

**Commission for Accessibility
Meeting Minutes
Monday, December 12, 2022**

Special Meeting Via Zoom

In Attendance: Christine Santori, , Maureen Culhane, Dave Choplinski, Kate White, Michael Londrigan, Don Ciota

Attendess: Eugene Zhang, Jayson Kranstat

Call to Order: 5:00 PM

Public Comment

Michael was congratulated for having been appointed to the Commission by the Board of Selectman.

Eugene and Jayson both have expressed an interest in learning more about the workings of the Commission. We hope they will continue to attend our meetings in this endeavor.

The following 2023 dates for meetings were proposed:

2023 Meeting Dates: (Mondays at 5:00PM)

Jan 9	Feb 13	Mar 13
Apr 10	May 8	Jun 12
Jul --	Aug--	Sep 11
Oct 16	Nov 13	Dec 11

Until further notice these meetings will continue via Zoom.

MOTION: To accept the proposed meeting dates.
Motion by Dave, seconded by Christine.

APPROVED UNANIMOUSLY

ADA as a Complaint-Based Law.

The Americans with Disabilities Act (ADA) is a complaint-based law because it allows individuals who feel that their rights under the ADA have been violated to file a complaint with the appropriate government agency. This process allows individuals to seek legal remedies for discrimination on the basis of disability in employment, public accommodations, transportation, and other areas covered by the ADA.

The complaint-based nature of the ADA allows individuals to seek redress for discrimination that may not have been addressed through other means, such as self-advocacy or informal negotiations with the responsible party. It also allows the government to investigate and address patterns of discrimination that may not have been brought to its attention through individual complaints.

The ADA is enforced by several federal agencies, including the Department of Justice, the Equal Employment Opportunity Commission, and the Department of Transportation. These agencies have the authority to investigate complaints, mediate disputes, and bring legal action against entities that are found to be in violation of the ADA.

ADA Consent Decrees

An ADA consent decree is a legal agreement that is entered into by the United States government and a defendant in a lawsuit brought under the Americans with Disabilities Act (ADA). A consent decree is a type of settlement that is reached between the parties in a lawsuit, and it

typically includes specific terms that the defendant must follow in order to resolve the lawsuit.

In the context of the ADA, a consent decree may be entered into in cases where the government has brought a lawsuit against an entity that is alleged to be in violation of the ADA. The consent decree will typically include specific provisions that the defendant must follow in order to come into compliance with the ADA, such as making physical modifications to facilities or providing auxiliary aids and services to individuals with disabilities.

Consent decrees are often used as a way to resolve disputes and avoid the time and expense of a trial. They are typically enforceable by the court and may include provisions for penalties or other remedies if the defendant fails to comply with the terms of the decree.

Commission for Accessibility Reference Guide

ADA Consent Decrees.

Actual Case resolutions as examples of enforcement.

Definitions:

Decree: A judicial decision or order.

Consent Decree: A judge's decision made with the consent/agreement of all parties.

On September 12, 2022, the Department of Justice intervened in *Betancourt-Colon v. City of San Juan*, a disability discrimination lawsuit brought by individuals with mobility disabilities against the City of San Juan, Puerto Rico under Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act. The department's complaint alleges that San Juan fails to provide people with mobility disabilities equal access to its public sidewalk system due

to widespread issues with city sidewalks and curb ramps. The department's allegations are based in part on findings by the Department of Transportation Federal Highway Administration's Office of Civil Rights. The department previously filed a Statement of Interest in the same lawsuit on November 9, 2020, asserting the long-held position of the United States that a public entity's provision and maintenance of public sidewalks is a covered "service" under Title II of the ADA.

On July 20, 2022, the U.S. Attorney's Office for the District of Colorado entered into a settlement agreement with the St. Vrain Valley School District pursuant to Title II of the ADA. The settlement agreement resolved a complaint that the school district failed to provide appropriate auxiliary aids and services for meetings between school personnel and a deaf parent of a student in the school district that were initiated by the school district. The agreement requires the school district to comply with the ADA's effective communication requirements, to have in place a system for providing qualified interpreters, training, reporting, and the payment of compensatory damages.

