, Texas XX
September 22, 1995

The Honorable Kay Bailey Hutchison
10440 N. Central Expressway
Dallas, Texas 75231

Dear Ms. Hutchison:

Enclosed is a copy of letter to Mr. Bill Keefler, City Manager of Richardson, Texas regarding a pay telephone booth equipped with a Telecommunication Device for the Deaf (TDD) is not installed at the Richardson Public Library and for the possible violations of Americans with Disabilities Act of 1990 (ADA) for denying the accessibility to the deaf and hard of hearing individuals.

Your immediate response on this matter will be greatly appreciated.

Sincerely yours,

XX
Enclosure
01-04132

Shelf-top Model

FEATURES

* Easy to install and use

* Works with almost all types of public telephones and popular enclosures

* Does not affect the use of the pay phone by the hearing public

* Mounted at an angle so it is comfortable for reading

* Approved by the FCC and accepted by major telephone companies

Motorized Models:

* M120 - one-line, 20-character vacuum fluorescent display
#M120.....$995.00

* M240 - two-line, 40-character LCD display
#M240.....$1195.00

* M240 FS - two-line, 40-character LCD display, for outdoor use
#M240FS.....$1495.00

Shelf-top Models:

* ST120 - one-line, 20-character vacuum fluorescent display
#ST120.....$699.00

* ST240 - two-line, 40-character LCD display
#ST240.....$899.00

Pay Phone TTYTM Series

Vandal-resistant TTYs
designed for the public environment

Designed for public use, the Pay Phone TTY makes TTY calls from public facilities easy and reliable. There are several different models for both indoor and out-door use. Motorized models offer the maximum protection from vandalism. The stainless steel TTY keyboard remains protected in a metal drawer until a TTY call is placed. The drawer opens auto-matically when another TTY answers and closes again when the call is finished. For installations with less traffic, the durable shelf-top model is ideal. It's easy to install for either acoustic or direct-connect use, and has on-line help to assist users.

The Pay Phone TTY meets the require-ments for the Americans with Disabilities Act (ADA) as a public text telephone.

DEC 28 1995

The Honorable Kay Bailey Hutchison
United States Senator
Suite 1160, LB 606
10440 N. Central Expressway
Dallas, Texas 75231-2223

Dear Senator Hutchison:

I am responding to your inquiry on behalf of the City of Richmond, Texas, with respect to the application of the Americans with Disabilities Act of 1990 (ADA) to the city's library. The library forwarded to you a letter to one of its patrons, XX XX in which it stated its position that it was not required to provide a TDD for patrons with hearing impairments at its public pay telephones because it only provided three such pay telephones.

Title II of the ADA prohibits discrimination on the basis of disability by public entities. The Department of Justice has published a regulation implementing title II that sets out the obligations of public entities under the ADA. In addition, the Department has published a Title II Technical Assistance Manual to further explain these requirements. Copies of these documents are enclosed for your reference.

Title II requires newly constructed or altered facilities to be constructed or altered in a manner that provides accessibility for individuals with disabilities in accordance with either the ADA Standards for Accessible Design (Standards) or the Uniform Federal Accessibility Standards (UFAS). As the library has correctly indicated to XX for most facilities, including libraries, the ADA Standards only require provision of a public TDD when the facility provides four or more public pay telephones.

FOIA
01-04127

If your consituents want further information about the ADA, they may contact the Department's ADA information line (800-514-0301 (voice) or 800-514-0383 (TDD)) Monday, Tuesday, Wednesday, and Friday from 10:00 a.m. to 6:00 p.m., Eastern time. On Thursday, the information line is staffed from 1:00 p.m. to 6:00 p.m.

I hope this information is useful to you in responding to your constituents. As requested, I am returning your constituents' correspondence.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

Enclosures
01-04128

CITY OF RICHARDSON
City Council
Gary A. Slagel
Mayor
September 28, 1995 John Murphy
Mayor Pro Tem
John F. Sweeden
Tom Rohm
Jim Shepherd
Carol Wilson
Bob Nusser

Bill Keffler
City Manager

XX
Garland, TX XX

Dear XX

This is in response to your letter of September 22, 1995 regarding the fact that our City Library's pay telephones are not equipped with Telecommunications Devices for the Deaf (TDDs). We regret that you were inconvenienced in this matter. However, our Library is not in violation of the Americans with Disabilities Act (ADA). We are properly guided by the Department of Justice's ADA Title II Technical Assistance Manual, which directs that a TDD would be required if the Library had a total of four or more pay telephones. The Richardson Public Library has a total of three pay telephones.

As required, we do have a TDD to enable hearing impaired patrons and citizens to call our Library for information. That TDD is for use by Library employees with the Library's business telephones, but would be made available to a patron for an emergency call, as Ms. Klobe stated. As a business line would be used, we are understandably reluctant to make it available as a public access service for business which is not Library related.

We are quite willing, however, to pursue possible placement of a permanently installed TDD with one of the pay telephones as a matter of convenience to patrons. We appreciate the information sheet you provided on one possible vendor. Our Purchasing Department will determine if there are alternative suppliers, to assure the most cost effective decision will be made.

P.O. Box 830309
Richardson, TX
75083-0309
214-238-4100

Again, we regret that you were inconvenienced during your visit to our Library. If we may be of further service, please feel free to contact Julianne Lovelace, Director of Library Services, on 238-4002.

Sincerely,

Bill Keffler
City Manager

CC: The Honorable Phil Gramm, U.S. Senator, Texas
The Honorable Kay Bailey Hutchison, U.S. Senator, Texas
The Honorable Sam Johnson, U.S. House of Representatives, Texas
The Honorable Gary Slagel, Mayor
The Honorable John Murphy, Mayor Pro Tem
The Richardson News
01-04130

XX
Garland, Texas XX
September 22, 1995

Mr. Bill Keffler, City Manager
City Hall of Richardson
411 W. Arapaho Street
Richardson, Texas 75080

Dear Mr. Keffler:
I am requesting a full investigation on the matter with the Richardson Public Library on 900 Civic Centre Drive why a pay telephone booth equipped with a Telecommunication Device for the Deaf (TDD) is not installed at this library and for the possible violations of Americans with Disabilities Act of 1990 (ADA) for denying the accessibility to the deaf and hard of hearing individuals.

On September 20, 1995 at 6:50 PM, I took my son to this library for his homework. When I needed to make a telephone call, I was looking for a pay telephone booth equipped with TDD in the lobby. Unfortunately, the TDD was not available. I asked a desk clerk if there was any TDD available in this library. She said we had one by the reference desk on the second floor. However, she asked Elaine Klobe, head librarian to see if I could use the TDD. She said that I would not be able to use this TDD, and she quoted "THE TDD IS NOT FOR PUBLIC USE, BUT IF IT IS AN EMERGENCY, I SHOULD LET YOU USE IT WITH MY PHONE". This remark really insulted and humiliated me. It was not very professional for Ms. Klobe to treat the library patrons with this kind of remark.

Also, I have noticed this library is being renovated. Apparently, the library has met all requirements of ADA EXCEPT it fails to meet the needs for the deaf/hard of hearing individuals. I am enclosing a copy of a motorized TDD for the pay telephone booth which I believe it will be more beneficial to all deaf/hard of hearing individuals. The name of company is ULTRATEC, and the address is 450 Science Drive, Madison, Wisconsin 53711. The telephone number is (608) 238-5400, or the fax number is (608) 238-3008.

Your immediate response on this matter will be greatly appreciated.

Sincerely yours,
XX

Enclosure

cc: The Honorable Phil Gramm, U. S. Senator, Texas
The Honorable Kay Bailey Hutchison, U. S. Senator, Texas
The Honorable Sam Johnson, U. S. House of Representative, District 3, Texas

The Honorable Gary A. Slagel, Mayor, Richardson
The Honorable John Murphy, Mayor Pro Tem, Richardson
Richardson Daily News
01-04131

XX
Garland, Texas XX
September 22, 1995

The Honorable Kay Bailey Hutchison
10440 N. Central Expressway
Dallas, Texas 75231

Dear Ms. Hutchison:

Enclosed is a copy of letter to Mr. Bill Keefler, City Manager of Richardson, Texas regarding a pay telephone booth equipped with a Telecommunication Device for the Deaf (TDD) is not installed at the Richardson Public Library and for the possible violations of Americans with Disabilities Act of 1990 (ADA) for denying the accessibility to the deaf and hard of hearing individuals.

Your immediate response on this matter will be greatly appreciated.

Sincerely yours,

XX
Enclosure
01-04132

Shelf-top Model

FEATURES

* Easy to install and use

* Works with almost all types of public telephones and popular enclosures

* Does not affect the use of the pay phone by the hearing public

* Mounted at an angle so it is comfortable for reading

* Approved by the FCC and accepted by major telephone companies

Motorized Models:

* M120 - one-line, 20-character vacuum fluorescent display
#M120.....$995.00

* M240 - two-line, 40-character LCD display
#M240.....$1195.00

* M240 FS - two-line, 40-character LCD display, for outdoor use
#M240FS.....$1495.00

Shelf-top Models:

* ST120 - one-line, 20-character vacuum fluorescent display
#ST120.....$699.00

* ST240 - two-line, 40-character LCD display
#ST240.....$899.00

Pay Phone TTYTM Series

Vandal-resistant TTYs
designed for the public environment

Designed for public use, the Pay Phone TTY makes TTY calls from public facilities easy and reliable. There are several different models for both indoor and out-door use. Motorized models offer the maximum protection from vandalism. The stainless steel TTY keyboard remains protected in a metal drawer until a TTY call is placed. The drawer opens auto-matically when another TTY answers and closes again when the call is finished. For installations with less traffic, the durable shelf-top model is ideal. It's easy to install for either acoustic or direct-connect use, and has on-line help to assist users.

The Pay Phone TTY meets the require-ments for the Americans with Disabilities Act (ADA) as a public text telephone.

DEC 28 1995

The Honorable Richard Shelby
United States Senate
110 Hart Senate Office Building
Washington, D.C. 20510-0103

Dear Senator Shelby:

I am responding to your letter on behalf of your constituents, XX regarding a county government's decision to waive garbage collection fees for individuals who rely on Social Security as their sole source of income, while requiring payment by individuals relying on veterans' benefits, disability benefits, or other sources of income. XX argue that such distinctions are discriminatory against individuals with disabilities and other individuals.

Title II of the Americans with Disabilities Act (ADA) prohibits discrimination on the basis of disability by State and local government agencies. Nothing in the ADA prohibits governments from providing special benefits, discounts, or fee waivers to individuals with disabilities or groups of individuals with disabilities. However, the ADA also does not prohibit the provision of such benefits, discounts, or waivers only to senior citizens, as long as the benefits, discounts, or waivers are offered equally to senior citizens who have disabilities and those who do not.

I have enclosed a copy of the Department of Justice's regulation implementing title II of the ADA and a Title II Technical Assistance Manual. I hope this information is helpful to you in responding to your constituents.

Sincerely,

Deval L. Patrick
Assistant Attorney General

Enclosures
FOIA
01-04134

Sen. Richard Shelby Nov. 6, 1995
509 - Hart Senate Office Building
Washington, D.C. 20510

Dear Sir,

I would appreciate receiving some information regarding discrimination toward Senior Citizens, disabled, low income or no income citizens. Lawrence County has mandatory garbage pick up and many of its citizens cannot afford to pay the garbage fee. At a meeting, the question was asked whether Senior Citizens would be exempt from paying the garbage fee. We were told "No" They are prevented from singling out a specific class of people for special treatment in regard to the rates they pay. Then we learned that people who have only Social Security income could be exempt. But anyone drawing V.A. disability or any other small income would not be exempt. Also they only took applications for exemption a short period of time; about a month. They quit taking applications in May, 1995 and said they had all the applications they could process.

Now we have learned that the Health Department is still exempting some people and ignoring other people who are qualified for exemption. The Alabama State Health Department is partially funded by federal money. Lawrence County Health Department is using federal money to collect fees for Waste Contractors, a multi-million dollar company and if the citizens don't

the Health Department will have the people arrested, put in jail and will take those citizens to Court. The Health Department discriminates against Lawrence County citizens. They make some pay the garbage fees and others are exempt.

Joe Wheeler Corp. is a distributor of power for TVA and receives federal money from TVA. The money is used to put the garbage fee on electric bills. If the members don't say the garbage fee. Joe Wheeler turns them in to the Health Department so they can have the people arrested, put in jail and taken to court. Joe Wheeler discriminates against citizens by making some pay the garbage fee and others are exempt.

The Lawrence County Commission receives federal money. They made garbage pick-up mandatory. They allow some folks to be exempt and others have to pay. If the people do not pay the fee, they are arrested, put in jail and taken to court. This is discrimination! Joe Wheeler, Lawrence County Commission and the Health Department don't care what the citizens do with the garbage, as long as they pay the fee. The money is all they are interested in.

A person can draw the maximum Social Security, $1,300 or more, and still be exempt, but if a person draws VA, welfare or retirement, as little as $250.00, or unemployment and can't get a job, they are still billed for the garbage fee. If they can't pay, they will be arrested, put in jail and taken to Court.

Citizens are arrested and tried as criminals by the District Attorney for

a month they cannot afford to pay. It costs more to arrest and try the people then they would pay in 5 years- $7.64 x 12= $91.68 x 5= $458.40. Since jail time is involved the defendant would be eligible for a court appointed attorney in any criminal case.

The Health Department Lawrence County Commission and Joe Wheeler said the ones who do not pay will be made an example of by being arrested and prosecuted in Court. They will not give qualified citizens Exemption Applications and said it would be some time in 1996 before application would be accepted again.

We need the federal law that states "any agency that receives federal money cannot discriminate against different class of people regarding rates charged."

We would appreciate it if you would put a stop to this harassment, discrimination and punishment toward Senior Citizens disabled, low income or no income citizens. Now you have an opportunity to make an example of these agencies. You can cut off their federal money.

We, the Lawrence County citizens, need your help in this matter and would appreciate hearing from you as soon as possible.

Sincerely,
XX

01-04137

The Honorable Spencer Abraham
United States Senator
301 E. Genesee Street, #100
Saginaw, Michigan 48607

Dear Senator Abraham:

I am responding to your letter on behalf of your constituent, XX , regarding the application of the Americans with Disabilities Act (ADA) to zoning ordinances. The response to your letter was delayed because of the shutdown of the Federal government. I apologize for any inconvenience to your constituent.

According to the documents enclosed with your letter, the zoning administrator of Hawes Township, Michigan, has determined that XX wood processing business violates the agricultural zoning of his land. XX argues that, because he is an individual with a disability, the ADA exempts his business from local zoning ordinances.

Title II of the ADA prohibits discrimination on the basis of disability in the programs, services, and activities of State and local government entities. Title II requires public entities to make reasonable modifications to their policies, practices, and procedures, including their zoning policies, practices, and procedures, when such modifications are necessary to ensure that individuals with disabilities are not subjected to discrimination because of their disabilities.

While title II may require reasonable modification of discriminatory zoning ordinances and procedures, it does not provide a general exemption from zoning requirements for individuals with disabilities. Individuals with disabilities must generally comply with their local zoning requirements just as non-disabled individuals must comply.

cc: Records, Chrono, Wodatch, McDowney, Blizard, Hill, FOIA
Udd:Hille:PolicyIt:Abr XX
01-04138

I hope this information is helpful to you in responding to your constituent.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

01-04139

Nov 6, 1995 XX

Senator Spence Abrham
301 E. Genesee
Suite 100
Saginaw, Mi. 48607
Att; Mr. John Potbury

Mr. John Potbury,
Enclosed you will find a copy of the letter I received from Mr. Lawrence A. Brown, Zoning administrator for Hawes township.

In late JUly when Mr. Brown was here he asked about the shop and I told him at that time I had always worked with wood. I was suprised to get this letter and really dont know what he is complaining about. In the spring of XX XX asked me to make him some 2X4 and 1X4 wood stakes which I did. This was my first customer, The second was XX XX which I also made stakes for. Which we have continued to this day.

XX I was in a accident and broke my back and as a result I am completely parolized from the chest down. So in the spring of XX and I started reparing and selling lawn & garden equip. Which XX continued until about XX at which time the stake business took off like crazy. XX went door to door talking to engineers and surveyors, Rd. commissions, anyone who might use wood stakes.

With the old customers and all the new ones picked up it was easy giving up the lawn & garden business. A couple years back the zoning administrator came to us and told us not to get to big. If a company has a good product you cant help but grow. We now have our logs brought here and have Can't Eardly lumber co. come in with his portable saw mill's and cut our lumber. Through the growth of the business we have helped to take 5 families off the welfare roll. These families do not directly work for us, they work on the saw mill's, for trucking and in the woods. We now serve 41 customers from engineers, Const. companies, surveyors, road comm. & etc.

I dont know if there was a misunderstanding between Mr. Brown and myself or what. I also was under the impression I came under the A.D.A. (American Disability Act). Perhaps you could inform me of this. I would be more then happy to work with Mr. Brown, If he would like some measurements, Id be more then happy to get them for him. I do not feel I should pay the $150.00 he is requesting as I feel the zoning board has made the mistake not me.

Thank you,

XX
XX
October 24, 1995

XX
XX
XX

Mr. & Mrs. XX

1. This letter is to advise you that the present use of your land for commercial wood processing purposes is in violation of the agricultural zoning for your property.
2. During my recent inspection of your property in late July 1995, I discussed this matter with you and asked how you made the transition from a small-motor repair service, which was grandfathered, to your present operation and you stated it was without the approval of the Hawes Township Planning/Zoning Committee, Your reasoning was that because of your handicap situation, approval to start up a new business or change types of operation was not required based on a Michigan Handicap law. I advised you that I was not aware of any such law but I would investigate the matter and get back with you.
3. It was the advice of legal counsel that there is no such law on Michigan records and that your operation without having prior approval of the township is in violation of the township ordinance.

4. You are hereby notified that all on-site wood processing operations should cease until you have received written approval for such land use from the Planning/Zoning Committee.

5. Application for such approval can be made through the undersigned by submittal of written request showing property lines, setbacks, building dimensions, storage areas, and operational procedures, together with a check for $50.00 to serve as deposit to activate the review and approval process. You will then be notified of the date and location of the public hearing at which time you will be expected to pay the balance of the special hearing cost which is a total of $150.00.

6. You may also submit your application to the secretary of the P/Z Committee:
   Marian Wilburn
   1934 Quick Rd.
   Lincoln, MI. 48742
   Tel. 736-6178

7. For additional information regarding this letter or submittal procedures, you may contact either Mrs. Wilburn or myself.

8. Strict compliance is expected on receipt of this letter.

Lawrence A. Brown XX
Zoning Administrator XX
Hawes Township XX
FEB 15 1996

The Honorable Trent Lott
United States Senate
Suite 487
Russell Senate Office Building
Washington, DC 20510-2403

Dear Senator Lott:

This letter is in response to your inquiry on behalf of your constituent, Mrs. Skeeter Maxey. The delay in responding was caused by the partial government shutdown. We apologize for any inconvenience this may have caused your constituent.

The correspondence from Mrs. Maxey enclosed with your letter to Attorney General Reno says that Mrs. Maxey is interested in opening a four-screen motion picture theater, but is concerned about what she believes are unnecessary costs associated with complying with the Americans with Disabilities Act ("ADA"). Mrs. Maxey's letter does not, however, indicate any specific provision of the ADA or of the Department of Justice's title III regulation about which she is concerned.

The ADA is a carefully balanced law providing equal opportunity for persons with disabilities while taking into consideration the legitimate cost concerns of the business sector. The costs of complying with the ADA are especially minimal in the area of new construction, where less than 1% of the costs of construction are attributable to accessibility.

Please be assured that the title III regulation was promulgated pursuant to Congress's directive and contains standards for the design and construction of facilities required to be accessible by the ADA. See 42 U.S.C. S 12186(b) and (c). These accessibility standards are consistent with the Americans with Disabilities Act Accessibility Guidelines ("ADAAG") issued by the Architectural and Transportation Barriers Compliance Board ("Access Board"). See 42 U.S.C. SS 12186(c); 12204(a) and (b).

cc: Records, Chrono, Wodatch, Bowen, McDowney, Kuczynski, FOIA
Udd:Kuccynsk:Bowen:Congress:Lott
01-04142

Members of the public were given an opportunity to comment upon both the regulation and the ADAAG before they were finally issued. In fact, representatives of the National Association of Theatre Owners commented extensively on the impact of the regulation and the ADAAG upon the motion picture theater industry.

I hope this information is helpful in responding to your constituent.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

01-04143

The Honarable Trent Lott
U.S. Congressman
Senate Majority Whip
Washington, D.C. 20510

Dear Senator Lott:

On behalf of myself as a theatre owner and as a consultant presently working with a man and his wife in the process of building a theatre in Holly Springs and also another prospect of a Clinton, Miss. location, I want to ask you to please consider taking a second look at the actions of the Department of Justice and their interpretation of the ADA.

At the present time Bill Nelms and I are working toward a plan to build a new four-screen theatre here in Senatobia. As you know, Mississippi Bank is building a new bank in the old Sandman Motel location. Bill told me this week that we are almost on ready to proceed. There is enough space next to the bank to build a four-plex theatre and they (President of the bank, Bill Nelms) an option to put in a new theatre complex. We feel Senatobia is ready to expand with the surge of growth the past few years.

You can see why I am so concerned about the ADA and the pressures from the Department of Justice. Business owners oppose the excessive demands, not to mention the litigation. We spend more time on the hassle than any other phase of getting our business 'house in order'.

Our industry has supported the legislation, and we have all provided accommodations that we are proud to serve our handi-capped.

I do wish some of us could come before your panel and discuss some of the changes or modifications that we need concerning ADA.
01-04144

We do not have any representatives that I know of on the Public Advisory Committee, and I do know it would be quite helpful to both parties to discuss the ADA requirement implementations that are at present ignored. There are overly costly changes that we really don't need. I could save enough to equip another projection room or more. The re-designing is costly, and really not needed. No one knows better than I since my husband is handicapped, that the handicapped deserve accomodations and a theatre provides this. I know first hand from being in this business so many years, that we go the extra mile to serve our handicapped.

I do so want to proceed with the four screen theatre and you know how vital a theatre is to our Northwest Community College students as well as the citizens, young and old in our community.

I employ mostly young high school and college students. They have gone on to professions in education, accounting, law, health fields, and one in particular a director of Miss Texas pageant. And you knwo Norval Sykes quite well; now executive producer of Miss Texas. Our industry does contribute to beyond entertainment.

Trent, so much is being ignored by the Department of Justice in our best interest. So much time and money is being wasted that could better serve more elsewhere.

I do hope you will look into this matter, and please let me hear from you and your thoughts. Anything you can do to help us, I will appreciate so much. It seems everytime I have a problem, I always call on you. But, I must add, you have always come through for me. And I do thank you so very much.

Kindest personal regards,

SKEETER
01-04145

FEB 15 1996

The Honorable Frank Pallone, Jr.
Member, U.S. House of Representatives
540 Broadway, Suite 118
Long Branch, New Jersey 07740

Dear Congressman Pallone:

I am responding to your recent letter on behalf of your constituent, XX , who asked for your assistance in resolving her allegation that certain entities have discriminated against her on the basis of disability. XX correspondence indicates that she is being discriminated against on the basis of her use of a hearing and guide dog that has not been certified as a service animal by the State of New Jersey. The response to your letter was delayed because of the Federal shutdown. I apologize for any inconvenience to your constituent.

As the enclosed Title III Technical Assistance Manual explains at S III-4.2300, title III of the Americans with Disabilities Act (ADA) requires places of public accommodation to make reasonable modifications in their policies to permit use of a service animal by an individual with a disability, unless doing so would result in a fundamental alteration or jeopardize the safe operation of the public accommodation. In addition, title II of the ADA requires State and local government entities to make reasonable modifications in their policies, including those governing service animals, to the extent such modification is necessary to avoid discrimination, unless the entity can demonstrate that the modification would fundamentally alter the nature of its service, program, or activity.

Some States and localities provide programs or requirements for certification or licensing of service animals. A place of public accommodation may not insist on proof of State or local certification before permitting the entry of a service animal onto its premises. Similarly, a State or local government agency may not require proof of certification before permitting an individual with a disability to participate in its programs, services, or activities.

cc: Records, Chrono, Wodatch, McDowney, Hill, FOIA
n:\udd\hille\policylt\pallone.XX \sc. young-parran

XX has written directly to the Attorney General regarding her complaint. After carefully reviewing her complaint, the Disability Rights Section of the Civil Rights Division has determined that it is appropriate for mediation through a mediation project sponsored by the Department of Justice through its technical assistance grant program. We have informed XX of this determination and have requested her consent to participate in the mediation program. Our letter to XX is attached.

I hope this information is helpful to you in responding to your constituent.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

Enclosures
01-04147

FEB 15 1996

The Honorable Deborah Pryce
U.S. House of Representatives
128 Cannon House Office Building
Washington, D.C. 20515

Dear Congresswoman Pryce:

I am responding to your letter on behalf of your constituent, XX , regardig the rights of XX XX under the Americans with Disabilities Act of 1990 (ADA). The response to your letter was delayed because of the shutdown of the Federal government. I apologize for any inconvenience to your constituent.

According to XX letter, XX is an individual with a disability who is considered to be incompetent under the law of the State of Maryland. XX apparently disagrees with the State's competency decision. Title II of the ADA prohibits discrimination by State and local government entities on the basis of disability. The ADA does not, however, generally provide a basis for overturning the disability-neutral decisions of State courts regarding the competency of particular individuals. The proper course for challenging such a determination is by appealing the competency decision through the State's judicial or administrative process.

If XX was discriminated against in some particular manner during the proceedings to determine his competency, he, or his representative, may file a complaint under title II of the ADA. Such a complaint must be in writing and must include the name and address of the complaining individual with a disability. Such a complaint must identify the entity alleged to have discriminated on the basis of disability and must describe the particular instance of discrimination. To assist XX , I have enclosed the Department's regulation implementing title II of the ADA and a title II complaint form.

cc: Records, Chrono, Wodatch, McDowney, Blizard, Hill, FOIA
Udd:Hille:PolicyIt:Pryce.ltr
01-04148

XX also disagrees with the State of Maryland's determination that XX father must continue to support his son financially. Again, title II of the ADA does not provide a general means to challenge State child support rulings. The proper course is to file an appeal through the State's judicial or administrative process.

I hope this information is helpful to you in responding to your constituent.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

Enclosures
01-04149

XX
XX
XX

September 12, 1995

Att: Robert Nichols
Deborah Pryce
United States Represenative
200 North High STreet
Suite 400
Columbus, OH 43215

Dear Mr. Nichols:
Thank you for returning my phone call today. I am going to greatfully accept your offer of help in regards to getting needed information to and from the following Federal Government agency.

1. The inspector General of the Dept. of Health and Human Services

2. The Federal Division of the criminal Division of the Civil rights, U.S. Justice.

3. The Federal Division of the Disability rights Section of the United States Justice.

THIS LETTER WILL AUTHORIZE YOU TO INQUIRE ON MY AND MY BROTHERS BEHALF INTO ALL MATTERS RELATING TO HIS ADULT SONS DISABILITY IN REGARDS TO HIS DISABILITY RIGHTS, EMANCIPATION, AND WHO HAS THE DUTY TO SUPPORT AN ADULT DISABLED PERSON.

The greatest concern we haVE IS THE FACT THE STATE OF MARYLAND WILL NOT TELL US THE LOCATION OR THE WELFARE OF XX . They state of maryland also claims he is unemancipated due to his disability, XX . This means all his rights are taken away and the state of maryland can treat him as an infant. He has no right to chose where he wants to live ordoes not have control of his money or his life.

My brother raised his son until the age of XX
XX to maryland XX . this was a sad day for us.

XX is a high school grad. and should be emancipated so he can contact his father and not be held prisoner of the State of Maryland.

I am power of attorney for my brother XX and I will send you a copy of the power of attorney for your files.

God Bless you for helping us, and God bless America, maybe you can help to old veterans of the Air Force and the U.S. Coast Guard.

Sincerely,

XX
XX
XX

01-04150

FEB 28 1996

The Honorable David L. Hobson
U.S. House of Representatives
1514 Longworth HOB
Washington, D.C. 20515

Dear Congressman Hobson:

I am responding to your letter on behalf of your constituent, Mr. Roger Bloomfield, regarding the application of the Americans with Disabilities Act (ADA) to the use of alcohol and drugs by college students. The response to your letter was delayed because of the Federal shutdown. I apologize for any inconvenience to your constituent.

Mr. Bloomfield's letter asks about the protections afforded to students using alcohol or illegal drugs in the context of the college admissions process. Mr. Bloomfield's question arises from the suggestion that users of alcohol or illegal drugs be excluded from admission to colleges or universities.

Colleges and universities may be covered by either title II or title III of the ADA. Title II covers publicly owned or operated schools, while title III covers private schools. Both title II and title III prohibit discrimination on the basis of disability by covered entities. Therefore, a covered entity generally may not rely upon an individual's disability as a basis for excluding that individual from participating in the entity's programs or services.

Mere casual use of alcohol or illegal drugs does not constitute a disability within the protection of the ADA. Therefore, a college or university may refuse admission to casual users of drugs or alcohol without violating the ADA. In addition, in enacting the ADA, Congress chose specifically to exempt from civil rights protection drug addicts who are currently engaged in the illegal use of drugs. Therefore, a college or university may exclude such current illegal drug users from its programs.

cc: Records, Chrono, Wodatch, McDowney, Hill, FOIA
n:\udd\hille\policylt\hobson.ltr\sc. young-parran

However, in order to encourage individuals with chemical dependencies to pursue rehabilitation and recovery, Congress chose to provide ADA protection to individuals with a history of drug dependency who have successfully completed a drug rehabilitation program, who are currently participating in such a program, or who, through their own efforts, are no longer engaging in the illegal use of drugs. Therefore, a college or university may not categorically exclude applicants on the basis of their former drug dependency.

Congress did not exclude alcohol dependency from coverage under the ADA. Therefore, individuals who are dependent on alcohol may not be excluded simply on the basis of their status as alcoholics. They may, however, be held to the same standards of conduct that other participants must meet, e.g., behavior standards, academic standards. Therefore, a college or university may prohibit drinking or drunkenness, as long as the prohibition applies to all students, not just those who are or were dependent on alcohol.

I have enclosed, for your information, two copies of the Department's regulations implementing titles II and III of the ADA, as well as one copy of each of the Technical Assistance Manuals for titles II and III. Additional information regarding the application of title II of the ADA to educational institutions may be obtained by contacting the Department of Education at (202) 205-5413 (Voice), (800) 358-8247 (TDD). I hope this information is helpful to you in responding to your constituent.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

Enclosures
01-04152

October 14, 1995

The Honorable David L. Hobson
1514 Longworth HOB
Washington, D.C. 20515

Dear David:

At a recent conference, Legal Issues in Higher Education, sponsored by the University of Vermont, I participated in a discussion concerning how an institution might screen alcohol abusers during the admissions process in an attempt to reduce the growing number of sexual assault and other incidents on campus that seem to coexist with alcohol abuse. One of my colleagues contended that one needed to be cautious about such screening since a student impaired by alcohol could claim protection under the Americans with Diabilities Act. It struck me as inappropriate, and almost ridiculous, that anyone under age 21 could claim alcohol as a disability since it is unlawful for those under age 21 to consume alcohol. The same could be said of other controlled and drug substances that are abused.

Consequently, I am prompted to write to you to ask you to consider whether federal legislation amending the ADA would be in order to make it clear that one cannot claim the Act's protection for any disability that is caused by the person's having engaged in an illegal activity.

Because this matter is related to the illegal use of alcohol, perhaps Mike DeWine would be interested in considering this point. There is no particular urgency to this matter, and in view of the other items on your current agenda, I would not expect any response until it is convenient for you.

Susan and I send our best to you and Carolyn.

Cordially,

01-04153

MAR 14 1996

The Honorable Mark E. Souder
Member, U.S. House of Representatives
3105 Federal Building
1300 S. Harrison Street
Fort Wayne, Indiana 46802

Dear Congressman Souder:

This letter is in response to your inquiry on behalf of your constituent, XX , regarding obesity. XX feels that seating should be made available at such places as restaurants and doctors' offices for persons who are severely overweight. The response to your letter was delayed because of the shutdown of the Federal government. I apologize for any inconvenience to your constituent.

The Americans with Disabilities Act of 1990 (ADA) prohibits discrimination on the basis of disability. However, in order to be viewed as a disability under the ADA, an impairment must substantially limit one or more major life activities.

Being overweight is generally not, by itself, an impairment. On the other hand, severe obesity, which has been defined as body weight more than 100% over the norm, is an impairment. Whether the impairment of severe obesity rises to the level of a disability depends on whether the obesity substantially limits a major life activity, such as walking. Therefore, except in rare circumstances, obesity would not be considered a disabling impairment.

I hope this information is useful to you in responding to your constituent.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

cc: Records, Chrono, Wodatch, McDowney, Milton, FOIA
n:\udd\milton\congress\obesity.sou\sc. young-parran

Dear Congressman Souder

I am writting to address to you a problem I've come across and it needs your attention. Please take this befor congress as a law.

Now, here is the problem that my Wife and millions of others face.

You see, my Wife and 4 other people I know are heavy set. As you may know being heavy set is also a disability just like or about like being crippled. My Wife and these other people go into Law Offices, Doctors Offices, Dentists, some Resturants and even Court Rooms. Most of thease places have seating for people who are small built by having chairs with arms on them. Well, a heavy set person is unable to set in thease chairs because the arms are too close together. They can't set in Booths at Resturants because the seats are too close to the table.

So when my wife and I go to a Doctors office she may have to stand for as much as an hour to an hour and a half waiting to be seen. How would you feel if you had to stand for an hour waiting to get into seeing a doctor and you have trouble with your legs and feet hurting because of the weight?

Thease places should be made to have seating for thease people. I've brought it to the attention of Doctors and Dentists and they said they

will not change there seating for anyone. Its just unfair to thease people. They should have the right to set comfertable just as much as a skinny or thin person. Don't you think so? Pleas write back and give me your insight on this problem. Can you do anything with this?

Sincerely,

XX

P.S.

The Huntington Co. Hospital is an example of such places without proper seating arrangements. You can also check Dr. Boyed's. office down by I69 behind the car wash and McDonalds, and almost any other doctors office in Ft. Wayne and Huntington. You can also check Dr. Cox ILLEGIBLE office in ILLEGIBLE accross from the Hospital. If you need addresses of thease people I can get them for you. All McDonalds, Bugar King, Harrdies and most Fast food places have Booths with attached chairs you can't move. Take a heavy set person to one of thease places to see how much trouble they have setting.

01-04156

Daily Labor Report
Leading The News
March 19, 1996

DISABILITIES: SUPREME COURT TURNS DOWN APPEAL OF BUS DRIVER DIAGNOSED WITH DIABETES

The U.S. Supreme Court has refused to hear an appeal by a bus driver in El Paso, Texas, who was removed from his job in 1992 following a diagnosis of diabetes. In failing to grant review, the justices left intact a July 1995 holding of the U.S. Court of Appeals for the Fifth Circuit (Daugherty v. El Paso, US SupCt, No. 95-1083, 3/18/96).

The Fifth Circuit held that the city government was not required to petitio the Department of Transportation for a waiver of rules specifically prohibiting insulin-dependent diabetics from driving buses. The court also found that the city was under no obligation to reassign the driver to another job.

According to the appeals court, the Americans with Disabilities Act does no require affirmative action in favor of individuals with disabilities such as priority in hiring or reassignment over those who are not disabled.

A jury had awarded Carl Daugherty $5,000 in compensatory damages when the city placed him on leave without pay following the diagnosis of his condition. The U.S. District Court for the Western District of Texas added nearly $22,000 in back pay, and $12,000 in attorneys' fees. Daugherty had worked for the cit as a part-time bus driver for some nine months prior to his diagnosis.
The Fifth Circuit held that insulin-dependent diabetics are by law not "otherwise qualified" to drive public buses because they pose a direct threat to the health and safety of others.

In his petition for review, Daugherty said that the act requires a case-by-case consideration whether an insulin-dependent diabetic should be allowed to operate a bus. He cautioned that the legislation was enacted precisely to combat the sort of unfounded prejudice exhibited by the federal appeals court. The petition said that he has been treated as a leper, even though he has not been shown to be a direct threat to the health and safety of anyone. It submitted that he has been treated on the basis of a stereotype, with no consideration of medical evidence.

The City of El Paso filed a six-page statement with the court asserting tha ADA does not require or condone affirmative action on behalf of the disabled: "[T]here is nothing in the ADA that even suggests that a disabled person shoul be given preference or priority over his nondisabled fellow workers. This notion is unthinkable, especially, one would imagine, to the disabled."

The American Diabetes Foundation submitted a friend-of-the-court brief denouncing the appeals court's reasoning as myopic. It warned that the holding reflects stereotypes and unfounded fear, rather than an individualized

assessment whether Daugherty could adequately and safely perform the job. The brief described the appeal as a matter of exceptional national importance that directly affects the interests of 3.8 million Americans who take insulin to treat their diabetes. With rapid and accurate self-monitoring of glucose levels, the risk of incapacitation from hypoglycemia is negligible, according to the brief.

01-04157

After-Acquired Evidence Claim Denied Review

In other action, the Supreme Court refused to examine the admissibility of after-acquired evidence to determine whether an employee with a disability is "otherwise qualified" under the Rehabilitation Act of 1973 (Maricopa County v Junot, US SupCt, No. 95-1178).

In October 1995, the U.S. Court of Appeals for the Ninth Circuit held that Maricopa County, Ariz., could not rely on evidence it obtained after it rejected a job applicant to support its view that she was not "otherwise qualified" for the job. The county rejected Patricia Junot when she applied in 1985 for a job as a detention officer, a position requiring the supervision and control of inmates housed in the local county jail. Junot had recently had a radical mastectomy.

According to the county, Junot supplied false information about her medical condition, and prevented the county from reviewing pertinent medical and psychiatric records. Ultimately, the county obtained information on her medical condition as part of public records relating to her divorce in 1984. Following the denial of her job application, she sought spousal maintenance based on a claim that her cancer surgery prevented full use of her right arm.

The county claimed that she concealed this information during a pre-employment physical, and that had she disclosed this information, she would have been given a stress test to reveal the extent of the weakness in her arm. The county also argued that Junot concealed information that she had been admitted to a mental hospital for an attempted suicide some five months prior to her filing a job application. It also submitted that Junot kept secret a long history of debilitating migraine headaches, and that she misrepresented the length and type of work history on her application.

The Ninth Circuit granted Junot a new trial in light of the Supreme Court's 1995 holding of McKennon v. Nashville Banner Publishing Co., dealing with after-acquired evidence. The appeals court reasoned that after-acquired evidence is barred until after the jury has determined, in a bifurcated proceeding, that the county was in fact liable for failing to hire Junot due to her disability.

In its petition for review, the county argued that the decision bars the use of after-acquired evidence to rebut Junot's claim that she was "otherwise qualified" for the job, or to rebut her credibility. The county warned that

the appeals court holding grants the disabled and unqualified applicant an advantage over non-disabled unqualified applicants. It concluded that the practical impact of the holding is to discourage employers from hiring the disabled. The use of a bifurcated trial procedure defies both precedent and common sense, according to the petition.

--By Bernard Mower

1996 DLR 53 d4

END OF DOCUMENT

01-04158

Daily Labor Report
News
March 18, 1996

DISABILITIES: PRISON GUARD WITH SEVERE VISION LOSS HELD NOT ENTITLED TO RELIEF UNDER ADA

A prison guard who lost substantial vision is not entitled to relief under the Americans with Disabilities Act because she can no longer perform the guard's position even with reasonable accommodation and no other job she could perform was available, a federal court ruled (Miller v. Illinois Department of Corrections, DC CI11, No. 95-3234, 3/1/96).

Despite her sightlessness, the guard, Bobbi Miller, maintained that she could be a telephone switchboard operator at the prison or could manage the guards' armory. The U.S. District Court for the Central District of Illinois said that even though Miller might be able to perform switchboard or armory supervisor duties, in a prison environment an employee must be able to perform other guard functions as well. Because Miller concededly is unable to perform the other duties, she is not entitled to permanent assignment to switchboard or armory work, the court said.

What Miller sought was not a guard's job with reasonable accommodation, but a new position as switchboard operator or armory attendant at the prison, Judge Richard Mills said. The ADA does not require the creation of permanent light-duty positions, he held, citing Rucker v. Philadelphia, DC EPa, No. 94-0364
(7/31/95).

Delayed Result of Crash

Miller began work at the Lincoln, Ill., correctional center in 1988. Two years earlier she had suffered severe head injuries in an automobile accident. In 1993, she experienced a substantial loss of vision and was placed on indefinite medical leave. Her treating physician, a neurologist, traced the condition to the head trauma in the accident. Her vision was measured as 20/800 in both eyes, leaving her effectively blind. The neurologist also said the condition was likely to be permanent.

Miller sought to return to Lincoln in some capacity. Management determined that there was no job for a severely visually handicapped person to do at the facility and removed her.

She filed suit under ADA, but Mills granted summary judgment to the state after finding that Miller was no longer qualified for work at Lincoln with or without reasonable accommodation for her disabling condition.

According to Mills, the job description for the correctional officer position makes clear that the ability to supervise and conduct surveillance of inmates--duties requiring good vision--is an essential function of the job.

Another's Case Unhelpful

Miller pointed to the case of another guard who was allowed to perform

restricted duties though disabled. The judge said the example provided little

support for Miller's position because the critical difference in the other guard's situation was that he was only temporarily disabled by injuries. Following his recovery, that employee resumed the full range of the duties of a guard.

Responding to Miller's arguments that still other employees classified as guards had been assigned specific duties for long periods, Mills replied that the other employees could, if necessary, perform all the duties of the guard position. In an emergency, for example, these guards could drop their office duties and assist the rest of the force. Miller is no longer able to do that, Mills said.

No Duty Of Job Creation

If Miller had pointed to an already existing switchboard or armory position that was vacant, she might have been able to make a case for her transfer, the court said. But no such showing was made, it said.

Although, as Miller pointed out, the prison employs other handicapped employees, some severely affected, their examples are irrelevant because they are not guards, Mills said.

Finally, Miller said the guards' union at Lincoln was willing to waive collective bargaining agreement requirements so that she could work full-time at switchboard or armory duties. The union's willingness is of no moment, the court replied, because ADA does not compel employers to create new jobs or to restructure existing ones so that their essential duties are eliminated.

Mills said that while he is certainly sympathetic to Miller's plight," he had to rule against her because she was not qualified, even with reasonable accommodation, to retain her job as prison guard.

1996 DLR 52 d5

END OF DOCUMENT

01-04160

Daily Labor Report
Leading The News
March 18, 1996

DISABILITIES: DOCTOR'S CLAIM OF JOB REJECTION LINKED TO AGE, HEART CONDITION ALLOWED

A federal magistrate in Boston has refused to dismiss disability and age bias claims filed by a cardiologist who had been deemed totally disabled under the terms of an insurance policy. Brigham & Women's Hospital argued that the doctor's receipt of benefits meant that he is totally disqualified from the practice of medicine, and therefore cannot be otherwise qualified" within the meaning of the Americans with Disabilities Act (Pressman v. Brigham Medical Group, DC Mass, No. 92-10463, 3/12/96).

The court also allowed Dr. David L. Pressman to proceed with a claim for invasion of privacy relating to allegations that a treating physician at the hospital gained access through a hospital computer to medical records showing that he had been admitted to the hospital in 1991 for angina and underwent a cardiac catheterization and angioplasty.

The evidence would permit an inference that the hospital reviewed the plaintiff's private medical records, said Magistrate Judge Robert B. Collings. He found that the case must go to the jury:

[W]hether the [hospital] failed to hire [Pressman] for unlawful discriminatory reasons or for legitimate, non-discriminatory reasons is a subject of dispute. At a minimum, Dr. Pressman has averred that he was told by Dr. [Harold] Solomon that his job offer was jeopardized by his medical history, and his age in light of his medical history. The defendants contend it was because Dr. Pressman exhibited poor judgment, was out of practice too long, behaved inappropriately and received lukewarm recommendations. The evidence raises questions of fact for a jury to decide."

The hospital argued that when Pressman applied for employment, he consented to an investigation of his professional competence and signed an authorization form. Collings found that the form cannot reasonably be read as a consent for the hospital to search or review his medical records.

Pressman is a graduate of Harvard University and Columbia University School of Medicine. He engaged in a solo practice of internal medicine and cardiology in Arlington, Mass., for some 22 years.

After an unsuccessful effort in 1987 to relocate his practice to Cape Cod, he suffered a myocardial infarction. He was transferred to Brigham and Women's Hospital and underwent surgery.

Received Disability Payments

Pressman applied for, and received, disability payments under his private disability policy with Provident Life and Accident Insurance Co. He continued to receive the payments through January 1993.

In November 1990, Pressman replied to an advertisement in the New England Journal of Medicine announcing the opening of a new practice that would be set

interview by Dr. Solomon. The opening included a faculty appointment as a clinical instructor with Harvard Medical School.

In February 1991, Dr. Solomon sent written confirmation of the job offer, and Pressman and his wife began a search for housing in the Boston area. But in June 1991, Solomon questioned Pressman about the 1987 events in Cape Cod, and the angioplasty procedure.

According to Pressman, Solomon said it was poor judgment not to have disclosed his cardiac medical history, and expressed concern about his age and the three and one-half years break in medical practice. Solomon allegedly questioned whether Pressman would tire at mid-day and want to leave work early.

Collings concluded that a jury could return a verdict that the rejection was tainted by considerations of age and disability. Pressman argued that under the terms of his private disability plan, he could continue to receive benefits so long as there was some medical restriction on his ability to practice his sub-speciality of cardiology. He also submitted insurance company correspondence that he is unable to perform the duties of a practicing cardiologist in solo private practice with emergency room duties, but can perform in a group clinical practice.

Hospital Had Access To Medical Records

As for the invasion of privacy claim relating to Dr. Solomon's alleged review of medical records regarding his surgery, the court found that Solomon had access to the records by computer, and whether or not he reviewed the files is a question of fact, awaiting resolution at trial.

The court also discounted the significance of a consent form signed by Pressman to permit an investigation of his professional competence. The form obliged the applicant to submit to a mental or physical examination or to provide evidence that any impairment does not interfere with his competence to practice medicine. It also authorizes any former employer, medical practice or association in the past 10 years to give an assessment of his professional skills, to release information concerning any disciplinary or malpractice proceedings, and any other information relevant to character and professional competence.

Collings concluded that the release cannot reasonably be read as a consent to a review of medical records or as notice that a review of his records was within the scope of an investigation of his professional competence.

--By Bernard Mower

END OF DOCUMENT

01-04162

Daily Labor Report
Leading The News
March 19, 1996

SUPREME COURT: JUSTICES WILL RULE ON METHOD OF COUNTING EMPLOYEES UNDER TITLE VII

Granting separate requests by the federal government and an Illinois woman, the Supreme Court March 18 agreed to clarify the method of counting employees for the purpose of determining coverage of small employers under Title VII of the 1964 Civil Rights Act (Walters v. Metropolitan-Educational Enterprises Inc., No. 95-259, and EEOC v. Metropolitan-Educational Enterprises Inc., No. 95-779, US SupCt, 3/18/96).

Without comment, the justices agreed to review a July 1995 decision by the U.S. Court of Appeals for the Seventh Circuit, which took a narrower approach toward counting salaried employees than the one endorsed by the Equal Employment Opportunity Commission and adopted by the First and Fifth Circuits.

"The method to be used to count employees affects the coverage determination for a very large number of small employers with part-time or nonsalaried employees on flexible work schedules," Solicitor General Drew Days argued on behalf of EEOC for the more expansive approach.

Title VII Is Not Explicit

Title VII defines a covered employer as "a person engaged in an industry affecting commerce who has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year. " But the statute does not explicitly prescribe a method of counting employees.

Last July, in a case involving a sex discrimination suit brought by Darlene Walters against Metropolitan Educational Enterprises, the Seventh Circuit, relying on an earlier decision involving the Age Discrimination in Employment Act, held that the company was not large enough to be considered a covered employer under Title VII (142 DLR A-7, 7/25/95, 68 FEP Cases 499).

The appeals court relied on a more restrictive method of counting employees salaried employees were to be counted toward the minimum number of employees, while hourly or part-time workers were counted only on the days when they were physically present at work or were on paid leave. That approach has been adopted by the Eighth Circuit and several district courts.

EEOC, on the other hand, has endorsed a more expansive, "payroll" method, which says that those hourly or part-time workers should be counted if they are on the employer's payroll. The EEOC-favored method, which the commission sets out in its compliance manual, has been adopted by the First and Fifth Circuit and a number of district courts.

'Tens of Thousands' May Be Covered

In arguing for review, the government said its more expansive interpretatio is "supported by the text, structure, and history of Title VII," is more

consistent with "the broad remedial purposes" of the statute, and also "create

01-04163

a more workable method" for determining whether a small employer is covered by the law.

The government cited Census Bureau statistics reporting that there are some 555,000 employers with 10 to 19 employees, who employed a total of 7.4 million employees in 1991.

"The data suggest that there are tens of thousands of employers who are within the range of the jurisdictional minimum," the government said, "and tha a significant number of employees of such employers are likely to work part-time or flexible work schedules. The court of appeals' approach to the coverag issue would require a cumbersome and time consuming examination of attendance and leave schedules for each working day at each employer whose coverage is uncertain. That approach unnecessarily complicates the coverage determination. . . In contrast, the relative simplicity of the EEOC's payroll method conserves administrative resources and clarifies for the EEOC and a significant number of small employers, employees, and employment applicants whether the federal nondiscrimination laws extend to them."

In opposing review, the company, which sells and finances encyclopedias and other educational materials, characterized the case as an anomaly, presenting an issue which has rarely been litigated by EEOC. "The Seventh Circuit's interpretation is consistent with the plain language of the statute and accord meaning to the phrase 'for each working day'," the employer said.

"History belies the dire forecast of an EEOC and district courts whose time will be consumed by counting employees. To the contrary, this case, and those like it are anomalies," the company said.

--By Nancy Montwieler

1996 DLR 53 d3

END OF DOCUMENT

01-04164

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

MAR 19 1996

XX
XX
Dear XX

I have been asked to respond to your letter to Attorney General Janet Reno, concerning the government's participation in lawsuits against dentists who refused to treat persons with HIV/AIDS.

The Americans with Disabilities Act ("ADA") is a civil rights statute enacted to protect the civil rights of individuals with disabilities. Title III of the ADA prohibits discrimination by "public accommodations" on the basis of disability. 28 C.F.R. S 36.201(a). HIV infection meets the definition of a "disability" under title III and its implementing regulation because it is a physical impairment that substantially limits one or more major life activities, e.g. reproduction. 42 U.S.C. S 12102(2) (definition of disability); 28 C.F.R. S 36.104. In fact, HIV disease, both symptomatic and asymptomatic, is listed as one of the covered disabilities in the regulation. See 28 C.F.R. S 36.104.

According to the ADA, public accommodations are defined as any private entity "that owns, operates, leases or leases to a place of public accommodation. 28 C.F.R. S 36.104. Covered entities include, specifically, the "professional office of a health care provider." Id. Therefore, dental offices are public accommodations within the meaning of title III and the title III regulation.

As such, dentists are required to treat all persons including those persons who are HIV positive, provided that the individual does not pose a direct threat to the health or safety

of others, or require or request treatment that is outside of the dentist's expertise. The term "direct threat" means a

cc: Records; Chrono; Wodatch; Perley; McDowney; FOIA
udd\perley\policy\XX
01-04165

significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures or by the provision of auxiliary aids or services. 42 U.S.C. S 12182(b)(3); See also 28 C.F.R. S 36.208. The title III regulation clarifies the direct threat exception:

> In determining whether an individual poses a direct threat to the health or safety of others, a public accommodation must make an individualized assessment, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence, to ascertain: the nature, duration, and severity of the risk; the probability that the potential injury will actually occur; and whether reasonable modifications of policies, practices, and procedures will mitigate the risk.

28 C.F.R. S 36.208(c). Thus, a dentist would have to demonstrate that persons with HIV pose a significant risk of transmitting the virus to the dentist, his employees, or his other patients, and that this risk cannot be mitigated through reasonable methods of infection control.

According to the Centers for Disease Control and Prevention, however, the risk of transmitting viruses like HIV in the health-care setting is minimal, and can be severely lessened by the use of infection control procedures, often described as "Universal Precautions." These protective measures -- which include the use of gloves, surgical masks, and protective eyewear, the sterilization of medical instruments, the disinfection of exposed environmental surfaces, and proper waste disposal methods -- prevent the spread of almost all bloodborne diseases, including HIV. Indeed, Congress has required each state to adopt CDC's guidelines regarding Universal Precautions, and OSHA has adopted most of the protective measures outlined by the CDC in its Bloodborne Pathogen Rule. See 29 C.F.R. Ch. XVIII S 1910.1030. Moreover, the American Dental Association strongly avers that Universal Precautions are an effective and adequate means of preventing the transmission of HIV from dental health care worker to patient and patient to dental health care worker. Thus, the risk of transmission is not significant, and the direct threat defense is considered to be invalid for these cases.

I hope that this responds to your concerns.

Sincerely,

John L. Wodatch
Section Chief
Disability Rights Section

01-04166

XX
XX
XX
XX

December 18, 1995

U.S. Attorney Janet Reno
Room 5111, 10th and Pennsylvania Ave. N.W.
Washington, D.C. 20530

Dear Ms. Reno

Every so often I read in some dental journal about a dentist being prosecuted and fined by the federal courts because of his or her refusal to treat an AIDS infected patient. Prosecution is based on the dentist's lack of compliance with the Americans with Disabilities Act, which, for some dubious reason, has categorized AIDS as a disability/handicap and not a disease.

In my office if a child comes in for dental treatment and I find out that they have pink eye, ring worm, impetigo, etc., I will often refuse to treat them. No one objects to this. I am not reported to the "proper authorities," or the ACLU. I am not prosecuted or sued. Yet if I refuse to treat or referred out an AIDS infected child, all hell would break loose. It could even cost me my livelihood and destroy my pediatric practice.

The overriding question in this whole scenario is "Why is AIDS classified as a handicap and not a disease?" Other sexually transmitted diseases are not so classified. As you can see from the enclosed articles this ADA classification is wreaking havoc with many innocent and unsuspecting people, especially women and children. Many young newborns could be successfully treated but the "privacy" laws prevent patient notification and greatly frustrate the physicians who have to stand by and watch these tragedies unfold.

The chance of a "magic bullet" being developed to suddenly wipe out and prevent future AIDS infections is probably very remote. Consequently AIDS will be around a long time and will continue to spread unless we treat is as a disease and not a 0 "handicap." What is the rationalization behind its "handicap"

01-04167

status where the rights to privacy of an individual are more important that the rights of the rest of us who do not have and do not want to contract the disease? Why is our rights secondary to the individuals? Tuberculosis is an example of a contagious disease that is being fought as it should be. Contacts are notified and every effort is being made to restrict and control its spread. Syphilis and gonorrhea are other examples of sexually transmitted diseases where contacts are notified, searched out, etc., in an effort to limit and eradicate the disease.

What is the great fear in the circle of our elected leaders that allows this "individual privacy rights" charade to persist? Are too many of them afraid that their names will end up on some contact list? Why are they allowing a small group of well funded, vociferous individuals dictate the government's policy on AIDS?

How can you ethically and morally justify your department's involvement in this prosecutorial approach to perpetuate the governments position on AIDS? Lawyers can pick and choose their clients. I can refuse to treat patients at my discretion except in the case of those infected with AIDS.

It's about time that the ACLU and other groups start accepting their responsibility in this matter and stop interfering in the eradication and control of AIDS. A prime example of the lack of responsibility of some AIDS infected individuals is exemplified in the enclosed copy of a St. Petersburg Times article. The young man quoted in the article spoke to an AIDS awareness class at the University of South Florida. For six years after he learned that he had the AIDS virus he continued to indiscriminately make his sexual contacts and probably infected many of them with the AIDS virus. He should be prosecuted, not someone who doesn't want to take the risk of contracting AIDS.

I wrote to President Clinton about this problem and as you can see from his response, I received a typical government non-answer. He completely ignored the question about attacking AIDS as a disease and not as a handicap.

I've had similar responses from other representatives. No one wants to touch the issue. Their careers are more important that the lives, heartaches, and misery that AIDS will wreak on the citizens of America let alone billions of dollars in cost. We are all affected, either directly or indirectly, by this plague.
01-04168

Our only real chance to defeat it is to treat it as a disease and fight it as such.

I would like you to use your position and influence to turn this thing around to a logical, scientific attack on AIDS as a disease. Now that you realize your own vulnerability to disease, I hope you can find it in your heart to do what you can to help in the restriction and eradication of this disease. I can only imagine the frustration of the physicians and staff at the Centers for Disease Control in Atlanta in regards to their hands being tied in dealing with AIDS.

I do not particularly relish the thought of my children and grandchildren having to face a life in constant fear of contracting such a disease. Is your position, status and power, as well as our other elected officials more important than the lives of hundreds of thousands and even millions of the rest of us in the United States? "I'm just obeying orders and doing my job," is not a rationalization for the prosecution of health care providers referring out or refusing to treat AIDS patients. That defense was tried and rejected in postwar Germany.

Sincerely,
XX
XX
XX
01-04169

MAR 19 1996

XX
XX
XX
Dear XX

I am writing in response to your letter to President Clinton, dated December 7, 1995. Several of the concerns that you raised are related to specific provisions of the Americans with Disabilities Act (ADA). The Disability Rights Section of the Civil Rights Division of the Department of Justice implements titles II and III of the ADA. Please excuse our delay in responding.

You asked about accessibility in public schools and school administration buildings. All public schools and state and local government entities are covered under title II of the ADA. Title II of the ADA is similar to Section 504 of an older law, the Rehabilitation Act of 1973, which applies to programs receiving Federal financial assistance and the operations of the Federal government. Most school districts are covered by both title II and Section 504.

Title II of the ADA requires that programs, activities, and services be accessible to, and usable by, people with disabilities. This does not necessarily mean that each facility or part of a facility must undergo extensive structural changes. School districts may pursue other options to achieve program access. However, the method that is selected must be effective. One of the acceptable options is to relocate meetings or services to another facility. However, the new location must be readily accessible to and usable by individuals with disabilities. Sections 35.149 and 35.150 of the enclosed regulation and the enclosed Title II Technical Assistance Manual will give you additional information about program access. If school districts and other covered entities are not able to provide effective program access using alternative methods, then structural changes must be made to remove barriers.

You also expressed concerns about the lack of privacy available to you while voting during the last election. Like

cc: Records Chrono Wodatch Hill Bouvier McDowney FOIA
N:\UDD\BOUVIER\XX .CON\secy.johnson
01-04170

other existing facilities covered under title II, polling places are required to be accessible, unless alternative methods are provided that are effective in enabling individuals with disabilities to cast a ballot on the day of the election. A ballot may be taken outside to the car, or an alternate method ensuring privacy might be acceptable. Again, the method chosen must be effective.

Your letter also describes the general lack of accessibility that you have encountered in the past months, with particular reference to a motel. Title III of the ADA covers places of public accommodation such as hotels, motels, restaurants, and service establishments. Under title III, private businesses in existing buildings are required to remove barriers when it is readily achievable to do so. "Readily achievable" means easy to accomplish without much difficulty or expense. The enclosed title III regulation and Technical Assistance Manual will give you additional information about the provisions of title III, including the Standards for Accessible Design, which must be followed for new construction and alterations.

Although I understand that telephone communication is difficult for you at present, you may call our ADA Information Line using a text telephone at 800/514-0383. The voice number is 800/514-0301. You may also write to us at P.O. Box 66738, Washington, DC 20035-6738. Please do not hesitate to contact us if you have additional questions or concerns.

Sincerely,

John L. Wodatch
Chief
Disability Rights Section

Enclosures
01-04171

XX

NOVEMBER 7, 1995

PRESIDENT WILLIAM CLINTON
1600 PENNSYLVANIA AVENUE NORTH WEST
WASHINGTON, DC 20500

DEAR PRESIDENT CLINTON:

I AM NOT SURE WHERE TO START, I HAVE MANY ISSUES I WOULD LIKE TO COVER. I GUESS I WILL TELL YOU A BIT ABOUT MYSELF FIRST.

IN XX , I WAS IN A AUTOMOBILE ACCIDENT, AND THROUGH A MRI TEST, WE FOUND A CERABELLUM EPIDERMOID TUMOR WHICH WAS LOCATED ON MY BRAINSTEM. BEING THAT IT WAS LOCATED IN SUCH A SENSITIVE AREA, WHICH WAS THE NERVOUS SYSTEM, IT WAS SAID THAT IT NEEDED TO BE REMOVED. THEY TOLD ME THAT IT HAD BEEN SLOWLY GROWING SINCE BIRTH, IF IT HAD NOT BEEN DETECTED, THAT ONE DAY I MAY NOT HAVE WOKE UP. I AM A HOUSEWIFE AND YOUNG MOTHER OF XX SCHOOL AGE CHILDREN, SO YOU CAN BET I CHOSE THE SURGERY. THE SURGERY LEFT ME TOTALLY PARALYZED, RESPITORY PROBLEMS, AND A PARALYZES VOCAL CORD. I SPENT TWO MONTHS IN ICU, AND TEN MONTHS AWAY FROM MY HUSBAND AND CHILDREN IN A REHABILITATION CENTER. I FINALLY RETURNED BACK HOME WITH MY FAMILY IN XX , WITH THE ABILITY TO MOVE A GOOD PART OF MY RIGHT SIDE, BUT MY VOCAL CORD IS STILL PARALYZED, SO MY COORESPODANCE IS BASICALLY LIMITED TO LETTERS. WE ARE STILL KEEPING THE FAITH THAT I MAY REGAIN MOVEMENT OF MY LEFT SIDE. SINCE I HAVE RETURNED HOME I WANT NOTHING MORE THAN TO BE ABLE TO GET BACK TO MY HOMAKING DUTIES, AND WITH A LITTLE LUCK AND ALOT OF PRAYER, BACK TO PART-TIME EMPLOYMENT. I HAVE ENCOUNTERED NOTHING BUT ROAD BLOCKS ON A WEEKLY BASS.

MY FIRST ISSUE IS MEDICAID, THE WAY THE GUIDE LINES ARE SET UP THEY DO NOT REALLY PERTAIN TO SOMEONE IN MY POSITION. THE WAY IT IS SET UP IT GEARS MORE TOWARD THE ELDERLY POPULATION. WE ARE A YOUNG FAMILY OF XX , MY HUSBAND WORKS 40 HOURS A WEEK AND THEN COMES HOME TO TAKE CARE OF ME AND OUR CHILDREN, IT MAKES FOR A VERY LONG DAY. WITH HIS INCOME AND MY SSD, WE GET ABOUT 31,000.00 A YEAR, WHICH IS ALL FINE AND WELL, BUT MEDICAID DOES NOT TAKE INTO CONSIDERATION BILLS THAT WERE INCURRED BEFORE ALL OF THIS, AND THE EXPENSE OF CLOTHING, FOOD, OR CHILD CARE FOR MY CHILDREN. MEDICAID IS TRYING TO TELL US THAT WE CAN AFFORD TO PAY THEM $572.00 A MONTH ABOVE AND BEYOND WHAT HE IS ALREADY PAYING FOR. WE TRIED TO TELL THEM, THAT WITH THE GUIDELINES THAT THEY GO BY, THE ONLY WAY HE COULD DO THAT IS TO GO BANKRUPT JUST TO PAY ANOTHER BILL, NOT EVEN TO GET AHEAD. IF WE ARE FORCED TO DO THAT, WE WILL BE NO FURTHER THAN WE ARE NOW, AND END UP WITH BAD CREDIT. I MYSELF HAD WORKED FOR FIFTEEN YEARS TO GET WHERE I AM TODAY, ONLY TO HAVE SOMEONE TELL ME

THAT BECAUSE I NEED A HOME HEALTH AID 8 HOURS A DAY 5 DAYS A WEEK, AND PHYSICAL THERAPY AND OCCUPATIONAL THERAPY 2 HOURS A DAY 5 DAYS A WEEK THAT IT IS COSTING TOO MUCH THEREFORE THEY 01-04172

WANT ME TO PAY. I COULD SEE IF I WAS MAKING NO PROGRESS, BUT THAT IS NOT THE CASE. EVERYDAY IS A STEP CLOSER TO INDEPENDENCE TO ME. THE PROBLEM WITH SOCIETY TODAY IS THAT QUALITY OF LIFE IS NOT A BIG ENOUGH ISSUE, SO PEOPLE JUST DO NOT CARE. BEING A YOUNG HOUSEWIFE AND MOTHER OF XX SCHOOL AGE CHILDREN, QUALITY OF LIFE IS A BIG ISSUE FOR US. I AM WORKING VERY HARD TO GET THINGS AS BACK TO NORMAL AS POSSIBLE, YES IT IS GOING TO TAKE SOME TIME, BUT IF I HAVE THE MEANS TO WANT TO GET BETTER AND IT TAKES A COUPLE OF YEARS, IT WILL CERTAINLY COST LESS FOR A COUPLE YEARS OF SERVICE THAN BEING ON MEDICAID FOR THE REST OF MY LIFE. THE WAY I SEE IT I HAVE ALREADY LOST XX WITH MY FAMILY, TIME IS TOO PRECIOUS TO LOSE ANYMORE. IF YOU HAVE ANY INPUT ON THIS, PLEASE SHARE IT.

MY NEXT ISSUE IS A STATE AGENCY CALLED VESID. I HAVE BEEN HOME SINCE XX , AND VESID CAME TO MY HOME TO EVALUATE FOR MODIFICATIONS THAT NEED TO BE DONE SO THAT I CAN BE ABLE TO GET BACK TO MY HOUSEMAKING SKILLS, AND REGAIN BACK SOME OF MY INDEPENDENCE, AND ALSO RELIEVE MY XX OLD OF THINGS THEY SHOULD NOT BE STUCK DOING. I HAVE SPOKE WITH VESID, AND THEY TELL ME THAT IT COULD BE UP TO ANOTHER 5 MONTHS BEFORE THEY EVEN GET STARTED. MEANWHILE, I AM UNABLE TO GET INTO MY BATHROOM TO GET INTO THE SHOWER, I HAVE NO CHOICE BUT TO GET A BED BATH AND SHAMPOO MY HAIR IN THE SINK. I AM UNABLE TO UTILIZE MY KITCHEN, UNABLE TO DO THE LAUNDRY, AND THEY WERE SUPPOSED TO SET UP A COMPUTER SO THAT I COULD CORRESPOND TO WHOM I NEEDED TO. MY HUSBAND HAS BEEN SO DISGUSTED WITH VESID THAT HE WENT OUT AND PURCHASED A DESK AND WORD-PROCESSOR SO I CAN WRITE WHO I NEED TO. I CANNOT CORRESPOND ON THE PHONE I DO NOT HAVE ENOUGH VOICE FOR THAT. I HAVE BEEN HOME ALMOST XX AND IT REALLY SEEMS TO ME THAT THEY EXPECT ME TO JUST STAY IN THIS WHEELCHAIR AND BE HAPPY WITH THAT. I AM TOO STRONG A PERSON TO GIVE UP NOW.

I AM VERY CONFUSED ON THE ISSUES THAT PERTAIN TO HANDICAPPED ACCESSIBILITY. WHERE MY CHILDREN GO TO SCHOOL IN THE XX CITY SCHOOL DISTRICT, CLAIMS THAT THE SCHOOL BOARD ADMINISTRATIVE BUILDING IS NOT HANDICAP ACCESSIBLE, BUT SOMEONE COULD MEET WITH ME AT ONE OF THEIR ACCESSIBLE SCHOOLS. WHEN I SAT BACK AND THOUGHT ABOUT THIS I DISCOVERED THAT THOSE SCHOOLS ARE NOT TOTALLY ACCESSIBLE. IF I WAS TO GET DROPPED OFF AT ONE OF THOSE SCHOOLS I WOULD NOT BE ABLE TO GET IN THE FRONT DOOR UNLESS SOMEONE HAD TO OPEN IT FOR ME. WHERE THEY HOLD THE SCHOOL BOARD

MEETINGS IT IS THE SAME WAY. I HAVE BEEN TRYING TO SET UP A MEETING WITH THE SCHOOL SUPERINTENDENT FOR OVER A MONTH, WITH NO SUCCESS. THERE ARE SO MANY PLACES THAT CLAIM THEY ARE ACCESSIBLE, BUT OVER THESE PAST 16 MONTHS I AM FINDING THAT THEY ARE NOT. XX
WE RESERVED A HANDICAPPED ACCESSIBLE ROOM, ONLY TO FIND OUT THAT THE ONLY THING ACCESSIBLE WAS THE FRONT DOOR.

I WAS JUST FACED WITH THIS ISSUE, I THOUGHT THAT THE CURTAINS AROUND A VOTING BOOTH WERE FOR PRIVACY. BEING THE SITUATION THAT I MYSELF AM IN, I HAD TO GO INTO THE BOOTH WITH

MY HUSBAND, BECAUSE THE VOTING BOOTHS ARE ALL TOO TALL FOR SOMEONE IN A WHEELCHAIR, BESIDES THE FACT THAT THEY ARE NOT DEEP ENOUGH FOR THE WHEELCHAIR TO FIT INTO. SO AS AN AMERICAN VOTING CITIZEN, THAT MY PRIVACY RIGHT IS BEING OVERLOOKED.

PRESIDENT WILLIAM CLINTON, ANY HELP YOU CAN GIVE ME WITH THESE MATTERS, WOULD BE GREATLY APPRECIATED. I HAVE ALREADY CONTACTED SENATOR SEARS AND CONGRESSMAN BOELHERT ON THESE MATTERS, AND THEY REALLY HAD NO ANSWERS, SO YOU ARE MY LAST HOPE. HOPE TO HEAR FROM YOU SOON.

SINCERELY,

01-04174

MAR 20 1996

The Honorable Sam Farr
Member, U.S. House of Representatives
701 Ocean Street
Santa Cruz, California 95060

Dear Congressman Farr:

I am responding to your letter on behalf of your constituent, XX , who is concerned about provisions for persons with disabilities in the San Benito Joint Union High School. Specifically, XX would like to know whether the High School is subject to the Americans with Disabilities Act (ADA) and whether the main auditorium, which hosts events open to the general pubic, is required to be accessible to persons using wheelchairs.

Title II of the ADA prohibits discrimination on the basis of disability in State and local government services, including public schools. Buildings constructed by or for State or local governments since the effective date of the ADA, January 26, 1992, are required to be fully accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. In addition, sections 35.149 and 35.150 of the Department's title II regulation (enclosed) require accessibility to programs, services, and activities in facilities that were existing on the effective date of the statute. The principal focus of the program accessibility standard is access to programs, services, and activities, as opposed to access to physical structures. Therefore, not every area of an existing school facility would have to be made accessible, as long as there is access to a school's programs, services, or activities.

For existing facilities, every building does not necessarily

have to be made accessible if all of the programs located inside that building can be made accessible by alternative means. Section 35.150(b)(1) of the title II regulation does not require that a school district eliminate structural barriers if it provides access to its programs through alternative methods such as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, delivery of

cc: Records, Chrono, Wodatch, McDowney, Milton, FOIA
n:\udd\milton\congress\existfac.far\sc. young-parran
01-04175

services at alternate accessible sites, alteration of existing facilities and construction of new facilities, or any other methods that result in making the services, programs, or activities readily accessible to and usable by individuals with disabilities.

If structural alterations are necessary to provide program accessibility, such alterations must be undertaken unless the public entity can demonstrate that the alterations would cause a fundamental change to its program or that the cost of the alterations would result in undue financial and administrative burdens. 28 C.F.R. S 35.150(a)(3). Where an action would result in such a change or such burdens, the public entity must take any other action that would not result in such change or such burdens but would nevertheless ensure that individuals with disabilities receive the benefits or services provided by the entity.

Thus, in situations where a school has an existing inaccessible auditorium in which public events are held, in order to meet its program accessibility obligations, the school district may choose to move the event from the inaccessible auditorium to an accessible location or to make the auditorium accessible to persons with disabilities. If making the auditorium accessible would result in a fundamental change in the events or would constitute an undue financial or administrative burden, then the school district would be required to move the events to an accessible location.

In the event that the San Benito Joint Union High School is in violation of the ADA, XX has several enforcement options. First, he may file a complaint with the U.S. Department of Education, which is the agency most likely to have jurisdiction over his complaint by writing to: Office for Civil Rights, Department of Education, 330 C. Street, N.W., Suite 5000, Washington, D.C. 20202. The complaint must be in writing and must include the complainant's name, address, and signature, and a description of the public entity's alleged discriminatory action. As an alternative to investigation by a Federal agency, XX may file a lawsuit in the appropriate Federal district court. He would not need any approval letter from the Department of Justice before proceeding. Attorneys' fees are available under title II to a prevailing party in a private lawsuit. XX also may seek to resolve his complaint through alternative dispute resolution. The enclosed brochure describes such processes.
01-04176

I hope this information is helpful to you in responding to your constituent.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

Enclosures
01-04177

INTAKE MEMO
Salinas
01/29/95
JU

XX
XX
XX

XX want to know whether San Benito Joint Union High School is subject to the Americans' With Disability Act (ADA). If so, then XX opines that the High School is violating the Act because the main auditorium, which hosts events open to the general public, is not wheel chair accessible.

Can Congressman Farr please find out whether or not the High School is subject to ADA? If so, can Congressman Farr describe the steps which XX should take to make a complaint with the appropriate authorities?
01-04178

MAR 20 1996

The Honorable Carol Moseley-Braun
United States Senator
230 South Dearborn Street
Chicago, Illinois 60604

Dear Senator Moseley-Braun:

This letter is in response to your inquiry on behalf of your constituent, XX , and his concern about the Americans with Disabilities Act (ADA) and service animals in hospitals. Please excuse our delay in responding.

Unless it is a religious entity or under the control of a religious organization, a health care facility, such as a hospital, is covered by the provisions of title III of the ADA and the Department's title III regulation as a place of public accommodation (see section 36.104 of the enclosed regulation). According to section 36.302(c), a public accommodation is required to modify policies, practices, or procedures to permit the use of a service animal by an individual with a disability.

The regulation does acknowledge that in rare circumstances, if the nature of the goods and services provided or accommodations offered would be fundamentally altered, or if the safe operation of a public accommodation would be jeopardized, a service animal need not be allowed to enter. A showing by appropriate medical personnel that the presence or use of a service animal would pose a significant health risk in certain areas of a hospital may serve as a basis for excluding service animals in those areas.

The remaining issues raised by XX letter do not appear to fall within the jurisdiction of the Civil Rights Division.

cc: Records, Chrono, Wodatch, McDowney, Hill, FOIA
n:\udd\hille\policylt\mosley.XX \sc. young-parran
01-04179

I hope this information is helpful in responding to XX concerns.

Sincerely,

Deval L. Patrick
Acting Assistant Attorney General
Civil Rights Division

Enclosure
01-04180

XX
XX
Senator Carol Mosely-Braun
320 Hart Building
Washington, D.C. 20510

Dear Senator Mosely-Braun:

PLEASE, PLEASE HELP US! My wife and I XX because I went to XX Medical Center Emergency Department seeking treatment. My crime was that I took my guide dog with me. According to the ADA I have a legal right to do so. But the minority of visually impaired who use guide dogs are severely discriminated against here in the XX area. Since February everything has seemed like a nightmare. I am enclosing an extensive file documenting discrimination against my wife and me. As you can see from the newspaper articles, we are advocates for the disabled. Although there have been several articles about us, we do not seek publicity. I am visually and hearing impaired with additional disabilities due to a XX injury XX . My wife is an XX and has been disabled since a combination of accidents in XX . Sir, things like this are not supposed to happen in America! Innocent people do not go to jail. Exhibit #30 is further evidence of the intimidation and harassment by the legal system. A person cannot be in two places at the same time. The people who signed the papers saw us at XX.

We were always taught in school that the American way of justice gives everyone a fair trial regardless of their economic status. The sad reality is that IT IS A LIE! My wife and I are XX respectively, and have NEVER been in trouble. Our attorney represented us for free. Then he turned his back on us. He told us that he did what he was told to do! I have sought help in the past from State's Attorney Lyons' office regarding acts of physical abuse or discrimination. And his office has always refused. Also the powerful realtors do not like us because of the advocacy work we do. We have registered a formal complaint against Chase Ingersoll for ineffective counsel, discrimination and malfeasance. XX after the verdict. I have enclosed cassette tapes of legally recorded conversations between Mr. Ingersoll and me. Please listen to the tapes. The enclosed photos are also evidence of brutality by the police.

Is there any way you can help us? We have tried several agencies, to no avail. As past members of the XX Army National Guard, we were called upon to assist police agencies during times of trouble. If you need further information, please feel free to contact me at any time. My telephone/fax number is XX

Sincerely yours,

XX

XX /jkw
01-04181

MAR 20 1996

The Honorable Louise M. Slaughter
Member, U.S. House of Representatives
3120 Federal Building
100 State Street
Rochester, New York 14614

Dear Congresswoman Slaughter:

I am responding to your letter on behalf of your constituent, Mr. Bruce Gianniny, regarding the cost of compliance with the construction requirements of the Americans with Disabilities Act of 1990 (ADA). The response to your letter was delayed because of the shutdown of the Federal Government. I apologize for any inconvenience to your constituent.

Mr. Gianniny's letter objects to what he considers to be the "large costs" of complying with the ADA. His objection is apparently based on his belief that "[a]ny governmental agency or private agency that receives Federal funding cannot lease space in a non-ADA complying building." This belief is incorrect. Recipients of Federal funds are not required to lease only accessible buildings. However, under section 504 of the Rehabilitation Act of 1993 their programs must, when viewed in their entirety be accessible to people with disabilities. Recipients are permitted to provide access through nonstructural alternative measures such as relocating activities to an accessible part of a building or delivering services at an accessible site. Recipients are not required to take any steps that would result in undue financial or administrative burdens. This same program accessibility requirement applies to all state and local government agencies under title II of the ADA whether or not they receive Federal funds.

Private entities that own or operate places of public accommodation similarly are not required to lease only accessible space. They are, however, required by title III of the ADA to remove architectural barriers to access in rented space when it is readily achievable to do so. The ADA regulations define "readily achievable" as easily accomplishable and able to be carried out without much difficulty or expense.

cc: Records; Chrono; Wodatch; Wodatch; Hill; McDowney; FOIA
udd\hille\policylt\slaughter.ltr
01-04182

I hope this information is helpful to you in responding to your constituent.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

01-04183

GIANNINY
ASSOCIATES
80 Linden Oaks Office Park - Rochester, New York 14625 - (716) 385-3350 -
FAX: (716) 385-6949

November 7, 1995

Congresswoman Louise M. Slaughter
3120 Federal Building
100 State Street
Rochester, NY 14614

Dear Congresswoman Slaughter:

I attended the Forum for Federal Regulatory Reform on Monday, November 6, and, not called upon to speak, I am writing to convey my thoughts on the Americans with Disabilities Act, and its impact on me as a real estate developer.

By designing and constructing office buildings I am aware of the large costs to comply to ADA regulations. Compliance with this code has increased the construction costs of new buildings substantially; costs that must be passed on to clients. To retrofit an existing building to ADA regulations, even when it is structurally feasible, is so extremely expensive the cost cannot be passed on. Any governmental agency or private agency that receives federal funding cannot lease space in a non-ADA complying building. So, as the owner of an older building, I have been excluded fiscally and legally from this market. At the same time I am forced to assume unwanted liability by this legislation. This will have grave implications for me as an owner and on any area with an infrastructure of older buildings such as a downtown.

I do not believe this to be a good or reasonable use of our resources.

As a member of a local school board, I am aware of the increased costs to comply with the Davis-Bacon Act. A recent construction job in the Brighton School District cost nearly one million dollars to comply with these regulations. This million dollars plus interest is paid primarily by the local property owner.

New York City school districts have been granted an exemption from the provisions of Davis-Bacon, I assume because of its inability to pay. I would submit that while the legislature searches for sources of funding for education, all districts should be granted this exemption.

I appreciate the opportunity to convey my thoughts and avail myself for discussion.

Very truly yours,

Bruce E. Gianniny

BEG:ban
01-04184

MAR 27 1996

VIA FACSIMILE AND
FIRST CLASS MAIL

The Honorable Tom Harkin
United States Senate
Washington, D.C. 20510-1502

Dear Senator Harkin:

I am responding to your letter on behalf of your constituent, W. Fletcher Reel, Mayor of Missouri Valley, Iowa, regarding the efforts of his municipality to comply with title II of the Americans with Disabilities Act or 1990 (ADA).

Title II of the ADA prohibits discrimination on the basis of disability in State and local government services. Sections 35.149 and 35.150 of the Department's title II regulation (enclosed) require accessibility to programs, services, and activities in facilities existing on the effective date of the statute, January 26, 1992. The principal focus of the program accessibility standard is access to programs, services, and activities, as opposed to access to physical structures. Therefore, not every facility nor every area of an existing facility would have to be made accessible, as long as there is access to the public entity's programs, services, or activities.

The title II regulation does not require that a government entity eliminate structural barriers, if it provides access to its programs through alternative methods such as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, or any other methods that result in making the services, programs, or activities readily accessible to and usable by individuals with disabilities.

cc: Records, Chrono, Wodatch, McDowney, Blizard, Hill, FOIA.
n:\udd\hille\policylt\harkin.ltr
01-04185

If structural alterations are necessary to provide program accessibility, such alterations must be undertaken unless the public entity can demonstrate that the alterations would cause a fundamental change in its program or that the cost of the alterations would result in undue financial and administrative burdens. 28 C.F.R. S 35.150(a)(3). Where an action would result in such a change or such burdens, the public entity must take any other action that would not result in such change or burdens but would nevertheless ensure that individuals with disabilities receive the benefits or services provided by the entity. Public entities may not waive the requirements of the ADA, nor is any Federal agency or other entity authorized to grant such a waiver.

Because title II applies to over 80,000 units of State and local government, our limited resources do not permit us to review and approve self-evaluations and transition plans required by the title II regulation. We are unable, therefore, to issue a ruling that Missouri Valley's compliance plan complies with title II. In general, however, the types of measures listed in the compliance plan are appropriate ways of meeting the program accessibility requirement. Where structural changes would result in undue financial and administrative burdens, it is appropriate to provide government services and hold meetings at other already accessible sites or at the home of a person with a disability. The one-week prior notice requirement for moving a city council meeting to an accessible location would likely, however, restrict opportunities for residents with disabilities to attend council meetings. Access to local legislative bodies is a core principle of democratic societies and every effort should be made to keep restrictions to an absolute minimum. Other public entities have found far shorter time periods to be workable.

I hope this information is helpful to you in responding to your constituent.

Sincerely,

John L. Wodatch
Chief
Disability Rights Section

Enclosure
01-04102

CITY OF MISSOURI VALLEY, IOWA
"Welcome Home to the Future"

March 15, 1996

Senator Tom Harkin
United States Senate
Washington, DC 20510-1502

Dear Senator Harkin:

The City of Missouri Valley has actively been attempting to bring all City services and facilities into compliance with the American Disabilities Act for some time. Though it is ultimately our own responsibility, we have on occasion been mislead. We have been left with some uncertainty, and hopefully now, a clear plan of action.

We believe our plan is compliant with both the letter and the spirit of the ADA, and essentially, we would like to verify its acceptability.

Any assistance you could provide would be greatly appreciated. If you have any questions or further requirements, please contact me at my 712/642-4077. Thank you for your assistance in this matter.

Sincerely,

W. Fletcher Reel
Mayor

01-04103

City of Missouri Valley, Iowa
American Disabilities Act Compliance Plan
March 1996

Objective:

To bring City buildings and services into compliance with both the letter and the spirit of the American Disabilities Act.

Background:

Missouri Valley is a small community with roughly 3,000 residents. We are a people who look-out for one another and have, with or without relating law, always considered it a civic duty to address the needs of those who are physically challenged. In essence, though our plans have not been formally adopted in the past, we have always made City services and facilities available to the disabled.

Our major challenges in bringing our facilities into ADA compliance are our City Hall, built in 1931, and our Public Library, built during the same era. As much of our community was built on a hillside with the downtown area bordering a flood plain, both City Hall and the Public Library used steps and multiple levels to protect the building from flooding. These architectural features, however, are a difficult challenge when attempting to make these facilities accessible to the handicapped. Essentially, we have found that making the most basic changes would cost the City more than the structures are worth.

When these buildings can no longer serve as useful facilities for the City, we will build new, fully ADA compliant buildings. However, building new structures now, before the old buildings' usefulness have ended, makes little economic sense, especially when one considers our limited funds and critical infrastructure priorities. Currently, all business district curbs are ADA compliant.

Strategy:

Our strategy in meeting immediate compliance with the ADA is essentially formalizing what we have always done. Our City Hall presently houses our City Clerk's office which handles a broad range of city services, the City Police, the Magistrates office, the Fire Department and the City Council Chambers.

According to 28 C.F.R. Sec. 35.150(a)(1); (b)(1) of Title II of the ADA, the City may reassign services to an accessible

01-04104

location if the facility is not accessible or a City worker may meet a disabled person at his or her home to provide whatever service is required or mail service may be permitted.

Plan:

* Any individual who meets the standard criteria to be classified as disabled may make a phone call to the Missouri Valley City Clerk's office and ask to be provided with home service. The City Clerk would then initiate whatever procedures are necessary to deliver that service. These could include but would not be limited to collecting payment of Water bills, making out police reports, filing complaints and the delivery of library books.

* The City Clerk's office could also coordinate special arrangements which may need to be made with the Magistrate's office.

* In order to make City Council meetings accessible, with one week's prior notification, we will move these meetings to an ADA compliant facility within the City Limits of Missouri Valley.

* The City will place signs in front of City Hall and the Library informing people where they may call for assistance.

* The City will publish the ADA compliant meeting locations in advance of the City Council meetings.

01-04186

The intent of
regulation can
sometimes be
achieved more
easily through
local
innovation.

town doesn't
oversee P.O.
accessibility
Fed. gov. has
to ensure
P.O. accessibility
Law very
flexible
ILLEGIBLE burden

ESSAY/COM
Bill Leonard

When rules overstep com

Missouri Valley, nestled comfortably in the low folds of the Loess Hills, is the sort of place you'd pick to show a visitor what small-town Iowa is all about - neat, homey, relaxed. It's home to businesses geared to the farming community, commuters, retired farmers, and small shops and services. Its mayor runs a child-care center.

But the town of 3,000 has a problem. It's out of compliance with the Americans with Disabilities Act. It needs more ramps and elevators - now. Congress left the town no alternatives.

Fletcher Reel, named mayor in a special election last June and re-elected in November, has no quarrel with the intent of the ADA. "I'm not saying ADA is unreasonable in looking out for the needs of the handicapped," he said. But it should cut the town some slack.

