



DISABILITY RIGHTS BAR ASSOCIATION QUARERLYLU

Disability Rights Bar Association Quarterly educates advocates on federal government guidance and updates, recently enacted legislation, new regulations and proposed rules, issued reports, and additional news.

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Special thanks to DRBA member, Danica Gonzalves, Advocacy Attorney with Paralyzed Veterans of America, for compiling this newsletter.

This is the eighth edition of this newsletter. DRBA members are encouraged to share cases or policy information for inclusion in future newsletters. Suggested articles for the next quarterly newsletter are due by March 31st, 2024, to Heather Ansley, DRBA Policy Committee Chair, HeatherA@PVA.org.

FEDERAL UPDATES

DOJ ISSUES ACCESSIBLE MDE PROPOSED RULE UNDER TITLE II

On January 12, 2024, the U.S. Department of Justice [issued](#) a Notice of Proposed Rulemaking for accessible medical diagnostic equipment (MDE) under Title II of the Americans with Disabilities Act (ADA). The proposed MDE definition includes equipment like medical examination tables, weight scales, dental chairs, x-ray machines, mammography equipment, and other imaging equipment. The proposed rule outlines specific scoping standards and technical requirements for accessible MDE. Comments on the proposed rule can be submitted [online](#) through February 12, 2024.

ACCESS BOARD VOTES TO SEND MDE LOW TRANSFER HEIGHT FINAL RULE TO OMB

In 2017, the U.S. Access Board published [standards](#) for accessible medical diagnostic equipment. However the 2017 standards did not include a requirement for a [low transfer height](#). Instead, the standards recommended a low transfer height of 17 to 19-inches, with a sunset provision to provide time for further research to set a specific standard. In May 2023, the Board published a [proposed rule](#) for a 17-inch low transfer height. On January 24, 2024, the Access Board members voted to send the low transfer height final rule to the Office of Management and Budget, and the final rule is expected to be published in the near future.

HUD ISSUES NPRM FOR A 30-DAY NOTIFICATION REQUIREMENT BEFORE JUDICIAL EVICTION PROCEEDINGS

The U.S. Department of Housing and Urban Development (HUD) published a [Notice of Proposed Rulemaking](#) on December 1, 2023. The proposed rule would require public housing agencies and owners of properties participating in HUD project-based rental assistance programs to provide tenants with written notice at least thirty days prior to commencing a formal judicial eviction procedure due to nonpayment of rent. The proposed rule would also require the notice include instructions on how tenants can cure lease violations and information on how to recertify their income and request a minimum rent hardship exemption. The comment period closed on January 30, 2024.

DOT PUBLISHES RFI ON TRANSIT FACILITY ACCESS

The U.S. Department of Transportation (DOT) published a [Request for Information](#) on accessibility requirements for transportation facilities under the ADA. The DOT is reviewing requirements for vertical access, communications, wayfinding, and other aspects of general accessibility. DOT will also accept comments on any other standards that govern rails stations, bus stops, and transfer stations – such as parking lots, fare vending machines, and accessible paths of travel. Comments can be submitted [online](#) through February 20, 2024.

ADMINISTRATION ISSUES EXECUTIVE ORDER ON AI

The Biden Administration issued an [Executive Order on the Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence](#) on the responsible use and development of artificial intelligence (AI). AI has been [found to discriminate](#) against people with disabilities, especially in employment. However, the Administration notes AI could provide benefits for people with disabilities, such as access to information, communication technology, and transportation services. The Administration seeks to ensure AI does is nondiscriminatory and ensures accessibility for people with disabilities in its design and development. The government also launched a [website](#) with Administration actions and AI research.

HHS AND DOE ISSUE JOINT STATEMENT ON INCLUSION OF CHILDREN WITH DISABILITIES IN EARLY CHILDHOOD PROGRAMS

The U.S. Department of Health and Human Services and U.S. Department of Education released an updated [joint-policy statement](#) on supporting the inclusion of children with disabilities in early childhood programs. The joint statement updates the [2015 statement](#) and includes a renewed commitment and urgency to address barriers for children with disabilities in accessing and fully participating in inclusive early childhood programs.