On July 20, 2022, the United States executed a Settlement Agreement with the Jefferson County, Kentucky Board of Elections, under Title II of the ADA to ensure that its polling places are accessible during elections to individuals with disabilities. Under the terms of the settlement agreement, the Jefferson County Board will immediately begin remediation of its voting program. To make its selected polling places accessible, the Jefferson County Board will employ temporary measures, such as portable ramps, signage, and propped-open doors. The Jefferson County Board will also train its poll workers and other elections staff on the requirements of the ADA and how to properly employ temporary measures so that each polling place is accessible during elections.

On July 14, 2022, the U.S. Attorney's Office for the Northern District of Illinois filed a lawsuit under Title III of the ADA against the various

ownership organizations of the Chicago Cubs for its failures to design and construct additions and make alterations that are readily accessible to and usable by individuals with disabilities as required by the ADA. The complaint alleges violations of the relevant ADA Standards for Accessible Design, including the 2010 Standards, in a wide range of areas throughout the facility, including wheelchair seating, accessible routes, and other features, elements and amenities throughout the Wrigley Field facility.

On October 28, 2021, the U.S. Attorney's Office for the Central District of Illinois entered into a Title II of the ADA settlement agreement with the Dunlap Community Unit School District regarding its failure to ensure that its playground areas at a school were readily accessible to and usable by a student with disabilities. The settlement agreement requires the school district to design and construct a new playground at the facility that meets the requirements of the 2010 ADA Standards for Accessible Design.

On April 11, 2022, the United States executed a settlement agreement with CVS Pharmacy, Inc., the nation's largest retail pharmacy, under Title III of the ADA regarding the accessibility of its vaccine registration portal. The agreement will ensure that people with disabilities (including those with vision disabilities who use screen readers and those who have difficulty using a mouse) can privately and independently get information about COVID-19 vaccinations and book their vaccination appointments online. Under the agreement, CVS will make content about the COVID-19 vaccine, including the forms for scheduling an appointment to get the vaccine, conform to the Web Content Accessibility Guidelines (WCAG), Version 2.1, Level AA.

On May 4, 2022, the United States entered into an agreement under Title III of the ADA with the Holiday Inn Express Hotels & Suites in Columbus, Ohio. Under the agreement, Badrivishal, LLC, the owner of the Hotel, will provide access for customers with disabilities, including

those who use wheelchairs, by making physical modifications so that parking, entrances, public restrooms, service counters, drinking fountains, routes to and within buildings are accessible. It will also ensure that the rooms, including bathrooms, that are required and advertised as accessible to people who use wheelchairs are accessible. The agreement further requires the managers, front desk personnel, and reservations staff at the Hotel to undergo training regarding the ADA requirements to accommodate individuals with disabilities. Finally, the Hotel will pay \$20,000 in damages to the couple harmed by the discrimination.

On May 6, 2021, the United States executed a settlement agreement with Central Texas College of Killeen, Texas, under Title II of the ADA regarding its program access and architectural accessibility requirements, as part of the Section's Veteran Access Program. The agreement will ensure individuals with disabilities access to programs, services, facilities, and activities at Central Texas College, which is in a jurisdiction with one of the nation's highest concentrations of veterans with service-connected disabilities.

ADA Requirements for Complaints

It is useful to know the requirements under this Act in order to insure compliance and provide necessary information for the filing of a grievance or complaint.

II-8.5000 Designation of responsible employee and development of grievance procedures. A public entity that employs 50 or more persons shall designate at least one employee to coordinate its efforts to comply with and fulfill its responsibilities under title II, including the investigation of complaints. A public entity shall make available the name, office address, and telephone number of any designated employee.

In addition, the public entity must adopt and publish grievance procedures providing for prompt and equitable resolution of complaints alleging any action that would be prohibited by title II.

II-9.0000 INVESTIGATION OF COMPLAINTS AND ENFORCEMENT

Regulatory references: 28 CFR 35.170-35.190.

II-9.1000 General. Individuals wishing to file title II complaints may either file --

- 1) An administrative complaint with an appropriate Federal agency; or
- 2) A lawsuit in Federal district court.