The main floor of the town's post office is about 12 feet above ground level. That meant a ramp was required. It cost about $100,000.

"It's a beautiful building," reflecting

the architectural nuances of the 1940s, Reel said, "and we absolutely trashed it with a ramp that winds back and forth."

Further, the mayor said, almost no one uses the ramp (although "the skateboarders kind of like it.") His 95-year-old grandmother prefers the steps; the long, winding ramp made her dizzy, Reel said.

The post office ramp was just for starters. City hall, the town library and the middle school are all out of compliance. Fixing them to satisfy the ADA would cost more than rebuilding. That means that some durable buildings with 20 or 30 or more years of useful life must be abandoned, and Missouri Valley abruptly faces some industrial-strength debt.

Again, Reel isn't critical of the intent of the law; his roommate, a lifelong friend, has been handicapped from birth ILLEGIBLE
other out," Reel said. But the ADA demands ramps and elevators, not helping hands or helpful neighbors.

A bond issue for a new middle school has been approved, and the city council has voted to rebuild city hall. The $6.6 million estimated as needed to satisfy ADA - more than $2,000 for each resident - would push the city and school district bonded indebtedness close to the limits. And then, what happens in an emergency? Reel asks.

Missouri Valley's sewer and water lines were buried before 1930; they could be getting weak. Woe be unto the little town if they collapse just a few years down the road, when the town is already up to here in debt.

*

Missouri Valley's mayor was one of a long parade of Iowans who testified in Des Moines last month before Iowa Congressman Greg Ganske and his

ILLEGIBLE
eral water-pollution and commercial driver's license laws. The hearing drew more than 100 Iowans with complaints dealing with federal regulations.

Targets varied. Favorites were farm, health care, environmental and transportation policies. The concept of metric conversion even took a hit.

It would be nonsense to suggest that all the gripes mean all the regulations represent unreasonable and unwarranted interference with free enterprise or local self-government. But it would be equal folly to deny that excesses exist. Some are simply built into the law by Congress.

L.D. McMullen, general manager of the Des Moines Water Works, was brief and to the point: Water-quality monitoring has become wasteful and burdensome. The Safe Drinking Water Act of 1974, as amended in 1986, required that the EPA set standards for 83 contaminants. It must add another 25 in a couple of years, and 25 more every three years thereafter.

As a result, Des Moines is forced to check for 83 chemicals although only
ILLEGIBLE
mon sense, it provides ammunition to those who profit by maligning all regulation. If they succeed in dismantling needed controls, the nation's forests, lakes and streams will soon be indistinguishable from the landfills. Russia and the former Soviet bloc in Eastern Europe offer examples. In a huge share of that forsaken territory, it's not even safe to breathe the air.

Avoiding a breakdown in orderly regulation here puts a special responsibility on the regulators. At all levels, controls must be applied in such a way that they retain the public's respect.

BILL LEONARD is a Register editorial

writer.
01-04188

flexibility. Missouri Valley, given some options, could serve its handicapped
ILLEGIBLE
ILLEGIBLE subcommittee on National Economic Growth, chaired by
ILLEGIBLE
83 contaminants. It must add another 25 in ILLEGIBLE

APR 3 1996

The Honorable Dianne Feinstein
United States Senator
1700 Montgomery Street, Suite 305
San Francisco, California 94111

Dear Senator Feinstein:

Staff of the Disability Rights Section, Civil Rights Division, have reviewed your inquiry on behalf of your constituent, XX . XX seeks information about the requirements for access to Federal Bankruptcy Court. Please excuse our delay in responding.

Section 504 of the Rehabilitation Act of 1973 prohibits discrimination on the basis of disability. As originally enacted, Section 504 applies to programs and activities that receive Federal financial assistance. In 1978, Section 504 was amended to apply to the operations of the Federal government itself. However, coverage was limited to agencies within the Executive branch of government. The United States judiciary was not covered by Section 504.

The response that XX initially received about accessing her bankruptcy proceedings probably reflects the fact that the Federal judiciary is exempt from coverage under Section 504. Nonetheless, while Section 504 does not apply to the Federal judiciary, most Federal courts operate with policies to provide access for persons with disabilities. In this regard, XX should contact the Bankruptcy Court's chief judicial officer or the clerk's office and request accommodations to access its proceedings.

Coverage under Section 504 may exist if the bankruptcy proceeding that XX sought to attend was, in fact, a program or activity conducted by an Executive agency. The Office of the United States Trustees, a Department of Justice (DOJ) component agency, conducts some bankruptcy proceedings on behalf

of the Federal government. Such proceedings conducted by the Trustees are subject to Section 504's requirements for program access as outlined in DOJ's regulations implementing the 1978 amendments to Section 504. These are codified at 28 Code of Federal Regulations Part 39, and should be available at local libraries.

If XX bankruptcy proceedings are conducted by the United States Trustees, a determination about whether or not Section 504 applies to those proceedings is the responsibility of the Trustees. XX may seek additional information about access to her Federal bankruptcy proceedings by contacting: Mr. Joseph Patchan, Director, Executive Office of the United States Trustees, Room 700, 901 E Street, N.W., Washington, D.C. 20534, Attention: Ms. Martha L. Davis, Office of General Counsel, telephone (202) 307-1399.

I hope this information is useful in responding to your constituent.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

01-04191

JAN 22 1996

January 4, 1996

Dianne Feinstein, U.S. Senate
Room 331, Hart Senate Office Building
Washington, D.C. 20510

Barbara Boxer, U.S. Senate
Room 112, Hart Senate Office Building
Washington, D.C. 20515

Frank Riggs, Congress
1714 Longworth House Office Building
Washington, D.C. 20515

I am a constituent in your district, and am writing to you to inform you of a problem I am facing and to request your assistance.
I have filed bankruptcy papers and my court appearance is scheduled for XX . This will be held in the U.S. Post Office Building, 5th and H Streets, XX I am wheelchair bound and totally unable to stand or even transfer, and this building is not wheelchair accessible. I called the Bankruptcy Court Trustee to inform her of my dilemma, and she suggested that I get someone to carry me up the outside flight of stairs, as "this is what we've done in the past". She had no other suggestions. I was also informed that, as this is a federal, historic building, they are not required by law to be accessible. As my elected official, I am turning to you to resolve this problem. Would it be possible to move the Bankruptcy Court to another site that would accommodate those of us with disabilities?

Sincerely,
XX
01-04192

APR 3 1996

The Honorable Robert S. Walker
U.S. House of Representatives
2369 Rayburn Building
Washington, D.C. 20515-3816

Dear Congressman Walker:

Your letter to the U.S. Department of Transportation on behalf of your constituent, XX , regarding the requirements of the Americans with Disabilities Act (ADA) for curb ramps and sidewalks at public streets and intersections, was forwarded to me for comment.

XX has questioned decisions by North Coventry Township, Pennsylvania, to install curb ramps leading from public streets to impassable areas where there are no sidewalks. According to your letter, officials of North Coventry Township claim that these actions are mandated by title II of the ADA.

Title II of the ADA prohibits discrimination on the basis of disability by State and local government entities. When public entities build new facilities or alter existing facilities, the Department of Justice's regulation implementing title II (enclosed) requires that the newly constructed or altered areas be made accessible to individuals with disabilities. The regulation specifically provides that new construction of or alterations to streets give rise to accessibility obligations for curb ramps. 28 C.F.R. S 35.151(e). Therefore, if the North Coventry Township were constructing a new street or intersection or were altering an existing street or intersection, it may be required to provide accessible curb ramps or ramps where pedestrian walkways that are elevated or curbed intersect with the new or altered street or intersection. 28 C.F.R. S 35.151(e)(1). Notably, resurfacing of streets gives rise to these obligations, as resurfacing is considered to be an alteration within the meaning of the ADA. See Kinney v. Yerusalim, 9 F.3d 1067 (3d Cir. 1993). In addition, if North

Coventry Township were building or altering a pedestrian walkway, it may be required to provide curb ramps or ramps as needed where the walkway intersects streets or intersections. 28 C.F.R. S 35.151 (e) (2).

However, the new construction and alterations provisions of title II do not require installation of ramps or curb ramps in the absence of a pedestrian walkway. Nor are they required in the absence of a curb, elevation, or other barrier between the street and the walkway. Therefore, curb ramps or ramps leading to vacant grass lots are not required by the ADA.

Of course, the ADA does not prohibit North Coventry Township from exceeding the requirements of the ADA. Nor does it limit the State's discretion to provide new pedestrian walkways and ramps as it sees fit to serve interests in addition to accessibility.

I hope this information is helpful to you in responding to your constituent.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

Enclosure
01-04194

Congress of the United States
House of Representatives
Washington, DC 20515-3816

March 5, 1996

Kent Markus, Esquire
Acting Assistant Attorney General
U. S. Department of Justice
Main Justice Building, Room 1603
Pennsylvania and Constitution Avenues, N.W.
Washington, D.C. 20530

Dear Mr. Markus:

I am writing to you on behalf of my constituent, XX , who has enlisted my assistance.

It is my understanding that XX is concerned about the curb cuts which are being constructed in her neighborhood. She notes that there are no sidewalks, and at many intersections, the curb cuts lead to impassable areas. When she contacted North Coventry Township officials, she was told this action is being taken in compliance with the ADA. Since XX notes that should an individual in a wheelchair be able to negotiate the curb cut, there is no where else that person could go, due often to tree limbs and other brush. Therefore, she contends this expense is not practical and these curb cuts should not be mandated. Accordingly, I would like to take this opportunity to express my interest on behalf of my constituent and to request that this matter be reviewed
as expeditiously as possible.
Thank you for your cooperation in this regard. I will look forward to hearing from you at your earliest opportunity.

Cordially,

Robert S. Walker

nw
01-04195

U.S. Department of Justice

Civil Rights Division

Disability Rights Section
P.O. Box 66738
Washington, DC 20035-6738

APR 8 1996

DJ 204-012-00074

Ms. Rhonda L. Daniels
Senior Counsel
National Association of Home Builders
1201 15th Street, N.W.
Washington, D.C. 20005-2800

Dear Ms. Daniels:

I am responding to your inquiry of January 19, 1995, on behalf of the National Association of Home Builders, regarding the application of the Americans with Disabilities Act of 1990 (ADA) to the home building industry. We apologize for the delay in responding to your letter.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities that have rights or obligations under the Act. This letter provides informal guidance to assist you in understanding the ADA's requirements. It does not, however, constitute a legal interpretation or advice, and it is not binding on the Department.

Your letter notes that questions have arisen about the application of the ADA to housing "as a result of the proposed accessibility guidelines published by the Architectural and Transportation Barriers Compliance Board . . . . " Therefore, you have requested clarification of the ADA's requirements as they apply to residential construction. Specifically, you have asked the Department to declare: 1) that privately owned residential housing is not subject to title II of the ADA; 2) that only buildings for which a State or local government holds the title are subject to title II; and, 3) that sidewalks in residential areas are not subject to the cross slope requirements

contained in the Interim Final ADA Accessibility Guidelines.

cc: Records; Chrono; Wodatch; Savage; Blizard; Pecht; FOIA
n:\udd\blizard\drsltrs\daniles\sc. young-parran
01-04196

Title II of the ADA, 42 U.S.C. S 12132, provides that

> [N]o qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

departments, agencies, or instrumentalities of State and local governments are public entities subject to title II. Under these definitions, it is clear that only public entities and individuals acting on behalf of public entities have an obligation to comply with title II. Residential properties that are owned and operated by private entities as purely private residential properties are not within the scope of title II.

However, when a State or local government establishes a program that involves providing housing to its residents, that public entity has the obligation to ensure that its program is operated in a non-discriminatory manner whether the program is provided directly by the public entity or through "contractual, licensing, or other arrangements." Because the ADA recognizes that public entities employ many different methods of operating their programs, the Department's regulations do not attempt to limit the types of arrangements that public entities may utilize to ensure effective delivery of programs or services. The regulation merely requires public entities to ensure that when public services or programs are provided through other entities those services or programs meet the same standard of accessibility that would be required if the public entity provided the service directly. 28 C.F.R. S 35.130. In cases where funding is provided to a private entity to facilitate the operation of a State or local program, such accessibility is required. In addition, it should be noted that even if title II would not require a specific facility to be made accessible, a public entity may have the authority under State or local law to require the facility to be accessible.

Your second assertion, that only buildings to which a public entity holds title should be subject to the ADA accessibility requirements is clearly inconsistent with title II and with the title II implementing regulation. Because title II prohibits discrimination in any program, service, or activity of a public entity, the title II regulation (28 CFR S 35.151(a)) requires

> [E]ach facility or part of a facility constructed by, on behalf of, or for the use of a public entity

. . . ." (emphasis added) to be designed and constructed so that it is ". . . readily accessible to and useable by individuals with disabilities.

A similar requirement applies to alterations to existing facilities that are commenced after January 26, 1992. 28 CFR S 35.151(b). Buildings and facilities covered by title II may be designed and constructed in accordance with either the Uniform Federal Accessibility Standards (UFAS) or the Americans with Disabilities Act Standards for Accessible Design (ADA Standards). 28 CFR S 35.151(c). These requirements will remain in effect until this Department publishes a final regulation adopting new accessibility standards for title II entities.

Finally, because sidewalks in residential areas are "facilities" within the meaning of the ADA, residential sidewalks that are constructed with the expectation that they will be turned over to the local government are required to be accessible to people with disabilities. As you know, the Access Board has published interim final guidelines that contain technical requirements applicable to public sidewalks. These requirements are the subject of a Notice of Proposed Rulemaking published by the Department, but they are not yet included in the Department's regulation. Therefore, compliance with the requirements of section 14 of the Access Board's Interim Final Rule is not required. Until this Department publishes a final regulation that establishes specific requirements for accessible public sidewalks, public entities may elect to meet their obligation to provide accessible sidewalks by using the technical provisions applicable to accessible exterior routes under the ADA Standards or UFAS, or they may follow any other accessibility standard in effect in their jurisdiction. In addition, public entities must provide curb ramps or other sloped areas at intersections between the pedestrian walkway and streets, roads, or highways. 28 CFR SS 35.151 (c) and (e).

I hope that this information assists you to understand the responsibility of public entities to apply title II in the operation of their programs. Please be advised that to the extent that your letter raises issues with respect to the technical and scoping requirements for residential properties or public rights of way contained in the notice of proposed rulemaking that was published by the Department in June 1994, we will consider your comments in our review of the responses to that notice. Both the Department and the Access Board are now completing the review of the proposed rule and making appropriate revisions. Your comments may be further addressed in the final

publication of the rule.

Sincerely,

John L. Wodatch
Chief
Disability Rights Section

01-04198

National Association of Home Builders
1201 15th Street, N.W., Washington, D.C. 20005-2800
(202) 822-0200 (800) 368-5242 Fax (202) 822-0559

January 19, 1995

Ms. Merrily Friedlander
Acting Section Chief, Coordination and Review
Civil Rights Division
U.S. Department of Justice
Box 6618
Washington, D.C. 20035-6118

Dear Ms. Friedlander:

On behalf of the National Association of Home Builders, I am writing to request clarification about the applicability of Title II of the Americans with Disabilities Act (ADA) to residential housing. Some questions have arisen about the applicability of Title II to the residential home building industry as a result of the proposed accessibility guidelines published by the Architectural and Transportation Barriers Compliance Board (ATBCB) (57 Fed. Reg. 60612, December 21, 1992, and 59 Fed. Reg. 31676, June 20, 1994). We respectfully request your office to clarify that privately owned and operated residential housing is not subject to Title II. We are concerned that in the absence of such clarification, there will be continuing confusion among builders, state and local regulatory officials, building code officials, as well as the users of these facilities about the applicability of the Title II guidelines to a particular project. This letter sets forth two issues arising from the proposed guidelines which need to be addressed by the Department. Only Buildings Owned and Operated by State of Local Governments Should be
Subject to Title II

There appears to be widespread confusion regarding the applicablity of Title II to residential buildings which are privately owned and operated, but which receive some form of subsidy from a state or local government entity. The proposed accessibility guidelines issued by the ATBCB on December 21, 1992 stated that the guidelines applied to "...single family and multifamily dwelling unit facilities constructed or altered by, for, or on behalf of a State or local government entity." (57 Fed. Reg. 60660). We have been apprised

that certain state housing agencies have taken the position that all residential projects that receive a federal or state subsidy qualify as facilities constructed "on behalf of" a state or local government entity. Various local

01-04199

Ms. Merrily Friedlander January 19, 1995 Page 2 officials have been interpreting this provision to mean that any building that receives any type of government loan, guarantee, grant or any other financial assistance qualifiesas a "state or local government facility." We cannot support such a reading of ADA.

The legislative history of the ADA indicates that Congress was concerned that newly constructed public buildings, i.e, buildings owned by governmental entities, be accessible to the disabled. To suggest that the law extends to buildings owned by private concerns merely because the building may have received some type of financial assistance from a state or local government would expand coverage of the law to an extent not contemplated by Congress. For example, under this reasoning, housing built with funds made available under the HOME Investment Partnership Program would be subject to the ADA. Similarly, housing which receives funding from a community block grant program, or which is eligible for a low interest rate mortgage under a state government housing program would be subject to the ADA under this reasoning.

There is nothing in the legislative history of the ADA to suggest that Congress intended that the receipt of some form of governmental subsidy effectively changes a privately owned building into a public building. In fact, a letter from the Congressional Budget Office (CBO) to the Chairman of the House Committee on Education and Labor, supports the position that the only buildings that Congress intended to be covered by Title II are newly constructed state owned or local government-owned buildings. In estimating the costs of Title II, the CBO concluded that there would be little or no costs to state governments, since all states currently mandate accessibility in newly constructed state- owned public buildings. CBO recognized however, that because municipalities may not have such accessibility requirements, they would probably incur additional costs to make newly constructed, locally-owned public buildings accessible. (House Report, 101-485 p. 145). This analysis demonstrates that there was no intent to expand the reach of Title II to privately owned buildings which may receive some form of government subsidy.

We submit that rather than focusing on whether a building receives some form of government subsidy, the focus should be on whether the building is owned by a public or private entity. There is no question that buildings which are publicly owned are subject to Title II. However, if a building is owned by a private individual or entity, as evidenced by the name on the title to the property, then that building should not be subject to Title II. It is the ownership of the building, not whether the building receives some form of government subsidy, that should determine whether it is subject to Title II accessibility requirements. We urge the Department to clarify that if title to a building is held in the name of a private individual or entity, the building is not subject to Title II, regardless of whether the building receives any form of government subsidy. 01-04200 Ms. Merrily Friedlander January 19, 1995 Page 3 Residential Development Should Not Be Subject to the Sidewalk Cross Slope Requirement

A second issue has arisen under Title II concerning applicability of

the sidewalk cross slope requirement to residential development. ATBCB's proposed guidelines require that every private right-of-way dedicated to a public jurisdiction must meet a 1:50 cross slope requirement. Section 14.2.1 of the Guidelines, June 20, 1994). It is common practice for private residential developers to develop the entire right-of-way, including sidewalks, and dedicate them to the local jurisdiction. Thus, every residential subdivision could be subject to this requirement. Because of the adverse impact this requirement could have on residential development, we request the Justice Department reexamine this issue.

We have attached a letter to the ATBCB from the Southern Nevada Home Builders detailing the adverse impact to residential development that could result from the current proposal. As set forth in that letter, in order to comply with the 1:50 cross slope requirement, design remedies such as providing additional maneuvering space, will be necessary. There will be serious impacts to residential development if a sidewalk must be offset around a driveway apron to maintain an acceptable cross slope. In addition, offset sidewalks impact building setbacks. Local governments require a minimum setback from the back of the sidewalk. If the sidewalk encroaches on the building, the building must be moved further back from the street. The ultimate result of the cross slope requirement is more expensive housing, as density will be reduced as a result of increased setbacks.

We urge the Justice Department to clarify in the final rule implementing Title II that residential development is not subject to the cross slope requirement. We thank you for this opportunity to present our concerns.

Sincerely,

Rhonda L. Daniels

Senior Counsel Attachment

01-04201

Southern Nevada
Home
Builders Association

December 12, 1994

Ms. Elizabeth A. Stewart
Office of the General Counsel Architectural and Transportation Barriers
Compliance Board
1331 F Street NW., suite 1000
Washington, D.C. 2004-1111

Re: Americans with Disabilities Act (ADA) Accessibility Guidelines for Buildings and Facilities: State and Local Government Facilities (Fed. Regis. Vol.59 NO. 117)

Dear Ms. Stewart,

The Southern Nevada Home Builders Association represents over seven hundred developers, subcontractors, and suppliers throughout southern Nevada. In reviewing the Interim Final Rule, our Association is extremely concerned with the proposed requirement for a 1:50 cross slope where public sidewalks intersect driveways.

It was our original understanding that the Accessibility Guidelines for Buildings and Facilities: State and Local Government Facilities (Guidelines) would not apply to private residential development.

However, Section A14.1 (Public Rights-of-Way) states,

> Jurisdictions that may later accept pedestrian facilities constructed in rights-of-way developed by private entities should ensure through the permitting process that such elements will also meet the requirements of this section.

As such, is it the intent of the Guidelines that every private right-of-way development dedicated to a government jurisdiction must meet the 1:50 cross slope requirement, including the intersection of a sidewalk with the private driveway of a single-family home? It is common practice for residential development, including private subdivisions, to develop the entire right-of-way, including sidewalks, and dedicate them to local governments for maintenance. As a result, it would seem that the proposed Guidelines would impact nearly every residential development in the United States, including private subdivisions.

In order to comply with the 1:50 cross slope requirement, design remedies, such as providing additional maneuvering space, will be necessary. Forcing sidewalks to be offset around driveway aprons to maintain an acceptable cross slope will result in a host of impacts on residential development. Many of the future impacts cannot reasonably be anticipated at this time. One of the greatest factors influencing the impact of the proposed Guidelines will be existing regulations in local jurisdictions. Yet another critical issue will be the natural topography of the region to be developed. The immediate impact to southern Nevada will be increased building setbacks, loss of private property, and expensive engineering "solutions." The design and construction of right-of-way developments is dictated by a myriad of overlapping regulations. Building elevations may be dictated by regional flood control agencies, while building setbacks are determined by local planning boards, and sidewalks and street specifications are mandated by public works departments.

The proposed Guidelines will supersede some local requirements, but will have no effect on existing regulations that address building elevations, drainage, and other related issues. The Guidelines suggest offset sidewalks (Fig. A9(a), (b), page A26) as an acceptable design solution to the 1:50 cross slope requirement. Not only does this option result in the loss of private property for sidewalk offsets, but would impact building setbacks as well. Local governments require a minimum setback from the back of sidewalk. Whenever the sidewalk encroaches on the building, the building must be placed further from the street to satisfy setback requirements. We suggest that the scope of these guidelines with respect to the acceptable cross slope for driveways be re-examined. Since nearly all residential developers eventually dedicate right-of-way developments to local jurisdictions, the impact on residential housing, particularly the home buyer, must be taken into consideration. As these Guidelines stand, housing density will be reduced as a result of increased setbacks and a loss of private property for sidewalk offsets. In addition, the increased materials, design, and construction costs will also be passed on to the home buyers. The cumulative result of the 1:50 cross slope requirement will be to significantly reduce a developers ability to provide affordable housing to the general public. This increased expense will result in potential home buyers not being able to afford the increased housing cost.
01-04203

In conclusion, we recommend that the Guidelines be modified to allow for a limited exception to the 1:50 cross-slope requirement for public sidewalks, that being the apron intersecting a private single-family driveway, so long as each side of the apron is beveled where it contacts the sidewalk. If this is unacceptable, then we recommend that the implementation date of the Guidelines be postponed until the issues mentioned above can be addressed. We appreciate this opportunity to express our concerns. Our office would be more than happy to discuss this matter with you in greater detail.

Sincerely,
Jesse Wells
Government Affairs Specialist

c.c. Rhonda Daniel's, National Association of Home Builders
Bob Raymer, California Building Industry Association
Mike Beasley, Colorado Association of Home Builders
Alan Lurie, Southern Arizona Home Builders Association
Gary Johnson, Clark County Regional Transportation Committee
01-04204

APR 9 1996

The Honorable Gerald B. Solomon
U.S. House of Representatives
Washington, D.C. 20515-3222

Dear Congressman Solomon:

I am responding to your letter on behalf of your constituent, Mr. XX , who is concerned about provisions for students with disabilities in the Rhinebeck, New York, school district. Specifically, XX would like to know whether the school district is eligible for a waiver from the Americans with Disabilities Act (ADA) due to the expense that compliance with the ADA would entail. Please excuse our delay in responding.

Title II of the ADA prohibits discrimination on the basis of disability in State and local government services, including public schools. Sections 35.149 and 35.150 of the Department's title II regulation (enclosed) require accessibility to programs, services, and activities in facilities existing on the effective date of the statute, January 26, 1992. The principal focus of the program accessibility standard is access to programs, services, and activities, as opposed to access to physical structures. Therefore, not every area of an existing school facility would have to be made accessible, as long as there is access to a school's programs, services, or activities.

For existing facilities, every building does not necessarily have to be made accessible if all of the programs located inside that building can be made accessible by alternative means. Section 35.150(b)(1) of the title II regulation does not require that a school district eliminate structural barriers if it provides access to its programs through alternative methods such as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, delivery of services at alternate accessible sites, alteration of existing facilities, construction of new facilities, or any other methods that result in making the services, programs, or activities readily accessible to and usable by individuals with disabilities.

cc: Records, Chrono, Wodatch, McDowney, Milton, FOIA
n:\udd\milton\congress\progacc.sol\sc. young-parran
01-04205

If structural alterations are necessary to provide program accessibility, such alterations must be undertaken unless the public entity can demonstrate that the alterations would cause a fundamental change to its program or that the cost of the alterations would result in undue financial and administrative burdens. 28 C.F.R. S 35.150(a)(3). Where an action would result in such a change or such burdens, the public entity must take any other action that would not result in such change or such burdens but would nevertheless ensure that individuals with disabilities receive the benefits or services provided by the entity.

As you can see, the ADA is a reasonable and balanced law that takes the cost of compliance into consideration. Therefore, the law does not allow waivers. Thus, public entities may not waive the requirements of the ADA, nor is any Federal agency or other entity authorized to grant such a waiver.

I hope this information is helpful to you in responding to your constituent.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

Enclosure
01-04206

Handicapped Accessibility

Currently, no district building meets the Federal requirements contained in the Americans with Disabilities Act (ADA). This act, signed into law by President George Bush on July 26, 1990, essentially requires that all program areas of all public buildings must be made accessible to persons with disabilities.

At this time, the district has children with disabilities in the first, fourth and fifth grades, and they will not be able to access the Bulkeley building because of its limitations. This creates a possible legal liability for the District.

An architectural study, provided to the district earlier this year, estimated the cost of the renovations at Bulkeley to be as high as $750,000.00.
A recent estimate by the current architect, based on different plans, estimates renovations at $460,000. The building will need a three story elevator, exterior ramp work, new doors, and lavatory renovations. Yet the district would still face space problems at Bulkeley and an accessibility problem at the High School.

VOTE

January 18, 1996
2:00 PM -- 9:00 PM
At the High School Gymnasium

01-04207

APR 12 1996

XX
Petaluma, California XX
Dear Mr. XX

Congresswoman Woolsey forwarded your correspondence regarding the Americans with Disabilities Act of 1990 (ADA) to this office for response. Your letter expressed concern that films shown in movie theaters are not accessible to people with hearing impairments. We apologize for our delay in responding.

The ADA prohibits discrimination on the basis of disability in employment, the provision of public services, places of public accommodation, and transportation. The ADA also requires all new construction and alterations in public buildings, places of public accommodation, and commercial facilities to be accessible, and it mandates the establishment of telephone relay services.

You are correct in your understanding that the ADA does not require movie theaters to show films with open captions. Under the Telecommunications Act of 1996, however, the Federal Communications Commission (FCC) will investigate the extent to which video programming is currently closed captioned and then promulgate regulations requiring video producers to incorporate captions into production. For more information regarding the Telecommunications Act of 1996, you may contact:

The Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554
Attention: Richard Engleman
(202) 653-6288 (Voice)
(The FCC requests that persons with speech or hearing impairments use the relay service to contact their offices).

I hope that this information proves useful to you.

Sincerely,

John L. Wodatch
Chief
Disability Rights Section

cc: Congresswoman Lynn Woolsey

cc: Records; Chrono; Wodatch; Hill; Deykes; McDowney; FOIA
udd\deykes\congrsnlXX
01-04208

LYNN WOOLSEY
6th District, California

COMMITTEES:
BUDGET
ECONOMIC AND EDUCATIONAL OPPORTUNITIES

Congress of the United States
House of Representatives

WASHINGTON OFFICE:
439 CANNON BUILDING
WASHINGTON, DC 20515-0506
TELEPHONE: (202) 225-5161

DISTRICT OFFICES:
1101 COLLEGE AVE., SUITE 200
SANTA ROSA, CA 95404
TELEPHONE: (707) 542-7182
FROM PETALUMA CALL:
(707) 795-1462

NORTHGATE BUILDING
1050 NORTHGATE DRIVE, SUITE 140
SAN RAFAEL, CA 94903
TELEPHONE: (415) 507-9554

Washington, DC 20515-0506
INTERNET ADDRESS:
woolsey@hr.house.gov

February 22, 1996

Attorney General Janet Reno
Department of Justice
Constitution Avenue and Tenth Street, NW
Washington, DC 20530
Attn: Congressional Liaison

Dear Attorney General Reno:

Enclosed please find comments from my constituent, XX regarding the limited availability of movie theaters offering open captioned films. Mr. XX is concerned that deaf and hard of hearing Americans are currently unable to enjoy many movies because they lack captions. I would appreciate it if you would respond to Mr. XX concerns in writing.

Please respond directly to Mr. XX at the following address:

XX
XX
XX
XX

and forward a copy of your letter to my Washington, DC office. If you have any questions, please do not hesitate to contact Greg Harrison of my staff at (202)225-5161. Thank you for your attention to this matter.

Sincerely,
Lynn Woolsey
Member of Congress
01-04209
Date: Thu, 7 Dec 1995 21:43:28 -0800
From: XX
To: Brownvk@assembly.ca.gov
Subject: I need your help

Dear Valerie,

There seems to be a minor loophole in the American Disabilities Act that prevents million of Americans from enjoying the fun and excitement that everyone else takes for granted. This would be going to the Movies. I need somebody that cares and is a public figure to help support a petition that I have started. In its rough draft form, I have included a copy of it here. Would you please review it and give me any suggestions, comments, ideas for improvement that you can think of. A word of endorsement with permission to quote you would also be of great help.

Thank you for your support and I look forward to hearing from you.

XX
XX
XX
XX

Intent of Petition:

To provide open captions at movie theaters on first run movies during special engagements.

Reasons:

The American Disabilities Act, ADA, does not provide for direct provisions for the hard of hearing and deaf as indicated in Senate Report 101-116, pg 64. The report does state that:

"Filmmakers are, however, 'encouraged' to produce and distribute open captioned versions of films and theaters are 'encouraged' to have at least some preannounced screenings of a captioned version of eature films."

Results:

When was the last time you went to a theater and saw an open captioned movie?

Reality:

The theaters show, on average, 0% open captioned screening of feature films. In the sense of the ADA, this meets the requirment for 'encouraged to produce' and 'encouraged to have some preannounced screenings'.

By signing this petition, you are agreeing that the ADA must amend the two words 'encouraged' and replace them with 'required' on Senate Report 101-116, page 64, as noted above.
01-04210

SEP 7 1995

XX
XX
Seattle, Washington XX

Dear XX

I am responding to your letter to President Clinton regarding the variance you requested to close off the open concrete staircase leading into your basement. You complain that the City of Seattle will not grant you a variance although you need to close off the staircase because of your disability.

Title II of the Americans with Disabilities Act of 1990 (ADA) prohibits discrimination against qualified individuals with disabilities on the basis of disability by State and local governments. Section 35.130(a) of the Department of Justice's Title II regulation (enclosed) provides that no qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity. Section 35.130(b)(7) of the Title II rule states that a public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity or result in undue financial or administrative burdens.

Thus, the city of Seattle may be required to grant a variance to you if a variance is necessary to avoid discrimination on the basis of disability, unless Seattle can demonstrate that granting the variance would result in undue financial or administrative burdens.

cc: Records; Chrono; Wodatch; Milton; McDowney; FOIA
udd\nilton\letters\variance.xx

01-03897

I am enclosing a copy of the Department's Title II Technical Assistance Manual for your information. I hope this information is helpful to you.

Sincerely,

John L. Wodatch
Chief
Disability Rights Section
Civil Rights Division

01-03898

APR 16 1996

The Honorable Mitch McConnell
United States Senator
601 West Broadway
Room 630
Louisville, Kentucky 40202

Dear Senator McConnell:

I am responding to your recent letter on behalf of your constituent, Mr. XX , Florence, Kentucky. Mr. XX filed a complaint with the Department of Justice alleging violation of the Americans with Disabilities Act (ADA) by the City of Florence for failure to pass an ordinance requiring the removal of snow from sidewalks by property owners. Please excuse our delay in responding.

Under title II of the ADA, State and local governments are required to ensure that their programs, services, and activities are accessible to individuals with disabilities. To the extent that accessible sidewalks are required to be provided in order to satisfy that obligation, those required sidewalks must be maintained in operable condition. Temporary interruptions in accessibility, such as those caused by snow, generally do not constitute violations of title II, however, unless they persist beyond a reasonable period of time. Notably, only those sidewalks that are required by the ADA to be accessible and that are within the control of the city will be required to be maintained by the city.

To the extent that a public entity provides snow removal services, title II requires those services to be provided in a non-discriminatory manner. However, sidewalk snow removal by private property owners is private action not covered by the title II absent some substantial involvement by the public entity. The ADA, therefore, does not generally require local governments to pass ordinances compelling property owners to remove snow from sidewalks.

cc: Records, Chrono, Wodatch, McDowney, Talian, FOIA
n:\udd\talian\congress\mcc XX \sc. young-parran
01-04217

To the extent that sidewalks lead to places of public accommodation covered by title III of the ADA, however, the private owners of such places of public accommodation may have obligations to maintain them under title III. If a sidewalk is required to be accessible under title III and if the abutting place of public accommodation exercises control over the sidewalk, the place of public accommodation may be required to maintain the sidewalk in operable condition. As under title II, temporary interruptions because of snow are permissible under title III unless they persist beyond a reasonable period of time.

Enclosed are copies of our Department's ADA Title II and Title III Technical Assistance Manuals, which may further assist Mr. XX in understanding the obligations of entities covered by the ADA. I hope this information is useful in responding to your constituent's inquiry.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

Enclosures
01-04218

United States Senate
WASHINGTON, DC 20510-1702
(202) 224-2541

January 17, 1996

Mr. Kent Markus
Asst. Attorney General
Dept.Of Justice/Office of Leg.Affairs
Main Justice Building, Room 1145
10th & Constitution Avenue
Washington, D.C. 20530

Dear Mr. Markus:

This letter is in reference to XX . He contacted my office regarding his discrimination complaint form filed under Title II of the Americans with Disabilities Act.

For your convenient reference, I have enclosed a copy of his correspondence.

Since I want to be responsive to all constituent inquiries, your prompt consideration, findings and views concerning the enclosed will be greatly appreciated. I look forward to hearing from you at your earliest convenience.

Please send your response to my state office. The address is 601 West Broadway, Room 630, Louisville, Kentucky 40202. It should be sent to the attention of Beth D. Kinnaman. She can be reached at (502) 582-6304 for further information.

Thank you for your assistance in this matter.

Sincerely,

MITCH McCONNELL
UNITED STATES SENATOR

MM/bdk
01-04219

Dec. 8, 1995

Senator Mitch McConnell
1885 Dixie Highway
Ft. Wright, KY 41011

XX

Dear Sen. McConnell;

I filed a complaint with the Department Of Justice, Civil Rights Division. This was done about 4 months ago. To date I have heard nothing.

The complaint was about snow removal in Florence. I do not think the city is being fair to persons with a disability The complaint goes into full details.

Thank you for your help in this matter.

Thank you;

XX
01-04220

APR 23 1996

The Honorable Dianne Feinstein
United States Senate
487 Russell Senate Office Building
Washington, D.C. 20510-0504

Dear Senator Feinstein:

This is in response to your recent letter on behalf of your constituent, XX . Ms. XX inquired as to whether her service animal may be allowed into a pool area, under the Americans with Disabilities Act of 1990 (ADA).

If the Santa Rosa Junior College, in which the pool is located, is a privately owned and operated entity, it is covered by title III of the ADA. Section 36.302 (c) of the regulation issued by the Department of Justice under title III requires that places of public accommodation, such as restaurants, retail establishments, hotels, places of education and places of recreation modify their "policies, practices, or procedures to permit the use of a service animal by an individual with a disability." Section 36.104 defines a "service animal" as an animal that is "individually trained to do work or perform tasks for the benefit of an individual with a disability ..." A copy of the title III regulation is enclosed.

If the Santa Rosa Junior College is an instrumentality of a State or local government, it falls under title II of the ADA. Title II, like title III, requires that a public entity "make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability...." A copy of the title II regulation is enclosed.

According to Ms. XX letter, the Santa Rosa Junior College has taken legal action in State court to obtain a permanent restraining order prohibiting her service animal from

cc: Records Chrono Wodatch Hill Berger McDowney FOIA
N:\UDD\BERGER\CONGRESS\FEINSTEI\secy.johnson
01-04221

the pool area. The Department of Justice does not intervene in State court actions. The means for challenging such actions is through the State appellate process.

We hope this information will be of assistance to you in responding to your constituent.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

Enclosure
01-04222

United States Senate
WASHINGTON, DC 20510-0504

March 5, 1996

Assistant To Attorney General
Civil Rights Division
Department of Justice
Washington, D.C. 20530

Dear Friend:

RE: Francine A.M. Griffiths

My office has received the attached correspondence which I believe falls under your jurisdiction. A letter has been sent to XX indicating I have forwarded the correspondence to your office. No response is necessary, but if you have any questions please contact Michael Brandon of my San Francisco office at (415) 536-6862.

Sincerely yours,

Dianne Feinstein
United States Senator

DF:mjb

01-04223

ILLEGIBLE

Help! The Santa Rosa Junior College, which advertises the huge Olympic-size heated indoor pool use to the disabled of our Community, is seeking to eradicate disabled person-dog teams from access to these wonderfully helpful classes. Ordinarily, I can go swim non-stop mile laps three times a week, when my body will co-operate. (I've just had a total hip replacement, so NOW is definitely NOT one of those blessed times - yet!) My surgeons & all doctors prescribe: "SWIM!"

For some of us disabled, this is a rare time for socialization and recreation and a little non-weight bearing exercise.

Over the recent two years, I have watched the Assistance Dog population go down to just my two-year old service dog, a Border Collie, named Velcro Max. Whereas the pool used to be a friendly & delightsome rendez-vous for these wonderful dogs and their owners; & where typically the dogs would be showered off while class mates helped, now, even after I refused to tie my dog outside "or, lock him in the car," (if I feared he'd be stolen"), & refused to leave, period, The SRJC attorneys HAVE gotten rid of my Max by securing false affidavits rife with hearsay (& FALACIOUS) comments quoted by a new - The new instructor at the pool, & others With this false evidence, they were able to push thru a temporary Restraining Order, which they hope to make permanent on 6 November 95 at 8:30 am. in The Superior Court Anne Dept 10, on Guerneville Road opposite ILLEGIBLE - D.

I live on an SSI income & cannot afford an attorney to fight these shameful proceedings against me & (worse!) against all assistance dogs.

As I understand the ADA, all accessible private & public entities MUST admit a qualified disabled person & that person's service dog, UNLESS they can prove that the dog would fundamentally alter the nature of the business. Speculation on possible ILLEGIBLE ILLEGIBLE individuals, & all old prejudices & retaliation for

ILLEGIBLE
ILLEGIBLE to ban us, if I read the ADA law a-right.

SRJC asserts that the law banning dogs from Calif. public pools controls, as does their hearsay evidence that Max is dangerous to others, potentially, as does also my refusal (per my legal rights) to accept a flimsy, non-effective endlessly droppable, pick-up device as "an adequate substitute for my service dog"! The ADA supercedes all these conditions, and the DOJ in Washington, D.C. assures me, via their ADA experts, that SRJC must conform. But they're using staff attornies to snake out of the law.

Judge Lloyd Van der Mehden apparently disagrees w/A He granted the TRO, & will judge the case for making that TRO permanent. Too bad I cannot have an attorney! I'd love to file a typewritten response to all of this. I DID hand-print two pages of comments to the Judge & would have blasted those untruths in the sheaf of affidavit handed me that day at Dept 10 by SRJC's attorney, but I "blew" my opportunity by saying I thought I'd provided sufficient date in my documents submitted; and yet - & wham! He interrupted & granted the TRO! He said I'd had my chance! He silenced my attempts to interject on objection & addition. I felt rude, having to try & insist. Of course, it did me no good. Done is DONE.

I offered to relent & agree to leashing & tying my utterly obedience-trained & reliable dog where he'd otherwise plant himself, anyway - at the foot of the lane where I do my endless nonstop laps. Max's eyes are on me the whole time, & should I get a cramp or heart problem, HE'D KNOW, & get help a-coming!

SRJC doesn't want possible dog hairs for students to walk upon. (My dog has zero fuzzy undercoat. His hairs are 2" to 2 1/2" long - far shorter than human styles today.

I ceased bathing Max at the SRJC pool in 1994 after being told by the multiply-degreed Director of Sonoma County Health Dept. that there is virtually NO danger to health in bathing the dog a

Because, in speaking again with ILLEGIBLE
Washington D.C., I learned that "no public or private entity
shall be required to provide supervision, goods or services
(I believe it says) to any service dog" - "goods" includes WATER,
from the showers, I believe. Right? So, there & then,
I decided I couldn't bathe Max in the absense of specific
permission, & never have, since - That's a loss of great
convenience to the disabled. So many people helped - It was
fun! & very useful, saving us not only another disrobing & re-robing
but also much difficulty in rinsing off all soap, as SRJC has flexible
long-hose shower heads in the 3/4 private handicapped shower booths.

Max is admitted to all hospitals with me. Mark Costielney,
the multiply-degreed Director of Public Health for Sonoma County SAYS the
dog represents no significant health hazzard, even if bathed at SRJC.
The DOJ in DC assures me that when local laws are more
stringent then Federal laws reaccess, the Government's law
has precedence. [28 CFR, Part 36 Section 36.103(a)].

As I cannot afford a real attorney to assist me in ILLEGIBLE
this matter, I am appealing to you to champion the cause
of dignity & freedom of access for disabled persons who rely
upon their 24-hour-a-day, life-sacrificing, canine assistants.
Are there any TEETH in Federal laws??? Do you care
that powerful people with prejudices can seize our
rights & manipulate the court system to serve their
own ends? I HOPE SO! I hope you will
help me gain legal access to the only place where I
can move freely on a more-or-less equal basis with
others in my community.

With 40 feet, to go around my down-stayed dog
(at the foot of "my" lane), on a little-used access route
for students - how dangerous can a curled up 50#
dog BE??? At poolside, how many will trip over him?
It is unrealistic to suppose ANYONE would walk that
close to the water! Help!

Thank you, sincerely, XX

01-04226

APR 29 1996

The Honorable Jerry F. Costello
Member, U.S. House of Representatives
327 W Main Street
Belleville, Illinois 62220

Dear Congressman Costello:

This letter is in response to your inquiry on behalf of your constituent, Ron Boyer, concerning the requirements of the Americans with Disabilities Act (ADA). We apologize for the delay in our response.

The Department of Justice's regulation under title III of the ADA covers places of public accommodation, such as a place of public gathering. The ADA places a relatively modest burden on existing facilities, requiring that they remove barriers to access where it is readily achievable or "easily accomplishable and able to be carried out without much difficulty or expense." The regulation offers examples of barrier removal including installing ramps, making curb cuts in sidewalks, installing grab bars in toilet stalls, and making other modifications that increase the accessibility of a facility. For further information on the removal of barriers and the order of priorities, please see section S 36.304 of the enclosed title III regulation.

Only when a place of public accommodation or commercial facility performs alterations or undertakes new construction does the Federal law require strict adherence to specific standards that are intended to provide physical access for persons with disabilities. Please see sections S 36.401 and S 36.402 of the regulation.

There may be State or local laws that are also applicable to Mr. Boyer's situation. He should consult with local building code officials to determine what is required.

Mr. Boyer inquired into the availability of funds to make accessibility improvements. The Department of Justice does not provide financial assistance for compliance with the ADA.

cc: Records Chrono Wodatch Hill Berger McDowney FOIA
N:\UDD\BERGER\CONGRESS\CONGRESS.COS\secy.johnson
01-04227

Community Development Block Grant (CDBG) funds, awarded to individual communities by the Department of Housing and Urban Development, can be used for the removal of architectural barriers. Also, the Internal Revenue Service has established tax credits and deductions that may assist small businesses in complying with the ADA (see the enclosed information on tax credits and deductions). The Internal Revenue Service can be reached at 800-829-1040.

I hope this information is helpful to you in responding to your constituent.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

Enclosures
01-04228

JERRY F. COSTELLO
12TH DISTRICT, ILLINOIS

COMMITTEES:
BUDGET
TRANSPORTATION & INFRASTRUCTURE
SCIENCE

PLEASE RESPOND TO THE OFFICE CHECKED BELOW:

CONGRESS OF THE UNITED STATES (ON LEAVE)

House of Representatives
Washington, DC 20515-1312

March 7, 1996

Mr. Andrew Foist
Assistant Attorney General for
Legislative Affairs
U.S. Department of Justice
10th and Constitution
Washington, D.C. 20530-0001

Dear Andrew:

I am writing to inquire about possible federal assistance for a local VFW in my Congressional district.

As you can note from the enclosed letter, Commander Boyer must comply with the American with Disabilities Act and has requested my help in locating financial assistance.

I would appreciate any information you could provide me in fulfilling Commander Boyer's request. Please direct your communication to my Belleville District Office to the attention of my district office manager Anne Risavy.

I appreciate you attention to this matter.

Sincerely,

Jerry F. Costello
Member of Congress

JFC/amr

Enclosure

VFW

VETERANS OF FOREIGN WARS OF THE U.S.
FAIRVIEW MEMORIAL POST NO. 8677
5325 North Illinois
Fairview Heights, Illinois 62208

February 3, 1996

Congressman Costello
327 West Main Street
Belleville, Illinois 62220

Dear Congressman Costello,

This letter is to request your assistance on behalf of Fairview Memorial Post 8677, Veterans of Foreign Wars of the United States located in Fairview Heights, Illinois.

As you may know, our Post Home located on North Illinois Street (Highway 159) is a very old structure dating back to the days when it was a cow barn used in the dairy industry. Over the years it has served the VFW Post and Ladies Auxiliary membership very well.

Our Post Home is open to the public for various functions, and it has now come the time that we must comply with the mandatory Handicap Accessibility Law by providing bathroom facilities for the handicapped men and women of our community. The cost of construction for the new facilities is approximately $93,000.00, which includes upgraded electrical power distribution required by the city of Fairview Heights, prior to issuing an occupancy permit after construction is completed.

Since compliance with the Handicap Accessibility Law is mandatory, and since we are a charitable and non-profit organization, we are asking your assistance in securing any financial help that may be available in the form of a grant or subsidy at the National, State or Local level of Government.

Over the years our membership has managed to allocate some funds to our 'building fund'; however, there is not nearly enough monies available to fund this project. We are forced to obtain a loan from a private banking institution, and will be required to surrender our Post Home and land as collateral for a loan. Our ability to make loan payments on a loan to finance this project is questionable.

Our Post Home has a long history of providing relief and assistance to members of our community.

We also allow our Post Home to be used free-of-charge by the following organizations:

* Red Cross blood drives
* Local, State and National election polling place for Township voters
* Mayor of Fairview Heights to hold Public meetings and 'rap' sessions
* Boy Scouts of America
* Various Community events and functions

We are very proud that we may have the opportunity to install handicap facilities for our handicapped citizenry, but as you can see we would welcome any much-needed assistance that may be provided to us.

We are thanking you in advance for any assistance you may provide us, and hope to hear from you at your earliest convenience.

Sincerely,

Ron Boyer
Commander

2

01-04231

APR 29 1996

The Honorable Jerry F. Costello
Member, U.S. House of Representatives
327 W Main Street
Belleville, Illinois 62220

Dear Congressman Costello:

This letter is in response to your inquiry on behalf of your constituent, Ron Boyer, concerning the requirements of the Americans with Disabilities Act (ADA). We apologize for the delay in our response.

The Department of Justice's regulation under title III of the ADA covers places of public accommodation, such as a place of public gathering. The ADA places a relatively modest burden on existing facilities, requiring that they remove barriers to access where it is readily achievable or "easily accomplishable and able to be carried out without much difficulty or expense." The regulation offers examples of barrier removal including installing ramps, making curb cuts in sidewalks, installing grab bars in toilet stalls, and making other modifications that increase the accessibility of a facility. For further information on the removal of barriers and the order of priorities, please see section S 36.304 of the enclosed title III regulation.

Only when a place of public accommodation or commercial facility performs alterations or undertakes new construction does the Federal law require strict adherence to specific standards that are intended to provide physical access for persons with disabilities. Please see sections S 36.401 and S 36.402 of the regulation.

There may be State or local laws that are also applicable to Mr. Boyer's situation. He should consult with local building code officials to determine what is required.

Mr. Boyer inquired into the availability of funds to make accessibility improvements. The Department of Justice does not provide financial assistance for compliance with the ADA.

cc: Records Chrono Wodatch Hill Berger McDowney FOIA
N:\UDD\BERGER\CONGRESS\CONGRESS.COS\secy.johnson
01-04227

Community Development Block Grant (CDBG) funds, awarded to individual communities by the Department of Housing and Urban Development, can be used for the removal of architectural barriers. Also, the Internal Revenue Service has established tax credits and deductions that may assist small businesses in complying with the ADA (see the enclosed information on tax credits and deductions). The Internal Revenue Service can be reached at 800-829-1040.

I hope this information is helpful to you in responding to your constituent.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

Enclosures
01-04228

JERRY F. COSTELLO
12TH DISTRICT, ILLINOIS

COMMITTEES:
BUDGET
TRANSPORTATION & INFRASTRUCTURE
SCIENCE

PLEASE RESPOND TO THE OFFICE CHECKED BELOW:

CONGRESS OF THE UNITED STATES (ON LEAVE)

House of Representatives
Washington, DC 20515-1312

March 7, 1996

Mr. Andrew Foist
Assistant Attorney General for
Legislative Affairs
U.S. Department of Justice
10th and Constitution
Washington, D.C. 20530-0001

Dear Andrew:

I am writing to inquire about possible federal assistance for a local VFW in my Congressional district.

As you can note from the enclosed letter, Commander Boyer must comply with the American with Disabilities Act and has requested my help in locating financial assistance.

I would appreciate any information you could provide me in fulfilling Commander Boyer's request. Please direct your communication to my Belleville District Office to the attention of my district office manager Anne Risavy.

I appreciate you attention to this matter.

Sincerely,

Jerry F. Costello
Member of Congress

JFC/amr

Enclosure

VFW

VETERANS OF FOREIGN WARS OF THE U.S.
FAIRVIEW MEMORIAL POST NO. 8677
5325 North Illinois February 3, 1996
Fairview Heights, Illinois 62208

Congressman Costello
327 West Main Street
Belleville, Illinois 62220

Dear Congressman Costello,

This letter is to request your assistance on behalf of Fairview Memorial Post 8677, Veterans of Foreign Wars of the United States located in Fairview Heights, Illinois.

As you may know, our Post Home located on North Illinois Street (Highway 159) is a very old structure dating back to the days when it was a cow barn used in the dairy industry. Over the years it has served the VFW Post and Ladies Auxiliary membership very well.

Our Post Home is open to the public for various functions, and it has now come the time that we must comply with the mandatory Handicap Accessibility Law by providing bathroom facilities for the handicapped men and women of our community. The cost of construction for the new facilities is approximately $93,000.00, which includes upgraded electrical power distribution required by the city of Fairview Heights, prior to issuing an occupancy permit after construction is completed.

Since compliance with the Handicap Accessibility Law is mandatory, and since we are a charitable and non-profit organization, we are asking your assistance in securing any financial help that may be available in the form of a grant or subsidy at the National, State or Local level of Government.

Over the years our membership has managed to allocate some funds to our 'building fund'; however, there is not nearly enough monies available to fund this project. We are forced to obtain a loan from a private banking institution, and will be required to surrender our Post Home and land as collateral for a loan. Our ability to make loan payments on a loan to finance this project is questionable.

Our Post Home has a long history of providing relief and assistance to members of our community.

We also allow our Post Home to be used free-of-charge by the following organizations:

* Red Cross blood drives
* Local, State and National election polling place for Township voters
* Mayor of Fairview Heights to hold Public meetings and 'rap' sessions
* Boy Scouts of America
* Various Community events and functions

We are very proud that we may have the opportunity to install handicap facilities for our handicapped citizenry, but as you can see we would welcome any much-needed assistance that may be provided to us.

We are thanking you in advance for any assistance you may provide us, and hope to hear from you at your earliest convenience.

Sincerely,

Ron Boyer
Commander

2

01-04231

APR 29 1996

The Honorable Curt Weldon
Member, U.S. House of Representatives
1554 Garrett Road
Upper Darby, Pennsylvania 19082

Dear Congressman Weldon:

I am responding to your letter on behalf of your constituent, Judge James P. MacElree II of the Court of Common Pleas of Chester County, Pennsylvania, regarding the requirements of the Americans with Disabilities Act of 1990 (ADA). Please excuse our delay in responding.

Judge MacElree's letter expresses concern that the requirements of the ADA for alteration of courtrooms increase the costs of the planned alterations and limit the functionality of courtroom design. Specifically, Judge MacElree believes that the ADA requires a ramp or lift at any elevated judge's bench, witness stand, jury box, or clerk's stand and that any ramp must be 16 feet long for every 6 inches of height.

The ADA prohibits discrimination on the basis of disability by State and local government agencies, including courts. The Department of Justice's regulations implementing title II (enclosed) specify that whenever an entity covered by title II undertakes an alteration to a facility, the altered area must be made accessible to and usable by individuals with disabilities. The standard of accessibility to be applied may be either the Uniform Federal Accessibility Standards (UFAS), 41 C.F.R. pt. 101-19.6, Appendix A, or the ADA Standards for Accessible Design (Standards), 28 C.F.R. pt. 36, Appendix A (enclosed).

Both the ADA Standards and UFAS require all altered public and common use areas to be made accessible. Therefore, jury boxes and witness stands must be accessible to individuals with disabilities, including those who use wheelchairs. In order to be considered accessible, a jury box or witness stand must be reachable by an accessible route, must contain at least one accessible wheelchair space (a removable seat may be installed in

cc: Records; Chrono; Wodatch; McDowney; Hill; FOIA

the space when it is not needed to accommodate a wheelchair), and must be served by an unobstructed turning space. Any fixed counters or operating mechanisms in a jury box or witness stand must be accessible.

Judge MacElree seems most concerned about the requirement that an accessible route be provided to the accessible areas. The ADA does require such an accessible route. If the accessible juror or witness seating is not raised, such an accessible route consists simply of a level route with adequate width and head room. If the accessible seating is raised, a ramp that complies with ADA Standard 4.8 or UFAS 4.8 must generally be provided. Such a ramp need not be 16 feet long for each 6 inches of height, however, as Judge MacElree believes. Rather, it must generally have a 1:12 slope, i.e., 1 foot long for every 1 inch high (a 6-inch high ramp would, therefore, only have to be 6 feet long). In addition, in alterations, if space limitations prohibit use of a 1:12 ramp, a steeper slope may be used.

As Judge MacElree notes, the requirement that some juror and witness seats be level or ramped may alter traditional courtroom design. This alteration is necessary, however, to ensure that individuals with disabilities have the same opportunities to participate fully in their communities that non-disabled individuals have, including the opportunities for jury service and for participation as witnesses in legal proceedings.

Judge MacElree has also asked about accessibility of judges' benches and clerks' and reporters' stands. The UFAS and ADA Standards do not provide specific scoping requirements for such spaces. However, one of the purposes of the ADA is to increase employment opportunities for individuals with disabilities. Therefore, the ADA generally requires construction to be accomplished in such a way that it will not pose an obstacle to employment of individuals with disabilities. In order to balance traditional courtroom design with the need to avoid obstacles to employment, the Department of Justice has recently issued proposed design standards for courtrooms (enclosed). If adopted, such standards would require judges' benches and clerks' stations to be either fully accessible or adaptable, at the discretion of the builder. An adaptable bench or station would be designed to contain necessary maneuvering clearances and other spaces so full accessibility can easily be achieved when an employee requires it. For example, an adaptable judges' bench would not need a ramp if it were designed so that a ramp or lift can be easily installed at a later date.

Under the proposed rule, court reporters' stations, bailiffs' stations, and counsel and litigants' stations must be

fully accessible. The Department believes that requiring full accessibility of these areas will have minimal conflict with traditional courtroom design. In addition, full accessibility is
01-04242

justified by the more fungible nature of these positions, i.e., more than one person may use these stations, which increases the likelihood that an individual with a disability will need to use the stations.

I hope this information will assist you in responding to your constituent.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

Enclosures
01-04243

CURT WELDON
7TH DISTRICT, PENNSYLVANIA
CHAIRMAN

2452 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-3807
(202) 225-2011
1554 GARRETT ROAD
UPPER DARBY, PA 19082
(610) 259-0700
30 SOUTH VALLEY ROAD, SUITE 212
PAOLI, PA 19301
(610) 640-9064

COMMITTEE ON NATIONAL SECURITY
RESEARCH AND DEVELOPMENT,
READINESS
MERCHANT MARINE PANEL

COMMITTEE ON SCIENCE
ENERGY AND ENVIRONMENT
BASIC RESEARCH

CONGRESS OF THE UNITED STATES
House of Representatives

CO-CHAIRMAN:
CONGRESSIONAL FIRE SERVICES CAUCUS
US-FSU ENERGY CAUCUS
THE EMPOWERMENT CAUCUS
GLOBE OCEAN PROTECTION TASK FORCE
Washington, DC 20515-3807
MIGRATORY BIRD CONSERVATION COMMISSION
REPUBLICAN POLICY COMMITTEE
CONGRESSIONAL MISSILE DEFENSE CAUCUS

Email curtpa7@hr.house.gov

October 18, 1995

The Honorable Sheila F. Anthony
Assistant Attorney General
Office of Legislative Affairs
Department of Justice
Constitution & 10th Street, NW
Washington, D.C. 20530

Dear Ms. Anthony:

You will find enclosed a copy of correspondence I have received from Judge James MacElree. The information, I feel, is self-explanatory.

I would appreciate your reviewing the enclosed letter and providing me with written information that would be helpful to my constituent.

Please forward your response to my District Office at 1554 Garrett Road, Upper Darby, PA 19082.

Thank you in advance for any assistance you may be able to provide in this matter.

Sincerely,
CURT WELDON
Member of Congress

CW:bt
Enclosure
THIS STATIONERY PRINTED ON PAPER MADE OF RECYCLED FIBERS
01-04244

COURT OF COMMON PLEAS OF CHESTER COUNTY
15TH JUDICIAL DISTRICT OF PENNSYLVANIA
WEST CHESTER, PENNSYLVANIA 19380
(610) 344-6000

October 5, 1995

Senator Arlen Spector
530 Hart Senate Office Building
Washington, D.C. 20510

Senator Rick Santorium
B-40 Dirksen Senate Office Building
Washington, D.C. 20510

Congressman Curt Weldon
2452 Rayburn House Office Building
Washington, D.C. 20515

Dear Senators Spector, Santorium and Congressman Weldon:

I am a Common Pleas Judge in Chester County, Pennsylvania. Previously, I served as District Attorney having been elected three times.

Currently Chester County is in the process of refurbishing the 4th floor of our Courthouse, which housed the offices of probation and parole, and converting that space into three courtrooms. We have been advised by a federal official in the American Disabilities Act Division that our courtroom plans are not acceptable for the following reasons:

We cannot have an elevated judge's bench without a forty foot (40') ramp or elevated lift, even though none of our judges needs a lift or ramp.

We cannot have an elevated witness stand without a sixteen foot (16') ramp or lift, even if we provide a space in front of the witness stand large enough for a wheelchair so that a disabled person could testify from that location. In the past three years no person in a wheelchair had been presented as a witness in my courtroom.

We cannot have an elevated jury box without a sixteen foot

(16') ramp or lift, even if we provide a location in front of, or at the edge of, the jury box for a wheelchair.
01-04245

We cannot have an elevated area for the clerk and court reporter without a ramp or lift, even though we have no disabled clerks or reporters who would need to use a ramp or lift.

I am advised by our Engineering Department that the ramp being required by the federal official must be 16' long for each 6" of height. The result would be to destroy the functionality of the courtrooms.

This extreme application of the A.D.A. will have the effect of:

(1) Destroying the functional design of virtually every courtroom, county, state and federal, in the United States of America to which it is applied;

(2) Driving the cost of any new or refurbished courtrooms so high as to discourage any construction or refurbishment;

(3) Severely limiting the ability of county and state courts to supply an adequate number of courtrooms to be used by the citizens. (The federal system seems to exempt itself or, at least in the last 40 years, prints the extra money it needs.

I pose the following questions:

(1) Did Congress intend the A.D.A. to be applied as indicated above to effectively destroy the fundamental design of courtrooms?

(2) Can you assist us (the Judges and Commissioners in Chester County) in obtaining a sensible and speedy

federal review of our courtroom plans?

(3) If the answer to #1 is yes, will you move to amend or eliminate the A.D.A. as applied under these circumstances?

We need your assistance quickly as we have judges working in small "temporary" courtrooms which are grossly inadequate to serve the public. We also have the need to increase the number of judges handling the enormous flood of litigation. This may require the construction of even more courtrooms in the future.
01-04246

Senator Arlen Spector
Senator Rick Santorium
Congressman Curt Weldon
Page Three
October 5, 1995

During the past twenty (20) plus years that I have been trying cases I can't recall being in a courtroom (county, state or federal) where the judge's bench, the witness box and at least the back row of the jury box was not on a raised platform.

I wonder at what point do these "politically correct" statutes do more harm than good? Have we lost all common sense? Will our great country be dragged down and suffocated by its own regulations?

Sincerely,

James P. MacElree II

JPM:mpl

cc: Chester County Commissioners
Chester County Judges
01-04247

APR 29 1996

The Honorable Bill Young
U.S. House of Representatives
Washington, D.C. 20515-0910

Dear Congressman Young:

This is in response to your letter on behalf of your constituent, Mr. XX regarding the Americans with Disabilities Act of 1990 (ADA). Please excuse our delay in responding.

Mr. XX asks about the ADA's application to Florida's assessment of a fee for issuance of a permit to be displayed in a vehicle to indicate that its occupant has a disability and is entitled to use designated accessible parking spaces.

Title II of the ADA requires State and local government entities to make their programs, including their public parking programs, accessible to individuals with disabilities. Therefore, if a State or local government provides parking at a facility, it must provide an appropriate number of accessible parking spaces for individuals with disabilities. In order to ensure that the accessible spaces are available when needed by individuals with disabilities, the spaces must be reserved for the exclusive use of such individuals. According to Mr. XX letter, the State of Florida effects the reservation of accessible parking spaces by requiring users of such parking to display a particular permit.

Title II of the ADA prohibits a public entity from imposing a surcharge on an individual with a disability for any measure that is necessary in order to ensure nondiscriminatory treatment required by the ADA. 28 C.F.R. S 35.130(f) (enclosed). Because accessible parking is required by the ADA to be reserved for individuals with disabilities and because the issuance of permits is Florida's method of reserving the accessible spaces, Florida may be prohibited from charging a fee for such permits.

However, if Florida provides some alternate means, such as license plates with the international symbol of accessibility (ISA), to allow individuals with disabilities to use accessible spaces and if there is no surcharge for the alternate means, then Florida may charge for its special permits, as long as the

cc: Records, Chrono, Wodatch, McDowney, Hill, FOIA
n:\udd\hille\polcilt\young.ltr\sc. young-parran
01-04248

coverage of the two means is equivalent (i.e., every individual with a disability has the choice and no one is required to use just one of the options).

Florida law apparently authorizes issuance of ISA license plates to individuals who use wheelchairs. Consistent with the ADA, Florida apparently charges such individuals the same fee for such plates as it charges non-disabled individuals for ordinary plates. However, individuals with disabilities that limit their ability to walk significant distances, but who do not use wheelchairs, are apparently not given the option, under Florida law, of applying for ISA license plates. Instead, they are required to obtain a parking permit by paying a $15 fee. For these individuals, for whom there is no surcharge-free option for obtaining access to required accessible parking spaces, the assessment of the extra fee appears to violate title II of the ADA.

I hope this information is helpful to you in responding to your constituent.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

Enclosure
01-04249

C.W. BILL YOUNG
10th District, Florida
2407 Rayburn Building
Washington, DC 20515-0910

DISTRICT OFFICES:
Suite 527
144 First Avenue, South
St. Petersburg, FL 33701

Suite 506
ILLEGIBLE West Bay Drive
Largo, FL 34640

MEMBER:
COMMITTEE ON
APPROPRIATIONS
SUBCOMMITTEE
ON
NATIONAL
DEFENSE

Congress of the United States

House of Representatives

SUBCOMMITTEE
ON
HEALTH AND
EDUCATION

PERMANENT SELECT COMMITTEE
ON
INTELLIGENCE

August 24, 1995

The Honorable Janet Reno
Office of Legislative Affairs
10th & Constitution, Room 1145
Washington, D.C. 20530

Dear Attorney General Reno:

This is to share with you the concerns of my constituent Mr. XX regarding the American's with Disabilities Act and Florida's $15 fee for exemption parking permits.

Please investigate the statements contained in the enclosed correspondence and forward the necessary information for reply to my Washington office. Should you have any questions please contact Gregory Lankler in my office, at (202) 225-5961.

Thank you for your assistance in this matter, and with best wishes and personal regards, I am,

Very truly yours,

C. W. Bill Young
Member of Congress

CWY:gml

RECYCLED PAPER
01-04250

320.0848 Disabled persons; issuance of exemption parking permits; temporary permits; permits for certain providers of transportation services to persons with disabilities.--

(1)(a) The Department of Highway Safety and Motor Vehicles or its authorized agents shall, upon application, issue an exemption parking permit for a period of 4 years to any person who has permanent mobility problems, or a temporary exemption parking permit not to exceed 90 days to any person with temporary mobility problems, together with an identification card. Such persons with disabilities shall be currently certified by a physician licensed under chapter 458, chapter 459, or chapter 460, or a podiatrist licensed under chapter 461, or comparable licensing in another state, by the Division of Blind Services of the Department of Education, or by the Adjudication Office of the United States Department of Veterans Affairs or its predecessor as having any of the following disabilities that limit or impair his ability to walk or who is certified as legally blind:

1. Inability to walk 200 feet without stopping to rest.

2. Inability to walk without the use of or assistance from a brace, cane, crutch, prosthetic device, or other assistive device, or without the assistance of another person. If the assistive device significantly restores the person's ability to walk to the extent that the person can walk without severe limitation, the person is not eligible for the exemption parking permit.

3. Permanently uses a wheelchair.

4. Restriction by lung disease to the extent that the person's forced (respiratory) expiratory volume for 1 second, when measured by spirometry, is less than 1 liter, or the person's arterial oxygen is less than 60 mm/hg on room air at rest.

5. Use of portable oxygen.

6. Restriction by cardiac condition to the extent that the person's functional limitations are classified in severity as Class III or Class IV according to standards set by the American Heart Association.

7. Severe limitation in the person's ability to walk due to an arthritic, neurological, or orthopedic condition.

(b) The certificate of disability shall include, but not be limited to:

1. The disability of the applicant; the certifying physician's name and address; the physician's certification number; the eligibility criteria for the permit; the penalty

for falsification by either the certifying physician or the applicant; and the duration of the condition that entitles the person to the permit.

2. The certificate of disability shall be signed by both the physician and the applicant or the applicant's parent or guardian.

(c) The Department of Highway Safety and Motor Vehicles shall renew, for a period of 4 years, the exemption parking permit of any person with disabilities upon presentation of the certification required by paragraph (b) or the identification card issued by the department with the previous permit together with proper identification and an affidavit of the department signed by the applicant which attests to the applicant's continued disability.

(d) The Department of Highway Safety and Motor Vehicles shall promulgate rules, in accordance with chapter 120, for the issuance of an exemption parking permit to any organization which can adequately demonstrate a bona fide need for such permit because the organization provides regular transportation services to persons with disabilities who are certified as provided in paragraph (a).

(2) EXEMPTION PARKING PERMIT; PERSONS WITH PERMANENT MOBILITY PROBLEMS.--

(a) The exemption parking permit shall be a placard and shall be renewed every 4 years in the birth month of the applicant. Each side of the placard shall have the international symbol of access in a contrasting color in the center so as to be visible, and the expiration date, and shall be suitable for display on a dashboard or from a rearview mirror.

(b) License plates issued pursuant to ss. 320.084, 320.0842, 320.0843, and 320.0845 shall be valid for the same parking privileges and other privileges provided for under ss. 316.1955, 316.1956, and 526.141(5)(a).

(c)1. Except as provided in subparagraph 2., the fees for the exemption parking permit and renewal are $15 for the initial parking permit, $1 for each additional parking permit, $15 for each renewal parking permit, and $1 for each additional renewal parking permit. The Department of Highway Safety and Motor Vehicles shall receive $13.50 from the moneys derived from the pro-

ceeds of the initial exemption parking permit fee and $13.50 from the moneys derived from the proceeds of the renewal fee therefor, and the tax collector of the county in which the fee was generated shall receive $1.50 from each such fee, to defray the expenses of administering this section.

2. If an applicant who is a disabled veteran, is a resident of this state, has been honorably discharged, and either has been determined by the 1Veterans Administration of the Federal Government to have a service-connected disability rating for compensation of 50 percent or greater or has been determined to have a service-connected disability rating of 50 percent or greater and is in receipt of both disability retirement pay from the 1Veterans Administration and has a signed physician's statement of qualification for the handicapped parking permits, the fees are $1.50 for the initial parking permit, $1 for each additional parking permit, $1.50 for each renewal parking permit, and $1 for each additional renewal parking permit. The fee must be paid to the tax collector of the county in which the fee was generated. The department shall not issue to any one eligible applicant more than two exemption parking permits upon request of the applicant. The provisions of subsections (1), (4), (5), and (6) shall apply to this subsection.

(3) EXEMPTION PARKING PERMIT: TEMPORARY.

(a) A person desiring a temporary exemption parking permit shall apply to the tax collector in his county of residence on a form furnished by the Department of Highway Safety and Motor Vehicles.

2(b) The application form shall be accompanied by a fee in the amount of $15. Such fee shall be distributed as follows:

1. To the tax collector for processing: $2.50.

2. To the Department of Highway Safety and Motor Vehicles: $3.50. Of such fee, $1 shall be deposited into the Motor Vehicle License Plate Replacement Trust Fund to be used for implementation of a real-time handicapped parking data base and replacement parking permit program.

3. To the Florida Governor's Alliance for the Employment of Disabled Citizens for the purpose of improving employment and training opportunities of persons with disabilities, with special emphasis on removing transportation barriers: $4. Such fees shall be deposited into the Transportation Disadvantaged Trust Fund

for transfer to the Florida Governor's Alliance for the Employment of Disabled Citizens.

4. To the Transportation Disadvantaged Trust Fund for the purpose of funding matching grants to counties for the purpose of improving transportation of persons with disabilities: $5.

(4) Any county or municipality may designate additional parking spaces for use for persons with disabilities, beyond the number required by s. 316.1955, to accommodate increased demand for such spaces.

(5) Any person who knowingly makes a false or misleading statement in an application or certification under this section commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(6) Any person who fraudulently obtains or unlawfully uses such an exemption parking permit or who uses an unauthorized replica of such exemption parking permit with the intent to deceive is guilty of a nonmoving traffic violation, punishable as provided in ss. 316.008(4) and 318.18(7).

(7) A violation of this section shall be grounds for disciplinary action pursuant to s. 458.331, s. 459.015, s. 460.413, or s. 461.013, as applicable.

(8) The Department of Highway Safety and Motor Vehicles shall adopt rules to implement this section.

ILLEGIBLE.--s. 7, ch. 79-82; s. 3, ch. 80-ILLEGIBLE; s. 32, ch. 83-318; s. 4, ch. 84-108, s.7, ch. 85-227; s. 1, ch. 86-237; s. 1, ch. 87-220; s. 1, ch. 90-28; s. 18, ch. 90-333; s. 06, ch. 93-120, s. 1, ch. 93-127; s. 12, ch. 93-208.

ILLEGIBLENote.--ILLEGIBLE as the United States Department of Veterans Affairs by s 2, Pub L. No 100-527.

ILLEGIBLENote.--Section ILLEGIBLE, ch. 93-120, amended paragraph (b) of subsection (3), effective July 1, 1994, to ILLEGIBLE.

(b) The application form shall be accompanied by a fee in the amount of $15. Such fee shall be distributed as follows:

1. To the tax collector for processing: $2.50.

2. To the Department of Highway Safety and Motor Vehicles. $3.50. Such fee shall be deposited into the Highway Safety Operating Trust Fund to be used for implementation of a real-time handicapped parking data base and replacement parking permit program and for operations of the department.

3. To the Florida Governor's Alliance for the Employment of Disabled Citizens for the purpose of improving employment and training opportunities of persons with disabilities, with special emphasis on removing transportation barriers: $4. Such fees shall be deposited into the Transportation Disadvantaged Trust Fund for transfer to the Florida Governor's Alliance for the Employment of Disabled Citizens.

4. To the Transportation Disadvantaged Trust Fund for the purpose of funding matching grants to counties for the purpose of improving transportation of persons with disabilities: $5.
785
01-04252

The Honorable ILLEGIBLE Young 3 July, ILLEGIBLE
United State House of Representatives
Washington, DC ILLEGIBLE

Dear Congressman Young:

ILLEGIBLE of Florida has imposed an illegal and discriminatory $15.00 tax on a tag that ILLEGIBLE in the front window of the automobile for handicap parking. We, as tax paying citizens of Florida, pay the same tax that all other citizens pay, so this has to be a tax on the handicapped. This illegal and discriminatory tax is imposed upon a group of residents that can least afford this extra financial burden.
The Federal Register / Vol. 56, No. 144 / Friday, July 26, 1991 / Rules and Regulations / Nondiscrimination on the basis of Disability in State and Local Government Services; Final Rule. Subpart B Section ILLEGIBLE.130 Paragraph (F) provides that a public entity may not place a surcharge on a particular individual with a disability, or any group of individuals with disabilities to cover any cost of measures required to provide that individual or group with the nondiscriminatory treatment required by this act or this part. Such measures may include the provision of auxiliary aids of modifications to provide program accessibility.
Section 35.101 states the purpose of the rule, which is to effectuate subtitle A of title 11 of the Americans with Disabilities Act of 1990 ILLEGIBLE the Act) which ILLEGIBLE discrimination on the basis of disability by public entities.

Section 35.104 Definitions: Public entity means- (1) Any State or local government; (2) Any department, agency, special purpose ILLEGIBLE or other instrumentality of a State or States or local government.

Your help as an United State Congressman to rectify this illegal and discriminatory tax would be much appreciated. I request that the State of Florida cease collecting this tax and refund all money collected by this tax to the disabled person that paid this illegal and discriminatory tax.

XX
XX
XX
XX
XX
Enclosures:

Copy of distribution of fees (present)

Copy of distribution of fees (ILLEGIBLE
01-04253

XX
Houston, Texas XX

Dear Mr. XX

Your letter to the Attorney General has been forwarded to this office for reply. Your letter asks whether Federal civil rights laws regarding education of students with disabilities cover private schools that do not receive Federal funding.

Section 504 of the Rehabilitation Act of 1973 and the Individuals with Disabilities Education Act, which impose requirements for appropriate individualized education of students with disabilities, apply only to schools that receive Federal funding. In addition, title II of the Americans with Disabilities Act (ADA), which imposes similar requirements on public schools, does not apply to private schools.

A private school that is not a religious entity or operated by a religious entity, however, will be covered as a place of public accommodation under title III of the ADA. Title III prohibits discrimination on the basis of disability by covered entities. However, unlike the laws discussed above, it does not impose requirements for appropriate individualized education for students with disabilities. Instead, it imposes more general requirements.

For example, a private school may not, on the basis of disability, refuse to allow a qualified individual with a disability to participate in its program. Such a school may not impose eligibility criteria that screen out individuals with disabilities from participation unless the criteria are necessary to the provision of the school's services. Such a school must make reasonable modifications to its policies, practices, and procedures where necessary to provide its services to individuals with disabilities, unless to do so would fundamentally alter the nature of the services. A covered private school must also ensure effective communication with students with disabilities by providing necessary auxiliary aids or services, unless doing so would fundamentally alter the nature of the services offered or would result in an undue burden.

cc: Records, Chrono, Wodatch, McDowney, Hill, FOIA

The requirements of title III are described in greater detail in the enclosed regulation implementing title III and in the enclosed Title III Technical Assistance Manual. If you have further questions, you may call the ADA information line at (800) 514-0301 (voice) or (800) 514-0383. Members of the Disability Rights Section staff are available to answer questions on the information line on Monday, Tuesday, Wednesday, and Friday from 10:00 a.m. to 6:00 p.m., Eastern time. On Thursday, the information line is staffed from 1:00 p.m. to 6:00 p.m.

I hope this information is helpful to you.

Sincerely,

John L. Wodatch
Chief
Disability Rights Section

Enclosures
01-04265

January 1, 1996

XX
XX
Houston, Texas XX

Ms. Janet Reno
Attorney General of the United States
U.S. Department of Justice
10th and Constitution, N.W.
Washington, D.C.
20530

Re: Opinion on the Applicability of Federal Statutes to Tax Exempt Private Schools
-Section 504 of the Rehabilitation Act
-Individuals with Disabilities Education Act

Madame Attorney General,
One of my children suffers from Attention Deficit Disorder (ADD) and attends a private school. He thrived in the lower grades as a result of the small class sizes and very sensitive teachers. As he moved on to middle school recently, the attitude seems to ahve changed from one of nurturing to expectations of self reliance; a standard which he is incapable of meeting due to his condition. So, too, have the administration's policies with regard to assistance to ADD children. Where they had provided duplicate sets of texts for him in the past free of charge, they now are asking us to pay for the books. Where his teachers previously willingly provided advance curriculum schedules, the administration now will not allow it. No structured programs for educationally disabled children are offered. Their Legal Counsel has stated that the referenced Federal Statutes are not applicable because the school receives no Federal Funds.
It is my contention that as not-for-profit institutions, private schools receive funding from the United States Government in the form of exemptions from corporate income taxes and, therefore, the referenced Federal Statutes are applicable.

My ultimate goal is to work with the Board, Administration and Teachers to help them develop the appropriate support network and systems for children suffering from ADD and other learning disabilities. At this point in time, however, it appears that I need a '2"x4" to get their attention' as the old joke goes.

Assuming that my interpretation is correct, a letter from you stating your opinion in this matter would serve as a catalyst for positive action. If my assumptions are not right, your letter would help me formulate a new course of action. Thank you.

XX

XX
01-04256

MAY 2 1996

The Honorable Frank Pallone, Jr.
Member, U.S. House of Representatives
I.E.I., Airport Plaza
(Room 33) Highway 36
Hazlet, New Jersey 07730-1701

Dear Congressman Pallone:

This is in response to your inquiry on behalf of your constituent Mr. XX Mr. XX inquired as to the painting of curb cuts in the town of Hazlet, New Jersey.

Title II of the Americans with Disabilities Act of 1990 (ADA), which covers State and local government programs and services, neither prohibits nor requires painting curb cuts red or otherwise. Enclosed, please find a copy of the Department of Justice regulations implementing title II.

I hope this information will be of assistance when responding to your constituent.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

Enclosure

cc: Records Chrono Wodatch Hille Berger McDowney FOIA
N:\UDD\BERGER\CONGRESS\PALLONE\secy.johnson
01-04257

COMMERCE COMMITTEE: FRANK PALLONE, JR. REPLY TO:
ENERGY AND POWER SUBCOMMITTEE 6TH DISTRICT, NEW JERSEY DISTRICT OFFICES:
RANKING MINORITY MEMBER 540 BROADWAY (SUITE 118)
HEALTH AND ENVIRONMENT SUBCOMMITTEE LONG BRANCH, NJ 07740
(908) 571-1140

RESOURCES COMMITTEE: Congress of the United States 67/69 CHURCH ST.
NATIONAL PARKS, FORESTS AND LANDS KILMER SQUARE
SUBCOMMITTEE NEW BRUNSWICK, NJ
08901

REPLY TO: House of Representatives (908) 249-8892
WASHINGTON OFFICE: Washington, DC 20515-3006 I.E.I., AIRPORT PLAZA
420 CANNON HOUSE OFFICE BUILDING (ROOM 33) HIGHWAY 36
WASHINGTON, DC 20515-3006 HAZLET, NJ
07730-1701
TELEPHONE: (202) 225-4671 April 3, 1996 (908) 264-9104

Sally Conway
Office of Legislative Affairs
US Department of Justice
10th and Pennsylvania Avenues NW
Washington, DC 20530

RE: XX
XX
XX

Dear Ms. Conway:

As per your conversation with my staff, I am requesting a copy of the pertinent regulations regarding the painting of "curb cuts."

My constituent, Mr. XX is concerned that the town of Hazlet is blaming Federal regulations for painting these curb cuts red.

I would appreciate you reviewing this matter and furnishing my Hazlet District Office with a written summary of your findings.

Thank you for your cooperation and assistance. I am looking forward to your earliest response.

Sincerely,
FRANK PALLONE, JR
Member of Congress

FP/pg
ENC.
01-04258

MAY 6 1996

The Honorable J. Bennett Johnston
United States Senator
1510 One American Place
Baton Rouge, Louisiana 70825

Dear Senator Johnston:

This letter responds to your inquiry on behalf of your constituent, Mr. XX , a restaurant owner, who expresses concern about what he regards as intrusions into private and commercial enterprises by the Americans with Disabilities Act of 1990 (ADA). In particular, Mr. XX appears to have concerns about questions that the ADA may not permit an employer to ask in pre-employment interviews. Please excuse our delay in responding.

Mr. XX requests the constitutional basis for the ADA. The stated purpose of the ADA is "to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities." 42 U.S.C. Section 12101(b)(1) (Supp. II 1990). Congress invoked the full sweep of its authority under the Commerce Clause and the Fourteenth Amendment to accomplish this mandate. For a thorough discussion of the constitutional authority underlying the ADA, we are enclosing two legal briefs pertinent to your constituent's question. Pinnock v. International House of Pancakes Franchisee, et al. 844 F.Supp. 574 (S.D. Cal. 1993), and Abbott v. Bragdon, Civil No. 94-0273-B, 1995 WL 775019 (D. Me. Dec. 22, 1995).

With respect to your constituent's question about pre-employment inquiries, the ADA prohibits discrimination in employment against a qualified individual with a disability. The Equal Employment Opportunity Commission (EEOC) has the authority to enforce the ADA's employment provisions, including setting employment policies. A copy of the EEOC's guidance regarding preemployment questions is enclosed.

cc: Records, Chrono, Wodatch, McDowney, O'Brien, FOIA
n:\udd\obrien\congress.drs/XX .sen\sc. young-parran
01-04259

For further information, you or your constituent may contact EEOC's Information Line at 1-800-669-4000. We also are enclosing copies of EEOC's brochure, The Americans with Disabilities Act, Your Responsibilities as an Employer, for information on employment requirements under the ADA, including those pertaining to pre-employment inquiries.

I hope this information will assist you in responding to your constituent. As you requested, we are returning your constituent's correspondence.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

Enclosures
01-04260

XX
Bossier City, La XX
Jan. 30, 1996

Dear Sir,

As a restaurant owner, I have attached an article from the Restaurant Association monthly magazine. I was alarmed at the intrusions the national government has made with meddling into the business affairs of private enterprise and all commercial entities.

Please quote me the Constitutional article, section and clause of our beloved CONSTITUTION that grants federal jurisdiction for this local interference and domination.

What are your proposals to rectify this situation.

Looking forward to your reply.

Yours truly,
XX
01-04261

DAMAGES ASSESSED AGAINST EMPLOYER WHO ASKED THE WRONG QUESTIONS DURING INTERVIEW

In a decision of first impression, a jury awarded a job applicant $45,000 this summer under the federal Americans with Disabilities Act (ADA) solely because the applicant was asked questions during a job interview that the ADA disallows. The case involved a company right here in Louisiana.

Prior to this decision, awards under discrimination laws for simply asking the wrong question were tied to other substantiated harm to the applicant, such as denial of the job. Here, however, the jury found there was no discrimination in refusing to hire the applicant, but awarded damages anyway simply because the interviewer committed "technical violations" by asking the applicant about his facial scars and how other persons reacted to his appearance.

This case emphasizes how important it is to carefully scrutinize the questions being asked during a job interview. The following outlines some questions that the ADA permits or does not permit.

Questions that may be asked include:

* An employer may ask whether an applicant can perform specific job functions. (question may be asked if it is not worded in terms of a disability, if it is asked of all applicants, and if a job description is provided.)

* If an applicant has a known disability that would appear to interfere with performance of a job function, the employer may ask

the applicant to describe or demonstrate how these functions will be performed, with or without an accommodation.

Questions that may not be asked

* Have you ever been hospitalized? If so, for what condition?

* Have you ever been treated for a mental condition?

* Have you ever had a major illness in the last few years?

* How many days were you absent from work because of illness last year?

* Do you have any physical defects that would preclude you from performing certain work for which you are applying?

* Are you taking any prescribed drugs?

* Have you ever been treated for drug addiction or alcoholism?

* Have you ever filed for workers' compensation insurance?

* Will you need time off for medical treatment?

Also, employers should keep in mind that other questions may create potential legal problems under other federal and/or state anti-discrimination laws, including questions about:

* marital status or number of children

* education requirements beyond what may be essential for the job

* arrest and/or conviction records

* citizenship

* birthdate.

01-04262

MAY 7 1996

XX
San Marcos, California XX

Dear Ms. XX

This is in response to your letter to Mrs. Clinton, which was referred to this office for reply. You request help in obtaining large-print bills and bank statements.

The Americans with Disabilities Act (ADA) prohibits discrimination on the basis of disability by State and local government entities and places of public accommodation and commercial facilities. The services of public utilities, such as telephone companies, gas companies, electric companies, etc., generally are not covered by the ADA or any other Federal law that would require their providing large-print bills.