OMB RELEASES GUIDANCE FOR FEDERAL AGENCIES TO IMPROVE DIGITAL ACCESSIBILITY

The Office of Management and Budget released [updated guidance](#) requiring federal agencies to improve digital accessibility for people with disabilities. The changes outlined in the guidance memo include: testing electronic content for accessibility before its launch and including people with disabilities during the digital design and testing user group process; establishing digital accessibility programs and policies by designating a program manager to define and oversee digital accessibility processes, reporting, tracking, and resolving issues; purchasing accessible products and services; regularly scanning web content to assess whether accessibility requirements are met and prioritizing remediation; and cultivating a positive culture of digital accessibility, such as by offering training and education to employees on a regular basis.

DOJ INVESTIGATION FINDS FOUR TEXAS COUNTIES' ELECTION WEBSITES INACCESSIBLE FOR PEOPLE WITH DISABILITIES

Under the U.S. Department of Justice's Americans with Disabilities Act (ADA) Voting Initiative, four [investigations](#) were conducted finding Title II ADA violations. The Department found that the election websites in four Texas counties were not accessible for individuals with vision disabilities or with limited manual dexterity, who use screen readers, keyboards or other assistive technology. The Department has urged the counties to work with the U.S. Attorney's Offices for the Northern, Southern, Eastern and Western Districts of Texas to resolve the identified violations.

STATE ID MOBILE APP SERVICE REACHES AGREEMENT WITH DOJ ON ACCESSIBILITY BARRIERS

The U.S. Department of Justice (DOJ) reached a [settlement agreement](#) with Service Oklahoma to resolve its findings that the state agency violated the Americans with Disabilities Act (ADA) by maintaining a mobile application that is inaccessible to individuals with vision disabilities. The app provides a digitalized version of a driver's license or other state-issued ID. However, the complainant was unable to complete the necessary steps to use the app, such as taking a picture of her ID and herself. After its investigation, the DOJ [found](#) critical accessibility barriers in violation of the ADA for people with vision disabilities. Under the agreement, the service agreed to ensure mobile apps comply with WCAG 2.1 Level AA, take corrective actions, solicit accessibility feedback, retain an ADA coordinator, and provide ADA employee training.

U.S. ATTORNEYS' OFFICES REACH SETTLEMENT WITH BANK AFTER IT TERMINATED SERVICES FOR SSRPS

The U.S. Attorneys' Offices in Ohio and Michigan reached a [settlement](#) with Huntington National Bank over its 2021 termination of the ability of Social Security Representative Payees (SSRPs) to use Huntington's electronic banking services. The Offices found the service termination discriminated against account holders with disabilities by barring them and their authorized SSRP from full and equal access to Huntington's banking services. Under the terms of the agreement, Huntington must provide SSRPs with full access to its online banking system and notify both current and past account holders that it has changed its policies.

DOJ ISSUES GUIDANCE ON THE ADA'S INTEGRATION MANDATE FOR EMPLOYMENT AND DAY SERVICES

The U.S. Department of Justice released a [questions and answers document](#) to provide guidance on the application of Title II of the ADA's integration mandate under *Olmstead v. L.C.* to employment and day services. The guidance answers questions about the ADA's application to sheltered workshops, small group employment, facility-based day programs, integrated day services, and supported employment services.

DOJ FINDS MINNESOTA CITY'S "CRIME-FREE" HOUSING PROGRAM VIOLATES ADA AND FHA

On November 7, 2023, the U.S. Department of Justice issued [Letters of Findings](#) determining the Minnesota city of Anoka's enforcement of its nuisance ordinance and Crime Free Multi-Housing Program violated Title II of the ADA and the Fair Housing Act (FHA). Under the city's policies and ordinances, the city can penalize landlords for "nuisance calls" to their properties. The Department determined these policies and ordinances violate the ADA and FHA by discriminating against individuals with mental health disabilities. The Department urged the city to promptly take corrective actions, including making reasonable accommodations, excluding all medical and disability-related information of individuals from service calls reports, and submitting written status reports to the Department.

LEGISLATION

INTRODUCED BILL SEEKS TO IMPROVE WIOA

The House Committee on Education and the Workforce leadership, Representatives Virginia Foxx (R-NC-5) and Robert C. Scott (D-VA-3), introduced, [A Stronger Workforce for America Act \(H.R. 6655\)](#), which seeks to improve the Workforce Innovation and Opportunity Act. The bill contains a number of provisions strengthening the focus of workforce programs for those facing barriers to employment, including people with disabilities; adds assistive technology as an allowable use of funds to accommodate those with disabilities for delivery of services; and increases authorization of appropriations under the Rehabilitation Act of 1973 for supported employment services.