If an individual files an administrative complaint, an appropriate Federal agency will investigate the allegations of discrimination. Should the agency conclude that the public entity violated title II, it will attempt to negotiate a settlement with the public entity to remedy the violations. If settlement efforts fail, the matter will be referred to the Department of Justice for a decision whether to institute litigation.

How does title II relate to section 504? Many public entities are subject to section 504 of the Rehabilitation Act as well as title II. Section 504 covers those public entities operating programs or activities that receive Federal financial assistance. Title II does not displace any existing section 504 jurisdiction.

The substantive standards adopted for title II are generally the same as those required under section 504 for federally assisted programs. In those situations where title II provides greater protection of the rights of individuals with disabilities, however, the funding agencies will also apply the substantive requirements established under title II in processing complaints covered by both title II and section 504.

Individuals may continue to file discrimination complaints against recipients of Federal financial assistance with the agencies that provide that assistance, and the funding agencies will continue to process those complaints under their existing procedures for enforcing section 504. The funding agencies will be enforcing both title II and section 504, however, for recipients that are also public entities.

II-9.2000 Complaints. A person or a specific class of individuals or their representative may file a complaint alleging discrimination on the basis of disability.

What must be included in a complaint? First, a complaint must be in writing. Second, it should contain the name and address of the individual or the representative filing the complaint. Third, the complaint should describe the public entity's alleged discriminatory action in sufficient detail to inform the Federal agency of the nature and date of the alleged violation. Fourth, the complaint must be signed by the complainant or by someone authorized to do so on his or her behalf. Finally, complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

Is there a time period in which a complaint must be filed? Yes. A complaint must be filed within 180 days of the date of the alleged act(s) of discrimination, unless the time for filing is extended by the Federal agency for good cause. As long as the complaint is filed with any Federal agency, the 180-day requirement will be considered satisfied.

Where should a complaint be filed? A complaint may be filed with either --

- 1) Any Federal agency that provides funding to the public entity that is the subject of the complaint;
- 2) A Federal agency designated in the title II regulation to investigate title II complaints; or
- 3) The Department of Justice.

Complainants may file with a Federal funding agency that has section 504 jurisdiction, if known. If no Federal funding agency is known, then complainants should file with the appropriate designated agency. In any event, complaints may always be filed with the Department of Justice, which will refer the complaint to the appropriate agency. The Department's regulation designates eight Federal agencies to investigate title II complaints primarily in those cases where there is no Federal agency with section 504 jurisdiction.

How will employment complaints be handled? Individuals who believe that they have been discriminated against in employment by a State or local government in violation of title II may file a complaint --

- 1) With a Federal agency that provides financial assistance, if any, to the State or local program in which the alleged discrimination took place; or
- 2) With the EEOC, if the State or local government is also subject to title I of the ADA (see II-4.0000); or
- 3) With the Federal agency designated in the title II regulation to investigate complaints in the type of program in which the alleged discrimination took place.

As is the case with complaints related to nonemployment issues, employment complaints may be filed with the Department of Justice, which will refer the complaint to the appropriate agency.

Which are the designated Federal agencies and what are their areas of responsibility? The eight designated Federal agencies, the functional areas covered by these agencies, and the addresses for filing a complaint are the --

- 1) Department of Agriculture: All programs, services, and regulatory activities relating to farming and the raising of livestock, including extension services. Complaints should be sent to: Complaints Adjudication Division, Office of Advocacy and Enterprise, Room 1353 - South Building, Department of Agriculture, 14th & Independence Avenue, S.W., Washington, D.C. 20250.
- 2) Department of Education: All programs, services, and regulatory activities relating to the operation of elementary and secondary education systems and institutions, institutions of higher education and vocational education (other than schools of medicine, dentistry, nursing, and other health-related schools), and libraries. Complaints should be sent to: Office for Civil Rights, Department of Education, 330 C Street, S.W., Suite 5000, Washington, D.C. 20202.
- 3) Department of Health and Human Services: All programs, services, and regulatory activities relating to the provision of health care and social services, including schools of medicine, dentistry, nursing, and other health-related schools, the operation of health care and social service providers and institutions, including "grass-roots" and community services organizations

and programs, and preschool and day care programs. Complaints should be sent to: Office for Civil Rights, Department of Health & Human Services, 330 Independence Avenue, S.W., Washington, D.C. 20201.