However, the ADA and the regulation issued by the Department under title III of the ADA (enclosed) require public accommodations, such as banks and retail stores, that are privately owned and operated, to provide auxiliary aids and services necessary to ensure effective communication with patrons with disabilities. Large print materials are one type auxiliary aid.

A public accommodation is not required, however, to provide any auxiliary aid or service that would fundamentally alter the nature of the services offered or that would result in an undue administrative or financial burden. Furthermore, while the title III regulation encourages public accommodations to consult with consumers about what they desire in the way of auxiliary aids, it does not require public accommodations to choose one aid over another only because the consumer chose it. Thus, a bank may make its statements accessible to persons with vision impairments by providing them in large print or on computer disk or tape or by any other effective method.

cc: Records; Chrono; Wodatch; Hill; McDowney; FOIA
udd\milton\letters\auxaid.tau
01-04263

We hope this information is helpful to you.

Sincerely,

John L. Wodatch
Chief
Disability Rights Section
Civil Rights Division

Enclosure
01-04264

XX
Sa Marcos CA XX

Dear Mrs Clinton,

I am legally blind and I have a problem!!
I am a long time member of a very good HMO.
I live alune and run my own home. I have attended seminars that have taught me to be mostly independent. I take care of myself and home.

My problem? I can not-even with my high powered magnifier- read the amounts due on my bills. or bank statements. I have made requests for large print bills and so far all replys have been negative.
I have offered proof of need from my dovtors. In the meantime I do consider it an invasion of my privacy to ask neighbors to read these amounts to me.
my debts are my own business!!

Many of these bills are printed in Spanish, Italian and many other langiages-but these companys do not care to help us who are attempting to stay off welfare. There are many of us and we are willing to present proof with our request.

Can you help me to find the proper people to make my appeals to? Your interest would be greatly apprciated.

GOD bless you and the President.

Sincerely,

XX

01-04265

MAY 8 1996

XX
Jacksonville, Florida XX

Dear Mr. XX :

I am responding to your letter regarding assistive listening devices in movie theaters. Your letter was also forwarded by Congresswoman Fowler. Please excuse the delay in responding.

As you know, the Americans with Disabilities Act (ADA) requires places of public accommodation, such as movie theaters, to ensure effective communication with their customers who have hearing impairments by furnishing appropriate auxiliary aids and services. Assistive listening devices such as those described in your letter are one type of auxiliary aid.

In addition to the requirement to provide auxiliary aids, the ADA requires places of public accommodation to maintain required accessible features such as assistive listening devices, in operable working condition. This obligation is described in the enclosed regulation implementing title III of the ADA. 28 C.F.R. S 36.211.

Sincerely,

John L. Wodatch
Chief
Disability Rights Section

Enclosure
cc: Records; Chrono; Wodatch; Hill; McDowney; FOIA
udd\hille\policylt\fowlerILLEGIBLE.ltr
01-04266

XX

U.S. Department XX XX
of Transportation XX

XX

United States XX
Coast Guard

FAX XX

14 September 1995

U.S. Dept. of Justice
Civil Rights Division,
Disability Rights Section
PO Box 66738
Washington DC 20035-6738

Dear Sir:

I have been wearing two hearing aids since 1940. I also like very much to attend movies, particularly in those new theaters that come equipped with and supply their patrons with special hearing devices.

When these first came out I thought they were a godsend, but in the past year it has been so exasperating. The theaters do not maintain them. The batteries run down and the wires develop cracks.

I would be very grateful if you would write to the following theaters reminding them of their obligations under Title III of Public Law 333-106 (42 U.S.C.A. 12101 et seq):

Mandarin Corner 6
10993 San Jose Blvd.
Jacksonville, FL 32257

Baymeadows 8
8552 Baymeadows Rd.
Jacksonville, FL 32256

Regency Square 8
9451 Regency Square Blvd.
Jacksonville, FL 32211

Movies at Mandarin Landing
State Rd. 13 @ I-295
Jacksonville, FL 32257

Very truly yours,
XX

bcc: Mr. Jack Gillrup
XX
01-04267

This certifies that
XX
has completed the requirements for
COMMUNITY FIRST AID AND SAFETY
sponsored by

ILLEGIBLE
ILLEGIBLE

Date completed
XX

This certifies that
XX
has completed the requirements for
COMMUNITY CPR
sponsored by

NO. CENTRAL MASS. CHAPTER
GARDNER SERVICE CENTER

Date completed
XX

SPORTS ACCIDENT INSURANCE
ILLEGIBLE NOT ILLEGIBLE
If a competitor (ILLEGIBLE the
athlete is eligible for ILLEGIBLE medical coverage ILLEGIBLE covering the
ILLEGIBLE obtained through work, parents of ILLEGIBLE is
the primary payor. The coverage provided ILLEGIBLE
ILLEGIBLE
the primary ILLEGIBLE.

The following claim ILLEGIBLE apply:

1. You must be a ILLEGIBLE competitor ILLEGIBLE
2. Place of Covered Injury ILLEGIBLE
   a) Injury ILLEGIBLE
   ILLEGIBLE
   ILLEGIBLE
   b) Injury taken ILLEGIBLE
3. Medical benefits ILLEGIBLE limited ILLEGIBLE

BENEFITS: Death and ILLEGIBLE
ILLEGIBLE
ILLEGIBLE
ILLEGIBLE
DEDUCTIBLE: ILLEGIBLE

The Americans with Disabilities Act with regard to reasonable accomodations for disabled registered members of the USTU. This includes registered members with disabilities (such as asthma) or registered members who become disabled from bodily injury during Taekwondo training during a regularly scheduled, supervised, sanctioned practice at a USTU registered club/school.

Could it be considered a reasonable accomodation under the Americans with Disabilities Act for all USTU registered (over XX
Fitchburg, MA XX
XX
my daughters 1995 membership card.
What constitutes supervision?
I am a Taekwondo student who is certified in first aid and CPR.
01-04268

MAY 13 1996

Alice D. Weingart, President
S.E. Florida Chapter, SHHH
4145 Cypress Reach Court, Apt. 301
Pompano Beach, Florida 33069

Dear Ms. Weingart:

Your letter to Attorney General Janet Reno was referred to this office for reply. You requested that the Department of Justice urge the National Safety Council to comply with the Americans with Disabilities Act (ADA) through the provision of auxiliary aids in their driver safety course.

Title III of the ADA requires that auxiliary aids and services be provided by public accommodations to ensure "effective communication" for individuals who are deaf or hard of hearing or who have impaired vision or speech. Under title III, "public accommodations" are private entities who own, operate, lease, or lease to, places of public accommodation, such as places of education. The National Safety Council's driver safety course may be a covered entity under title III if it is privately operated.

The ADA's auxiliary aids requirement is intended to be flexible, reflecting the variable nature of what constitutes effective communication. In addition to the specific nature of the disability involved, factors used to determine communication effectiveness in any given circumstance include the length, complexity, and significance of the information being exchanged. The auxiliary aids provisions of title III do not compel a covered entity to comply with a unilateral determination of an individual with a disability that a particular auxiliary aid is essential to effective communication. Ideally, the covered entity and the individual should arrive at a mutually acceptable choice through a process of consultation.

Under section 36.301(c) of the title III regulation, when an auxiliary aid or service is necessary to ensure effective communication, the covered entity must absorb the cost of this aid or service, unless it would result in an undue burden. The term "undue burden" means "significant difficulty or expense."

cc: Records, Chrono, Wodatch, McDowney, Milton, FOIA
n:\udd\milton\letters\auxaid.wei\sc. young-parran
01-04268

In determining whether the provision of an aid or service would result in an undue burden, covered entities should consider their overall financial resources. If the provision of a particular auxiliary aid or service would result in an undue burden, the public accommodation must provide an alternative auxiliary aid or service, if one exists, that would not result in an undue burden but would nevertheless ensure, to the maximum extent possible, effective communication with individuals with disabilities.

The National Safety Council states that the provision of closed captioning on driver safety course videos would violate copyright laws. However, in most circumstances, it is anticipated that the need for captioning can be addressed in the ordinary course of the licensing agreements between the National Safety Council and the copyright owner. Therefore, copyright laws should rarely, if ever, be an obstacle to the provision of closed captioning. If copyright posed an insurmountable obstacle to captioning, the National Safety Council may, nevertheless, be required to find another way to make the driver safety course accessible to persons with hearing impairments.

I hope this information is helpful to you.

Sincerely,

John L. Wodatch
Chief
Disability Rights Section

01-04269

A & R WEINGART
4145 Cypress Reach Ct., Apt. 301
Pompano Beach, Florida 33069

November 1, 1995

Attorney General Janet Reno
Main Justice Building
10th St. & Constitution Ave., N. W.
Washington, D. C. 20530

Dear Ms Reno,

The South Florida Chapter of The National Safety Council's reply to our request for a Driver Safety Course directed towards the hearing impaired was, at best, wanting. (See enclosed letter from the Chapter.)

As the enclosed article from the bulletin of SHHH national points out, we tried to show the Council Chapter how they could meet the needs of a large segment of the population without altering their presentation. Were they to avail themselves of the various assist-ive devices which are used at our meetings, the Driver Safety Course could be made available, all over the country, to the deaf and hard of hearing communities.

AARP, with funding from United Hearing and Deaf Services for Real-Time Captioning, is presenting the course for $8.00 enabling these drivers to receive an insurance credit.

Would you please use your good offices to prod the National Safety Council to comply with the Americans With Disabilities Act.

Thank you for your help.

Cordially,

Alice D. Weingart, President
S. E. Florida Chapter, SHHH

CC: SHHH National
United Hearing
Att'y Gen'l Butterworth
01-04270

National Safety Council
South Florida Chapter
Now serving Broward, Dade and Monroe Counties and the Caribbean
Main Headquarters: 2099 West Prospect Road, Fort Lauderdale, Florida 33309-3600
(305) 772-9900 * Fax: (305) 938-8148

October 6, 1995

Ms. Alice Weingert
4145 Cypress Reach Court, Apt. 301
Pompano Beach, Florida 33069

RE: Late Deafened Safety Courses

Dear Ms. Weingert:

I have investigated this entire area and it is impossible for us to alter any of the videos due to copyright laws. I have contacted our national office and they do not have any of the mature driving courses using closed captions. However, we have contacted the Greater Fort Lauderdale Convention Center and they have, for your use, nineteen headsets which could be utilized by the late deafened people who want this course. Registration could be handled via sending a list of people to our office.

We are willing to set up the entire program at a cost of $12.00 for each of the participants. We are also willing to pay for the parking at the convention center to limit the cost to the individuals taking this course.

I need your quick response so that I may make the final arrangements with the convention center. Looking forward to hearing from you soon and thank you for your cooperation.

Sincerely,

Murry Corito
Executive Director

lr
c: Andrea Wilson
Janet Beets, President, Board of Directors

A nongovernmental, not-for-profit, public service organization dedicated to protecting lives and promoting health since 1965.
01-04271

JUN 4, 1998

The Honorable John W. Olver
Member, U.S. House of Representatives
463 Main Street
Fitchburg, Massachusetts 01420

Dear Congressman Olver:

This is in response to your inquiry on behalf of your constituent, XX , of Fitchburg, Massachusetts. We apologize for the delay in our response.

Ms. XX asks if the Americans with Disabilities Act of 1990 (ADA) requires the United States Taekwondo Union, Inc. (USTU) to have appropriate First Aid supplies available during classes and to have their instructors certified in First Aid and CPR.

Taekwondo schools may be covered by title III of the ADA, which prohibits discrimination on the basis of disability by private entities that own, operate, or lease places of public accommodation. Places of education, entertainment, gathering, recreation, and exercise are places of public accommodation.

An association or union, such as USTU, would only be subject to title III to the extent it owns, operates, leases, or leases to a place of public accommodation. Therefore, when the USTU contracts to use such a facility, it may be subject to title III with respect to the operation of that facility.

An entity covered by title III must make reasonable modifications to its current policies, practices, and procedures in order to ensure that those policies do not exclude individuals with disabilities from participation in the programs that they offer. Covered entities are not required to make modifications in their programs that would fundamentally alter the nature of the program or services provided, nor are they required to expand the scope of their program to provide programs or services that they have not previously offered.

cc: Records Chrono Wodatch Hill McDowney Berger FOIA
N:\UDD\BERGER\CONGRESS\OLVER.REV\secy.johnson

One cannot assume, however, that people with disabilities are in greater need of First Aid than others. Therefore, First Aid preparation is not an ADA issue, but, rather, one of good safety practice. Similarly, the negligence issues raised by Ms. XX are governed by State law and not by the ADA.

Enclosed, please find a copy of the Department of Justice regulations implementing title III. I hope this information will be of assistance when responding to your constituent.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

Enclosure

01-04273

Congress of the United States
House of Representatives
Washington DC 20515-2101

April 8, 1996

William P. Barr
Attorney General of the United States
Department of Justice
10th St. and Constitution Ave., NW
Congressional Liaison
Washington, DC 20530

Dear Attorney General Barr,

I am writing to you on behalf of my constituent, XX , of Fitchburg, Massachusetts.

I have enclosed a letter that I received from Mrs. XX regarding her concerns about the United States Taekwondo Union, Inc. (USTU). Mrs. XX asks if the ADA, with regard to reasonable accommodations, could require that USTU instructors be certified in the areas of First Aid and CPR.

I would appreciate your assistance in addressing Mrs. XX concerns regarding this matter. If you have any questions, please feel free to contact my aide, Peggy Bird, in my Fitchburg district office.

Thank you for your time and attention to my request.

Sincerely,

John W. Olver
Member of Congress

JWO:PB

01-04274

(HANDWRITTEN)

Please let me
know if this is
within the Amer-
icans with Dis-
abilities Act.
(Reasonable accomodations)

XX

XX

Fitchburg, MA

XX

XX

Some USTU schools/
clubs are located at
public education institution

01-04275

(HANDWRITTEN)

The United States Tae-
kwondo Union is under the
United States Olympic
Committee. Both are loc-
ated at Colorado Springs, CO.

The USTU address is:

U.S. Taekwondo Union
1750 E. Boulder St, Ste 405
Colorado Springs, CO 80909

Grandmaster Hwa Chong is
the president.

The USTU has many regis-
tered schools/clubs all over the
United States. The USTU has
thousands of registered members
from their registered schools/
clubs. Members live in all 50 states.
Members train in all 50 states.

01-04276

(HANDWRITTEN)

XX
XX
Fitchburg, MA XX

01-04277

(HANDWRITTEN)

schools/clubs to have a suitable
first aid kit, comprehensive first
aid manual, box of disposable
gloves, and face masks or shields
to use in the event of a Taekwondo
student's bodily injury during
a regularly scheduled, supervised,
sanctioned practice?

Could it be considered a reasonable
accomodation under the Americans
with Disabilities Act for all USTU
Taekwondo instructors supervising
the regularly scheduled, supervised
sanctioned Taekwondo practice to
be certified in first aid and CPR?

Could it be considered gross
negligence for a USTU registered
Taekwondo instructor who is not
certified in first aid and CPR
to give improper first aid or
no first aid to an injured
USTU registered member or non-member at
a regularly scheduled, supervised,
sanctioned practice resulting in
the aggrivation of the injury?

I have given a copy of the questions and ILLEGIBLE

01-04278

JUN 4, 1996

The Honorable Craig Thomas
United States Senator
2632 Foothill Boulevard, Suite 101
Rock Springs, Wyoming 82901

Dear Senator Thomas:

I am responding to your letter on behalf of your constituents, XX and XX , regarding the Americans with Disabilities Act (ADA). Please excuse the delay in responding.

Your constituents' correspondence alleges that the rules of the subdivision in which they live prohibit snowplowing in the winter. Your constituents argue that this rule may inhibit individuals with disabilities from visiting them at their homes.

Title II of the ADA prohibits discrimination on the basis of disability by State and local government entities. Title III of the ADA prohibits discrimination on the basis of disability by places of public accommodation, which are, by definition, nonresidential. The Fair Housing Act prohibits discrimination on the basis of disability in residential facilities. It is not clear from your constituents' correspondence which, if any, of these provisions covers the Hoback Ranches Board of Directors.

Under the ADA, the local government may not deny services to individuals on the basis of disability, if it makes those services available to other citizens. Generally, however, it is not required to provide special programs or services for individuals with disabilities if it does not provide such programs or services for individuals without disabilities.

The rule against snowplowing that your constituents complain of does not appear to discriminate on the basis of disability because the rule affects both people with disabilities and people without disabilities equally.

I hope this information is helpful to you in responding to your constituents.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

01-04281

March 4, 1996

Hoback Ranches Board Of Directors
P.O. Box 33
Bondurant, Wy 82922

Directors,

We are writing in regards to the newly adopted rules of no snowplowing in Hoback Ranches Subdivision. These rules were adopted without the knowledge or consent of the residents of Hoback Ranches, along with the general public which they affect. We know of hundreds of people that feel as strongly opposed to this action as we do.

When we purchased our property there were no restrictions of this nature in our deed or in the covenants.

By attempting to stop snow plowing, which is a way of life in Wyoming, you are denying us and the general public our constitutional rights.

First of all our equity is being stagnated. This by people who are not year round residents.

Second, we are registered Sublette County voters and taxpayers. We are being denied some of these services, that we pay for, during the winter season. One of the reasons given for the new rules was because of safety. How safe is it when we are denied medical, fire and sheriff personnel? How safe is it when our vehicles, snowmobiles and trailers have to be parked out on the highway? Not too safe since there have been break ins and thefts. If you think your home is safer in the winter, then we suggest you think again.

Snowmobilers with sleds can empty out a house and depart in many directions and never be tracked.

Third, we have friends and family that are disabled and would be unable to visit us unless the road was plowed. We find this to be discriminating and we feel against the American Disabilities Act. This is a public road to be used by the public.

These legal rights are being denied by you, the same biased Board of Directors, who in December of 1995, illegally closed and padlocked a gate across this public road. In a meeting called by the Civil Attorney of Sublette County in regards to the locking of the gate, this same biased Board of Directors denied the other residents, whom you are suppose to be representing on their behalf, their legal rights to equal time to state their cause. When finally given a chance to speak they were unprofessionally interrupted and at one point were called liars.

We do not feel this biased Board of Directors has the right to continue to take away our constitutional rights.

Respectfully,

XX

Certified Copies to:

Governor James Geringer - State Capitol - Cheyenne, Wyoming
U.S. Senator Craig Thomas - Hart Building - Washington, D.C.
U.S. Representative Barbara Cubin - Longworth House - Washington, D.C.
Senator Grant Larson - Jackson, Wyoming
Representative Louis Tomassi - Big Piney, Wyoming
Sublette County Sheriff Office - Pinedale, Wyoming
Wyoming Health Care - Hathaway Building - Cheyenne, Wyoming
B.L.M. Resource Area Pinedale - Pinedale, Wyoming
01-04282

MAR 19, 1996

H.R.I.S.D.
Box 33
Bondurant, Wyoming 82922

Directors:

This letter is in reference to the past action of building and locking a gate across a public road -Rim Road- approximately 8 miles south of Bondurant. Forestry personnel say that Rim Road is a public road and this action was illegal and is a dangerous thing to do.

I understand your group has taken it upon yourselves to limit the lifestyles and property use of residents that choose to live on Hoback Ranch Estates all year. Although you don't live full time at Hoback Ranch Estates, you feel you have the right to control the lives of those that do. This is dictatorial and not the way our republic was meant to function.

The impact of your decision affects many facets of the residents lives and I can see no logical reason for such an action to be taken by your group.

Your decision affects residents economically by having a portion of their tax money not being used to keep Rim Road open; affects safety as no ambulance, police or fire vehicles can reach the properties if the roads are not plowed; the property is devalued due to the limited access and most importantly, you are discriminating against any handicapped person that might visit there, if they can't ride snowmobiles due to their handicap.

I hope your group can realize how untenable your position is in trying to control the lives and property of the full time residents. As I look over the deed and covenants there are no provisions for restricting usage of the property to summer season only.

Respectfully,
XX

CERTIFIED COPIES TO:

GOVERNOR JAMES GERINGER -STATE CAPITOL ROOM 214 -CHEYENNE, WY. 82002
U.S.SENATOR CRAIG THOMAS -302 HART BLDG. -WASHINGTON D.C. 20510
U.S.REPRESENTATIVE BARBARA CUBIN -1114 LONGWORTH HOUSE -WASHINGTON D.C.20515
SENATOR GRANT LARSON -P.O.BOX 3490 -JACKSON, WY.83001
REPRESENTATIVE LOUIS TOMASSI -P.O.BOX 549 -BIG PINEY, WY. 83113
WYOMING HEALTH CARE -HATHAWAY BLDG. ROOM 117 -CHEYENNE, WY. 82002
B.L.M. RESOURCE AREA PINEDALE -432 EAST MILL PINEDALE, WY. 82941
SUBLETTE COUNTY SHERIFF OFFICE -HANK RULAND -PINEDALE, WY. 82941

01-04283

March 1, 1996

(HANDWRITTEN)

H R S ILLEGIBLE
PO BOX 33
Bondurant Wyoming 82922

To whom it may concern:

I understand from the public notice in January's Pinedale/Big Piney Roundup that you are attempting to restrict access to other peoples property on Hoback Ranch Estates. This at the very least is dictatorial - no one has the legal or moral right to prevent any persons access to their private property at any time.

I visit Wyoming regularly and have always been impressed with the honesty and fairness of the natives. Are you and others in your organization natives or out of state ILLEGIBLE people?

A copy of this letter will be sent to the elected officials of the state of Wyoming and law enforcement agencies.

Disappointedly -
XX

01-04284

JUN 11, 1996

Ms. Marcia Beach
Executive Director
Advocacy Center for Persons with Disabilities, Inc.
2671 Executive Center Circle West
Suite 100
Tallahassee, Florida 32301-9071

Dear Ms. Beach:

Your letter to Attorney General Janet Reno has been referred to me for response. Your letter indicates that the Florida State legislature is considering a proposal to reallocate funding for such care of individuals with developmental disabilities from one program ("ICF/DD") to another (Home and Community Based Waiver Act) without changing the type of services provided, and to cut the amount of funding. You allege that this action would violate the Federal medicaid statute and the Americans with Disabilities Act (ADA). Please excuse our delay in responding.

The issues that you raise primarily involve Florida's administration of the Federal Medicaid program. Inquiries and complaints regarding the implementation of Medicaid program requirements should be directed to the Department of Health and Human Services at:

Health Care Financing Administration
Department of Health and Humans Services
230 Independence Avenue, S.W.
Room 5400 Cohen Building
Washington, D.C. 20201.

Title II of the ADA requires States to administer services, programs, and activities, "in the most integrated setting appropriate to the needs of qualified individuals with disabilities." 28 C.F.R. S 35.130(d). In some circumstances it may be a violation of the ADA for a State only to provide services to an individual with a disability in an institutional,

as opposed to a community, setting. Helen L. v. Didario, 46 F. 3d 325 (3d Cir. 1995).

cc: Records, Chrono, Wodatch, McDowney, Hill, FOIA
n:\udd\hille\policylt\beach.ltr\sc. young-parran

01-04285

An individual with a disability may take action under title II by filing a private suit in Federal district court or by filing a complaint with the Department of Justice or the appropriate "designated agency." The regulation implementing title II designates the U.S. Department of Health and Human Services (HHS) as the agency responsible for investigating alleged violations of title II by providers of health care and social services. The address for filing complaints with HHS is:

Office for Civil Rights
Department of Health & Human Services
330 Independence Avenue, S.W.
Room 5400 Cohen Building
Washington, D.C. 20201.

I hope this information is helpful to you.

Sincerely,

John L. Wodatch
Chief
Disability Rights Section

01-04286

Advocacy Center
FOR PERSONS WITH DISABILITIES, INC.
2671 EXEC. CENTER
CIRC. W. * SUITE 100
TALLAHASSEE, FL
32301-5092
(904) 488-9071
(904) 488-8640 (FAX)
(800) 342-0823 (VOICE)
(800) 346-4127 (TDD ONLY)
3101 MAGUIRE BLVD.
SUITE 150
ORLANDO, FL 32803
(407) 897-2760
(407) 897-2763 (FAX)
(800) 408-3074
(VOICE OR TDD)
2901 STIRLING ROAD
SUITE 206
FT. LAUDERDALE, FL 33312
(954) 967-1493
(954) 967-1496 (FAX)
(800) 350-4566
(VOICE, TDD OR ESPANOL)

April 29, 1996

The Honorable Janet Reno
Office of the Attorney General
U.S. Department of Justice
10th and Constitution Avenue, NW
Washington, DC 20530

Dear Madam Attorney General:

Florida is preparing, in the last few days of the legislative 1996 session, to grossly violate the provisions of both the ICF/DD and Home and Community Based Waiver Acts (HCBW). They are doing so in a way that is harmful to individuals with DD and that violates the rights of individuals with DD under those acts and under the Americans with Disabilities Act. They are doing so in

violation of the terms of Florida's waiver approved by the U.S. Department of Health and Human Services in 1992.

Florida is planning to eliminate all ICF/DD funding used to finance nursing home-type supports in private institutions and totally replace such funding with a greatly reduced amount of funding under the Home and Community Based Waiver. They are totally disregarding the fact that the purpose of the HCBW is to allow individuals to move from institutional and nursing home settings such as most ICF/DD's in Florida, into inclusive community settings. Florida will not be moving the individuals into the community - just changing the funding. Because of the drastic reduction in funding by the Florida Legislature (a cut of over 35 million dollars from the Developmental Services program), the same services that are presently available to the individuals under the ICF/DD program will not be available to them. Most individuals will be left without adequate supports in the same 64 bed nursing home-type ICF's and other similar structures.

Further violated will be the right of individuals under the ICF/DD program to be informed about the Home and Community Based Waiver and given a choice of either institutional (ICF/DD) services or home and community based

services. As you know, Federal law does not allow a state to force individuals into the HCBW program. This is particularly harmful to individuals when there are insufficient funds to provide necessary services under the HCBW.

The Advocacy center supports the phasedown and closure of public and private institutions that confine individuals with developmental disabilities. However, this proposal does not provide for phasedown or closure of any institution(s). It simply uses funds approved for that purpose. The legislature is scheduled to Sine die in three days.

We urgently request that you notify Florida of this imminent violation which we believe could jeopardize all medicaid funding to Florida.

Sincerely,

Marcia Beach
Executive Director

MB:mkk

cc: Governor Lawton Chiles
Senate President Jim Scott
House of Representatives Speaker Peter Rudy Wallace
HRS Secretary Ed Feaver
HRS Dept. Secretary Charles Kimber
HRS Dept. Asst. Secretary Donna Allen
Parker Thomson, Esq., President, Board of Directors
Board of Directors
Dexter Douglas, Esq., General Counsel to the Governor

01-04288

JUN 11, 1996

XX

Dear Mr. XX :

The Disability Rights Section of the Civil Rights Division, Department of Justice, has reviewed your recent inquiry to President Clinton about alleged discrimination on the basis of disability at an All Seasons Resorts residential camp facility located in Ohio. You indicated that you filed a lawsuit regarding the incident at a local court in Dayton, Ohio. We have carefully reviewed the issues raised and have the following suggestions with respect to them.

Title II of the Americans with Disabilities Act (ADA) prohibits discrimination on the basis of disability in the services, programs, and activities of public entities (State and local governments). This office is responsible for investigating alleged violations of title II by public entities for which it is the designated enforcement agency, including State and local law enforcement programs and court systems. Absent exceptional circumstances, however, this office does not intervene in litigation in State or local courts and does not review decisions of such courts on the merits of cases pending before them. Accordingly, we have determined that intervention by the Department of Justice in your court case is inappropriate. We suggest that you contact private counsel for advice on how to obtain a decision in the case, or otherwise bring the case to closure by the courts.

The information you provided about the incident describes it as involving an All Seasons Resorts facility, which may be a place of public accommodation, subject to title III of the ADA. Title III prohibits discrimination on the basis of disability by places of public accommodation. If an All Seasons Resorts facility constitutes a recreational establishment, it may be covered by title III of the ADA, and may be required to reasonably modify its policies regarding the services it provides in order to afford those services to individuals with disabilities, unless it can demonstrate that such policy modification would fundamentally alter the nature of the services. In addition, the facility may be required to remove

physical barriers to access to the extent that such barrier

cc: Records, Chrono, Wodatch, McDowney, Talian, FOIA
n:\udd\talian\congress\XX .hud\sc. young-parran

01-04289

removal is readily achievable, i.e., easily accomplishable and able to be carried out without much difficulty or expense. Coverage and enforcement of title III of the ADA is described in the enclosed manual.

Strictly residential facilities, however, are not places of public accommodation under the ADA. Instead, such facilities may be required to meet nondiscrimination and accessibility requirements under the Fair Housing Act, enforced by the following office:

Ms. Sara K. Pratt
Director, Office of Investigations
Fair Housing and Equal Opportunity
Department of Housing and
Urban Development
451 7th Street, S.W.
Room 5204
Washington, D.C. 20410.

I hope this information is useful in resolving your concerns.

Sincerely,

John L. Wodatch
Chief
Disability Rights Section

Enclosures

01-04290

(FORM) HARDSHIP CASES

(HANDWRITTEN FORM) (ILLEGIBLE)

01-04291

JUN 29, 1996
JUN 25, 1996

Dear Mr. XX

This letter responds to your letter to President Clinton about the state of Hawaii's quarantine of guide dogs and other animals entering the state. We apologize for the delay in responding to you.

The Americans with Disabilities Act of 1990 ("ADA") authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist your constituent in understanding the ADA's requirements. However, it does not constitute a legal interpretation and it is not binding on the Department.

The Department of Justice is aware of the quarantine imposed by the state of Hawaii on all carnivores entering the state, and agrees with you that the quarantine violates the ADA. As the article enclosed with your letter points out, the quarantine has been challenged in federal court in Hawaii. The district court in Hawaii ruled that the ADA did not apply to the quarantine, and that even if it did apply, the state had complied with the ADA by "modifying" the quarantine by allowing a person with a disability to stay in a cottage at the quarantine station.

The parties challenging the quarantine appealed the decision to the United States Court of Appeals for the Ninth Circuit (the Circuit court that has appellate jurisdiction for cases decided

by federal district courts in Hawaii). The Department of Justice filed a friend of the court brief with the Ninth Circuit, supporting the position of the individuals challenging the quarantine, and urging the appellate court to reverse the decision of the lower court. The United States argued in its brief that the ADA did apply to the quarantine, and that modifications were needed, and could be made, to allow individuals with disabilities who use guide dogs to travel freely to and from Hawaii.

cc: Records; Chrono; Wodatch; Magagna; Contois; McDowney; FOIA
udd\contois\XX

The Ninth Circuit ruled that the ADA does apply to the quarantine, and held that Hawaii's quarantine requirement "discriminates against visually-impaired individuals by denying them meaningful access to state services, programs and activities by reason of their disability in violation of the ADA." The Ninth Circuit refused to rule, however, on whether the modifications proposed by the plaintiffs (a system of rabies vaccinations and antibody tests, accompanied by identifying microchips) were the kind of reasonable modification required by the ADA. It has sent the case back to the district court in Hawaii for further factual inquiries on this issue. The Department of Justice will continue to monitor the case, and may again participate in the case, in an effort to compel Hawaii to comply with the requirements of the ADA.

I hope this information addresses the concerns expressed in your letter to the President.

Sincerely,

John L. Wodatch
Chief
Disability Rights Section
Civil Rights Division

01-04293

XX
February 23, 1996///

The Honorable William Clinton
President of the United States
The White House
1600 Pennsylvania Ave.
Washington, DC

Dear Mr. President:
I am writing you a letter concerning a matter of freedom in the United States of America that concerns one hundred thousand guide dog users who are also voters. We must be able to travel the entire United States of America if the Americans with Disabilities Act is to be worth the paper that it was writen on.
I am a totally blinded veteran who tried to vacation in the beautiful state of Hawaii which has been called paradise. I am an owner of a guide dog by the name of Bubba. We arrived in Hawaii on Labor Day 1994. While disembarking from the aircraft and while everyone was being greeted with flower leis I was met by an officer of the state agricultural department who then informed me that my guide dog was to be confiscated and to follow him to a van that was to take me to a warehouse where my guide dog was to be taken.

I thought that the Americans with Disabilities Act was there to protect my guide dog as a prosthetic for my individual freedom and independence which I value as much as life itself. I found that even with proper vaccination records and documentation this was not sufficient. They made veiled threats against the life of my guide dog if I did not comply with the unjust rules of the state. So after about two hours of a passive sit-in in front of the cage where they held him, and after they told me that they were going to dump me off of the airport grounds without a white cane, I decided to go with them to the animal quarantine station. I was held in deplorable conditions. I was forced to stay in a little cottage with an eight foot fence around it. It was padlocked and there was the overwhelming smell of the 1700 animals waste that I would spend the next twenty days inhaling with the Trade Winds. I still hear them barking to this day.

I found that many of the rules that govern the station were not adhered to, and they were given to me in print form and they were not read to me at all. There were no communication devices available nor were there any pull cords, fire alarms or extinguishers.

I was told that I should not have come to Hawaii alone, that most disabled people come with a sighted guide. I quickly informed the director of the quarantine station that this is what my guide dog was for. Then I was told that I would have to pay a
01-04294

registration fee of twenty dollars, five dollars a day for one hundred and twenty days or for the length of my stay and ten dollars for an health certificate. After adding this and multiplying this figure by 1700 it came to be about $3,213,000 annually.

/The quarantine station also sold flee powder and different vaccinations. I found out that the University of Kansas perfected a test that can detect the rabies strain within forty eight hours, but they refuse to use it because of the lost monies. I believe that an individual's freedom is worth more than that. At least that's why I joined the Marine Corps. It is in that great tradition that I feel I must be one of the first to fight for the rights and freedom of all disabled persons that use animal prosthetics. Now I am blind and can not enjoy my fiftieth state like any other citizen. Maybe disabled people are really third class citizens after all. Is the state of Hawaii above the rest of the United States and free not to follow the rules of the Americans with Disabilities Act?

I also found out that circus animals do not have to go through this quarantine, allegedly because those animals are with there trainers. But I am with my guide dog more than any one is ever with a lion,elephant or any other circus animal. I also found out that I can travel to Puerto Rico, Mexico, the Bahamas, Canada, and a few other countries without having to put my guide dog in any quarantine or having to notify them of my arrival thirty days ahead of time. This really bothers me because we are the United States of America. I guess all that I am asking is that you, Mr. President, check out the practice and legality of the state of Hawaii's treatment of disabled people who choose to use animal prosthetics and force Hawaii to comply with federal law because disabled persons may what to explore Diamond Head or run on the beautiful beaches of the island without the hassle of a one hundred and twenty day delay. As you know, no one can vacation that length of time. Please read the article accompanying this letter. I eagerly await your reply. Thank you very much, Mr. President.

Sincerely,

XX

P.S. Four more Years!

01-04295

JUL 12, 1996

The Honorable Russell D. Feingold
United States Senate
502 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Feingold:

This is in response to your recent letter on behalf of one of your constituents, who would like to know whether the Americans with Disabilities Act of 1990 (ADA) requires hotels and motels to supply closed captioning on all televisions. We apologize for the delay in our response.

Title III of the ADA covers places of public accommodation,

including hotels and motels. Section 36.303(e) of the Department's regulation implementing title III (enclosed) states that "Places of lodging that provide televisions in five or more guest rooms... shall provide, upon request, a means for decoding captions for use by an individual with impaired hearing." Therefore, while not every television is required to have closed captioning, a hotel must be prepared to supply closed caption decoders on request.

The Television Decoder Circuitry Act requires manufacturers to include closed captioning capability in all new televisions 13 inches and larger. Therefore, as old televisions in hotels are replaced with new ones, the requirement for decoders will be automatically met.

I hope this information will be of assistance to you in responding to your constituent.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

Enclosure

cc: Records Chrono Wodatch Hill McDowney FOIA Berger
N:\UDD\BERGER\CONGRESS\FEINGOLD\secy.johnson

01-04296

RUSSELL D. FEINGOLD
ILLEGIBLE
502 HART SENATE OFFICE BUILDING
WASHINGTON, DC 20510
(202) 224-5323
(202) 224-1280 (TDD)

United States Senate
WASHINGTON, DC 20510-4904

STATE OFFICES:
8383 GREENWAY BOULEVARD
MIDDLETON, WI 53562
(608) 828-1200
(608) 823-1215 (TDD)

517 E. WISCONSIN AVENUE
ROOM 408
MILWAUKEE, WI 53202
(414) 276-7282

COMMITTEE ON THE JUDICIARY
317 FIRST STREET

ROOM 107
COMMITTEE ON FOREIGN RELATIONS WAUSAU, WI 54403
SPECIAL COMMITTEE ON AGING (715) 848-5660
DEMOCRATIC POLICY COMMITTEE 425 STATE STREET
ROOM 225
LA CROSSE, WI 54801
(608) 782-5585

May 6, 1996

Mr. Andrew Fois
Assistant Attorney General, Office of Legislative Affairs
Department of Justice
Tenth St and Constitution Ave NW
Washington, DC 20530

Dear Mr. Fois,

One of my constituents has asked me if the Americans With Disabilities Act requires hotels and motels to supply closed captioning for the hearing impaired on all televisions.

I would appreciate it if you would forward any information you may have concerning this matter to the attention of Deanna Busalacchi in my Washington office so that I may forward that information to my constituent.

Thank you for your assistance.

Sincerely,

Russell D. Feingold
United States Senator
202-16-0

01-04297

JUL 12, 1996

The Honorable Ernest F. Hollings
United States Senate
125 Russell Office Building
Washington, D.C. 20510-4002

Dear Senator Hollings:

This letter responds to your inquiry on behalf of your constituent, Mr. XX , concerning coverage of a 401k plan under the Americans with Disabilities Act of 1990 (ADA). We apologize for the delay in our response.

Mr. XX letter indicates that he has a hearing impairment that prevents him from telephonically making changes to his 401k account. He further indicates that the company managing the account does not respond to his written requests for account changes.

If Mr. XX 401k account is a fringe benefit of his employment, it may be covered under title I of the ADA. Title I prohibits employers from discriminating on the basis of disability in employment matters, including fringe benefits and insurance. Title I requires employers to make reasonable accommodations to ensure that employees with disabilities have equal opportunities to participate in fringe benefit programs with non-disabled employees. A reasonable accommodation in the situation Mr. XX describes might involve altering account access procedures to allow written changes rather than telephonic ones for an individual with a hearing impairment.

Mr. XX employer may not escape its obligation to provide reasonable accommodation by contracting with another entity, such as CIGNA, to provide or manage its fringe benefits. The employer must ensure that the necessary reasonable accommodations are provided, either by the contractor or by the employer itself.

cc: Records Chrono Wodatch Hill McDowney FOIA Berger
N:\UDD\HILLE\POLICYLT\HOLLINGS.XX \secy. johnson

01-04298

To pursue a complaint under title I of the ADA, Mr. XX may write to: Mr. Godfrey Dudley, Director, Field Management

Programs-East, Equal Employment Opportunity Commission, 1801 L Street, N.W., Washington, D.C. 20507

I hope this information will be helpful to you when responding to your constituent.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

01-04299

XX
XX
XX
N. CHARLESTON, SC
XX

SEN. ERNEST F. HOLLINGS
SR-125
WASHINGTON, DC
20510-4002

SIR:

I HAVE COME ACROSS A PROBLEM THAT I THINK WOULD BE OF INTEREST TO YOU. IT CONCERNS MY 401K PLAN MY EMPLOYER HAS CONTRACTED IT TO CONNECTICUT GENERAL LIFE INSURANCE COMPANY KNOWN AS C I G N A. MY EMPLOYER'S MAIN RESPONSIBILITY IS TO MAKE THE REQUIRED SALARY DEFERRAL CONTRIBUTIONS AS INDICATED BY ME.

CIGNA HOLDS THE FUNDS IN THE VARIOUS ACCOUNTS THAT I HAVE CHOSEN FROM THEIR PROSPECTUS. THE PROSPECTUS STATES THAT I CAN MAKE CHANGES AS THE MARKET FLUCTUATES BY THE USE OF THEIR 800 PHONE NUMBER.

NOW THIS IS WHERE THE PROBLEM STARTS, I'AM HARD OF HEARING. SOMETIMES I CAN HEAR AND SOMETIMES I CAN'T. SEVERAL TIMES I TRIED TO USE THE PHONE BUT I JUST COULD NOT HEAR WELL ENOUGH. SO I WROTE A LETTER TO C I G N A EXPLAINING MY PROBLEM TO THEM, TWO LETTERS AND AS OF THIS DAY I HAVE NOT GOTTEN AN ANSWER.

I KNOW THERE WAS A DISABILITY LAW THAT WAS PASS, I BELIVED SOMETIME IN 1994.
IF C I G N A IS NOT ANSWERING TO A CLIENTS PROBLEM, ARE THEY BREAKING THE LAW? IF NOT I FEEL THE DISABILITY LAW COULD USE SOME REVISIONS.

SINCERELY YOURS
XX

JUL 12, 1996

The Honorable Lynn Woolsey
Member, U.S. House of Representatives
1101 College Avenue
Suite 200
Santa Rosa, California 95404

Dear Congresswoman Woolsey:

This is in response to your inquiry on behalf of your constituent, Mr. XX who seeks information about the applicability of the Americans with Disabilities Act (ADA) to a mobile home park. I apologize for the delay in responding.

Title III of the ADA prohibits discrimination on the basis of disability by places of public accommodation and commercial facilities. Strictly residential facilities do not fall within the statutory definitions of places of public accommodation and commercial facilities. Accordingly, the individual dwelling units in residential communities (such as mobilehomes in mobilehome parks) are not covered by title III of the ADA. Common areas (such as recreational facilities) in such communities are also not covered where use is restricted exclusively to residents and their guests. However, if a residential community opens up common areas to general use by non-residents, it may lose its strictly residential character. Areas open to the public will probably be covered by the ADA if common area activities or facilities fall within one of the twelve categories of places of public accommodation in title III. For example, rental offices that are open to the public would be considered rental establishments or service establishments under title III. Meeting rooms, if not restricted to tenants and their guests, would be places of public gathering covered by the ADA. Parking, entrances, access routes, and restrooms serving the areas covered by the ADA would also be covered. If certain facilities are made available to the public only for certain events, they will be covered by the ADA only for those events that are open to people other than tenants and their guests.

Mobile home parks may also be covered by the Fair Housing Act, 42 U.S.C. SS 3600-3620. That Act prohibits discrimination

on the basis of disability in the sale or rental of dwellings.

cc: Records, Chrono, Wodatch, McDowney, Milton, FOIA
n:\udd\milton\congress\mobilehm.woo\sc. young-parran

01-04301

For more information about the Fair Housing Act, your constituent may contact the Information Clearinghouse for Fair Housing at (800) 343-3442 (voice), or (800) 483-2209 (TTY).

I hope this information will be useful to you in responding to your constituent.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

01-04302

Congress of the United States
House of Representatives
Washington, DC 20515-0506

December 22, 1995

To: Department of Justice
Faith Burton, Assistant Attorney General
Office of Legislative Affairs
Room 1603
U.S. Department of Justice
Washington, DC 20530

Re: XX

On November 9, 1995, I sent an inquiry to your office regarding the above named constituent. Enclosed is additional information concerning this matter. Please review your files and advise me on the current status of the inquiry.

I would appreciate a written reply, as soon as possible, to the attention of Jim Chaaban of my Sonoma County office.

If you have any questions, Jim can be reached at 707-542-7182.

Thank you for your assistance.

Sincerely,

Lynn Woolsey

Member of Congress

01-04303

November 24, 1995
XX
XX California XX

Lynn Woolsey
Member of Congress
439 Cannon Bldg
Washington, D.C. 20515

Dear Congresswoman Woolsey:
While attending your meeting with Veterans, that was postponed once, on October 4, 1995 at the Petaluma Veterans Memorial Building in Petaluma, California, the subject matter of enforcement of The Americans With Disabilities Act within mobilehome Parks were addressed. Your Field Representative, Jim Chaaban stated to me he would look- up the previous records and contact me. Your letter dated November 8, 1995, which was received on November 17, 1995 addressed a very, very limited reply that I'm totally dissatisfied with.
This problem was addressed, to you to resolve, not assignment of "PROJECTS" for me to work off for resolution!!!
ITEM 1: Mr. Grable was indeed contacted at the number provided (707 528-9941) on many occasions, it took a call to your Santa Rosa Office to complain he did not bother to return my calls for his office to respond. When they did, a female that could not speek nor understand English well contacted me three and a half (3 1/2) weeks after to tell me in exceptionally broken words they could not help me.
ITEM 2: Golden State Mobilehome Owners League were contacted even prior to my contacting your office for assistance. They mentioned it was a Federal Law and could not assist me. A Mr. Coleman C. Persily sent you a copy of my letter dated April 4, 1995 (see Encl) requesting a copy of the law, to date, nothing has been received.
This problem was addressed to you Congresswoman Woolsey, not for you to think up someone else to address the problem to. In short, there is an error in the Federal Law, you are my Representative in Congress, and its your sworn job for you/or your office to correct, not my job to bounce from one recommendation your staff can think up to "Get out of WORK".
ITEM 3: Senator Mike Thompson were also contacted, he also sent you, under cover letter a copy of my complaint. To date, no reply.

WHAT THE HELL IS GOING ON CONGRESSWOMAN WOOLSEY???????????????????? I deserve an answer, If your Jim Chaaban were ever in my platoon, he would be reduced to the lowest grade, and kicked out of the Corps for not doing his job.
My original letter were dispatched to your office (see Encl 2)February 18, 1995 and no positive reply to date, other than you most recent (see Encl 3) November
8, 1995 assignment of work-projects. If you want Veterans support, this is a piss poor way.

Sincerely,
XX
01-04304

U.S. Department of Justice

Civil Rights Division

Disability Rights Section
P.O. Box 66738
Washington, DC 20035-6738

XX
XX
Glen Burnie, Maryland XX

Dear Mr. XX

Senator Barbara Mikulski has forwarded your complaint regarding the Delaware River and Bay Authority, which operates the Cape May - Lewes Ferry, to this office for response. Your letter indicates that the Cape May - Lewes Ferry encourages reservations, requires such reservations to be made during business hours, and requires reservations to be made at least 24 hours in advance. Your letter contends that the reservation system should provide extended reservation hours for people with disabilities and should accept short-notice reservations from people with disabilities.

The Americans with Disabilities Act (ADA) prohibits discrimination on the basis of disability by State and local governments and places of public accommodation. It requires covered entities to reasonably modify their policies, practices, or procedures when such modifications are necessary to avoid discrimination on the basis of disability.

Your letter does not indicate that the Cape May - Lewes Ferry's reservation policies distinguish between people with disabilities and people without disabilities or that the policies affect people with disabilities differently from people without disabilities. Rather, the hours and policies apply identically to both. Because the reservation system does not appear to discriminate on the basis of disability in violation of the ADA, we will take no further action in this matter.

For your future reference, complaints of disability-related discrimination against fixed-route transportation systems, such as the Cape May - Lewes Ferry, are investigated by the U.S. Department of Transportation. Such complaints may be submitted directly to that department at the following address:

Departmental Office of Civil Rights
Office of the Secretary
Department of Transportation
400 7th Street, S.W.
Room 10215
Washington, D.C. 20590

Telephone: (202) 366-4648.

I hope this information is helpful to you.

Sincerely,

John L. Wodatch
Chief
Disability Rights Section

cc: Senator Barbara Mikulski

01-04306

XX
Glen Burnie, MD XX

The Honorable Barbara A. Mikulski
United States Senate
World Trade Center, Suite 253
Baltimore, MD 21202-3041

Dear Senator Mikulski:

I wrote the Cape May-Lewes Ferry on March 5, 1996 with a complaint that their Reservation System failed to take into consideration the needs of the Handicapped; and I proposed a very easy and inexpensive way to eliminate the problem (copy enclosed).

The reply I received from the Delaware River and Bay Authority (a bi-State Agency of Delaware and New Jersey) dated March 18, 1996 in no way directly responded to my complaint (copy enclosed).

Under the Constitution, Rivers and Navigable Waterways are under Federal jurisdiction usually by the Army Corps of Engineers or the U. S. Coast Guard. Bi-State compacts such as the Delaware River and Bay Authority need the approval of Congress; and the Ferry is obviously engaged in Interstate Commerce, also a Constitutional matter.

I would very much appreciate it if you would direct my complaint to the proper Federal Agency that would handle this bi-State matter under the American with Disabilities Act (ADA) of 1990 [42 U.S.C. 12101 et seq.].

Sincerely
XX

01-04307

THE DELAWARE RIVER AND BAY AUTHORITY
Post Office Box 827
DELAWARE MEMORIAL BRIDGE Cape May, New Jersey 08204 CAPE MAY-LEWES FERRY
609-889-7200
Fax: 609-886-1021

CAPE MAY FERRY TERMINAL

March 18, 1996

XX
XX
Glen Burnie, MD XX

Reference (a) Your letter dated March 5, 1996

Dear Mr. XX

Thank you for your recent letter concerning our reservation system policy and the specific needs of disabled customers. The Cape May - Lewes Ferry system encourages feedback from our patrons and it is such input from concerned customers like yourself that has helped us improve in recent years.

This is the second year of a very intricate reservation system and we are making progress each season. As to your specific observations, although our reservation line has limited hours during the slower winter season, they are open and available to take reservations on weekends from early May to mid-October, with expanded daily hours of 7:00 a.m. - 8:00 p.m. during most of our busy summer season, May through September. Same day reservations are not available at this time.

Although I cannot be specific with dates, the Ferry is proceeding with

plans for new terminal facilities and refurbished vessels, all which will better address the needs of the disabled traveler. Once again, thank you for your comments and suggestions. We will examine possible solutions and look forward to serving you even better in the future.

Sincerely,

Larry Sharp
Director of Marketing
Cape May Lewes Ferry

01-04308

5 March 1996
XX
Glen Burnie, MD XX

Cape May - Lewes Ferry
P. O. Box 517
Lewes, DE 19958

Gentlemen:

Last month, I tried to make Ferry reservations, but I wasn't able to do so.

Your brochure (1996 Winter Schedule, January 2 - April 3, 1996) says in part:

> "Reservations are encouraged. Call 1-800-717-SAIL (7245) to guarantee your space. Reserve at least 24 hours in advance. Processing fee: $5. No same-day reservations accepted".
> ...
> "Reservation line hours - 8:30 am - 4:30 pm (Mon-Fri)".

This means that after 4:30 pm on a Friday, I can't get reservations for that Saturday, Sunday or Monday. The earliest reservation I can get is for Tuesday (if I call on Monday). I am handicapped/disabled and your reservation requirements are unacceptable for my needs. Being disabled means that I have physical limitations as to when and how and with whom I can travel; and your extremely severe reservation requirements do not take my needs into account.

The Americans with Disabilities Act (ADA) of 1990 (42 U.S.C. 12101 et seq.) requires that business, industry, state and local government and quasi-governmental units accommodate individuals with disabilities to the fullest extent possible.

Since you have a reservation system already set up, I am asking that you make only a slight modification to it for your disabled customers. Have your telephone announcement add something to the effect that if the caller is disabled, then reservations will be accepted for the same-day, and on Saturday and Sunday also. You already have employees who can cover this small additional duty.

To make sure that the non-disabled do not impose on you, you could require that the Handicapped auto license plate or window ID card number be given at the time of reservation. On arrival, verify the Handicapped license or ID number; and if a non-disabled person is abusing the system, he could be given a ticket as if he parked in a reserved Handicapped parking space.

01-04309

Please let me know as soon as possible when you will implement this or a better reservation system for the disabled.

Sincerely,
XX

01-04310

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General Washington, D.C. 20035

JUL 25 1996

The Honorable Lee H. Hamilton
U.S. House of Representatives
2314 Rayburn Building
Washington, D.C. 20515-1409

Dear Congressman Hamilton:

This letter is in response to your inquiry on behalf of your constituent, Mr. William C. Keeney, regarding his complaint against the State of Kentucky under the Americans with Disabilities Act of 1990 (ADA). Mr. Keeney alleges that the Kentucky Health Reform Act violates the ADA by providing that

out-of-state residents whose group health insurance policies are issued to Kentucky employers are subject to the same rules and limitations as Kentucky residents, including the lack of insurance coverage for high-dose chemotherapy and bone marrow transplant for cancer patients. We apologize for the delay in responding.

Generally, because of the nature of the insurance business, consideration of disability in the sale of insurance contracts does not necessarily constitute "discrimination." An insurer or other public accommodation may underwrite, classify, or administer risks that are based on or not inconsistent with State law, provided that such practices are not used to evade the purposes of the ADA.

However, the question of disability-based distinctions in employer-provided health insurance involves a complex and changing area of the law. In some cases, denying coverage for a given procedure to treat a given illness may violate the ADA where the procedure is covered for the treatment of other illnesses. See Henderson v. Bodine Aluminum, Inc., 70 F.3d 958 (8th Cir. 1995). We have enclosed the Equal Employment Opportunity Commission's latest guidance on the application of the ADA to disability-based distinctions in insurance. I hope this information is helpful to you in responding to your constituent.

Sincerely,
Deval L. Patrick
Assistant Attorney General
Civil Rights Division

01-04311

Congress of the United States
House of Representatives
Washington, DC 20515-1409

May 19, 1996

Office of Congressional Relations
Department of Justice
Tenth and Constitution
Washington, D.C. 20530

To whom it may concern:

One of my constituents recently contacted me with his concerns about health insurance regulations in Kentucky, and his belief that they violate the Americans with Disabilities Act. A

copy of his correspondence is enclosed.

If you will advise me of your action in this matter, I will appreciate it.

Thank you for your consideration.

Sincerely yours,

LEE H. HAMILTON, M.C.

01-04312

WILLIAM C. KEENEY
ATTORNEY AT LAW
599 Catalpa Drive
Sellersburg, Indiana 47172
Telephone
812-246-2875

March 13, 1996

Representative Lee H. Hamilton
1201 East 10th Street
Jeffersonville, Indiana 47130

Representative Hamilton:

Enclosed are copies of correspondence and information I recently supplied to the U.S. Attorney's Office in Louisville. As you can see from the enclosures, the Kentucky Health Reform Act has created a terrible and in my opinion, illegal, situation for the citizens of Kentucky relative to the treatment of certain cancers by means of high-dose chemotherapy with bone marrow transplant. I bring this to your attention because of the impact this law has on many of your constituents in Southern Indiana.

The Kentucky Department of Insurance has advised that those out-of-state residents working in Kentucky whose group health insurance policy is issued to a Kentucky employer are subject to the same rules and limitations as a Kentucky resident. Simply put, because they work in Kentucky many Indiana residents do not have health insurance coverage that could be quite literally life saving. This is especially true for the treatment of breast cancer.

Not only is this morally reprehensible, I firmly believe it violates the Americans With Disabilities Act. I have requested that the Department of Justice investigate based on the ADA. As you can understand, time is of the essence. Any efforts on your part to encourage Justice to expedite would be greatly appreciated.

Mr. Hamilton, treatment by high-dose chemotherapy with bone marrow transplant has moved beyond the experimental stage. I myself was given approximately three-to-four weeks to live last May suffering from non-Hodgkin's lymphoma. I had the high-dose and bone marrow transplant and am in full remission today. Recent studies confirm its particular value in the treatment of breast cancer. This truly is a life and death situation that few, particularly Indiana residents, are aware of.

I look forward to hearing from you.

Sincerely,

William C. Keeney

01-04313

United States Attorney's Office
510 West Broadway- 10th Floor
Louisville, Ky. 40202
Attn: Ms. Regina Edwards via HAND DELIVERY

Re: Complaint Based on the
Americans With Disabilities Act

Ms. Edwards:

The Commonwealth of Kentucky, through the Kentucky Health Policy Board, ("Board"), is illegally discriminating by disparate treatment against persons suffering from certain cancers by denying those person as a matter of law insurance coverage for treatment of the cancer by bone marrow transplant.

The Board is an agency of the Commonwealth established pursuant to the Kentucky Health Reform Act, commonly referred to as H.B. 250. As part of its charge, KRS 304.17A-160 mandates the Board define the standard health benefits plans that will be permitted to be issued within the Commonwealth. Accordingly, all providers of health care insurance issued within the Commonwealth are required to issue uniform policies.

The uniform language mandated by the Board specifically excludes coverage for bone marrow transplants for certain cancers, including breast, while mandating coverage for other cancers such as lymphomas. The excluded procedures are not alleged within the policy to be experimental or investigatory but are specific exclusions. Section 501(c) of the ADA does not apply as the prohibition is not based on underwriting or classification of risks.

Title II of the ADA specifies that an individual with a disability may not be discriminated against by state government. Cancer is a chronic disease and is a covered disability. As an indication of the extent of this discrimination, I offer the following which I believe to be accurate but not always verified.

1. Kentucky is the only state in the union that mandates a prohibition on treatment by bone marrow transplant for certain cancers.
2. All federal employees, including those in Kentucky, are covered for treatment by bone marrow transplant for breast cancer, by federal mandate.
3. Medicaid recipients are covered because of the federal relationship.
4. At least one local insurer, Humana, is prohibited from covering certain bone marrow treatments for Kentucky residents but will cover persons insured from out-of state who are treated at the University Hospital, Louisville.

My client suffers from breast cancer and is a candidate for treatment by bone marrow transplant. She has been denied coverage for this procedure based on the standard policy language promulgated by the Board. I know of others in similar circumstance.

Ms. Edwards, this is truly a life and death problem, not only for my client but also for many other residents of the Commonwealth. Bone marrow transplants have been proven to be very effective, especially so in the treatment of breast cancer. There is now legislation pending, House Bill 504, that mandates coverage for the treatment of breast cancer. Its passage this term is questionable and, if passed, its retro-active effect is more questionable. The intervention of the Department of Justice is warranted and needed.

Please confirm you have received this inquiry. I have enclosed copies of certain pertinent information for your ready review. Time is of the essence. Any efforts to expedite would be greatly appreciated.

Sincerely,

William C. Keeney

01-04315

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General Washington, D.C. 20035

JUL 26 1996

Mr. John D. Del Colle
Associate Executive Director
Eastern Paralyzed Veterans Association
75-20 Astoria Boulevard
Jackson Heights, New York 11370-1177

Dear Mr. Del Colle:

The Attorney General has asked me to respond to your letter to her. You question the decisions that the New York City Department of Buildings has made regarding accessibility of buildings to people with disabilities.

Your letter indicates that the Department of Buildings has limited the scope of the "minor alterations" exception to the City's building permit requirements and has prohibited use of combined ramp/stair configurations.

As your letter correctly notes, title III of the Americans with Disabilities Act (ADA) requires places of public accommodation in existing buildings to remove barriers to access when it is readily achievable to do so. Providing a ramp at an entrance step is a common method of achieving such barrier removal.

The Department of Justice is committed to ensuring full implementation of the ADA. The ADA is intended to balance the needs of people with disabilities with the reasonable needs of businesses. Therefore, the ADA requirements are flexible and implementation relies on voluntary compliance and innovative solutions to accessibility problems. In keeping with this intent, the Department seeks to expand the range of safe, cost-effective, and usable accessibility options available to businesses.

The ADA allows ramps and stairs to share a landing, as long as additional space is provided beyond the minimum landing and

maneuvering clearance requirements. See ADA Standards SS 4.8.7 and 4.13.6. This additional space is necessary to prevent wheelchairs from rolling off the ramp landing onto a step. The New York City approach prohibits stair/ramp combinations even when this additional space is provided. There does not appear to be any significant safety reason for this strict prohibition.

01-04316

Although the New York City approach to ramp/stair combinations does not violate the ADA, it imposes more rigorous requirements than the ADA does and significantly limits the range of accessibility options available to small business enterprises. As your letter notes, the New York City requirements make compliance more difficult for small business owners, limit the accessibility options available, and may discourage voluntary compliance.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

01-04317

June 25, 1996

The Honorable Janet Reno
Attorney General
U.S. Department of Justice
Constitution Ave. & 10th St., NW
Washington, DC 20530

Dear Attorney General Reno:

I am writing to alert you and to request your assistance to help persons with disabilities access small businesses in New York City.

Due to a change in the interpretation of the New York City Building Code, it has become more costly and more difficult for small business owners to comply with Title III of the Americans with Disabilities Act. In the recent past, New York City had adopted a progressive policy allowing small businesses to remove one-step barriers without a building permit. This streamlined the process by considerably reducing the cost and time consumption of barrier removal.

The current interpretation (Technical Policy and Procedure Notice #1/95 enclosed) narrows the scope of work to be done without a permit, limits the types of material used in construction, and prohibits the use of a shared ramp/step configuration that is used safely throughout the nation. The result is an increased burden on business owners when they undertake the process of barrier removal. As you know, the law requires businesses to remove barriers only when it is readily achievable to do so. EPVA feels strongly that this interpretation adds significantly to business' burden, decreasing the likelihood of barrier removal, and therefor substantially reduces the opportunity for persons with disabilities to access businesses.

The most significant change is the New York City Department of Buildings refusal to recognize a shared ramp/step configuration. The Department of Justice, the Architectural Transportation and Barriers Compliance Board, and the American National Standards Institute (ANSI) all support the ramp/step configuration which New York City's Department of Buildings has now deemed to be unsafe, with no architectural data to support the claim.

The bottom line is that New York City, the largest city in the country, has now made it more difficult and expensive for small business owners to comply with the ADA. The ADA calls for the removal of barriers where it is readily achievable. By requiring the costly procedure of obtaining a permit, and requiring a more elaborate ramp design, the Department of Buildings has made barrier removal readily unachievable, allowing small business owners to sidestep the ADA.

01-04318

I would be grateful if your department could investigate this problem, and at the very least, advise the New York City Department of Buildings that the ramp/step configuration is a safe, affordable design and must be utilized as a design alternative in New York City.

Thank you for your attention to this matter. I look forward to learning of the action your department will be taking to correct this problem which appears to be unique to New York City.

Sincerely,

JOHN D. DEL COLLE
Associate Executive Director
Government Relations

JDD/ic

01-04319

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General Washington, D.C. 20035

JUL 26 1996

The Honorable Paul David Wellstone
United States Senator
2550 University Avenue W. #100N
St. Paul, Minnesota 55114

Dear Senator Wellstone:

This is in response to your letter on behalf of your constituent, XX According to your letter, Mr. XX claims that his son, XX has been unable to gain admission to law school because, due to a disability, XX is unable to achieve a high enough score on the Law School Admissions Test ("LSAT"). You ask what obligations educational institutions have to make accommodations in their admissions process for students with disabilities.

Title III of the Americans with Disabilities Act ("ADA") requires private entities that offer tests such as the LSAT to offer them in a "place and manner accessible to persons with disabilities," so that "the examination results accurately reflect [an individual with a disability's] aptitude or achievement level or whatever other factor the examination purports to measure." See 42 U.S.C. S 12189; 28 C.F.R. S 36.309(a) and (b)(1)(i). This obligation includes a duty to make reasonable modifications to the way in which an examination is administered, which may include "changes in the length of time permitted for completion of the examination or adaptation of the manner in which the examination is given.: 28 C.F.R. S 36.309(b)(2). XX may request that the entity administering the LSAT make appropriate modifications to ensure that the test will accurately assess his ability.

Law schools that are part of a State university system have an obligation under title-II of the ADA to make "reasonable modifications" to their policies, practices, and procedures, where "necessary to avoid discrimination on the basis of disability." See 42 U.S.C. S 12132; 28 C.F.R. S 35.130(b)(7). Private law schools have a similar obligation under title III of the ADA. See 42 U.S.C. S 12182(b)(2)(A)(ii); 28 C.F.R. S 36.302(a). This obligation does not require an institution to

01-04320

lower its admission or performance standards. Neither title II nor title III requires modifications that would "fundamentally alter" the nature of a covered entity's programs. See 28 C.F.R. S 35.15(b)(7); 42 U.S.C. S 12182(b)(2)(A)(ii); 28 C.F.R. S 36.302(a). Therefore, unless there is evidence that a tester has failed to administer a test in a manner that complies with the ADA, the ADA does not require law schools to discontinue the use of standardized tests in the admissions process.

We hope this information is helpful in responding to your constituent.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

01-04321

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General Washington, D.C. 20035

AUG 1 1996

The Honorable Bennie Thompson
U.S. House of Representatives
1408 Longworth House Office Building
Washington, D.C. 20515-2402

Dear Congressman Thompson:

This letter responds to your inquiry on behalf of the Mississippi State Board of Medical Licensure ("Mississippi Board") regarding the Americans with Disabilities Act, 42 U.S.C. SS 12101-12213 ("ADA"). Your inquiry attached a letter from the Mississippi Board expressing concern about the impact of the ADA upon the Board's ability to protect citizens from medical providers who are not fit to practice medicine due to chemical dependency. Please excuse our delay in responding.

According to the Mississippi Board, prior to the implementation of the ADA, the Board had regulations in place designed to ensure that applicants and licensees were sober and fit to practice medicine. The Board's letter states that these regulations required applicants and licensees to verify sobriety, either through a monitoring program or urine screens, and show that a relapse had not occurred and that the applicant or

licensee had been drug-free for a minimum of two years. It is not possible for us to comment upon the legality of the specific regulations to which the Board refers in its letter, as we have not had an opportunity to review these regulations.

In its letter, the Board states that the ADA "has negated this Board's regulations designed to specifically protect its citizens from licensees who are suffering from chemical dependency and has erased this Board's ability to enforce this regulation." The letter also maintains that the ADA "will allow physicians who have problems to become more mobile and move from state to state with little or no interference from state regulatory boards."

01-04322

The Mississippi Board's concern is based on an apparent misunderstanding of the ADA's requirements. The ADA prohibits State licensing boards from administering licensing programs in a manner that discriminates on the basis of disability. However, the ADA does not preclude State licensing boards from determining whether applicants or current licensees are engaging in illegal drug use or whether they are otherwise fit to practice medicine. Nor does the ADA prohibit sharing of information among State regulatory boards about licensee malfeasance or unfitness to practice.

In enacting the ADA, Congress chose specifically to exempt from civil rights protection drug addicts who are currently engaged in the illegal use of drugs. Therefore, the Mississippi board may ask an applicant or licensee if he or she engages in illegal drug use.

Congress did not exclude alcohol dependency from coverage under the ADA. Therefore, individuals who are dependent on alcohol may not be excluded simply on the basis of their status as alcoholics. They may, however, be held to the same standards of conduct that other participants must meet, including those standards prohibiting drinking or drunkenness.

In order to encourage individuals with chemical dependencies to pursue rehabilitation and recovery, Congress chose to provide ADA protection to individuals with a history of drug dependency who have successfully completed a drug rehabilitation program, who are currently participating in such a program, or who, through their own efforts, are no longer engaging in the illegal use of drugs. Therefore, a licensing board may not categorically exclude applicants or licensees on the basis of their former drug dependency.

However, the ADA does not prevent a licensing entity from determining that an applicant or licensee is unfit to practice medicine based on a record of misconduct, even if that misconduct was due to alcohol or drug addiction. Licensing authorities can legitimately take into account an applicant's or licensee's employment history, military and school record, credit history, criminal record, financial and legal problems, record of disciplinary actions, suspensions or terminations from school or jobs, and so forth. The Board may inquire generally about any leaves of absence or terminations from employment in the past; whether there is anything that would currently impair the applicant's or licensee's ability to carry out the duties and responsibilities of a physician; and past suspensions or

revocations of hospital privileges, malpractice suits, or patient complaints, among other things.
01-04323

Whether a licensing board's questions regarding an applicant's or licensee's history of alcohol or drug abuse is permissible under the ADA will depend on whether the questions are necessary to the objective of licensing only those candidates capable of practicing the profession at issue in a competent and ethical manner. Such questions must be focused on actual, current impairments of candidates' abilities or functions, and must be narrowly tailored to determine the current fitness to practice the profession. Enclosed is a list of questions proposed by boards that license attorneys that the Department has concluded do not, on their face, violate the ADA.

In its letter, the Mississippi Board maintains that unfit physicians will be free to move from State to State because the ADA precludes the States from obtaining or sharing information about an applicant's or licensee's history of chemical dependency. As noted above, nothing in the ADA prohibits the Board from asking applicants or licensees about past conduct or behavior that may evidence an incapacity to practice medicine. Such conduct or behavior, whether it results from mental illness, substance dependency, or other factors, constitutes a legitimate area of inquiry under the ADA. Nor does the ADA preclude the sharing of this legitimately obtained information with other jurisdictions.

I hope this is helpful to you in responding to the Mississippi Board.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

Enclosure

01-04324

Congress of the United States
House of Representatives
Washington, DC 20515-2402

November 15, 1995

Ms. M. Faith Burton
Congressional Liaison Officer
U.S. Dept. of Justice
Room 1603
Washington, D.C. 20530

Dear Ms. Burton:

This request for an inquiry and guidance is made on behalf of the Mississippi State Board of Medical Licensure.

Specifically, I have received correspondence from members of the Board of Medical Licensure relating their concerns about the Americans with Disabilities Act (ADA) and their inability to effectively protect citizens from medical providers that have been, or continue to be, involved with drugs or alcohol (See letter attached). Board members contend the Americans with Disabilities Act has negated the regulations they established and implemented to protect its citizens from physician licensees who are suffering from chemical dependency. Board members further contend the ADA "has reopened the door which, as interpreted, will allow physicians who have problems to become more mobile and move from state to state with little or no interference from state regulatory boards".

I am respectfully requesting your office conduct an inquiry and respond to my office regarding the legitimacy of the Board's concerns as it relates to their ongoing efforts to protect the public from chemical dependent practictioners. Whatever guidance you are able to provide to my office and the Board regarding this matter would be appreciated.

Sincerely,

Bennie G. Thompson
Member of Congress

BGT/rb

Attachment(s): As stated
01-04325

MISSISSIPPI
STATE BOARD OF MEDICAL LICENSURE
P. Doyle Bradshaw
2688-D Insurance Center Drive Executive Officer
Jackson Mississippi 39216
Telephone: (601)
354-6645

September 21, 1995

The Honorable Bennie Thompson
House of Representatives
1408 Longworth, House Office Building
Washington, DC 20515

RE: Americans with Disabilities Act
Interpretation Problems

Dear Representative Thompson:

The Mississippi State Board of Medical Licensure, a state agency, is responsible for licensing and regulating physicians (M.D.s and D.O.s) and podiatrists (D.P.M.s) in the State of Mississippi.

As a part of the overall function of protecting the public from licensees who are impaired or have been impaired to the extent that their professional competency is affected, this Board assesses and reviews the background of all applicants for licensure in the State of Mississippi. It is not uncommon for applicants seeking licensure to practice medicine on the citizens of the State of Mississippi to have been involved with drugs or alcohol to the extent that they are diagnosed with chemical dependency.

Prior to the Implementation of the Americans with Disabilities Act, the Mississippi State Board of Medical Licensure had regulations in place designed to ensure the sobriety of these practitioners prior to their licensure in this state and, once licensed, to monitor the practitioner to ensure that citizens were not subjected to possible harm from these practitioners. The regulation required an applicant to show and be able to verify sobriety, either through a monitoring program or urine screens, that a relapse had not occurred and that applicant had been drug free for a minimum of two years (24 months).

In effect, the Americans with Disabilities Act as is being interpreted, has negated this Board's regulations designed to specifically protect its citizens from licensees who are suffering from chemical dependency and has erased this Board's ability to enforce this regulation. We, the physicians who make up the Mississippi State Board of Medical Licensure, are very concerned that the Americans with Disabilities Act will seriously curtail this Board's ability to protect the citizens of this state from practitioners seeking licensure who have problems with chemical dependency.

In the past, the various medical boards, which comprise the physician regulatory authorities at the state level, have been severely criticized for not being willing to discipline and regulate licensees and allow them to travel from state to state as a result of problems in their practice. In order to address this, boards have become more vigorous in their regulatory and investigative efforts.

The Federal Government initiated the National Practitioners Data Bank for the reporting of disciplinary actions by various boards in order to manage physicians who are performing in an untoward manner.

Now, the Americans with Disabilities Act has reopened the door which, as interpreted, will allow physicians who have problems to become more mobile and move from state to state with little or no interference from state regulatory boards. In fact, an impaired physician under the current Americans with Disabilities Act can make a career of practicing medicine by running from state to state without any interference from a state medical board.

This Board requests immediate steps to correct the intent of this legislation by a review of the legislation with appropriate changes in place to allow State Boards of Medical Licensure to continue assessing the competency, qualifications, sobriety and ability of applicants who apply for licensure without being required to comply with Federal Mandates which do not protect the public.

We solicit your careful review of the problems which will affect the citizens of this state, and all other states, if state medical boards are prohibited from having in place regulations designed to specifically prevent that which is now allowed with the Americans with Disabilities Act.

Your interpretation of the above and your assistance in making appropriate changes if the intent of the Act is as outlined above will be appreciated.

As officers and members of the Mississippi State Board of Medical Licensure, we
sincerely solicit your prompt review and response to this request.

Sincerely,

MISSISSIPPI STATE BOARD OF MEDICAL LICENSURE

T. Steve Parvin, M.D., President John L. Pendergrass, M.D., Vice President

Richard F. Riley, M.D., Secretary Freda M. Bush, M.D., Member

Edwin G. Egger, M.D., Member Benton M. Hilbun, M.D., Member

Joseph E. Johnston, M.D., Member Richard L. Peden, D.O., Member

Walter H. Rose, M.D., Member

MSBML:jh

cc: Federation of State Medical Boards

01-04328

AUG 16 1996

The Honorable Harry Johnston
Member, U.S. House of Representatives
1501 Corporate Drive
Suite 250
Boynton Beach, Florida 33426

Dear Congressman Johnston:

This is in response to document number DF, an inquiry on behalf of your constituent, Mr. XX . Mr. XX inquired about provisions for visually impaired patrons in several theaters for performing arts.

Title II of the Americans with Disabilities Act of 1990 (ADA) requires a State or local government program or service, such as a public theater, to ensure that its communications with individuals with disabilities are as effective as communications with others.

Similarly, title III of the ADA requires a public accommodation, such as a theater that is privately owned and operated, to provide auxiliary aids and services necessary to ensure equal access to the services that it offers. Those auxiliary aids and services must ensure effective communication with persons with disabilities.

Both title II and title III require covered entities to ensure effective communication with the participants in their programs or services, unless doing so would cause a fundamental alteration of the program or service or would result in an undue burden.

In addition, both title II and title III require covered entities to reasonably modify their policies, practices, or procedures when such modifications are necessary to afford their services to people with disabilities. Such reasonable

cc: Records Chrono Wodatch Hill McDowney Conway FOIA
N:\UDD\BERGER\CONGRESS\JOHNSTON\secy.johnson

modifications are required unless they would fundamentally alter the nature of the services offered.

Enclosed, please find the Department of Justice regulations implementing title II and title III. I hope this information will be of assistance to you in responding to Mr. XX

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

Enclosures

01-04330

XX

june 24, 1996

Hon. Harry Johnston
1501 Corporate Drive
Suite 250
Boynton Beach, Fl. 33426

Dear Congressman Johnston,

I am a resident of Broward Country and am visually impaired. I have attempted many times to buy tickets at the Broward County Center for the Performing Arts and at the Parker Playhouse, but am informed each time that no provisions are made for visually handicapped people; all seats are sold on a first come first served basis, with special consideration for season ticket holders.

I believe that this is a direct violation of the federal law Americans with Disabilities Acr, which mandates that special consideration be given to citizens with disabilities.

I would appreciate it if you would please advise me what action you can take to remedy this unfair situation.

Yours very truly,

XX

01-04331

T. 8-20-96

AUG 29 1996

The Honorable Patty Murray
United States Senator
2988 Jackson Federal Building
915 Second Avenue
Seattle, Washington 98174

Dear Senator Murray:

This is in response to your inquiry on behalf of your constituent, Mr. XX , who requests information regarding the Americans with Disabilities Act of 1990 (ADA). Please excuse the delay in responding.

Specifically, Mr. XX requests a listing of disabilities covered by the ADA and other similar civil rights laws. However, the ADA does not provide an exhaustive list of disabilities. Rather, the regulation implementing title III of the ADA defines a disability as "a physical or mental impairment that substantially limits one or more of the major life activities ...; a record of such an impairment; or being regarded as having such an impairment." 28 C.F.R S 36.104. For your convenience, I have enclosed a copy of that regulation.

With regard to States and their programs, States are not required to grant special status to people with disabilities. However, if a State chooses to do so via a particular program or service, it is not required to use definitions or criteria established by Federal civil rights laws.

If Mr. XX has any questions or needs additional information regarding the requirements of the ADA, he may contact the Department's ADA information line at 800-514-0301 (voice) or 800-514-0383 (TDD).

cc: Records, Chrono, Wodatch, Mercado, McDowney, FOIA
n:\udd\mercado\letters\congress\murray.elh

I hope this information is useful to you in responding to your constituent.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

Enclosure

01-04333

U.S. Department of Justice
Civil Rights Division
Office of the Assistant Attorney General Washington, D.C. 20530

SEP 5 1996

The Honorable Sam Farr
Member, United States House of
Representatives
701 Ocean Street
Santa Cruz, California 95060

Dear Congressman Farr:

This letter is in response to your inquiry on behalf of your constituent, Mr. XX , regarding automobile insurance and the Americans with Disabilities Act of 1990 (ADA). Mr. XX wishes to know whether auto insurance companies may charge him more for driving a golf cart than they would charge for a standard automobile if he drives the golf cart because of his disability. We apologize for the delay in responding.

The ADA prohibits unjustified discrimination in all types of insurance, including automobile insurance, provided by public accommodations. However, because of the nature of the insurance business, an insurer or other public accommodation may underwrite, classify, or administer risks that are based on, or not inconsistent with, State law, provided that such practices are not used to evade the purposes of the ADA.

With respect to the purchase of insurance, the ADA allows insurance companies to charge more for insurance, or to refuse to insure someone with a disability, only if the higher charges or refusal to provide coverage is based on sound actuarial data and principles, and not on speculation. Thus, while the ADA does provide some protection for individuals with disabilities in their dealings with insurance companies, it does not prohibit the use of legitimate actuarial considerations.

If an insurance company is simply charging all policy holders more for golf cart coverage without regard to disability, the question of whether this charge is legal would be determined

cc: Records, chrono, Wodatch, Magagna, Milton, McDowney,
FOIA:dhj T. 8/28/96 udd\Milton\Congress\insure.far

DJ 202-11-0

01-04334

under State insurance law and would not be an ADA issue. It would be an ADA issue, however, if the company charges more for coverage for a person with a disability who drives a golf cart than it does for others. In that case, the difference would have to be based on legitimate actuarial considerations.

I hope this information is useful to you in responding to your constituent.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

01-04335

MEMO
Monterey
July 26, 1996

lc

RE: XX
XX
XX
XX

ADA COMPLIANCE

Mr. XX would like to know if the Americans with Disabilities Act (ADA) contains provisions that governs the way car insurance companies conduct business with disabled individuals. He drives a golf cart instead of a car because it is easier for him to get in and out of the vehicle. Also, he suffers from extreme motion sickness, and the golf cart allows him to drive at a very slow speed.

Unfortunately, his insurance carrier (AAA of N. California) has informed him that his insurance will cost him $700 per year. If he drove a car, the insurance would only cost $300. Mr. XX believes that he should be allowed to pay the same rate as a car driver. He thinks that it is unfair to be required to pay a higher rate, since he is disabled.

He has been in touch with the State Insurance Commissioner. He has also contacted McPherson's office for assistance. They informed him that they will help him deal with that agency, and that our office can help him with ADA information.

202-11-0

01-04336

SEP 9 1996

The Honorable Tom Harkin
United States Senate
Washington, D.C. 20510-1502

Dear Senator Harkin:

I am responding to your letter on behalf of your constituent, XX , regarding accessibility of "web pages" on the Internet to people with visual disabilities.

The Americans with Disabilities Act (ADA) requires State and local governments and places of public accommodation to furnish appropriate auxiliary aids and services where necessary to ensure effective communication with individuals with disabilities, unless doing so would result in a fundamental alteration to the program or service or in an undue burden. 28 C.F.R. S 36.303; 28 C.F.R. S 35.160. Auxiliary aids include taped texts, Brailled materials, large print materials, and other methods of making visually delivered material available to people with visual impairments.

Covered entities under the ADA are required to provide effective communication, regardless of whether they generally communicate through print media, audio media, or computerized media such as the Internet. Covered entities that use the Internet for communications regarding their programs, goods, or services must be prepared to offer those communications through accessible means as well.

Mr. XX suggests compatibility with the Lynx browser as a means of assuring accessibility of the Internet. Lynx is, however, only one of many available options. Other examples include providing the web page information in text format, rather than exclusively in graphic format. Such text is accessible to screen reading devices used by people with visual impairments. Instead of providing full accessibility through the Internet directly, covered entities may also offer other alternate accessible formats, such as Braille, large print, and/or audio materials, to communicate the information contained in web pages to people with visual impairments. The availability of such materials should be noted in a text (i.e., screen-readable) format on the web page, along with instructions for obtaining the

materials, so that people with disabilities using the Internet will know how to obtain the accessible formats.

cc: Records, Chrono, Wodatch, McDowney, Hill, FOIA
n:\udd\hille\policylt\harkinxx.ltr\sc. young-parran

01-04337

The Internet is an excellent source of information and, of course, people with disabilities should have access to it as effectively as people without disabilities. A number of web sites provide information about accessibility of web pages, including information about new developments and guidelines for development of accessible web pages. Examples include:

http: //www.gsa.gov/coca/wwwcode.htm
Center for Information Technology Accommodation
General Services Administration

http: //www.trace.wisc.edu/text/guidelns
Trace Center, University of Wisconsin

http: //www.webable.com/index.html

http: //www.psc-cfp.gc.ca/dmd/access/welcom1.htm

These sites may be useful to you or your constituent in exploring the accessibility options on the Internet. In addition, the Department of Justice has established an ADA home page to educate people about their rights and responsibilities under the ADA and about the Department's efforts to implement the ADA. The address of the ADA home page is http://www.us-doj.gov/crt/ada/adahom1.htm.

I hope this information is helpful to you in responding to your constituent.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

01-04338

Deval Patrick
Assistant Attorney General
Civil Rights Division
10th Street and Constitution Avenue NW
Washington, DC 20530

Dear Assistant Attorney General Patrick:

I have recently been contacted by one of my constituents who has a concern over the administration's policy on making Web pages compatible for the disabled. I respectfully ask you to review the administration's policy on this issue and send me a clarification so that I might be able to respond to my constituent's questions. It would be helpful if you could mark your correspondence with my office to the attention of Laura Stuber.

Thank you in advance for your assistance on this matter.

Sincerely,

Tom Harkin
United States Senator

TH/les

01-04339

Mime-Version: 1.0
To: tom_harkin@harkin:senate.gov
Subject: ADA and web pages
Content-Type: text/plain; charset=us-ascii
Content-Transfer-Encoding: 7bit

Dear Senator Harkin,

I'm a web designer based I Iowa City, and also a lawyer. I contribute a regular column to the Web Consultant's Association on-line newsletter. My topics usually lean toward the small designer, but recently a question of a different sort arose that interested me.

One of the great concerns of web designers today is providing web page compatability for "web interpretters" for the blind and other handicapped peoples. These systems require web pages to be Lynx compatible, which means that the use of almost "essential" elements such as imagemaps and tables render the pages inaccessible to such people.

Web designers, on the whole, would *like* to provide text-only alternatives to commercial web sites, but our clients are, by and large, not willing to pay anything extra for that service. An average estimate

01-04340

ILLEGIBLE that it would raise the costs of each site, and continued ILLEGIBLE, by about 35 to 40%.

ILLEGIBLE, someone recently noted that if one were to read the ADA very strictly, it could be argued that a web page (especially in the case of a government organization or public service agency) is a "public accommodation", and hence could be required by law (under the ADA) to be Lynx compatible. I think this is probably stretching the law a bit beyond it's intent--especially since the ADA was passed before the web became the popular tool that it is today. It does raise some interesting points, though.

I posed the question to the list as a whole, and most designers (there are 8000 on the list) seemed to think that this was just the type of thing that might encourage people to "do the right thing" when they purchased site design. On the other hand, others pointed out that (beyond the initial cost concerns) government agencies would still mail materials to anyone who called, so they offered a viable alternative. My initial response was that, especially in the case of the blind, if they aren't offering *braille* printed materials, the web converters are, in fact, the *only* service the agency provides that can be accessed by the blind in a manner "equal" to that provided to others. This, of course, only spurred more interest.

Needless to say, no firm conclusions were reached. I'm sure there's probably an activist-oriented organization out there that has thought about this type of legal challenge, but as far as I know none are currently before the courts.

I did offer to drop you a note, though, and see if maybe:

A. There is currently any discussion in Congress surrounding the issue of equal access to the WWW for the handicapped, and, if so, whether that is in fact linked to the general themes established by the ADA.

B. If not, would you be willing (or interested in) to provide a few words of input on the subject (if nothing else by way of support to help "encourage" those who are doing their best to forward this issue, and maybe to prod those that aren't thinking about it into at least recognizing the importance of the issue)?

In either case, I would be more than happy to forward any material you thought appropriate to the WCA mailing list (and, if you were interested in being associated with that issue, to other appropriate lists as well) in the interest of at least providing some insight from the sponsor of the ADA itself.

Sorry for the rather quick and dirty note--work calls. I hope my haste hastened weakened the message.

Also, I'm not sure how your list of potential consultants on web/Internet issues looks, but I'd be more than offer to volunteer what services I could. By way of background, I have my BA in Communications from the UI, as well as a J.D. and an LL.M. I'm currently the webmaster at ACT in Iowa City, and President of my own web firm on the side. I spent the last three years in Washington running a small non-profit, and have some lobbying experience as well (as a clerk for the Chesapeake Bay Foundation). I'd be more than happy to provide any feedback/comments or any other services I could contribute in the effort to generate some decent net legislation. (And if you're really interested in such an offer, I do have a 15 minute fix to make the CDA not only workable, but constitutional ;)).

01-04341

appreciate your taking the time to wade through this and, of course, ILLEGIBLE you the best of luck in the coming election.

Sincerely,
XX

Webmaster - American College Testing
President - Digital Alchemy
(Standard Disclaimers Apply.)

01-04342

SEP 17 1996

XX
XX
XX

Dear Ms. XX

Senator Herb Kohl has referred your correspondence regarding tornado warning signals for deaf people to the Department of Justice for response.

Title II of the Americans with Disabilities Act (ADA) prohibits discrimination on the basis of disability in State and local government programs. If tornado warnings are provided by State or local governments, then those systems are covered programs under title II of the ADA.

Title II requires State and local governments to ensure that their communications with program participants with disabilities are as effective as their communications with other participants, unless doing so would result in a fundamental alteration to the program or in undue financial and administrative burdens. Generally, to satisfy communication obligations, State or local governments must furnish appropriate auxiliary aids or services when necessary to ensure full participation of people with disabilities in public programs.