FAA REAUTHORIZATION DEADLINE EXTENDED TO MARCH 8

Ahead of the September 30, 2023 deadline, the U.S. Senate passed a bill to extend the 2018 Federal Aviation Administration (FAA) Reauthorization to December 31, 2023. On December 19, 2023, Congress again [extended](#) the deadline to March 8, 2024. Advocates have urged Congress to include increased protections for passengers with disabilities, including training for personnel who assist wheelchair users in boarding and deplaning, personnel training for the proper stowage of wheelchairs and other mobility devices in the cargo hold, and accessible in-flight entertainment and announcements.

BIPARTISAN BILL REINTRODUCED TO IMPROVE ACCESS TO EATING DISORDER MEDICAL CARE

U.S. Senators Maggie Hassan (D-NH) and Lisa Murkowski (R-AK) reintroduced a bipartisan bill to better support seniors and people with disabilities with eating disorders. The bipartisan [Nutrition CARE Act \(S. 3010\)](#) would expand access to medical care for Medicare beneficiaries with eating disorders by including coverage of outpatient medical nutrition therapy through Medicare Part B, which will provide patients with a more comprehensive, specialized approach to treating eating disorders than what is currently offered under Medicare.

CASES

SUPREME COURT FINDS ADA TESTER CASE TO BE MOOT

After hearing [oral arguments](#) in October 2023, the U.S. Supreme Court found the case in [Acheson Hotels, LLC v. Laufer](#) to be moot. The respondent, a person with a disability and self-described "ADA tester," regularly visits hotel websites checking whether they have the accessibility information required by the ADA. The Court granted the petition for certiorari to determine whether the ADA tester has standing. However, due to developments in the case after the petition was granted, the Court added a consideration of whether the case was [moot](#). On December 5, 2023, the Court unanimously [ruled](#) the case as moot and remanded the case to the circuit court, where it will be dismissed. The Court's decision explained that though this case is moot, they are open to reviewing a future ADA tester case since the circuit courts are still split on whether an ADA tester has standing.

LAWSUIT ALLEGES OHIO VOTING LAW DISCRIMINATES AGAINST PEOPLE WITH DISABILITIES

On December 19, 2023, a lawsuit was [filed](#) alleging Ohio's newly enacted [HB 458](#) makes voting inaccessible to voters with disabilities; argues assistance restrictions are vague; creates a substantial risk of criminal prosecution for voter assistance for people with disabilities; and violates the Voting Rights Act of 1965. HB 458 makes it a felony for anyone who is not an election official or mail carrier to possess or return a voter's absentee ballot, unless the person assisting that voter falls within a list of statutorily enumerated persons. Under HB 458, a neighbor, in-home caregiver, staff member at a nursing home or other group facility could face felony charges for possessing or returning the absentee ballot of a voter with a disability.

EEOC JOINS CASE AGAINST RAILROAD FOR DISCRIMINATORY EMPLOYMENT VISION TESTS

The U.S. Equal Employment Opportunity Commission (EEOC) [joined](#) twenty-one former workers in suing Union Pacific over the use of a [vision test](#) that disqualifies railroad workers the company believed were color blind or may have trouble reading signs. Union Pacific even fired current employees when they could not pass a new vision test, that was found not to be related to real-world situations or their ability to read the signs. Some of these employees had worked at the company from two to thirty years without incident. It is estimated that more than three dozen lawsuits have been filed and more are still being reviewed by the EEOC.

WASHINGTON DOC AGREES TO PROVIDE GENDER-AFFIRMING CARE

In October 2023, Disability Rights Washington filed a [complaint](#), settlement agreement, and joint motion for a consent decree alleging the Washington State Department of Corrections (DOC) violated Title II of the ADA, Section 504 of the Rehabilitation Act, and the 8th Amendment by denying essential gender-affirming medical and mental health care. The complaint also alleged DOC discriminated against people by delaying their treatment for disability-related reasons and failing to modify policies or provide reasonable accommodations to avoid discrimination. The district judge granted the [Joint Motion to Approve Settlement](#). As part of the [agreement](#), DOC will provide gender-affirming health care and services and ensure any person with an active prescription for hormone replacement therapy will continue to receive their medications or be eligible to receive medication.