4) Department of Housing and Urban Development: All programs, services, and regulatory activities relating to State and local public housing, and housing assistance and referral. Complaints should be sent to: Assistant Secretary for Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 7th Street, S.W., Room 5100, Washington, D.C. 20410.

5) Department of the Interior: All programs, services, and regulatory activities relating to lands and natural resources, including parks and recreation, water and waste management, environmental protection, energy, historic and cultural preservation, and museums. Complaints should be sent to: Office for Equal Opportunity, Office of the Secretary, Department of the Interior, 18th & C Streets, N.W., Washington, D.C. 20547.

6) Department of Justice: All programs, services, and regulatory activities relating to law enforcement, public safety, and the administration of justice, including courts and correctional institutions; commerce and industry, including general economic development, banking and finance, consumer protection, insurance, and small business; planning, development, and regulation (unless assigned to other designated agencies); State and local government support services (e.g., audit, personnel, comptroller, administrative services); all other government functions not assigned to other designated agencies. Complaints should be sent to: Coordination and Review Section, P.O. Box 66118, Civil Rights Division, U.S. Department of Justice, Washington, D.C. 20035-6118.

7) Department of Labor: All programs, services, and regulatory activities relating to labor and the work force. Complaints should be sent to: Directorate of Civil Rights, Department of Labor, 200 Constitution Avenue, N.W., Room N-4123, Washington, D.C. 20210.

8) Department of Transportation: All programs, services, and regulatory activities relating to transportation, including highways, public transportation, traffic management (non-law enforcement), automobile licensing and inspection, and driver licensing. Complaints should be sent to:

Office for Civil Rights, Office of the Secretary, Department of Transportation, 400 Seventh Street, S.W., Room 10215, Washington, D.C. 20590.

Where should a complaint be filed if more than one designated agency has responsibility for a complaint because it concerns more than one department or agency of a public entity? Complaints involving more than one area should be filed with the Department of Justice. If two or more agencies have apparent responsibility for a complaint, the Assistant Attorney General for Civil Rights of the Department of Justice shall determine which one of the agencies shall be the designated agency for purposes of that complaint. Complaints involving more than one area of a public entity should be sent to: Coordination and Review Section, Civil Rights Division, U.S. Department of Justice, P.O. Box 66118, Washington, D.C. 20035-6118.

How will complaints be resolved? The Federal agency processing the complaint will resolve the complaint through informal means or issue a detailed letter containing findings of fact and conclusions of law and, where appropriate, a description of the actions necessary to remedy each violation. Where voluntary compliance cannot be achieved, the complaint may be referred to the Department of Justice for enforcement. In cases where there is Federal funding, fund termination is also an enforcement option.

If a public entity has a grievance procedure, must an individual use that procedure before filing a complaint with a Federal agency or a court? No. Exhaustion of a public entity's grievance procedure is not a prerequisite to filing a complaint with either a Federal agency or a court.

Must the complainant file a complaint with a Federal agency prior to filing an action in court? No. The ADA does not require complainants to exhaust administrative remedies prior to instituting litigation.

Are attorney's fees available? Yes. The prevailing party (other than the United States) in any action or administrative proceeding under the Act may recover attorney's fees in addition to any other relief granted. The "prevailing party" is the party that is successful and may be either the complainant (plaintiff) or the covered entity against which the action is brought (defendant). The defendant, however, may not recover attorney's fees unless the court finds that the plaintiff's action was frivolous, unreasonable, or without foundation, although it does not have to find that the action was brought in subjective bad faith. Attorney's fees include litigation expenses, such as expert witness fees,

travel expenses, and costs. The United States is liable for attorney's fees in the same manner as any other party, but is not entitled to them when it is the prevailing party.

Is a State immune from suit under the ADA? No. A State is not immune from an action in Federal court for violations of the ADA.

Addendum:

The Town of Ridgefield has a grievance procedure in place as required by this law. Persons are encouraged to contact the ADA Coordinator, or this Commission for information and assistance.

Next Meeting: January 9, 2023

Minutes prepared by Don Ciota, Chairman