Your suggestion of a flashing light that is activated when a tornado siren is activated is one possible means of ensuring effective communication of tornado warnings to individuals with hearing impairments. Other options may also be available. The ADA does not dictate use of any particular method of complying with title II's effective communication requirement, as long as the method chosen ensures effective communication with persons with disabilities.

cc: Records, Chrono, Wodatch, McDowney, Hill, FOIA
n:\udd\hille\policylt\kohl.ltr\sc. young-parran

01-04343

I have enclosed a copy of the Department of Justice's regulation implementing title II for your information. For further information regarding the ADA, you may contact the Department's ADA information line at (800) 514-0301 (voice) or (800) 514-0383 (TDD). Members of the Disability Rights Section staff are available to answer questions on the information line on Monday, Tuesday, Wednesday, and Friday from 10:00 a.m. to 6:00 p.m., Eastern time. On Thursday, the information line is staffed from 1:00 p.m. to 6:00 p.m.

I hope this information is helpful to you.

Sincerely,

John L. Wodatch
Chief
Disability Rights Section

Enclosure

cc: Senator Herb Kohl

01-04344

(HANDWRITTEN)

7/23/96

Dear Senator,

I'm deaf, my name
is XX I understand
about tornado siren for hearing
people and impaired hearing who
wear hearing aid, but some deaf
people don't have hearing aid.
some deaf people don't watch T.V.
but deaf people can watch T.V. for
sign ET. I don't feel aware of the
weather. When special notice don't
have closed-captioned (live). I'm concern
about deaf people need protect to
themself. I went to Delavan to visited
my girlfriend's apt. She have tornado
siren flashing light. She love it.
I would like to have one. what do
you think about tornado siren
flashing light for only deaf people?
what to do about it?

Thank you

XX

01-04345

U.S. Department of Justice
Civil Rights Division
Disability Rights Section
P.O. Box 66738
Washington, DC 20035-6738
OCT 31 1996

Ms. Patricia Ryan
Executive Director
Maine Human Rights Commission
State House Station 51
Augusta, Maine 04333-0051

Dear Ms. Ryan:

I am responding to your letter of July 21, 1995, submitting the Maine Human Rights Act, as amended ("law"), for review and possible certification under title III of the Americans with Disabilities Act ("ADA").

I apologize for the delay in responding to your request and I thank you for your patience. In an effort to carry out our responsibilities under the ADA and to provide helpful information to you, we have undertaken a detailed and comprehensive review of the materials submitted.

Our review of the submitted materials indicates that the Maine law's construction requirements are very nearly equivalent to the construction and alterations requirements of title III of the ADA. You and your team have done an excellent job adapting the ADA requirements to the Maine enforcement system. However, a number of issues need further clarification. We, therefore, request clarification before we make a preliminary determination regarding whether the Maine law meets or exceeds the requirements of the ADA.

Our analysis of the material you submitted is discussed in detail in the attached side-by-side comparison of the Maine law with the ADA title III regulations (including the ADA Standards for Accessible Design (Standards)). The side-by-side comparison identifies those elements that do not appear to meet the requirements of the ADA. Sections of the ADA Standards for which we could find no equivalent Maine law provision are designated "not equivalent" ("NE"). Other sections are identified as

"possibly not equivalent" ("PNE"), indicating that further clarification is needed regarding the Maine law's intent and meaning.

N:\UKK\HILLE\MAINE\TAZ.LTR
Records Chrono Wodatch Blizard Hill Cert File FO1A

It is important to note that, although the Maine law covers both public and private facilities, ADA certification applies only to title III (i.e., privately owned) facilities. Our analysis does not address the Maine law's application to publicly owned facilities. In addition, certification applies only to new construction and alterations requirements. Therefore, our analysis does not address the Maine law's requirements regarding existing buildings or businesses' policies and practices.

As we have previously noted, no transcript of hearings was included in your submission, as called for by the title III regulation, 28 C.F.R. S 36.603(c)(3). The reason for this omission is unclear.

While the side-by-side comparison should provide a comprehensive picture of the areas of concern, I would like to highlight some of the areas about which we are concerned.

1. Definitions

The Maine law uses the term "primary function" in its alterations provision without including a definition. A definition is needed.

2. Structural impracticability (28 C.F.R. S 36.401(c)(3))

The Maine law does not specify that when it is structurally impracticable to make a facility accessible for people with one type of disability, it must, nevertheless, be made accessible for people with other types of disabilities, to the extent it is not structurally impracticable.

3. Elevator Exception (4.1.2(5) Exception 1)

The Maine law is unclear regarding whether it includes ADA Standard 4.1.3(5) Exception 1 or whether it relies only on Maine law S 4594-F3C. The two are substantially similar in most respects. However, Maine law S 4595-F3C does not specify that

non-elevator buildings must comply with all other accessibility requirements, even on upper floors.

01-04347

4. Path of Travel (4.1.6(2))

The Maine law addresses requirements separately for alterations costing more than $100,000 and alterations costing $100,000 or less. Maine's path of travel requirement for large (>$100,000) alterations is largely equivalent. However, for smaller alterations, the Maine law requires provision of accessible path of travel elements when the cost is not "disproportionate." Because the Maine law does not specify that disproportion only applies if path of travel costs exceed 20% of alterations costs, Maine's provision is potentially not equivalent.

In addition, the Maine law requirement for smaller alterations fails to address priority of accessible path of travel elements in the event of disproportionate cost.

For large alterations, the Maine law prohibits evasion of path of travel requirements by performing a series of small alterations. However, the Maine law does not address this issue for smaller alterations. Furthermore, for both large and small alterations, the Maine law does not specify inclusion of alterations undertaken in previous years as part of the total alterations cost in figuring disproportion.

5. Historic Buildings (4.1.7)

It is unclear whether the Maine law adopts the Uniform Federal Accessibility Standards ("UFAS") requirements for alterations to historic buildings, or the ADA Standards, or both. Based on Maine law S 4594-F5, our analysis has assumed the Maine law uses UFAS. The Maine law does not address the ADA requirements for buildings not covered by section 106 of the National Historic Preservation Act, or for consultation with interested persons.

The UFAS requirements used by Maine law do not require a notification system to be provided when the accessible entrance is not the entrance used by the general public. The ADA Standards (S 4.1.7(3) (b)) require such a system.

6. Toilet Rooms (4.22.4)

The Maine law does not specifically address the ADA requirement that a 36-inch wide toilet stall be provided in addition to the accessible stall whenever 6 or more toilet stalls are provided. Because Maine law includes a specific provision

for toilet stalls, it is unclear whether it also adopts the ADA requirement for stalls.

I believe a meeting on these issues will be very useful. I appreciate your willingness to set aside time on November 4 to meet with Eve Hill. You may also contact Ms. Hill at (202) 307-0663 with any questions you may have about our analysis.

Sincerely,

John L. Wodatch
Chief
Disability Rights Section

Enclosure

cc: U.S. Architectural and Transportation
Barriers Compliance Board

NOV 7 1996

The Honorable Bob Stump
U.S. House of Representatives
Washington, D.C. 20515-0303

Dear Congressman Stump:

I am responding to your letter on behalf of your constituent, XX , regarding coverage of the Americans with Disabilities Act (ADA).

Mr. XX asks whether recreational facilities in a residential complex are required to be accessible to people with disabilities under the ADA if use of the facilities is restricted to residents and their guests.

The ADA does not cover strictly residential facilities. However, the Fair Housing Act may cover such facilities and may require them to be accessible to people with disabilities. The Department of Housing and Urban Development's regulation implementing the Fair Housing Act is available from the Fair Housing Information Clearinghouse at (800) 343-3442 (voice), (800) 483-2209 (TDD).

I hope this information is useful to you in responding to your constituent.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

cc: Records, Chrono, Wodatch, McDowney, Talian, FOIA
n:\udd\hille\policylt\stump.ltr\sc. young-parran

XX
XX
August 16, 1996
XX

Dept., of Justice
Washington, D.C/

Gentlemen:

Re: Americans with Disabilities Act.-- private facilities

It is my understanding that facilities that are not open to the public are exempt from ADA architectural requirements. I reside in Sun City West, AZ which is a planned retirement community. Included in the community is over 60 million dollars of recreation facilities owned by a resident controlled non profit corporation. All residents pay annual dues to this corporation and are voting members of the corporation. Only residents and to a limited degree their
guests may use these facilities. Monitors are employed at each facility to insured that the use of the facility is limited to that as here-in stated. Question-- Are these facilities exempt from the architectural access requirements of ADA?

Very truly your,

XX

bc: Recreation Center, Inc.

01-04351

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General Washington, D.C. 20530

NOV 22 1996

The Honorable Nancy L. Johnson
Member, United States House of
Representatives
480 Myrtle Street, Suite 200
New Britain, Connecticut 06053

Dear Congresswoman Johnson:

This letter is in response to your inquiry on behalf of your constituent, Mr. XX who was denied a waiver under local zoning ordinances to allow retail sales of firearms from his residence. Please excuse our delay in responding.

Title II of the Americans with Disabilities Act (ADA) prohibits discrimination on the basis of disability by State and local government agencies. Section 35.130 (b)(7) of the Department's regulation implementing title II (enclosed) provides that "[A] public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity."

A waiver of a zoning ordinance to allow an individual with a disability to operate a business from a residence may be "reasonable" if, for example, other similar waivers have been granted. However, the ADA does not necessarily require a waiver to operate a business from a residence simply because an individual has a disability. Such a waiver may "fundamentally alter" the community's interests to ensure a separation between commercial and residential areas.

cc: Records, chrono, Wodatch, Nichol, McDowney, FOIA,

01-04352

At this time, there is insufficient information to determine whether the Plainville Zoning Board violated title II of the ADA. We have opened an investigation in this case, and Mr. XX will be receiving correspondence from this office in the near future.

We hope this information is helpful to you in responding to your constituent.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

Enclosure

01-04353

October 8, 1996

Department of Justice
Attorney General
Main Justice Building, Room 1603
Pennsylvania & Constitution Avenues
Washington, D.C. 20530

Dear Sir:

I am writing on behalf of XX , who has contacted my office with regard to Title II of the American with Disabilities Act.

I have enclosed a Title II Discrimination Complaint Form which Mr. XX has asked me to forward to you. Please do not hesitate to contact my caseworker, Mark Cistulli, at 480 Myrtle Street, Suite 200, New Britain, CT 06053, or by phone at (860) 223-8412 should you need any additional information or have any additional questions or concerns. Thank you for your attention to this matter.

Very truly yours,

Nancy L. Johnson
Member of Congress

NLJ:mdc

Enclosure

01-04354

XX
September 18, 1996

Congresswoman Nancy Johnson
480 Myrtle Street
New Britain, Ct. 06053
Att'n.: Mark Cistulli

Re: Conversation of 9/18/96 inre imminent loss of Federal Firearms license due to actions of Plainville Zoning Board.

Dear Mark,

As the date of the enclosed letter will indicate, I have sent it so that if the Herald does not print it, you may be able to influence them to do so. As I have often indicated, although I am a registered Deomocrat, I support those political representatives that show a genuine concern as representing the entire country and not just their district. It is for this same reason that I am presently writing to you, as I know that if your office cannot be of assistance, you will at least direct me as to what possible recourse I may have.

My present problem is that my request for variance in the Town of Plainville, ZBA application # 08-96-35, to allow for retail sales of Pistols and Revolvers at retail in an R-11 zone was recently denied. Thus, although I presently possess a Federal Firearms License, issued by Alcohol, Tobacco and Firearms, a State License to sell pistols and revolvers, a Town license to sell pistols and revolvers at retail, all of which are valid until the year 2000, with the exception of the Federal License which I may lose, I recently received a letter stating that after fourteen years of being licensed in Plainville, I am in violation of Zoning laws and had to apply for a "Variance". The Town of Plainville has known of these sales as they issued the license and a form has to be filed with them every time a weapon is sold, which is seldom, as I operate very discreetly, and my own neighbors did not know of my situation until the Town advertised the purpose of my variance hearing in the paper. I have many dictionaries and they define a "Variance" as the act of varying from the norm. In this case, sales from an R-11 zone (Residential) after fourteen years of trouble free and very discreet operation. My request for said variance was based on a hardship, which in my case is a total disability and severe handicap, preventing me from operating a full time commercial business where I would to overcome high overhead, etc. It was for this reason that Chief of Police, Daniel Coppinger and former Chief, Frank Roche took measures to assure that a license was issued to me. I have to be available during the daytime hours

to allow ATF access for inspection of records, and by operating from my home, I am able to occupy myself by doing repairs to guns, selective sales, etc. and still be available for ATF inspections, while at the same time allowing me to be available for my visiting nurses, as well as therapy and rest in between appointments. My operation has never caused a traffic problem, either vehicular or pedestrian for the fourteen years I have already been operating from this location. The only reason given for the denial of my application, although the ZBA did praise the manner in which I conducted my business and stressed that if no problems have ever been incurred in the past, there is no reason to believe they will exist in the future, was the fact that I am in an R-11 zone. I stressed that I realized this and this was why I requested a variance, citing hardship as the reason for said request. I do not make a living, or even a marginal profit from the operation I conduct, but it does keep me from vegetating as numerous Doctors, including the Mayo clinic have determined that my condition prohibits my ever being gainfully employed again. Having just turned 54 yrs. old, that leaves somewhat of a bleak future, let alone the effect it has on the morale of a person trying to live with and overcome severe disabilities and lead somewhat of a semblance of a reasonable life style with a reason to wake up in the morning. Although I have been confined to a wheelchair by several doctors, my present life style has so far helped me to avert this drastic measure, although I am limited to walking short distances with a walker and/or crutches. Although I have the right to appeal the decision of the ZBA to Court, I am presently not in a financial position to incur the expenses involved in so doing, especially since the operation I conduct is not what could be called profitable operation or one that is operated for monetary gain, and I was hopeful that possibly through the many Federal Acts to assist the handicap and disabled, there might be a possible avenue of seeking assistance for relief of my dilemna through such an act as the ZBA never considered or discussed the hardship and handicap aspect of my request for variance, but merely cited what the zoning regulations read in black and white, yet they did grant variances for fences beyond property line limits as hardships, for partially built garages that had constructed without a permit and outside the property line limits so the homeowner would not have to demolish the partial construction, although they did state that had he applied for a permit, he would have been aware of the regulations and could have properly applied for whatever variances he needed. The manner in which the board operated led me to believe that they acted in a discriminatory manner as their primary fear seemed to be that about twelve persons possess a Federal Firearms License in Plainville and they feared setting a precedence.

I indicated that the purposes of a variance hearing was to act on each case based on its own merits and action on my request should have no different effect than allowing a garage or fence to be built outside property restrictions. This did not absolve anyone else from the required regulations and each person has to apply as an individual. Most of the presently licensed dealers in my situation are gainfully employed, (one is a police officer for the town, active) and to the best of my knowledge and research, none are handicapped or disabled. My immediate neighbors on both sides had no objection to my operation if I continued to conduct it in the same manner, and most of the people who showed up and objected live at the far end of the street in the immediate vicinity of a vacant retail premises, which if I was operating a profitable operation, I could lease and the sales in question would be right in their front and back yards. However, I prefer to operate discreetly, do not advertise, interview by appointment only and determine from by background as a retired Police Detective and long time president of the New Britain P.D. Police revolver club, having shot competitively. I also stressed that I have one of my children and two, sometimes three, of my grandchildren living in my home, so there was no way I would consider a slipshod operation. The Police Department also indicated that I have turned down potential customers that they referred to me as I felt that they either did have justification for the need of a weapon, did not know how to properly handle one safely, referring them for a training course before I would consider a sale to them and have rejected some outright as conversing with them indicated to me that they suffered mental disorders as a result of old age or other reasons.

It would appear that in todays society and with the pressure to place guns in only the proper, competent hands, coupled with the handicap and disability factor, the Town ould bein favor of an operation such as that which I conduct. Most of my business has been conducted with the City of New Britain, Town of Berlin, Town of Plainville and those individual police officers I felt comfortable selling weapons to, and as I have also turned down police officers who had drinking problems, etc., even though the law basically exempts law enforcement officers from the stringent regulations that govern the general public. I have been licensed for the sale of guns and sporting goods for over 23 years and have never encountered a problem with any weapon I sold, which can be verified with ATF who I have assisted in the past to take illegal guns off the street and stop legal persons from buying and selling to others that did not meet the requirements. This can be verified by Agent Richard Cocharro of the Hartford office of ATF. Alcohol, Tobacco and Firearms has indicated support for my operation and the manner in which

it is conducted and rather than revoke my license because of the ZBA ruling, have placed my renewal on hold pending the exhaustion of all remedial avenues. This action is being taken by Agent Ernest Giuliani of 25 Grandview Road in East Greenwich, R.I. 02818 - phone 401 528-4366, who is in charge of my Federal License renewal which has been approved for everything with the exception of the Zoning ruling in Plainville.
In summary, it would appear that I am seeking to determine if there is any manner of intervention that can be taken under handicap or other regulations as having to resort to court for an appeal would force me to forfeit my license because of the expense involved. Any help or information that you may be able to provide me with would be greatly appreciated to guide me in a direction whereby I could avoid court costs, etc. I am confident, that as in the past, Nancy Johnson and her staff will do everything in their power to assist in this dilemna, but I was not advised of time restrictions if any exist for appeal, so I am hopeful you can at least look into this matter as soon as possible.

Respectfully
XX
XX
XX

P.S. I look forward to one day meeting Ms Johnson in person
ILLEGIBLE

01-04357

T. 11-22-96

DEC 4 1996

The Honorable Tim Holden
Member, U.S. House of Representatives
Berks County Services Center
633 Court Street
Reading, Pennsylvania 19601

Dear Congressman Holden:

I am responding to your request for information on the Americans with Disabilities Act (ADA) on behalf of your constituent, Ms. Carolyn Jaffe.

Specifically, Ms. Jaffe requests information regarding the responsibility of a landlord and a tenant as it relates to the removal of barriers in an existing building. The regulation implementing title III of the ADA (enclosed) states that "[b]oth the landlord who owns the building that houses a place of public accommodation and the tenant who owns or operates the place of public accommodation are public accommodations subject to the requirements of this part." 28 C.F.R. S 36.201(b). However, the regulation does allow the parties to allocate their compliance responsibilities between them through means of a lease or contract.

The responsibilities of an entity subject to the title III regulation are two-fold. Both facilities housing places of public accommodation that are designed or constructed for first occupancy after January 26, 1993, and those that are altered or renovated after January 26, 1992, must comply with the ADA

Standards for Accessible Design. 28 C.F.R S 36.406. In addition, a public accommodation must "remove architectural barriers in existing facilities ... where such removal is readily achievable." 28 C.F.R. S 36.304. This provision requires that public accommodations in existing facilities that are not being altered must, nevertheless, remove barriers to access where that removal is able to be carried out without much difficulty or expense.

If Ms. Jaffe has any questions or needs additional information regarding the requirements of the ADA, she may contact the Department's ADA information line at 800-514-0301 (voice) or 800-514-0383 (TDD). Members of the Disability Rights

cc: Records, Chrono, Wodatch, Mercado, McDowney, FOIA
n:\udd\mercado\letters\congress\holden3.jlb

01-04358

Section staff are available to answer questions on the information line from 10:00 a.m. to 6:00 p.m., Eastern time, on Monday, Tuesday, Wednesday, and Friday. On Thursday, the information line is staffed from 1:00 p.m. to 6:00 p.m.

I hope that this information is helpful to you and your constituent.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

Enclosure

01-04359

HEALTH
and Wellness

Alternative Medical Center

Carolyn Jaffe, R.Ac., Dipl. NCCA
Judith M. Mellor, RN, R.Ht.

October 16, 1996

Congressman Tim Holden
633 Court Street
Reading, PA 19601

Dear Congressman Holden:

I am writing to request a determination regarding handicap accessibility for medical office buildings. I have been renting space at 309 Madison Avenue, where my medical practice is located and I would like to know who is responsible for supplying ramps, handrails, etc. My patients have complained about the difficulty of getting into and out of my office, and I am interested in finding out whether the responsibility for these measures falls upon the landlord or myself as the tenant.

I would like to thank you in advance for your expedient response to this request. Time is of the essence, since winter is approaching we would like to have this issue resolved so that our handicapped patients will be able to continue to receive medical treatment irregardless of weather conditions. Thank you again for your time and consideration of this request.

Sincerely,

Carolyn Jaffe, R.Ac., CMT

309 Madison Avenue Reading, PA 19605 (610) 929-0797

202-620

PAIN & ALLERGY ELIMINATION
ACUPUNCTURE * HERBOLOGY * KINESIOLOGY * IRIDOLOGY

01-04360

DEC 9 1996

XX
XX
XX

Dear Ms. XX :

I am responding to your letter regarding the accessibility of gas stations to people with disabilities. Your letter asks the Department of Justice to take action to compel companies that operate gas stations to provide a "full service" option for their customers. Please excuse our delay in responding.

The Department of Justice is responsible for enforcing title III of the Americans with Disabilities Act (ADA), which prohibits discrimination on the basis of disability by places of public accommodation, including gas stations. The ADA requires existing gas stations that are not otherwise being altered to remove architectural barriers to the extent that it is readily achievable to remove them. The Department of Justice regulation implementing title III requires such barrier removal to comply with the ADA Standards for Accessible Design (Standards) for each altered element if it is readily achievable.

If a self-service gas station determines that it is not readily achievable to redesign gas pumps to enable people with disabilities to use them, the gas station is not required to make physical modifications to the gas pumps. However, the gas station is required to provide its services to individuals with disabilities through any readily achievable method, such as providing refueling service upon request to an individual with a disability at self-service prices. A service station is not required to provide refueling service to individuals with disabilities at any time when it is operating exclusively on a remote control basis with a single cashier. Similarly, the ADA does not require a self-service gas station to initiate a full-service operation.

cc: Records, Chrono, Wodatch, Blizard, FOIA
n:\udd\blizard\drsltrs\gaspumps.ltr

Because no Federal civil rights law enforced by this Division prohibits the operation of gas stations on a self-service basis, we can take no further action in response to your request.

Sincerely,

John L. Wodatch
Disability Rights Section
Civil Rights Division

Enclosures

01-04362

(HANDWRITTEN)

ILLEGIBLE Sirs:

My plea is for a full
ILLEGIBLE pump at each station
ILLEGIBLE tho the law says
ILLEGIBLE handicapped person can
ILLEGIBLE service at a self serve
ILLEGIBLE me give you a horse
ILLEGIBLE.
But back to my plea
ILLEGIBLE are those with
ILLEGIBLE in their hands &
ILLEGIBLE hold a pump
ILLEGIBLE. There are some
ILLEGIBLE elderly enough
ILLEGIBLE to want to climb
ILLEGIBLE of the car to service
ILLEGIBLE car.
Also the oil & tires etc
ILLEGIBLE checking for us
ILLEGIBLE & one cannot
ILLEGIBLE a full service
ILLEGIBLE.
It frightens me to get
low on gas & cannot
find a full service
station.
I realize stop & go ILLEGIBLE
stores can't do that ILLEGIBLE
there are gas station
that need to. (Every gas
station)
I do appreciate the
stations that have the
service. Exxon & Chevron
& not all of them do
There are all kinds
activity in the ruling
group to help the
handicapped - why ILLEGIBLE
this problem not ILLEGIBLE
solved.

Sincerely

XX

XX

01-04363

DEC 13 1996

XX
XX
XX

Dear Mr. XX :

Your letter to President Clinton was forwarded to the Disability Rights Section, Civil Rights Division, Department of Justice. Your letter argues that your student loan lender should be required to grant a deferment of your loan payments because you have a disability.

The Disability Rights Section enforces title III of the Americans with Disabilities Act (ADA), which prohibits discrimination on the basis of disability by places of public accommodation, including banks. Covered entities must make reasonable modifications to their policies, practices, and procedures when necessary to avoid discrimination on the basis of disability. However, modifications are not required if they will fundamentally alter the nature of the service provided.

A lender must grant deferments to people with disabilities on the same basis as it grants them to people without disabilities. A lender may not use a person's disability as a basis for refusing a deferment that the person is otherwise qualified to receive. In addition, a lender may be required to make reasonable modifications to its deferment policies in order to ensure that people with disabilities have equal access to deferments. However, the ADA does not require a lender to grant deferments on the basis of disability. To require a lender to forego repayment of money loaned indefinitely would likely constitute a fundamental alteration of the lender's loan program.

If your student loan was guaranteed by the Federal government, you may wish to contact the U.S. Department of Education to determine the options available to you.

cc: Records, Chrono, Wodatch, McDowney, Hill, FOIA
n:\udd\hille\policylt\XX .ltr\sc. young-parran

I hope this information is useful to you.

Sincerely,

John L. Wodatch
Chief
Disability Rights Section

01-04365

From XX Wed Oct 2 12:09:15 1996
Date: Wed, 02 Oct 1996 12:08:24 -0400
Subject: White House Forum E-Mail
To: president@WhiteHouse.GOV
Message-id: XX

Field 1 = XX
XX
XX

Field 2 = Dear Mr. President.

During all our Nations concerns on crime and protection for the criminals rights, I would like to ask this question? What about the VICTOMS RIGHTS!! Two and a half years ago 5-28-94 to be exact, I became a victom of a violent crime. I was shot at point blank range by a 357 magnum pistol. the most shocking point is, I was shot in the HEAD. The bullet entered my lower left side of my neck under the jawbone. 1/4 in. from jugular traveled through the roof of my mouth, sinuses, and out my right temple. The bone from my mouth tore out my right eye. so now Im blind there. My point is that as far as I know I am one out of 60 million t ever survive such a magnitude of injury and still function okay mentally. the gun was a semi-automatic. Why am i telling you this you might ask, well so far I cant get anyone to listen to my story of survival and trials of pain. during the last 2 years I have been denied benefits jobs and government help. Why. I was denied help from a CA. agency called victims of violent crime due to i complained to my state legislator about there treatment of my case. I tryied to get in touch with this departments supervisor but to no avail. So I called my representative. case was put on hold for nine months then turned down because i didnt press charges. YEAH right against who was i supposed to do that to. THE officer lied and give a correct police report much less icant get a copy of my taped testimony from them that will show I was telling the truth. and that hes lying. This all started because the person handling my case wasnt doing her job. I notice that a lot lately, most state agency workers just dont want to take the time to investigate your needs so they brush you off for an easier case. I cant even get a lawyer to help due to there is no money involved for them. Federal law took away my job because im blind but when I applied for benifits under this law so I can go back to school and learn a new profession. Ihad to pay a lawyer to get the benifits I should of gotten anyway. Im studying environmental science now thanks to you and your federal courts that listened and gave me my chance to go back to school and be a productive citizen again. I believe you need to set up an agency to regulate companies that handle student loans for my old ones in default because of company greed... I applied for defferment of payments once when i got laid off a couple of years ago and no problem, butr when i applied for defferment due to disability I when through all kinds of hell and denied that right. I sent them certified copies faxes etc. and they never processed them. they defaulted my student loan as if i never applied for it. The biggest case i

Have is this and its so simple. if i never contaced them then why do they

01-04366

have my coreect address after i moved nuch less my reciepts of requests. I would like to speak out as a victom. please help..
even though i was shot with a gun i believe its not the laws of our nation that are correcting our problem. criminals will get them anyway no matter how many laws we pass, although to make assult weapons or semi auto pistols of 357 magnum range for5 sell to the public is rediculous..

sincerly thankyou XX

01-04367

DEC 13 1996

The Honorable Rick Lazio
U.S. House of Representatives
Washington, D.C. 20515-3202
Dear Congressman Lazio:

I am responding to your letter on behalf of your constituent, Mr. XX , regarding the requirements of the Americans with Disabilities Act (ADA) for sidewalks at new highway construction projects. Please excuse our delay in responding.

Generally, the ADA does not require installation of pedestrian walkways in new construction projects where no such walkways are planned. When public entities build new facilities or alter existing facilities, the Department of Justice's regulation implementing title II (enclosed) requires that the newly constructed or altered areas be made accessible to individuals with disabilities. The regulation specifically provides that new construction of or alterations to streets give rise to accessibility obligations for curb ramps. 28 C.F.R. S 35.151(e). Therefore, if a State or local government were constructing a new street or intersection or were altering an existing street or intersection, it would be required to provide accessible curb ramps or ramps where pedestrian walkways that are elevated or curbed intersect with the new or altered street or intersection. 28 C.F.R. S 35.151(e)(1). In addition, if the State or local government were building or altering a pedestrian walkway, it would be required to provide curb ramps or ramps as needed where the walkway intersects streets or intersections. 28 C.F.R. S 35.151(e)(2).

In addition to the requirements for new construction and alterations, title II of the ADA also requires public entities to ensure that existing programs, services, and activities are accessible to individuals with disabilities unless to do so would cause a fundamental alteration of the nature of the program,

service, or activity or would result in undue financial or administrative burdens. 28 C.F.R. S 35.150. If installation of a curb ramp or of a pedestrian walkway is necessary to ensure

cc: Records, Chrono, Wodatch, McDowney, Hill, FOIA
n:\udd\hille\policylt\lazio.tr\sc. young-parran

01-04368

that individuals with disabilities have access to a particular State or local program, such as a school, equivalent to the access available to non-disabled individuals, the public entity may, in some circumstances, be required to install a ramp or walkway where none existed previously.

Of course, the ADA does not prohibit State or local governments from exceeding the requirements of the ADA. Nor does it limit their discretion to provide new pedestrian walkways and ramps as they see fit to serve interests in addition to accessibility.

I hope this information is helpful to you in responding to your constituent.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

Enclosure

01-04369

Congress of the United States
House of Representatives
Washington, DC 20515-5202

October 22, 1996

Ms. Ellen Davis
Congressional Affairs
Department Of Justice
Room 1603
Constitution Avenue, N.W.
Washington, D.C. 20530

Dear Ms. Davis:

I am writing on behalf of Mr. XX of XX New York.

Mr. XX has been told that the Americans with Disabilities Act requires state's to install sidewalks in all new highway construction with potential pedestrian access (e.g. service roads to major highways). Mr. XX is concerned because many of these sidewalks destroy substantial areas of greenery along the roadway. I would greatly appreciate if you could see to it that this claim regarding the act is investigated.

If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,

Rick Lazio
Representative in Congress

RL:kt

01-04370

U.S. Department of Justice

Civil Rights Division
Disability Rights Section
P.O. Box 66738
Washington, DC 20035-6738

DEC 19 1996

DJ # XX

Mr. Michael McDonough, Director
Bureau of Support Services
Portland Public Safety
109 Middle Street
Portland, Maine 04101

Dear Mr. McDonough:

Thank you for your assistance and cooperation with my November 1, 1996, review of the Portland 9-1-1 system's compliance with title II of the Americans with Disabilities Act (ADA). You were very helpful. Thank you, also, for your letter of November 26, 1996, regarding the steps you have taken to improve the Portland 9-1-1 system's accessibility to individuals who use TDDs for telephone communication.

As we discussed during our meeting, title II of the ADA prohibits discrimination on the basis of disability in State and local government services, including 9-1-1 services. Section 35.162 of the enclosed regulation implementing title II requires that telephone emergency services provide direct TDD access.

My review raised several concerns about the accessibility of Portland's 9-1-1 services to people who use TDDs. Those concerns involved the need for additional TDD equipment, written standard operating procedures for handling TDD calls, training and testing for call-takers, and public outreach.

Your November 26, 1996, letter indicates that you have purchased two additional TDDs in order to ensure that each call-taker has easy access to a TDD. Your letter also indicates that you have purchased a video training series about TDD-accessible 9-1-1 services, that all personnel assigned to the communications

division are receiving that training, and that call-takers will be tested on the material.

udd:hille:me911new.ltr
cc:Records Chrono Wodatch Magagna Hill Mather Novich FOIA

01-04371

In light of the significant steps you have already taken to ensure TDD access to your system, only a few issues remain to be addressed and you have agreed to resolve these issues. First, you should ensure that backup TDD equipment is available for cases of equipment failure. You have indicated that your 9-1-1 system's standard operating procedures do not include procedures for answering TDD calls. Such procedures are important to ensure that TDD calls are handled appropriately and consistently. Such procedures must ensure that call-takers consider "silent" open lines as possible TDD calls and respond accordingly without requiring the TDD caller to hit additional keys, that call-takers understand the language conventions used in TDD calls, that call-takers understand how to call a TDD-caller back using a TDD, and that call-takers respond appropriately to TDD Relay Service calls.

To ensure the continued effectiveness of your training and testing program, refresher courses should be given to call-takers periodically (e.g., every six months) and test calls should be made periodically to ensure call-takers are responding appropriately.

Finally, the TDD-accessibility of Portland's 9-1-1 system needs to be brought to the attention of the community. A public education campaign should be designed and implemented to make TDD users and others aware that Portland's 9-1-1 services are directly accessible by TDD. The assistance of individuals from the local community(ies) who are deaf, hard of hearing, or who have speech impairments should be sought in developing and carrying out this program. I have enclosed a list of groups in your area who may be able to assist in this effort. As part of this outreach, the next edition of the local telephone directory must prominently note the direct TDD accessibility of Portland's 9-1-1 services. Such notices should appear at each location in the directory where 9-1-1 services are mentioned.

I understand that the Portland 9-1-1 system will be substantially renovated in the next year to become a Primary Public Service Answering Point in the new statewide 9-1-1 system. I expect that the necessary changes described above will continue to work under the new system. However, we will, of course, work with you to resolve any inconsistencies with the new system. We

also expect to contact the persons responsible for implementing the statewide system to provide any assistance they may need to ensure that the new system complies with the requirements of the ADA.

I have enclosed a copy of the Telecommunications for the Deaf, Inc.'s publication, Emergency Access Self-Evaluation (EASE) manual, for your information. If I can be of assistance in addressing the issues I have noted, please do not hesitate to contact me at (202) 307-0663 or at the above address. I would also appreciate being kept informed of your progress.
01-04372

Again, thank you for all your cooperation and effort in this matter.

Sincerely,

Eve L. Hill
Attorney
Disability Rights Section

Enclosures

01-04373

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General Washington D.C. 20530

Oct 25 1996

The Honorable Vernon J. Ehlers
Member, United States House of
Representatives
166 Federal Building
Grand Rapids, Michigan 49503

Dear Congressman Ehlers:

This is in response to your inquiry on behalf of your constituent, Mrs. Sharon R. Brinks, regarding whether hotels can require deposits for auxiliary aids and services such as assistive listening devices. A hotel is considered a public accommodation and is covered under title III of the Americans with Disabilities Act (ADA). Please excuse our delay in responding.

The ADA requires public accommodations, including hotels, to furnish appropriate auxiliary aids and services where necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals without disabilities because of the absence of auxiliary aids and services. Specifically, your constituent inquires whether a hotel can require credit card imprints before auxiliary aids such as an assistive listening device would be

provided. Section 36.301 of the title III regulations prohibits a public accommodation from imposing a surcharge on a particular individual with a disability or any group of individuals with disabilities to cover the cost of measures that are required to provide that individual or group with the nondiscriminatory treatment required by the ADA.

It is the Department's view, however, that reasonable, completely refundable, deposits are not prohibited by this section. Requiring deposits is an important means by which an entity can ensure the availability of equipment to meet the

cc: Records, chrono, Wodatch, Magagna, Deykes, McDowney, FOIA:dhj T. 10/4/96 udd\Deykes\Congrls\Ehlers 202-38-0

auxiliary aids requirement with future patrons. Therefore, the requirement of a credit card imprint would not be considered an unreasonable deposit. Further discussion of the meaning of surcharges and deposits may be found in the appendix to the enclosed regulation on page 305.

For your information, I am enclosing a copy of the title III regulation and the Department's Title III Technical Assistance Manual. I hope this information will be helpful to you in responding to your constituent.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

Enclosures

BRINKS
& ASSOCIATES AUG 01 1996

Sharon R. Brinks
ATTORNEY AT LAW July 31, 1996

Rep. Vern Ehlers

110 Michigan NW
Grand Rapids, MI 49503

Dear Representative Ehlers:

I am a Board Member for the Legal Network for the Deaf and Hard of Hearing. In that capacity, we as a Board try to stay abreast of issues involving communication access throughout the country and to be a resource to various individuals involved with the Americans with Disabilities Act issues, etc.

On a recent trip to Las Vegas, I discovered that two of the hotels, the Sheraton Desert Inn and the Flamingo Hilton, both required credit card imprints before they would permit me to check out an assistive listening device. The normal procedure in place throughout the United States has been to require some sort of a deposit (such as a driver's license) in order to assure that the assistive listening device would be returned. These are the first times that I had encountered a request for a blank credit card commitment by myself in order to obtain the rights due pursuant to the Americans with Disabilities Act.

I am wondering if you could inquire from the EEOC what their position is on this particular point. As I perceive the intent of the act as well as the legislation as drafted, requiring "financial security" is not appropriate. It has the potential to make communication access non-existent for some individuals.

Thank you in advance for your attention to this matter.

Sincerely yours,

Allegan
217 Hubbard St.
Allegan, MI 49010
PH: (616) 686-0243
FAX: (616)454-3709

BRINKS & ASSOCIATES

Sharon R. Brinks

Grand Rapids
(Main Office)
Riverfront Plaza Building
Suite 40, 55 Campau, NW
Grand Rapids, MI 49503
PH: (616) 454-5547
TTY: (616) 454-8321

SRB/hms

FAX: (616) 454-3709

FEB 12 1997

The Honorable Nancy Pelosi
Member, U.S. House of Representatives
Federal Building
450 Golden Gate Avenue
San Francisco, California 94102-3460

Dear Congresswoman Pelosi:

I am responding to your letter on behalf of your constituent, XXX , regarding the requirements of the Americans with Disabilities Act of 1990 (ADA) regarding health clubs and martial arts schools.

Health clubs and martial arts schools are covered by title III of the ADA and, therefore, are prohibited from discriminating on the basis of disability in the provision of their services. Title III requires, among other things, that covered entities make reasonable modifications to their policies, practices, and

procedures when necessary to ensure that people with disabilities have equal access to their services.

A health club, therefore, may be required to modify its training procedure to provide extra time for an individual with a learning disability to learn how to use the available exercise equipment. Similarly, exercises in an exercise class may have to be demonstrated more slowly than usual, either before or during class, in order to ensure that a person with a learning disability can follow the class. A martial arts school may need to modify some of its class requirements, such as requirements for specific warm-up movements, for a person with a disability who cannot carry out the required movements.

Title III does not, however, require a covered entity to make any modification that would fundamentally alter the nature of the services provided. Therefore, an exercise facility would not be required to develop a special curriculum for an individual with a disability. Similarly, a martial arts program that requires participants to demonstrate a specific level of achievement in order to advance in the program would not be required to exempt a participant with a disability from the fundamental requirements of a class.

cc: Records, Chrono, Wodatch, McDowney, Hill, FOIA
n:\udd\hille\policylt\pelosi.ltr\sc. young-parran

When an individual with a non-apparent disability requests a reasonable modification of policy under title III, a covered entity may ask the individual questions necessary to determine what modifications will be effective and reasonable. The entity may not ask additional questions that are not tailored toward determining the appropriate modification.

I have enclosed two copies of the regulation implementing title III of the ADA for your reference. I hope this information is helpful to you in responding to your constituent.

Sincerely,

Isabelle Katz Pinzler

Acting Assistant Attorney General
Civil Rights Division

Enclosures
NOV 19 1996

San Francisco, CA

November 11, 1996

Norman Chesler
Representative Nancy Pelosi
450 Golden Gate Avenue
San Francisco, CA 94102

Dear Mr. Chesller,

I have a disability covered under title three of the 1990 ADA. I am writing to you regarding understanding of title three as this relates to public accommodation.

I have had a hard time in exercise, martial art classes and health clubs because of my disability. I have tried a few times on and off without out much success because of a number of difficulties from my disability. Outside of my experience with Adaptive PE I have had a hard time with sports, recreation and exercise.

Recently the 1990 ADA was brought to my attention. After reading title three of the handbook I am wondering if 36.203, Intergrated Settings, 36.302, Modifications and 36.201a, General and other sections of title three applies to my situation.

In Health Clubs/Fitness Centers/Gyms I have two problems. One is with understanding the instructions for the different cardiovascular and weight training machines. I need the instructions in audio tape (I had text books on cassettes in college) and not the printed form that appears on the machines. Because of information processing difficulties from my disability (I do not have hearing problems) it takes me much longer time then most people to understand how these machines work. Another method which should work is to have someone explain, taking a much longer time then the normal introductory explanation as to how the machine works. I have hurt myself (I have taken up to four months for one injury to get better)

several times on exercise machines because I do not understand how they work.

The second problem I have in health clubs is in group classes. I have gone to a number of exercise classes that are not aerobic classes which are for beginners. Though these classes have

beginners not everything is slowly demonstrated before it is done. Because I have Gross Motor Planning Disorder, (one of the difficulties I have from my disability), I am unable to reproduce an exercise or movement unless it is done slowly several times.

Because of this disorder I am unable to reproduce an instructors movements or exercises that they do unless it is demonstrated slowly several times. I am unable to participate for up to 35% of the classes because the instructors do not slowly do or demonstrate some of the exercises. I have found this to be a consistent problem at several places.

The classes are 30 to 60 minutes in length. If the instructor demonstrated slowly everything it would take up 2-3 minutes in the shorter classes and 2-4 minutes in the 60 minute classes. I think this would be a minor modification.

Would a health club be required to demonstrate everything slowly? The marketing people say the instructors are suppose to demonstrate everything slowly in classes which are for 'beginners' or 'all levels'. I have tried several ways to resolve this including meeting the instructors before class. If the 1990 ADA covered this situation it would open up exercise/recreational class opportunities for me that I could fully participate in.

I have found one type of martial art which I can learn and do somewhat even though I have a disability. While I am able to fully participate in most of the core of the class, I am not able to do 25%-50% of the warm ups because of primary and secondary restrictions and difficulties from my disability. What has happened, is that I have been taking private lessons which are very expensive (about 8 times the cost of a group class) partly because I can not do a lot of the 20-35 minutes

of warm ups. The instructor asks that I do them in the group class. In private lessons I only have to do warm ups which I can do.

Are martial art schools considered public accommodations in category's 10 or 12?

Does the 1990 ADA require that I be excused from some warm ups or be allowed to do other warm ups which I am able to do?

Sometimes there is one part of the core part of the class which I am not able to participate in because of my disability. Is the instructor required to provide an alternative activity for me during this part of the class?

With regards to the two situations covered in this letter I have the following question. It is always hard to explain my disability to someone not in the health care industry so that they understand it. Am I required to explain it? Should

I have a doctor's letter covering each detail of why I can't participate or do something? It would be easier to just have a letter documenting that I have the disability. If I did need to explain why I can't do each thing it would be hard for me and my doctor.

Though the difficulties covered in this letter may seem silly they are important to me. It is not possible for me to play most popular sports or recreational activities because of my disability.

I would greatly appreciat e any time that you spend looking into these issues.Can you please keep this letter confidential.

Sincerely yours,
XXX
XXX

December 10, 1996

Dear Mr. Chesler,

Thank you for your letter of November 26th.

I was confused by Congress Woman Nancy Pelosi's response. The information goes against what I have been told in the past with regards to Titles 2 and 3.

I assume there was miss communication with my first sentence of my letter of November 11th. I have a disability that is specifically listed as being covered in Titles 2 and 3. My disability is included in the circled areas of the enclosed copy marked A. As a direct result of my disability I have the disorders or difficulties mentioned in my letter. Perhaps you thought that physical exercise is my disability. I have always been told that private public places of exercise and recreation are covered in category 12 of Public Accommodation.

I have been told that I am covered in the two situations in my letter, but I have some questions regarding this.

Could you please review my letter of November 11th again and respond. I would appreciate if you could please assist me by answering the questions in my letter of the 11th.

Sincerely yours,
XXX

enclosures: photocopys

MAR 19 1997

The Honorable Jane Harman
Member, U. S. House of Representatives

1217 El Prado Avenue
Torrance, California 90501

Dear Congresswoman Harman:

I am responding to your letter on behalf of your constituent, David Raizman, asking for clarification of the requirements of the Americans with Disabilities Act of 1990 (ADA) with respect to the installation of accessible freeway call boxes. Mr. Raizman has asked you to determine if the ADA requires a public entity to modify or replace inaccessible call boxes in the absence of a specific Federal design standard for this type of equipment.

Title II of the ADA prohibits discrimination on the basis of disability in the programs, activities, and services of public entities, including public agencies responsible for freeway design, maintenance, and operations. Therefore, programs and services offered to motorists must be accessible to motorists who have disabilities. This program access obligation applies regardless of whether a specific Federal design standard has been issued for unique elements such as emergency call boxes.

In the absence of specific Federal requirements applicable to the design of emergency call boxes, a public entity may rely on the general accessible design criteria contained in the ADA Standards for Accessible Design (28 CFR pt. 36, Appendix A) and the Uniform Federal Accessibility Standards (41 CFR SS 101-19.600 to 101-19.607). Both of these standards provide guidance to public entities concerning design considerations for accessible routes, clear space, reach ranges, and operating mechanisms. In addition, the existing Federal standards and the enclosed Department of Justice regulations (28 CFR pts. 35 and 36) offer guidance about factors to consider in developing accessible emergency communication devices that will provide effective communication for people who have vision, speech, or hearing impairments.

cc: Records, Chrono, Wodatch, McDowney, Blizard, FOIA
n:\udd\blizard\drsltrs\harman\sc. young-parran

The ADA expressly provides that covered entities must comply with State or local laws or regulations that provide greater or equal access for individuals with disabilities. Therefore, if the State of California has established specific design standards for accessible call boxes, those standards should be followed unless or until they are superseded by more stringent Federal standards. Public entities should note that any Federal standards for the new construction or alteration of freeway call boxes will be prospective in application. They will not require the replacement of accessible equipment installed prior to the effective date of the standards. Existing equipment is required to be replaced only when the existing equipment fails to provide effective access to the public entity's program.

I hope that this information is helpful to you in responding to your constituent.

Sincerely,

Isabelle Katz Pinzler
Acting Assistant Attorney General
Civil Rights Division

Enclosures

WLCDR The Western Law Center For Disability Rights
919 South Albany Street, Los Angeles, CA 90015, Phone & TDD (213) 736-1031 Fax (213) 736-1428

November 22, 1996

The Honorable Jane Harman
Member, U.S. House of Representatives
Torrance District Office
1217 El Prado
Torrance, California 90501

Re: Inquiry to Department of Justice

Dear Congresswoman Harman:

The Western Law Center for Disability Rights is a non-profit organization that provides legal and mediation services to persons with disabilities throughout California, including thousands in your district. Many of those we serve are concerned about Los Angeles County's 4,300 emergency freeway call boxes, all of which are inaccessible to persons with hearing and speech impairments and

many of which are inaccessible to wheelchair users.

As you know, the "public entity" provisions of the Americans with Disabilities Act ("ADA" -- 42 U.S.C. S 12133) and earlier federal (i.e., the Rehabilitation Act -- 29 U.S.C. S 794) and state civil rights laws (i.e., California Civil Code Section 54) guarantee persons with disabilities free and equal access to precisely these kinds of benefits and services of state and local governments.

Nevertheless, the responsible State and County agencies have taken the position that they need not comply with these statutory mandates and the implementing regulations because of a specific, pending "guideline" proposed as an Interim Final Rule in June 1994 by the Architectural and Transportation Barriers Compliance Board (the "Access Board"). See 36 C.F.R. pt. 1191, App. A, S 14.2.6(4). Specifically, they say any dispute involving the pending call box guideline is "unripe" for adjudication because there can be no current obligation on their parts to do anything.

Meanwhile, disabled motorists in Los Angeles County and across the State and nation continue to ride our freeways without the benefit of access to the emergency aid made available at the call boxes.

The Honorable Jane Harman
November 22, 1996

Those persons we serve would like to have a better understanding of whether the continued pendency of this guideline (we have learned from the Access Board that they no longer are pressing for its finalization) in fact abridges the free and equal access rights guaranteed under the ADA, Rehabilitation Act and California Civil Code Section 54. Specifically, they have the following questions of the appropriate interpretation of these laws:

(1) What effect, if any, does the pendency of a specific Access Board guideline have on obligations incurred or rights provided under:

(a) 42 U.S.C. S 12133?
(b) 28 C.F.R. pt. 35 (see, e.g., 28 C.F.R. SS 35.130(b) (1) (iii), 35.130(b) (4), 35.151, 35.161, 35.162)?
(c) more general, but active and applicable accessibility guidelines under the ADA

Accessibility Guidelines (36 C.F.R. pt. 1191, App. A) (see, e.g., 36 C.F.R. pt. 1191, App. A, SS 4.2, 4.2.1, 4.2.3, 4.2.5, 4.2.6, 4.3, 4.5, 4.6, 4.10.14, 4.27, 4.28, 4.31)?

(d) more general, but active and applicable accessibility guideliness under the Uniform Accessibility Standards (41 C.F.R. pt. 101-19, subpt. 101-19.6, App. A) (see, e.g., 41 C.F.R. pt. 101-19, subpt. 101-19.6, App. A, SS 4.2, 4.2.1, 4.2.3, 4.2.5, 4.2.6, 4.3, 4.5, 4.6, 4.10.14, 4.27, 4.28, 4.31)?

(e) preceding and broader mandates under California law (see, e.g., Cal. Civ. Code S 54)?

(2) Does the answer to any question posed in Number (1) above change if it is shown that the pending guideline in the form of an Interim Final Rule has been withdrawn from consideration by the Access Board?

(3) Assume for purposes of this question that the appropriate State and County agencies agreed to commence remediation of the call box system before the pending guideline was finalized, further assume that the guideline was finalized during the remediation process and further assume that the finalized guideline required additional or different standards than those undertaken by the governmental entities: could these governmental entities be made to comply with the new, finalized guideline on a retroactive basis either with respect to:

(a) those call boxes that they have already remediated?

(b) those call boxes that they have yet to remediate, but have concrete plans and budgets to undertake that remediation?

(4) Is there any obligation under 42 U.S.C. S 12204 for the Access Board to propose a design standard for any particular facility or device, such as a freeway call box?

The answers to these questions would prove quite valuable to those we serve in assessing whether they must continue to wait for the Access Board to act or whether they have an immediate ability to enforce their rights dating back to 1968 and Section 54 of the

California Civil Code.

Thank you for considering this request. We would be glad to answer any questions posed by you or your staff, including any requests for further elaboration.

Very truly yours,

David H. Raizman
Executive Director

h:\raizwork\callbox\jharman

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General Washington, D.C. 20530

The Honorable Bart Stupak
Member, United States House of Representatives
1120 E. Front Street
Suite D
Traverse City, Michigan 49686

MAY 2 1997

Dear Congressman Stupak:

This letter is in response to your inquiry on behalf of your constituent, XXX , regarding the Americans with Disabilities Act of 1990 (ADA). XXX refers to an article from the Detroit Free Press, stating that employers are required to provide designated smoking areas that will protect smokers from inclement weather and extreme temperatures. XXX wishes her employer to be directed to meet that requirement. Please excuse our delay in responding.

When Congress enacted the ADA, it specifically stated that the ADA does not preclude the prohibition of, nor the imposition of restrictions on, smoking in places of employment or other facilities covered by the Act. 42 U.S.C. S 12201 (b). Thus, the Detroit Free Press' statement that the ADA "does guarantee that any employer who decides to restrict or prohibit your ability to smoke on the job cannot do so without 'making reasonable accommodations' to your disability" is incorrect.

I hope this information is useful to you in responding to your constituent.

Sincerely,

Isabelle Katz Pinzler
Acting Assistant Attorney General
Civil Rights Division

cc: Records, chrono, Wodatch, Nichol, Milton, McDowney, FOIA:dhj
T. 4/2/97 udd\Milton\Congress\Smoking.stu rev. 4/21/97
202-38-0

FEB-07-97 15:50 FROM: CONGRESSMAN STUPAK TO D O ID: 6169297725 PAGE 1/2

BART STUPAK
1st District, Michigan

317 Cannon Building
Washington, DC 20515
(202) 225-4735
FAX: (202) 225-4744

COMMITTEE:
COMMERCE
SUBCOMMITTEES:
Health and the Environment
Commerce, Trade, and
Hazardous Materials

Congress of the United States
House of Representatives
Washington, DC 20515-2201

Co-Chairman,
Law Enforcement Caucus
Regional Whip

February 7, 1997 FAXED

Department of Health and Human Services
Food and Drug Administration
Legislative Liaison Office
200 Independence Ave., SW
Washington, DC 20201

Dear Legislative Liaison Specialist:

Following is a copy of a Detroit Free Press newspaper "Commentary" from the Fall of 1995 that I received from a constituent of Congressman Bart Stupak. I would appreciate your review and assistance with constructing a response to the constituent.

As I understand the situation, the constituent XXX and other co-workers are attempting to use this article to demand that their employer provide them with a designated smoking area that will protect them from inclement weather and temperatures (note highlighted paragraph). XXX stated that the business where she works has over 400 employees.

Please send your reply to Congressman Bart Stupak, Attn: JoAnn Papenfuss, 1120 E. Front St., Suite D, Traverse City, MI 49686. You can also send it by FAX to (616) 929-7725. If you have any additional questions about this case you can call (616) 929-4711.

Sincerely,

JoAnn Papenfuss
Congressional Aide to
CONGRESSMAN BART STUPAK

2 pages total with this FAX

(handwritten) No 97-987
Please Reply To:
* 1223 W. Washington * 902 Ludington Street * 616 Shelden * 1120 East Front Street * 111 E. Chisholm * 2 South 6th Street
Marquette, MI 49865 Escanaba, MI 49829 Houghton, MI 49801 Suite D Alpena, MI 49707 Suite 3
(905) 228-3700 (906) 788-1504 (906) 482-1371 Traverse City, MI 49686 (517) 356-0690 Crystal Falls, MI 49920
(616) 929-4711 (906) 875-3751
Toll Free: 1-800-050 REP1 (1-800-350-7371)
PRINTED ON RECYCLED PAPER

FEB-07-97 15:51 FROM: CONGRESSMAN STUPAK TO D O ID: 6169297725 PAGE 2/(illegible)

Smokers gain rights through 'addict' label

(handwritten) Detroit Freepress
(handwritten) Fall 1995
FEB 07 1997

By John (illegible)
Special to the Washington Post

Smokers of America, take heart. Your deliverance is at hand. No longer can you be denied covered employment opportunities. No longer can you be forced to huddle in alleyways in sub-zero temperatures to indulge your habit. No longer must you bear without recourse, the indignities heaped upon you by condescending, nonsmoking co-workers.

How has this come to pass? Who are your saviors? Why, none other than President Bill Clinton and Food and Drug Administration Commissioner David Kessler, who earlier this month transformed you from a despised and oppressed rabble into the newest legally protected minority.

Earlier this month, Clinton approved Kessler's finding that nicotine

is an addictive drug. As a result, you are now federally recognized drug addicts.

No longer are you responsible adult citizens who have foolishly chosen to run the risk of disease and death in the long term for the immediate gratification afforded by smoking. You are now victims of a "psychological substance use disorder." This means you are officially disabled and protected by the Americans with Disabilities Act (ADA).

The ADA protects anyone who has or is regarded as having a physical or mental impairment that substantially limits a major life activity. This has been interpreted to include drug addicts and alcoholics. Before, when smoking was just a nasty habit, the act did not apply to you. Now that you are officially impaired, you are legally entitled to all the rights and privileges currently enjoyed by those undergoing 12-step programs.

Before, employers could ask you whether you smoked during an employment interview. They could refuse to hire you even though you were the best-qualified applicant in order to save on their health care costs. They could deny you a promotion you had earned simply because you were a smoker.

No longer. Now any of these actions would constitute blatant discrimination against the disabled.

I do not wish to overstate the case.

Life is not a bed of roses. The ADA will not guarantee you the right to smoke on the job.

However, it does guarantee that any employer who decides to restrict or prohibit your ability to smoke on the job cannot do so without "making reasonable accommodations" to your disability. Although there is a great deal of legal uncertainty as to what counts as reasonable accommodation, you may feel confident that being driven outside

(handwritten) hi
This is

into freezing cold, driving rain or tropical heat in order to deal with your handicap will not qualify.

You should also be aware that now that you are officially disabled, you are entitled to a workplace free of harassment based on your disability.

This means that your employer is legally obligated to ensure that your supervisors and co-workers do not engage in conduct that would create an intimidating, hostile or offensive working environment for you as a smoker.

A week ago, you had to put up with the superior attitude of your condescending nonsmoking co-workers. If they insisted on badgering you with paternalistic lectures about how smoking is bad for you or gracious advice on how to quit, if they greeted your trips outside for cigarette breaks with looks of disgust or pity, or worse, with fake hacking coughs or derisive comments about kissing an ashtray, you had no choice but to grin and bear it.

Now, thanks to the president and the FDA commissioner, you can demand that your employer put a stop to such behavior and sue if he or she does not take "immediate and appropriate corrective action."

So do not be offended the next time Kessler refers to you as a drug addict. Do not rebel against being characterized as one bereft of free will, mindlessly enslaved by tobacco and unable to decide for yourself what risks you wish to run.

Try to see his statement for what it is--an open invitation to the wonderful world of legally recognized victimhood with all the rights and benefits contained therein. Accept the invitation. If you do, I think you will find the workplace to be a more felicitous, accommodating and warmer place.

Especially on those winter workdays when it is 10 below.

What I have.

Thank you very much for your attention (handwritten)

John Hasnas is an (illegible) professor at the Georgetown University School of Business.

JUN 13 1997

The Honorable Earl Pomeroy
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Pomeroy:

This is in response to your letter on behalf of your constituent, XXX , who asserts that the North Dakota State Legislature has violated the Americans with Disabilities Act of 1990 (ADA) by failing to enact legislation to ban smoking in places of public accommodation. Please excuse our delay in responding to you.

The ADA prohibits discrimination on the basis of

disability. The ADA clearly permits a ban on smoking, but it only requires covered entities to make reasonable modifications in their policies and practices that are necessary to enable individuals with disabilities to participate in their programs and activities.

The Department of Justice has declined to state categorically that sensitivity to cigarette smoke is a disability because the degree of impairment varies among individuals. To be legally recognized as a disability, a physical or mental impairment must substantially limit one or more major life activities of an affected individual. Thus, the determination as to whether sensitivity to smoke is a covered disability must be made using the same case-by-case analysis that is applied to all other physical or mental impairments.

In some cases, an individual's respiratory or neurological functioning may be so severely affected by sensitivity to cigarette smoke that he or she will be considered disabled. Such an individual would be entitled to all of the protections afforded by the ADA. These protections may include a ban on smoking in a specific covered facility if such a ban can be imposed without fundamentally altering the nature of the business or program. In other cases, however, an individual's sensitivity to smoke will not constitute a disability because the individual's major life activity of breathing is affected, but not substantially impaired. In this situation, an individual would not be entitled to claim ADA protection.

cc: Records, Chrono, Wodatch, Blizard, FOIA
n:\udd\blizard\drsltrs\policy\smoking\sc. young-parran

After a determination is reached that a person is an individual with a disability who is entitled to claim the protection of the ADA, it is necessary to determine if a requested modification, such as a ban on smoking, is "reasonable." This determination involves a fact-specific, case-by-case inquiry that considers, among other factors, the effectiveness of the modification in light of the nature of the disability in question and its effect on the organization that would implement it. Staron v. McDonalds Corp., 51 F.3d 353 (2d Cir. 1995) (Lower court dismissal was reversed and remanded to permit plaintiffs to offer evidence that a requested smoking ban

was a reasonable modification).

Because of the case-by-case nature of these determinations, the ADA regulations do not require an absolute ban on smoking. Therefore, the failure of the North Dakota State Legislature to impose a ban on smoking in public places does not violate the ADA.

I hope this information is helpful to you in responding to your constituent.

Sincerely,

Isabelle Katz Pinzler
Acting Assistant Attorney General
Civil Rights Division

XXX
XXX
XXX
XXX
XXX
XXX

RECEIVED
DEC 12 1996

Congressman Earl Pomeroy
FARGO, N.D. 58102

RECEIVED

DEC 18 1996

Congressman Earl Pomeroy
Washington, DC 20515

November 21, 1996

In 1995 the North Dakota State Health Department attempted to protect non-smoking employees and children from the effects of second-hand tobacco smoke. They also attempted to address the needs of the breathing disabled. This was presented as Bill 1367 at the 54th Legislative Assembly.

I have read through the entire testimony on Bill 1367 in utter disbelief. The way I see it, a majority of 52 legislators voted in favor of an activity that has no legal or constitutional right, and in doing so completely ignored the legal rights established by the federal government in the 1990 Americans With Disabilities Act.

ADA requires that a reasonable accommodation be made for the breathing disabled. Non-smoking areas may be socially adequate for the average non-smoker, but are entirely ineffective as a reasonable accommodation for the breathing disabled. A smoke-free policy is the most effective reasonable accommodation. (See Staron v. McDonald's Corp., 51F3d353)

It appears to me that rather than complying with ADA and requiring businesses to make reasonable accommodation for the breathing disabled.

North Dakota legislators have allowed private businesses and the hospitality industry to continue to make unreasonable accommodation for substance abuse.

Testimony was presented by Jess Cooper representing North Dakota's State Chamber of Commerce (GNDA) and David Meiers representing the North Dakota State Hospitality Association opposing Bill 1367 on the basis of the economic impact that it would have on private businesses and the hospitality industry.

In my research I have found no documentation of long-term negative economic impact on businesses (including restaurants) in other cities and states where a smoke-free policy has been established. In fact, in most cases business has increased. Why? Simple mathematics--the majority (75%) of all US citizens are non-smokers and prefer a smoke-free environment.

I am breathing disabled. Nothing aggravates my condition more than tobacco smoke. As a business owner I am fortunate that I no longer have to seek employment in a state that does not understand what it means to be breathing disabled. However, as an interior designer I travel all over North Dakota and Minnesota and I cannot enter most businesses, restaurants, and motel lobbies that are not smoke-free.

I know that the 1990 Americans With Disabilities Act covers my concerns. Under ADA I can sue each business and restaurant and motel all across North Dakota and Minnesota that I am unable to enter. Kind of a spendy solution, don't you think?

Over the past year I have had many conversations with other individuals who are also breathing disabled. We wonder what to do when North Dakota legislators, North Dakota's State Chamber of Commerce (GNDA) and the North Dakota State Hospitality Association do not seriously respond to federal laws like the Americans With Disabilities Act.

Your suggestion on how we can eliminate this form of discrimination in our state would be appreciated.

Sincerely,

XXX
XXX
XXX
XXX

JUL 3 1997

The Honorable Vernon J. Ehlers
Member, U.S. House of Representatives

166 Federal Building
Grand Rapids, Michigan 49503

Dear Congressman Ehlers:

This letter is in response to your inquiry on behalf of your constituent, XXX , regarding the Americans with Disabilities Act of 1990 (ADA). XXX is training a service dog for his son and is concerned that the dog has been prohibited from certain facilities, including his place of employment. XXX suggests that service animals in training who are accompanied by their trainer should be allowed the same privileges as service animals who are accompanied by people with disabilities. Please excuse our delay in responding.

Section 36.302 of the Department of Justice regulation implementing title III of the ADA states that a public accommodation must modify policies, practices, or procedures to permit the use of a service animal by an individual with a disability. The ADA does not specifically require such modifications for persons who are training service animals. Thus, the facilities that have barred XXX from entering with his service dog-in-training have not violated the ADA.

I hope this information is useful to you in responding to your constituent.

Sincerely,

Isabelle Katz Pinzler
Acting Assistant Attorney General
Civil Rights Division

cc: Records, Chrono, Wodatch, McDowney, O'Brien, FOIA
H:\nmilton\myfiles\congress\f-svc_an.ehl\sc. Young-parran

APR 10 1997

XXX
Grand Rapids, MI 49503-1117

April 8, 1997

Congressman Vern Ehlers
166 Federal Building
100 Michigan NW
Grand Rapids, MI 49503

Hon. Mr. Ehlers:

I am becoming increasingly frustrated with a select but important group of people. Although my contact is local, I am sure there are persons of this group across the nation.

My son was born with myotonic muscular dystrophy. He is expected to be in a wheelchair most, if not all, of his life. The very day he was born, when I was told of his diagnosis, I immediately called Paws with a Cause to register him for a service dog, expecting that there would be a long waiting list. My thought was that he could grow old enough to be able to utilize a service dog while his name worked its way up the waiting list. The Paws representative indicated that the waiting list was not near as long as I expected and that I should call again when he reached the age of two years old.

When he reached the age of two, I called again, only to be told he should have been placed on the waiting list when he was born.

I have occasional contact with a few Paws trainers and discussed my son with them. I also discussed some of the ideas I have in using new technologies (I am experienced in computer technologies) to help disabled persons with commanding their dogs through computer technology when they have vocal impairments. Since I have limited experience with dog training, and since the trainers were excited about my concepts, they instructed me in the proper training techniques for the first two years with the dog in preparation for service work.

One of the most important elements of the training rigor was told to me as, "Take the dog everywhere with you." I thought they meant to be sure the dog was exposed to every experience I could provide, and brought the dog to many places, but not with me at all times. A few months later, when a trainer saw me at work, he asked where the dog was. I told him she was at home and he explained to me that he meant that she should be with me at all times, as if I were the person needing the assistance. That way, if the dog decided to do something inappropriate (like beg from another person, for example), I, as an able bodied person, could provide the proper instruction and take corrective action. (It would be difficult for a wheelchair bound person to do that.)

I explained the situation to my manager at work, the director at the store where I shop, my school, and even to GRATA (I did not have a car at the time). All agreed to allow

the dog to act as my assistant, understanding that (a) I did not have facilities like that of Paws to use, (b) I could not "work" at training the dog, but had to continue my employment, and (c) that it was important for the dog to be exposed to these environments during her formative years.

Progress with the training has been good for nearly 18 months. However, my manager's supervisor was told about the dog's attendance with me at work and informed my manager that I was not to bring her if I wished to continue to be employed. (Two facts are important to understand here. First, the dog behaved perfectly for 18 months already without incident and showed no reason to anticipate any trouble. Secondly, my work performance has been such that I have always placed in the top 20% of the performance ranking of part time sales associates, usually one of the "top five," so there is no doubt that my work performance may have negatively influenced their decision.)

Since Coco (the dog) has not been allowed to accompany me to work, her advancement in training has literally halted. Since I have not been able to "work" her during the hours I am at work, she has not been able to learn new skills. The time I can afford to spend with her has been consumed with maintaining social skills.

Occasionally, I am confronted by persons such as security officers at shopping malls or public arenas. When they inform me that "pets" are not allowed, I explain why she is harnessed and with me. Until today, that has been sufficient explanation for the person requesting that I leave. More on today later...

A few weeks ago, while at the Kent County Health Department for an appointment with a Michigan Special Health Services nurse with my son (yes Coco was with me), I asked both the caseworker and the nurse if there was any state or federal forms I should file to "register" Coco as a service dog or service dog in training. They checked with others in the office, but could find no such registration.

Since my employer has forced me to curtail training to the point of no progress, my wife has also contacted Senator Glen Steil's office, your office, and countless other offices in Lansing and Washington to try to find some way out of this "Catch 22," where Coco would be allowed under the ADA if she were fully trained, but not allowed to be trained. For example, even if I were to fully train her on the proper handling of the wheelchair, doors, and buttons, could you not imagine her fear the first time she had to ride a city bus lift if she had not practiced it with "able bodied" supervision?

Today, I was refused entry into the State of Michigan building downtown to register my automobile plates. The security guard and the building manager refused to allow my admittance to the building because I was not the disabled person. Their excuse was that "other dog trainers" would want to "socialize" their dogs in the building. (Socialization is part of a show dog's training as well.) Even though I happened to have documentation about my son's disability with me, they would not allow me in the building to conduct business with the Secretary of State. The guard told me I should build "facilities" to do the training on my own property.

I think it is great that organizations like Paws with a Cause can build facilities to train service dogs in simulated "real world" locations. I also think it is great that they can hire professional trainers to spend time with the

animals. (Trainers also take the animals home with them, by the way.) Unfortunately, there is more demand than they can fill for service dogs.

With reasonable accommodation, I have been able to make substantial progress in training a service animal for my own son. Coco's presence with me these past 18 months has not been any more than a slight, pleasant distraction where ever I have gone. In addition to the substantial progress I have been able to make toward providing a service dog for my son, I have been able to further the education of the public in proper etiquette toward a service dog (ignore it, do not pet it, please).

The intent of the Americans with Disabilities Act is to make it possible for service dogs to assist their charges and to prevent discrimination against the disabled by those who would refuse the animal's entrance in public places. It is also the intent of the Family Leave Act to allow reasonable accommodation to a parent in the provision of needs to his family.

It is virtually impossible to purchase a service dog or the training of a dog to become a service dog. (I have tried!)

This is the first time I have ever been confronted with the inability to provide an important benefit for a member of my family simply because a small number of key persons refused to allow a reasonable accommodation. All they need to do is allow the dog to accompany me. This does not reduce my effectiveness as an employee or disrupt the environment around me in any way. Virtually everyone I meet finds my persistence in this task admirable and honorable. Many even wish to offer assistance when it would be counter to the dog's training (she should hold the door for me, not be allowed passage with a human holding the door!).

The unreasonable persons which cause most of my problems in this endeavor refer back to "the ADA doesn't force us to allow entry to a dog in training." After months of searching, I am confident that there is no law that does address the training of service animals. Therefore, after having all of this trouble and suffering the harassment and discrimination of a certain few, I am convinced that there needs to be just such a law.

I am not suggesting that a law be as vague as to allow anyone to claim that they are "training a service dog." Instead, the law should allow service animals in training accompanied by their trainer in the same way as a service animal accompanied by a disabled person. The trainer should be required to be registered as an employee of a bona fide service animal training organization (such as Paws with a Cause) or the registered trainer of a service animal intended for an immediate family member who is totally and permanently disabled (the Social Security Administration makes such determinations already) or otherwise deemed to be a candidate for placement of a service animal by a bona fide service animal training facility.

I feel that it is important that any person be able to assist their own family members. I understand the need to restrict animals from access to many public areas for health reasons or to protect the public from aggressive animals. However, for a person who can document the presence of a family member who is totally

and permanently disabled, the government should not stand in the way of that person's attempt to provide for that disabled family member in any reasonable way possible. To provide that balance, the trainer could simply be required to publicly register his or her intent to train the dog and receive some sort of paperwork (identification card, perhaps?) to identify the animal and trainer as "registered service animal in training" and naming the trainer.

Really, I do not understand why, in a non-health related building like the State of Michigan offices, a security guard would be so adamant that a well behaved dog should be expelled. Why did he assume I was not disabled? He did not see me drive. In fact, many legally blind persons do not appear to be so. I was even wearing shaded glasses at the time. We need to "plug this hole" in the ADA and allow more training of service animals. I can not be alone in this situation.

I look forward to hearing from you. I would also be very happy to meet with you, introduce you to Coco, and if you wish, my son Tom as well. I would also be willing to speak on behalf of this issue as required. You see, I am one of those parents who is willing to "do whatever it takes" for his offspring.

Sincerely,

XXX

T. 6-27-97

JUL 11 1997

The Honorable Dianne Feinstein
United States Senate
331 Hart Senate Office Building
Washington, D.C. 20510-0504

Dear Senator Feinstein:

I am responding to your letter requesting information on the Americans with Disabilities Act of 1990 (ADA) on behalf of your constituent, XXX . Your letter was referred to the Department of Justice by the U.S. Equal Employment Opportunity Commission. Please excuse the delay in responding.

Specifically, XXX requests information regarding the ADA's requirements for access to public golf courses. Although the ADA requirements do not currently include specific accessibility standards for new construction or alterations of the unique aspects of a golf course, other facilities like restrooms, locker rooms, and restaurants must comply with the ADA accessibility standards.

In addition, both title II and title III of the ADA require that covered entities "make reasonable modifications in policies, practices, or procedures," when necessary to avoid discrimination on the basis of disability, unless it can show "that making the modifications would fundamentally alter the nature" of the service or activity. 28 C.F.R. SS 35.130 (b) (7), 36.302 (a). Where a golf course does not provide nor allow golf carts or

where the course provides or allows golf carts on the site but not in designated areas, the course may be required to modify its policies in order to allow people with disabilities to participate fully. For your convenience, I have enclosed a copy of the regulations implementing titles II and III.

If XXX has any questions or needs additional information regarding the requirements of the ADA, he may contact the Department's ADA information line at 800-514-0301 (voice) or 800-514-0383 (TDD). Members of the Disability Rights Section staff are available to answer questions on the information line from 10:00 a.m. to 6:00 p.m., Eastern time, on Monday, Tuesday, Wednesday, and Friday. On Thursday, the information line is staffed from 1:00 p.m. to 6:00 p.m.

cc: Records, Chrono, Wodatch, Mercado, McDowney, FOIA
h:\hmercado\myfiles\drsletters\congressionals\boxer for XXX .wpd

I hope this information is useful to you in responding to your constituent.

Sincerely,

Isabelle Katz Pinzler
Acting Assistant Attorney General
Civil Rights Division

Enclosures

Author: XXX
Date: 4/12/97 20:25
Priority: Normal
TO: senator at Fein-Int
Subject: Re: Information on ADA legislation
---------- Message Contents----------
Dear Senator Feinstein,
We are having a little problem at our local golf course in Twain Harte, CA.
Our members are getting up in age and their is talk of having golf carts on our little course. What it boils down to - We would like to know: What does ADA legislation have to say about allowing golf carts on public courses. Would it be possible that you could send me any

information on the bill that relates to golf courses? It would be sincerely appreciated.

If the info would be adequate for e-mail, great. If not, snail mail would have to do. We are having a board meeting this coming Wednesday, April 16, 1997, and it would be great to have some info by then. Thanks for your consideration.

Your Constituent, (and a Democrat)

XXX
Twain Harte, CA XXX
XXX

JUL 24 1997

Linda D. Kilb, Esq.
Disability Rights Education and Defense Fund
2212 Sixth Street
Berkeley, California 94710

Dear Linda:

I am responding to your letter dated November 29, 1995, regarding the requirements of title III of the Americans with Disabilities Act (ADA). Your letter asks whether title III requires pharmacies to cut pills in half at the request of customers with disabilities when half-doses are prescribed by such customers' physicians. I apologize for the delay in responding.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities that have rights or responsibilities under the Act. Pursuant to that authority, this letter provides informal guidance to assist you in understanding the ADA. However, this technical assistance does not constitute a legal interpretation of the statute, and it is

not binding on the Department.

Title III of the ADA requires places of public accommodation, including pharmacies, to make reasonable modifications to their policies, practices, and procedures when such modifications are necessary in order to avoid discriminating on the basis of disability. 28 C.F.R. S 36.302. We have consulted with persons associated with the pharmacy industry, including the National Association of Boards of Pharmacy, who have informed us that pharmacists regularly cut pills in half to meet dosing requirements prescribed by doctors at the request of patients. In light of this information, we believe that cutting pills in half for persons with disabilities is a reasonable modification required by title III under the circumstances described in your letter.

cc: Records, Chrono, Wodatch, Mobley, Breen, Blizard, FOIA
mmobley\myfiles\pletters\f-kilb.wpd\sc. Young-Parran

I hope this information is helpful to you.

Sincerely,

John L. Wodatch
Chief
Disability Rights Section

(handwritten) 705

DREDF Disability Rights Education and Defense Fund, Inc.

Law, Public Policy, Training and Technical Assistance DISABILITY RIGHTS SECTION
95 DEC-6 PM 2:08

November 29, 1995

Via Certified Return Receipt Mail

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

Re: Request for Policy Finding Under ADA Title III

Dear Mr. Wodatch:

On behalf of the Disability Rights Education and Defense Fund, Inc. ("DREDF"), I write to request a policy finding from the U.S. Department of Justice ("DOJ") under Title III of the Americans with Disabilities Act ("ADA"). 42 U.S.C. SS 12181 et seq..

DREDF is a national law and policy center dedicated to advancing the civil rights of people with disabilities. Because we are nationally recognized for our interpretation of disability civil rights laws, including the ADA, we are often questioned about the practical implications of such statutes. Through such an inquiry, DREDF has become aware of an issue that affects many individuals with disabilities who must, per doctors' prescriptions, take half-doses of medication, but who, because of their disabilities, are themselves unable to cut their pills in half. The issue is whether pharmacies are required to cut pills in half at the request of their customers with disabilities. DREDF requests that DOJ issue a policy finding on this matter.

DREDF's position, supported by both the statute, DOJ's implementing regulations and DOJ's ADA Title III Technical Assistance Manual ("the DOJ Manual"), is that cutting medication is a reasonable modification of policy and/or practice, and that refusing to provide such a reasonable modification constitutes unlawful discrimination on the basis of disability.

A pharmacy is a public accommodation subject to the provisions of Title III of the ADA. 42 U.S.C. S 12181(7)(F). Title III states that discrimination includes failing to make reasonable modifications in policies, practices, or procedures when such modifications are necessary to afford goods and services to individuals with disabilities. 42 U.S.C. S 12182(b)(2)(A)(ii). Title III further provides that a public accommodation may only refuse to modify its policies, practices, or procedures if to do so would fundamentally alter the nature of such goods and services. 42 U.S.C. S 12182(b)(2)(A)(ii).

A not-for-profit public benefit corporation dedicated to the Independent Living Movement and the Civil Rights of Persons with Disabilities

1633 "Q" N.W., Suite 220
Washington, D.C. 20009
(202) 986-0375
FAX (202) 462-5624

2212 Sixth Street
Berkeley, California
94710
(510) 644-2555
800-466-4232
FAX (510) 841-8645

By refusing to honor the request of an individual with a disability to have pills cut in half, apharmacy is refusing to reasonably modify its policies, practices, and/or procedures, and is effectively rendering its goods and services unavailable to certain individuals with disabilities. The ADA provides a pharmacy with only one reason to refuse a request for a reasonable modification -- that is, that to cut pills in half would "fundamentally alter" the nature of the goods and services it provides. It is doubtful that a pharmacy could support a claim that cutting pills to provide medication in half doses fundamentally alters the nature of its goods and services. The DOJ Manual's definition of "fundamentally alters" makes it especially unlikely that

any pharmacy could prevail on this defense. The DOJ Manual provides that "[a] fundamental alteration is a modification that is so significant that it alters
the essential nature of the goods, services, facilities, privileges, advantages, or accommodations offered." DOJ Manual, III-4.3600 at 29. Cutting pills in half does not alter the essential nature of the medication, and is consistent with, rather than a significant alteration of, the essential nature of the service of providing medication pursuant to a prescription for half doses.

In addition to asserting the fundamental alteration defense, a pharmacy might argue that cutting pills in half for customers with disabilities is a "personal service" that the ADA's regulations deem a public accommodation is not required to provide. 28 C.F.R. S 36.306. The DOJ's comments to S 36.306 (appearing in its section-by-section analysis) suggest, however, that this assertion cannot excuse a refusal to provide this reasonable modification. The comments clearly state that minimal actions that may be required as modifications in policies, practices, or procedures, such as a kitchen's cutting up food into smaller pieces, are not services of a personal nature within the meaning of S 36.306. 56 Fed. Reg. 35571 (Friday, July 26, 1991). It follows, therefore, that cutting pills in half is the type of minimal action that a pharmacy is required to perform as a reasonable modification in policy, practice, or procedure, and not a personal service that a pharmacy is not required to perform pursuant to S 36.306.

The above analysis brings DREDF to the conclusion that pharmacies should be required to cut pills in half at the request of individuals with disabilities. DREDF requests that DOJ issue a policy finding on this issue. Your response may be directed to my attention in DREDF's Berkeley office, 2212 Sixth Street, Berkeley, CA 94710, telephone (510) 644-2555, facsimile (510) 841-8645. Thank you for your attention to this matter.

Sincerely,

Linda D. Kilb, Esq.

(clinic\kerry\pharmacy)

AUG 6 1997

The Honorable Frank Pallone, Jr.
U.S. House of Representatives
Washington, D.C. 20515-3006

Dear Congressman Pallone:

I am responding to the correspondence that you forwarded on behalf of your constituent, XXX , of Edison, New Jersey. XXX takes issue with the use of fine print in legal and other documents, and believes such practices may be discriminatory against elderly persons, many of whom have vision impairments. Please excuse our delay in responding.

The Civil Rights Division of the Department of Justice is responsible for the implementation of the Americans with Disabilities Act of 1990 (ADA), which prohibits discrimination on the basis of disability by public entities and public accommodations. XXX query relates most directly to the auxiliary aids and services provisions of titles II and III of the ADA as these apply to covered entities, including governments and private sector businesses, respectively.

Such aids and services must be provided by these covered entities to ensure "effective communication" for individuals who have impaired vision or speech. A covered entity, thus, must provide effective communication under a flexible standard, reflecting the variable nature of what constitutes effective communication. This ADA flexible standard does not broadly regulate the nature of print, such as requiring a wholesale prohibition against the use of fine print. Rather, the ADA strikes a balance between protecting persons with vision loss from discrimination, while preserving economical means of producing printed materials, such as fine printing where it is appropriate.

The ADA's flexible communication standard accounts for other factors used to determine the effectiveness of communication in any given circumstance, including the length, complexity, and significance of the information being exchanged. Thus, most of the "legal documents" that XXX refers to in his letter

cc: Records; Chrono; Wodatch; Talian; McDowney; FOIA
h:\jtalian\myfiles\congress\okvision.ifo.wpd

are subject to the ADA's requirements, by virtue of the fact that

a government agency or private practitioner (attorney, insurance agent, or physician, for example) might be required to provide standard or larger print versions of a document upon request by the disabled person. Furthermore, such covered entities in our society must absorb the cost of this aid or service, unless it would result in an undue burden. The term "undue burden" means "significant difficulty or expense." In determining whether the provision of an interpreter, reader, tape, or other aid or service would result in an undue burden, covered entities should consider their overall financial resources.

The effective communication requirements of the ADA briefly described above are discussed more fully in the technical assistance manuals developed by the Department of Justice (enclosures). XXX can direct any questions about specific documents, or communications problems generally, to the various Federal ADA hotlines established to address such concerns by the American public. Our flyer listing the prominent Federal telephone resources on the ADA also is enclosed.

I hope this information will assist you in responding to your constituent.

Sincerely,

Isabelle Katz Pinzler
Acting Assistant Attorney General
Civil Rights Division

Enclosures

(handwwritten)

JAN 15 A.M.
ID 140037083
Doc 9900805 Jan. 11-1997

Honorable Congressman
Frank Pallone
House of Representatives
Washington, D.C.

Dear Congressman:

Thousands of people in our nation are being deceived and taking advantage of every day by Fine Print especially Senior Citizens who have some sort of vision difficulty but do not have any problem with standard news paper print. Fine Print is a means of hiding information. It is constantly used in Legal Documents and in Public Notice in Newspaper publications and contracts etc. Many people are being hurt in some way by Fine Print. Public notices which are important to every citizen because it most always effects local taxpayers. It's difficult even for people with good vision to read newspaper Public Notices.

(cont.)

Because of Fine Print many legal documents and public notices go on read and that is the purpose of Fine Print.
I am a very active and alert eighty year old man and with my eyeglasses I have no problem reading standard news print.
I ask you now to introduce or cause to be introduced legislative outlawing Fine Print completely and make it illegal to print anything in any form in less than the standard news print size.
I have enclosed newspaper examples.
Please acknowledge this letter.
I wish you a Healthy and Happy New Year

Yours Truly

XXX
XXX
Edison-N.J.

XXX

AUG 8 1997

The Honorable Richard Burr
Member, U.S. House of Representatives
2000 West First Street
Suite 508
Piedmont Plaza Two
Winston-Salem, North Carolina 27104

Dear Congressman Burr:

I am responding to your inquiry on behalf of XXX of Winston-Salem, North Carolina, who wrote to you about the architectural design standards of the Americans with Disabilities Act of 1990 (ADA). XXX seeks information about the standards of the ADA as they pertain to accessibility to "private buildings" that serve the public, such as restaurants, banks, grocery stores. XXX also asks whether the standards that apply to covered buildings differ depending on when the building was constructed. Please excuse our delay in responding.

Title III of the ADA applies to "places of public accommodation," which are defined to include private facilities that house operations that affect commerce and fall within at least one of the 12 categories of business or service establishments, such as places of lodging, recreation, entertainment, and so forth, that are identified in the ADA. The definition of public accommodation encompasses most private sector business establishments that routinely operate in our country.

Under title III, all newly constructed places of public accommodation (and those undergoing alterations), as well as commercial facilities (factories, warehouses), must comply with the ADA Standards for Accessible Design. A building is covered under the new construction requirements only if it was first occupied after January 26, 1993, and its last application for a building permit or permit extension was certified as complete after January 26, 1992. Public accommodations in buildings occupied before January 26, 1993, that are not otherwise being altered, are required to remove architectural barriers where such removal is "readily achievable." The concept of readily

achievable incorporates the common sense notion of removing architectural barriers where it is both easy and inexpensive to accomplish. Barrier removal under the readily achievable

cc: Records, Chrono, Wodatch, McDowney, Talian, FOIA
jtalian\myfiles\congress\f-burrwile.ifo.wpd\sc. Young-Parran

standard is never required to exceed the requirements for new construction.

XXX specific concern apparently was prompted by his belief that the ADA requires the installation of automatic doors, while his local building code does not. The ADA design standards specify requirements for particular elements of a building. The requirements pertaining to doors are found in section 4.13 of the Appendix to the enclosed regulation. These technical provisions permit, but do not require, the use of automatic doors and doors that swing open in either direction. Doors that pull open are permitted, but appropriate maneuvering space also must be provided.

If Winston-Salem local codes require a particular type of exterior door opening, such a requirement does not necessarily conflict with the ADA because the ADA does not preempt all State and local regulations in the area of accessible design. States and localities are free to enact and enforce code provisions that provide equal or greater access than the ADA standards. To the extent possible, covered entities must comply with both the State or local code and the Federal requirement. If the State or local code provisions differ, however, from the ADA requirements in a way that results in less accessibility, then an entity subject to title III of the ADA is required to comply with the Federal standard.

The design standards of the ADA are described in full in the enclosed title III regulation and interpretative manual. I hope this information is helpful to respond to XXX He also may seek additional advice on the architectural barrier removal and design standards from several informational hotlines described on the enclosed summary of ADA telephone information services. Most of the hotlines are toll-free and have operators to answer questions on specific ADA subjects.

I hope this information is useful in responding to your constituent.