CALIFORNIA JUDGE FINDS SCHOOL DISTRICT'S SECURITY PROGRAM VIOLATES DISABILITY RIGHTS LAWS

A federal court judge [found](#) the Moreno Valley Unified School District's (MVUSD) security program violates the ADA and Section 504 of the Rehabilitation Act. The [complaint](#) alleged MVUSD's security programs violated the ADA and Section 504 by using excessive force against students based on their disability and race on school campus. The court found MVUSD discriminated against the students by allowing teachers to refer students to school police for disability-related behaviors, failed to train school police about students with disabilities, and authorized school police to engage in excessive conduct for students exhibiting disability-related behaviors. The judge ordered MVUSD to design a remedy to bring MVUSD into compliance with disability laws.

DOJ SETTLES CASE AGAINST TWO NURSING HOME CHAINS FOR VIOLATING THE ADA FOR PROSPECTIVE PATIENTS WITH SUD AND FAILING TO PROVIDE SIGN LANGUAGE INTERPRETERS

The U.S. Attorney's Office for the Western District of Washington [settled](#) a case with two nursing home chains in western Washington for allegations that they violated the ADA. The allegations were based on the nursing home chains denying admission to prospective residents because of their substance use disorders and failing to provide sign language interpreters for a patient who is deaf. An investigation found the chains routinely denied admission to prospective patients who were prescribed medication for an opioid use disorder. Under the settlement, the chain must submit a draft non-discrimination policy, post the policy at its facilities, and train its employees and contractors on the new policies. The chain must also provide appropriate communication devices and services to patients who need accommodations.

NATIONWIDE CLASS ACTION AGAINST QUEST OVER INACCESSIBLE KIOSKS WILL PROCEED TO TRIAL

The American Council of the Blind's (ACB) [lawsuit](#) against Quest Diagnostics' Patient Service Centers (Quest) has been certified as a [nationwide class action](#) and will [proceed to trial](#). The nationwide class was certified on behalf of all legally blind individuals who visited Quest in 2018 and 2019 and were denied full and equal enjoyment of Quest's services due to Quest's failure to make its self-service kiosks independently accessible. In 2016, Quest installed automated touch screen kiosks at its Patient Services Centers which allow patients to check-in, edit personal information, opt to wait outside and receive a text for their appointment, and request assistance. In 2020, ACB [joined](#) the lawsuit alleging Quest deprived members of the blind community full and equal enjoyment of Quest's services and failed to provide effective communication to blind patients. In 2021, the U.S. Department of Justice filed a [Statement of Interest](#) in the case affirming that Quest must provide auxiliary aids and services.

PA COUNTY JAIL AGREES TO PROVIDE OUD TREATMENT

Under a recent [settlement agreement](#) with the U.S. Department of Justice, the Allegheny County Jail, in Pennsylvania, agreed to provide medication treatment for people who are incarcerated with opioid use disorders (OUD). Under the agreement, the county will medically evaluate all individuals for OUD, ensure all individuals who were receiving OUD medications from a licensed treatment provider before their incarceration are continued on that medication, and offer individuals the option to receive OUD medications even if they were not receiving medication before their incarceration.

SETTLEMENT REQUIRES ALAMEDA COUNTY TO IMPLEMENT POLICIES TO REDUCE UNNECESSARY INSTITUTIONALIZATION

In a [2020 complaint, amended](#) in 2021, multiple disability rights organizations [sued](#) Alameda County challenging the county's use of discriminatory treatment against adults with serious mental health conditions, who repeatedly cycled into and out of the county's psychiatric institutions. The lawsuit requested the court to order the county to provide necessary community-based mental health services in lieu of institutionalization. The U.S. Department of Justice (DOJ) investigated the complaint and [found](#) reasonable cause that the county violated federal disability rights laws. In November 2023, the DOJ and relevant parties reached a [settlement agreement](#), requiring the county to address the provision of community-based mental health services to prevent unnecessary psychiatric institutionalization and incarceration.

DOJ FILES SOI IN CASE ALLEGING CHICAGO'S INACCESSIBLE AFFORDABLE HOUSING VIOLATES THE ADA AND SECTION 504

On May 13, 2018, a lawsuit, [Access Living of Metropolitan Chicago, Inc. v. City of Chicago](#), was filed alleging Chicago failed to meet accessibility requirements in their affordable housing program in violation of Title II of the ADA and Section 504 of the Rehabilitation Act. On December 12, 2023, the U.S. Department of Justice filed a [Statement of Interest](#) clarifying that the city's affordable housing program is subject to Section 504 and Title II. The Department also argued that Chicago cannot contract away federal law requirements and the city must ensure private developers provide affordable and accessible rental housing.