Sincerely,

Isabelle Katz Pinzler
Acting Assistant Attorney General
Civil Rights Division

Enclosures

RICHARD BURR
5th District, North Carolina
COMMITTEE
COMMERCE
SUBCOMMITTEES
HEALTH AND THE ENVIRONMENT
ENERGY AND POWER
OVERSIGHT AND INVESTIGATIONS
Congress of the United States
House of Representatives

WASHINGTON OFFICE:
1513 Longworth HOB
Washington, DC 20515
(202) 225-2071
Fax (202) 225-2995
DC INFO LINE:
(202) 226-0320
E-MAIL:Richard.BurrNC05@mail.house.gov
WWW.http://www.house.gov/burr/

DISTRICT OFFICE
2000 West First Street
Suite 508
Piedmont Plaza Two
Winston-Salem, NC 27104
(910) 631-5125
Fax (910) 725-4493

May 5, 1997

Ms. Sally Conway
Department of Justice
Civil Rights Division
Post Office Box 66738
Washington, D.C. 20035

Dear Ms. Conway:

My constituent, XXX recently contacted my office regarding a problem he is having with some buildings in Winston-Salem, North Carolina, that he believes do not address the accessibility statutes of the Americans with Disabilities Act.

XXX has cited several buildings in Winston-Salem that he says have exterior doors that only open to the outside (pull open). These are standards the city of Winston-Salem has set, but he understands that the Americans with Disabilities Act requires any building to either have doors that swing open both ways, or can be opened automatically. I would appreciate any information that will address the following concerns: What are the standards of the Americans with Disabilities Act as they pertain to accessibility to private buildings that

serve the public (restaurants, banks, grocery stores, etc.), and are the statutes different for buildings that were built before the act was signed into law, as opposed to those built after the law was enacted. Please mail your response to my Winston-Salem office.

Thank you for your attention to this matter, and I look forward to hearing from you soon.

Sincerely,

Richard Burr
Member of Congress

RB:bv

AUG 13 1997

Ms. Elisabeth S. Shuster
Chief Counsel
Human Relations Commission
State of Pennsylvania
P.O. Box 3145
Harrisburg, Pennsylvania 17105-3145

Dear Ms. Shuster:

I am responding to your recent letter to Attorney General Reno with respect to a complaint now pending before the Pennsylvania Human Relations Commission. Please excuse our delay in responding.

The complaint, which was filed by the Eastern Paralyzed Veterans Association (EPVA), alleges violations of the Pennsylvania Human Relations Act by Widener University and the Pennsylvania Department of Labor and Industry. Because the Pennsylvania Human Relations Act requires compliance with the Americans with Disabilities Act of 1990 (ADA), you have asked the Department's advice on the application of the ADA to this matter.

The ADA authorizes the Department of Justice to provide technical assistance to assist individuals and entities subject to the Act to understand their rights and responsibilities. Because this response is based solely on the facts presented in your letter, it is intended only as technical assistance to help you to identify pertinent facts. This response does not constitute a legal opinion of the Department with respect to the

obligations of the parties to this dispute.

The facts, as we understand them, are that Widener University constructed a new football stadium that includes multi-level viewing stands and a press box. It is undisputed that there is no accessible means of vertical access provided to the press box. There is a significant dispute among the parties as to whether the press box is an integral part of the multi-level stadium or a separate single-story facility.

cc: Records, Chrono, Wodatch, McDowney, Blizard, FOIA
a:\shuster.wpd\sc. YOUNG-PARRAN

The press box is described by EPVA as an integral part of the stadium. It is described by the University as a single-story, 1200 square-foot facility. The University further asserts that it would require an elevator with a lift height of 36 feet to provide access to the press box.

When the University applied for a building permit for the stadium construction, it requested a waiver of the State requirement to provide an elevator to the press box. This request was denied by the Pennsylvania Accessibility Advisory Board. The Advisory Board did grant the University a variance that would have permitted the University to provide access to the press box by means of a wheelchair lift or "personal service" elevator rather than a full passenger elevator. The University appealed this decision to the Pennsylvania Department of Labor and Industry, which ultimately determined that the elevator exception set forth in Pennsylvania's Universal Accessibility Act applies to the press box. Therefore, the press box was constructed without an elevator.

In your letter, you posed two specific questions:

1) Whether a press box that has three levels is considered to have "stories" such that if those "stories" are less than 3000 square feet, the facility is entitled to claim the elevator

exemption under the ADA; and

2) If an elevator is not required, could a covered entity be required to provide vertical access by means of a ramp?

The ADA Standards for Accessible Design (ADA Standards), 28 C.F.R. pt. 36, App. A, S 3.5, define a story as:

> That portion of a building located between the upper surface of a floor and upper surface of the floor or roof next above. If such portion of a building does not include occupiable space, it is not considered a story . . . .

The definition goes on to note that "[t]here may be more than one floor level within a story as in the case of a mezzanine or mezzanines." Therefore, a facility that has three floor levels may be entitled to the elevator exemption if one or more of the floor levels does not fall within the ADA definition of a "story." When a building or structure is entitled to the ADA elevator exemption, it is not required to provide any accessible means of vertical access (e.g., lifts or ramps) between stories.

However, a facility that qualifies for the ADA elevator exemption is still required to comply with all of the other applicable accessibility requirements in the ADA Standards. See, 28 C.F.R. S 36.401 (3). Therefore, although the ADA may exempt a facility from the obligation to provide an accessible route (elevator, lift, or ramp) to the upper stories of a facility, the facility must still comply with any other applicable accessibility requirements. For example, if fixed seating, restrooms, drinking fountains, or telephones are provided in the press box, these elements must comply with the ADA Standards.

I hope that this discussion of the potentially applicable sections of the ADA Standards is helpful to you in resolving this matter.

Sincerely,

Isabelle Katz Pinzler
Acting Assistant Attorney General
Civil Rights Division

COMMONWEALTH OF PENNSYLVANIA
HUMAN RELATIONS COMMISSION
101 South Second Street, Suite 300
P.O. Box 3145
Harrisburg, PA 17105-3145
(717) 787-4410 (Voice)
(717) 787-4087 (TT)

Reply to:
P.O. Box 3145
Harrisburg, PA 17105-3145

July 3, 1997

The Honorable Janet Reno
Attorney General of the United States
Department of Justice
Tenth Street & Constitution Avenue N.W.
Washington, D.C. 20530

Dear Attorney General Reno:

The Pennsylvania Human Relations Commission (PHRC) is the legislatively mandated civil rights enforcement agency in Pennsylvania.

Our statute, the Pennsylvania Human Relations Act, 43 P.S. SS951-963 (Act), is unique, in that our housing provisions cover both commercial and non-commercial housing. The Act provides that it is a violation of the Act to construct, operate, offer for sale, lease or rent or otherwise make available housing or commercial property which is not accessible, 43 P.S. S955(h)(7). Accessibility is defined in 43 P.S. S954 (v), as, among other things, being in compliance with
the provisions of the Americans with Disabilities Act (ADA).

Currently before the PHRC is a complaint filed by the Eastern Paralyzed Veterans Association against Widener University. The allegation is basically that Widener University has built a stadium with an inaccessible press box. Following a determination of probable cause by the PHRC, Widener has raised additional defenses based upon its interpretation of the ADA.

Throughout the investigation, the PHRC has attempted to avail itself of information from the ADA/stadium experts at the Justice Department. We have reviewed the May, 1996 release regarding stadium accessibility, and, of course, all the guidance and current case law. While the Commission prosecuting attorney handling the case has interpreted the actions of Widener to violate accessibility laws, the issues currently raised by Widener are unique. Since it is a federal law administered by the Justice Department, we seek your input.

We have enclosed the documents necessary to understand the issues raised by Respondent. Respondent's first defense included an approval by the Pennsylvania Department of Labor and Industry of its plans. Its second is an argument that the press box is a separate facility from the stadium and thus need not be accessible because of the small size. In general, the most recent defenses all relate to the elevator exemption for new construction found at 42 U.S.C. 12183(b) and the regulations relating to that section found at 28 C.F.R. S36.401(d). One of the questions that has arisen is, whether, under the elevator exemption, a press box that has three levels and is within a stadium (or separate from the stadium and "next to it") is considered to have "stories", such that if those "stories" are less than 3,000 square feet, the press box falls within the exemption. In addition, if, as the analysis to the elevator exemption regulation states, "lifts to provide access between floors are not required in buildings that are not required to have elevators", could a ramp be required if feasible?

I appreciate your prompt attention to this matter. Our contact person in this matter is Assistant Chief Counsel Nancy L. Gippert, the prosecuting attorney on the case. If Ms. Gippert is not available, Director of Housing, Raymond W. Cartwright should be contacted. They may be reached at (717) 783-8132. Ms. Gippert will be looking forward to hearing from your staff.

Sincerely,

Elisabeth S. Shuster
Chief Counsel

ESS/NLG/lms

cc: Homer C. Floyd, Executive Director
Raymond W. Cartwright, Housing Director
Nancy L. Gippert, Assistant Chief Counsel

AUG 15 1997

The Honorable Philip M. Crane
Member, U.S. House of Representatives
300 North Milwaukee Avenue
Suite C
Lake Villa, Illinois 60046

Dear Congressman Crane:

I am responding to your letter on behalf of your

constituent, XXX , regarding the application of the Americans with Disabilities Act of 1990 (ADA) to the changes in rules for a fencing tournament that XXX has participated in with the Society for Creative Anachronism (Society). Please excuse our delay in responding.

Title III of the ADA prohibits discrimination on the basis of disability by any person who owns, leases (or leases to), or operates a place of public accommodation. 42 U.S.C. S 12182 (a). The term "operate" includes sponsorship of competitions and tournaments. A "place of public accommodation" includes places of public gathering (e.g., auditoriums, convention centers, lecture halls), places of recreation (e.g., parks, zoos, amusement parks), and places of exercise (e.g., gymnasiums). Thus, if the fencing tournament is held in a place of public accommodation then the Society, as a sponsor, organizer, and administrator of the fencing tournament, may be covered by title III of the ADA.

Title III requires, among other things, that covered entities make reasonable modifications to their policies, practices, and procedures when necessary to ensure that individuals with disabilities have equal access to goods, services, facilities, privileges, advantages, or accommodations. However, title III does not require a covered entity to make any modification that would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations offered.

cc: Records, Chrono, Wodatch, McDowney, Hahm, FOIA
jhahm\myfiles\policyltrs\f-crane72497.wpd\sc. YOUNG-PARRN

I have enclosed a copy of the regulation implementing title III of the ADA for your reference. I hope this information is helpful to you in responding to your constituent.

Sincerely,

Isabelle Katz Pinzler
Acting Assistant Attorney General
Civil Rights Division

Enclosure

XXX
Wauconda, IL XXX

May 1, 1997

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

Sir:

Pursuant to a phone conversation with your office on April 29, 1997, by my friend, XXX I am writing to you to request a "statement of policy" on the following issue. An organization that I belong to, called the Society for Creative Anachronism, currently has in place a competition style of fencing known as rapier combat. As the rules now stand, it is possible for the handicapped to compete on an equal to near-equal footing due to the availability of adaptive equipment for the handicapped fencer.

On June 1, 1997, my district intends to change its rules and equipment standards. The practice schlager blade they are substituting for the currently used epee blade has no adaptive equipment available. Also, by its very weight, this practice schlager is impossible for many of the handicapped to use. In short, my district is removing an accommodation which is currently in place without any suitable replacement. As we pay for our own equipment, it does not cause our club any undue financial burden to keep the old system.

A brief aside, the club officers claim this change is being made in the interests of safety.' Every fencing professional I've spoken to has stated that the epee is a much safer piece of equipment.

Mr. Wodatch, I am handicapped and if this change goes through, I will no longer be able to even consider competing because I will not be able to lift and hold the blade up. Many of my friends, who have such common ailments as Carpal Tunnel Syndrome, will no longer be able to compete due to the increased weight of the blade. Others, who have arthritis or weakening of the tendons will not be able to hold the blade due to the lack of availability of adaptive equipment.

The district has refused to reconsider this matter without an authoritative opinion, such as from your office. They have also requested that such an opinion be in writing. Sir, you are our last hope in this matter. We do not want to go to court and have some long, lengthy fight to have our rights restored. They should not be taken away in the first place. A simple letter from you will go a long way towards stopping it.

Hoping to hear from you soon,

XXX

AUG 28 1997

The Honorable Joseph I. Lieberman
United States Senate
Washington, D.C. 20510

Dear Senator Lieberman:

I am responding to your inquiry on behalf of your constituent, Dr. Jeffrey I. Gorelick, regarding a physician's obligation to provide auxiliary aids or services for persons with disabilities, and the burden of the costs associated with this requirement. Please excuse our delay in responding.

The Americans with Disabilities Act (ADA) requires public accommodations, including physicians, to furnish appropriate auxiliary aids and services where necessary to ensure effective communication with individuals with disabilities. In determining what constitutes an effective auxiliary aid or service, a physician must consider, among other things, the length and complexity of the communication involved. For instance, a notepad and written materials may be sufficient to permit effective communication when a physician is explaining a simple procedure. It may also be possible to provide effective communication by using a computer at which the doctor and patient can type out their communication. However, if the information to be conveyed is lengthy or complex, the use of written notes may be extremely slow or cumbersome and the use of an interpreter may be the only effective form of communication.

Dr. Gorelick's letter specifically raises issues associated with treatment provided to a deaf patient who, following an office visit, had an interpreter submit fees that exceeded the reimbursement that the doctor's practice received in Medicare payments for treating the patient. He thus incurred a net loss in treating the Medicare eligible patient.

(handwritten) FOIA

Under section 36.301(c) of the regulation, when an interpreter or other auxiliary aid or service is necessary to ensure effective communication, the physician must absorb the cost for this aid or service. As provided in section 36.303(f), however, the physician is not required to provide any auxiliary aid that would result in an undue burden. The term "undue burden" means "significant difficulty or expense." Undue burden must be determined on a case-by-case basis in light of factors such as the nature and cost of the aid or service, and the overall financial resources of the practice. Further discussion of the meaning and application of the term undue burden may be found in the preamble discussion on pages 607-610 of the enclosed regulation.

In determining whether the provision of an interpreter would result in an undue burden, the physician should consider not only the fees paid for providing the medical service or procedure, but also the overall financial resources of the practice. The physician should consider other factors that would minimize the degree of burden on the practice, such as the ability to spread costs throughout the general clientele and the provision of tax credits. As amended in 1990, the Internal Revenue Code permits eligible small businesses to receive a tax credit for certain costs of compliance with the ADA. An eligible small business is one whose gross receipts do not exceed $1,000,000 or whose work force does not consist of more than 30 full-time workers. Qualifying businesses may claim a credit of up to 50 percent of eligible access expenditures that exceed $250 but do not exceed $10,250. Eligible access expenditures may include the costs of providing auxiliary aids and services to persons with disabilities. Information about the tax credit and the tax deduction, including the appropriate form to file for a tax deduction, are enclosed.

Another consideration related to costs associated with the provision of auxiliary aids involves the fact that it is the physician who decides ultimately what the appropriate auxiliary should be. The auxiliary aid provisions of the ADA do not contemplate that a patient with a disability can unilaterally decide on the appropriate type of auxiliary aid. If a patient who is deaf brings a sign language interpreter for an office visit without prior consultation and bills the physician for the

cost of the interpreter, the physician is not obligated to comply with the unilateral determination by the patient that an interpreter is necessary. The physician must be given an opportunity to consult with the patient and make an independent assessment of what type of auxiliary aid, if any, is necessary to ensure effective communication. If the patient believes that the physician's decision will not provide effective communication, then the patient may challenge that decision under title III by

initiating litigation or filing a complaint with the Department of Justice.

I hope this information will be helpful to you in responding to your constituent.

Sincerely,

Isabelle Katz Pinzler
Acting Assistant Attorney General
Civil Rights Division

Enclosures

UROLOGY ASSOCIATES OF DANBURY, P.C.
ADULT & PEDIATRIC UROLOGY
WILLIAM T. HENNESSY, M.D., F.A.C.S.
JEFFREY I. GORELICK, M.D., F.A.C.S.
EDWARD M. BECK, M.D., F.A.C.S. 01 MAY 15 AM 9:03
JOHN K. LUDLOW, M.D.

DANBURY OFFICE RIDGEFIELD OFFICE PATTERSON PARK OFFICE
73 SAND PIT ROAD, SUITE 204 30 PROSPECT STREET, SUITE 300 OLD ROUTE 22, SUITE102
DANBURY, CT. 06810-4041 RIDGEFIELD, CT 06877 BREWSTER, NEW YORK 10509203-748-0330
203-748-0330 914-278-4200
FAX: 203-797-0255 FAX: 203-797-0255 FAX: 914-278-4194

May 9, 1997

Danbury News Times
Letters to the Editor
333 Main Street
Danbury, CT 06810

Re: Impact of Aspects of the American Disabilities Act (ADA) on Small Group Medical Practices

I am sure the intent of special interest groups and legislators when passing legislation such as the American Disabilities Act, is good natured and looking out for the well being of those citizens that are afflicted with disabilities, but as with many other aspects of our bureaucracy, they fail to recognize the practical, every day impact of such legislation and how what may be a benefit or entitlement to one, may impose unfairness to another.

Case in point has occurred on multiple occasions in our medical practice, specifically regarding patients who are hearing and speech impaired. We see patients who are on state welfare and those who have absolutely no insurance at either minimal or no compensation whatsoever, as our moral and professional obligation to serve the needs of those less fortunate in our community.

We recently saw a deaf patient who is on state welfare for a problem who brought with them a sign language interpreter for the office visit. Soon after that visit, we received an itemized bill from that sign language

interpreter for her hourly fee, which not only was for her time spent in our office but actually began from the time that she left her home or facility, until she returned there. This fee was almost double the fee that we receive from the state for providing medical service to the patient. We, therefore, incurred a financial loss by seeing this patient. It seemed amazing to me as citizen and small business owner that there could be such a law

Danbury News Times

that required us to pay for the interpreter for this disabled patient, but when we checked with advocates for thehearing impaired as well as independent sources, we were shocked to find that that is, indeed, part of the American Disabilities Act.

It is one thing for us to take time out of our schedules to see patients free of charge, which I said earlier, that we do on a daily basis, but to actually incur a financial loss and have to pay to see patients is an absurdity. Though we are first physicians, we also have a business and as businessmen, we have salaries to pay and overhead to maintain. We would not be able to provide service to the community for very long if we had to take a financial loss and pay to see many patients. If our government and our society feels that the disabled, such as the hearing impaired, are entitled to this service, then I think that that is laudable, but it is incumbent upon the government and society to, therefore, pay for that entitlement. Why should the private sector, like our practice, be legislated to pay for those social benefits for this or any other patient.

Once again, I must emphasize that I am not against this patient or any like him receiving sign language interpreter services, but what I am against is that I am being asked to personally pay for that service as opposed to the state or federal government. We provide voluntary, uncompensated services to the community far beyond that of any profession and this is just one example of how we get taken advantage of by this system. I, for one, am becoming increasingly discouraged by such unfair bureaucratic practices and legislation.

Sincerely yours,

Jeffrey I. Gorelick, M.D., F.A.C.S.

JIG:ku

cc: Fairfield County Medical Association, 2285 Reservoir Ave., Trumbull CT 06611
Senator Mark Nielson, District Office, P.O. Box 421, Danbury, CT 06813

Rep. Christopher Scalzo, Legislative Office Building, Room 4200, Hartford, CT 06106-1591
Congressman James Maloney, Federal Building, 135 Grand St., Room 211, Waterbury, CT 06702
Senator Joseph Lieberman, 316 Hart Senate Office Building, Washington, DC 20510
Senator Dodd, 444 Russell Building Washington, DC 20510
Rep. David Capiello, Legislative Building, House of Rep., Room 4200, Capital Ave., Hartford, CT 06106
Rep. Julia B. Wasserman, 113 Walnut Tree Hill Rd., Sandy Hook, CT 06482
Rep. Norma Gyle, 6 Milltown Rd., New Fairfield, CT 06812
Rep. Judith Freedman, Crawford Road, Westport, CT 06880

NOV 6 1997

The Honorable James J. Jeffords
United States Senate
Washington, D.C. 20510

Dear Senator Jeffords:

I am writing in reply to your letter, with enclosures, on behalf of your constituent, Ms. XXX of XXX Vermont. Ms. XXX had provided you with a copy of the letter she wrote to President Clinton outlining some of the problems she and her disabled son have encountered, over the years, with various schools he has attended. Please excuse our delay in responding.

In her correspondence, Ms. XXX alleges that some of her son's school experiences may have involved discrimination on the basis of disability for failure on the part of the schools' various administrators and teachers to provide him with reasonable modifications of programs and, at times, freedom from harassing behavior by other students. Ms. XXX additionally describes difficulties her son has encountered with respect to his inability to obtain financing for enrollment in a Vermont State College to study art. She hopes our department may be able to assist her.

Staff of the Disability Rights Section, Civil Rights Division, have given careful consideration to the information Ms. XXX furnished. The circumstances she describes, however, do not reveal that current violations of Federal civil rights laws are involved. Several of her allegations concern issues related to education financing, vocational rehabilitation, and qualification for Supplemental Security Income (SSI). These matters with which she is principally concerned are properly within the jurisdiction of the Federal and State and local agencies that administer such programs. Accordingly, we are unable to be of direct assistance.

cc: Records, Chrono, Wodatch, McDowney, Talian, FOIA
talian\myfiles\congress\f-oknovoij.eff.ed.loans.wpd\sc. YOUNG

Ms. XXX should continue to pursue full explanations about qualifying for vocational rehabilitation with the appropriate State agency office in her locale. She should, likewise, seek advice on school loan matters from financial aid officers at the schools her son will attend or has attended in the past. These officials should be able to explain fully what her options are with respect to repaying outstanding student loans, or for obtaining waivers or exemptions from repayment based on her son's disabled status. At the Federal level, these matters are administered by the Department of Education through the following offices:

Mr. Thomas Hehir
Director
Office of Special Education
Programs
OSERS, Room 3086
Switzer Building
330 C Street, S.W.
Washington, D.C. 20202-1100
Telephone (202) 205-5507

Mr. David Longanecker
Assistant Secretary
Office of Postsecondary Education
U.S. Department of Education
ROB-3, Room 4082
600 Independence Avenue, S.W.
Washington, D.C. 20202
Telephone: (202) 708-5547.

Although Ms. XXX generally believes that her son's rights have been violated, a Federal investigative agency can only respond to allegations with supporting facts sufficient to identify a possible violation of Federal civil rights statutes and implementing regulations prohibiting discrimination on the basis of disability. Under title II of the Americans with Disabilities Act of 1990 (ADA) and, concomitantly, section 504 of the Rehabilitation Act of 1973, as amended, the Department of Education is the agency with primary jurisdiction to investigate alleged violations of these laws by educational public entities and/or schools that are recipients of Federal financial assistance. The Department of Justice may initiate judicial enforcement actions under title II of the ADA and section 504, but this is done only after a matter is referred to the Department of Justice from an agency with primary investigative and enforcement jurisdiction.

Referrals to the Department of Justice are made by the investigative agency, after a formal finding of discrimination. This follows a determination that the public entity or recipient school will not voluntarily comply with remedial actions to resolve the discrimination. Such a referral to the Department of Justice for consideration of judicial enforcement has not occurred with respect to any of Ms. XXX complaints.

If Ms. XXX has specific information about a school that has denied admission or discriminated in other educational programs, benefits, or activities with respect to her son based on his disability, she should file her complaint with:

Mr. Thomas J. Hibino
Office for Civil Rights/ED
J.W. McCormack Post Office &
Courthouse

Room 222, 01-0061
Boston, Massachusetts 02109-4557
Telephone: (617) 223-9662
FAX: (617) 223-9669; TDD (617) 223-9695.

Ms. XXX also has other enforcement options if she does not want to pursue a Department of Education administrative investigation, or if the Department of Education does not initiate an investigation based on Ms. XXX charge. As an alternative to investigation, she may file a section 504/title II lawsuit in the appropriate Federal district court if she chooses to do so. She does not need any approval letter from the Department of Education or the Department of Justice before proceeding.

Ms. XXX also may seek to resolve her complaints through alternative dispute resolution; or, she may consult with the State or local authorities involved, disability rights organizations, or organizations that provide alternative dispute resolution services (such as mediation or negotiation). We have enclosed a list of organizations serving Ms. XXX area. These groups may be able to identify resources available to provide Ms. XXX with assistance. Because Ms. XXX believes that her rights have been violated, we suggest that she contact private counsel or the nearest legal aid office and/or the local bar association to determine whether they may be able to assist

her at this time. An additional resource on the issue of accommodations for students with disabilities is:

AHEAD
Association on Higher Education
and Disability
P.O. Box 21192
Columbus, Ohio 43221-0192
Telephone: (614) 488-4972.

Our last suggestion pertains to Ms. XXX concerns about her son's application for SSI benefits. The most expeditious manner to resolve areas of disputed benefits or medical claims

processing is to contact the nearest local Social Security office. Ms. XXX may call the Social Security Administration's toll-free information number at (800) 772-1213 for instructions on exactly what information she needs to bring to any discussions about benefits claims, and to schedule an appointment. This procedure should expedite resolution of the problems she perceives she may encounter in obtaining SSI services. The Social Security Administration guarantees contact with its staff by calling their toll-free number, and we highly recommend that your constituents use this resource to resolve SSI disputes.

I hope this information is useful in responding to your constituent's concerns. I also hope that Ms. XXX son receives the benefits and assistance to which he may be entitled under Federal and State/local programs.

Sincerely,

Isabelle Katz Pinzler
Acting Assistant Attorney General
Civil Rights Division

Enclosure

NOV 12 1997

The Honorable John Glenn
United States Senator
200 North High Street
Suite 600
Columbus, Ohio 43215

Dear Senator Glenn:

I am responding to your letter on behalf of your

constituent, Mr. XXX who asked you to determine if a person who has had his colon removed is considered an individual with a disability for the purposes of the Americans with Disabilities Act (ADA). We apologize for the delay in responding.

The ADA does not identify specific diseases or conditions as disabilities because it would not be possible to guarantee comprehensiveness by providing a list of specific disabilities. The ADA provides that an individual will be considered an individual with a disability for the purpose of ADA coverage if he or she has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. This definition of "disability" is consistent with the definitions used in the Rehabilitation Act of 1973 and in the Fair Housing Act of 1988.

The Department of Justice regulations implementing the ADA provide a broad definition of the term "physical or mental impairment." Physical impairments include, among other things, any physiological disorder or condition that affects the digestive system. Therefore, the conditions described in Mr. XXX letter are potentially covered by the ADA if, in fact, they substantially limit one or more life activities of an affected individual.

cc: RECORDS; CHRONO; WODATCH; BLIZARD; MCDOWNEY; FOIA
H:\GCONCEPC\CGRSGLENNLTR.JB.WPD

I hope that this information is helpful to you in responding to your constituent.

Sincerely,

Isabelle Katz Pinzler
Acting Assistant Attorney General
Civil Rights Division

NOV 18 1997

The Honorable Ernest F. Hollings

United States Senator
1835 Assembly Street
Columbia, South Carolina 29201

Dear Senator Hollings:

I am responding to your letter on behalf of your constituent, Mr. XXX , who asked you to determine if a person who has fibromyalgia is an individual with a disability for the purposes of the Americans with Disabilities Act of 1990 (ADA). Mr. XXX letter also suggests modifications that he considers necessary to provide accessibility for people who use mobility aids, such as canes and walkers. We apologize for the delay in responding.

The ADA does not identify specific diseases or conditions as disabilities because it would not be possible to guarantee comprehensiveness by providing a list of specific disabilities. The ADA provides that an individual will be considered an individual with a disability for the purpose of ADA coverage if he or she has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. This definition of "disability" is consistent with the definitions used in the Rehabilitation Act of 1973 and in the Fair Housing Amendments Act of 1988.

The Department of Justice regulations implementing the ADA provide a broad definition of the term "physical or mental impairment." Physical impairments include, among other things, any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more body systems, including conditions that affect neurological or musculoskeletal systems. Therefore, fibromyalgia is a condition that is potentially covered by the ADA if, in fact, it substantially limits one or more life activities of an affected individual.

CC: RECORDS; CHRONO; WODATCH; BLIZARD; MCDOWNEY; FOIA
H:\GCONCEPC\HOLLINGSCGRSLTR.JB.WPD

With respect to the architectural modifications suggested by Mr. XXX I note that the U.S. Architectural and Transportation Barriers Compliance Board (Access Board) is now in the process of reviewing its ADA Accessibility Guidelines. The Access Board anticipates that it will publish revised guidelines for public comment in 1998. If Mr. XXX wishes to have his suggestions considered by the Access Board during this process, he may write to the:

U.S. Architectural and Transportation
Barriers Compliance Board
1331 F Street, N.W.
Washington, D.C. 20004-1111

I hope that this information is helpful to you in responding to your constituent.

Sincerely,

Isabelle Katz Pinzler
Acting Assistant Attorney General
Civil Rights Division

NOV 18

The Honorable Ron Wyden
United States Senator
500 NE Multnomah Street
Suite 320
Portland, Oregon 97232

Dear Senator Wyden:

I am responding to your inquiry on behalf of your constituent, Mr. XXX of XXX , Oregon, who wrote to you about alleged discrimination on the basis of disability at the International Air Academy (Academy) in Vancouver, Washington. Please excuse our delay in responding.

The Americans with Disabilities Act of 1990 (ADA) and section 504 of the Rehabilitation Act of 1973 (section 504), as amended, may apply to the allegation raised by Mr. XXX . Title III of the ADA prohibits places of public accommodation such as the Academy from discriminating on the basis of disability. Title III offers a variety of remedies for individuals who believe their rights under that statute have been violated. It provides for a private right of action, and Mr. XXX may wish to consult with a private attorney if he is interested in pursuing this option.

In addition to filing a private suit, there are a number of avenues that your constituent may pursue to resolve this matter, including consulting State or local authorities, disability rights organizations, or organizations that provide alternative dispute resolution services (such as mediation or negotiation). We have enclosed a list of organizations in Oregon and Washington. One of these groups may be able to assist Mr. XXX . A State or local bar association may be able to provide the names of private attorneys or mediation services that handle disability rights matters. The mediation process and information on securing a local mediator are summarized in the enclosed brochure "Want to Resolve Your ADA Complaint? Consider Mediation."

CC: RECORDS; CHRONO; WODATCH; TALIAN; MCDOWNEY; FOIA
H:\JTALIAN\MYFILES\CONGRESS\OKREFER.504.WPD

Title III also authorizes the Department of Justice to investigate alleged violations of the Act by public accommodations and commercial facilities. 42 U.S.C. S 12188 (b) (1) (A). In this respect, staff of the Disability Rights Section, Civil Rights Division, have reviewed Mr. XXX complaint. We determined that the Academy is approved to participate in the Federal education loan program administered by the Department of Education. This arrangement subjects the Academy to coverage by section 504, because of its status as a recipient of Federal financial assistance from the Department of Education.

When both title III and section 504 apply to a complaint, we frequently refer the complaint for processing by the agency with section 504 jurisdiction. This results from the fact that the Department has received several thousand complaints about potential ADA title III violations, and we do not have unlimited resources to investigate each of the complaints that we receive and attempt to resolve them informally. Additionally, we do not investigate each complaint that we receive for the purposes of bringing litigation. The Department may seek judicial relief only in instances where there appears to be a pattern or practice of discrimination or where an issue of general public importance is involved. The Department does not act as an attorney for, or representative of, an individual.

For these reasons, we have referred Mr. XXX complaint to the Department of Education for processing under section 504 (Enclosure). Mr. XXX also has a private right of action pursuant to section 504, which generally offers relief similar to that available under the ADA. The address for the Department of Education to which we referred Mr. XXX complaint is:

Mr. Gary D. Jackson
Office for Civil Rights/ED
915 Second Avenue
Room 3310, 10-9010
Seattle, Washington 98174-1099

Telephone (206) 220-7880
FAX (206) 220-7887; TDD (206) 220-7907

If Mr. XXX has additional questions or seeks to provide additional information, he should contact the Department of Education at the address listed above. If Mr. XXX has questions about the ADA or section 504, he may call the Department of Justice ADA information line (800-514-0301 (voice) or 800-514-0383 (TDD)). Members of the Disability Rights Section staff are available to answer questions on the information line on Monday, Tuesday, Wednesday, and Friday from 10:00 a.m. to 6:00 p.m., Eastern time. On Thursday, the information line is staffed from 1:00 p.m. to 6:00 p.m.

I hope this information is useful in responding to your constituent.

Sincerely,

Isabelle Katz Pinzler
Acting Assistant Attorney General
Civil Rights Division

Enclosures

U.S. Department of Justice
Civil Rights Division
Office of the Assistant Attorney General Washington, D.C. 20035

NOV 20 1997

The Honorable Tom Harkin
United States Senate
Washington, D.C. 20510-1502

Dear Senator Harkin:

I am responding to your inquiry on behalf of your constituent, Mr. XXX of XXX Iowa, who inquires about programs and advice for persons who are color blind. Mr. XXX mentions that in XXX he was rejected for military service due to color blindness. He implicitly seeks information about color blindness as it relates to Federal antidiscrimination statutes such as the Americans with Disabilities Act of 1990 (ADA). Please excuse our delay in responding.

Two prominent sources of information at the national level on eye disorders or pathology and degenerative eye disease are:

National Eye Institute
National Institute of Health
Department of Health and Human Services
Building 31, Room A03
Bethesda, Maryland 20892
Telephone (301) 496-5248

The Foundation Fighting Blindness
Executive Plaza One, Suite 800
11350 McCormick Road
Hunt Valley, Maryland 21031-1014
Telephone 1 800 683-5555
(410) 771-9470 (Fax)

Additional information about the issue of color blindness or sight impairment generally may be available through local service organizations. We have enclosed a list of resources in Iowa that may be able to answer specific questions that Mr. XXX may have about discrimination against persons with color blindness.

Congress and the courts have generally excepted the uniformed services from coverage by broad, cross-cutting Federal civil rights statutory provisions such as the ADA. Rather, nondiscrimination in the uniformed services is enforced through specific antidiscrimination policies established for and implemented by the Department of Defense and the chain of command. That physical conditions such as color blindness are disqualifying may be due no doubt to requirements related to combat-readiness. If Mr. XXX seeks to know why the military exempts persons with color blindness from the uniformed services, he might pose his questions to a local military recruiter or he may contact the Pentagon at the following office:

Colonel William Walton
Director
Military E.O. Office
OSD/FM&P-MEO (MMP)
Room 3A256, Pentagon
Washington, D.C. 20301-4000

The ADA and section 504 of the Rehabilitation Act or 1973, as amended, a civil rights statute similar to the ADA, prohibit discrimination on the basis of disability. They do not guarantee that persons with disabilities will be able to obtain all services that they need. Under the ADA, there is no specific

method by which an individual is "classified" as disabled. Each determination with respect to coverage is made case-by-case. To initiate ADA coverage, it must be established that an individual has a physical or mental impairment that substantially limits a major life activity, has a record of such an impairment or is regarded as having such an impairment. If Mr. XXX believes he has been discriminated against due to color blindness, the enclosed "Guide to Disability Rights Laws" and complaint forms should be helpful for filing his complaint and directing it to the proper Federal investigative agency.

I hope this information will be helpful to you in responding to your constituent.

Sincerely,

Isabelle Katz Pinzler
Acting Assistant Attorney General
Civil Rights Division

Enclosures

The Honorable Charles S. Robb
United States Senator
The Ironfronts, Suite 310
1011 East Main Street
Richmond, Virginia 23219

Dear Senator Robb:

I am responding to your letter on behalf of your constituent, XXX who asked you to determine if a person who has Rosacea is considered an individual with a disability for the purposes of the Americans with Disabilities Act of 1990 (ADA). Please excuse our delay in responding.

The ADA does not identify specific diseases or conditions as disabilities because it would not be possible to guarantee comprehensiveness by providing a list of specific disabilities. The ADA provides that an individual will be considered an individual with a disability for the purpose of ADA coverage if he or she has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. This definition of "disability" is consistent with the definitions

used in the Rehabilitation Act of 1973 and in the Fair Housing Amendments Act of 1988.

The Department of Justice regulations implementing the ADA provide a broad definition of the term "physical or mental impairment." Physical impairments include, among other things, any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more body systems, including conditions that affect the skin. Therefore, Rosacea is a condition that is potentially covered by the ADA if, in fact, it substantially limits one or more major life activities of an affected individual.

cc: Records, Chrono, Wodatch, McDowney, Blizard, FOIA
blizard\myfiles\drsltrs\robb-1.wpd\sc. YOUNG-PARRAN

I hope that this information is helpful to you in responding to your constituent. As you requested, I am providing a duplicate copy of this response and I am returning the enclosure to your letter.

Sincerely,

Isabelle Katz Pinzler
Acting Assistant Attorney General
Civil Rights Division

Enclosures

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General Washington, D.C. 20035

NOV 25 1997

The Honorable Robert F. Smith
Member, U.S. House of Representatives
843 East Main, Suite 400
Medford, Oregon 97504-7137

Dear Congressman Smith:

I am responding to your letter on behalf of your constituent, Ms. XXX . Please excuse our delay in responding.

Ms. XXX is the manager of a non-profit animal shelter operated by the Southern Oregon Humane Society (SOHS). According to her letter to you, the SOHS has purchased an existing office building that will be relocated to the SOHS property for use as an office building. Ms. XXX requested your assistance in obtaining a "formal" determination of the applicable requirements under the Americans with Disabilities Act of 1990 (ADA) because she has been informed by a local building official that the SOHS will be required to remodel the existing restrooms to make them accessible "to comply with the ADA."

The Department of Justice is authorized by the ADA to provide technical assistance to assist covered entities to understand their ADA compliance obligations. Because this advice is based solely on the facts presented in the incoming letter, it does not constitute a formal legal opinion about SOHS rights or responsibilities under the ADA. However, this guidance should enable Ms. XXX to understand the generally applicable ADA requirements.

If the new building is used strictly as an administrative office building for SOHS staff, then it is a "commercial facility" that is subject only to the new construction and alterations requirements of title III of the ADA. However, if SOHS operates the facility as a place of public accommodation (as that term is defined in section 36.304 of the enclosed regulation), then SOHS will also have the obligation to remove architectural barriers in the existing facility, where such removal is readily achievable, i.e., easily accomplishable and able to be carried out without much difficulty or expense.

(handwritten)FOIA

Because the ADA defines the term "alteration" to include any change "that affects or could affect the usability of the building," the relocation of an existing building from one site to another is considered to be an alteration. Therefore, SOHS would be required to ensure that, to the maximum extent feasible, would be required to ensure that, to the maximum extent feasible, the altered portions of the facility, i.e., the external elements of the facility that are physically altered, must comply with the ADA Standards for Accessible Design (appendix A to the enclosed

regulation). As a result of the relocation, SOHS will be required to make the building entrance(s) accessible and to provide an accessible route to each accessible entrance.

In general, the ADA does not require major retrofitting in existing facilities. Therefore, in a commercial facility, the ADA would not require restrooms that were not otherwise being altered to be made accessible. In a public accommodation, barriers to access in existing restrooms must be removed if it is readily achievable to do so.

Ms. XXX should note, however, that this letter addresses only the requirements of Federal law. Some States have adopted accessibility requirements through State statutes or building codes that are more stringent than the Federal regulation. The ADA expressly permits local authorities to enforce State or local laws that provide accessibility that equals or exceeds the Federal rules. Therefore, the State of Oregon may require SOHS to comply with provisions that impose obligations in addition to those identified in this letter.

I have enclosed two copies of the regulation implementing title III of the ADA for your reference. I hope this information is helpful to you in responding to your constituent.

Sincerely,

Isabelle Katz Pinzler
Acting Assistant Attorney General
Civil Rights Division

Enclosures

JAN 16 1998

The Honorable Patsy T. Mink
U.S. House of Representatives
Washington, D.C. 20515-1102

Dear Congresswoman Mink:

I am replying to your inquiry on behalf of your constituent, Mr. XXX of Honolulu, Hawaii, who believes there is a discrepancy in the nature of his military pension. Please excuse our delay in responding.

Staff of the Disability Rights Section, Civil Rights Division, have reviewed the issues raised by Mr. XXX and determined they are not matters that the Civil Rights Division is able to address. Mr. XXX implies that because there is a distinction between veterans' disability compensation, which he receives, and regular pension benefits for military service, which he apparently does not receive, this pension status possibility violates the Americans with Disabilities Act of 1990 (ADA). Our understanding of military pensions is that a veteran or service retiree is eligible for either one or the other type of pension for military service, but not both.

The ADA does not apply to the executive branch of the Federal government. A similar statute, section 504 of the Rehabilitation Act of 1973, as amended, prohibits discrimination on the basis of disability in programs that receive Federal financial assistance or that are conducted by the Federal government itself. Primary jurisdiction to investigate allegations about possible section 504 violations resides with the Federal agency that conducts or funds the program. If Mr. XXX believes that he was denied services or access to a VA program or activity based on his disability, he may file a section 504 claim with the following office: Mr. Gerald K. Hinch, Deputy Assistant Secretary, Office of Equal Opportunity, Department of Veterans Affairs, 1425 K Street N.W., Washington, D.C. 20420, telephone (202) 233-2012.

Cc: Records, Chrono, Wodatch, McDowney, Talian, FOIA
h:\talian\myfiles\congress\mink XXX va\sc. YOUNG-PARRAN

Claims about the denial of disability compensation and/or

receipt of improper medical treatment concerning the VA are primarily under the jurisdiction of the program office at the VA that oversees administration of such services. Therefore, if Mr. XXX disputes determinations by the VA about his eligibility for benefits, he should file his allegations with the following office: Mr. Newell Clinton, Director, Veterans Assistance Service (27), Department of Veterans Affairs, 810 Vermont Avenue, N.W., Washington, D.C. 20420, telephone (202) 275-5451.

We note that disagreements by a claimant with determinations by the VA concerning a benefits claim, or for changing the status of one's discharge for military service, must ultimately be resolved through the VA's administrative appeal process involving the Board of Veterans' Appeals. The VA regional staff that processed any claim by Mr. XXX can provide information about procedures to appeal the VA's determination in his case, or he may write to the Department of Veterans Affairs, (01C1), Board of Veterans' Appeals, Washington, D.C. 20420.

Mr. XXX may find it useful to enlist the assistance of a veterans' service organization such as the Veterans of Foreign Wars or the American Legion to assist in his VA claims and appeals. He also may consult with a private attorney to determine what other options are available to him. For his review we have enclosed a copy of the VA's benefits directory. It describes in detail the names and locations of veterans' assistance services and proper appeal authorities at the VA.

I hope this information is useful in responding to your constituent.

Sincerely,

Bill Lann Lee
Acting Assistant Attorney General
Civil Rights Division

Enclosure

FEB 12 1998

The Honorable Dave Weldon
Member, U.S. House of Representatives
Brevard County Government Complex
2725 Judge Fran Jamieson Way
Building C
Melbourne, Florida 32940

Dear Congressman Weldon:

I am replying to your inquiry on behalf of your constituent, Mr. XXX of XXX , Florida, who wrote seeking the status of his complaint filed with the Department of Justice. Please excuse our delay in responding.

Although Mr. XXX believed that his civil rights had been violated, his complaint generally involved a dispute concerning his eligibility for benefits under programs administered by the Department of Veterans Affairs (VA). After careful review we referred Mr. XXX complaint to the VA on April 8, 1997, and notified him about this action (Enclosure). As recently as November we responded to several telephone inquiries from Mr. XXX directing him to staff at the VA that were processing his complaint. Mr. Ken Kunkle, telephone (202) 273-8923, of the VA's civil rights office provided information that the VA staff contact on Mr. XXX file was Mr. Carl Wasson, telephone (202) 273-7345.

Disagreements between Mr. XXX and the VA with respect to his eligibility to receive service-connected disability compensation or to qualify for guaranteed or subsidized loans must be resolved through the VA's administrative appeal process involving the Board of Veterans' Appeals. The VA regional staff that processed Mr. XXX claim can provide information about procedures to appeal the VA's determinations in his case. In the alternative, Mr. XXX may write directly to the Department of Veterans Affairs, (01C1), Board of Veterans' Appeals, Washington, D.C. 20420.

cc: Records, Chrono, Wodatch, McDowney, Talian, FOIA
h:\talian\myfiles\congress\f-weld XXX .va.wpd\sc. YOUNG-PARRAN

Mr. XXX may find it useful to enlist the assistance of a recognized national veterans service organization such as the Veterans of Foreign Wars or the American Legion to help him in his VA appeal. He also may consult with a private attorney to determine what other options are available to him.

Additionally, if Mr. XXX believes that VA personnel were intentionally negligent in the handling of his complaints or intentionally misapplied the law, or otherwise engaged in fraud, waste, or abuse, he may wish to file a complaint with the VA's Office of Inspector General by writing to:

Mr. Richard Griffin
Inspector General (50)
Department of Veterans Affairs
810 Vermont Ave, N.W.
Washington, D.C. 20420
Telephone (202) 565-8621.

For Mr. XXX use, we have enclosed the VA's benefits directory that provides information about veterans' assistance services and proper appeal authorities at the VA. I hope this information is responsive to your constituent's concerns.

Sincerely,

Bill Lann Lee
Acting Assistant Attorney General
Civil Rights Division

Enclosures

MAR 5 1998

The Honorable Sherwood Boehlert
Member, U.S. House of Representatives
Alexander Pirnie Federal Building, Room 200
10 Broad Street
Utica, New York 12501-1270

Dear Congressman Boehlert:

This letter is in response to your inquiry on behalf of your constituent, XXX . Mr. XXX has asked you to determine if the Americans with Disabilities Act of 1990 (ADA) would require the Oneida County Historical Society to modify its facilities, and, to determine if Federal funds are available to defray the cost of compliance. We apologize for the delay in responding.

We do not have sufficient information about the Oneida County Historical Society to be able to say specifically how the ADA applies to that organization's operations. There are different requirements for public entities (usually State or local governments) and places of public accommodation operated by private entities. In general, however, Mr. XXX should be aware that the ADA applies different requirements to new construction and alterations than it applies to existing facilities that are not otherwise being altered.

New construction of (or alterations to) privately owned buildings subject to the ADA must comply with the ADA Standards for Accessible Design. Publicly owned buildings may comply with the ADA Standards or with the Uniform Federal Accessibility

cc: RECORDS; CHRONO; WODATCH; BLIZARD; MCDOWNEY; FOIA
C:\MYFILES\BOEHLERT.WPD

Standards. The ADA does not exempt historic facilities from coverage, but it does take into account the national interest in preserving significant historic structures. The ADA regulations establish special procedures that may be followed in situations where full compliance with the technical requirements of the ADA accessibility standards for new construction and alterations will threaten or destroy the historic significance of a facility.

Even if no alterations are planned, a public accommodation is required to remove architectural barriers to the extent that it is readily achievable to do so. Barrier removal that would threaten or destroy the historic significance of the facility would not be readily achievable; therefore, it would not be required. However, if it is not readily achievable to remove architectural barriers in customer service areas, the public accommodation is still required to make its goods and services available to customers with disabilities through alternative methods such as curbside service, if such methods are readily achievable. Public entities have a similar obligation - to ensure that individuals with disabilities are not excluded from their programs because the facility in which the program is offered is inaccessible.

Mr. XXX also asked about the availability of funds to pay for modifications to provide access. The ADA, itself, does not provide funds for construction. However, funds may be available through other Federal programs that provide funds for various types of construction. In addition, private entities may be eligible for a tax credit for expenses necessary to comply with the ADA. As amended in 1990, the Internal Revenue Code permits an eligible small business (one whose gross receipts do not exceed $1,000,000 or whose work force does not exceed more than 30 full-time workers) to claim a credit of up to 50 percent

of eligible access expenditures that exceed $250 but do not exceed $10,250. Information about this tax credit can be obtained from a local IRS office, or by contacting the Office of Chief Counsel, Internal Revenue Service.

I am enclosing copies of the Department of Justice regulations implementing titles II and III of the ADA and the Department's Technical Assistance Manuals. These documents should enable Mr. XXX to determine which requirements of the

ADA apply to the facilities that he manages. If Mr. XXX has further questions, he may contact the Department of Justice's toll-free ADA Information Line (800-514-0301 (voice) or 800-514-0383 (TDD)). Members of the Disability Rights Section staff are available to answer questions on the information line on Monday, Tuesday, Wednesday, and Friday from 10:00 a.m. to 6:00 p.m., Eastern time. On Thursday, the information line is staffed from 1:00 p.m. to 6:00 p.m.

I hope that this information is helpful to you in responding to your constituent.

Sincerely,

Bill Lann Lee
Acting Assistant Attorney General
Civil Rights Division

Enclosures

MAR 5 1998

The Honorable Jennifer Dunn
Member, U.S. House of Representatives
Nine Lake Bellevue Drive
Suite 204
Bellevue, Washington 98005

Dear Congresswoman Dunn:

I am responding to your letter asking if Federal law would require the installation of an elevator in a two-story facility that is being remodeled. Your inquiry was prompted by a letter from your constituents, Mr. and Mrs. XXX , who wrote to you objecting to a determination by the Washington State Building Code Council that the State's accessibility code requires the installation of an elevator or ramps to provide access to an upper level in a building being remodeled at the Atwood's Pet Resort. We apologize for the delay in responding.

Title III of the Americans with Disabilities Act of 1990 (ADA) requires newly constructed or altered places of public accommodation and commercial facilities to be readily accessible to, and usable by, individuals with disabilities. However, the ADA does contain a limited exception to this requirement. Section 303(c) provides that the requirement to provide access in newly constructed or altered facilities

. . . shall not be construed to require the installation of an elevator for facilities that are less than three stories or have less than 3,000 square feet per story unless the building is a shopping center, a shopping mall, or the professional office of a health care provider . . .

CC: RECORDS; CHRONO; WODATCH; BLIZARD; MCDOWNEY; FOIA
h:\GCONCEPC\MYFILES\DUNN.WPD

Therefore, federal law would not require the installation of an elevator in a two-story facility.

Your constituents should note, however, that the ADA does not preempt the authority of the State of Washington to impose more stringent requirements on construction through its building code process. Therefore, the State may require the installation of elevators in two-story buildings. The interpretation and application of the State's accessibility code is a matter that Mr. and Mrs. Atwood must resolve with State code officials.

I hope that this information is helpful to you in responding to your constituents.

Sincerely,

Bill Lann Lee
Acting Assistant Attorney General
Civil Rights Division

T. 2-23-98

MAR 5 1998

D.J. No. 202-50-0

FIRST CLASS MAIL

The Honorable Daniel Patrick Moynihan
United States Senator
United States Senate
Washington, D.C. 20510-3201

Dear Senator Moynihan:

I am responding to your letter on behalf of your constituent, XXX . Mr. XXX wrote to you about his general concerns about the Americans with Disabilities Act.

As you requested, we have responded directly to Mr. XXX and have enclosed a copy of our response for your records. I hope this information is helpful to you and your constituent.

Sincerely,

Bill Lann Lee
Acting Assistant Attorney General
Civil Rights Division

Enclosures

cc: Records, Chrono, Wodatch, Blizard, McDowney, Hahm, FOIA
jhahm\myfiles\plcyltrs\moynihan.wpd

U.S. Department of Justice
Civil Rights Division

D.J. No. 202-50-0 Disability Rights Section
P.O. Box 66738
Washington, DC 20035-6738

FIRST CLASS MAIL

FEB 23 1998

Mr. XXX
XXX
Syracuse, NY XXX

Dear Mr. XXX :

I am writing in response to your letter to Senator Daniel Patrick Moynihan, which the Department of Justice received on February 3, 1998, regarding questions about the Americans with Disabilities Act (ADA).

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities having rights or obligations under the Act. This letter provides informal guidance to assist you in understanding the ADA's requirements. However, it does not constitute a legal interpretation or legal advice, and it is not binding on the Department.

The ADA prohibits discrimination on the basis of disability in employment, State and local government, public accommodations, commercial facilities, transportation, and telecommunications. The following four Federal agencies are primarily responsible for enforcing the ADA. The U.S. Equal Employment Opportunity Commission enforces ADA provisions prohibiting discrimination in employment against qualified individuals with disabilities (title I). The U.S. Department of Justice enforces ADA provisions prohibiting discrimination on the basis of disability in State and local government services (title II), and in public accommodations and commercial facilities (title III). The U.S. Department of Transportation enforces ADA provisions that require nondiscrimination in public and private mass transportation systems and services. The Federal Communications Commission enforces ADA telecommunications provisions (title IV).

The elements that an ADA claimant must prove vary slightly depending on the particular claim. For example, an ADA title I claimant must show that (1) he has a disability within the meaning of the ADA; (2) he is qualified for the job, with or without reasonable accommodation, and is able to perform the essential functions of the job; (3) he was subjected to an adverse employment decision; (4) the employer knew or had reason to know of his disability; and (5) he was replaced by a

non-disabled person or treated less favorably than a non-disabled person. An ADA title II claimant must show that (1) she has a disability within the meaning of the ADA; (2) she is qualified, with or without reasonable modifications to rules, policies, or practices, and meets the essential eligibility requirements for the receipt of services or the participation in programs or activities; and (3) by reason of such disability, she was denied the benefits of the services, programs or activities by a public entity. An ADA title III claimant must show that (1) he is

disabled within the meaning of the ADA; (2) a private entity owns, leases (or leases to), or operates a public place of accommodation; and (3) he was denied the opportunity to participate in or benefit from services or accommodations on the basis of his disability.

Remedies available under the ADA also vary depending on the claim. Under title I, remedies available may include hiring, reinstatement, promotion, back pay, front pay, reasonable accommodation, or other actions that will make an individual "whole." Compensatory and punitive damages also may be available where intentional discrimination is found. Under titles II and III, remedies available may include an order granting temporary, preliminary, or permanent relief; requiring that facilities be made readily accessible to and usable by individuals with disabilities; requiring provision of an auxiliary aid or service; or requiring modification of a policy, practice, or procedure. In addition, the Department may request monetary damages for individual victims and/or civil penalties against covered entities.

Enclosed, among other things, is a booklet entitled "A Guide To Disability Rights Laws" that provides an overview of Federal civil rights laws that ensure equal opportunity for people with disabilities. Also enclosed is the most recent status report that summarizes ADA activities of the Department of Justice during the fourth quarter of 1997. In addition, enclosed is a list containing telephone numbers and Internet and electronic bulletin board addresses of federal agencies and other organizations that provide information about the ADA.

I hope this information is helpful to you.

Sincerely,

John L. Wodatch
Chief
Disability Rights Section

Enclosures

MAR 17 1998

The Honorable Porter Goss
Member, U.S. House of Representatives
2000 Main Street
Suite 303

Ft. Myers, Florida 33901

Dear Congressman Goss:

I am responding to your inquiry on behalf of your constituent, Ms. XXX , regarding the obligation of the Peace River Federated Republican Forum to provide real-time captioning for a person who wants to attend a program sponsored by that organization. Please excuse our delay in responding to you.

Title III of the Americans with Disabilities Act of 1990 (ADA) provides that no individual shall be discriminated against on the basis of disability in any place of public accommodation. The ADA defines 12 categories of places of public accommodation, including places serving food or drink, lecture halls, and other places of public gathering. Organizations that do not usually fall within one of the 12 categories may become subject to the ADA when they lease a place of public accommodation for the purpose of sponsoring an event. Therefore, Ms. XXX has been correctly advised that her organization is subject to the ADA when it is sponsoring a public gathering such as a luncheon program with a speaker.

The ADA requires covered entities to ensure effective communication with program participants who have hearing impairments. This may require a covered entity to provide auxiliary aids for a person with a hearing impairment if it is necessary to ensure effective communication. Real-time captioning, i.e., having a reporter prepare a simultaneous transcription of a speech, is an auxiliary aid that is often effective, but other auxiliary aids may also be effective.

cc: Records, Chrono, Wodatch, McDowney, Blizard, FOIA
h:\cyoung\2goss-XXX .wpd\sc. Young-Parran

The obligation to ensure effective communication is not unlimited. A covered entity is not required to provide a requested auxiliary aid if the covered entity can demonstrate that providing that auxiliary aid would result in an undue financial or administrative burden, i.e., a significant difficulty or expense. In determining whether the provision of real-time captioning would result in an undue burden, Ms. XXX organization should consider not only the fees charged for the specific program, but also the overall financial resources of the organization. The sponsoring organization should also consider other factors that would minimize the degree of burden.

If the organization determines that providing real-time captioning would result in an undue burden, then the organization may propose the use of an alternative auxiliary aid. In such circumstances, it is important for the covered entity to work with the person who requested the auxiliary aid to identify an alternative that will provide effective communication. The use of amplification devices or assistive listening systems are effective communication aids for some people, but they are not effective for everyone.

I am enclosing copies of the Department's regulation implementing title III of the ADA and the Department's Title III Technical Assistance Manual. If Ms. XXX has further questions about the ADA, she may contact the Department of Justice's toll-free ADA information line (800-514-0301 (voice) or 800-514-0383 (TDD)). Members of the Disability Rights Section staff are available to answer questions on the information line on Monday, Tuesday, Wednesday, and Friday from 10:00 a.m. to 6:00 p.m., Eastern time. On Thursday, the information line is staffed from 1:00 p.m. to 6:00 p.m.

I hope this information will be helpful to you in responding to your constituent.

Sincerely,

Bill Lann Lee
Acting Assistant Attorney General
Civil Rights Division

Enclosures

MAR 23 1998

The Honorable Alfonse M. D'Amato
United States Senate
Washington, D.C. 20510-3202

Dear Senator D'Amato:

I am replying, in duplicate and with your original enclosures, to your inquiry on behalf of your constituent, Ms. XXX , of XXX , New York. Ms. XXX also filed her complaint directly with our department. She raises issues about the licensing of service animals used by persons with disabilities, and also alleges discrimination on the basis of disability by the Stanford Free Library. Please excuse our delay in responding.

Ms. XXX correspondence summarizes a dispute with local government officials about the status of her service dog and whether or not it will be licensed or certified by New York as a Medical Assistance Dog. Her correspondence further refers to efforts by the Town of Stanford supervisor to "revoke" her dog's license.

The Americans with Disabilities Act (ADA) does not require States to establish licensing or certification programs for service animals. Our review of the letter Ms. XXX received from the Stanford Town Supervisor, Mr. Kelly, shows that he is referring to State and local laws that require dogs to be licensed generally, whether or not the animal functions as a service animal for a person with disabilities. Thus, the dispute described by Ms. XXX about her dog's licensing does not raise an issue cognizable under the ADA.

On the other hand, under titles II and III of the ADA, both public entities (State and local governments) and public accommodations (private businesses) are required to admit to their facilities animals that are considered service animals as defined by the ADA (any guide dog, signal dog, or other animal individually trained to provide assistance to an individual with a disability), regardless of whether they have been licensed or certified by a State or local government. The incident described by Ms. XXX occurring at her local library thus raises issues that may be a violation of the ADA.

cc: Records, Chrono, Wodatch, McDowney, Talian, FOIA

Ms. XXX allegations about the Stanford Free Library are covered by title II of the ADA or Federal laws prohibiting discrimination in State or local programs that receive Federal financial assistance. The title II implementing regulation delegates to the Department of Education responsibility for complaints relating to educational programs, services, and regulatory activities, including libraries. Accordingly, we have referred this matter to that agency for investigation. We have enclosed a copy of our referral letter and our letter to Ms. XXX for your information.

I hope this information will assist you in responding to your constituent.

Sincerely,

Bill Lann Lee
Acting Assistant Attorney General
Civil Rights Division

Enclosures

MAR 30 1998

The Honorable Rosa L. DeLauro
U.S. House of Representatives
Washington, D.C. 20515-0703

Dear Congresswoman DeLauro:

I am responding to your letter on behalf of your constituent, Ms. XXX , regarding the application of the Americans with Disabilities Act of 1990 (ADA) to architectural barriers to access by people with disabilities.

Title III of the ADA, which prohibits discrimination against persons with disabilities by public accommodations, requires owners or operators of a place of public accommodation, such as a shopping center, department store, bank, hospital, restaurant, theater, library, etc., to remove architectural barriers to access. Title III also requires facilities that are newly designed, constructed or altered to be readily accessible to and usable by individuals with disabilities.

The ADA Standards for Accessible Design (Standards), 28 C.F.R. pt. 36, app. A, set forth the requirements for new construction and alterations of places of public accommodations. In removing architectural barriers, a public accommodation is also required to comply with the ADA Standards to the extent that it is readily achievable, that is, easily accomplishable and able to be carried out without much difficulty or expense. Section 36.304(b) and (c) of the enclosed title III regulations provide examples and suggest priorities of barrier removal steps.

Cc: RECORDS; CHRONO; WODATCH; BLIZARD; MCDOWNEY; FOIA
H;/GCONCEPC/MYFILES/CGRSBLIZARDDELAURO.LTR

Ms. XXX letter contains comment concerning the following four barrier removal issues: ramps, doors, accessible routes, and parking spaces. With respect to ramps, the ADA Standards provide that any part of an accessible route with a slope greater than 1:20 will be considered a ramp and must comply with section 4.8. Section 4.8 of the ADA Standards specifies a ramp's slope and rise, clear width, landing, and etc. For example, section 4.8.2 requires that the least possible slope shall be used for any ramp. Section 4.8.2 also requires that the maximum slope of a ramp in a new construction shall be 1:12, and the maximum rise for any run shall be 30 inches. In addition, section 4.8.5 requires handrails if a ramp has a rise greater than 6 inches or a horizontal projection greater than 72 inches. Section 4.9.4 of the ADA Standards further requires handrails at both sides of all stairs.

Section 4.13 of the ADA Standards sets forth the requirements for doors. The ADA Standards do not require that automatic doors be provided although other requirements for doors are addressed, including maneuvering clearances, hardware, and push/pull force. Automatic doors may be used where inadequate maneuvering space prevents a person with mobility impairments from approaching and opening the door without standing in the door swing. If automatic doors are provided they must comply with the requirements of the ADA Standards in section 4.13.12.

Section 36.304(c) of the enclosed title III regulations require a public accommodation to take measures to provide access to those areas of a place of public accommodation where goods and services are made available to the public. Thus, businesses may be required to rearrange tables, chairs, vending machines, display racks, and other furniture to provide accessible paths to

the extent that it is readily achievable. In determining what is readily achievable, businesses should consider, among other things, how many movable racks and display units intrude on accessible paths, and the impact on sales volume of the loss of selling space created by widening aisles and removing racks and display units.

With respect to parking spaces, section 4.6.2 of the ADA Standards require that accessible parking spaces serving a particular building be located on the shortest accessible route of travel to an accessible entrance. In some instances, local fire engine access requirements prohibit parking immediately adjacent to a building. In such situations, a marked crossing may be used as part of the accessible route to the entrance. Additionally, enforcement of parking regulations is a matter governed by State or local law. The ADA does not contain provisions specifically requiring spaces are occupied only by persons with disabilities. Decisions made by local law enforcement officials as to how to allocate scare enforcement resources are a matter of local prosecutorial discretion that typically would not raise ADA concerns.

I have enclosed a copy of the regulation implementing title III of the ADA for your reference. Also enclosed are documents entitled the Title III Technical Assistance Manual, the Title III Highlights, How to File a Title III Complaint, and the ADA Guide for Small Businesses. I hope this information is helpful to you in responding to your constituent.

Sincerely,

Bill Lann Lee
Acting Assistant Attorney General
Civil Rights Division

Enclosures

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General Washington, D.C. 20035

MAR 30 1998

The Honorable Jennifer B. Dunn
Member, U.S. House of Representatives
Nine Lake Bellevue Drive
Suite 204
Bellevue, Washington 98004

Dear Congresswoman Dunn:

I am responding to your letter on behalf of your constituent, Ms. XXX , regarding accessibility at the new post office in Issaquah, Washington. Please excuse our delay in responding.

The Americans with Disabilities Act (ADA) does not apply to the U.S. Postal Service. The U.S. Postal Service is covered by the Rehabilitation Act of 1973. Ms. XXX complaint comes under the jurisdiction of the United States Postal Service, which has the responsibility under section 504 of the Rehabilitation

Act of 1973, as amended, to ensure that its own programs and activities do not discriminate on the basis of disability. The section 504 regulations contain different requirements for newly constructed, altered, and existing postal facilities. The Postal Service has established jurisdiction over this complaint.

In addition, because the Issaquah Post Office was designed, constructed, altered, or leased by the Federal Government after 1968, the Architectural Barriers Act (ABA) applies to this complaint. The Architectural and Transportation Barriers Compliance Board (Access Board) has jurisdiction to enforce the provisions of the ABA. The Access Board also established jurisdiction over this complaint.

I understand that both the Postal Service and the Access Board investigated this complaint and pursued it to the extent of their jurisdiction. The Postal Service also took corrective action in response to some portions of the complaint.

(handwritten)FOIA

The Department of Justice, however, does not serve as a reviewing authority for the decisions of other Federal agencies following their investigations of discrimination complaints. If your constituent is dissatisfied with the determination concerning the merits of her complaint, she may be entitled to file an action in an appropriate United States District Court. Ms. XXX may wish to retain private counsel to assist her in assessing what courses of action may be open to her.

If you or your constituent have any questions, you may contact:

Mr. Rodger B. Carter
Coordinator
Architectural Barriers Compliance Program
United States Postal Service
4301 Wilson Boulevard, Suite 300
Arlington, Virginia 22203-1861

Telephone: (703) 526-2867 (Voice and TDD); or

Ms. Judith A. Haslam
Director
Office of Compliance and Enforcement
Architectural and Transportation Barriers
Compliance Board
1331 F Street N.W.
Washington, D.C. 20004-1111

Telephone: (202) 272-5435 (Voice)
(202) 272-5449 (TDD).

I hope this information will assist you in responding to your constituent.

Sincerely,

Bill Lann Lee
Acting Assistant Attorney General
Civil Rights Division

MAR 30 1998

The Honorable Max Cleland
United States Senator
75 Spring Street, S.W.
Suite 1700
Atlanta, Georgia 30303

Dear Senator Cleland:

This letter responds to your inquiry on behalf of your constituent, Ms. XXX , who alleges that her newly built house does not meet the Council of American Building Officials (CABO) standards. She claims that she and her roommate, who are both individuals with disabilities, have had difficulties in resolving their concerns regarding the construction of their house with the builder, building supervisor, and county building inspector. Please excuse our delay in responding.

The Disability Rights Section of the Civil Rights Division of the Department of Justice enforces titles I, II and III of the Americans with Disabilities Act (ADA). Title I protects qualified individuals with disabilities from discrimination in employment by State and local government employers and by private employers, when these employers have 15 or more employees. Title II protects individuals with disabilities from discrimination in all of the services, programs, and activities of State and local government entities. Title III protects individuals with disabilities from discrimination on the basis of disability by most privately owned businesses that offer goods and services to the public.

The circumstances that your constituent describes do not appear to raise an issue over which we have jurisdiction. Nor

(handwritten)FOIA

are we aware of any other component of the Department of Justice or other Federal agency that would have authority to handle the matter. Instead, the issue Ms. XXX presents appears to be a matter over which a local government entity would have jurisdiction. Ms. XXX may wish to retain private counsel, or contact the local legal aid office, to ascertain what legal options, if any, may be available to her. She also may find recourse through the appropriate State or local building department. The CABO standards are not mandatory unless the local jurisdiction has adopted them in its building codes. Other building code requirements may be in effect in Ms. XXX locality.

If your constituent or your staff has questions about title II or title III of the ADA, they may call the Department's ADA information line at 1-800-514-0301 (voice) or 800-514-0383 (TDD). Members of the Disability Rights Section staff are available to answer questions on the information line on Monday, Tuesday, Wednesday, and Friday from 10:00 a.m. to 6:00 p.m., Eastern time. On Thursday, the information line is staffed from 1:00 p.m. to 6:00 p.m.

We regret that we are unable to help your constituent further. I hope this information is helpful in responding to your constituent.

Sincerely,

Bill Lann Lee
Acting Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General Washington, D.C. 20035

APR 3 1998

The Honorable John Breaux
United States Senate

Washington, D.C. 20510-1803

Dear Senator Breaux:

I am replying to your inquiry on behalf of Judge Frank A. Marullo, Jr., Chief Judge, Criminal District Court, Parish of Orleans, New Orleans, Louisiana. Judge Marullo seeks information about the availability of Federal financial assistance for capital improvements to the Israel M. Augustine, Jr. Criminal Justice Center in New Orleans. Please excuse our delay in responding.

Staff of the Disability Rights Section, Civil Rights Division, researched potential sources of funding in response to Judge Marullo's request. There are no Federal domestic assistance programs specifically earmarked for accessibility renovations and security upgrades to State and local court buildings. However, some State and local courts have, nonetheless, been successful over the years in their efforts to obtain Federal assistance for capital improvements.

According to Mr. Bob Tilden of the National Center for State Courts, Conference of State Court Administrators, 1700 North Moore Street, Suite 1710, Arlington, Virginia 22209, telephone (703) 841-0200, the funding sources have been innovative and wide-ranging. They have included such methods as Congressionally appropriated line-item riders, funding associated with Federal agencies such as the Federal Emergency Management Agency following disaster-related damage, urban-renewal funding through the Department of Housing and Urban Development, "impact funds" associated with a significant "Federal presence" in the local community, and "move-ins" to vacated Federal facilities. In 1995 the State Justice Institute published the results of a study entitled "Court Managers Guide to Court Facility Financing Survey" which describes such creative financing efforts undertaken by local court systems. According to Mr. Tilden, Judge Marullo should consult Mr. Hugh Collins, the State Court Administrator in New Orleans, for a copy of the financing survey.

(handwritten)FOIA

We also referred Judge Marullo's correspondence to the Office of Justice Programs (OJP) and the Department of Housing and Urban Development (HUD) (Enclosures). OJP's Bureau of Justice Assistance administers criminal justice formula grants.

Funding for facility renovation of State and local courts may be considered for this program under existing guidelines.

HUD administers Federal aid to promote community development under its Community Development Block Grants Program. State and local courts may be recipients of community development funding for capital improvements. Both OJP and HUD should be able to provide Judge Marullo with specific information about the Federal financial assistance programs under their administration.

An additional resource that Judge Marullo might find useful is entitled "Opening the Courthouse Door; An ADA Access Guide for State Courts", published by the American Bar Association's Commission on Mental and Physical Disability Law. This 1992 guide has a chapter with suggestions on funding resources that may be helpful to pay for providing access to the courts by persons with disabilities. It is available by contacting:

American Bar Association
Commission on Mental and Physical
Disability Law
740 15th Street, N.W.
Washington, D.C. 20005
Telephone (202) 662-1570

I hope this information is useful in responding to your constituent.

Sincerely,

Bill Lann Lee
Acting Assistant Attorney General
Civil Rights Division

Enclosures

Civil Rights Division

Office of the Assistant Attorney General Washington, D.C. 20035

APR 3 1998

The Honorable Joseph I. Lieberman
United States Senate
Washington, D.C. 20510-0703

Dear Senator Lieberman:

Your inquiry on behalf of your constituent, Ms. XXX , has been forwarded to the Disability Rights Section of the Civil Rights Division for consideration and response. Ms. XXX had several questions regarding proposed changes to regulations established by the State of Hawaii related to the quarantine of guide dogs for the visually impaired. In addition, Ms. XXX listed several changes to the regulations which she advocates. Please excuse our delay in responding.

As way of background, a group of private plaintiffs sued the State of Hawaii under the Americans with Disabilities Act ("ADA"), 42 U.S.C. S 12101 et seq., alleging that the State's refusal to modify its rabies prevention program violated the ADA. Specifically, the Plaintiffs argued that the State should be required to replace its quarantine of guide dogs for persons with visual impairments with a rabies prevention scheme that included administrative requirements aimed at ensuring that rabies would not enter the State. Among the safeguards proposed by the Plaintiffs were the use of titer-testing, microchip implantation and a record of vaccination since infancy for a dog provided by a reputable guide dog training school.

The United States intervened in the litigation, arguing that the Plaintiffs' proposals were reasonable under the ADA and would not fundamentally alter Hawaii's rabies control policies. As the litigation progressed, the parties agreed to a settlement, adopting much of what the Plaintiffs were seeking, including replacement of quarantine with a rabies control system advocated by the Plaintiffs. In accordance with the settlement, the State has proposed and is considering regulations which will implement the settlement.

(handwritten)FOIA

Ms. XXX is not correct in her assessment of certain facts regarding those regulations. First, it is not true that only guide dog schools that are members of the U.S. Council of Dog Guide Schools are eligible to be on the list of approved schools maintained by the State. Instead, under the regulations, any school that meets the following criteria is eligible to be included on that list:

1. Dogs must be required to have their first rabies vaccination administered between approximately 12 and 24 weeks of age;

2. A second rabies vaccine must be required approximately one year later;

3. All dogs in the school must be vaccinated against rabies by a licensed veterinarian or licensed veterinary technician under the supervision of a licensed veterinarian;

4. Before taking a guide dog trained at the school, the user must be instructed on the proper care, maintenance, and training for guide dogs, including proper veterinary care;

5. For all dogs that are still owned by the school, the school must have a policy or practice requiring that veterinary records of its guide dog graduates, including but not limited to rabies vaccination records, be made available to the school at the school's request.

Second, it is not correct that blind visitors can stay only in "pre-selected, pre-approved lodgings." Under the regulations, the State will maintain a list of hotels that have been inspected and have been approved because the hotels take steps to control stray animals and rodents and offer a secure environment that contains no other carnivores in the guest areas (except other certified guide dogs, security dogs or other animals entitled to be present pursuant to the Americans with Disabilities Act or other federal law). However, blind visitors are free to stay in other hotels or in other lodgings, including private residences, so long as they provide the address to the State so that the State may ensure that the residence meets the above criteria.

In addition to the above, Ms. XXX proposed several other revisions to the regulations. Under the State regulations, there is a public comment period while the regulations are being considered. We note from her correspondence that Ms. XXX has submitted her suggestions to the State for their review and consideration.

I hope this information is helpful to you in responding to your constituent.

Sincerely,

Bill Lann Lee
Acting Assistant Attorney General
Civil Rights Division

APR 17 1998

XXX
XXX
Oklahoma City, OK XXX

Dear Mr. XXX :

I am responding to your letter regarding the requirements of the Americans with Disabilities Act (ADA) for curb ramps and sidewalks at public streets and intersections. You have questioned decisions by Oklahoma City to install curb ramps leading from public streets to impassable areas where there are no sidewalks. According to your letter, Oklahoma City officials claim that these actions are required by the ADA.

Title II of the ADA prohibits discrimination on the basis of disability by State and local government entities. When public entities build new facilities or alter existing facilities, the Department of Justice's regulation implementing title II (enclosed) requires that the newly constructed or altered areas be made accessible to individuals with disabilities. The regulation specifically provides that new construction of or alterations to streets give rise to accessibility obligations for curb ramps. 28 C.F.R. S 35.151(e). Therefore, if Oklahoma City constructs a new street or intersection or alters an existing street or intersection, it is required to provide accessible curb ramps where pedestrian walkways that are elevated or curbed intersect with the new or altered street or intersection. 28 C.F.R. S 35.151(e)(1). Notably, resurfacing of streets gives rise to these obligations, as resurfacing is considered to be an alteration within the meaning of the ADA. See Kinney v. Yerusalim, 9 F.3d 1067 (3d Cir. 1993). In addition, if Oklahoma City builds or alters a pedestrian walkway, it may be required to provide curb ramps where the walkway intersects streets or intersections. 28 C.F.R. S 35.151(e)(2). However, the ADA does not require installation of ramps or curb ramps where there is no pedestrian walkway.

cc: Records; Chrono; Wodatch; Blizard; FOIA.
blizard\myfiles\drsltrs\XXX

Of course, the ADA does not prevent a public entity from exceeding the requirements of the ADA. Nor does it limit a public entity's discretion to provide new pedestrian walkways and ramps as it sees fit to serve interests in addition to accessibility.

I hope this information is helpful to you. As you requested, we are returning the photographs enclosed with your letter.

Sincerely,

John L. Wodatch
Section Chief
Disability Rights Section

Enclosures

APR 17 1998

The Honorable Kay Bailey Hutchison
United States Senator
10440 North Central Expressway
Suite 1160
LB 606
Dallas, Texas 75231-2223

Dear Senator Hutchison:

I am responding to your inquiry on behalf of your constituent, Mr. XXX who is concerned about the policy of the Town of Highland, Texas, which requires the compulsory use of sidewalks by runners and joggers. Mr. XXX recently sent a copy of the same complaint to the Disability Rights Section of the Civil Rights Division. The Section responded directly to Mr. XXX . Please excuse our delay in responding.

The Americans with Disabilities Act of 1990 (ADA) authorizes the Department of Justice to investigate alleged violations of title II and title III of the ADA, which prohibit discrimination on the basis of disability by private entities, public accommodations, and commercial facilities. In addition, the Department of Justice is responsible for enforcing title I of the ADA when a public employer is engaging in a pattern or practice of discrimination on the basis of disability, or when the Equal Employment Opportunity Commission (EEOC) has referred an individual complaint for enforcement after the EEOC has found that there is reasonable cause to believe a violation has

occurred and the EEOC has failed to obtain a conciliation agreement.

CC: RECORDS; CHRONO; WODATCH; XXX ; MCDOWNEY; FOIA;
E:/COBRIEN/MYFILES/CONGRESSIONALS.DRS/XXX .SEN

These ADA enforcement responsibilities are assigned to the Attorney General as the nation's chief law enforcement officer and head of the Department of Justice. Within the Department, ADA enforcement is assigned to the Civil Rights Division's Disability Rights Section, which also is responsible for enforcing section 504 of the Rehabilitation Act of 1973, as amended, and other Federal statutes that prohibit discrimination on the basis of disability. In enforcing the ADA, the Department of Justice represents the law enforcement interest of the United States. The Department does not act as an attorney for, or representative of, any individual complainant.

The circumstances that your constituent describes do not appear to raise an issue over which we have jurisdiction. Nor are we aware of any other component of the Department of Justice or other Federal agency that would have authority to handle the matter. Instead, the issue Mr. XXX presents appears to be a matter over which a local government entity would have jurisdiction.

To assist members of the public to understand their rights and responsibilities under the ADA, the Department operates an ADA information line (800-514-0301 (voice) or 800-514-0383 (TDD)). Members of the Disability Rights Section staff are

available to answer questions on the information line on Monday, Tuesday, Wednesday, and Friday from 10:00 a.m. to 6:00 p.m., Eastern time. On Thursday, the information is staffed from 1:00 p.m. to 6:00 p.m.

I hope this information is helpful in responding to your constituent.

Sincerely,

Bill Lann Lee
Acting Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Disability Rights Section
P.O. Box 66738
Washington, DC 20035-6738

APR 22 1998

XXX
XXX
McMinnville, Oregon 97128

Dear Dr. XXX :

Senator Ron Wyden has asked me to respond to your letter to him regarding the Americans with Disabilities Act of 1990 (ADA). You expressed concern because some licensure boards, including the National Board of Medical Examiners (NBME), have permitted applicants who have learning disabilities to have additional time in which to complete their licensing examinations.

The ADA is a comprehensive civil rights law that prohibits discrimination on the basis of disability in employment, transportation, public services, public accommodations, and in the operation of certain licensing and certification organizations. The term "disability" is defined by the ADA as a "physical or mental impairment that substantially limits one or more of the major life activities of such individual." 42 U.S.C. S 12102 (2) (A). "Specific learning disabilities" are included within the definition of the phrase "physical or mental impairment." 28 C.F.R. S 36.104.

In enacting the ADA, Congress made specific findings that "society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem . . . that persists in such critical areas as employment [and] ... education ...." (42 U.S.C. S 12101) Congress further found that:

CC: RECORDS; CHRONO; WODATCH; BLIZARD; MCDOWNEY; FOIA
E/GCONCEPC/MYFILES/WYDEN.WPD

individuals with disabilities continually encounter various forms of discrimination, including . . . failure to make modifications to existing facilities and practices, exclusionary qualification standards and criteria, segregation, and relegation to lesser services, programs, activities, benefits, jobs, or other opportunities [emphasis added].

There is no doubt that Congress intended that entities such as the NBME to be subject to the ADA's nondiscrimination requirements. Section 309 of the ADA expressly provides that "[a]ny person that offers examinations or courses related to applications, licensing, certification, or credentialing for secondary or postsecondary education, professional, or trade purposes shall offer such examinations or courses in a place and manner accessible to persons with disabilities or offer

alternative accessible arrangements for such individuals." 42 U.S.C. S 12189. The regulations implementing the ADA authorize testing entities such as the NBME to modify the amount of time provided to complete an examination in appropriate cases to accommodate persons with disabilities so as to ensure that the examination results accurately reflect the individual's aptitude or achievement level or whatever other factor the examination purports to measure, rather than reflecting the individual's impairment or disability. 28 C.F.R. SS 36.309 (b) (1) (i) and (b) (2).

I hope this information clarifies the provisions of the ADA concerning testing accommodations for people with learning disabilities.

Sincerely,

John L. Wodatch
Chief
Disability Rights Section

cc: The Honorable Ron Wyden

APR 27 1998

The Honorable Dianne Feinstein
United States Senate
Washington, D.C. 20510-0504

Dear Senator Feinstein:

I am replying to your inquiry on behalf of your constituent, Ms. XXX , whose office represents the San Ramon Valley Primary Care Medical Group ("Medical Group"). Please excuse our delay in responding.

Ms. XXX , on behalf of the Medical Group, has expressed

concern that health insurers do not reimburse physicians for costs associated with a physician's obligation under the Americans with Disabilities Act (ADA) to provide auxiliary aids or services (specifically, sign language interpreters) for persons with disabilities. The Medical Group believes that the ADA should require health insurers to reimburse medical practitioners when they provide interpreter services.

The terms and conditions of health insurance policies sold by insurance providers who are public accommodations must comply with the ADA. However, the ADA does not expressly require a medical insurer to reimburse health care providers for all expenses incurred by an individual with a disability.

Ms. XXX letter to you enclosed a copy of a letter on this issue that was sent to the Department of Health and Human Services (HHS). HHS, through the Health Care Finance Administration, has a significant role in determining which expenses constitute valid and acceptable insurer reimbursable medical expenses. HHS, pursuant to its overall regulation and monitoring of the medical insurance industry, is the most appropriate agency to determine which expenses should be reimbursed as medical expenses. We have been informed that HHS is researching medical insurance payment schemes, including those under the Medicaid/Medicare programs administered by the Health Care Finance Administration. HHS will reply directly to the Medical Group.

(handwritten)FOIA

For your information, we have enclosed a copy of the Department of Justice regulation implementing title III of the ADA, tax credit information, the Title III Technical Assistance Manual, and a Question and Answer flyer issued by the National Center for Law and Deafness, an ADA technical assistance grantee of the Department of Justice. I hope this information is helpful to you in responding to your constituent. As you requested, we have responded in duplicate.

Sincerely,

Bill Lann Lee
Acting Assistant Attorney General
Civil Rights Division

Enclosures

U.S. Department of Justice

Civil Rights Division

Disability Rights Section
P.O. Box 66738

Washington, DC 20035-6738

MAY 13 1998

Ms. Diane Merideth
Code Consultant
Safety and Buildings Division
Wisconsin Department of Commerce
P.O. Box 2599
Madison, WI 53701-2599

Dear Ms. Merideth:

I am responding to your inquiry about the application of title II of the Americans with Disabilities Act of 1990 (ADA) to the construction of "press boxes." You have asked if elevator access must be provided to a press box, and if the use of a platform lift or limited use elevator would be deemed equivalent to the use of a passenger elevator that complies with section 4.10 of the ADA Standards for Accessible Design.

The Civil Rights Division of the Department of Justice is responsible for the implementation of title II of the ADA. The ADA authorizes the Department of Justice to provide technical assistance to assist individuals and entities subject to the Act to understand their rights and responsibilities. This response to your inquiry is intended to assist you to understand the potentially applicable legal requirements and to identify pertinent facts that should be considered in applying the ADA Standards to press boxes and similar facilities. This letter does not constitute a binding legal opinion and it is not binding on the Department of Justice.

The ADA requires new construction of (or alterations to) public facilities to be readily accessible to and usable by individuals with disabilities. The Department's regulation implementing title II, 28 C.F.R. S 35.151(c), provides that a public entity may comply with this requirement by complying with

(handwritten)FOIA

the ADA Standards for Accessible Design that were adopted to implement title III of the ADA. The ADA Standards establish

requirements applicable to all covered facilities. There are no requirements that are unique to the design of a "press box."

The ADA Standards require a covered entity to provide an accessible route to an accessible facility and to provide an accessible entrance. Generally, a ramp is the preferred means of providing vertical access to an entrance. Elevators are required only in multi-story facilities.

The ADA Standards define a "story" as

> [t]hat portion of a building included between the upper surface of a floor and upper surface of the floor or roof next above. If such portion of a building does not include occupiable space, it is not considered a story for purposes of these guidelines . . .

"Occupiable space" includes

> [a] room or enclosed space designed for human occupancy in which individuals congregate for amusement, educational or similar purposes, or in which occupants are engaged at labor, and which is equipped with means of egress, light, and ventilation.

If a covered facility has two or more levels that fall within the definition of a "story," a covered entity must provide an elevator or other accessible means of vertical access to connect all floor levels in the facility. Although an elevator is the most common means of providing vertical access in a multi-story facility, ramps may also be used to meet this requirement. It is unclear from your inquiry if the press box at issue contains "occupiable space" and whether it is a multi-story facility. If it does not meet either one of these requirements, there would be no requirement for an elevator under the ADA.

Platform lifts are permitted in new construction only in certain limited circumstances identified in section 4.1.3(5), Exception 4 of the ADA Standards. These include:

> (a) To provide an accessible route to a performing area in an assembly occupancy.
>
> (b) To comply with the wheelchair viewing position line-of-sight and dispersion requirements of 4.33.3.
>
> (c) To provide access to incidental occupiable spaces and rooms which are not open to the general public and which house no more than five persons, including but not limited

to equipment control rooms and projection booths.

(d) To provide access where existing site constraints or other constraints make use of a ramp or an elevator. infeasible.

The ADA Standards do not permit the use of limited-use elevators as an alternative to using a passenger elevator. However, the Department would regard such limited use elevators as "equivalent facilitation" in the limited circumstances in which the use of a platform lift is permitted.

I hope that this information is helpful to you in responding to the questions that you have received.

Sincerely,

John L. Wodatch
Chief
Disability Rights Section

MAY 14 1998

The Honorable Henry Bonilla
Member, U.S. House of Representatives
11120 Wurzbach, Suite 300
San Antonio, Texas 78230

Dear Congressman Bonilla:

I am responding to your letter on behalf of your constituent, XXX , who asked about the application of the new construction and alteration requirements of the Americans with Disabilities Act of 1990 (ADA).

Mr. XXX has recently received a waiver of the Texas Accessibility Standards to permit the installation of strobe alarms in a manner that differs from that prescribed by either the Texas Accessibility Standards or the ADA Standards for Accessible Design (28 C.F.R. pt. 36, App. A) (ADA Standards). Mr. XXX has asked you to determine why he cannot also receive a waiver of the ADA's new construction requirements.

Basically, Mr. XXX cannot receive a waiver of the ADA requirements because, in contrast to the State of Texas which, in the course of enforcing its State building code, can give advance approval of variances, the Federal government is not authorized to make ADA building inspections and grant waivers absent a complaint that the ADA is being violated. To understand this more fully, it is important to remember that the ADA is a comprehensive civil rights act that prohibits discrimination on the basis of disability in employment, transportation, public services, and public accommodations. To achieve the objectives of the Act, the ADA also requires that public buildings and facilities, places of public accommodation, and commercial facilities be designed, constructed, and altered in compliance with the ADA Standards. The ADA Standards, therefore, constitute only one small part of a much broader piece of Federal civil rights legislation that is intended to enable people with disabilities to participate in society.

The enforcement of building codes is the responsibility of State or local officials - usually through plan reviews and building inspections prior to (and during) construction. Most

local building regulations include a process through which a

cc: Records; Chrono; Wodatch; McDowney; Blizard; FOIA.
Spinckne\myfiles\bonilla.wpd

builder or building owner may seek advance approval of variances from the code requirements. The ADA, like other Federal civil rights statutes, relies on case-by-case enforcement in response to complaints. The statutory enforcement process does not include any mechanism for Federal ADA building inspections or plan reviews analogous to those in the State code enforcement process.

Because each compliance determination is unique, the Department is unable to determine if a building complies with the ADA without conducting a full investigation, and the Department is authorized to investigate only when there is reason to believe that a violation of the ADA has occurred. Therefore, the Department cannot approve plans prior to construction or waive the requirements of the ADA Standards.

To mitigate the tension between State code enforcement and the ADA, title III of the ADA authorizes the Attorney General to certify State or local building codes that are equivalent to the ADA Standards. Enforcement of a certified code facilitates compliance with the ADA. However, State and local officials enforcing a certified code do not have the authority to enforce the ADA on behalf of the Federal government.

The Texas Accessibility Standards have been certified by the Department of Justice. Therefore, the State of Texas is in a position to assist owners and builders in the State by using the expertise of building officials to guide them in applying the law. Building elements constructed pursuant to a State waiver or modification are not certified - but that does not mean that waivers or modifications are prohibited. It only means that the burden will be on the covered entity in any enforcement action to prove that any modification approved by the State complies with the ADA.

I hope that this information is helpful to you in responding to your constituent.

Sincerely,

Bill Lann Lee
Acting Assistant Attorney General
Civil Rights Division

U.S. Department of Justice
Civil Rights Division
Office of the Assistant Attorney General Washington, D.C. 20035

MAY 14 1998

The Honorable William D. Delahunt
Member, U.S. House of Representatives
15 Cottage Avenue
Quincy, Massachusetts 02169

Dear Congressman Delahunt:

I am responding to your letter on behalf of your constituent, Mr. XXX regarding whether the Americans with Disabilities Act (ADA) requires the removal of snow and maintenance of sidewalks on a city street. Please excuse our delay in responding.

The answer to this question depends on the specific circumstances. The Department of Justice regulation implementing title II of the ADA requires a public entity (such as a city) to ensure that its services, programs, and activities in existing facilities are accessible to people with disabilities. The focus of the requirement is access to services, programs, and activities, as opposed to access to physical structures. Therefore, there is no general requirement that compels a public entity to ensure that all sidewalks are free of snow.

However, if the sidewalk is part of an accessible route that is required to provide access to a covered program or activity, the public entity that provides the program would be required to ensure the sidewalk remains accessible. However, temporary interruptions in accessibility, such as those caused by snow, generally do not constitute violations of title II unless they

persist beyond a reasonable period of time. Further, only those sidewalks that are required by the ADA to be accessible and that are within the control of the city will be required to be maintained by the city.

To the extent that a public entity provides snow removal services, title II requires those services to be provided in a non-discriminatory manner. However, sidewalk snow removal by private property owners is private action not covered by title II absent some substantial involvement by the public entity. The ADA, therefore, does not generally require local governments to pass ordinances compelling property owners to remove snow from sidewalks.

(handwritten) FOIA

If sidewalks lead to places of public accommodation (such as stores or restaurants) covered by title III of the ADA, the owners or operators of these public accommodations may have obligations to maintain them under title III. If a sidewalk is part of a required accessible route and if the public accommodation exercises control over the sidewalk, the public accommodation may be required to keep the sidewalk accessible. As under title II, temporary interruptions to access because of snow are permissible unless they persist beyond a reasonable period of time.

I hope this information is helpful to you in responding to your constituent.

Sincerely,

Bill Lann Lee
Acting Assistant Attorney General
Civil Rights Division

MAY 20 1998

The Honorable Herb Kohl
United States Senator
14 West Mifflin Street
Suite 312
Madison, Wisconsin 53703

Dear Senator Kohl:

I am responding to your inquiry on behalf of your constituent, Monte K. Hottmann, District Administrator of the School District of Cambridge, Wisconsin. Mr. Hottmann wrote to you concerning a determination by the Wisconsin Department of Commerce that the Cambridge School District is required to install an elevator to provide access to the press box/control room that the school district is building at its high school athletic field. The Wisconsin Department of Commerce has granted the school district a two-year extension of time in which to comply with this requirement of the State accessibility code, which is based on the requirements of the Americans with Disabilities Act of 1990 (ADA). Please excuse our delay in responding.

The Civil Rights Division of the Department of Justice is responsible for the implementation of title II of the ADA, which prohibits discrimination on the basis of disability in the

programs, services, and activities of public entities. The ADA authorizes the Department of Justice to provide technical assistance to assist individuals and entities subject to the Act to understand their rights and responsibilities. Because this response is based solely on the facts presented in Mr. Hottmann's letter to you, it is intended only as technical assistance to help Mr. Hottmann to understand the applicable legal requirements and to identify pertinent facts. This response does not constitute a legal opinion of the Department with respect to the obligations of the Cambridge School District.

(handwritten) FOIA

The ADA requires new construction of (or alterations to) public facilities to be readily accessible to and usable by individuals with disabilities, including those who use wheelchairs. The Department's regulation implementing title II, 28 C.F.R. S 35.151 (c), provides that a public entity may comply with this requirement by complying with the Uniform Federal Accessibility Standards (UFAS) or the ADA Standards for Accessible Design that were adopted to implement title III of the ADA. We understand that the State of Wisconsin has adopted accessibility requirements based on the ADA Standards. Therefore, our analysis will be based solely on those standards.

The ADA Standards require a covered entity to provide an accessible route to an accessible facility and to provide an accessible entrance. In a multi-story facility, an accessible means of vertical access must be provided to connect all levels. Although an elevator is the most common means of providing vertical access, ramps and (in certain, limited circumstances) platform lifts may also be used. See, S 4.1.3 (5), Exceptions 4, of the enclosed ADA Standards. If the press box/control room is not part of a multi-story facility and is reached by its own

entrance, a ramp may be used to provide access to the entrance.

Mr. Hottmann should note, however, that the ADA does not preempt the authority of the State of Wisconsin to impose more stringent requirements on construction through its building code process. Therefore, the State may require the installation of an elevator in the high school press box. The interpretation and application of the State's accessibility code is a matter that the Cambridge School District must resolve with State officials.

Mr. Hottmann also inquired about the possibility of amending the Federal regulations. The ADA Standards are based on the ADA Accessibility Guidelines (ADAAG) developed by the United States Architectural and Transportation Barriers Compliance Board (Access Board). The Access Board is now engaged in a total review of these accessibility guidelines. The Access Board anticipates that the revised guidelines should be published as a proposed rule before the end of this year. To be fully responsive to your request, we at the Department of Justice will apprise the Access Board of your constituent's concerns. You should know that we have heard separately on this issue from the Safety and Building Division of the Wisconsin Department of Commerce. In addition, we are also in consultation with the United States Department of Education regarding this issue.

If Mr. Hottmann wants to address the situation described in his letter to you with the Access Board on his own, he may write to:

Thurman M. Davis
Chair
U.S. Architectural and Transportation
Barriers Compliance Board
1331 F Street, N.W.
Washington, DC 20004-1111

Copies of the Department's regulations implementing title II and title III of the ADA are enclosed for your reference. The ADA Standards for Accessible Design are published as Appendix A to the title III regulation. We have also enclosed a copy of the Department's response to the Wisconsin Department of Commerce that discusses the applicable requirements in detail.

I hope that this information is helpful to you in responding to your constituent.

Sincerely,

Bill Lann Lee
Acting Assistant Attorney General
Civil Rights Division

Enclosures

762

June 4, 1998

The Honorable Joseph I. Lieberman

United States Senate

Washington, D.C. 20510-0703

Dear Senator Lieberman:

I am responding to your recent letter on behalf of your constituent, xxxxxxxxxxxxxx. Ms. xxxxxxx expressed concern that the Greyhound bus company may be excluded from coverage under the Americans with Disabilities Act of 1990 (ADA). Please excuse our delay in responding.

Section 304 of the ADA, 42 U.S.C. § 12184, prohibits discrimination on the basis of disability in transportation services offered by any private entity that is primarily engaged in the business of transporting people. Greyhound, and other private companies that provide bus service to the public, are subject to this prohibition and to the Department of Transportation's (DOT) implementing regulation (49 C.F.R. pt. 37).

The ADA requires DOT to issue a regulation to establish both the nondiscrimination requirements applicable to transportation providers and the design standards applicable to the vehicles they purchase. When this regulation was published in 1991, it did not contain design requirements for the "over-the-road" buses or OTRBs, which are commonly used by private interstate bus lines. OTRBs are buses that have an elevated passenger deck located over a baggage compartment. This exclusion was based on specific statutory provisions that required DOT to defer development of such standards until the Office of Technology Assessment completed a study required by section 305 of the ADA. That study was completed in 1993.

On March 25, 1998, DOT published, for public comment, a proposed rule that will establish design standards and purchase requirements for OTRBs. The proposed rule will also establish interim operating requirements to be followed by the private providers until their bus fleets are fully accessible. The public comment period will close on May 26, 1998.

I have enclosed a copy of this proposed rule for your information. I hope that it is helpful to you in responding to Ms. xxxxxxx.

Bill Lann Lee

Acting Assistant Attorney General

Civil Rights Division

Enclosure

763
June 23, 1998
The Honorable David L. Hobson
U.S. House of Representatives
Washington, D.C. 20515
Dear Representative Hobson:
This letter is in response to your inquiry on behalf of your constituent, Hugh W. Payton, M.D. Dr. Payton inquired about enforcement of the "Respiratory Section" of the Americans with Disabilities Act (ADA), particularity in the service sector, to protect individuals with a sensitivity to house dust mites and mold spores. We apologize for delay in responding.

There is no separate section of the ADA devoted to respiratory illness in particular. The definition of "disability" encompasses individuals who have a physical or mental impairment, which may include a

physiological disorder or condition affecting the respiratory system. To be legally recognized as a disability, however, a physical or mental impairment must substantially limit a major life activity (such as breathing) of an affected individual. Thus, the determination as to whether sensitivity to house dust mites and mold spores is a covered disability must be made using the same case-by-case analysis that is applied to all other physical or mental impairments.

In some cases, an individual's respiratory or neurological functioning may be so severely affected by sensitivity to house dust mites and mold spores that he or she will be considered disabled. Such an individual would be entitled to all of the protections afforded by the ADA. These protections may include the provision of an area treated to control dust mites or mold

spores, if such treatment would not fundamentally alter the nature of the business or program. In other cases, however, an individual's sensitivity to dust mites and mold spores will not constitute a disability because the individual's major life activity of breathing is affected, but not substantially impaired. In this situation, an individual would not be entitled to claim ADA protection.

The ADA prohibits discrimination on the basis of disability, but it only requires covered entities to make reasonable modifications in their policies and practices that are necessary to enable individuals with disabilities to partake of their goods, services or facilities. After a determination is made that a person is an individual with a disability who is entitled to claim the protection of the ADA, it is necessary to determine if a requested modification, such as the treatment of an area within the place of public accommodation to control dust mites or mold spores, is "reasonable." This determination involves a fact-specific, case-by-case inquiry that considers, among other factors, the effectiveness of the modification in light of the

nature of the disability in question, and its effect on the

entity that would implement it.

Because of the case-by-case nature of these determinations, the ADA regulations do not require the treatment of areas in a place of public accommodation to control dust mites and mold spores.

I hope this information is helpful to you in responding to your constituent.

Sincerely,

Bill Lann Lee

Acting Assistant Attorney General

Civil Rights Division

764

June 24, 1998

The Honorable Phil Gramm

United States Senator

2323 Bryan Street, #2150

Dallas, Texas 75201

Dear Senator Gramm:

This letter is in response to your correspondence on behalf of your constituent Janelle Culberson who is the Manager of the Best Western Irish Inn in Shamrock, Texas. Ms. Culberson requested a copy of the Americans with Disabilities Act (ADA) and inquired whether it was required that they install a teletypewriter (TTY, also known as a telecommunication device for the deaf). We apologize for the delay in responding.

Disability Rights Section staff contacted Ms. Culberson and was informed that the Inn was constructed in 1977, well before the passage of the ADA. As an existing place of public accommodation, the Irish Inn, among other things, is obligated to remove communication barriers that are structural in nature, where such removal is readily achievable; to provide auxiliary aids and services where necessary to ensure effective communication; and to ensure generally that individuals are not denied, on the basis of disability, an equal opportunity to participate in or benefit from the goods, services, and facilities of the hotel. See generally 28 C.F.R. §§ 36.202, 36.303, 36.304.

Accordingly, if the hotel offers its customers the opportunity to make outgoing telephone calls on "more than an incidental convenience basis," such as providing in-room telephone service for its guests, the hotel must make TTYs

available on request in private guest rooms. A hotel also is required to have a TTY at the front desk on request so that guests with hearing or speech impairments can contact the front desk from their rooms. However, as an existing place of public accommodation, the hotel is not obliged to provide TTYs in common areas such as lobbies.

I have enclosed copies of the ADA, as well as the Department of Justice's implementing regulations (28 CFR, part 36) and Technical Assistance Manual that applies to hotels, the *ADA Guide for Small Businesses*, and a list of other technical assistance materials that may be helpful to your constituent. I have enclosed a second copy of these documents for your files.

I hope that this information is helpful to both you and your constituent. If Ms. Culberson has additional questions about the ADA, she may call our toll-free ADA Information Line at 800-514-0301. As you requested, we are returning your constituent's correspondence.

Bill Lann Lee

Assistant Attorney General

Civil Rights Division

Enclosures

765

July 6, 1998

Mr. Michael Auberger

ADAPT

Post Office Box 9598

Denver, Colorado 80209

Mr. Bob Kafka

ADAPT of Texas

1339 Lamar Square Drive

Suite 101

Austin, Texas 78704

Dear Mr. Auberger and Mr. Kafka:

Thank you for your letter seeking clarification of the Americans with Disabilities Act's (ADA) self-evaluation requirements as they relate to the "integration mandate" of title II.

The ADA requires every public entity to conduct a self-evaluation of its "current services, policies, and practices, and the effects thereof, that do not meet the requirements of [the title II regulations] . . . ." 28 C.F.R. 35.105(a). One of the fundamental requirements of the title II regulations is that public entities "administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities." 28 C.F.R. 35.130(d).

This integration requirement applies to all State activities, including the provision of nursing home, institutional, and community-based services to people with disabilities. L.C. v. Olmstead, No. 97-8358 (11th Cir. April 8, 1998); Helen L. v. DiDario, 46 F.3d 325 (3d Cir. 1995). Therefore, a State must review, as part of its self-evaluation, its policies and practices regarding the provision of nursing home, institutional, and community-based services to ensure that individuals with disabilities receive services in the most integrated setting appropriate to their needs.

If a State has failed to address the ADA's integration requirement in its self-evaluation, then its self-evaluation is incomplete. In these circumstances it would be appropriate for State officials to address the integration issue. As provided in the Department's implementing regulation at 28 C.F.R. 35.105(b), interested persons, including individuals with disabilities or organizations representing individuals with disabilities, must be given an opportunity to participate in the self-evaluation process.

Sincerely, John L. Wodatch Chief Disability Rights Section >

July 14, 1998

Neil E. Hutcher, M.D.

Commonwealth Surgeons, Ltd.

5855 Bremo Road

Suite 506

Richmond, Virginia 23226

Dear Dr. Hutcher:

I am responding to your letter to Attorney General Reno about the coverage of obesity under the Americans with Disabilities Act of 1990 (ADA). Specifically, you have asked if the ADA prohibits employers from providing employee health insurance policies that do not provide for the medical treatment of obesity and related conditions. We apologize for the delay in responding.

The ADA does not identify specific diseases or conditions as disabilities. Instead, the ADA provides that an individual will be considered an individual with a disability for the purpose of ADA coverage if he or she has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. The Equal Employment Opportunity Commission (EEOC), the Federal agency responsible for implementing the employment requirements of the ADA, has determined that an individual who has been diagnosed as having "morbid" obesity may be considered an individual with a disability under the ADA.

The EEOC has also issued interim enforcement guidance on the application of the ADA to employer-provided health insurance. A copy of EEOC's policy statement is enclosed for your information. Because the EEOC has primary jurisdiction over this issue, any further questions on this topic should be addressed to the EEOC through its toll-free ADA technical assistance line (800/669-400 (voice) or 800/669-6820 (TDD).

I hope that this information is helpful to you.

John L. Wodatch

Chief

Disability Rights Section

Enclosure

July 24, 1998
The Honorable Roy Blunt
Member, U.S. House of Representatives
2740 East Sunshine
Springfield, Missouri 65804
Dear Congressman Blunt:

I am responding to your letter on behalf of your constituent, Mr. Jerry King, regarding the enforcement of title II of the Americans with Disabilities Act of 1990 (ADA). Please excuse our delay in responding.

Mr. King's letter indicates that as the local building official one of his duties is to enforce the accessibility requirements found in the city's building code. The city's building code is currently based on a model code published by the Building Officials and Code Administrators (BOCA). In his letter, Mr. King states that he had recently received a bulletin from the U.S. Architectural and Transportation Barriers Compliance Board (Access Board), and this bulletin stated that effective April 13, 1998, all State and local government facilities must comply with title II of the ADA. Mr. King, based on the bulletin, expressed his concern that because local building officials have the authority to enforce locally adopted building codes and lack the authority to enforce the ADA, that this may create an "enforcement dilemma."

Under the ADA, the Access Board is required to issue minimum guidelines to assist the Department of Justice in establishing accessibility standards. The Department is responsible for issuing final regulations, consistent with the guidelines issued by the Access Board, to implement title II. Recently, the Access Board published its new guidelines for title II, effective April 13, 1998. These new guidelines have not yet been adopted by the Department and are, therefore, not legally enforceable. However, the Department's existing title II regulations, in 29 C.F.R. Pt. 35, have been in effect since January 26, 1992.

Under title II of the ADA, State and local governments are prohibited from discriminating against persons with disabilities with regard to any programs, activities and services. Mr. King is correct that State or local governments lack the authority to enforce the ADA. The Department, along with other federal agencies, are responsible for enforcing the ADA. However, the fact that state or local governments lack the authority to enforce the ADA does not relieve them from their title II obligations to provide readily accessible programs, activities and services.

Lastly, in his letter, Mr. King inquired whether the accessibility provisions in BOCA are equivalent to the Department's ADA accessibility standards. Under title III of the ADA, the Department, upon request by a State or local government, may certify that a State or local building code meets or exceeds the minimum requirements of the ADA for new construction and alterations. To date, the Department has certified the building codes of the States of Washington, Texas, Maine and Florida. The Department, upon request by a model code entity, may also review a model code, such as the BOCA code, and issue guidance of whether the model code is consistent with the ADA accessibility standards. Although the Department has not completed its review of the BOCA code, it has reviewed the BCMC/ANSI provisions on which the BOCA code is based and the Department determined that those provisions were not equivalent to the ADA.

For your information I have enclosed a copy of an article entitled "Open Letter to Building Code Officials" which was published in the November/December 1995 issue of the Building Standards magazine. The article addresses not only the process of obtaining certification but also the many questions the Department has received regarding the role of State and local building officials in implementing the ADA. If Mr. King has

additional questions, the Department maintains a telephone information line to provide technical assistance regarding the rights and obligations of individuals, businesses, agencies, and others covered or protected by the ADA. This technical assistance is available by calling 800-514-0301 (Voice) or 800-514-0383 (TDD).

I hope this information is helpful to you in responding to your constituent.
Sincerely,
Bill Lann Lee
Acting Assistant
Attorney General
Civil Rights Division
Enclosure

768

August 4, 1998

The Honorable Ted Strickland

Member, U.S. House of Representatives

Washington, D.C. 20515

Dear Congressman Strickland:

This letter is in response to your inquiry on behalf of your constituent, Mr. xxxxxxxxxxx. Mr. xxxxxxx has asked you to determine if the Kardex Systems "Lektriever," complies with the Americans with Disabilities Act of 1990 (ADA). Please excuse the delay in responding.

The ADA is a comprehensive civil rights law that prohibits discrimination on the basis of disability in employment, in transportation, in public services, and in the operation of places of public accommodation and commercial facilities. Among the ADA's requirements is a mandate for all public facilities, places of public accommodation, and commercial facilities to be designed, constructed, or altered in compliance with the ADA Standards for Accessible Design (ADA Standards), which were cited in Mr. xxxxxxx's letter to you.

The ADA Standards set the number and type of fixed building elements that must be accessible. The standards also establish the technical specifications that accessible elements must meet. The ADA does not apply to manufacturers of products such as the Lektriever. However, the ADA requires covered entities, in selecting products for use in new or altered accessible spaces to ensure that fixed equipment purchased complies with the ADA Standards.

In addition, the Department of Justice regulations implementing titles II and III of the ADA require covered entities to ensure that individuals with disabilities have an equal opportunity to participate in, or receive the benefits of, the programs and services that they offer. This provision requires covered entities to purchase and use accessible equipment when it is necessary to provide equal opportunity for individuals with disabilities.

Mr. xxxxxxx's letter to you indicates that the Lektriever system does not comply with the provisions of the ADA Standards that establish "reach range" or knee clearance requirements. Therefore, the ADA would not permit the use of the Lektriever in a space that is required to be accessible or in a situation where the use of accessible equipment is required as a reasonable accommodation for an employee with a disability. However, nothing in the ADA precludes the use of inaccessible equipment in spaces that are not required to be accessible.

I hope that this information is useful to you in addressing the concerns of your constituent.

Sincerely,

Bill Lann Lee

Acting Assistant

Attorney General

Civil Rights Division

769

August 5, 1998

The Honorable Gil Gutknecht

Member, U.S. House of Representatives

1530 Greenview Drive, SW

Suite 108

Rochester, Minnesota 55902

Dear Congressman Gutknecht:

I am responding to your inquiry on behalf of your constituent, xxxxxxxxxxxxxx, who wrote to you concerning the accessibility requirements applicable to a high school stadium press box.

The Federal law that applies to this situation is the Americans with Disabilities Act of 1990 (ADA), which prohibits discrimination on the basis of disability by public entities, including public school systems. The Federal regulations implementing the ADA, which took effect on January 26, 1992, require all new construction to be readily accessible to, and usable by, people with disabilities. A public school system may meet this requirement by complying with either the ADA Standards for Accessible Design, 28 C.F.R. pt. 36, App. A, or the Uniform Federal Accessibility Standards, 41 C.F.R. pt. 101-19.6. In addition to this Federal requirement, most State building codes now contain accessibility requirements that are similar to those implemented by the ADA. Because Mr. xxxxxxxx letter specifically mentions a law that became effective in January 1996, we infer that the action affecting him was initiated under the State building code.

The ADA does not contain provisions that specifically address the construction of "press boxes." The ADA merely requires that all new construction by covered entities must comply with the applicable requirements of the regulations. In general, these requirements would include an accessible route to an accessible facility and an accessible entrance. In a multi-story facility, an accessible means of vertical access must be provided to connect all levels. Although an elevator is the most common means of providing vertical access, ramps and (in certain-limited circumstances) platform lifts may also be used. *See,* § 4.1.3.(5), Exception 4, of the enclosed ADA Standards. If the press box is not part of a multi-story facility, a ramp may be used to provide access to the entrance. The ADA does not provide for a waiver of these new construction requirements.

Mr. xxxxxx did not describe the press box in his letter to you, but, because he specifically complained that he is being required to install an elevator to provide access, we infer that his school has chosen to design a traditional press box that is located above the viewing stands with an entrance well-above ground level. This design choice is permitted by the ADA, but it is not compelled by it. Therefore, if Mr. xxxxxxxx school wants to comply with the ADA, but to avoid the cost of an elevator, the school should explore alternative press box designs.

Mr. xxxxxx should also note that the ADA does not preempt the authority of the State of Minnesota to impose more stringent requirements on construction through its building code process. The interpretation and application of the State's accessibility code is a matter that Mr. xxxxxx must resolve with State code officials.

For your information, we note that the ADA Standards are based on the ADA Accessibility Guidelines (ADAAG) developed by the United States Architectural and Transportation Barriers Compliance Board (Access Board). The Access Board is now engaged in a total review of these accessibility guidelines. The Access Board anticipates that the revised guidelines should be published as a proposed rule before the end of this year.

If Mr. xxxxxx wants to address this issue with the Access Board, he may write to:

Thurman M. Davis, Chair
U.S. Architectural and Transportation
Barriers Compliance Board
1331 F Street, N.W.
Washington, DC 20004-1111

Copies of the Department's regulations implementing title II and title III of the ADA are enclosed for your reference. The ADA Standards for Accessible Design are published as Appendix A to the title III regulation.

I hope that this information is helpful to you in responding to your constituent.

Bill Lann Lee
Acting Assistant Attorney General
Civil Rights Division

Enclosures

770

August 21, 1998

The Honorable Barbara B. Kennelly
Member, U.S. House of Representatives
One Corporate Center
Hartford, Connecticut 06103

Dear Congresswoman Kennelly:

This letter responds to your recent inquiry about the obligation of a manufacturer's service line to accept calls placed through a TDD (Telecommunication Device for the Deaf) relay system. Please excuse our delay in responding to you.

Your inquiry was prompted by one of your constituents, an individual with a hearing impairment, who attempted to contact a manufacturer's service line using the TDD relay, and was informed that the manufacturer does not accept relay calls. Your constituent received conflicting opinions regarding the manufacturer's legal right, under the Americans with Disabilities Act of 1990 (ADA), to reject her call.

The TDD relay system was established pursuant to title IV of the Americans with Disabilities Act of 1990 (ADA). Title IV amended the Communications Act of 1934 to require each common carrier that provides telephone voice transmission services to establish a TDD relay system to make telephone services accessible to people with hearing and speech impairments. The manufacturer's refusal to communicate with your constituent is, in our view, unjustified because accepting a relay call places no burden on the manufacturer. The manufacturer is simply required to talk to a relay operator, who then communicates with the individual with a hearing impairment using a TTY or TDD.

There is no question that if a business is covered under the ADA, it is required to accept telephone calls from individuals who have hearing impairments, by using either the relay service or a TDD. The difficult problem in this instance, however, is that a manufacturer is not clearly covered by the ADA. Title III, which prohibits discrimination by private businesses, reaches only those businesses that are "places of public accommodation."

The ADA provides a list of categories and examples in each category of what constitutes "public accommodations," such as, places serving food or drink, like restaurants; places of entertainment, like movie houses or theaters; and places of lodging, like hotels. "Service establishments" constitute one of the categories provided in the statute, but the category includes facilities like hospitals, lawyer's offices, and beauty shops. Manufacturers that are not engaged in selling directly to the public do not operate a "place of public accommodation."

Although the ADA does not cover manufacturers, there may be a state law prohibiting discrimination on the basis of disability, or dealing with consumer protection, that could assist your constituent. Your constituent might also want to contact the Connecticut Department of Consumer Protection, at 1-860-566-3290 or 1-800-842-2649; or a local Better Business Bureau. In the event the manufacturer is in a different state, your constituent could call the Federal Information Center for assistance in identifying the agency most likely to handle her issue, and their TTY/TDD number is 1-800-326-2996. Finally, a local group might assist your constituent by calling the manufacturer to discourage them from refusing to communicate with individuals who have hearing impairments by explaining just how simple it is to receive relay calls. A list of Connecticut organizations is enclosed.

I am sorry that we could not provide more assistance, and hope that this information is helpful to you in responding to your constituent.

Sincerely,

Bill Lann Lee
Acting Assistant
Attorney General
Civil Rights Division
Enclosure

771
August 26, 1998
The Honorable Michael Bilirakis
Member, U.S. House of Representatives
1100 Cleveland Street
Suite 1600
Clearwater, Florida 33755
Dear Congressman Bilirakis:
I am responding to your letter on behalf of your constituent, xxxxxxxxxxx, who asked you to initiate an investigation of the implementation of the Americans with Disabilities Act of 1990 (ADA) by the Disability Rights Section of the Civil Rights Division.

Mr. xxxxxx letter to you makes unfounded assertions about the Division's ADA implementation. Mr. xxxx is basing his request on a recent article in a publication called *The Mouth*, which alleged that the Disability Rights Section has completed only one ADA case since the statute was enacted. This assertion is simply wrong. It is premised on a failure to understand the role of the Department of Justice in ADA implementation, the nature of the Federal civil law enforcement process, and the allocation of ADA implementation responsibility within the Civil Rights Division.

The ADA prohibits discrimination on the basis of disability in employment, transportation, public services, and public accommodations. The Department of Justice bears the primary responsibility for the implementation of title II (public services) and title III (public accommodations) of the ADA. The Equal Employment Opportunity Commission (EEOC) has the primary responsibility for implementing the ADA's employment requirements and

the Department of Transportation (DOT) has primary responsibility for implementing the transportation-related requirements. However, the Department of Justice is responsible for litigation involving public employers or public transportation providers and all enforcement involving private transportation providers.

The Disability Rights Section is assigned to implement these requirements. The Section uses a multi-faceted approach to achieve compliance with the ADA. The Section investigates charges of discrimination and, when appropriate, initiates litigation. In addition, the Section intervenes as a party in some ongoing litigation and participates as *amicus curiae* in other district court cases. The Section also sponsors a pilot-project on ADA mediation. Under this program, the Section has awarded grants to train more than 350 professional mediators in 45 States and the District of Columbia to resolve ADA disputes without litigation.

In addition to these enforcement responsibilities, the Section reviews accessibility codes to determine if they are equivalent to the ADA. The Section operates an extensive ADA technical assistance program that includes a technical assistance grant program, the publication of technical assistance documents, and the operation of a toll-free ADA information line that receives over 160,000 calls each year. The Section also has responsibilities under section 504 of the Rehabilitation Act, the Small Business Regulatory Enforcement Fairness Act, and Executive Order 12,250. The Section's activities affect six million businesses and non-profit agencies, 80,000 units of state and local government, 54 million people with disabilities, and over 100 other Federal agencies and commissions in the Executive Branch. Additional information about all of these activities is provided on the Section's ADA Home Page on the Internet (http://www.usdoj.gov/crt/ada/adahom1.htm).

As of March 1998, the Disability Rights Section has a staff of 79 people, including 28 attorneys, assigned to handle these responsibilities. The Section's resources are supplemented, as appropriate, by other Civil Rights Division staff. The Appellate Section handles cases in the U.S. Courts of Appeals, and the Special Litigation Section litigates ADA matters that arise in the context of investigations under the Civil Rights of Institutionalized Persons Act.

With these limited resources, the Department has participated in 116 lawsuits as of May 1998. In 60 of these cases, the Department either initiated the litigation or intervened in an ongoing lawsuit. Fifty eight of these cases were handled by the Disability Rights Section; two were handled by the Special Litigation Section. The Department has also appeared as *amicus curiae*in 56 cases. The 20 *amicus* appearances in U.S. Courts of Appeals were handled by the Appellate Section with the assistance of the Disability Rights Section. Of the 36 *amicus*appearances in U.S. District Courts, 34 were handled by the Disability Rights Section, and two were handled by the Special Litigation Section. We have enclosed a copy of the Civil Rights Division's ADA case list for your reference.

The Division's extensive *amicus* participation enables us to fulfill one of our primary obligations in ADA litigation -- to influence the development of case law interpreting the ADA. The Department carries out this obligation in any lawsuit in which it participates. However, our experience has been that one of the most effective ways to target our limited resources is to participate as *amicus curiae* in cases where significant legal principles will be developed. As *amicus*, we are able to share our expertise on the legal issues with the court, without expending the significant resources required to initiate and litigate a case.

In addition to the cases that have been litigated since 1992, the Civil Rights Division has received over 10,000 ADA complaints that have been opened for investigation. As of July 1998, the Division has also received 469 referrals of employment discrimination charges from the EEOC, and three matters have been referred for possible litigation by other Federal agencies.

In resolving these complaints, the Disability Rights Section is guided by Executive Order 12,988, which requires Federal law enforcement agencies to seek pre-litigation resolutions of alleged violations. Therefore, the

Section diligently attempts to resolve cases through both formal and informal settlements before filing lawsuits. For instance, as of May 1998, the Section has offered 671 complainants the opportunity for mediation. However, even after a lawsuit is filed, the Section continues to seek pre-trial resolutions, such as consent decrees, which will bring about ADA compliance in the most cost-effective manner. As of May 1998, over 50 of these matters have been resolved through settlement agreements or consent decrees.

Despite the Division's accomplishments, we recognize that there are some people who we are not able to assist in a way that they find satisfactory. It appears that Mr. xxxx is one of those individuals. At the present time, the Disability Rights Section has two open investigations of complaints received from Mr. xxxx. One of the pending complaints was initially received in February 1996, but action was deferred while mediation was attempted. When mediation was unsuccessful, the Disability Rights Section initiated an investigation which is close to resolution. The second pending complaint, received in July 1996, is presently involved in mediation. The Disability Rights Section defers action on complaints that have been referred for mediation until the mediation process is completed. If mediation is successful, the complaint file is closed. If mediation is unsuccessful, the Section will review the file to determine if further action by the Department is appropriate.

The Disability Rights Section has corresponded directly with Mr. xxxx about his pending complaints. In addition to the pending complaints, the Section has received complaints from Mr. xxxx that have not been opened for investigation. This appears to be the source of much of his dissatisfaction. In his letter to you, Mr. xxxx criticized the Section for failing to provide appropriate "customer service." His comments indicate that he believes that the Department is required to investigate each complaint that it receives.

The role of the Department of Justice in ADA enforcement is often misunderstood by members of the public. Many people believe that the Department's role is to provide legal services for aggrieved individuals. Therefore, they expect that the Department will pursue each complaint until it is resolved to the satisfaction of the complainant. This perception is incorrect.

As a law enforcement agency, the Department's responsibility is to ensure the fair and effective implementation and enforcement of the law. When the Department initiates an investigation or a lawsuit, it acts on behalf of the United States, not on behalf of an individual complainant. The Department's goals in litigation are to address violations that raise issues of general public importance and to establish legal precedent that may be relied on by other litigants. Although individual complainants may form the basis for the Department's actions, the Department does not act as the attorney for the complainant.

The ADA specifically provides that each individual complainant has the right to initiate ADA enforcement litigation on his or her own behalf. Actions to enforce titles II and III may be filed at any time. Title I incorporates certain procedural requirements before a private lawsuit may be filed.

In summary, the Disability Rights Section works to promote compliance with the ADA in a cost-effective manner. The Section attempts to avoid costly litigation by resolving complaints amicably through informal or formal settlement agreements or through mediation. Nevertheless, the Section will not hesitate to file lawsuits when covered entities refuse to come into compliance voluntarily.

Since the ADA's inception, the Section has emphasized the need to educate the public about the law. By using resources to enlighten rather than simply litigate, the Department has encouraged voluntary compliance. However, when the Section is unable to gain voluntary compliance, the Department has used -- and remains committed to using -- all the enforcement tools that the law provides.

I hope that this information is helpful to you in responding to Mr. xxxx. As you requested, I am returning your constituent's correspondence.

Sincerely,
Bill Lann Lee
Acting Assistant
Attorney General
Civil Rights Division
Enclosure

772

August 26, 1998
The Honorable Sander M. Levin
Member, U.S. House of Representatives
2107 E. 14 Mile Road, Suite 130
Sterling Heights, Michigan 48310
Dear Congressman Levin:
This is in response to your correspondence on behalf of your constituent, Mr. xxxxxxxxxxxx, who is preparing for reconstruction after a fire destroyed a portion of the interior of his restaurant. Please excuse the delay in our response.

Reconstruction after a fire is considered an "alteration." The requirements for alterations are found in the Department's title III regulation, 28 CFR Part 36, §§ 36.402-36.404, and Appendix A. Alteration is defined as "a change to a place of public accommodation or a commercial facility that affects or could affect the usability of the building or facility or any part thereof." (28 CFR § 36.402 (b)). The term alteration includes remodeling, renovation, rehabilitation, reconstruction, historic restoration, changes or rearrangement in structural parts or elements, and changes or rearrangement in the plan configuration of walls and full-height partitions. Normal maintenance, reroofing, painting or wallpapering, asbestos removal, or changes to mechanical and electrical systems are not alterations unless they affect the usability of the building or facility. (28 CFR § 36.402 (b)(1)).

Thus, if the damage caused by the fire is minor and can be corrected by cleaning, re-painting, or re-wallpapering, the ADA would not apply. If walls are being reconstructed or new toilet fixtures or other elements are provided, the ADA requirements would apply. Any alteration shall be made so as to ensure that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. (28 CFR § 36.402 (a)(1)). Each element, space, or common area that is altered or added must comply with the applicable provisions of the ADA Standards for Accessible Design. (28 CFR § 36.402 (b)(2)). Further, if alterations of single elements, when considered together, amount to an alteration of a room or space in a building or facility, the entire space shall be made accessible. (28 CFR App. A, section 4.1.6 (1)(c)).

We are enclosing a copy of the regulation along with resource information about tax credits and deductions that may help businesses comply with the ADA.

We hope this information is useful to your constituent. If he has additional questions, he may call the ADA Information Line at 800-514-0301 (voice) or 800-514-0383 (TDD).

Sincerely,
Bill Lann Lee
Acting Assistant
Attorney General
Civil Rights Division
Enclosures

773
August 31, 1998
The Honorable Joseph I. Lieberman
United States Senate
Washington, D.C. 20510
Dear Senator Lieberman:
This letter responds to your inquiry on behalf of your constituent, xxxxxxxxxxxxxxx, and his wife, who is an individual with a hearing impairment. Mr. xxxxxxxxxx and his wife support strengthening the Americans with

Disabilities Act (ADA) by requiring all businesses to have telecommunication devices for deaf persons, or TDD's, also known as TTY's, or text telephones. Please excuse the delay in responding.

Your constituent is correct in advising that the ADA does not necessarily require all businesses to have TDDs. First, not all businesses are covered by the ADA. Title III of the ADA, in relevant part, covers private businesses that are places of public accommodation. A business is a place of public accommodation if its operations affect commerce, and if it falls into one of twelve categories specified in the statute and regulation, examples of which are places of lodging, sales or rental establishments, service establishments, places serving food and drink, and places of entertainment.

Second, covered businesses are required to ensure effective communication with individuals who have hearing impairments, but they are not specifically required to use a TDD in receiving and making telephone calls. Title IV of the ADA establishes a relay service in every State that enables TDD callers who have hearing or speech impairments to call private businesses, and businesses to call individuals with hearing or speech impairments. Relay calls are facilitated through a relay operator, who uses a TDD to communicate with the TDD user, and, typically, uses her or his voice to communicate with the business entity. In this way, the relay operator conveys the TDD user's questions or responses to the business, and vice versa.

During notice and comment rulemaking for the Department of Justice's regulation implementing title III, the Department received some comments from individuals who were concerned that the relay service would not be sufficient for all types of communication. The Department felt that this concern was best addressed by the Federal Communications Commission, which was the agency responsible for rulemaking under title IV, which provides for the relay service. To obligate all businesses to have TDDs, therefore, is likely to require a change in the statute or its implementing regulations.

Under some circumstances, however, businesses are required to have TDDs. If a business customarily offers the use of telephone services to its customers on more than an incidental, or convenience basis, then it must provide use of TDDs. So, for example, a hospital or hotel that offers patients or patrons the opportunity to make outgoing calls would be required to provide a TDD on request. On the other hand, retail stores, doctors offices, or restaurants generally would not be required to have TDDs, because orders or appointments could be made using the relay service.

I hope that this information is helpful to you in responding to your constituent.
Sincerely,
Bill Lann Lee
Acting Assistant
Attorney General
Civil Rights Division

774

September 22, 1998
The Honorable Bob Graham

United States Senator
Post Office Box 3050
Tallahassee, Florida 32315
Dear Senator Graham:
This letter responds to your inquiry on behalf of your constituent, Mr. xxxxxxxxxxxxxxxxx, who asks whether the Americans with Disabilities Act of 1990 (ADA) addresses the accessibility of fishing piers. In particular, he inquires whether there are scoping requirements for railing heights and parking spaces. Mr. xxxxxxxxxx advises that Charlotte County, where he resides, has restored a fishing pier that provides both "handicap spaces" for fishing and a ramp for accessibility to individuals with disabilities.

The Architectural and Transportation Barriers and Compliance Board, which recommends accessibility guidelines and scoping requirements to the Department of Justice as part of its rulemaking authority under the ADA, is in the process of preparing requirements for recreational facilities and sites. This rulemaking includes fishing piers. The Department of Justice expects to issue its Notice of Proposed Rulemaking on recreation by the end of the calendar year.

With respect to your constituent's particular questions,

the ADA's accessibility standards provide general scoping requirements for accessible parking spaces. When your constituent asks about railing heights, we assume that he refers to guard rails that are often required for safety by local codes, and not hand rails that are addressed in the ADA's accessibility standards. Local codes often require guard rails to be approximately 44 inches high, a height that is likely to present an obstruction to a wheelchair user who is fishing. The question of whether and how the ADA requires such rails to be modified to prevent obstructing wheelchair users is likely to be addressed in the upcoming Notice of Proposed Rulemaking. The issue requires balancing the safety concerns represented by guard rails with the rights of individuals with disabilities to use the pier. We encourage your constituent to voice his concerns in writing during the notice and comment period of the rulemaking for recreational sites.

Even in circumstances where the ADA's accessibility standards do not provide scoping requirements for a particular element, the ADA still requires that covered entities take steps to ensure general accessibility. Private businesses that are public accommodations must provide access to their fishing piers by engaging in barrier removal that is "readily achievable" or easily accomplishable without great difficulty or expense. Further, if the businesses renovate a pier, they must ensure that the altered areasand path of travel to the altered areas are readily accessible to and usable by individuals with disabilities. Similarly, state or local governments that provide use of fishing piers as part of their recreational programs must ensure that individuals with disabilities are able to participate in such programs.

Thank you for your inquiry. We hope that this information is helpful to you in addressing the very timely concerns of your constituent.

Sincerely,
Bill Lann Lee
Acting Assistant
Attorney General
Civil Rights Division

775

September 2, 1998

xxxxxxxxxxxxxxxxxxxx
xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
xxxxxxxxxxxxxxxxxx[xx]xxxxxx
xxxxxxxxxxxxxxxxxxx xxxxx-xxxx
Dear Ms. xxxx:

Senator Barbara Boxer has asked us to respond to your letter about private health care insurers and the costs associated with interpreter services required by the Americans with Disabilities Act (ADA). Please excuse our delay in responding.

On April 27, 1998, we replied to your similar inquiry made through Senator Dianne Feinstein's office (enclosure 1). We commented that the ADA does not expressly require a medical insurer to reimburse health care providers for all expenses incurred by an individual with a disability. We also provided information about congressional initiatives in the form of tax relief for public accommodations, including medical care providers, for providing patient interpreter services under the ADA. The ADA's title III regulation, furthermore, provides for flexibility in the methods that practitioners can use to effectively communicate with patients with disabilities who require auxiliary aids to obtain services.

The Department of Health and Human Services (HHS) also addressed the same issues in Mr. xxxxxxxxxxxxxxxxxxx March 31, 1998, letter to you. Like HHS, our Department has not targeted medical care service providers for failing to provide sign language interpreters. We likewise have been handling title III complaints presented to us on an individual basis.

We believe that the consideration of any other initiatives with respect to medical insurer reimbursable medical expenses is more appropriate for the Health Care Finance Administration (HCFA), which administers the Medicare/Medicaid programs and researches and monitors issues with respect to health care. Inquiries to HCFA may be addressed to:

Ms. Nancy-Ann Min DeParle

Administrator

Health Care Financing Administration

7500 Security Boulevard

Baltimore, Maryland 21244-1850

Telephone (410) 786-3000

I hope that you find this information useful and responsive to your concerns.

Sincerely,
John L. Wodatch
Chief
Disability Rights Section
Civil Rights Division

Enclosures
cc: The Honorable Barbara Boxer

776

September 8, 1998
The Honorable Charles S. Robb
United States Senator
The Ironfronts
Suite 310
1011 East Main Street
Richmond, Virginia 23219
Dear Senator Robb:

This letter is a response to your inquiry on behalf of your constituent, Ms. xxxxxxxxxxxxxxxxxxx, who is deaf. Ms. xxxxxx believes that movie theaters should be required to present movies with open captions. Ms. xxxxxx contacted Mr. Clyde W. Matthews, Jr., Managing Attorney for the Department of Rights of Virginians with Disabilities, who informed her that such an action is not mandated by the Americans with Disabilities Act (ADA) of 1990.

The issue of whether movies should be open-captioned was raised during the legislative debate on the ADA. Congress heard testimony from the motion pictures industry and from owners and operators of movie houses. Movie houses do not produce the movies they show. Instead, they have control of only completed films for the brief duration while they are playing. For that reason, it made little sense to place the obligation to caption films on movie houses. Thus, as Mr. Matthews explained to your constituent, movie houses are not required by the ADA to provide films with open captions, although they are encouraged to do so. Entities covered by the ADA that produce films are responsible for providing captioning or other means of making their films accessible to individuals with hearing impairments.

The motion picture industry has also suggested that providing open captioning might fundamentally alter the films they produce. Fortunately, emerging technologies and evolving ideas about captioning are likely to make such a suggestion obsolete and unnecessary. There are now several closed-captioning options for theaters or live performances in which the captions are made visible only to those who desire to see them.

Captions are either displayed on the back of the seat in front of the deaf patron, or in another location that does not require their placement directly on the film. These technologies are currently used by businesses and facilities open to the public. Here in Washington, for example, the Holocaust Museum and theImax Theater in the Air and Space Museum are using innovative applications of closed captioning, and the Arena Stage is using similar technologies for live performances. It is only a matter of time before these technological advances become widely available for use in movie houses.

As requested, we are replying in duplicate and returning the enclosure to your office.

Thank you for your inquiry. We hope that this information is useful to you in responding to the needs of your constituent.

Sincerely,
Bill Lann Lee
Acting Assistant
Attorney General

Civil Rights Division
Enclosures

777

September 16, 1998
The Honorable Dianne Feinstein
United States Senator
Washington, DC 20510-0504
Dear Senator Feinstein:
This letter responds to your most recent inquiry on behalf of your constituent, Ms. xxxxxxxxxxxxx. Ms. xxxxx requested your support in repealing or modifying the Americans with Disabilities Act (ADA) based on her concerns that certain historic facilities or noteworthy parts of those facilities were being closed to the public because of ADA requirements. Specifically, Ms. xxxxx was concerned that visitors were no longer able to view the second story of a house at the Duke Tobacco Homestead in North Carolina because the second story was not accessible to people with mobility impairments. Ms. xxxxx had been told by a docent that people with disabilities would be discriminated against if able bodied people were permitted to visit the second story of the house. Please excuse the delay in our response.

First of all, let me assure you that the ADA is a flexible law that does not require a private entity to close part or all of a historic house museum. The ADA provides a balance between the rights of people with disabilities and the importance of the preservation and use of historic facilities.

Historic museums such as the Duke Homestead are considered "public accommodations" under the ADA, and, therefore, have ongoing obligations under title III of the statute. Title III requires private entities, including private museums, to provide people with disabilities "full and equal enjoyment" of their programs and services and may require a private entity to modify its policies, practices or procedures; provide necessary auxiliary aids and services; and remove barriers to access in existing facilities when such removal is readily achievable. Please see the enclosed title III regulation at sections 36.201, and 36.301-36.305 (pages 471, and 474-477) for further discussion.

The ADA provisions for qualified historic facilities exist to achieve the goals of the ADA while protecting the significant characteristics of America's historic resources. These provisions may be used when an alteration to a qualified historic facility, including modifications done for barrier removal, would threaten or destroy its historic significance. Section 4.1.7 of the ADA Standards for Accessible Design (Standards), 28 C.F.R. part 36, Appendix A (page 504-505), specifically addresses alterations to historic buildings. Please see the enclosed Title III regulation for more information.

When it is not possible to remove certain barriers to accessibility because it is not readily achievable to do so or because the alteration would threaten or destroy the historic significance of the qualified historic facility, the ADA requires the use of alternative methods to provide access to the goods or services, if it is readily achievable to do so. For example, if the second floor of a historic house museum can only be reached by climbing stairs, it may be appropriate for a docent to show a set of photographs or a video that depicts the items, space and information shown on the second floor to a person who is unable to climb the stairs. The photographs or video would have to be shown in an accessible location. This would permit people with a

mobility disability to obtain information about the items and space on the upper level that others obtain who are able to climb the stairs.

A copy of the Title III Technical Assistance Manual is included to provide additional guidance on barrier removal requirements and the requirements for historic preservation (see pages 39 - 40 and 55 - 56).

I hope this information will assist you in responding to your constituent. As you requested, I am responding in duplicate.

Sincerely,

Bill Lann Lee
Acting Assistant
Attorney General
Civil Rights Division
Enclosures

778

October 5, 1998
The Honorable Jack Quinn
Member, U.S. House of Representatives
403 Main Street
Suite 240
Buffalo, New York 14203-2199
Dear Congressman Quinn:

I am responding to your letter on behalf of your constituent, Ms. xxxxxxxxxxxx, who wrote to you asserting that she was denied the opportunity to purchase health insurance because she has Graves' disease and a bipolar disorder.

You have asked us to determine if this decision violates Federal law. Please excuse our delay in responding.

The Department of Justice is responsible for enforcing the Americans with Disabilities Act of 1990 (ADA). Title III of the ADA prohibits discrimination on the basis of disability by places of public accommodation, including service establishments such as insurance companies. However, the ADA does not prohibit insurance companies from underwriting, classifying, or administering their benefit plans in accordance with State insurance laws, provided that such practices are not used as a subterfuge to evade the purposes of the ADA. Therefore, the ADA may allow insurance companies to charge more for insurance if the company's decision is based on legitimate actuarial data and principles, and not on speculation about the effects of a disability. An insurance company, however, may not refuse to serve a person with a disability because of limitations on coverage or higher rates in its insurance policies. Because each person's situation is unique, it is not possible for us to determine, based on the information provided by Ms. xxxxxx, whether the insurance company's decision on her application was made in compliance with the ADA.

The Department of Health and Human Services (HHS) is responsible for the implementation of other Federal laws that affect health care and insurance providers. Therefore, we have referred your letter to HHS for review and response with respect to the possible application of statutes subject to HHS jurisdiction. Questions with respect to HHS jurisdiction may be directed to:

Ms. Nancy-Ann Min DeParle
Administrator

Health Care Financing Administration
7500 Security Boulevard
Baltimore, Maryland 21244-1850
Telephone (410) 786-3000
I have enclosed a copy of the regulation implementing

title III of the ADA for your reference. I hope this information is helpful to you in responding to your constituent.

Sincerely,

Bill Lann Lee
Acting Assistant
Attorney General
Civil Rights Division
Enclosure

779

October 16, 1998
The Honorable Sam Farr
Member, U.S. House of Representatives
701 Ocean Street
Santa Cruz, California 95060
Dear Congressman Farr:

This is in response to your correspondence on behalf of your constituent, Ms. xxxxxxxxxxxxxxx, who is seeking information on the specific requirements for public buildings for compliance with the Americans with Disabilities Act (ADA).

We are enclosing a copy of the regulation for title III of the ADA, 28 CFR Part 36, which applies to "public accommodations" (businesses and non-profit agencies that serve the public) and "commercial facilities" (businesses such as manufacturing plants and wholesale operations that do not serve the public directly). Sections 36.304-310 of this document apply to public accommodations that existed before the ADA went into effect. Sections 36.401-406 apply to public accommodations and commercial facilities built or altered after the ADA went into effect. Appendix A contains the ADA Standards for Accessible Design that apply to new construction and alteration projects. These Standards also serve as guidelines for removing barriers, when removal is readily achievable, in facilities that existed before the ADA went into effect. §§ 36.304(a), (d), and (g).

We are also enclosing a copy of the regulation for title II of the ADA, 28 CFR Part 35, which applies to the programs, services, and activities of "public entities" (State and local governments). Section 35.151 applies to facilities built or altered after the ADA went into effect. Public entities may choose either the Standards for Accessible Design in 28 CFR Part 36, Appendix A, or the Uniform Federal Accessibility Standards in 41 CFR Part 101-19.6, Appendix A, for new construction and alteration projects. Sections 35.149-150 apply to facilities that existed before the ADA went into effect, and require "program accessibility" rather than "facility access." A public entity must operate each program, service, or activity so that the service, program, or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities, but a public entity is not necessarily required to make each of its existing facilities accessible. Program access can be achieved by

relocating services from inaccessible buildings to accessible ones, by assigning aides to program beneficiaries, or by delivering services to alternate accessible sites. When these methods are not effective in providing access to programs, a State or local government must undertake structural modifications to its existing buildings, unless an undue burden would result. §§ 35. 150 (a) and (b).

A Guide to Disability Rights Laws and an ADA Information Services list, two general resources that indicate which agencies provide information about the ADA and other disability rights laws, are also enclosed.

We hope this information is useful to your constituent. If she has additional questions, she may call the ADA Information Line at 800-514-0301 (voice) or 800-514-0383 (TDD).

Please do not hesitate to contact the Department if we can be of assistance in other matters.

Sincerely,

Bill Lann Lee
Acting Assistant
Attorney General
Civil Rights Division
Enclosures

780
November 2, 1998
The Honorable Dianne Feinstein
United States Senate
Washington, D.C. 20510-0504
Dear Senator Feinstein:
This is in response to your inquiry on behalf of your constituent, xxxxxxxxxxxxxxxxxx. In his letter to you, Mr. xxxxxxxx raises issues concerning the applicability of the Americans with Disabilities Act (ADA) to athletic competitions.

Mr. xxxxxxxx is concerned by a federal court's decisions rendered earlier this year in the Casey Martin litigation. Please excuse our delay in responding.

For your convenience, I have enclosed a copy of the two opinions issued by the federal district court in that case. See Martin v. PGA Tour, Inc., 984 F.Supp 1320 (D.Or. Jan. 30, 1998), and Martin v. PGA Tour, Inc., 994 F.Supp. 1242 (D.Or. Feb. 19, 1998). You should also be aware that the case is currently under appeal to the Ninth Circuit Court of Appeals. Martin v. PGA Tour, Inc., No. 98-35309 (9th Cir. March 20, 1998).

Title III of the ADA provides that "public accommodations" may not discriminate against individuals with disabilities in the full and equal enjoyment of the goods, services, facilities, privileges, advantages or accommodations offered by that public accommodation. 42 U.S.C. § 12182(a). The law defines a "public accommodation" as a private entity that owns, operates or leases a place of public accommodation. 42 U.S.C. §§ 12181(7) and 12182(a). Congress established a list of 12 categories of private entities that should be considered public accommodations, including hotels, restaurants, theaters and schools. 42 U.S.C. § 12181(7). Golf courses are specifically listed in the statute as public accommodations. 42 U.S.C. § 12181(7)(L). Therefore, the federal district court ruled that the PGA Tour must comply with the provisions of title III because it is a private entity that owns and operates golf courses.

Title III requires a public accommodation to make reasonable modifications in its policies, practices or procedures if those modifications would not fundamentally alter the nature of the public accommodation's goods, services, facilities, privileges, advantages or accommodations. 42 U.S.C. § 12182(b)(2)(A)(ii). The PGA Tour had difficulty proving that its no-cart rule was fundamental to the game of golf because it allows carts in several of the competitions it sponsors. For example, the Senior PGA Tour, a highly competitive and multi-million dollar series of competitions, allows the use of carts, and the PGA Tour also allows golfers to use carts in the tournaments held to determine which golfers will qualify for the PGA Tour. Since the PGA Tour allows carts in some tournaments but does not allow carts in other tournaments, the federal district court ruled that its own rules and procedures demonstrate that the no-cart rule -- i.e., requiring competitors to walk -- is not "fundamental" to the golf competitions it sponsors.

There should be no concern that these rulings will undermine the integrity of sports competitions. The ADA's requirement of reasonable modifications was not meant to change the essential activities that comprise an athletic competition or to accommodate a lower skill level.

As requested, we are replying in duplicate. I hope this information is helpful to you in responding to your constituent. Please do not hesitate to contact the Department if we can be of assistance in other matters.

Sincerely,

Bill Lann Lee
Acting Assistant
Attorney General
Civil Rights Division
Enclosures

781
November 3, 1998
The Honorable Dianne Feinstein
United States Senate
Washington, D.C. 20510-0504
Dear Senator Feinstein:

I am responding to your letter on behalf of your constituent, xxxxxxxxxxxxxxxxxxx (Reference xxxxx-xxxxx).

Mr. xxxxxxxxx wrote to you regarding an article by Walter Olson entitled "In the Land of the ADA, the One-Eyed Man Is King." The article appeared in The Wall Street Journal on June 22, 1998. Mr. xxxxxxxxx, based on the Olson article, stated in his letter that the Americans with Disabilities Act (ADA) should be repealed because it was being used to force businesses to hire unqualified personnel. To illustrate his opinion, Mr. xxxxxxxxx referred to a case described in the Olson article and concluded that the ADA was being used to force Aloha Airlines to hire a pilot with monocular vision. Please excuse our delay in responding.

The ADA requires employers to provide qualified persons with disabilities an equal opportunity to benefit from the full range of employment-related opportunities available to others. For instance, the ADA prohibits discrimination in recruitment, hiring, promotions, training, pay, and other privileges of employment. The ADA restricts questions that can be asked about an applicant's disability before a job offer is made, and it requires that employers make reasonable accommodation to the known physical or mental limitations of otherwise qualified persons with disabilities, unless it results in undue hardship. The ADA does not require employers to hire unqualified personnel.

Mr. xxxxxxxxx also stated in his letter that the ADA was being used to force Aloha Airlines to hire a pilot with monocular vision. Although the Aloha Airlines case was mentioned in the Olson article, this lawsuit was brought under the Hawaii state disability rights law and not under the ADA. The Olson article, however, does contain discussions of several ADA cases where individuals with monocular vision successfully challenged their employers' vision standards. For instance, the Olson article referred to a case in which a police officer with monocular vision obtained a judgment against the City of Omaha, as well as a Department of Justice settlement with the City of Pontiac of a case brought by a firefighter with monocular vision. The plaintiffs in both cases had a history of successfully performing their jobs with monocular vision. Officer Doane, the plaintiff in the case against the City of Omaha, performed all the functions of his job successfully and competently for nine years with monocular vision before the police department instituted its blanket policy of refusing to employ police officers with monocular vision. Mr. Henderson, the firefighter in the case against the City of Pontiac, had worked successfully and safely as a firefighter with monocular vision for fourteen years in a neighboring county. In both of these cases, the employers had a blanket policy of excluding from employment all persons with monocular vision regardless of the persons' ability to perform the job safely and effectively.

The ADA generally prohibits physical or mental qualification standards which exclude an entire group of people with a certain disability. The ADA, however, allows an employer to exclude an individual with a disability from a job if it can demonstrate that he or she would pose a "direct threat," that is, a significant risk of substantial harm that cannot be eliminated or reduced through reasonable accommodation. Any determination of a direct threat must be based on an individualized assessment of objective and specific evidence about a particular individual's current ability to perform the essential job functions, and not on general assumptions or speculations about a disability. Therefore, excluding an individual with monocular vision from a job even when he or she has demonstrated an ability to perform it safely and competently is precisely the kind of unwarranted discrimination that the ADA was intended to abolish.

As you requested, I am responding to your correspondence in duplicate. I hope this information is helpful to you in responding to your constituent. Please do not hesitate to contact the Department if we can be of assistance in other matters.

Sincerely,
Bill Lann Lee
Acting Assistant
Attorney General
Civil Rights Division

782

November 10, 1998
The Honorable Max Sandlin
Member, U.S. House of Representatives
Sulphur Springs District Office
P.O. Box 538
Sulphur Springs, Texas 75483
Dear Congressman Sandlin:

I am responding to your inquiry on behalf of your constituent, xxxx xxxxxxx xxxxxx, concerning businesses that display the International Symbol of Accessibility or handicapped signs but do not have accessible facilities. Her letter arose from a recent incident where she and other members of her family stopped at a gas station that displayed the International Symbol of Accessibility on the side of its building, and were told by a clerk that the facility did not have any restrooms for the public or for people with disabilities.

Title III of the Americans with Disabilities Act (ADA) prohibits discrimination on the basis of disability by places of public accommodation, such as gas stations. Title III does not, however, require any place of public accommodation to fundamentally alter the nature of its business to provide different services, even if those services might better meet the needs of people with disabilities. If a gas station does not provide any restroom

facilities for customers, then the gas station does not have to alter the nature of its business by providing restrooms facilities for customers with disabilities. If the gas station clerk's statement was accurate, then the station was not required to provide accessible restroom facilities because it chose not to provide toilet facilities to any of its customers.

In a situation where a gas station does provide restroom facilities for customers, the ADA imposes different requirements depending on whether the restroom has been recently constructed or altered, or whether it is an existing facility. The Americans with Disabilities Act Standards for Accessible Design establish strict architectural accessibility requirements for new construction and alterations, including specifications for accessible toilet rooms. With few exceptions, the new construction requirements apply to facilities, including gas stations, first occupied after January 26, 1993. The requirements also apply to alterations (i.e., any change that affects usability such as remodeling, renovation, rearrangements in structural parts, and changes or rearrangements of walls and full height partitions) begun after January 26, 1992. New construction and alterations must be readily accessible to and usable by individuals with disabilities in accordance with the Standards. Please see the enclosed title III technical assistance manual, at pages 45-56, for more information on the accessibility requirements for new construction and alterations. See page 62 for specific information on the requirements for accessible bathrooms in newly constructed or altered facilities.

If a gas station has neither been constructed nor altered since the effective dates explained above, then accessibility requirements are less stringent. The ADA requires existing gas stations that are not otherwise being altered to remove architectural barriers to the extent that it is readily achievable to remove them. Readily achievable means easily accomplishable and able to be carried out without much difficulty or expense. Determining if barrier removal is readily achievable is necessarily a case-by-case judgment that involves the analysis of many different factors and circumstances. The Department's title III regulation contains a list of 21 examples of modifications that may be readily achievable, including: widening doors, installing offset hinges to widen doorways, rearranging toilet partitions to increase maneuvering space, and installing a raised toilet seat. The list is intended to be illustrative. Each of these modifications will be readily achievable in many instances, but not in all. Please see the title III technical assistance manual, at pages 31-38, for more information on barrier removal in existing facilities.

The Department's title III regulation recommends priorities for removing barriers in existing facilities. Because the resources available for barrier removal may not be adequate to remove all existing barriers at any given time, the regulation suggests a way to determine which barriers should be mitigated or eliminated first. A public accommodation's first priority should be to enable individuals with disabilities to physically enter its facility. Based on xxxx xxxxxxxx letter, it appears that the gas station at issue had accomplished this first priority by installing a ramp at the facility entrance. The second priority is for measures that provide access to those areas of a place of public accommodation where goods and services are made available to the public. Again, based on xxxx xxxxxxxx letter, the gas station may have accomplished this priority as well. Xxx xxxxxx, a person with an unspecified disability, was able to utilize the gas pumps. It is unclear whether xxxx xxxxxxxx daughter, who uses a wheelchair, was able to maneuver in the gas station store area. More facts are needed before a determination could be made whether the regulation's second priority for barrier removal was met.

The third priority for barrier removal should be providing access to restrooms, if restrooms are provided for use by customers or clients. If the gas station clerk's statement that they don't have any restrooms for the public means that the station does not provide restroom facilities to customers, then the gas station does not have any obligation under the ADA to provide restroom facilities to individuals with disabilities. However, if the gas station does provide restroom facilities to customers and those facilities are inaccessible to individuals with disabilities, then the gas station may be in violation of the ADA if it is readily achievable to make the restrooms accessible. As explained above, we cannot make this determination without more facts.

I can understand xxxx xxxxxxxx frustration that the gas station displayed the International Symbol of Accessibility, but did not have an accessible restroom. However, the Department's title III regulation requires the use of the symbol in some situations where a facility is not fully accessible. For example, the symbol must be displayed at a facility's accessible entrance when not all of its entrances are accessible. This requirement is irrespective of whether or not the public accommodation has accessible toilet facilities. Please see Section 4.1.2(7), at pages 497-498 of the enclosed title III regulation, and Section 4.30.7, at pages 544-545 of the regulation, for more information on signage requirements.

I hope this information is helpful to you in responding to your constituent. Please do not hesitate to contact the Department if we can be of assistance in other matters.

Sincerely,

Bill Lann Lee
Acting Assistant
Attorney General
Civil Rights Division
Enclosures

783

December 3, 1998
The Honorable William D. Delahunt
Member, U.S. House of Representatives
15 Cottage Avenue
Quincy, Massachusetts 02169
Dear Congressman Delahunt:
I am responding to your inquiry on behalf of your constituent, xxxxxxxx xxxx. Ms. xxxx asked you to determine if the Americans with Disabilities Act of 1991 (ADA) may be interpreted to require places of public accommodation, such as shopping malls, to provide wheelchairs or other motorized vehicles for the use of their customers. Please excuse our delay in responding.

Title III of the ADA prohibits discrimination on the basis of disability in the operation of places of public accommodation such as retail stores. This requirement is implemented through regulations published by the Department of Justice in title 28 of the Code of Federal Regulations. Copies of this regulation and the Title III Technical Assistance Manual are enclosed.

The title III regulation generally requires public accommodations to make reasonable modifications in their policies or practices when the modifications are necessary to enable people with disabilities to benefit from the goods, services, or facilities offered. Public accommodations are also required to remove architectural, communication, and transportation barriers to access if it is readily achievable to do so. However, the regulation specifically provides that a public accommodation is not required to provide its customers or clients with personal devices, such as wheelchairs.

I hope that this information is helpful to you in responding to Ms. Levy. Please do not hesitate to contact the Department if we can be of assistance in other matters.

Sincerely,

Bill Lann Lee

Acting Assistant

Attorney General

Civil Rights Division

Enclosures

784
December 14, 1998
xxxxxxxxxxxxxxxx
xxxxxxxxxxxxxx
xxxxxxxxxx, xxxxxxx xxxxx
Dear Mr. xxxxxxxx:

Senator McCain requested that I respond to your recent e-mail message, in which you suggested that accessible hotel rooms should be available on ground floors only. You expressed concern that individuals with

disabilities housed in accessible rooms on higher floors may not be able to safely exit buildings during emergencies. Please excuse our delay in responding.

The Americans with Disabilities Act of 1990 (ADA) authorizes the Department of Justice to provide technical assistance to individuals and entities that have rights or obligations under the Act. This response to your inquiry is intended to assist you in understanding the ADA's requirements. However, this technical assistance does not constitute a determination by the Department of Justice of specific rights or responsibilities under the ADA, and it is not a binding determination by the Department.

Title III of the ADA prohibits discrimination on the basis of disability by places of public accommodation, including hotels and motels. The Department of Justice is required by the ADA to issue a regulation to implement the statute. The Department's title III regulation is published at 28 C.F.R. part 36. This regulation and the Department's Title III Technical Assistance Manual are enclosed for your information.

In order to ensure that people with disabilities have a range of options equivalent to those available to other hotel guests, the title III regulation requires accessible hotel rooms to be dispersed among the various classes of rooms available at the hotel. Factors to be considered in dispersing rooms include room size, price, available amenities, and number of beds. Although there is no prohibition on locating accessible rooms on the first floor (if the available rooms offer a range of options), hotels usually find that some accessible rooms must be provided on more than one level of the facility in order to provide an equivalent choice of views or other amenities. To ensure the safety of individuals with disabilities in accessible spaces that are above the ground floor, the ADA regulation requires all new facilities, including hotels, to provide areas of rescue assistance on any level that does not provide an accessible egress route for emergency evacuation.

The Department believes that the dispersal requirements are essential to ensure that the services and facilities of a hotel are provided to individuals with disabilities in the most integrated setting appropriate to their needs. As stated in the preamble to the title III regulation, the "ADA recognizes that the provision of goods and services in an integrated manner is a fundamental tenet of nondiscrimination on the basis of disability." Please see the enclosed title III regulation, at page 472 and 595-597, for further information on the ADA's requirements for integrated settings.

As Appendix B to the title III regulation makes clear, the exclusion and segregation of individuals with disabilities and the denial of equal opportunities enjoyed by others, based on, among other things, presumptions, patronizing attitudes, fears, and stereotypes about individuals with disabilities is prohibited. If a hotel restricted accessible rooms to the ground floor because of fears or presumptions about the ability of individuals with disabilities to exit the hotel during emergencies, it would violate both the letter and spirit of the ADA. Individuals who seek accessible hotel rooms have a wide range of abilities and disabilities, as well as tastes in hotel rooms. The dispersal of accessible hotel rooms provides individuals with disabilities the greatest opportunity to select the rooms that best meet their needs and desires.

The U.S. Architectural and Transportation Barriers Compliance Board (Access Board) is currently reviewing the Americans with Disabilities Act Accessibility Guidelines, on which the requirements in the Department's rule are based. The Access Board intends to issue proposed revisions to the accessibility guidelines early next year. You may want to share your concerns about the safety of accessible hotel rooms with the Access Board during the notice and comment period for the proposed revisions.

I hope this information is helpful to you.

Sincerely, John L. Wodatch Chief Disability Rights Section Civil Rights Division
Enclosures

785

December 14, 1998
The Honorable Olympia J. Snowe

United States Senator
Two Great Falls Plaza
Suite 7B
Auburn, Maine 04210
Dear Senator Snowe:

I am responding to your letter on behalf of your constituent, xxxxxxxxxxxxx. Ms. xxxxx wrote to you indicating that the Town of Minot is in the process of building an addition to the Town Office. Ms. xxxxx described the Town Office as a one story building with a full basement and inquired whether the Americans with Disabilities Act (ADA) requires the installation of an elevator. Please excuse our delay in responding.

Under title II of the ADA, State and local governments (i.e., public entities) are prohibited from discriminating against persons with disabilities with regard to any programs, activities and services. Title II also requires that each facility or part of a facility that is constructed or altered must be designed and constructed so that it is readily accessible to and usable by individuals with disabilities. Title II permits public entities to choose either of two design standards - the Uniform Federal Accessibility Standards (UFAS) or the ADA Accessibility Guidelines for Buildings and Facilities, as adopted by the Department of Justice as the Standards for Accessible Design (Standards). Since the State of Maine has adopted an accessibility code that is based on the ADA Standards, our response will address the requirements of the ADA Standards rather than the requirements of the UFAS.

In new construction and in alterations where vertical access is required, section 4.1.3(5) of the ADA Standards requires a public entity to provide a passenger elevator that will serve each level, including mezzanines, in all multistory[(1)] buildings and facilities. Under the ADA, an addition is regarded as an alteration. Therefore, the Town of Minot must ensure that the newly added part of the building is, to the maximum extent feasible, readily accessible to and usable by people with disabilities. The question of whether title II requires the installation of an elevator depends on what type of addition is being made to the Town Office. For example, if a new story is being added to the Town Office or if the addition is a two story facility, then title II's readily accessible standard would require some form of vertical access (e.g., an elevator, a lift or a ramp) to the new story or basement. However, if space is being added to an existing floor level without affecting the circulation path between the basement and the ground floor, then it is unlikely that title II would require an elevator so long as the added space is, to the maximum extent feasible, readily accessible to and usable by people with disabilities.

Ms. xxxxx should note that this letter addresses only the requirements of Federal law. Some States have adopted accessibility requirements through State statutes or building codes that are more stringent than the Federal regulation. The ADA expressly permits local authorities to enforce State or local laws that provide accessibility that equals or exceeds the Federal rules. Therefore, the State of Maine may require the Town of Minot to comply with provisions that impose obligations in addition to those identified in this letter.

I have enclosed copies of the regulation implementing title II and the ADA Standards for your reference. Also, if Ms. xxxxx has additional questions, the Department maintains a telephone information line to provide technical assistance regarding the rights and obligations of individuals, businesses, agencies, and others covered or protected by the ADA. This technical assistance is available by calling 800-514-0301 (Voice) or 800-514-0383 (TDD).

I hope that this information is helpful to you in responding to Ms. xxxxx. Please do not hesitate to contact the Department if we can be of assistance in other matters.

Sincerely,

Bill Lann Lee
Acting Assistant
Attorney General
Civil Rights Division
Enclosures

1. Section 3.5 of the ADA Standards defines "story" as that "portion of a building included between the upper surface of a floor and upper surface of the floor or roof next above. If such portion of a building does not include occupiable space, it is not considered a story for purposes of these guidelines...." Section 3.5 defines "occupiable" as a "room or enclosed space designed for human occupancy in which individuals congregate for amusement, educational or similar purposes, or in which occupants are engaged at labor, and which is equipped with means of egress, light, and ventilation."

786

January 15, 1999
The Honorable Charles T. Canady
Member, U.S. House of Representatives
Federal Building
124 South Tennessee Avenue, Suite 125
Lakeland, Florida 33801
Dear Congressman Canady:

This is in response to your letter requesting information about the Americans with Disabilities Act (ADA) on behalf of your constituent, Mr. xxxxxxxxxxx of Dade City, Florida. Please excuse our delay in responding.

You have asked whether a convenience store and a restaurant may be exempted from requirements of the Americans with Disabilities Act (ADA) because the facilities were built before the ADA was passed. Your constituent, Mr. xxxx, had been told by the owners of the facilities that they were "grandfathered in" and exempt from ADA requirements.

In response to your question, title III of the ADA addresses accessibility requirements for public accommodations. Convenience stores and restaurants are considered places of public accommodation, as defined by the ADA's twelve categories of places of public accommodation. No places of public accommodation are exempted from title III requirements, regardless of their age. Older buildings, that are places of public accommodations, are not "grandfathered" under the ADA.

Some facility owners may not understand that ADA requirements may be different from requirements of a local building code. Although the facility may be "grandfathered" according to the local building code, the ADA does not have a provision to "grandfather" a facility.

While a local building authority may not require any modifications to bring a building "up to code" until a renovation or major alteration is done, the ADA requires that a place of public accommodation remove barriers that are readily achievable even when no alterations or renovations are planned.

Readily achievable means that barrier removal is easily accomplishable and can be done without much difficulty or expense. Any physical modifications that would be truly "physically impossible" would not be readily achievable, and would not be required under the ADA. For your information, I have enclosed the ADA Guide for Small Businesses and an ADA-TA publication for further discussion of these issues.

I have also enclosed information about the Department's ADA Mediation Program which has been established to help resolve complaints locally. This information provides guidance on how the program may be used.

I hope this information is useful to you. Please do not hesitate to contact the Department if we can be of assistance in other matters.

Sincerely,
Bill Lann Lee
Acting Assistant
Attorney General
Civil Rights Division

787

January 15, 1999
The Honorable Rubén Hinojosa
U.S. House of Representatives
Washington, D.C. 20515
Dear Congressman Hinojosa:

I am responding to your inquiry on behalf of your constituent, Mr. xxxxxxxxxxxxxxxxx, concerning the application of the Americans with Disabilities Act of 1990 (ADA) to the operating policies of golf courses. Specifically, Mr. xxxxxx complained that his golf course did not permit golfers who have disabilities to bring golf carts onto the course, and he asked if the ADA would apply to the golf course. Please excuse our delay in responding.

The ADA prohibits discrimination on the basis of disability in the all of the services, programs, and activities of public entities and in the operation of privately owned places of public accommodation, such as golf courses. Covered entities are required to make reasonable modifications in their policies, practices, and procedures in order to ensure that an individual with a disability has an equal opportunity to participate in the program or activity that the covered entity provides. However, a covered entity is not required to provide modifications that result in a fundamental alteration of the program that is offered.

A golf course may be covered under either title II or title III depending on whether it is publicly or privately owned and operated. However, in order to trigger the protection of the ADA in challenging a golf course policy, certain criteria must be met. The first criterion is that the affected golfer must be an "individual with a disability" as that term is defined by the ADA. This means that a person must have a physical or mental impairment that substantially limits one or more of his or her major life activities.

If a golfer's impairment substantially limits a major life activity, he or she is entitled to the protection of the ADA. A impairment that does not substantially limit a major life activity does not trigger ADA protection. Thus, the determination as to whether a particular golfer is entitled to seek a modification of a golf course rule requires a case-by-case analysis.

After it has been determined that the golfer is an individual with a disability, it is necessary to determine if a requested modification, such as the use of a golf cart in areas other than a designated path, is "reasonable" and whether the modification would fundamentally alter the golf course. These determinations also involve fact-specific, case-by-case inquiries that consider, among other factors, the effectiveness of the modification in light of the nature of the disability in question, the modification's effect on the organization that must implement it or on the golf course.

The ADA requires that golf course operators be prepared to modify or waive general rules in circumstances where the waiver is necessary to permit an individual with a disability to participate in its program and the waiver would not fundamentally alter the program that is provided. In most circumstances, requiring a golf course to allow golfers with disabilities to take golf carts off the designated path would be reasonable and, depending on the type of golf cart being used, would not usually result in a fundamental alteration.

I hope this information is helpful to you in responding to your constituent. Please do not hesitate to contact the Department if we can be of assistance in other matters.

Sincerely,
Bill Lann Lee
Acting Assistant
Attorney General
Civil Rights Division
788

March 12, 1999
The Honorable Kay Bailey Hutchison
United States Senator
961 Federal Building
300 East Eighth Street
Austin, Texas 78701
Dear Senator Hutchison:

I am responding to your inquiry on behalf of your constituent, Ms. xxxxxxxxxxxx, who wrote about the difficulties experienced by individuals with disabilities when doors are not accessible at public places.

Automatic doors are not currently required under the Americans with Disabilities Act (ADA) Standards of Accessible Design adopted by the Department of Justice. The high costs of installing automatic doors and the engineering challenges involved in achieving appropriate door closure force while providing access has resulted in the problem faced by your constituent.

However, whether to require automatic doors on at least some kinds of doors on at least some kinds of buildings is currently being considered by the Architectural and Transportation Barriers Compliance Board (Access Board). The Access Board establishes the ADA Accessibility Guidelines, which are then adopted as the minimum standard for accessibility by the Department, which may increase the requirements for accessibility and then promulgates its own regulation containing the ADA Standards.

Both the Access Board and the Department of Justice will be revising the accessible design requirements contained in the ADA Guidelines and Standards over the next two years. Your constituent is welcome to submit her comments on this difficult issue. Each agency will seek public comment through a "Notice of Proposed Rulemaking" published in the Federal Register. For information on when that may occur, Ms. xxxxxx may contact the Civil Rights Division later in the year by calling our ADA

Information Line, 1-800-514-0301 (voice) or 1-800-514-0383 (TDD). The Board can be reached at the following address and phone number:

Lawrence Roffee
Executive Director
Architectural and Transportation
Barriers Compliance Board
1331 F Street, N.W.
Washington, D.C. 20004-1111
Telephone: 202-272-5434

I hope this information will assist you in responding to your constituent. Please do not hesitate to contact the Department if we can be of assistance in other matters. As requested, we are returning your constituent's correspondence.

Sincerely,

Bill Lann Lee
Acting Assistant
Attorney General
Civil Rights Division
Enclosure

789

March 24, 1999
The Honorable Joe Scarborough
U.S. House of Representatives
Washington, D.C. 20515
Dear Congressman Scarborough:
I am responding to your letter on behalf of State Representative Jerry Melvin regarding the application of the new construction requirements of the Americans with Disabilities Act of 1990 (ADA) to the construction of fire stations. Mr. Melvin questions the conclusion of the State of Florida that the ADA (and the Florida Accessibility Code for Building Construction) require the installation of an elevator to provide access to the second floor of a fire station.

Title II of the ADA prohibits discrimination on the basis of disability in all of the programs, services, and activities of a public entity. Both title I and title II of the ADA prohibit discrimination on the basis of disability in employment. One aspect of this nondiscrimination mandate is the obligation to ensure that all new public buildings and facilities are readily accessible to and usable by individuals with disabilities. The federal regulation implementing title II (28 C.F.R. pt.35) permits covered entities to meet this obligation by complying with either of two design standards -- the Uniform Federal Accessibility Standards (UFAS) or the ADA Standards for Accessible Design.

Both UFAS and the ADA Standards require covered entities to provide an accessible means of vertical access (such as a ramp, a lift, or an elevator) to connect all floor levels in multi-story buildings. Mr. Melvin objects to this requirement because he believes that individuals with disabilities who require the use of an elevator are not eligible to be fire fighters.

Mr. Melvin's analysis appears to be based on the assumption that if the principal users of a facility will be able-bodied individuals, the facility may be designed exclusively to serve them. This analysis conflicts with the primary purpose of the new construction requirements of the ADA, which is to ensure that people with disabilities are not excluded from opportunities that would otherwise be available to them, because buildings are not accessible.

Even if a fire department could establish that the employment requirements of titles I and II of the ADA support exclusion of people who have mobility impairments from employment as fire fighters, that fact does not support the conclusion that no person with a disability will need access to the second floor of the fire station. For example, other employees, such as those responsible for cleaning, maintenance, and clerical tasks, may need access to some or all of the areas in question. Supervisory personnel and city officials may also need

access to such areas. It is not likely that persons with physical disabilities may be lawfully excluded from those types of positions or denied access to the second floor of a public building. In addition, because the useful life of a building may span many decades during which the uses of the facility can change. Although the current users of a facility may be fire fighters and other fire department employees, a public entity may later decide to open the facility for school tours, neighborhood association meetings, or other public activities that are required to be accessible.

The U.S. Architectural and Transportation Barriers Compliance Board (Access Board), the Federal agency that is responsible for developing the accessibility guidelines on which the UFAS and the ADA Standards are based, is now in the process of reviewing and revising its guidelines. A Notice of Proposed Rulemaking will be published in the Federal Register this year to solicit public comments on these rules. Mr. Melvin may wish to share his views on the elevator requirements of the standards with the Access Board during this rulemaking. Information about the rulemaking schedule may be obtained from the Access Board's Internet site at "www.access-board.gov" or from its toll-free technical assistance information line at 800-872-2253 (voice) or 800-993-2822 (TDD).

I hope this information is helpful to you. Please do not hesitate to contact the Department if we may be of assistance with other matters.

Sincerely,
Bill Lann Lee
Acting Assistant
Attorney General
Civil Rights Division

790

April 8, 1999
The Honorable Phil Gramm
United States Senator
2323 Bryan Street, #2150
Dallas, Texas 75201
Dear Senator Gramm:
I am responding to your letter on behalf of your constituent, Dr. xxxxxxxxxxxxxxxx. Dr. xxxxxxx wrote to you inquiring if financial assistance is available to assist him to alter a dental clinic building to make it accessible to individuals with disabilities.

Under title III of the Americans with Disabilities Act (ADA), any alteration to a place of public accommodation, such as a dental office, must ensure that, to the maximum extent feasible, the altered portions of the facility are accessible to persons with disabilities. An alteration is any change that affects or could affect the usability of the facility. Normal maintenance, reroofing, painting or wallpapering, asbestos removal, or changes to mechanical and electrical systems are not alterations unless they affect the usability of the building or facility.

With regard to Dr. xxxxxxxxx question of financial assistance, there are no Federal funds specifically available for the purpose of complying with the ADA. However, the Department of Housing and Urban Development awards Community Development Block Grants (CDBG) to communities in need of funds for various reasons, one of which is to provide accessibility for individuals with disabilities. Dr. xxxxxxx should be advised that each community establishes its own priorities for the use of CDBG funds. Therefore, it is important that Dr. xxxxxxx work with his community to assure that some of the funds are used to provide accessability to individuals with disabilities. If Dr. xxxxxxx would like to apply for a CDBG, he may send a request to: Andrew Cuomo, Assistant Secretary, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street, S.W., Room 7100, Washington, D.C. 20410.

In addition, the Internal Revenue Code permits eligible small businesses to receive a tax credit for certain costs of compliance with the ADA. An eligible small business is one whose gross receipts do not exceed $1,000,000

or whose work force does not consist of more than 30 full-time workers. Qualifying businesses may claim a credit of up to 50 percent of eligible access expenditures that exceed $250 but do not exceed $10,250. Information about the tax credit and the tax deduction is enclosed.

As you requested, we are returning your constituent's correspondence. I hope this information is helpful to you in responding to your constituent. Please do not hesitate to contact the Department if we can be of assistance in other matters.

Sincerely,
Bill Lann Lee
Acting Assistant
Attorney General
Civil Rights Division
Enclosure

791

June 2, 1999
The Honorable Max Cleland
United States Senator
75 Spring Street, S.W.
Suite 1700
Atlanta, Georgia 30303
Dear Senator Cleland:

This is in response to your inquiry on behalf of your constituent, xxx xxxxxxx xxxxxxxx. Please excuse our delay in responding. xxx xxxxxxxx expressed two concerns in his letter to you: (1) that the Department's lawsuit against American Multi-Cinema, Inc. and AMC Entertainment, Inc. (collectively, "AMC") is frivolous, and (2) that Bill Lann Lee's service as Acting Assistant Attorney General for the Civil Rights Division is not legal.

The Americans with Disabilities Act ("ADA") prohibits discrimination against individuals with disabilities in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation, such as a movie theater. Discrimination includes giving persons with disabilities a good, service, facility, privilege, advantage, or accommodation that is not equal to that given to other individuals. The ADA also requires movie theaters designed and constructed after January 26, 1993, to be readily accessible to and usable by individuals with disabilities. To meet these requirements, a movie theater must provide wheelchair seating with lines of sight comparable to those for other members of the general public.

In 1997 and 1998, the Department conducted on-site investigations of six of AMC's theaters with stadium-style seating, including one theater located in Florida. AMC advised the Department that these theaters were

representative of the theaters that it was building and operating nationwide. The Department's investigation revealed that, in mose of its auditorium's with stadium-style seating, AMC denies persons who use wheelchairs access to the stadium-style section of the theater and instead relegated them to much less desirable seating areas that are in the front rows of the theater and very close to the screen. The Department found that AMC's theaters violated the ADA because they did not provide wheelchair seating locations in the stadium-style section of the theater with lines of sight comparable to those for members of the general public.