SIXTH CIRCUIT UPHOLDS MEDICAL CENTER'S DENIAL OF NURSING STUDENT'S SERVICE DOG

In *Bennett v. Hurley Med. Ctr.*, the U.S. Court of Appeals for the Sixth Circuit [held](#) the medical center did not violate Title II of the ADA by failing to allow a nursing student's service dog to accompany her during rotations. Instead the court determined the service dog was a direct threat. The medical center initially permitted the service dog on the hospital floor. However, after both a patient and a staff member had allergic reactions, the medical center rescinded the accommodation. The court determined the medical center did not violate the ADA because the service dog posed a direct threat and allowing the dog in other areas of the medical center was unreasonable.

METRO NASHVILLE AGREES TO ALLOW VIRTUAL ATTENDANCE AT PUBLIC MEETINGS

The U.S. Attorney's Office for the Middle District of Tennessee reached an [agreement](#) with the Metropolitan Government of Nashville and Davidson County, Tennessee ("Metro Nashville") to settle allegations that Metro Nashville violated Title II of the ADA by failing to provide reasonable modifications to allow people with disabilities to attend public meetings remotely. The complainant was unable to attend the meetings in-person due to their disability. Under the agreement, Metro Nashville must update its policies and procedures to permit reasonable accommodations for a person with a disability to fully participate in the meetings virtually.

LEARN MORE

NCD RELEASES ANNUAL PROGRESS REPORT FOCUSING ON THE IMPACT OF ASSET AND INCOME LIMITS

The National Council on Disability (NCD) released its [annual progress report](#) on the implications of asset limits in government-sponsored social safety net programs. The report reviews the economic self-sufficiency and financial independence of people with disabilities. It focuses on four critical areas of public policy: health care, cash benefits provided through Supplemental Security Income (SSI), employment, and asset building and wealth protection. One of its key findings was that tying income and asset limits to eligibility for health care and medical insurance coverage imposes limitations that force people with disabilities to choose between working at levels that allow them to maintain healthcare benefits or risk losing health care access. NCD recommended Congress propose and pass legislation to eliminate or modify SSI income and asset rules, including allowing debts to counterbalance assets.

REPORT OUTLINES SUPPORTIVE SERVICES FOR INDIVIDUALS WITH AUTISM

The Report to Congress on [Supportive Services for Individuals with Autism](#), issued in November 2023, describes supportive services that, in addition to healthcare, may be beneficial for improving outcomes for autistic individuals and their families. The report also provides an overview of existing coverage policies for supportive services under federal programs.

2024 NATIONAL ADA SYMPOSIUMS

Two 2024 National ADA Symposiums, an annual conference on the Americans with Disabilities Act, will be offered in a virtual or in-person setting. The in-person Symposium will be held in Minneapolis, Minnesota on June 9-12, 2024. The virtual Symposium will be held on May 6-8, 2024. [Registration information](#) will be posted online in the upcoming weeks.

2024 ANNUAL DISABILITY STATISTICS CONFERENCE ON MARCH 28, 2024

The 2024 [Annual Disability Statistics Conference](#) will be held on March 28, 2024 in Washington, DC. The free, hybrid conference will review the Annual Disability Statistics Compendium, Annual Disability Statistics Supplement, and State Reports for County-level Data, which are web-based tools that pool disability statistics published by various federal agencies together in one place. Attendees can [register](#) online. The in-person registration closes on March 14, 2024.

JACOBUS TENBROEK DISABILITY LAW SYMPOSIUM

The [Jacobus tenBroek Disability Law Symposium](#) – a disability law conference that examines issues and explores advocacy strategies on economic opportunity, social equality, and personal dignity for all members of the disability rights community – will be held at the National Federation of the Blind Jernigan Institute in Baltimore, Maryland, on March 21-22, 2024. The 2024 Symposium's theme is, "The Right of People with Disabilities to Live in the World: Emergent Barriers and Unrealized Potential." In-person and virtual [registration](#) will soon be available online.

ADDITIONAL NEWSLETTERS

Subscribe to other disability rights and advocates' newsletters for more information on the issues impacting individuals with disabilities and efforts to promote civil rights.

[ADA News from the Mid-Atlantic ADA Center](#)

[Disability Rights Advocates](#)

[Disability Scoop](#)

[Disability Rights International](#)

[Disability Rights Education & Defense Fund](#)

[Seyfarth Shaw's ADA Title III News & Insights Blog](#)

[Bazon Center for Mental Health Law](#)

[ADA Southeast Newsletter: ADA and Access Matters](#)

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