In June 1998, the Department advised AMC that its theaters failed to comply with ADA requirements. For seven months, the Department attempted to reach a settlement with AMC which would provide for AMC's voluntary compliance with the ADA. However, AMC refused to comply voluntarily, so the Department was required to file suit against AMC to compel compliance with the ADA.

xxx xxxxxxxxxx letter expresses concern that the lawsuit might be frivolous. However, a district court in Texas has alaready addressed the same issues in a case involving a movie theater operated by Cinemark, USA, and found a plain violation of the ADA. A copy of that ruling is enclosed for your reference.

xxx xxxxxxxxxx letter states that it would be inappropriate for the Department to file a lawsuit requiring a theater to give persons who use wheelchairs access to each and every seat in a theater auditorium. The Department agrees with him on this point, and our lawsuit does not seek to require every seat to be wheelchair accessible. Instead, the lawsuit only seeks to require AMC to provide a relatively small number of wheelchair seats in the stadium-style section of each auditorium with lines of sight comparable to those for members of the general public. For example, in auditoriums with 300 seats, only four wheelchair spaces with comparable lines of sight must be provided -- not 300 seats.

The second concern xxx xxxxxxxxxx letter raises is whether Bill Lann Lee has the legal authority to perform the duties of Acting Assistant Attorney General for the Civil Rights Division because his appointment to the position of Assistant Attorney General has not been confirmed by the U.S. Senate. Bill Lann Lee was named Acting Assistant Attorney General by the Attorney General under her authority to make designations to fill vacancies at the Department of Justice. Prior to the Vacancies Act amendments of October 1998, the Attorney General had the authority to make designations to fill vacancies at the Department of Justice under 28 U.S.C. Sections 509-510. This authority has been used by Attorneys General in both Democratic and Republican Administrations for over 60 years. Mr. Lee's apointment was clearly lawful under this authority and under the terms of the Vacancies Act.

The Vacancies Reform Act expressly provides that it applies only to vacancies arising after its effective date, with the exception that the Act limits the term of service for an acting officer in a vacancy that arose before the law took effect. Since the position of Assistant Attorney General for Civil Rights has been vacant since 1997, the Vacancies Reform Act provides that he may continue to serve for at least a 210-day period pending the submission of a nomination to fill the vacancy. Since Mr. Lee's nomination was resubmitted to the Senate in March 1999, Mr. Lee may continue lawfully to serve as Acting Assistant Attorney General for as long as his nomination is pending before the Senate.

I hope this information responds to the concerns raised in the letter from your constituent. Please do not hesitate to contact the Department if we can be of assistance in other matters.

Sincerely,
Jon P. Jennings
Acting Assistant
Attorney General
Enclosure

792
June 29, 1999
The Honorable Marge Roukema
Member, U.S. House of Representatives
1200 East Ridgewood Avenue
Ridgewood, New Jersey 07460
Dear Congresswoman Roukema:
This letter responds to your inquiry on behalf of your constituent, xxxx xxxx xxxxxxx, who alleges that Grand European Tours (GET), a division of Forbes International, Inc., is violating title III of the Americans with Disabilities Act of 1990 (ADA).

xxxx xxxxxxx claims that GET denied her request to bring a wheelchair for her sister on a tour of Ireland. In light of xxxx xxxxxxxxx imminent departure, an investigator in the Department's Disability Rights Section telephoned her and the company to obtain more facts and to attempt some type of resolution. It is our understanding that GET assisted xxxx xxxxxxx in locating wheelchairs to rent at all hotels in Ireland. The European company with which GET contracts to provide on-site transportation, however, uses motorcoaches that are not equipped to transport wheelchairs.

Unfortunately, the practices of the European company may be beyond the reach of the ADA. It is a well-established principle of statutory construction that legislation enacted by Congress does not extend beyond

the territorial jurisdiction of the United States unless there is evidence of clear legislative intent to the contrary. E.E.O.C. v. Arabian American Oil Co., 499 U.S. 244, 248 (1991); Foley Bros., Inc. v. Filardo, 336 U.S. 281, 285 (1949).

Title III of the ADA does not contain any express provisions extending the law to extraterritorial activities. Moreover, although title III of the ADA applies to public accommodations and commercial facilities whose operations "affect commerce" and the statute defines commerce, in part, as "travel, trade, traffic, commerce, transportation or communication . . . between any foreign country or any territory or possession and any State," such broad language, found in many laws, is not generally considered sufficient, by itself, to overcome the presumption against extraterritoriality. See E.E.O.C. v. Arabian American Oil Co., supra, 499 U.S. at 250-51; see also, sections 301(1), (2) and (7) of the ADA.

Furthermore, Congress, in passing the Civil Rights Act of 1991, amended sections 101(4) and 102 of the ADA, to broaden the ADA to protect extraterritorial employment. See sections 109(a) and (b) of the Civil Rights Act of 1991, Pub. L. No. 102-166, 105 Stat. 1071 (1991); E.E.O.C. v. Arabian American Oil Co., supra, 499 U.S. at 258-59. No comparable, explicit expression has been made with respect to extraterritorial coverage of public accommodations and commercial facilities under title III.

As a place of public accommodation, GET is prohibited from discriminating against people with disabilities either directly or through contractual arrangements with other entities, including transportation companies that it books. 42 U.S.C. § 12182(b)(1)(A)(i); 28 C.F.R. § 36.202(a). The Disability Rights Section has reminded GET of that obligation and urged it to contract with companies abroad that provide disability access. For the reasons stated above, however, the law may not provide jurisdiction for the provision of accessible services in foreign countries.

I hope this information is helpful to you in responding to your constituent. Please do not hesitate to contact the Department if we can be of assistance in other matters.

Sincerely,
Bill Lann Lee
Acting Assistant
Attorney General
Civil Rights Division
793

July 13, 1999
Mr. Hermann Paul Schlander
Cruise Ship Consultant
42-980 Massachusetts Court
Palm Desert, California 92211
Dear Mr. Schlander:
This letter is in response to your inquiries whether the Americans with Disabilities Act of 1990 (ADA) applies to foreign flag cruise ships. Please excuse the delay.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities that have rights or responsibilities under the Act. Pursuant to that authority, this letter provides informal guidance to assist you in understanding the ADA. However, this technical assistance does not constitute a legal interpretation of the statute, and is not binding on the Department.

Cruise ships are subject to the requirements of title III of the ADA. Section 301 of the ADA prohibits discrimination against persons with disabilities by private entities in their operation of places of public accommodation. A place of public accommodation is defined as a facility whose operations affect commerce and fall within one or more of the twelve broad categories of facilities listed in the statute. These categories include places of lodging, establishments serving food or drink, places of exhibition or entertainment, and places of exercise or recreation. Cruise ships, which typically contain guest cabins, restaurants, snack bars, movie theaters, lounges, health clubs, and pool areas, function as one or more of these types of places of public accommodation.

Cruise ships are also covered by section 304 of the ADA. Section 304 prohibits discrimination on the basis of disability in "specified public transportation services provided by a private entity that is primarily engaged in the business of transporting people and whose operations affect commerce." Specified public transportation is defined as "transportation by bus, rail, or any other conveyance (other than by aircraft) that provides the general public with general or special service (including charter service) on a regular and continuing basis." 42 U.S.C. 12181(10)

Nothing in the plain language of the ADA excludes from coverage foreign flag cruise ships that do business in the United States. The ADA does not exempt from coverage public accommodations or transportation services operated by foreign corporations. Absent a statutory exemption, corporations doing business in the United States must comply with all generally applicable laws, including laws that prohibit discrimination. The fact that a cruise ship sails under a foreign flag and is registered in a foreign country does not exempt it from generally applicable laws of the countries in which it does business.

Because foreign flag vessels generally are subject to the laws of the United States when they are in United States ports or other internal waters, the Department of Justice has determined that foreign flag cruise ships are subject to the requirements of the ADA when they are in the ports or internal waters of the United States. The Department of Justice Technical Assistance Manual provides that foreign flag ships "that operate in United States ports may be subject to domestic law, such as the ADA, unless there are specific treaty prohibitions that preclude enforcement." Title III Technical Assistance Manual III-1.2000(D) (1994 Supp.) The Department of Transportation has similarly determined that the United States "appears to have jurisdiction to apply ADA requirements to foreign-flag cruise ships that call in U.S. ports" except to the extent that enforcing ADA requirements would conflict with a treaty. 56 Fed. Reg. 45,584, 45,600 (1991). Therefore, unless there is a showing that the application of the ADA to a foreign flag cruise ship would conflict with an international convention to which the United States is a party, the ADA applies.

The Department of Justice has recently filed a brief as amicus curiae, or "friend of the court," in the United States Court of Appeals for the Eleventh Circuit in support of an individual with a disability who is appealing the dismissal of her ADA suit against a foreign flag cruise ship. The Department's amicus brief sets forth our position that the ADA applies to foreign flag cruise ships when they are in the ports or other internal waters of the United States.

I hope that this information is helpful to you.

John L. Wodatch
Chief
Disability Rights Section

794

July 14, 1999
The Honorable Charles S. Robb
United States Senator
The Ironfronts, Suite 310
1011 East Main Street
Richmond, Virginia 23219
Dear Senator Robb:

This is in response to your inquiry on behalf of your constituent, xxx xxxxxxx xxxxxxxxxx, who alleges that Sears and Roebuck has installed a computer customer service system that is inaccessible to persons with vision impairments and persons with poor or no manual dexterity.

Under title III of the Americans with Disabilities Act of 1990 ("ADA"), a public accommodation, such as Sears and Roebuck, shall take those steps necessary to ensure that no individual with disabilities is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services unless the public accommodation can demonstrate that taking those steps would fundamentally alter the nature of the goods, services, or facilities being offered or would result in an undue burden. 28 C.F.R § 36.303(a). The term auxiliary aids and services includes acquisition or modification of equipment or devices. Title III also requires a public accommodation to make reasonable modifications in policies, practices, and procedures when necessary to afford goods and services to people with disabilities unless the modifications would fundamentally alter the nature of the goods and services. 28 C.F.R. § 36.302(a).

Please note, also, that the ADA defines disability as a physical or mental impairment that substantially limits one or more major life activities, a record of such an impairment; or being regarded as having such an impairment. 28 C.F.R. § 36.104. To determine whether a person is substantially limited in the ability to perform a major life activity, we look to the nature and severity of the injury, the duration of the impairment, and the permanent and long term impact of the injury. (See 29 C.F.R. § 1630.2 (j)(2)).

You should be aware that the Division is examining the ADA's application to the use of computer customer services by public accommodations. We will take xxx xxxxxxxxxxx concerns into consideration as we continue our review.

As you requested, I am replying in duplicate and returning your correspondence. I hope this information is useful to you in responding to your constituent. Please do not hesitate to contact the Department if we can be of assistance in other matters.

Sincerely,
Bill Lann Lee Acting Assistant
Attorney General
Civil Rights Division
Enclosure

795

July 27, 1999
The Honorable George Voinovich
United States Senator

37 W. Broad Street
Suite 970
Columbus, Ohio 43215
Dear Senator Voinovich:
This is in response to your inquiry on behalf of your constituent, xxx xxxx xxxxxx. Xxx xxxxxx earlier wrote to the Disability Rights Section alleging that the failure of Clinical Health Laboratories (Laboratories) to accommodate her Multiple Chemical Sensitivity (MCS)and latex sensitivity violates the Americans with Disabilities Act of 1990 (ADA).

After careful review, the Section has decided against further investigation of xxx xxxxxxxx claims. That decision is based upon resources. The Section receives thousands of complaints each year and does not have sufficient staff to attempt to resolve each one.

xxx xxxxxxxx claims raise some of the most difficult issues under the ADA. Title III of the law and the Department's implementing regulation require a public accommodation to modify its policies, practices, or procedures when necessary to afford its goods and services to an individual with a disability, unless to do so would fundamentally alter the nature of those goods and services. 42 U.S.C. § 12182(b)(2)(A)(ii); 28 C.F.R. § 36.302. The Laboratories is a title III "public accommodation," but whether xxx xxxxxx is an "individual with a disability" is a question that is less easily answered.

"Disability" is defined in part as a physical or mental impairment that substantially limits a major life activity. 42 U.S.C. § 12102(2); 28 C.F.R. § 36.104. The Department assumed MCS was an "impairment" when it published its title III regulations several years ago. *See* 28 C.F.R. Part 36, Appendix B - *Preamble to Regulation on Nondiscrimination on the Basis of Disability in Public Accommodations and In Commercial Facilities*

(Published July 26, 1991) - at p. 585. Since that time, however, the courts have aired considerable medical controversy over the issue.

Assuming MCS and latex sensitivity are impairments, the next step is to determine whether they substantially limit one or more of the individual's major life activities. As the Department stated in the *Preamble* to its regulation, that determination must necessarily be made case-by-case. We also stated that the determination should be made "without regard to the availability of mitigating measures, such as reasonable modifications or auxiliary aids and services." The Supreme Court in a trio of cases recently held, however, that mitigating measures such as medications or prosthetic devices, used to ameliorate the effects of impairments, should be considered in making this determination. *Sutton v. United Air Lines, Inc.*, 67 USLW 4537 (1999); *Murphy v. United Parcel Service, Inc.*, 67 USLW 4549 (1999); *Albertsons, Inc. v. Kirkingburg*, 67 USLW 4560(1999).

Finally, xxx xxxxxxxx claims raise the issue of whether the ADA requires the Laboratories to use different medical products and to instruct its employees to refrain from wearing perfume in order to afford xxx xxxxxx its services. The answer to this question depends upon whether such actions can be deemed "reasonable" modifications of its procedures and, if reasonable, whether they would nonetheless "fundamentally alter" the nature of the Laboratories' services.

I am sorry that we cannot assist xxx xxxxxx. Let me also make clear that the Department takes no position on the merits of her ADA complaint. Rather, our decision is one of resource allocation. Please do not hesitate to contact the Department if we can be of assistance in other matters.

Sincerely,

Bill Lann Lee

Acting Assistant
Attorney General
Civil Rights Division
Enclosure

796

August 4, 1999
The Honorable Mary L. Landrieu
United States Senator
Room 326, Federal Building
707 Florida Street
Baton Rouge, Louisiana 70801
Dear Senator Landrieu:
This letter responds to your inquiry on behalf of your constituent, xxx xxxxxxxxx xxxxxxx, regarding the fine she received for parking in a space designated for individuals with disabilities.

The Disability Rights Section of the Civil Rights Division enforces titles I, II, and III of the Americans with Disabilities Act of 1990 (ADA). Title I protects qualified individuals with disabilities from discrimination in employment. The Equal Employment Opportunity Commission handles most employment-related complaints. Title II protects individuals with disabilities from discrimination in all of the services, programs, and activities of State and local government entities. Title III protects individuals with disabilities from discrimination by most privately owned businesses that offer goods and services to the public.

xxx xxxxxxxxx letter does not specify the location of the parking area in question, but the assumption is that it is on church property. Religious organizations or entities controlled by religious organizations, including places of worship, however, are specifically exempted from coverage under the ADA. The exclusion of religious entities set forth in the title III implementing regulation is derived from section 307 of the ADA, Public Law 101-336, codified at 42 U.S.C. 12187. This section states that "[t}he provisions of this title [Title III Public Accommodations and Services Operated by Private Entities] shall not apply to ... religious organizations or entities controlled by religious entities, including places of worship."

With respect to designated parking, the ADA only requires that public facilities and places of public accommodation provide accessible parking spaces for their clients and customers. The enforcement of parking regulations that govern the use of these accessible spaces, however, is a matter governed by State or local law. The ADA does not contain provisions specifically requiring law enforcement officials to ensure that accessible parking spaces are occupied only by persons with disabilities. Accordingly, the problem encountered by xxx xxxxxxx, whether the parking space was on or off the church's property, would be handled by local law enforcement officials.

Because the enforcement of parking regulations is a matter that falls within the jurisdiction of local officials, this Department cannot assist xxx xxxxxxx. Your constituent, however, may wish to continue working with the appropriate city offices that have the authority to handle this matter.

I hope this information is helpful to you in responding to your constituent. Please do not hesitate to contact the Department if we can be of assistance in other matters.

Sincerely,

Bill Lann Lee
Acting Assistant
Attorney General

797
August 5, 1999
The Honorable Joseph R. Pitts
Member, U.S. House of Representatives
50 North Duke Street
Courthouse, 5th Floor
Lancaster, Pennsylvania 17602
Dear Congressman Pitts:

I am responding to your letter on behalf of your constituent, xxx xxxxxxx xxxxxxxxxx, regarding whether it is appropriate, under the Americans with Disabilities Act (ADA), for the City of Lancaster to require his daughter and son-in-law to incur costs from replacing curbs and/or sidewalks adjacent to their house.

Title II of the ADA prohibits discrimination on the basis of disability by State and local government entities. The Department of Justice's regulation implementing title II requires public entities with authority over streets, roads, or walkways (including sidewalks) to construct certain curb ramps or similar structures in order to provide access to sidewalks for individuals with mobility impairments. See 28 C.F.R. § 35.150(d)(2). In addition, when public entities build new or alter existing facilities, streets or pedestrian walkways, the title II regulations require the construction of curb ramps or similar structures. See 28 C.F.R. § 35.151(e).

It appears from the letter that the City of Lancaster is requiring xxx xxxxxxxxxxxx daughter and son-in-law to replace curbs and/or sidewalks adjacent to their house as part of the City's annual street improvement project. As described above, under the ADA, constructing a new street or altering an existing street give rise to accessibility obligations for curb ramps. However, the ADA does not regulate the manner in which a covered entity, such as the City of Lancaster, should finance changes it must make in order to bring itself into compliance with the ADA. Rather, the ADA prohibits such an entity from placing a surcharge on any particular individual with a disability or group of individuals with disabilities in order to cover the cost of complying with the ADA. See 28 C.F.R. § 35.130(b)(8)(f).

In our view, curb ramps that are installed to meet the City's overall obligations under the ADA do not provide a particular benefit to the adjacent property owner and are more properly paid for through general revenues or other funds available for street and sidewalk improvements. However, public entities are free to allocate these cost among their residents in any manner authorized by state law.

Again, we must stress that, other than prohibiting a surcharge against a particular individual or group of individuals with disabilities, the ADA and its implementing regulations do not address this issue. Therefore, unless a covered entity attempts to place a direct charge on such an individual or group of individuals, the final determination with respect to payment for any improvements undertaken to comply with the ADA falls within the discretion of the taxing entity.

For your information I have enclosed a copy of the title II regulations. If xxx xxxxxxxxxx has additional questions, the Department maintains a telephone information line to provide technical assistance regarding

the rights and obligations of individuals, businesses, agencies, and others covered or protected by the ADA. This technical assistance is available by calling 800-514-0301 (Voice) or 800-514-0383 (TDD).

I hope this information is helpful to you in responding to your constituent. Please do not hesitate to contact the Department if we can be of assistance in other matters.
Sincerely,
Bill Lann Lee
Acting Assistant
Attorney General
Civil Rights Division
Enclosure
798
August 10, 1999
The Honorable Charles E. Grassley
United States Senate
Washington, D.C. 20510-1501
Dear Senator Grassley:

I am responding to your letter on behalf of your constituent, xxx xxxxxx xx xxxxxx. xxx xxxxxx wrote to you inquiring whether her automobile insurance company's policy of providing a premium discount for "good students" who maintain a grade point average of "B" or better violates the Americans with Disabilities Act (ADA).

Title III of the ADA prohibits discrimination on the basis of disability by places of public accommodation, including service establishments such as insurance companies. Therefore, an insurance company may be prohibited by the ADA from discriminating on the basis of disability in making decisions to grant or deny coverage, and in setting rates for types of coverage. However, because of the nature of the insurance business, an insurer may underwrite, classify, or administer risks that are based on, or not inconsistent with, State law, provided that such practices are not used to evade the purposes of the ADA.

In her letter, xxx xxxxxx indicates that it would be difficult for her son, who has a learning disability, to maintain a grade point average of "B" or better. xxx xxxxxx, therefore, believes that her automobile insurer's policy of providing a premium discount for "good students" is discriminatory towards her son and other students who do not have "the mental capacity" to achieve a B-average or better. The ADA prohibits insurers from making disability-based distinctions that lack an actuarial basis or are unrelated to actual or reasonably anticipated experience. In this case, the insurance company is making a distinction based on school performance, not disability. The automobile insurer is providing all policy holders with a "good students" premium discount without regard to disability. Therefore, the policy of providing a premium discount to "good students" does not appear to violate the ADA.

If xxx xxxxxx has additional questions, the Department maintains a telephone information line to provide technical assistance regarding the rights and obligations of individuals, businesses, agencies, and others covered or protected by the ADA. This technical assistance is available by calling 800-514-0301 (Voice) or 800-514-0383 (TDD).

I hope this information is helpful to you in responding to your constituent. Please do not hesitate to contact the Department if we can be of assistance in other matters.

Sincerely,

Bill Lann Lee
Acting Assistant
Attorney General
Civil Rights Division

799

August 12, 1999
The Honorable Christopher Shays
Member, U.S. House of Representatives
10 Middle Street
Bridgeport, Connecticut 06604-4223
Dear Congressman Shays:

Staff of the Disability Rights Section, Civil Rights Division, have reviewed the correspondence that you forwarded on behalf of your constituent, xxx xxxxxx xxxxxxxx, of Bridgeport, Connecticut (Reference #xxxxxxx). xxx xxxxxxxx wrote to you after encountering barriers to access during a recent visit to Washington, D.C. His letter indicates that both transportation facilities he used and buildings he visited lacked accessible restrooms. Sidewalks were difficult to traverse or lacked curb cuts. He mentions that he has similarly encountered lack of accessibility in his hometown of Bridgeport, both at facilities owned and operated by public as well as private entities.

Facilities in Washington, D.C. and Bridgeport, as in all American cities, are covered by nondiscrimination provisions of the Americans with Disabilities Act (ADA). Section 504 of the Rehabilitation Act of 1973, as amended (Section 504) may also apply to some of these facilities. The Disability Rights Section of the Civil Rights Division enforces titles I, II, and III of the ADA. Title I protects qualified individuals with disabilities from discrimination in employment by State or local government employers and by private employers, when these employers have 15 or more employees. Title II protects individuals with disabilities from discrimination in all of the services, programs, and activities of State and local government entities. Title III protects individuals with disabilities from discrimination by privately owned places of public accommodation. Section 504 prohibits discrimination on the basis of disability in programs that receive Federal financial assistance or in programs conducted by the Federal government.

Enforcement of the Federal statutes prohibiting discrimination on the basis of disability requires a fact-specific inquiry by the appropriate officials with oversight and enforcement duties. Coverage of public sidewalks and transportation may come under title II ADA enforcement duties placed with the Department of Transportation. Most of the Federal monuments and museums would be subject to section 504 enforced by the Department of the Interior. Enclosed are copies of appropriate regulations and other descriptive information on the ADA and section 504.

xxx xxxxxxxx may use the enclosed complaint forms to file his allegations with the Department of Justice. We will forward his complaint to the appropriate enforcement agency. He also may file directly with the Department of the Interior or the Department of Transportation, depending on which facility he identifies as having barriers to access for persons with disabilities. Complaints may also comprise any written statement that identifies the discriminating entity, the time and place when the discrimination occurred, and a description of the alleged discriminatory facility, program, or activity with sufficient detail to raise an inference that discrimination has occurred. Appropriate addresses for filing complaints are enclosed.

Please note that the enclosed information describes coverage of residential housing by the Fair Housing Act, as amended in 1988 (FHA). A complaint under the FHA would be filed with the Department of Housing and Urban Development.

If your constituent or your staff have questions about titles II or III of the ADA, they may call the Department's ADA information line at 1-800-514-0301 (voice) or 1-800-514-0383 (TDD). If they have questions about title I of the ADA, they may call the Equal Employment Opportunity Commission (EEOC) at 1-800-669-4000 (voice) or 1-800-669-6820 (TDD).

I hope this information will assist you in responding to your constituent. Please do not hesitate to contact the Department if we may be of assistance in other matters.

Sincerely,

Bill Lann Lee
Acting Assistant
Attorney General
Civil Rights Division
Enclosures

800

August 16, 1999
Dr. Bonita M. Bergin
President
The Assistance Dog Institute
P.O. Box 2334
Rohnert Park, California 94927
Re: DJ 202-11-0
Dear Dr. Bergin:

This letter is in response to your request that the Department of Justice change the language of its regulations implementing titles II and III of the Americans with Disabilities Act of 1990, 28 C.F.R. pts. 35, 36. You requested that the regulatory term "service animal" be replaced by "assistance animal."

As you correctly note, we received a letter dated January 1996, in which xxxxx xxxxxx xxxxxxxxx made the same request. You infer that we did not respond adequately to xxx xxxxxxxxx. In a letter dated October 17, 1997, then-Acting Assistant Attorney General Isabelle Katz Pinzler clearly indicated that the Department carefully considered the issue and decided to retain the term "service animal" in its regulations. A copy of her letter is attached for your reference.

You have not offered any additional information that would cause us to reconsider our decision. We believe that we best serve the interests of people with disabilities by the consistent use of the term "service animal," along with our broad interpretation of that term to include:

any guide dog, signal dog, or other animal individually trained to do work or perform tasks for the benefit of an individual with a disability, including, but not limited to, guiding individuals with impaired vision, alerting individuals with impaired hearing to intruders or sounds, providing minimal protection or rescue work, pulling a wheelchair, or fetching dropped items.

28 C.F.R. § 36.104. A change of terminology would likely engender confusion among businesses and State and local governments.

If you have any remaining questions or concerns, please do not hesitate to contact our toll-free ADA Information Line,

1-800-514-0301 (voice), or 1-800-514-0383 (TTY).

Sincerely,

Bill Lann Lee
Acting Assistant
Attorney General
Civil Rights Division
Enclosure

801

September 8, 1999
The Honorable Joseph I. Lieberman
United States Senate
Washington, D.C. 20510-0703
Dear Senator Lieberman:
This is in response to your inquiry on behalf of your constituent, Dr. xxxx xx xxxx of West Hartford, Connecticut.
Dr. xxxx is a physician who is concerned that the Americans with Disabilities Act of 1990 (ADA) requires him to provide a sign language interpreter for patients needing the service and further expects him to absorb the costs associated with the interpreter services.

We understand Dr. xxxxxx concern, but we believe that he may not be aware of the flexibility provided to him under the ADA. Title III of the ADA was enacted to ensure that people with disabilities are not excluded from receiving the benefits and services provided by covered entities, including physicians. However, in enacting title III, Congress carefully struck a balance between the rights of people with disabilities to participate fully in activities of daily life and the legitimate economic needs of the service providers.

The ADA does require physicians to ensure effective communication with patients (and, for pediatric patients, with their parents or guardians.) When one of these individuals has a disability that affects communication (*e.g.,* a hearing impairment), the ADA may require a physician to provide a sign language interpreter or other appropriate auxiliary aid to ensure effective communication, unless the physician can prove that providing the auxiliary aid will fundamentally alter the service or benefit that the physician is providing or result in an undue burden.

Ensuring effective communication does not necessarily require a physician to provide a sign language interpreter each time that a patient requests one. The physician has the right to select the auxiliary aid that will be provided and also the obligation to ensure that the selected method of communication is effective. In making this determination, the physician should consult with the patient to learn what auxiliary aids may be effective in the specific circumstances. For example, if a patient can communicate effectively in writing, then written communication through the exchange of notes or using a computer to facilitate conversation may be effective when a physician is explaining a simple procedure. However, if the information to be conveyed is lengthy or complex, or the patient has difficulty communicating in writing, then the use of written notes may be ineffective. The use of an interpreter may be the only effective form of communication. Thus, Dr. xxxx may not need to provide an interpreter for a routine office visit where paper-and-pen communication is sufficient to provide effective communication between him and his patient.

If an interpreter is necessary to provide effective communication, a physician must provide the interpreter without charge to the person with a disability unless it is an undue burden. The term "undue burden" means "significant difficulty or expense." Dr. xxxx states he was billed for two hours of interpreting services (apparently the "minimum" charges billed by the interpreter service) at a total fee of $60 even though the patient appointment lasted only 15 minutes. Thus, Dr. xxxx might be able to argue that these charges are within the "undue burden" standard as a "significant expense." Such an evaluation, however, is not based solely on a comparison of the interpreter costs to the revenue generated by the office visit at which the interpreter is present. Instead, the interpreting costs are considered in relationship to the overall financial resources of the practice and other mitigating factors such as the ability to spread costs throughout the general clientele and the availability of tax credits.

The Internal Revenue Code permits eligible small businesses to receive a tax credit for certain costs of ADA compliance. An eligible small business is one whose gross receipts do not exceed $1,000,000 or whose work force does not consist of more than 30 full-time workers. Qualifying businesses may claim a credit of up to 50 percent of eligible access expenditures that exceed $250 but do not exceed $10,250. Eligible access expenditures may include the costs of providing auxiliary aids and services to persons with disabilities. Further information on the tax credit can be obtained from a local Internal Revenue Service office, or by contacting the Office of Chief Counsel, Internal Revenue Service. The enclosed booklet also provides general information about the tax credit.

I hope this information will be helpful to you. Please do not hesitate to contact the Department if we can be of assistance in other matters.
Sincerely,
Bill Lann Lee
Acting Assistant
Attorney General
Civil Rights Division
Enclosure

802
October 1, 1999
The Honorable Frank R. Wolf
Member, U.S. House of Representatives
13873 Park Center Road
Suite 130
Herndon, Virginia 20171
Dear Congressman Wolf:
This is in response to the letter you forwarded from one of your constituents, xxxxx xx xxxxx. xxx xxxxx posed several questions regarding the applicability and enforceability of the Americans with Disabilities Act of 1990 (ADA) on entities that operate passenger vessels registered domestically or under foreign flags.

Passenger vessels, both privately and publicly owned, are subject to the requirements of the ADA. Section 301 of the ADA prohibits discrimination against persons with disabilities by private entities in their operation of places of public accommodation. A place of public accommodation is defined as a facility that falls within one or more of the twelve broad categories listed in the statute with operations that affect commerce. The categories include places of lodging, establishments serving food or drink, places of exhibition or entertainment, places of public gathering, sales or rental establishments, service establishments, and places of

exercise or recreation. Passenger vessels, which may contain guest cabins, restaurants, snack bars, movie theaters, casinos, lounges, gift shops, beauty shops, health clubs, and pool areas, contain one or more of these types of places of public accommodation.

In addition, privately owned passenger vessels are covered by section 304 of the ADA. Section 304 prohibits discrimination on the basis of disability in "specified public transportation services provided by a private entity that is primarily engaged in the business of transporting people and whose operations affect commerce." Specified public transportation is defined as "transportation by bus, rail, or any other conveyance (other than by aircraft) that provides the general public with general or special services (including charter service) on a regular and continuing basis." 42 U.S.C. 12181(10).

Passenger vessels operated by public entities also are covered by the ADA. Section 222 of the ADA prohibits a public entity which operates a fixed route system (such as a ferry) from purchasing or leasing new vehicles that are not readily accessible to and usable by individuals with disabilities, including those who use wheelchairs. Section 202 of the ADA prohibits a public entity from excluding a person with a disability from its services, programs, or activities.

Nothing in the plain language of the ADA excludes from coverage foreign flag vessels that do business in the United States. The ADA does not exempt from coverage public accommodations or transportation services operated by foreign corporations. Absent a statutory exemption, corporations doing business in the United States must comply with all generally applicable laws, including laws that prohibit discrimination. The fact that a passenger vessel sails under a foreign flag and is registered in a foreign country does not exempt it from generally applicable laws of the countries in which it does business.

Because foreign flag vessels generally are subject to the laws of the United States when they are in United States ports or other internal waters, the Department of Justice has determined that foreign flag vessels are subject to the requirements of the ADA when they are in the ports or internal waters of the United States. The Department of Justice Technical Assistance Manual provides that foreign flag ships "that operate in United States ports may be subject to domestic law, such as the ADA, unless there are specific treaty prohibitions that preclude enforcement." Title III Technical Assistance Manual III-1.2000(D) (1994 Supp.). The Department of Transportation has similarly determined that the United States "appears to have jurisdiction to apply ADA requirements to foreign-flag cruise ships that call in U.S. ports" except to the extent that enforcing ADA requirements would conflict with a treaty. 56 Fed. Reg. 45,584, 45,600 (1991). Therefore, unless there is a showing that the application of the ADA to a foreign flag vessel would conflict with an international convention to which the United States is a party, the ADA applies. Of course, the ADA also applies to U.S. flagged vessels. Recently, the Department filed a brief as amicus curiae, or "friend of the court," in support of a private lawsuit under the ADA against Premier Cruises. In the Department's brief we argued that title III of the ADA governs the operations of cruise ships that do business in the United States, including foreign flag ships such as Premier's "Big Red Boat."

With respect to your constituent's questions concerning enforcement, title III of the ADA authorizes the Department of Justice to investigate alleged violations of the Act by public accommodations and commercial facilities. 42 U.S.C. § 12188 (b)(1)(A). The Department may seek judicial relief only in instances where there appears to be a pattern or practice of discrimination or where an issue of general public importance is involved. The Department of Justice also is charged with enforcing title II complaints against public entities. With respect to both title II and title III complaints, an individual with a disability may choose to file an action in court rather than file a complaint with the Department.

I am enclosing a copy of the Division's latest Status Report which summarizes our ADA enforcement activity, as well as a copy of the Department's brief in the above referenced case against Premier Cruises. I hope this information is useful to you in responding to your constituent. Please do not hesitate to contact the Department if we can be of assistance in other matters.

Sincerely,

Bill Lann Lee
Acting Assistant
Attorney General
Civil Rights Division
Enclosures

803

October 19, 1999

The Honorable Calvin Dooley
Member, U.S. House of Representatives
224 W. Lacey Boulevard
Hanford, California 93230

Dear Congressman Dooley:

This is in response to your inquiry on behalf of your constituent, xxxx xxxxxxx xxxxxxxx, who accompanied her parents last summer on an Alaskan cruise aboard Holland American's Nieuw Amsterdam. The ship was in large

part not accessible to her father who uses a wheelchair. xxxx xxxxxxxx has asked whether cruise ships that dock in American ports must comply with the Americans with Disabilities Act of 1990 (ADA).

The Department has long taken the position that such ships must be ADA compliant. The issue was discussed in the preamble to Section 36.104 of our title III regulation (28 C.F.R. Part 36, Appendix B at 585) and in sections III-5.3000 and 1-2000(D) of our Title III Technical Assistance Manual (1994 Supp.). The Department recently reiterated that position in an *amicus curiae* brief in *Tammy Stevens v. Premier Cruises, Inc.*, No. 98-5913 (11th Cir., filed March 24, 1999), a case that will be argued this fall. Two copies of our brief are enclosed should you care to share one with xxxx xxxxxxxx.

As the brief points out, cruise ships are covered by title III of the ADA because they typically contain guest cabins, eating and drinking establishments, places of exhibition and entertainment, and exercise and recreation facilities and thus function as one or more of the types of places of public accommodations enumerated in the statute. 42 U.S.C. 12181(7).

They are also covered by Section 12184(a) of the ADA, which prohibits disability-based discrimination "in public transportation services provided by a private entity that is primarily engaged in the business of transporting people and whose operations affect commerce." The Department of Transportation, which is authorized to implement Section 12184, has determined that cruise ships are covered by that provision. 56 Fed. Reg. 45,584, 45,600 (1991).

Cruise ships must therefore comply with the full range of title III requirements, which include nondiscriminatory eligibility criteria; reasonable modifications in policies, practices, and procedures; provision of auxiliary aids; and readily achievable removal of barriers in existing facilities. A ship is not required to comply with a specific accessibility standard for new construction or alterations, however, because no Federal standard for the construction of accessible ships has yet been issued. The Architectural and Transportation Barriers Compliance Board is currently developing such guidelines. 63 Fed. Reg. 15,175 (1998).

Our *Stevens* brief also addresses the issue of whether the ADA applies to foreign-flag cruise ships, like the one boarded by xxxx xxxxxxxx and her family, when they are docked in the ports or other internal waters of the United States (brief at pages 15-27). As you can see, the Department takes the position that they are covered and that boarding such a ship which has not removed barriers to accessibility subjects the individual with a disability to an act of discrimination that occurs in the United States.

I hope this information is helpful to you in responding to your constituent. If xxxx xxxxxxxx would like to file a title III ADA complaint with the Department, she can do so by writing to the Disability Rights Section, P. O. Box 66738, Washington, D.C. 20035-6738. Please do not hesitate to contact the Department if we can be of assistance in other matters.

Sincerely,
Bill Lann Lee
Acting Assistant
Attorney General
Civil Rights Division
Enclosures
804
November 16, 1999
The Honorable George W. Gekas
Member, U.S. House of Representatives
108 B Municipal Building

400 South 8th Street
Lebanon, Pennsylvania 17042-6794
Dear Congressman Gekas:
This is in response to your letter requesting information about the Americans with Disabilities Act (ADA) on behalf of your constituent, Mr. Ross W. Watts, Mayor of the Borough of Palmyra, Pennsylvania.

You have asked about your constituent's request for a variance or exemption from requirements of the Americans with Disabilities Act (ADA). The Borough of Palmyra is concerned that modifications to handrails to create extensions of the gripping surface at the bottom of several stairs at the Palmyra Area Middle School create a hazard to pedestrians.

In response to your question, while there is not a procedure for exemption or waiver of ADA requirements, the ADA Standards do make allowance for existing conditions that may make it very difficult or impossible to fully comply with the alteration provisions. In those situations, an entity is required to comply to the greatest extent feasible taking into account existing conditions.

In altering a facility covered by the ADA, the alterations must be done to meet the minimum requirements of the ADA Standards and must not create a hazard for people who are blind or visually impaired. It appears from the photographs that were included with your letter that the handrail extensions do not fully comply with the handrail requirements in the ADA Standards. Section 4.9.4(6) Handrails, states that "ends of handrails shall be either rounded or returned smoothly to floor, wall or post." Although the handrail extensions shown do return to the post, they are a protruding object because the bottom of the extension is more than 27 inches above the sidewalk. Figure 19 (c) and (d) of the ADA Standards provide guidance on how the handrail may return to the post or ground and not be a protruding object hazard. If the handrail extensions are modified to comply with Figure 19, then the railings will not be a hazard to pedestrians.

Your constituent expressed particular concern about one stair that leads to the stage area of the middle school auditorium. To address this concern, the Borough of Palmyra should first determine whether the stair is required to have handrail extensions. The ADA Standards set minimum requirements for new construction and for the alteration of buildings and facilities and include both scoping and technical requirements. The scoping provisions determine the location and number of accessible elements and spaces and the technical provisions set requirements for the basic design. In Section 4.1.3(4) of the ADA Standards, it states that the requirements for stairs only apply when an elevator, ramp or other means of vertical access does not provide access to a level served by the stair. If an accessible route is provided to the Middle School auditorium stage using a ramp or lift, then the ADA Standards would not apply to the exterior stair. However, if the stair serves a level not served by a ramp, elevator or other means of vertical access, then the stair and handrail requirements would apply when the facility is altered.

I have enclosed a copy of the ADA Standards for Accessible Design which are part of the title III regulations and have marked the sections that apply to handrails for your use and for the use of your constituent. If the Mayor or other officials of the Borough of Palmyra would like further information on this matter, they should call the Division's toll-free ADA Information Line at (800) 514-0301 (voice) or (800) 514-0383 (TTY). Members of the Disability Rights Section staff are available to answer questions on the information line on Monday, Tuesday, Wednesday, and Friday from 10:00 a.m. to 6:00 p.m., Eastern time. On Thursday, the information line is staffed from 1:00 p.m. to 6:00 p.m.

I hope this information is helpful to you in responding to your constituent. Please do not hesitate to contact the Department if we can be of assistance in other matters.

Sincerely,

Bill Lann Lee
Acting Assistant
Attorney General
Civil Rights Division
Enclosure

805
November 16, 1999
The Honorable Joseph I. Lieberman
United States Senate
Washington, D.C. 20510-0703
Dear Senator Lieberman:
This is in response to your inquiry on behalf of your constituent, xxx xxxxxxx xxxxxx of Groton, Connecticut.

xxx xxxxxx has requested information on the application of the Americans with Disabilities Act of 1990 (ADA) to the insurance industry.

xxx xxxxxx wrote that he has been denied an insurance policy to pay off the mortgage on his house in the event that he dies before the mortgage is paid off, because he has a congenital heart defect.

Title III of the ADA prohibits discrimination on the basis of disability by places of public accommodation, including service establishments such as insurance companies. Because of the nature of the insurance business, however, consideration of disability in the sale of insurance contracts does not always constitute unlawful "discrimination." An insurer or other public accommodation may underwrite, classify, or administer risks that are based on or not inconsistent with state law, provided that such practices are not used as a subterfuge to evade the purposes of the ADA.

With respect to the purchase of insurance, the ADA allows insurance companies to refuse to insure someone with a disability only if the refusal to provide coverage is based on sound actuarial principles, or actual or reasonably anticipated experience. The ADA, therefore, does not prohibit the use of legitimate actuarial considerations to justify differential treatment of individuals with disabilities in insurance.

Enclosed for your information is a copy of the Department of Justice's Technical Assistance Manual for title III of the ADA. It discusses the definition of disability on pages 9 to 13, and the requirements applicable to insurance companies on pages 19 to 20.

I hope that this information is useful to you in responding to your constituent. Please do not hesitate to contact the Department if we can be of assistance in other matters.
Sincerely,
Bill Lann Lee
Acting Assistant
Attorney General
Civil Rights Division
Enclosure

806
November 30, 1999
The Honorable David Vitter
Member, U.S. House of Representatives
2800 Veterans Boulevard
Metairie, Louisiana 70002
Dear Congressman Vitter:
This letter is in response to your inquiry on behalf of your constituent, xxx xxxx xx xxxxxxxxxxx. xxx xxxxxxxxxxx wrote to you stating that the East Jefferson Levee District intends to provide pathways to a levee system for the citizens of Jefferson Parish. xxx xxxxxxxxxxx asked whether the Americans with Disabilities Act of 1990 (ADA) requires each of these pathways to be accessible to individuals with disabilities.

Title II of the ADA, which applies to State and local governments, requires that all new buildings and all alterations to existing facilities must be designed and constructed so as to be readily accessible to and usable by persons with disabilities. The construction of pathways to an existing levee is considered an alteration. Therefore, if the Levee District constructs pathways across the levee, the District must ensure that each constructed pathway is, to the maximum extent feasible, readily accessible to and usable by people with disabilities.

xxx xxxxxxxxxxx also asked whether the ADA would require the Levee District to provide each individual neighborhood its own accessible pathway for people with disabilities. The Levee District has the discretion to determine how many pathways it will construct across the levee. The ADA only requires that each constructed pathway is, to the maximum extent feasible, readily accessible to and usable by people with disabilities.

If xxx xxxxxxxxxxx has additional questions, the Department maintains a telephone information line to provide technical assistance regarding the rights and obligations of individuals, businesses, agencies, and others covered or protected by the ADA. This technical assistance is available by calling 1(800) 514-0301 (Voice) or 1(800) 514-0383 (TDD).

I hope this information is helpful to you in responding to your constituent. Please do not hesitate to contact the Department if we can be of assistance in other matters.
Sincerely,
Bill Lann Lee
Acting Assistant
Attorney General
Civil Rights Division

807

December 1, 1999
Mr. Charles Crawford
Executive Director
American Council of the Blind
1155 15th Street, N.W.
Suite 720
Washington, D.C. 20005
Dear Mr. Crawford:
This is in response to your letter to the Attorney General. Your letter addressed two issues: 1) your letter dated September 7, 1999, concerning a complaint against the Maryland Highway Administration by xxxxxxxx xxxxxxx; and 2) the Department of Justice's use of the computer software "Quattro Pro."

The Civil Rights Division has no record that we received either your letter concerning the installation of accessible pedestrian signals or a complaint from xxx xxxxxxx on the same issue. Our records indicate that we did receive a photocopy of a letter concerning the Maryland Department of Transportation from xxx xxxxxxx, but that letter did not constitute a complaint.

xxx xxxxxxx may have filed a complaint with the U.S. Department of Transportation (DOT), which is the agency responsible for investigating alleged violations of the Americans with Disabilities Act that involve services and regulatory activities relating to transportation, including traffic management. Because DOT has been designated to investigate complaints relating to transportation, the Department will refer your current letter pertaining to this complaint to DOT for appropriate action.

If you have any questions concerning this referral, you may contact DOT at the following address:
Mr. Ronald Stroman
Director
Departmental Office of Civil Rights
Office of the Secretary
U.S. Department of Transportation
400 7th Street, S.W., Room 10215
Washington, D.C. 20590
Telephone: (202) 366-4648
The second issue raised in your letter concerns the accessibility of "Quattro Pro," the spreadsheet software used by the Department. You have suggested that the Department test this program to determine its acceptability under section 508 of the Rehabilitation Act. Section 508, as amended, requires each federal agency to ensure that electronic and information technology developed, procured, maintained, or used by the agency is accessible to people with disabilities. The Department is committed to complying with section 508.

However, because the technical standards for determining section 508 compliance have not yet been published, it is not possible to make that determination now.

Section 508 requires the Architectural and Transportation Barriers Compliance Board (Access Board) to develop standards for accessibility for electronic and information technology. Those standards are now being developed. Until the standards become final, it is not possible to determine if specific software "complies" with section 508.

Section 508 also requires the Department of Justice to conduct a survey of the current accessibility of federal government information technology and to report its findings and recommendations to the President in February 2000. To fulfill this obligation, the Department developed a comprehensive survey package that included detailed surveys of web pages, software, information transaction machines, and other equipment. The Department used this package to conduct a self-evaluation of its own information technology, including a survey of its computer software. The data collected are now being analyzed along with the data collected by other agencies. This data will form the basis of the Department's report to the President and will be considered in ensuring that the Department complies with section 508 in our future software purchases.

I hope this information is helpful to you. Please do not hesitate to contact the Department if we can be of assistance in other matters.
Sincerely,
John L. Wodatch
Chief
Disability Rigths Section

808
December 6, 1999
xxx xxxxx xx xxxxxxxxx
xx xxxxx xxxxxx xxxxx
xxxxxxx, xxxxxxxx xxxxx
Dear Mr. xxxxxxxxx:
This letter responds to your inquiry to the Attorney General on behalf of xxx and xxxxxxxx xxxxxxxxxx, who alleged discrimination on the basis of disability by the Department of State in their application for passports. Your letter and those written by xxx xxxxxxxxxx indicated that the local passport office would not accept their state identification cards in lieu of their drivers' licenses. Instead, a witness, with a driver's license, was required to sign an affidavit before the clerk to verify their citizenship. The xxxxxxxxxx allege that this practice discriminates against individuals who, like them, are blind.

Both the Immigration and Naturalization Service (INS) and the Disability Rights Section of the Civil Rights Division of the Department of Justice received this complaint. On October 4, 1999, the INS referred the complaint to the Passport Office of the Department of State. Thereafter, the Seattle Passport Agency responded to the xxxxxxxxxxx complaint by a letter of apology, a clarification of the Department's policies, and a recognition that training for local passport acceptance agents should be increased.

On November 19, 1999, Catherine O'Brien of the Disability Rights Section spoke to you regarding this complaint. We understand that you and the xxxxxxxxxx extend your concerns beyond the individual situation they faced. You want the Passport Office to modify its policies and practices so that individuals who are blind are not required to do more than individuals who are sighted. The xxxxxxxxxx object to the response from the Seattle Passport Agency, which suggests that a written explanation about the nature of the disability accompany an identity card. They believe that passport offices simply should recognize federal or state identification cards presented by individuals who do not have drivers' licenses.

Because the xxxxxxxxxxx complaint alleges a possible violation of section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of disability in programs or activities conducted by federal agencies, we have referred their complaint to the civil rights office of the Department of State, which has the responsibility to investigate section 504 complaints involving the Department's own programs. If you have any questions, please contact the Department of State at the following address:

Mr. Thomas Jefferson, Jr.
Associate Director for Equal
Opportunity and Civil Rights
Department of State
S/EEOCR
2201 C Street, N.W., Room 4216
Washington, D.C. 20520
Telephone: (202) 647-9295
Please do not hesitate to contact the Department if we can be of assistance in other matters.
Sincerely,
Bill Lann Lee
Acting Assistant
Attorney General Civil Rights Division
Enclosures

809
December 23, 1999
The Honorable Gordon H. Smith
United States Senator
One World Trade Center
121 SW Salmon Street
Suite 1250
Portland, Oregon 97204
Dear Senator Smith:

This letter is in response to your inquiry regarding the case, Drew, et. al. v. Merrill and Perinatal Associates, P.C., CA No. 99-810, on behalf of your constituent, Dr. Patrick A. Merrill. The Department recently successfully mediated this matter.

Questions raised by Dr. Merrill are: 1) whether the Americans with Disabilities Act (ADA) specifically encourages the use of alternative dispute resolution (ADR); 2) how the Department of Justice determines whether a case is appropriate for ADR; 3) whether the monetary relief agreed to in the consent decree made sense in light of previous settlement agreements; and 4) whether a physician should be given an opportunity to determine if "effective communication" can occur.

When Congress enacted the Americans with Disabilities Act, it specifically encouraged the use of alternative dispute resolution (ADR). Section 513 of the ADA provides:

Where appropriate and to the extent authorized by law, the use of alternative means of dispute resolution, including settlement negotiations, conciliation, facilitation, mediation, factfinding, minitrials, and arbitration is encouraged to resolve disputes arising under . . . [the ADA].

42 U.S.C. § 12212. The Department of Justice restated this provision in section 36.506 of the enclosed title III regulation.

The Division is committed to the active use of mediation and other ADR techniques in appropriate cases. In each case we consider whether the case is an appropriate one for ADR. Of course, Division practice will at times be controlled by rules of federal appellate and district courts. When a litigant or potential litigant makes a request for ADR, a Division manager will review the case and determine whether the case should or should not be subject to ADR.

Before the Department initiates litigation under title III of the ADA, it is our practice to notify opposing parties to set forth the basis upon which we believe there is a violation of the ADA and to encourage resolution. In this case, the Assistant U.S. Attorney and an attorney from the Civil Rights Division spoke to Dr. Merrill's counsel, and exchanged correspondence explaining the ADA requirements for effective communication and our intent to participate in the ongoing litigation. In fact, the Department delayed the filing of a Complaint in this matter because the parties continued to work toward settlement through the attorneys. As a result of those conversations, we were able to resolve a number of issues including agreement on a policy on sign language interpreters and staff training. We were not able to resolve all the issues in this case. When it appeared that the parties had gone as far as possible without an outside mediator, the defendants' attorneys recommended formal mediation. We readily agreed. The parties agreed upon a mediator and went to mediation to resolve the remaining issues in the case.

The monetary relief of $25,000 was agreed to by both the private plaintiffs and defendants in this case. The proper amount of damages is a very fact specific determination and in this case the Department concurred in the final amount. This amount was not excessive given the circumstances of the case. Prior to the negotiations, we had provided Dr. Merrill's counsel with examples of recent damage awards in other cases handled by the Department. For example, in a consent decree with 14 hospitals in the State of Connecticut concerning the provision of sign language interpreters, the hospitals paid $333,000 in compensatory damages to 49 persons with individual amounts ranging from $1,000 to $25,000.

Finally, regarding how a physician can determine how to ensure effective communication, title III requires physicians to furnish appropriate auxiliary aids and services where necessary to ensure effective communication with individuals with disabilities. The purpose of the requirement is to ensure that no individual with a disability is excluded, denied services, segregated, or otherwise treated differently than other individuals because of the absence of auxiliary aids and services.

In determining what constitutes an effective auxiliary aid or service, a physician must consider, among other things, the length and complexity of the communication involved. During some doctor's visits a note pad and written materials may be sufficient to permit effective communication, for instance, when a physician is explaining possible side effects resulting from a flu shot. During other visits, however, the use of handwritten notes may be extremely slow or cumbersome (e.g., where information to be conveyed is important, lengthy, or complex). In these situations, the use of an interpreter may be the only effective form of communication. The title III regulation requires the doctor to decide what type of auxiliary aid to provide, but the doctor is first required to consult with the client or patient and determine what auxiliary aids will actually provide effective communication.

While the nature of medical services is considered one factor in determining the effective means of communication, the focus should be not only on the nature of the services, but also on the type of communication among the physician, patient, and companion. The fact that an office visit is characterized as routine does not necessarily negate the need for interpreting services. For instance, an interpreter may be required if a note pad does not facilitate effective communication among the physician, patient and others.

I hope this information is helpful to your constituent. Please do not hesitate to contact the Department if we can be of assistance in other matters.

Sincerely,
Bill Lann Lee
Acting Assistant
Attorney General
Civil Rights Division

810
January 11, 2000
The Honorable Max Cleland
United States Senator
75 Spring Street, S.W.
Suite 1700
Atlanta, Georgia 30303
Dear Senator Cleland:

This is in response to your request for assistance on behalf of your constituent, xxx xxxx xxxx xxxxx of Rossville, Georgia. xxx xxxxx is disabled and seeks financial assistance to purchase a van.

Staff of the Disability Rights Section, Civil Rights Division, carefully reviewed xxx xxxxxxx request. Our Department enforces the Americans with Disabilities Act of 1990, and section 504 of the Rehabilitation Act of 1973, as amended. Both these laws are considered to be civil rights statutes prohibiting discrimination on the basis of disability; they do not provide financial assistance for persons with disabilities.

There are numerous other federal statutes to provide financial and other support to persons with disabilities, and to protect them from discrimination. We have enclosed a summary of federal programs targeted to assist persons with disabilities that was published by the Department of Education several years ago (Enclosure 1). Separate chapters in this publication describe income, housing, education, health, and transportation

assistance programs. xxx xxxxx should contact the federal, state, or local agencies that directly administer these programs in his area. Also enclosed is a list of organizations within Georgia that serve persons with disabilities (Enclosure 2).

The Office of Special Education and Rehabilitative Services (OSERS), Department of Education, administers most federal special education and rehabilitation programs to assist persons with disabilities. OSERS may have additional information and suggestions for xxx xxxxx with respect to Georgia's programs to assist persons with disabilities. xxx xxxxx may contact OSERS by writing to:

Ms. Judith Heumann
Assistant Secretary
Office of Special Education and
Rehabilitative Services
Department of Education
Room 3006
330 C Street, S.W.
Washington, D.C. 20202
Telephone: (202) 205-5465
The following state government resource in Georgia also may provide xxx xxxxx with information about obtaining the transportation and other financial assistance that he is seeking. He may contact:

Georgia Department of Human Resources
2 Peachtree Street, N.W.
Atlanta, Georgia 30303
Telephone: (404) 657-9358
or
Tools for Life
Georgia Department of Human Resources
Telephone: 1-800-497-8665
I hope this information is responsive to your inquiry.
Please do not hesitate to contact the Department if we can be of assistance in other matters.
Sincerely,
Bill Lann Lee
Acting Assistant
Attorney General
Civil Rights Division
Enclosures

811
January 7, 2000
The Honorable Mark Foley
U.S. House of Representatives
Washington, D.C. 20515
Dear Congressman Foley:

This is in response to your letter to the Attorney General. Your letter requests an inquiry by the Department regarding lawsuits alleging violations of the Americans with Disabilities Act ("ADA") filed against businesses located in Palm Beach, Florida. You attached several recent clippings from the Palm Beach newspaper citing examples of lawsuits filed by private attorneys in federal district court to enforce the ADA. As you have noted, the lawsuits were apparently filed by two lawyers on behalf of an organization called Citizens Concerned about Disability Access.

We have carefully reviewed the information provided in your letter and I have decided to refer the matter to the State Bar of Florida for their review. The Attorney General is authorized to enforce title III of the ADA, which applies to public accommodations; she is authorized to investigate alleged violations, undertake compliance reviews of covered entities, and file civil actions in federal court for equitable relief or damages in order to make facilities readily accessible to persons with disabilities. Likewise, private persons are also authorized to file civil actions pursuant to title III against covered entities for injunctive relief to correct the ADA violations; however, only the Attorney General may seek damages under title III. Entities covered by title III include, for example, places of lodging, establishments serving food and drink, places of entertainment, places of public gathering, sales and service establishments, transportation stations, places of public display or recreation, places of education or social services, or places of recreation.

Notwithstanding her authority to enforce the ADA, the law does not give the Attorney General authority to investigate or prosecute plaintiffs or attorneys for filing enforcement actions to remedy title III violations by public accommodations.

Therefore, the Department lacks jurisdiction to investigate or pursue claims of alleged frivolous or harassing litigation by private attorneys who file enforcement actions. Responsibility for investigating such claims lies with the State Bar of Florida or with the judiciary system in which the litigation is pending.

The Department takes very seriously the duty of all lawyers to comply with applicable court rules and codes of professional responsibility. The Federal Rules of Civil Procedure prohibit any attorney from filing a civil action in any United States court that is intended "[f]or any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation." *See* Rule 11, Federal Rules of Civil Procedure. Likewise, local rules of procedure and State canons of professional ethics also require attorneys not to abuse the process of the courts and to maintain professional standards of conduct at all times. Accordingly, I will forward this matter to the State Bar of Florida to advise them of the information provided in your letter. In this case, it is that body which has the authority to review the facts and investigate any potential violations of the standards of professional conduct for attorneys practicing in Florida. I am enclosing herewith a copy of my letter referring this matter to the Florida State Bar.

I hope this information is helpful. Please do not hesitate to contact the Department if we can be of assistance in other matters.

Robert Raben
Assistant Attorney General

Enclosure
cc: Board of Governors
The Florida Bar

812

January 21, 2000

The Honorable Ron Wyden
United States Senator
700 NE Multnomah Street
Suite 450
Portland, Oregon 97232

Dear Senator Wyden:

This letter is in response to your inquiry regarding the case, Drew, et. al. v. Merrill and Perinatal Associates, P.C., CA No. 99-810, on behalf of your constituent, Dr. Patrick A. Merrill. The Department recently successfully mediated this matter.

Questions raised by Dr. Merrill are: 1) whether the Americans with Disabilities Act (ADA) specifically encourages the use of alternative dispute resolution (ADR); 2) how the Department of Justice determines whether a case is appropriate for ADR; 3) whether the monetary relief agreed to in the consent decree made sense in light of previous settlement agreements; and 4) whether a physician should be given an opportunity to determine if "effective communication" can occur.

When Congress enacted the Americans with Disabilities Act, it specifically encouraged the use of alternative dispute resolution (ADR). Section 513 of the ADA provides:

Where appropriate and to the extent authorized by law, the use of alternative means of dispute resolution, including settlement negotiations, conciliation, facilitation, mediation, factfinding, minitrials, and arbitration is encouraged to resolve disputes arising under . . . [the ADA]. 42 U.S.C. ï½§ 12212. The Department of Justice restated this provision in section 36.506 of the enclosed title III regulation.

The Division is committed to the active use of mediation and other ADR techniques in appropriate cases. In each case we consider whether the case is an appropriate one for ADR. Of course, Division practice will at times be controlled by rules of federal appellate and district courts. When a litigant or potential litigant makes a request for ADR, a Division manager will review the case and determine whether the case should or should not be subject to ADR.

Before the Department initiates litigation under title III of the ADA, it is our practice to notify opposing parties to set forth the basis upon which we believe there is a violation of the ADA and to encourage resolution. In this case, the Assistant U.S. Attorney and an attorney from the Civil Rights Division spoke to Dr. Merrill's counsel, and exchanged correspondence explaining the ADA requirements for effective communication and our intent to participate in the ongoing litigation. In fact, the Department delayed the filing of a Complaint in this matter because the parties continued to work toward settlement through the attorneys. As a result of those conversations, we were able to resolve a number of issues including agreement on a policy on sign language interpreters and staff training. We were not able to resolve all the issues in this case. When it appeared that the parties had gone as far as possible without an outside mediator, the defendants' attorneys recommended formal mediation. We readily agreed. The parties agreed upon a mediator and went to mediation to resolve the remaining issues in the case.

The monetary relief of $25,000 was agreed to by both the private plaintiffs and defendants in this case. The proper amount of damages is a very fact specific determination and in this case the Department concurred in the final amount. This amount was not excessive given the circumstances of the case. Prior to the negotiations, we had provided Dr. Merrill's counsel with examples of recent damage awards in other cases handled by the Department. For example, in a consent decree with 14 hospitals in the State of Connecticut concerning the provision of sign language interpreters, the hospitals paid $333,000 in compensatory damages to 49 persons with individual amounts ranging from $1,000 to $25,000.

Finally, regarding how a physician can determine how to ensure effective communication, title III requires physicians to furnish appropriate auxiliary aids and services where necessary to ensure effective communication with individuals with disabilities. The purpose of the requirement is to ensure that no individual with a disability is excluded, denied services, segregated, or otherwise treated differently than other individuals because of the absence of auxiliary aids and services.

In determining what constitutes an effective auxiliary aid or service, a physician must consider, among other things, the length and complexity of the communication involved. During some doctor's visits a note pad and written materials may be sufficient to permit effective communication, for instance, when a physician is explaining possible side effects resulting from a flu shot. During other visits, however, the use of handwritten notes may be extremely slow or cumbersome (e.g., where information to be conveyed is important, lengthy, or complex). In these situations, the use of an interpreter may be the only effective form of communication. The title III regulation requires the doctor to decide what type of auxiliary aid to provide, but the doctor is first required to consult with the client or patient and determine what auxiliary aids will actually provide effective communication.

While the nature of medical services is considered one factor in determining the effective means of communication, the focus should be not only on the nature of the services, but also on the type of communication among the physician, patient, and companion. The fact that an office visit is characterized as routine does not necessarily negate the need for interpreting services. For instance, an interpreter may be required if a note pad does not facilitate effective communication among the physician, patient and others.

I hope this information is helpful to your constituent. Please do not hesitate to contact the Department if we can be of assistance in other matters.

Bill Lann Lee
Acting Assistant Attorney General
Civil Rights Division

Enclosure

813

February 17, 2000

The Honorable Gordon H. Smith
United States Senator

One World Trade Center
121 SW Salmon Street
Suite 1250
Portland, Oregon 97204

Dear Senator Smith:

This letter is in response to your inquiry regarding the case, Drew, et al. v. Merrill and Perinatal Associates, P.C., CA No. 99-810, on behalf of your constituent, xxxxx x. x. xxxxxx. The Department recently successfully mediated this matter.

Xx. xxxxxx asked how the United States initiates litigation under title III of the Americans with Disabilities Act. The United States may initiate litigation if there is reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of discrimination or any person or group of persons has been discriminated against and the action raises a matter of public importance. Prior to filing any litigation, it is the practice of the Department of Justice to notify opposing parties, to set forth the basis upon which we believe there is a violation or violations of the ADA, and to encourage resolution without litigation.

The Civil Rights Division is also committed to the active use of mediation in appropriate cases, and we fund an extensive mediation program for new complaints that are not appropriate for litigation or that appear to be relatively uncomplicated and likely to resolve quickly. That program is not used when the Department first becomes involved in a case through a request to intervene in ongoing litigation, as in this case. The matters in dispute in this case were resolved successfully by alternative dispute resolution, as part of the litigation process. In each case, we consider whether the matter is an appropriate one for mediation. Of course, Division practice will at times be controlled by rules of federal appellate and district courts and mediation programs operated by the courts. When a litigant or potential litigant makes a request for mediation, a Division manager reviews the case and determines whether the case should be referred to mediation.

In this case, private counsel to the plaintiffs contacted the Assistant U.S. Attorney and an attorney from the Civil Rights Division about then-ongoing civil litigation. The Assistant U.S. Attorney spoke to Dr. Merrill's counsel, and exchanged correspondence explaining the ADA requirements for effective communication and our intent to participate in the ongoing litigation. In fact, the Department delayed the filing of a Complaint in this matter because the parties continued to work toward settlement through the attorneys. As a result of those conversations, we were able to resolve a number of issues, including agreement on a policy on sign language interpreters and staff training. We were not able to resolve all the issues in this case. When it appeared that the parties had gone as far as possible without an outside mediator, the defendants' attorneys recommended formal mediation. We readily agreed. The parties agreed upon a mediator and went to mediation to resolve the remaining issues in the case.

The monetary relief of $25,000 was negotiated and agreed to by both the private plaintiffs and defendants in this case. The proper amount of damages is a very fact specific determination and in this case the Department concurred in the final amount. This amount was not excessive given the circumstances of the case. Prior to the negotiations, we had provided Dr. Merrill's counsel with examples of recent damage awards in other cases handled by the Department. For example, in a consent decree with 14 hospitals in the State of Connecticut concerning the provision of sign language interpreters, the hospitals paid $333,000 in compensatory damages to 49 persons with individual amounts ranging from $1,000 to $25,000.

Finally, regarding how a physician can determine how to ensure effective communication, title III requires physicians to furnish appropriate auxiliary aids and services where necessary to ensure effective communication with individuals with disabilities. The purpose of the requirement is to ensure that no

individual with a disability is excluded, denied services, segregated, or otherwise treated differently than other individuals because of the absence of auxiliary aids and services.

In determining what constitutes an effective auxiliary aid or service, a physician must consider, among other things, the length and complexity of the communication involved. During some doctor's visits a note pad and written materials may be sufficient to permit effective communication, for instance, when a physician is explaining possible side effects resulting from a flu shot. During other visits, however, the use of handwritten notes may be extremely slow or cumbersome (e.g., where information to be conveyed is important, lengthy, or complex). In these situations, the use of an interpreter may be the only effective form of communication. The title III regulation requires the doctor to decide what type of auxiliary aid to provide, but the doctor is first required to consult with the client or patient and determine what auxiliary aids will actually provide effective communication.

While the nature of medical services is considered one factor in determining the effective means of communication, the focus should be not only on the nature of the services, but also on the type of communication among the physician, patient, and companion. The fact that an office visit is characterized as routine does not necessarily negate the need for interpreting services. For instance, an interpreter may be required if a note pad does not facilitate effective communication among the physician, patient, and others.

I hope this information is helpful to your constituent. Please do not hesitate to contact the Department if we can be of assistance in other matters.

814

February 23, 2000

The Honorable Bob Goodlatte
Member, U.S. House of Representatives
2 South Main Street
Suite A, First Floor
Harrisonburg, Virginia 22801-3707

Dear Congressman Goodlatte:

This is in response to your inquiry on behalf of your constituent, Dr. xxxxxxx x. xxxxxxx of Harrisonburg, Virginia. Dr. xxxxxxx is a physician who is concerned that the Americans with Disabilities Act of 1990 (ADA) requires him to provide a sign language interpreter for patients needing the service and further expects him to absorb the costs associated with the interpreter services.

We understand Dr. xxxxxxx's concern, but we believe that he may not be aware of the flexibility provided to him under the ADA. Title III of the ADA was enacted to ensure that people with disabilities are not excluded from receiving the benefits and services provided by covered entities, including physicians. However, in enacting title III, Congress carefully struck a balance between the rights of people with disabilities to participate fully in activities of daily life and the legitimate economic needs of the service providers.

The ADA does require physicians to ensure effective communication with patients (and, for pediatric patients, with their parents or guardians.) When one of these individuals has a disability that affects communication (*e.g.,* a hearing impairment), the ADA may require a physician to provide a sign language interpreter or other appropriate auxiliary aid to ensure effective communication, unless the physician can prove that providing the auxiliary aid will fundamentally alter the service or benefit that the physician is providing or result in an undue burden.

Ensuring effective communication does not necessarily require a physician to provide a sign language interpreter each time that a patient requests one. The physician has the right to select the auxiliary aid that will be provided and also the obligation to ensure that the selected method of communication is effective. In making this determination, the physician should consult with the patient to learn what auxiliary aids may be effective in the specific circumstances. For example, if a patient can communicate effectively in writing, then written communication through the exchange of notes or using a computer to facilitate conversation may be effective when a physician is explaining a simple procedure. However, if the information to be conveyed is lengthy or complex, or the patient has difficulty communicating in writing, then the use of written notes may be ineffective. The use of an interpreter may be the only effective form of communication. Thus, Dr. xxxxxxx may not need to provide an interpreter for a routine office visit where paper-and-pen communication is sufficient to provide effective communication between him and his patient.

If an interpreter is necessary to provide effective communication, a physician must provide the interpreter without charge to the person with a disability unless it is an undue burden. The term "undue burden" means "significant difficulty or expense." The evaluation of whether the cost of an auxiliary aid is an "undue burden" may not be based solely on a comparison of the interpreter costs to the revenue generated by the office visit at which the interpreter is present. Instead, the interpreting costs must be considered in relationship to the overall financial resources of the practice and other mitigating factors such as the ability to spread costs throughout the general clientele and the availability of tax credits.

The Internal Revenue Code permits eligible small businesses to receive a tax credit for certain costs of ADA compliance. An eligible small business is one whose gross receipts do not exceed $1,000,000 or whose work force does not consist of more than 30 full-time workers. Qualifying businesses may claim a credit of up to 50 percent of eligible access expenditures that exceed $250 but do not exceed $10,250. Eligible access expenditures may include the costs of providing auxiliary aids and services to persons with disabilities. Further information on the tax credit can be obtained from a local Internal Revenue Service office, or by contacting the Office of Chief Counsel, Internal Revenue Service. The enclosed booklet also provides general information about the tax credit.

I hope this information will be helpful to you. Please do not hesitate to contact the Department if we can be of assistance in other matters.

Bill Lann Lee
Acting Assistant Attorney General
Civil Rights Division

Enclosure

815

March 1, 2000
The Honorable Max Cleland
United States Senator
75 Spring Street, S.W.
Suite 1700
Atlanta, Georgia 30303
Dear Senator Cleland:

This is in response to your request for assistance on behalf of your constituent, Mrs. Xxxxxx x. xxxxxx of Stone Mountain, Georgia. Mrs. xxxxxx wrote for information on obtaining financial assistance to purchase a van for her disabled husband who uses a Rangerx wheelchair.

Staff of the Disability Rights Section, Civil Rights Division, carefully reviewed Mrs. xxxxxx's request. Our Department enforces the Americans with Disabilities Act of 1990, and section 504 of the Rehabilitation Act of 1973, as amended. Both these laws are considered to be civil rights statutes prohibiting discrimination on the basis of disability; they do not specifically provide financial assistance for persons with disabilities.

There are numerous other federal statutes to provide financial and other support to persons with disabilities, and to protect them from discrimination. We have enclosed a summary of federal programs targeted to assist persons with disabilities that was published by the Department of Education several years ago (Enclosure 1). Separate chapters in this publication describe income, housing, education, health, and transportation assistance programs. Mrs. xxxxxx should contact the federal, state, or local agencies that directly administer these programs at the local level. Also enclosed is a list of organizations within Georgia that serve persons with disabilities (Enclosure 2).

The Office of Special Education and Rehabilitative Services (OSERS), Department of Education, administers most federal special education and rehabilitation programs to assist persons with disabilities. OSERS may have additional information and suggestions for Mrs. xxxxxx with respect to Georgia's programs to assist persons who need specially equipped vehicles to transport wheelchair users like Mr. xxxxxx. Mrs. xxxxxx may contact OSERS by writing to:

Ms. Judith Heumann
Assistant Secretary
Office of Special Education and Rehabilitative Services
Department of Education
330 C Street, S.W., Room 3006
Washington, D.C. 20202
Telephone: (202) 205-5465

On a similar request from your office last year, we contacted the United Cerebral Palsy Association (UCP) in Georgia and spoke with Ms. Jan Popovich who suggested that the writer seeking financial aid in obtaining a

van should contact UCP with the request. At that time, Ms. Popovich said she could send a resource package targeted to the writer's request for obtaining transportation for a person with disabilities. We reiterate this information for Mrs. xxxxxx. The address for UCP is:

United Cerebral Palsy Association
1665 Tullie Circle
Suite 100
Atlanta, Georgia 30329
Telephone: (404) 329-9390

Ms. Popovich also provided us with several resources in Georgia that might aid Mrs. xxxxxx as well. The agency titles and telephone numbers are:

Foundation for Medically Fragile Children
Telephone: (707) 953-3750

Tools for Life
Georgia Department of Human Resources
Telephone: 1 (800) 497-8665

Georgia Learning Resources System
Telephone: 1 (800) 282-7552

I hope this information is responsive to your inquiry. Please do not hesitate to contact the Department if we can be of assistance in other matters.

Bill Lann Lee
Acting Assistant Attorney General
Civil Rights Division

Enclosures

816

May 30, 2000

The Honorable Richard C. Shelby
United States Senator
308 U.S. Courthouse
Mobile, Alabama 36602

Dear Senator Shelby:

This letter is in response to your correspondence to me on behalf of your constituent, Mr. xxxxxxx x. xxxx. According to the documents enclosed with your letter, Mr. xxxx has brought a state court case appealing the denial of his application for a variance from a zoning requirement enforced by a local permitting authority.

Our inquiry into the circumstances reveals that, in consideration of flood danger, the zoning requirement prescribes a particular elevation for a dwelling Mr. xxxx is remodeling on beachfront property. Apparently, the local zoning officials denied the request for a variance based on regulations issued by the Federal Emergency Management Agency (FEMA) in its authority relating to safety and insurance. The elevation requirement poses difficulties for Mr. xxxx, who uses a wheelchair, and he asserts that because he is an individual with a disability, under the Fair Housing Act and the Americans with Disabilities Act (ADA), he should be granted a variance from the local zoning ordinance in order to build on ground level.

Title II of the ADA prohibits discrimination on the basis of disability in the programs, services, and activities of state and local government entities. Title II requires public entities to make reasonable modifications to their policies, practices, and procedures, including their zoning policies, practices, and procedures, when such modifications are necessary to ensure that individuals with disabilities are not subjected to discrimination because of their disabilities. 28 C.F.R. ï½§35.130(b)(7). In the appropriate circumstances, granting a variance to a zoning regulation can constitute a reasonable modification required under Title II. However, a modification need not be made if the public entity can demonstrate that making the modification would fundamentally alter the nature of the program, or cause an undue burden. 28 C.F.R. ï½§ 35.150(a)(3).

Zoning restrictions are also covered by the Fair Housing Act, which provides that it is a discriminatory practice to refuse to make a reasonable accommodation in rules, policies, practices, or services when such accommodation may be necessary to afford an individual with a disability equal opportunity to use and enjoy a dwelling. 42 U.S.C. ï½§ 3604(f)(3)(b).

While Title II and the Fair Housing Act require reasonable modification of zoning ordinances and procedures, they do not provide a broad exemption from zoning requirements for individuals with disabilities. Individuals with disabilities must generally comply with their local zoning requirements just as non-disabled individuals must comply. When a particular aspect of a zoning ordinance is alleged to be discriminatory, determination of what constitutes a reasonable modification of that aspect is highly fact-specific, requiring a case-by-case analysis. Crowder v. Kitigawa, 81 F.3d 1480, 1486 (9th Cir. 1996). An inquiry into reasonable modification in the case of your constituent would most likely necessitate findings of fact regarding the nature of the safety and insurance concerns addressed by the FEMA regulation and local ordinance, including the nature of the risks underlying the elevation requirement; the extent of risk posed by granting a variance; and the probability that harm would occur in the event that a variance was granted.

The Department of Justice does not intervene in state court actions implicating the ADA. Nor can the Department override a state court's judicial decision regarding an individual's case in a state judicial proceeding or serve as a reviewer of the judicial decisions of courts in individual cases. Although discrimination on the basis of disability in violation of the ADA may be a basis for challenging a court's decision, that challenge must be made through the applicable appeals procedure, including appeal to the U.S. Supreme Court.

The Department's policy in this regard is based on federal judicial decisions, including U.S. Supreme Court precedent, making clear that judicial determinations by state courts can only be reviewed through the state appellate process and by the U.S. Supreme Court. See, e.g., District of Columbia Ct. Of Appeals v. Feldman, 460 U.S. 462, 476 (1982); Campbell v. Greisberger, 80 F.3d 703, 706-07 (2d Cir. 1996) (federal court has no jurisdiction to hear ADA-based challenge to a state court decision). These cases make clear that ADA challenges to state court decisions must be made through the state appellate process.

I hope this information is helpful to you in responding to your constituent. Please do not hesitate to contact the Department if we can be of assistance in other matters.

Bill Lann Lee
Acting Assistant Attorney General
Civil Rights Division

817

June 13, 2000

The Honorable Bob Graham
United States Senator
2252 Killearn Center Boulevard
Third Floor
Tallahasse, Florida 32308

Dear Senator Graham:

This letter responds to your inquiry on behalf of your constituent, Mr. xxxxx xxxxxxxx, regarding the lack of open-frame beds for individuals with disabilities in hotel rooms. Mr. xxxxxxxx proposes that accessible hotel rooms have open-frame beds, rather than closed-frame beds, for the use of individuals with disabilities. Please excuse our delay in tesponding.

Under the Americans with Disabilities Act of 1990 (ADA), the Department of Justice issues regulations that detail ADA requirements for over six million places of public accommodations, including hotels. The Department's existing rules contain requirements on what constitutes an accessible hotel room and also requires that hotels make reasonable modifications in policies, practices, or procedures when the modifications are necessary to provide accessibility but would not fundamentally alter the hotel's operations. The Department has never provided guidance on whether hotels are required to have open-frame beds in accessible guest rooms to accommodate persons with disabilities who travel with portable mechanical lifts. However, it appears that it would be a reasonable modification for a hotel to provide open-frame beds and would not fundamentally alter the hotel's operations to do so.

In the coming months, the Department will be undertaking additional rulemaking on our ADA regulations. We will take Mr. xxxxxxxx's comments into consideration during that process.

I hope that this information will assist you in responding to your constituent. Please do not hesitate to contact the Department if we can be of assistance in other matters.

Bill Lann Lee
Acting Assistant Attorney General
Civil Rights Division

818

June 29, 2000

The Honorable Charles E. Grassley
United States Senate
Washington, D.C. 20510-1501

Dear Senator Grassley:

This is in response to your inquiry on behalf of your constituent, Ms. xxxx x. xxxxxxx, who was placed on disability retirement from her position as a corrections officer by the State of Iowa in April 1998. Ms. xxxxxxx wishes to return to her position and questions the legality of the retirement under the Americans with Disabilities Act of 1990. (ADA).

The Civil Rights Division's Disability Rights Section shares with the U.S. Equal Employment Opportunity Commission (EEOC) the responsibility for enforcing title I of the ADA, which prohibits disability-based discrimination in employment. EEOC investigates most complaints under title I. Only the Section, however, may initiate litigation against state and local government employers. The Section also enforces section 504 of the Rehabilitation Act of 1973, which prohibigts disability discrimination by recipients of federal financial assistance, with respect to entities such as state corrections systems that receive funds from the Department of Justice. Finally, the Section has authority to investigate certain employment discrimination complaints from state and local government employees under title II of the ADA, which prohibits discrimination in state and local government programs, services, and activities, including employment. Regulations issued to coordinate complaint processing between EEOC and other federal agencies provide that EEOC's title I regulations and appendix, and the case law arising under those regulations, govern the resolution of employment discrimination complaints processed elsewhere under section 504. See 28 C.F.R.ï½§ 37.12.

The EEOC regulations provide that employers must reasonably accommodate qualified individuals with disabilities, upon notice of need, unless to do so would cause undue hardship. Qualified individuals are those who are capable of performing the essential functions of the job with or without accommodation. It appears that Ms. xxxxxxx' employer determined that, because of her disability, she was not qualified to perform as a corrections officer with or without accommodation. It therefore transferred her to a vacant position, that of accountant, a type of accommodation prescribed by the ADA and the EEOC regulations. 42 U.S.C. ï½§12111(9)(B)(1994); 29 C.F.R. ï½§ 1630.2(o)(2)(ii)(1997).

In light of these legal principles, it is unclear whether Ms. xxxxxxx has a viable ADA claim. That would depend upon whether a type of reasonable accommodation existed that would enable her to perform the essential functions of the corrections officer position. Finally, the time frame for filing a complaint with EEOC is 180-300 days from the date of the alleged discrimination, depending upon whether there is a state or local agency authorized to grant relief from the practice at issue. The time frame for filing a title II complaint with the Disability Rights Section is 180 days after the date of the alleged discrimination, unless the time for filing is extended for good cause shown.

I hope this information will assist you in responding to your constituent. Please do not hesitate to contact the Department if we can be of assistance in other matters.

Bill Lann Lee
Acting Assistant Attorney General
Civil Rights Division

819
July 31, 2000
The Honorable Mary L. Landrieu
United States Senate
Washington, D.C. 20510

Dear Senator Landrieu:

This is in response to your inquiry on behalf of your constituent, xxxxx xxxx xxxxxxx, identified in your transmittal letter to the U.S. Department of Justice as Landrieu Project No. 130200. Mr. xxxxxxx wrote to request private or public funding for an audit of existing hotel and transportation facilities, to be conducted by an entity that understands the combined requirements of accessibility, usability, and safety. Based upon his personal experience of inaccessible features in hotel rooms and inadequate or nonexistent taxi service, Mr. xxxxxxx feels strongly that past accessibility reviews have been conducted by entities that fail to possess the requisite understanding of these combined requirements.

Applicable ADA Requirements. Under the Americans with Disabilities Act of 1990, as amended (ADA), and the implementing regulation issued by this Department, hotels that are newly constructed or altered must generally be "readily accessible to and usable by persons with disabilities." Standards for accessibility for this purpose were developed only after extensive consultation with persons with disabilities and organizations representing persons with disabilities.

The ADA and the implementing regulation require existing hotels to remove architectural barriers if it is "readily achievable to do so." "Readily achievable" is defined in the implementing regulation as "easily

accomplishable and able to be carried out without much difficulty or expense," considering such factors as the nature and cost of the action needed.

The ADA and the implementing regulation issued by the Department of Transportation do not in any way address the number of taxis available in any locality. The ADA does, however, prohibit discrimination on the basis of disability in the delivery of taxi services. An example of discrimination of the basis of disability in the delivery of taxi service would be a taxi driver's refusal to accept persons who use service animals as passengers.

The requirements of the ADA with respect to public transportation are more stringent. The ADA does require newly constructed public transit facilities and "key stations" to be accessible to persons with disabilities. Under certain circumstances, the ADA also requires public entities to provide comparable paratransit service for persons with disabilities.

Enforcement of ADA Requirements. The ADA is enforced through the investigation and resolution of individual complaints. In the event that your constituent would like to file a complaint against a specific hotel or hotel chain or against an individual or group of taxi drivers, we have included complaint forms.

The ADA also authorizes this Department to conduct reviews of public accommodations, including hotels. We have used that authority to conduct reviews of newly constructed facilities. Enclosed is a document prepared by this Department entitled "Common ADA Problems at Newly Constructed Lodging Facilities." Nothing in the Act contemplates public funding for private compliance reviews.

We hope this information will be helpful to you in responding to your constituent. As you requested, we are returning your constituent's correspondence. Please do not

hesitate to contact the Department if we can be of assistance in other matters.

Bill Lann Lee
Acting Assistant Attorney General
Civil Rights Division

Enclosures

820

April 13, 2000

The Honorable Henry J. Hyde
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This is in response to your letter requesting an inquiry by the Department regarding lawsuits alleging violations of the Americans with Disabilities Act ("ADA") filed against businesses located in El Cajon, California. You attached a letter from xxxxxxxxxxxxxxxxxxxx addressed to Congressman Duncan Hunter complaining that she had settled a lawsuit filed against her and her tenants in federal court involving allegations of ADA title III violations. The lawsuit was filed by an attorney on behalf of an "apparently disabled" person. She explained that rather than bear the expense of litigation, she elected to settle with the plaintiff on behalf of herself and her tenants. In conclusion, xxx xxxxxxx asks the opinion of her Congressman on what can be done to curb

possible abuse of the ADA through unnecessary litigation and whether where is new legislation pending to address her complaint.

The Attorney General is authorized to enforce title III of the ADA, which applies to public accommodations like the strip mall and businesses described in xxx xxxxxxxxx letter. The ADA authorizes the Attorney General to investigate alleged violations, undertake compliance reviews of covered entities, and to file civil actions in federal court for equitable relief of damages in order to make facilities readily accessible to persons with disabilities. Likewise, private persons are also authorized to file civil actions pursuant to title III against covered entities for injunctive relief to correct the ADA violations; however, only the Attorney General may seek damages under title III. Entities covered by title III include, for example, places of lodging, establishments serving food and drink, places of entertainment, places of public gathering, sales and service establishments, transportation stations, places of public display, places of education or social services, or places of recreation.

Notwithstanding her authority to enforce the ADA, the law does not give the Attorney General authority to investigate or prosecute plaintiffs or attorneys for filing enforcement actions to remedy title III violations by public accommodations. Therefore, the Department lacks jurisdiction to investigate or pursue claims of alleged frivolous or harassing litigation by private attorneys who file enforcement actions. Responsibility for investigating such claims lies with the state bar or with the judiciary system in which litigation is pending.

The Department takes very seriously the duty of all lawyers to comply with applicable court rules and codes of professional responsibility. The Federal Rules of Civil Procedure prohibit any attorney from filing a civil action in any United States court that is intended "[f]or any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation." See Rule 11, Federal Rules of Civil Procedure. Likewise, local rules of procedure and state canons of professional ethics also require attorneys not to abuse the process of the courts and to maintain professional standards of conduct at all times. In this case, if xxx xxxxxxx identifies individual attorneys or allegations that may reveal a violation of professional standards by specific attorneys, she may want to bring this information to the attention of the relevant disciplinary entities.

In response to xxx xxxxxxxxx question regarding new legislation, your colleagues, Congressman Foley and Congressman Shaw, both of Florida, have introduced proposed legislation to require that title III entities be given ninety days' notice of a violation before they can be sued. The Department is deeply committed to enforcement of the ADA, and we join members of Congress in seeking to protect the civil rights of persons with disabilities.

I hope this information is helpful. Please do not hesitate to contact the Department if we can be of assistance in other matters.

Sincerely,

Robert Raben
Assistant Attorney General

cc: The Honorable John Conyers, Jr.
Ranking Minority Member

821

September 14, 2000

The Honorable Bob Graham
United States Senator
2252 Killearn Center Boulevard
Third Floor
Tallahassee, Florida 32308

Dear Senator Graham:

This is in response to your inquiry on behalf of your constituent, xxx xxxxxxx xxxxxx, whose concerns were brought to your attention by The Honorable Doug Wiles, Florida State Representative.

Xxx xxxxxx, who is deaf, reportedly considered running for election to the St. Johns County Board of Commissioners. He decided not to seek public office when he discovered that the Florida Division of Elections would not provide sign language interpreters so that he could participate in community forums and debates. Representative Wiles inquired whether the Americans with Disabilities Act would entitle xxx xxxxxx to any assistance.

Legal Requirements

Title II of the Americans with Disabilities Act (ADA) protects qualified individuals with disabilities from discrimination in the programs, services, and activities of public entities such as the Florida Division of Elections.

The Department of Justice's regulation implementing title II provides that a public entity must ensure that its communications with individuals with disabilities are as effective as communications with others and must furnish appropriate auxiliary aids and services where necessary to afford an individual with a disability an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity conducted by a public entity. 28 C.F.R. ï½§ 35.160. A public entity is not required to take any steps that would result in a fundamental alteration in the service, program, or activity or in undue financial and administrative burdens. 28 C.F.R. ï½§ 35.164.

Discussion

According to the information provided on its Internet site (www.election.dos.state.fl.us), the Florida Division of Elections has a variety of legal and administrative responsibilities, including, among others:

- overseeing the interpretation and enforcement of election laws;
- prescribing rules and regulations to carry out the provisions of election laws;
- providing advisory opinions to supervisors of elections and others;
- maintaining voter fraud hotline and providing election-fraud education to the public; and
- conducting regional workshops around the state for supervisors of elections, candidates, political committees, political parties, and others.

Significantly, the Division of Elections does not appear to provide any campaign resources to political candidates.

Under title II of the ADA, the Division of Elections must ensure that each of its activities is free from disability-based discrimination. For instance, with respect to its regional workshops and election fraud education sessions, the Division of Elections should provide appropriate auxiliary aids and services upon request, such as qualified sign language interpreters, to qualified individuals with disabilities for whom such aids or services are necessary for effective communication, unless doing so would impose an undue burden or result in a fundamental alteration. On the other hand, the Division of Elections is not required to provide auxiliary aids and services for other election-related activities, over which it exercises no administrative control and for which it provides no financial or other resources. Assuming that the Division of Elections neither administers nor sponsors the community forums and debates at issue, the Division of Elections would not have any obligation under title II of the ADA to provide auxiliary aids and services for those forums and debates.

It is the entities that hold the community forums and debates at issue that are generally obligated under ADA titles II, 42 U.S.C. ï½§ï½§ 12131 et seq., 28 C.F.R. pt. 35 (covering public entities), and title III, 42 U.S.C. ï½§ï½§ 12181 et seq., 28 C.F.R. pt. 36 (covering private entities) to provide appropriate auxiliary aids and services to qualified persons with disabilities, unless doing so would fundamentally alter the nature of the good, service, or program that is being provided, or would result in an undue burden. [(1)] For example, if a private entity such as the League of Women Voters were to hold a public debate among candidates running for seats on the St. Johns County Board of Commissioners, it would have to comply with title III of the ADA with respect to this activity, including the obligation to provide auxiliary aids and services to qualified individuals with disabilities, unless doing so would impose an undue burden or result in a fundamental alteration.

I hope this information is helpful to you. Please do not hesitate to contact the Department if we can be of assistance in other matters.

Sincerely,

Bill Lann Lee
Assistant Attorney General
Civil Rights Division

1. Religious entities and certain private clubs are exempt from title III of the ADA. 42 U.S.C. ï½§ 12187; 28 C.F.R. ï½§ 36.102(e).

822

October 3, 2000

The Honorable Steven T. Kuykendall
Member, U.S. House of Representatives
21311 Hawthorne Boulevard
Suite 250
Torrance, California 90503-5610

Dear Congressman Kuykendall:

I am responding to your letter on behalf of your constituent, xxx xxxxxxxxxxxxxxxxx, who inquires about the applicability of the Americans with Disabilities Act of 1990 (ADA) to the transportation needs of his mother, Xxxx xxxxxxxxxxxxx. xxxx xxxxxxx, who according to her son is bedridden, must engage a private agency for transportation services to her medical appointments. That agency carries her from her condominium up and down 30 stairs and charges $175.00 per trip. Please excuse our delay in responding.

The Department of Transportation (DOT) is responsible for enforcing the ADA's transportation provisions, including those pertaining to paratransit services. The DOT regulation implementing these transportation provisions defines paratransit as "comparable transportation service required by the ADA for individuals with disabilities who are unable to use fixed route transportation systems." Paratransit service is complementary to fixed route transportation and is demand responsive, providing origin to destination service. While the ADA requires that the service must go from the user's point of origin to his or her destination point, detailed operational decisions rest with the local paratransit systems. These local paratransit plans may provide for door-to-door or curb-to-curb service. The ADA does not mandate additional service, such as that required by xxxx xxxxxxx.

In fact, the preamble to DOT's regulation states that "... the ADA does not attempt to meet all the transportation needs of individuals with disabilities"; rather, it simply provides individuals with disabilities with the same mass transportation opportunities as others in the population. The preamble further states that the "ADA is a civil rights statute, not a transportation or social service program statute"; the ADA, then, does not intend complementary paratransit to be a comprehensive transportation system, but instead a "safety net" for individuals with disabilities who cannot use the fixed route system.

For your information, we have enclosed a copy of the DOT regulation, "Transportation Services for Individuals with Disabilities," 49 C.F.R. pt. 37. We also have included the portion of the regulation's preamble pertaining to paratransit service, which is in subpart F of the regulation. Please note that the "Urban Mass Transit Administration," is now known as the "Federal Transit Administration." If you or your constituent have questions about the DOT regulation you may contact:

Mr. Ronald Stroman
Director
Departmental Office of Civil Rights
Office of the Secretary
Department of Transportation
400 7th Street, S.W., Room 10215
Washington, D.C. 20590
Telephone: (202) 366-4648

You or your constituent, however, may wish to contact agencies or organizations in Los Angeles County that provide transportation and other services or referrals, including case management services, for the elderly and for individuals with disabilities. The following are agencies that may be able to provide assistance:

Westside Center for Independent Living
12901 Venice Boulevard
Los Angeles, California 90066
(310) 390-3611 # 211 (Veronica Addison)

Los Angeles County Area Agency on Aging
3333 Wilshire Boulevard, 4th Floor
Los Angeles, California 90010
(213) 738-4004

Wise Senior Services
Care Management
1527 4th Street, Suite 200
Santa Monica, California 90401-2354
(310) 576-2550 # 217 (Stacey Monroe)

I hope that this information will assist you in responding to your constituent. Please do not hesitate to contact the Department if we can be of assistance in other matters.

Sincerely,

Bill Lann Lee
Assistant Attorney General
Civil Rights Division

Enclosures

823

October 13, 2000

The Honorable Phil Gramm
United States Senate
Washington, D.C. 20510-4302
Dear Senator Gramm:

This letter is in response to your inquiry on behalf of Judge Arthur Ware, Potter County, Texas. Judge Ware seeks information about the availability of federal financial assistance for capital improvements to Potter County court facilities to promote compliance with the Americans with Disabilities Act of 1990 (ADA).

Staff of the Disability Rights Section, Civil Rights Division, researched potential sources of funding in response to Judge Ware's request. No federal domestic assistance programs specifically earmarked for accessibility renovations and security upgrades to state and local court buildings were found. Some state and local courts have, nonetheless, been successful over the years in their efforts to obtain federal assistance for capital improvements.

Funding sources have been innovative and wide-ranging according to Mr. Bob Tobin of the National Center for State Courts (NCSC). They have included such methods as funding associated with federal agencies such as the Federal Emergency Management Agency following disaster-related damage, urban-renewal funding through the Department of Housing and Urban Development (HUD), "impact funds" associated with a significant "federal presence" in the local community, "move-ins" to vacated federal facilities, and so forth. In 1995, the State Justice Institute published a study entitled "A Court Manager's Guide to Court Facility Financing", authored by Mr. Tobin. It describes creative financing efforts undertaken by local court systems. A copy of the guide may be available from the offices/libraries of the Texas State Court Administrator. It can also be ordered directly from the NCSC Publications Catalog available on the web (Enclosure 1).

The Department of Justice (DOJ) is currently funding an NCSC office to provide technical assistance on architectural standards and other resources to state and local courts to help them comply with the ADA. Information on this project is available through:

Ms. Deanna Parker
Project Director, ADA Resources
National Center for State Courts
300 Newport Avenue
Williamsburg, Virginia 23185
Telephone (800) 616-6164 Ext.1863
(757) 564-2051 (Fax)
(757) 259-1845 (TDD)

The Department's Bureau of Justice Assistance (BJA) administers criminal justice formula grants and HUD administers federal aid to promote community development under its Community Development Block Grants Program. We understand that funding for facility renovations of state and local courts may be eligible for consideration under these programs. Information about these block grant programs may be obtained directly from these agencies by contacting HUD and BJA respectively at:

Mr. Cardell Cooper
Assistant Secretary
Office of Community Planning and Development
HUD
Washington, D.C. 20410
Telephone (202) 708-2690

Ms. Nancy Gist
Director
Bureau of Justice Assistance
Office of Justice Programs
DOJ
810 7th Street, N.W.
Washington, D.C. 20531
Telephone (202) 514-6278

An additional resource that Judge Ware might find useful is entitled "Opening the Courthouse Door; An ADA Access Guide for State Courts", published by the American Bar Association's Commission on Mental and Physical Disability Law in 1992. This guide contains a chapter with suggestions on funding resources that may be helpful to provide access to the courts for persons with disabilities. We could not provide a copy of this copyrighted material but it is available by contacting:

American Bar Association
Commission on Mental and Physical
Disability Law
740 15th Street, N.W.
Washington, D.C. 20005
Telephone (800) 988-2221
Refer to ABA Product Code No. 344-0022

We also suggest a review of programs listed in the Catalog of Federal Domestic Assistance now available on the web (Enclosure 2). It is the most comprehensive summary of financial assistance available from the federal government and includes information about application procedures for both block (formula) and discretionary grants. According to Ms. Parker of NCSC, it is possible that courts may qualify for funding under the Department of Transportation's (DOT) block grant transportation programs, as well as those administered by HUD and BJA. DOT's block grants are listed in the Catalog.

With respect to Judge Ware's request about obtaining additional drug enforcement agents and border patrol personnel in his area, we have referred his correspondence directly to the Drug Enforcement Administration and Immigration and Naturalization Service for their review.

I hope this information is useful in responding to your constituent. Please do not hesitate to contact the Department if we can be of assistance in other matters.

Sincerely,

Bill Lann Lee
Assistant Attorney General
Civil Rights Division

Enclosures

824

January 5, 2001

The Honorable Don Nickles
United States Senator
3310 Mid-Continent Tower
409 South Boston
Tulsa, Oklahoma 74103-4007

Dear Senator Nickles:

This letter is in response to your inquiry on behalf of your constituent, xxxxxxxxxxxxxxxxxxxxxxxx, Oklahoma, who designs web sites. Xxxxxxxxxx questions whether or not section 508 of the Rehabilitation Act of 1973, as amended (section 508) applies to websites made available to the general public by private industry or by state and local governments. Please excuse our delay in responding.

According to his letter, xxxxxxxxxx found contradictory information when he tried to conduct online research regarding "the Americans with Disabilities Act Title III Section 508." xxxxxxxxxxx confusion appears to stem from a misunderstanding of the differences between the Americans with Disabilities Act of 1990 (ADA) and a separate law - the previously mentioned section 508. As stated in the Department of Justice's technical assistance materials quoted by xxxxxxxxxx, section 508 does not apply directly to any individuals or entities other than the federal government. The ADA, however - not section 508 - controls the degree to which the websites of state and local governments, and those of private entities falling within the definition of "public accommodation," must be made accessible to individuals with disabilities.

The applicability of the ADA to the online activities of covered entities is explained in the enclosed brief, which was filed with the Fifth Circuit Court of Appeals in the case of Hooks v. Okbridge. The brief explains that commercial businesses that otherwise qualify as "public accommodations" - whether they provide services solely over the Internet or in combination with a "bricks and mortar" establishment - are subject to the ADA's prohibition against discrimination on the basis of disability.

xxxxxxxxxx' allegation that the Department reserves its technical assistance for its own employees rather than for the tax-paying public is mistaken. xxxxxxxxxx directed his question to an e-mail address (sec508.questions@usdoj.gov)(link sends e-mail), which is indeed reserved for use by federal employees who are responsible for their agencies' compliance with section 508. The Department has limited the scope of this e-mail address because section 508 only applies to federal agencies. All persons who send messages to this address receive the same automated reply that xxxxxxxxxx received. [(1)] This automated response was carefully designed to give members of the public, who are seeking information about section 508 or the ADA, the toll-free telephone numbers of the Department's ADA Information Line, where specially trained staff members are prepared to answer their questions. Only the targeted e-mail address (sec508.questions@usdoj.gov)(link sends e-mail) is reserved for federal employees.

I hope this information will assist you in responding to your constituent and that our explanation clarifies the pertinent differences between section 508 and the ADA. Please do not hesitate to contact the Department if we can be of assistance in other matters.

Sincerely,

Bill Lann Lee
Assistant Attorney General
Civil Rights Division

Enclosure

1. The text of the automated e-mail response is as follows:

This e-mail address (sec508.questions@usdoj.gov)(link sends e-mail) is reserved for federal employees who are working with their agencies' compliance with section 508 of the Rehabilitation Act.

If you are a federal employee corresponding on behalf of an agency, we will respond to your message as soon as possible.

If you are not a federal employee, you will not receive a response to your inquiry, nor will you receive any other acknowledgment of your correspondence. We regret this circumstance, but our limited resources prevent us from responding to inquiries unrelated to the implementation of section 508 by public agencies.

Anyone with general questions about the Americans with Disabilities Act (ADA) may call the Department of Justice's toll free ADA Information Line, 1-800-514-0301 (voice) or 1-800-514-0383 (TTY). Thank you.

825

January 19, 2001

The Honorable Bob Graham
United States Senator
2252 Killearn Center Boulevard
Third Floor
Tallahassee, Florida 32308

Dear Senator Graham:

This is in response to your inquiry on behalf of your constituents, xxxxxxxxxxxxxxxxxxxxxx. Xxxxxxxxxxxxxxxxx have asked that the Americans with Disabilities Act (ADA) be amended to prohibit the "forced" relocation of persons with developmental disabilities to a more integrated setting. Please excuse our delay in responding.

The xxxxx letter describes the situation of their son, xxxxx xxxxx, as follows. xxxxx is an adult with developmental disabilities who is a long-time resident of the Melmarck Institute, located in Pennsylvania. County and state officials want xxxxx to be moved to a smaller home in order to comply with the ADA mandate for community-based housing for persons with developmental disabilities, despite his desire to remain in his current setting, and have denied the request of xxxxxxx family to apply his Medicaid payments to the cost of his current home.

The Department of Health and Human Services (HHS), through its regional office in Philadelphia, Pennsylvania, has fully and thoroughly investigated the numerous complaints that xxxxxxx xxxxxxxxxx have filed against Pennsylvania agencies in connection with their son. These complaints have been rejected by HSS on the basis that the actions of the agencies were consistent with the ADA's requirement for treatment in the most integrated setting appropriate to the needs of persons with disabilities. Attached are two letters sent by HSS to xxxxxxxxxxxxxxxxxx in May 1999 and February 2000. It should be noted that the Department does not serve as a reviewing authority for the administrative actions or decisions of other federal agencies following their investigations of complaints about discrimination.

Providing programs and services in the most integrated setting appropriate to the needs of persons with disabilities is a core concept of the ADA and the Department's implementing regulations. The application of this concept to persons with developmental disabilities was recently upheld by the Supreme Court in Olmstead v. Zimring (527 U.S. 581, 1999) (holding that mentally disabled patients may in specified

circumstances compel a state to provide them treatment in a less segregated setting). The concept of the enhanced integration of persons with disabilities is a fundamental principle underlying the ADA and its goal of a fuller life for the persons it is designed to protect. The amendment to the ADA requested by xxxxxxxxxxxx xxxxx could undermine the efforts by states to provide services to people with disabilities in their communities.

We hope this information will be helpful to you in responding to your constituents. Please do not hesitate to contact the Department if we can be of assistance in other matters.

Sincerely,

Bill Lann Lee
Assistant Attorney General
Civil Rights Division

Enclosures

826

January 19, 2001

The Honorable William E. Kennard
Chairman
Federal Communications Commission
Washington, DC 20554

Dear Chairman Kennard:

Thank you for your informative letter to Attorney General Reno concerning whether the federal regulations implementing the Americans with Disabilities Act of 1990 (ADA) require covered entities to provide an effective means of telephone communication for individuals with disabilities who are unable to access interactive voice response systems and voicemail. Your letter provides information that people with disabilities who rely on relay services to facilitate telephone communication are unable to use these systems despite the Federal Communications Commission's (FCC) repeated efforts to address access through the regulations governing the relay system required by title IV of the ADA and the regulations implementing the Telecommunications Act of 1996.

Your letter suggests that there are several alternative means through which access to the services provided by IVR systems or voicemail may be provided to individuals with disabilities. These options include obtaining and using accessible IVR and voicemail equipment, providing a dedicated TDD line, allowing an individual to "opt out" of an IVR system to speak with a live operator, or providing an alternative telephone number at which a relay system user could contact a live operator.

At the present time, the regulations implementing the ADA, 28 C.F.R. pts.. 35 and 36, do not require covered entities to utilize accessible IVR systems, accessible voicemail equipment, or dedicated TDD lines. Public entities are required to use TDD's or "equally effective telecommunications systems" when the public

entity communicates with applicants and beneficiaries by telephone. 28 C.F.R. section 35.161. However, the appendix to the regulation specifically states that public entities may meet this obligation by utilizing the TDD relay service required by title IV of the ADA. 28 C.F.R. pt. 35, App. A. Similarly, the auxiliary aids provisions of the title III regulation, 28 C.F.R. section 36.303(d)(2), provides that "[t]his part does not require a public accommodation to use a TDD for receiving or making telephone calls incident to its operations." In responding to commenters who questioned the application of these provisions to automated systems or voice recordings, the Department noted its view that these telecommunication issues would be more appropriately addressed by the FCC in its rulemaking under title IV of the ADA. 28 C.F.R. pt. 35, App. A; 28 C.F.R. pt. 36, App. B.

It is significant to us that, although the FCC has addressed these issues in its regulations, you continue to receive a significant number of consumer complaints that indicate that the FCC's regulations have failed to ensure that relay system users achieve effective communication with entities that use interactive voice response systems or voicemail. Because the FCC's extensive efforts have not proven successful in providing effective communication, we believe that it is appropriate and necessary for the Department of Justice to revisit this issue under the ADA regulations. We anticipate that the Department will be proposing amendments to its ADA regulations later this year. We will include new regulatory language on the use of interactive voice response systems and voicemail among the issues that are addressed in that rulemaking. We will also include the information in your letter as a factual basis for the development of new rules establishing requirements for what constitutes effective communication.

Thank you for bringing this important issue to our attention. Please do not hesitate to contact the Department if we can be of assistance in other matters.

Sincerely,

Bill Lann Lee
Assistant Attorney General
Civil Rights Division

827

January 19, 2001

The Honorable Max Sandlin
Member, U.S. House of Representatives
Post Office Box 538
Sulphur Springs, Texas 75483

Dear Congressman Sandlin:

This letter is in response to your inquiry on behalf of your constituent, xxx xxxxx xxxx. Xxx xxxx sent you an email regarding the Americans with Disabilities Act (ADA) requirements for private toilet and bathing facilities. Please excuse the delay in responding.

Title III of the ADA, which prohibits discrimination against persons with disabilities by public accommodations, requires owners or operators of a place of public accommodation, such as a restaurant, bank, hospital, car dealership, etc., to remove architectural barriers to access. Title III also requires facilities that are newly designed, constructed or altered to be readily accessible to and usable by persons with disabilities. Therefore, the ADA requires all public and common use toilet and bathing facilities to be accessible to people with disabilities. A limited exception, however, exists for private toilet and bathing facilities intended

for the use of a single occupant of a private office. The ADA requires that private toilet and bathing facilities must be designed to be "adaptable," that is, designed to be easily modified to be accessible.

In his email, xxx xxxx comments that his employer, a hospital, constructed toilet and bathing facilities for the use of its emergency medical service personnel. Under the ADA, toilet and bathing facilities for the use of employees are considered common use facilities. Therefore, the hospital's common use toilet and bathing facilities must be accessible to people with disabilities.

xxx xxxx also comments in his email that a friend, who owns a car dealership, wishes to construct a new building which includes a private shower in his office. The ADA does not require private toilet and bathing facilities for the use of the occupant of a private office to be fully accessible at the time of construction. The ADA, however, requires the private toilet and bathing facilities to be designed to be adaptable so that accessible elements can be easily installed when needed after construction.

Please note that the ADA establishes only minimum accessibility requirements. Nothing in the ADA prohibits state and local governments from establishing and enforcing more stringent requirements for accessibility. Therefore, the State of Texas or a local building authority may require toilet and bathing facilities that serve private offices to be fully accessible.

If xxx xxxx has additional questions, he may wish to call the Department's ADA Information Line. The ADA Information Line provides technical assistance regarding the rights and obligations of individuals, businesses, agencies, and others covered or protected by the ADA. This technical assistance is available by calling 800-514-0301 (Voice) or 800-514-0383 (TDD).

I hope this information is helpful to you in responding to your constituent. Please do not hesitate to contact the Department if we can be of assistance in other matters.

Sincerely,

Bill Lann Lee
Assistant Attorney General
Civil Rights Division

828

February 6, 2001

Dr. Henry Betts
Past Medical Director/President/CEO
Rehabilitation Institute of Chicago
345 East Superior Street
Chicago, Illinois 60611-4496

Dear Dr. Betts:

This letter is in response to your request that the Attorney General address two issues:

- the accessibility to persons with disabilities of programs conducted under the federal E-Rate Discount Program, 47 U.S.C.A. ï½§ 254(h); and
- the accessibility of information kiosks in airports.

E-Rate Program

The Universal Service Fund for Schools and Libraries (E-Rate Program) was created by section 254 of the Communications Act, 47 U.S.C. ï½§ 254. It is administered through a nonprofit entity, the Universal Service Administrative Company, Schools and Libraries Division, and funded through the Federal Communications Commission.

Recipients of federal funds are subject to section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. ï½§ 794a. Section 504 generally requires programs to be accessible to people with disabilities. Under section 504, schools and libraries that receive federal assistance through the E-Rate Program or other federal program should provide their computer and telecommunications services in a manner that does not discriminate against people with disabilities. For instance, a library may need to provide an appropriate auxiliary aid or service - such as screen reading software - upon request to a user who is blind, unless doing so would impose an undue hardship. It may also need to ensure that a computer station is configured so that it can be utilized easily by someone who uses a wheelchair and take other appropriate actions.

In addition, regardless of whether schools and libraries receive federal assistance, they have obligations under the Americans with Disabilities Act (ADA). Public schools and public libraries are covered by title II of the ADA, while private schools and private libraries are covered by title III of the ADA.

As you know from your work in this area, section 504 of the Rehabilitation Act and titles II and III of the ADA incorporate some degree of flexibility in determining how entities may meet their nondiscrimination obligations.

If you have specific information about libraries or schools that have violated section 504 of the Rehabilitation Act or title II of the ADA, please send that information to the U.S. Department of Education. The office serving your region is:

Mr. Don Pollar
Office for Civil Rights
Midwestern Division
U.S. Department of Education
111 North Canal Street, Suite 1053
Chicago, Illinois 60606

Title III of the ADA covers private entities that may or may not receive federal financial assistance. If an entity receives federal funds, it is covered by section 504. Complaints against such an entity may be referred to the Department of Education at the above address. Complaints against private entities that do not receive federal financial assistance may be directed to the Department of Justice at the following address:

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

Information Kiosks

The various types of entities that own or operate information kiosks at airports are subject to different federal disability rights laws. Airlines are covered by the Air Carriers Access Act, 49 U.S.C.A. ï½§ 41705. Public entities, such as state and local governments, are covered by title II of the ADA, 42 U.S.C. ï½§ 12131-61. Private entities whose actions affect commerce and who fall within one or more of 12 "public accommodation" categories - including, among others, banks or insurance companies - are subject to title III of the ADA, 42 U.S.C. ï½§ï½§ 12181-88. All commercial entities - including those that are not "public accommodations" - are subject to the new construction and alteration provisions of title III. All entities receiving federal assistance are subject to section 504 of the Rehabilitation Act. The legal obligations contained in these laws differ in some significant respects.

The Department of Justice offers extensive technical assistance on the ADA. The ADA Information Line is available during weekdays to provide technical assistance. It also provides a 24-hour automated service for ordering ADA materials. This free service provides answers to general and technical questions about ADA requirements and is a source for free ADA materials. You may reach the ADA Information Line by calling:

1-800-514-0301 (voice)
1-800-514-0383 (TTY)

ADA information is also available on the Department of Justice's ADA Home Page:

www.usdoj.gov/crt/ada/adahom1.htm

Questions regarding an entity's obligations under section 504 of the Rehabilitation Act are generally handled by the federal agency that is providing financial assistance to the entity. The Department of Transportation is likely to be the agency to contact for many airport operations:

Ms. Mary N. Whigham Jones
Deputy Director
Departmental Office of Civil Rights
Office of the Secretary
Department of Transportation
400 7th Street, S.W., Room 10215
Washington, D.C. 20590

The Department of Transportation is also the appropriate agency to respond to questions regarding the Air Carriers Access Act.

Finally, you suggest that the issue of whether information kiosks at airports have to be accessible to persons with disabilities is governed by section 508 of the Rehabilitation Act, 29 U.S.C. ï½§ 794d. Section 508 applies to federal agencies' electronic and information technology. Information kiosks at airports - unless those kiosks are owned or operated by federal agencies - are not directly subject to section 508. The Department of Education is responsible for determining whether state governments' electronic and information technology must comply with the accessibility standards for section 508, as part of their responsibilities under the Assistive Technology Act, as amended, 29 U.S.C. ï½§ï½§ 3001 et seq. Questions about whether state governments that own airports have a responsibility to ensure that their information kiosks are accessible to persons with disabilities under the Assistive Technology Act should be directed to the Department of Education.

We hope this information has been helpful to you. Please do not hesitate to contact the Department if we can be of assistance in other matters.

Sincerely,

John L. Wodatch
Chief
Disability Rights Section

829

February 6, 2001

The Honorable Ted Stevens
United States Senator
Federal Building - Box 4
101 12th Avenue
Fairbanks, Alaska 99701

Dear Senator Stevens:

This is in response to your inquiry on behalf of your constituent, xxxxxxxxxxxxxx, who contacted you about a complaint he filed with the Disability Rights Section of the Civil Rights Division. Please excuse our delay in responding.

We did receive to complaints from xxx xxxxxxx on July 12, 2000. One named the Fairbanks North Star Borough and the other named the 4th Judicial District of the Alaska state courts. Both concern xxx xxxxxxx's property tax dispute with the Borough and the alleged failure of both entities to provide effective communication to xxx xxxxxxx, who is blind.

We apologize for the delay in responding to xxx xxxxxxx. His complaints raised a number of complicated issues that have engendered a thorough review. The first is whether the Borough, as a public entity, had an obligation to provide him with documents in alternate formats when interacting with xxx xxxxxxx as a citizen. The answer is clearly "yes." Under title II of the Americans with Disabilities Act of 1990 (ADA), a state or local government entity must take such steps as are necessary to ensure that communication with members of the public with disabilities is as effective as communication with others, unless to do so would cause a fundamental alteration of the program, activity, or service or an undue financial or administrative burden. The Department has specifically stated that tax bills, for example, must be made available in large print or audio tape (or Braille, if necessary) for persons with vision impairments. The Americans with Disabilities Act Title II Technical Assistance Manual, II-7.1000 (1993 and 1994 Supp.)

It appears from the information provided that the Borough provided audio tapes of documents to xxx xxxxxxx until he filed suit against it. The second issue, then, is whether, once the Borough became a defendant, it had an obligation to provide its court pleadings in an accessible format. The Department has not interpreted the law to require this result.

Xxx xxxxxxx has also alleged, however, that the state court failed to communicate effectively with him in the course of adjudicating his dispute with the Borough. Under title II, access to the case files in the court clerk's office is a covered "service" to which the duty to provide effective communication attaches. It appears from the information provided that the clerk's office of the 4th Judicial District attempted to provide audio tapes of the court's written rulings and correspondence to xxx xxxxxxx the contents of the whole court record, including the submissions of the Borough, or believed that the task would have constituted an undue administrative or financial burden.

I regret to say that the Disability Rights Section cannot pursue these issues further, however, because it simply lacks the resources to do so. I can understant xxx xxxxxxx's frustration at our inability to take up his cause. I am sorry that we cannot assist every individual whose ADA rights may have been violated.

Additionally, it is unclear what could be done at this juncture to remedy the alleged ADA violation that occurred in the course of xxx xxxxxxx's state court litigation. The Department does not have the authority to review the judicial decisions of courts in individual cases. Although discrimination on the basis of disability in violation of the ADA may be a basis for challenging a court's decision, that challenge must be made through the applicable judicxial appeals procedure.

The Department policy in this regard is based on federal judicial decisions, including U.S. Supreme Court precedent. See, e.g., District of Columbia Ct. or Appeals v. Feldman, 460 U.S. 462, 476 (1982); Campbell v. Greisberger, 80 F.3d 703, 706-707(2d Cir. 1996) (federal court has no jurisdiction to hear an ADA-based challenge to a state court decision). These cases make clear that ADA challenges to state or local court decisions must be made through the state and local appellate process, ultimately including appeal to the U.S. Supreme Court.

We have enclosed a list of organizations in Alaska that advise and advocate on disability issues. Xxx xxxxxxx may wish to consult one of these to explore any options or bases on which to appeal the decision made with respect to his tax case.

I hope this information is useful in responding to your constituent. Please do not hesitate to contact the Department if we can be of assistance in other matters.

Sincerely,

William R. Yeomans
Chief of Staff
Civil Rights Division

Enclosures

The Honorable Steny H. Hoyer
Member, U.S. House of Representatives
U.S. District Courthouse
6500 Cherrywood Lane, Suite 310
Greenbelt, Maryland 20770

Dear Congressman Hoyer:

This is in response to your inquiry on behalf of your constituent, xxxxxxxxxxxxxxxxxxxxxxxxx, concerning the complaint she filed with this office under title III of the Americans with Disabilities Act of 1990 (ADA).

Initially, you requested our guidance on the statute of limitations for private litigation under title III of the ADA. Title III of the ADA is silent with respect to the statute of limitations for private litigation. You should be aware, however, that because title III is silent on the statute of limitations period for private rights of action, federal courts, when applying the ADA, will apply the most analogous state statute of limitations. "When Congress has not established a time limitation for a federal cause of action, the settled practice has been to adopt a local time limitation as federal law if it is not inconsistent with federal law or policy to do so." (Wilson v. Garcia, 471 U.S. 261, 266 (1985)). This process was endorsed by Congress in 42 U.S.C. ï½§ 1988(a), which directs the court to 1) follow federal law if federal law provides a limitations period; 2) apply the common law, as modified by state constitution or statute, if no limitations period is provided by federal law; but 3) apply state law only if it is not inconsistent with the Constitution and laws of the United States. (Hickey v. Irving Indep. Sch. Dist., 976 F.2d 980 (5th Cir. 1992)). Federal courts generally interpret Congressional silence on statute of limitations periods as a directive to apply the most closely analogous statute of limitations under state law by considering the essential nature of the federal claim and the extent to which the proceedings provided under respective state and federal causes of action are functionally equivalent. (Owens v. Okure, 488 U.S. 235 (1989); Andrews v. Consolidated Rail Corp., 831 F.2d 678 (7th Cir. 1987); Wills v. Ferrandino, 830 F. Supp. 116 (D. Conn. 1993)). Because title III does not provide its own statute of limitations for private rights of action, the court must "borrow" the most appropriate state statute of limitations.

Thus, if xxxxxxxxxxxx decides to bring a private right of action under title III, proceedings may be time-barred by statutes of limitations applied by the courts. Xxxxxxxxxxxx may wish to consult a private attorney to determine the appropriate statute of limitations in Maryland.

xxxxxxxxxxxx also wished to express her dissatisfaction with the Department's handling of her complaint. We regret that xxxxxxxxxxxx was dissatisfied with the outcome of our investigation. In addition to litigation, there are a number of avenues that xxxxxxxxxxxx may wish to pursue to resolve this complaint, including consulting state or local authorities, disability rights organizations, or organizations that provide alternative dispute resolution services. We have enclosed a list of organizations serving your area. These groups may be able to identify resource groups available to provide assistance. A state or local bar association may also be able to provide the names of private attorneys or mediation services that handle disability rights matters.

To assist members of the public to understand their rights and responsibilities under the ADA, the Department of Justice has published technical assistance manuals that explain the ADA regulations. In addition, the Department operates an ADA information line (800-514-0301 (voice) or 800-514-0383 (TTY)). Members of the Disability Rights Section staff are available to answer questions on the information line on

Monday, Tuesday, Wednesday, and Friday from 10:00 a.m. to 6:00 p.m., Eastern time. On Thursday, the information line is staffed from 1:00 p.m. to 6:00 p.m.

For your information, I am enclosing a copy of the Division's ADA Status Report that summarizes our ADA enforcement activity. I hope this information is useful to you in responding to your constituent. Please do not hesitate to contact the Department if we can be of assistance in other matters.

Sincerely,

William R. Yeomans
Acting Assistant Attorney General
Civil Rights Division

Enclosures

831

March 28, 2001

Barbara Greenstein
Deputy City Attorney
City of Santa Monica
City Attorney's Office
1685 Main Street, Room 310
P.O. Box 2200
Santa Monica, CA 90407-2200

Re: DJ 202-12C-179
Gayle v. Ampco System Parking, Inc., et al.

Dear Ms. Greenstein:

This letter is in response to your letter of January 9, 2001, as well as the blueprints and photographs of parking structures that were submitted to the Department of Justice for review. The City of Santa Monica, which owns parking facilities in and around Santa Monica's Third Street Promenade, was notified in November, 2000, that the Department had received a complaint alleging that the parking facilities around the Promenade are not accessible to persons with disabilities in violation of the Americans with Disabilities Act of 1990 ("ADA"). The complaint upon which our investigation is based alleges that the city-owned parking structures around Santa Monica's Third Street Promenade do not have any van accessible parking spaces or accessible ticket dispensers or cashiers.

Title II of the ADA requires that each service, program, or activity conducted by a public entity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities. See 28 C.F.R. ï½§35.149 and ï½§35.150. Although not every existing facility need be made accessible, the service, program, or activity must be accessible unless the proposed action would fundamentally alter the service, program, or activity or would result in undue financial and administrative burdens. See 28 C.F.R. ï½§35.150. In addition, accessible features must be maintained so they are readily accessible to and usable by individuals with disabilities. See 28 C.F.R. ï½§35.133. Accessible routes may not be obstructed. See Appendix A to 28 C.F.R. ï½§35.133.

In addition, Title III of the ADA prohibits discrimination on the basis of disability by public accommodations and requires entities that own, lease, or operate places of public accommodation to design, construct, and alter them in compliance with the Standards for Accessible Design set forth in Appendix A to 28 C.F.R. Part 36. See 28 C.F.R. ï½§36.101.

The Department understands that the City contracts with APCOA/Standard Parking to operate parking structures one through six on Fourth and Second Streets around Santa Monica's Third Street Promenade.

APCOA/Standard Parking must ensure that the structures comply with Title III and the City is obligated to ensure that the structures are operated in a manner that complies with the City's Title II obligations.

It is the responsibility of the Attorney General, and of this Division in particular, to enforce the provisions of Title II and Title III of the ADA. Where an entity is found to be in violation of Title II or Title III of the ADA, it is the responsibility of the Attorney General to take appropriate action to eliminate that violation, including the presentation of the matter to the appropriate court for civil proceedings. However, in the interests of resolving the complaint expeditiously and without resort to litigation, we are seeking your continued cooperation in addressing the following concerns.

As acknowledged in your letter, in November 2000, Department staff inspected the six parking structures around the Third Street Promenade. All six structures, as currently operated, use a single entryway for both entry and egress that provides insufficient vertical clearance for van accessibility in violation of the ADA. See Appendix A to 28 C.F.R. Part 36 ("Standards for Accessible Design"), ï½§ï½§ 4.1.2(5)(a) and (b). Our inspection also identified the following ADA violations:

1. On the upper levels of structures one through six, the accessible parking spaces do not have access aisles that are five feet wide and do not have accessible routes to the elevators. For example, in parking structure five, the accessible parking space near the West elevator has a built-up curb ramp that is too steep for people who use wheelchairs and that projects into the parking space. This curb ramp also creates an access aisle that is not level. See Standards for Accessible Design, ï½§ï½§ 4.3.7; 4.3.8; 4.7.2; 4.7.8; 4.6.6. Similarly, the accessible parking space near the east elevator does not have an access aisle that is five feet wide and has a change in level between the access aisle and the sidewalk that is greater than 1/4". See Standards for Accessible Design, ï½§ï½§ 4.6.3 and Figure 9; 4.3.8; 4.5.2.
2. In structure six, the walkway from the east elevator to Second Street is less than 36" wide as it passes the corner of the elevator structure and there is no curb ramp where the walkway meets the sidewalk. See Standards for Accessible Design, ï½§ï½§ 4.3.3; 4.3.8; 4.5.2; 4.7.
3. The men's and women's toilet rooms in structures one through six are not accessible to people using wheelchairs, visually impaired individuals, and other individuals with disabilities:
    A. The routes to the toilet rooms from the accessible parking spaces, the elevators, and the street/alley are not accessible. For example, in structures two, three, four, and six, the ramps to the toilet rooms from the alley and first level of parking are too steep. See Standards for Accessible Design, ï½§ 4.8.2. In structures one through six, the ramps to the restrooms do not provide handrails on both sides of the ramp and/or are placed too high. See Standards for Accessible Design, ï½§ 4.8.5. In structure three, the ramp from the alley to the toilet rooms is less than 36" wide. See Standards for Accessible Design, ï½§ 4.8.3.
    B. The self-closing faucets do not stay open for at least ten seconds. See Standards for Accessible Design, ï½§ 4.19.5.
    C. The toilet paper dispensers do not permit continuous paper flow and are mounted too far away from the rear wall. See Standards for Accessible Design, ï½§ï½§ 4.16.6; 4.17.3; Figure 30(d).
    D. The hand dryers protrude more than four inches into the circulation path. Appropriate cane detectible barriers to warn blind or visually impaired persons may be installed. See Standards for Accessible Design, ï½§ 4.4.1.
    E. In the men's toilet rooms, the urinal and its flush are mounted too high. See Standards for Accessible Design, ï½§ï½§ 4.18.2 and 4.18.4.
    F. In some of the designated accessible toilet stalls, the rear grab bar is missing and/or the far end of the side grab bar is not at least 52" from the rear wall. See Standards for Accessible Design, ï½§ï½§ 4.17.6; 4.17.3; Figure 30(d).

G. All signs designating the toilet rooms do not have raised characters accompanied with Grade 2 Braille non-glare finish, and are mounted too high. See Standards for Accessible Design, ï½§ï½§ 4.30.1; 4.30.4; 4.30.5; 4.30.6.

One of our primary concerns continues to be the lack of any explanation as to why structures one through six are currently operated using only the primary entryway that provides insufficient clearance for van accessibility. Our inspection of the structures identified an alternative point of entry ("second entryway") into each of the six parking structures (specifically, the entryway along the "east aisle" in structures two, four, and six and the "west aisle" in structures one, three, and five). Near these second entryways is a section of parking spaces reserved for accessible parking. These second entryways and the accessible parking spaces near them have sufficient vertical clearance for several van accessible parking spaces. Although these areas seem to have been open to the public previously, they are now closed off to the public by gates, chains, and other barriers, and apparently are currently used by police and public works vehicles, and for trash.

In one of our telephone conversations regarding the second entryways, you mentioned a traffic study that was evaluating the traffic flow pattern of downtown Santa Monica. If the City's position is that opening the second entryway in structures one through six to provide van accessible parking is an undue financial or administrative burden, the head of the public entity or his or her designee must make such a determination and submit a written statement of the reasons for reaching that conclusion. See 28 C.F.R. ï½§35.150(a)(3).

Individuals with disabilities must be afforded services that are equal to and as effective as those afforded to individuals without disabilities. See 28 C.F.R. ï½§35.130(b)(1)(ii) and (iii). Integration is fundamental to the purposes of the ADA. See Appendix A to 28 C.F.R. ï½§35.130. A public entity may not provide different or separate services for individuals with disabilities or otherwise limit the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the service. See 28 C.F.R. ï½§35.130(b)(1)(iv) and (vii).

In this case, you sent to us for review blueprints and photographs of six additional city-owned or operated parking structures in downtown Santa Monica, including: structures seven and eight, the Ken Edwards Center, the Wilshire House, the Main Library, and the Menorah Housing Project. However, none of these parking structures is comparable to the public parking provided for individuals without disabilities for the Third Street Promenade. [(1)] As stated in your letter, structures seven and eight provide parking for Santa Monica Place, a shopping mall immediately south of the Promenade. It is our understanding that the Wilshire House provides subsidized housing for the elderly and mobility impaired and that the Ken Edwards Center functions as a community center, has tenants, holds meetings and community forums, and has very limited hours. It is inappropriate to relegate individuals with disabilities to park at the library, a public housing project, a senior housing complex, a community center, or a completely separate shopping mall, in order to access the Third Street Promenade when individuals without disabilities can choose to park in structures one through six which surround the Promenade in a variety of locations.

In an effort to settle this matter without resort to litigation, the Department recommends that the City voluntarily agree to provide van accessible parking for the Third Street Promenade by opening to the public the second entryways in structures one through six, correcting the other aforementioned ADA violations, and installing the requisite signage to direct persons to van accessible parking spaces and accessible restrooms in compliance with the Standards for Accessible Design, ï½§ï½§ 4.1.2(7); 4.30; and 4.6.4. Please forward your written response no later than April 27, 2001. If you have any questions, please do not hesitate to contact me at (202) 353-2288. Thank you for your cooperation.

Sincerely,

Angela Liang
Trial Attorney
Disability Rights Section

1. In addition, the blueprints and photographs provided to us are incomplete and do not have sufficient enough information for us to determine whether they have van accessible parking. The blueprints for structure eight do not indicate where the parking spaces are located and we were not provided the blueprints for the first level of parking for structure seven.

832

June 6, 2001

The Honorable Joseph R. Pitts
United States Senator
Lancaster County Courthouse
50 North Duke Street
Lancaster, Pennsylvania 17602

Dear Senator Pitts:

This letter responds to your correspondence on behalf of your constituent, xxxxxxxxxxxxxxx, whom you indicated had heard there was a rule or regulation that provides free Internet service to people with disabilities. Your correspondence particularly questioned whether there is any such regulation under the Americans with Disabilities Act (ADA) of 1990. Please excuse our delay in responding.

The ADA prohibits discrimination against individuals with disabilities in employment, state and local government services, public accommodations, transportation, and telecommunications. Within its remedies, it is possible that an employee or program participant might be provided with modified computer equipment to permit access to the Internet if accessing the Internet is an essential function of an employee's job, or if accessing the Internet is required to benefit from a covered program. The ADA, however, has no specific provisions to assure that individuals with disabilities will be provided with free access to computers or the Internet.

I believe, however, that your constituent might be referring to the New Freedom Initiative that was announced by President Bush on February 1, 2001. The New Freedom Initiative is a set of proposals sent to Congress that focuses on increasing access to assistive and universally designed technologies, expanding educational opportunities, promoting home ownership, integrating Americans with disabilities into the workforce, expanding transportation options, and promoting full access to community life. Title I of the Initiative proposes a significant increase in federal funding for guaranteed low-interest loans to purchase assistive technology. The prohibitive cost of computers that are configured with assistive technology was specifically cited as an example of why such loans are necessary. I have enclosed a copy of the New Freedom Initiative and the White House press release for your consideration.

I hope this information assists you in responding to your constituent. Please do not hesitate to contact the Department if we can be of assistance in other matters.

Sincerely,

William R. Yeomans
Acting Assistant Attorney General
Civil Rights Division

Enclosures

833

July 5, 2001

The Honorable Eleanor Holmes Norton
Member, U.S. House of Representatives
815 15th Street, NW, Suite 100
Washington, D.C. 20005-2201

Dear Congresswoman Norton:

This is in response to your letter on behalf of your constituent, xxx xxxxxxx xxxxx xxxxxx, regarding the Americans with Disabilities Act (ADA) and the requirements for public accommodations. We apologize for the delay in responding.

Title III of the ADA, which applies to public accommodations and commercial facilities, went into effect on January 26, 1992. Pursuant to title III, public accommodations, like movie theaters, must provide effective communication for individuals with hearing, vision, and speech disabilities via the use of auxiliary aids. Examples include sign language interpreters, assistive listening devices, TDDs, audiotaped materials, large print, Braille, and readers. The type of auxiliary aid needed to provide effective communication will depend on the nature and content of the conversation or discussion. Covered entities are not required to take steps that would result in undue financial or administrative burdens.

Your constituent, xxx xxxxxx, who is a person with a hearing impairment, complains specifically about assistive listening systems at movie theaters in the Baltimore County area. In his earlier complaint filed with the Justice Department about a General Cinemas movie theater, he stated that the assistive listening system then available at the theater was ineffective and that the system was not maintained, including a failure to replace batteries or repair damaged equipment. He noted that he had heard about a different auxiliary aid, the loop system, that might perform better than the assistive listening system currently in use at General Cinemas. By letter dated March 12, 2001, the Department declined to investigate that complaint citing a lack

of resources, and advising him of his right to file a private lawsuit. In that letter, the Department also provided technical assistance materials and the toll-free telephone number at which he could reach trained Department staff who would be able to answer questions or provide additional assistance.

The primary enforcement mechanisms under title III are private lawsuits brought by individuals and suits by the Department of Justice whenever it has reasonable cause to believe that there is a pattern or practice of discrimination, or that the discrimination raises an issue of general public importance. Unfortunately, the Civil Rights Division is unable to pursue many complaints received pursuant to title III due to the huge volume of complaints and limited staff and resources.

In this situation, as described by xxx xxxxxx, the movie theater has a responsibility under the federal title III regulation currently in effect to "maintain in operable condition those features of facilities and equipment that are required to be readily accessible to and usable by persons with disabilities..." 28 C.F.R. ï½§ 36.211. If the assistive listening system in use at the theater is not maintained properly, or if fresh batteries are not available to operate the assistive listening system, the theater would be in violation of that provision of the federal ADA title III regulation. However, the theater would not be required to replace the current assistive listening system with an alternative listening system if the current system provides effective communication when properly maintained.

The Department actively pursues investigations involving movie theaters and effective communication. For example, a nationwide settlement agreement with Loews Cineplex Odeon theaters required that chain to provide and maintain assistive listening systems at all of their theaters nationwide. Another movie theater chain in Arizona entered a similar agreement to provide assistive listening systems throughout their properties in that state.

I hope this information is helpful in responding to your constituent. Please do not hesitate to contact the Department if we can be of assistance in other matters.

Sincerely,

William R. Yeomans
Acting Assistant Attorney General
Civil Rights Division

834

July 30, 2001

DJ No. 202-26S-0

Mary E. Ham, Esq.
Vice President, General Counsel
Steak'n Shake, Inc.
500 Century Building
36 South Pennsylvania Street
Indianapolis, Indiana 46204

Dear Ms. Ham:

This letter responds to your April 9, 2001, letter, in which you pose several questions about accessibility requirements under title III of the Americans with Disabilities Act (ADA) in relation to the Steak'n Shake chain of restaurants. Please excuse our delay in responding.

The ADA authorizes the Department of Justice to provide technical assistance to individuals and entities with rights or obligations under the Act. This letter provides informal guidance to assist you in understanding the ADA accessibility standards. However, this technical assistance does not constitute a legal interpretation of the statute and it is not binding on the Department.

Title III of the ADA prohibits owners or operators of a place of public accommodation, such as the Steak'n Shake restaurant chain, from denying persons with disabilities an equal opportunity to participate in or benefit from the goods and services that are provided. In addition, public accommodations are required to remove architectural barriers from existing facilities when it is readily achievable to do so. Title III also requires facilities that are newly designed, constructed or altered to be readily accessible to and usable by persons with disabilities.

We note at the outset that your letter provides very limited information regarding the specific nature of your inquiry or the specific circumstances that inform each of your questions; we will attempt to respond, however, based solely on the information you have provided.

You first ask whether the ADA's requirement that a restaurant provide access to at least 5 percent of its fixed seating area includes non-fixed or "movable" seating. You note, furthermore, that your restaurants provide counter seating, booths (both of which we understand to be fixed or built-in) and tables and chairs (which we understand to be movable). If the fixed seating area is newly constructed or altered, then the ADA requires access to at least 5 percent of fixed or built-in tables to be distributed throughout dining areas. The 5 percent calculation does not include movable seating. In addition, where food or drink is served at counters exceeding 34 inches in height, a portion of the counter 60 inches minimum in length must be accessible to persons with disabilities or service must be available at accessible tables in the same area. See ADA Standards for Accessible Design (ADA Standards) at 28 C.F.R. pt. 36, app. A, ï½§ 5. In an existing restaurant that has both fixed and movable seating and where the fixed seating area is not being altered, the ADA requires that barriers to access be removed when it is readily achievable to do so. In this context, providing accessible seating that includes seating at movable tables may be permissible. This analysis, however, is to be made on a case-by-case basis and cannot be determined in the abstract.

Second, you ask whether the ADA requires a urinal, toilet or other plumbing fixture to be "centered" with regard to the "clear floor space" in front of the fixture. With regard to the location of a plumbing fixture in relation to the clear floor space in front of it, the ADA does not require that the urinal, toilet or other plumbing fixture be strictly centered or centered with mathematical precision in relation to the clear floor space in front of it. The ADA does require that the clear floor space be located in front of the fixture, and that the urinal, toilet or other plumbing fixture not be located beyond the required width of the clear floor space.

In addition to these general considerations, the ADA includes specific clear floor space requirements for lavatories, water closets, urinals, etc. These requirements take into consideration the space required for a person in a wheelchair to approach the particular fixture, either from the front or the side, and in some instances to transfer onto the fixture, as would be the case with a water closet. For example, the ADA requires a clear floor space of 30 inches by 48 inches in front of a lavatory so as to allow for a forward approach by a person in a wheelchair, and the clear floor space cannot extend more than 19 inches underneath the lavatory. 28 C.F.R. pt. 36, app. A, ï½§ 4.19.3. There are different requirements, however, for the clear floor space for water closets, the arrangement of which is dependent, among other things, on the approach provided to the water closet. 28 C.F.R. pt. 36, app. A, ï½§ 4.16.2. We refer you to these more specific ADA requirements as you consider the arrangement of clear floor space in relation to the plumbing fixtures at issue in your restaurants.

Third, you ask whether toilet stall doors are subject to the same minimum maneuvering clearance as other doors. Generally, toilet stall doors are subject to the doors requirements in section 4.13 of the ADA Standards, which includes the maneuvering clearance requirement. However, section 4.17.5 of the ADA Standards specifically provides that "[i]f toilet stall approach is from the latch side of the stall door, clearance between the door side of the stall and any obstruction may be reduced to a minimum of 42 in[ches]...."

Therefore, except for the allowance provided in section 4.17.5, doors requirements in section 4.13 of the ADA Standards apply to toilet stall doors.

Fourth, you ask whether a toilet stall door that closes as a result of gravity is considered to be equipped with a closer. Although we are not altogether certain of what you mean when you reference a door that closes as a result of gravity, we note for your information that if a toilet stall door is equipped with a gravity hinge, then the door is not considered to be equipped with a closer.

Last, you ask whether movable chairs may encroach on an accessible route in a restaurant. The ADA requires that all fixed accessible tables must be accessible by means of an access aisle at least 36 inches clear between parallel edges of tables or between a wall and the table edges. Therefore, movable chairs may encroach on an accessible route. However, the restaurant must provide an accessible route to an accessible table. For example, if movable chairs at an occupied table obstruct an accessible route, then the restaurant employees must move the chairs so that a person in a wheelchair can maneuver to an accessible table.

We hope that this information is helpful to you. If you have additional questions about the ADA, you may call our ADA Information Line at 800-514-0301 (voice) or 800-514-0383 (TDD).

Sincerely,

John L. Wodatch
Chief
Disability Rights Section

835

August 14, 2001

Vickie L. Dawes
Deputy County Counsel
Office of the County Counsel
Contra Costa County
651 Pine Street, 9th floor
Martinez, CA 94553-1229

Re: ADA Complaint DJ # 202-11-69

Dear Ms. Dawes:

The purpose of this letter is to inform you of our findings from the investigation of this complaint under the Americans with Disabilities Act of 1990 (ADA), and to offer to informally resolve some problematic areas.

Contra Costa Regional Medical Center (Contra Costa) is a public entity covered by title II of the ADA, which prohibits disability-based discrimination. 42 U.S.C. ï½§ 12132. Section 35.160(a) of the Department of Justice's

title II implementing regulation requires that a public entity take appropriate steps to ensure that communications with applicants, participants, and members of the public with disabilities are as effective as communications with others. Section 35.160(b)(1) requires a public entity to furnish appropriate auxiliary aids and services where necessary to afford an individual with a disability an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity conducted by a public entity, and section 35.160(b)(2) requires that, when determining what type of auxiliary aid or service is necessary, a public entity must give primary consideration to the request of the individual with the disability.

As you know, the complaint alleged that Contra Costa did not provide effective communication for xxxxxxxxxx, who is deaf, during his treatment at Contra Costa from March 17-20, 1997. The Department expanded the scope of the investigation to review all of Contra Costa's systems for effective communication, including the provision of auxiliary aids and services, TDD's, captioned televisions, visual alarms, training, and public notice and education.

As to the specific complaint, the Department did not find sufficient evidence to pursue this charge, but xxxxxxxxxx advocate at Berkeley Place, a non-profit community organization with a Deaf/Disability Project, has indicate there is an ongoing problem at Contra Costa with providing xxxxxxxxx and other individuals qualified sign language interpreters.

We have reviewed the information that you provided about Contra Costa's systems and technology for facilitating communication with patients and companions who are hearing or speech impaired. We believe they are adequate in fulfilling Contra Costa's legal obligations under the ADA with the following exceptions, including Contra Costa's policy and procedures for providing appropriate auxiliary aids to patients and companions who have hearing of speech impairments. Specifically, we find it imperative that Contra Costa implement a system to consult such persons in deciding how to achieve effective communication. Therefore, in order to resolve the complaint, the Department seeks that the following actions be undertaken at Contra Costa:

1. Assessment
   The determination of which appropriate auxiliary aids and services are necessary, and the timing, duration and frequency with which they will be provided, shall be made by the Hospital Personnel who are otherwise primarily responsible for coordinating and/or providing patient care services, in consultation with the person with a disability, unless otherwise impossible. The assessment will take into account all relevant facts and circumstances, including without limitation the nature, length, and importance of the communication at issue, as well as the individual's communication skills, knowledge, the patient's health status or changes thereto, the reasonably foreseeable health care activities of the patient (e.g., group therapy sessions, medical tests or procedures, rehabilitation services, meetings with health care professionals or social workers, or discussions concerning billing, insurance, self-care, prognoses, diagnoses, history and discharge), and the availability at the required times, day or night, of appropriate auxiliary aids and services.
2. Initial assessment.
   The initial assessment will be made at the time an appointment is scheduled or on the arrival of the patient or companion at the Hospital, whichever is earlier. Hospital Personnel will perform and document a communication assessment as part of each initial inpatient assessment that is required by the Joint Commission On Accreditation of Healthcare Organizations ("JCAHO"). Completion of communication assessments will be documented in the patient's record. Hospitals may use, but are not required to use, the Model Communication Assessment Form provided as an attachment to this letter.

3. Ongoing assessments
   If a patient or a companion of a patient who is deaf or hard of hearing or who has a speech impairment has an ongoing relationship with the Hospital, the provision of appropriate auxiliary aids or services will be reconsidered as part of each routine assessment of an inpatient, or on a regular basis with respect to other patients and companions. Hospital Personnel shall keep appropriate records that reflect the ongoing assessments and communications with the patient, such as copies of hand written notes, interpreter fees, notations on patient's use of any and all auxiliary aids, etc, in the patient's file and/or record.
4. Individual Notice In Absence of Request
   If a patient or a companion who is deaf or hard of hearing or who has a speech impairment does not request appropriate auxiliary aids or services but Hospital Personnel have reason to believe that such person would benefit from appropriate auxiliary aids or services for effective communication, the Hospital will specifically inform the person that appropriate auxiliary aids and services are available free of charge.
5. TTY's in public areas, including signage and storage

   a. Contra Costa needs to make a TTY device available wherever a telephone is made available to the public (whether public pay telephone, public closed circuit telephone, or otherwise). Specifically, the Hospital should make a TTY device available in the 3rd Floor Lobby, 4th Floor Lobby, 5th Floor Lobby, and 3rd Floor IMCU/CCU Waiting Area. To satisfy this, Contra Costa can permanently install the required TTY's or make available a sufficient number of portable TTY's. Standards ï½§ï½§ 4.1, 4.31.9. Each such TTY, whether permanently installed or portable, shall comply with the Standards set forth in Schedule A, attached.
   b. Wherever public telephones are available but TTY's are not permanently installed, Contra Costa should post signs complying with the Standards set forth in Schedule A. Such signs will indicate the location of the nearest portable or permanently installed TTY's.
   c. Portable equipment for use in public areas should be stored in places that are readily accessible to all Hospital Personnel who have client contact at all times of the day and night. All Hospital Personnel need to be notified of the storage location that is closest to their work area(s). The equipment is to be stored at the appropriate supervised location (e.g., nurses' station, admission desk, etc.) closest to the public phone for which the equipment is to be made available. Such equipment shall be made available to patients or companions who are deaf or hard of hearing or who have speech impairments as soon as practicable but no more than ten (10) minutes from the time of the person's request.
6. Telephones in Patient Rooms
   Contra Costa should make 3 additional TTY's with printout capability available for patient room use. Contra Costa should make the TTY's available within thirty (30) minutes of a patient's arrival in a patient room, regardless of the hour of the day or night.Contra Costa will notify all relevant Hospital Personnel of the availability and location of this equipment.
7. Visual Alarms
   In the Cafeteria where the Hospital has an audible alarm in place, it will add a visual alarm complying with the Standards set forth in Schedule B.
8. Captioning and Decoders Instructions
   Clearly stated directions for use of the closed caption capability shall be in the Patient Handbook (or equivalent publication) or otherwise available in each patient room or public area containing a

television with captioning capability. The directions for operating the closed caption function shall also accompany all closed caption decoders for standard television sets.

9. Notice to Hospital Personnel and Physicians
   Contra Costa should adopt and distribute, in an appropriate form, a written policy statement regarding the Hospital's policy for effective communication with persons who are deaf or hard of hearing or who have speech impairments. The policy statement shall include, but is not limited to, language to the following effect:

> "If you recognize or have any reason to believe that a patient, relative, or a close friend or companion of a patient is deaf or hard of hearing or has a speech impairment, you must advise the person that appropriate auxiliary aids and services will be provided free of charge. If you are the responsible health care provider, you must ensure that such aids and services are provided when appropriate. All other personnel should direct that person to the appropriate Program Administrator. This offer and advice must likewise be made in response to any overt request for appropriate auxiliary aids or services."

Ms. Dawes, these provisions track the provisions of a much larger consent decree that concluded the Department's litigation against several Connecticut hospitals. As I have previously noted, the decree can be found at the Department's ADA Home Page at the following address: http://www.usdoj.gov/crt/ada/. As a by-product of that action, the Department last summer published a "pictogram" book to help hospital emergency rooms communicate with persons who are deaf as an interim measure, until more effective communication can be established. A press release concerning this project is attached. We hope to have that book available for purchase from the Government Printing Office by the end of this summer.

Please call me within a week to schedule a time when we can discuss what I have proposed and timelines for achieving compliance. I invite you to make any suggestions so that we can resolve this complaint in a way that is meaningful for you and the government. Thank you for your cooperation to date, and I look forward to hearing from you soon. I can be reached at (202) 616-5576, by fax at (202) 305-9775 or by email at lisa.m.levine@usdoj.gov.(link sends e-mail)

Sincerely,
Lisa M. Levine
Investigator
Disability Rights Section

Enclosures
Schedules A & B
Model Communication Assessment Form
DOJ Press Release

836

August 15, 2001

The Honorable Tim Holden
Member, U.S. House of Representatives
101 North Center Street
Pottsville, PA 17901

Dear Congressman Holden:

This letter is in response to your inquiry on behalf of your constituent, xxxxxxxxxx. Xxxxxxxxx, who is the President of a volunteer fire company in Schuylkill County, Pennsylvania, asked you to determine how the Americans with Disabilities Act of 1990 (ADA) applies to the fire company. Specifically, xxxxxxxxx wants to know if the fire company is required to install a lift or an elevator to provide access to a "social room" that is now reached by means of a staircase.

From the information provided in your letter, we infer that the volunteer fire company is a private entity that is not funded by the county government. We have also inferred that the fire company, not the county government, owns the building that houses the fire company. If these assumptions are correct, the fire company would be subject to title III of the ADA. Title III prohibits discrimination on the basis of disability by private entities that own, operate, lease (or lease to) places of public accommodation. The statutory term "public accommodation" includes social service providers, such as fire companies.

If the fire company's building was constructed on or after January 26, 1992, it is subject to the new construction requirements of the Act. A new building must comply fully with the ADA Standards for Accessible Design. The Standards require elevator access in any building with three or more stories. A privately owned building that has less than three stories does not have to provide elevator access to the upper floor.

If the fire company's building was constructed prior to January 26, 1992, the fire company is only required to remove architectural barriers to the extent that it is readily achievable to do so. The statute defines readily achievable as "easily accomplishable and able to be carried out without much difficulty or expense." The Department's regulations provide that a covered entity should refer to the ADA Standards to identify barriers. The barrier removal requirement does not exceed the requirement for an altered facility. Therefore, if the fire company's building is less than three stories, it is not required to have an elevator. If the building is more than three stories, the fire company must consider whether it is "readily achievable" to install an elevator or other means of vertical access. If the cost of installing an elevator would not be "readily achievable," the fire company would not be required to provide access to the second floor.

I hope this information is helpful to you in responding to your constituent. If xxxxxxxxx has additional questions about the ADA, he may contact our toll-free ADA Information line ((800) 514-0301(voice) or (800) 514-0383 (TDD)) to discuss his questions with members of the Disability Rights Section's staff. Please do not hesitate to contact the Department if we can be of assistance in other matters.

Sincerely,

Ralph F. Boyd, Jr.
Assistant Attorney General
Civil Rights Division

837

August 20, 2001

BY FACSIMILE TO 925-228-7009
AND FIRST CLASS MAIL

John Dodson, Owner
Pine Meadow Public Golf Course
451 Vice Hill Way
Martinez, CA 94553

RE: ADA Complaint DJ # 202-11-79

Dear Mr. Dodson:

In regard to our recent phone conversation, the Department finds that reasonable modifications to the policies of Pine Meadows Public Golf Course ("Pine Meadows") for persons with vision impairments could be accomplished without any substantial danger to customers of your facility. As discussed, we are therefore requesting that the following information be sent to our office within 30 days to informally resolve this investigation.

Please provide us with the following:

1. A copy of a written policy adopted by your establishment concerning accommodations made for persons with vision impairments at your facility (see enclosed sample). We will also need assurances that you will have copies of this policy available to your customers in alternate formats, including large text and Braille (see enclosed lists of California ADA Technical Assistance Centers to inquire about obtaining such services).
2. Verification, such as photographs, that this policy is posted at your establishment;
3. Confirmation that all appropriate employees of Pine Meadows have been issued a copy of the golf course's policy on serving people with vision impairments;
4. Proof of payment of damages in the amount of $100 paid and mailed directly to the complainant, xxx xxxxxx xxxxxx including:
    a. A copy of a certified check made payable to xxx xxxxxx xxxxxx in the amount of $100 **or** a copy of a gift certificate to Pine Meadows in the amount of $100 made payable to xxx xxxxxx xxxxxx;
    b. A copy of a certified mail receipt indicating receipt of the payment by the Complainant. The check must be mailed to xxx xxxxxx xxxxxx at xxxx xxxxxxxxxxxx xxxxx, xxxxxxx, xx xxxxx.

We are obligated to inform you that no one may intimidate, threaten, coerce, or engage in other discriminatory conduct against anyone because he or she has either taken action or participated in an action to secure rights protected by the ADA. Any individual alleging such harassment or intimidation may file a complaint with the Department of Justice. We would investigate such a complaint if the situation warrants.

Finally, under the Freedom of Information Act (FOIA), 5. U.S.C. $ 552, we may be required to release this letter as well as other correspondence and records related to the complaint in response to a request from a third party. Should we receive such a request, we will safeguard, to the extent permitted by FOIA, the release of information that constitutes an unwarranted invasion of privacy.

We appreciate very much your cooperation in this matter and believe that this matter can be resolved quickly and amicably. If you wish to discuss the terms of our proposed settlement, please contact me as soon as possible.

Please reference the Department of Justice complaint number cited above in any correspondence that you send to this office. If you have questions or concerns, feel free to contact Deputy Chief Susan Reilly by phone at (202) 307-2230, by fax at (202) 305-9775 or by e-mail at susan.reilly@usdoj.gov.(link sends e-mail)

Sincerely,

Jennifer A. Schlosberg
Investigator
Disability Rights Section

Enclosure
Sample Policy on Accommodating Persons with Vision Impairments
List of California ADA Technical Assistance Centers

Revised Policy (Date)

Pine Meadows Golf Course provides assistance to its customers with physical and mental disabilities in order to allow full access to the services we offer. We welcome the patronage of customers with vision impairments who are accompanied by assistants who act as spotters. We recognize the importance of the role that spotters play in insuring the independence of people with such disabilities.

It is our policy to welcome any spotter who personally assists a person with a vision impairment, and recognize that they provide a wide range of services including but not limited to:

- Assisting persons with vision impairments by retrieving balls, clubs, and other materials on the golf course;
- Assisting persons with vision impairments by notifying them of physical barriers or dangers on the golf course, including carts, clubs, balls, shrubbery, and other players;
- Assisting persons with vision impairments by driving their golf carts;
- Assisting persons with vision impairments by estimating distances or wind factors on the golf course.

Pine Meadows Golf Course is committed to conveying the content and meaning of this policy to its staff. We are committed to helping our staff recognize the importance of the role that assistants play and minimizing the limitations placed on the independence of the persons whom they serve.

To the end outlined above, we set forth the following policy:

I. Upon entering Pine Meadows Golf Course's place of business, a person with a vision impairment who is accompanied by an assistant who acts as a spotter is:
   - not required to show proof of a disability;
   - not assessed a surcharge for the spotter, unless the spotter is playing golf as well;
   - welcome to review this policy in alternative formats including large print or Braille; and
   - welcome to request assistance in reading this policy by a Pine Meadows Golf Course employee.

II. In no event will a person with a disability accompanied by an assistant be denied service or be given inferior service due to the expressed preferences of other customers. In the event that other customers express a preference to not be proximity to a customer with disability, Pine Meadows Golf Course will honor the individual's right not to be the subject of invidious discrimination on the basis of disability.

III. In the event that an individual wishes to inquire about our policy, or lodge a complaint alleging that our policy has been breached, the individual should contact_____ at( )____-_____, or write to (her/him) at_____.Questions about the Americans with Disabilities Act (ADA)

may also be addressed to the United States Department of Justice's ADA Information Line, at 800-514-0301 or 800-514-0383 (TDD).

838

August 22, 2001

xxxxxxxxxxxxxxxxx
xxxxxxxxxxxxxxxx
Lodi, New Jersey 07644

RE: ADA Complaint DJ# xxxxxxxxxx

Dear xxxxxxxxx:

I thoroughly enjoyed speaking with you on August 21, and I would like to reassure you that disability rights is most certainly not a losing battle and that you are not alone in fighting it. My job would be meaningless if that were the case. After our conversation, I inquired about the questions you asked me and gathered some information for you to look at.

The Air Carrier Act prohibits disability-based discrimination in air travel and requires air carriers to accommodate the needs of passengers with disabilities. The Act was implemented and is enforced by the U.S. Department of Transportation (DOT). I know some of the specifics, but I thought the "Plane Talk Guide" and "Horizons" would help you understand your rights. Also, because DOJ does not handle alleged Air Carrier violations, I located a person over at DOT that you could speak with or file a complaint with. His name is Mike Spollen and he is a consumer aviation protection specialist in the Office of Civil Rights at DOT. His number is 202-366-5945.

I also asked my supervisor about you being carried into restaurants by employees and she said that it is absolutely unacceptable. However, unfortunately because you were unaware that carrying a person is not a reasonable accommodation and, therefore allowed yourself to be carried, monetary compensation would be hard to obtain. If you got injured as a result compensation would be warranted, however you may still file a complaint against the restaurant because it is illegal to carry a person with a disability as an alternative to doing readily achievable barrier removal. Finally, no public accommodation is able to be "grandfathered" or exempt from the ADA, so you can bring a copy of the law into Burger King next time you want a whopper.

Coincidently, after I hung up with you, John Shahdanian, the attorney for North Bergen, called me to say that the Town accepts the Department's Letter of Resolution. What this means is that once the NJ DOT inspects the property at the Municipal Building, the Town Council will pass a resolution to have the accessible spaces added to the parking lot. "Accessible spaces" means that there is an accessible route (curb cuts, ramps, etc...) from the designated spaces to the accessible entrance of the building. The Department is also requiring the Town to publish its 1996 policy concerning the Municipal Building's alternative delivery of services in the local paper and to submit to the Department the Town's plans to build a new accessible municipal building. I hope that you understand that because of your complaint the Town of North Bergen will have a new, completely accessible municipal building in the near future. And also because of your complaint disabled town

residents will now have accessible spaces at their disposal. So this battle might have been small but it was won and consequently, you made a difference in your community.

I wish you the best and please feel free to call me anytime at (202) 307-2756. As soon as I receive photos of the completed accessible spaces, I will send you a copy of the resolution and a closing letter. If you have any other complaints, don't be hesitant to call our hotline 1-800-514-0301 or file them via mail. Hope to speak with you soon. Take care!

Best Regards,

Natalie Sinicrope
Investigator
Disability Rights Section

Enclosures
- Plane Talk Guide
- New Horizons
- A Section of Title II Regs.
- Common Questions Concerning Barrier Removal
- Title III Complaint Form

839

September 14, 2001

The Honorable C. W. Bill Young
Member, U.S. House of Representatives
801 West Bay Drive, Suite 606
Largo, Florida 33770

Dear Congressman Young:

This letter is in response to your inquiry on behalf of your constituent, xxxx xxxxxxx xx xxxxxxxx, concerning an alleged violation of the Americans with Disabilities Act of 1990 (ADA). Please excuse the delay in responding.

The ADA authorizes the Attorney General to investigate alleged violations of title II and title III of the ADA, which prohibit discrimination on the basis of disability by state and local government entities, public accommodations, and commercial facilities. In addition, the Attorney General is responsible for enforcing title I of the ADA when a public employer has engaged in a pattern or practice of discrimination on the basis of disability, or when the Equal Employment Opportunity Commission has referred an individual complaint for enforcement.

The ADA enforcement responsibilities are assigned to the Attorney General as the nation's chief law enforcement officer and head of the Department of Justice. Within the Department, ADA enforcement has been delegated to the Civil Rights Division's Disability Rights Section, which is also responsible for enforcing section 504 of the Rehabilitation Act of 1973 and other federal statutes that prohibit discrimination on the basis of disability. In enforcing the ADA, the Department of Justice represents the law enforcement interest of the United States. The Department does not act as an attorney for, or representative of, any individual complainant.

We have carefully reviewed xxxx xxxxxxxx's complaint alleging that a retail store violated the ADA by neglecting to main an electric scooter that it provides as a courtesy to customers with disabilities. The law does not require a public accommodation, such as a aretail store, to provide scooters for its customers. Therefore, the store's failure to maintain this equipment does not violate the ADA. This determination does

not affect your constituent's right to pursue her allegations in some other manner. Xxxx xxxxxxxx may with to consult a private attorney to discuss other options.

Other avenues may be effective in resolving this complaint, including consulting with organizations that provide alternative dispute resolution services. We have enclosed a list of organizations serving her area. These offices may be able to identify resource groups available to provide assistance. A state or local bar association may also be able to provide the names of private attorneys or mediation services that handle consumer disputes.

To assist members of the public to understand their rights and responsibilities under the ADA, the Department of Justice has published technical assistance manuals that explain the ADA regulations. In addition, the Department operates an ADA information line (800-514-0301 (voice) or 800-514-0383 (TDD)). Members of the Disability Rights Section staff are available to answer questions on the information line on Monday, Tuesday, Wednesday and Friday from 10:00 a.m. to 6:00 p.m., Eastern time. On Thursday, the information line is staffed from 1:00 p.m. to 6:00 p.m.

For your information I am enclosing a copy of the Division's ADA Status Report that summarizes our ADA enforcement activity. I hope this information is helpful to you in responding to your constituent. Please do not hesitate to contact the Department if we can be of assistance in other matters.

Sincerely,

Ralph F. Boyd, Jr.
Assistant Attorney General
Civil Rights Division

Enclosures

840

September 27, 2001

Sharon K. Storms
Manager III
Program Compliance Section
Driving and Traffic Violator Schools Complaint Unit
Department of Motor Vehicles
Licensing Operations Division
P.O. Box 932342
Sacramento, California 94232-3420

Dear Ms. Storms:

This is in response to your letter, dated July 27, 2001, to Edward Wu, Unical Driving and Traffic School DS0853, informing Mr. Wu that he had to bring his classroom location into compliance or submit a written "exception letter from ADA requirements from an appropriate federal jurisdiction agency." As the federal office with responsibility for enforcing title III of the Americans with Disabilities Act of 1990 (ADA), we wished to respond to your letter.

The ADA does not establish specific requirements regarding alterations that must be made to existing facilities for the purpose of accessibility if alterations are not otherwise planned. Title III of the ADA, which applies to places of public accommodation and commercial facilities, simply requires that places of public accommodation remove architectural and communication barriers to the extent that it is readily achievable to do so. Congress defined the term "readily achievable" to mean "easily accomplishable and able to be carried out without much difficulty or expense."

In determining whether an action is readily achievable, the factors to be considered include: 1) the nature and cost of the action needed; 2) the overall financial resources of the entity; 3) the number of persons employed by the entity; 4) the effect that complying will have on the entity's expenses and resources; 5) legitimate safety requirements necessary for safe operation; 6) the impact otherwise of the action upon operation of the site; 7) the relationship of the entity to any parent corporation or entity; and 8) the overall financial resources, size, and types of operations of any parent corporation or entity.

The Department of Justice regulation implementing title III of the ADA requires that measures taken to remove barriers must comply with the ADA Standards for Accessible Design unless such compliance is not readily achievable. If it is not readily achievable to remove barriers in an existing facility that is not otherwise being altered, then barrier removal is not required. However, where barrier removal is not readily achievable, the public accommodation must nonetheless make its goods, services, or facilities available through alternative methods, such as curbside service, home delivery, or relocation of activities, where those methods are readily achievable.

Furthermore, please note that both the landlord and the tenant of a retail establishment are public accommodations and have full responsibility for complying with all ADA title III requirements applicable to that place of public accommodation. The title III regulation permits the landlord and the tenant to allocate responsibility, in the lease, for complying with particular provisions of the regulation. However, any allocation made in a lease or other contract is only effective as between the parties, and both landlord and tenant remain fully liable for compliance with all provisions of the ADA relating to that place of public accommodation.

Finally, because the Department of Justice does not have authority to approve facilities or designs for compliance with the ADA or to grant exceptions based on individual circumstances, we cannot provide Mr. Wu, or any other entity that you are monitoring, with a variance for his classroom. This does not necessarily mean, however, that Mr. Wu, or any other entity, is capable of providing readily achievable barrier removal at his facility, and you may wish to further investigate Mr. Wu's financial and other circumstances.

I hope this information will be helpful to you in conducting further classroom monitoring inspections in the future.

Sincerely,

Naomi Milton
Supervisory Attorney
Disability Rights Section

cc: Mr. Edward Wu

841

October 17, 2001

The Honorable John Ensign
United States Senator
400 South Virginia Street
Suite 738
Reno, Nevada 89501

Dear Senator Ensign:

This is in response to your inquiry on behalf of your constituent, xxxxxxxxxxxxxx, who asks whether the Americans with Disabilities Act of 1990 (ADA) prohibits the University of Nevada at Reno (University) from charging a fee for the use of accessible parking spaces. Please excuse our delay in responding.

Xxxxxxxxx has enclosed a memorandum issued by the University announcing that campus accessible parking permits will need to be displayed, in addition to official accessible placards or license plates issued by the Nevada Department of Motor Vehicles, on all vehicles parked in campus accessible parking spaces effective September 10, 2001. The University will charge $2.00 for a daily permit and $37.00 for an annual permit. The University memorandum does not disclose whether the same (or any) fee is charged for the use of

nonaccessible parking spaces on campus. xxxxxxxxx's letter, however, raises the possibility that the University imposes a fee for all campus parking.

The Department's regulation implementing title II of the ADA requires public entities to make their programs, including their parking programs, accessible to persons with disabilities. Therefore, if a public entity, such as the University, provides on-campus parking, it must provide an appropriate number of accessible parking spaces for persons with disabilities.

The Department's regulation implementing title II of the ADA prohibits a public entity, such as the University, from imposing surcharge on a person with a disability for any measure that is necessary in order to ensure nondiscriminatory treatment required by the ADA or the regulation. Because accessible parking spaces are required (if nonaccessible parking spaces are provided) in order to comply with the nondiscrimination requirements of the ADA, the University would be prohibited from charging a fee for permits for its accessible parking spaces that is greater than the fee it imposes for nonaccessible on-campus parking.

Because neither your constituent's letter nor the University's memorandum discloses the amount, if any, charged for nonaccessible parking, we cannot determine at this time whether the University's fee for accessible parking violates the ADA. We note, however, that nothing in the ADA requires a covered entity to provide free parking to individuals with disabilities in situations where all other drivers must pay fees.

We hope this information will be helpful to you in responding to your constituent. Please do not hesitate to contact the Department if we can be of assistance in other matters.

Sincerely,

Ralph F. Boyd, Jr.
Assistant Attorney General
Civil Rights Division

842

October 17, 2001

The Honorable Rick Santorum
United States Senator
Suite 250 Landmarks Building
One Station Square
Pittsburgh, Pennsylvania 15219

Dear Senator Santorum:

This is in response to your inquiry on behalf of your constituent, xxxxxxxxxxxxxxxxxxxxxxxx, who asks whether the Americans with Disabilities Act of 1990 (ADA) requires that hospitals and doctors' offices provide adjustable examining tables for patients with disabilities who cannot use standard-height tables. Please excuse our delay in responding.

Title II of the ADA prohibits discrimination on the basis of disability by public entities, and title III of the ADA prohibits discrimination on the basis of disability by public accommodations. Hospitals and doctors' offices may be either public entities or places of public accommodation. Under the ADA and the Department's implementing regulations, the issue of adjustable examining tables may be addressed under the "policy modification," "barrier removal," and "program accessibility" standards.

Under the policy modification standard, entities subject to the ADA are required to make reasonable modifications in their policies, practices, and procedures if necessary to afford a person with a disability an equal opportunity to participate in the services, facilities, or activities that the entity provides. The regulations provide an exception for modifications that result in a fundamental alteration in the nature of the services, facilities, or activities that are offered. The determination of whether a particular modification meets the conditions of the policy modification standard must be made on a case-by-case basis.

Whether provision of an adjustable examination table is necessary and reasonable and would not fundamentally alter the nature of the services provided is a fact-specific inquiry. Relevant facts include the needs of the patient and the resources of the hospital or doctor's office. Use of a nonadjustable examining table, of suitable height, is another possible policy modification that would alleviate the difficulty that persons with mobility impairments have in using standard examining tables.

Under the barrier removal standard of title III of the ADA, which applies to hospitals and doctors' offices that are public accommodations, a standard-height, nonadjustable examining table constitutes an architectural barrier to persons with certain mobility impairments. Therefore, an adjustable table must be provided if it is readily achievable to do so (that is, easily accomplished and able to be carried out without much expense). If it is not readily achievable to obtain such a table, then an alternative means, such as a lowered height table, must be provided if that means is readily achievable. With respect to hospitals and doctors' offices that are public entities, the "program accessibility" standard of title II of the ADA requires that covered entities make their programs, such as medical services, readily accessible to and usable by persons with disabilities unless to do so can be shown by the covered entity to cause a fundamental alteration in the nature of a service or an undue financial and administrative burden. Once again, under these standards, the Department of Justice makes the determination of whether a particular action is required on a case-by-case basis.

Your constituent's letter addresses the needs of "handicapped and elderly" persons. To be entitled to the protection of the ADA, a person must have a physical or mental impairment that substantially limits one or more of his or her major life activities. Whether an impairment limits a major life activity is a fact-specific inquiry. Old age is not, in and of itself, such an impairment. In the event that your constituent would like to file a complaint against a specific hospital or doctor's office, we have included complaint forms.

We hope this information will be helpful to you in responding to your constituent. Please do not hesitate to contact the Department if we can be of assistance in other matters.

Sincerely,

Ralph F. Boyd, Jr.
Assistant Attorney General
Civil Rights Division

843

November 15, 2001

The Honorable Joseph R. Pitts
Member, U.S. House of Representatives

Lancaster County Courthouse
50 North Duke Street
Lancaster, PA 17602

Dear Congressman Pitts:

This is in response to your letter on behalf of your constituent, xxx xxxxxxx xxxxxx, regarding whether sidewalks, and in particular curb ramps, in a residential development built in 1993 must comply with the Americans with Disabilities Act of 1990 (ADA), if plans for the development were approved by local authorities in 1988. Please excuse our delay in responding.

As you know, the ADA prohibits discrimination on the basis of disability by state and local governments (title II) and private entities that operate places of public accommodation or commercial facilities (title III). If the residential development that is the subject of xxx xxxxxx's inquiry was built by a private developer with the expectation that the sidewalks in the area would be turned over to a local government, then title II of the ADA could apply. If, however, the sidewalks at issue were constructed by a private developer as part of a purely private residential development, such as a gated community, the ADA would not apply at all. As noted above, title III of the ADA only applies to private entities that operate places of public accommodation or commercial facilities.

With respect to title II of the ADA, section 15.151 of the regulation implementing title II (copy enclosed) provides that buildings or facilities designed or constructed by, on behalf of, or for the use of a public entity are required to be constructed to be readily accessible to and usable by individuals with disabilities if the construction was commenced after the effective date of title II, which was January 26, 1992. Buildings or facilities that were under design on that date are subject to these requirements if the date that bids were invited fell after the effective date. Sidewalks that are considered "new construction" under this requirement must be designed and constructed with curb ramps. Similarly, when an existing sidewalk is altered by a public entity after January 26, 1992, the public entity must install curb cuts.

Existing sidewalks that are not otherwise being altered are subject to Section 35.149 of the title II regulation, which prohibits a public entity from denying the benefits of its programs, activities, and services to qualified individuals with disabilities because the entity's buildings or facilities are inaccessible to or unusable by individuals with disabilities. A public entity that has responsibility for, or authority over, sidewalks or other public walkways, must ensure that such sidewalks and walkways meet the program access requirement and, when viewed in their entirety, are readily accessible to and usable by individuals with disabilities. This may require the public entity to install curb ramps on an existing sidewalk. In addition, a public entity is required to maintain sidewalks in operable working condition. See section 35.133 of the enclosed title II regulation. The only exception to this requirement permits isolated or temporary interruptions in operation when required for maintenance or repairs of the sidewalks. See section 35.133(b).

I hope this information will be useful to you in explaining the requirements of the ADA. You may wish to inform your constituent that further information is available through our Americans with Disabilities Act Information Line at 800-514-0301 (voice) or 800-514-0383 (TTY). Please do not hesitate to contact the Department if we may be of assistance in other matters.

Sincerely,

Ralph F. Boyd, Jr.
Assistant Attorney General
Civil Rights Division

December 26, 2001

The Honorable Wally Herger
Member, U.S. House of Representatives
410 Hemsted Drive, Suite 116
Redding, California 96002

Dear Congressman Herger:

This is in response to your inquiry on behalf of your constituent, xxx xxx xxxxxxxx. He asks whether it is legal for potential plaintiffs to seek an out of court settlement of alleged violations of title III of the Americans with Disabilities Act (ADA) when he questions whether the potential plaintiffs are truly seeking any modifications to make the property more accessible. Please excuse our delay in responding.

Xxx xxxxxxxx received a letter from attorneys at the Frankovich Group in San Francisco, identifying alleged title III violations at his Days Inn Hotel in Yreka, California. In the letter, the attorneys explained their claim that there are an inadequate number of accessible parking stalls, no van accessible parking, improper signage, and that the hotel must develop a policy to hold rooms with accessibility features until all other rooms in the hotel are rented. The letter proposes a settlement rather than litigation over the identified problems, and recommends that xxx xxxxxxxx cooperate with the Frankovich Group rather than litigate.

Although we cannot be certain of all of the facts on the basis of your constituent's letter, this situation follows a pattern that has become familiar to us in which some law firms sent out warnings about threatened litigation in hopes of getting the respondent to fix the problems and pay attorney's fees to avoid litigation. It is impossible to know from the face of the letters whether your constituent has actual ADA violations at his property, but if the allegations of inaccessible parking and a discriminatory hotel reservations policy alleged in the Frankovich letter to your constituent are accurate, he should first correct the violations in order to protect himself from liability, and perhaps seek legal counsel to deal with the Frankovich Group. If xxx xxxxxxxx needs assistance in determining how to come into compliance with the ADA title III standards for accessible parking or suggestions about hotel reservations policies, he may call the Justice Department Information Line at (800) 514-0383 (TTY) for advice and technical assistance. In addition, he may consult our website at www.usdoj.gov/crt/adm/adahom1.htmfor information and examples of prior settlement agreements in ADA title III cases.

Because it seems that your constituent is also concerned about the possibility that he might be sued or charged attorney's fees to settle, we recommend that he contact the State Bar of California at www.calbar.org(link is external) if he wishes to complain about the attorneys in question or if he seeks a referral to an attorney to represent him with experience in this area of the law. If xxx xxxxxxxx has no ADA violations on his property or if he corrects and violations before litigation is concluded, it is unlikely that he would be liable for any attorney's fees pursuant to the ADA, although we do not address liability under California law.

The ADA does not authorize payment of attorney's fees prior to an adjudication and the order of a court. The ADA provides only, in section 505, that a court may award a reasonable attorney's fee, including litigation expenses, and costs to the prevailing party in a suit commenced under the ADA. In Buckhannon Board and Care Home, Inc. v. West Virginia Department of Health and Human Resources, 531 U.S. 1004 (May 29, 2001),

the Supreme Court addressed the question of when a party is the prevailing party for purposes of section 505 of the ADA, holding that a party must secure either a judgment on the merits or a court-ordered consent decree to qualify as a "prevailing party."

Xxx xxxxxxxx is under no obligation under the ADA to pay attorney's fees to settle with the Frankovich Group, but his hotel is required, under title III of the ADA, to comply with certain ADA accessibility standards. Xxx xxxxxxxx should provide appropriate parking spaces, including van accessible parking where required, as well as proper signage in order to avoid the possibility of future liability for attorney's fees.

We hope this information will be helpful to you in responding to your constituent. Please do not hesitate to contact the Department if we can be of assistance in other matters.

Sincerely,

Ralph F. Boyd, Jr.
Assistant Attorney General
Civil Rights Division