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Access

New England

A publication of the New England ADA & Accessible IT Center
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This Issue Highlights **ADA's 15th Anniversary**

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New England ADA & Accessible IT Center staff

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For more information

1 (800) 949-4232 voice/tty
ADAinfo@NewEnglandADA.org
www.NewEnglandADA.org

New England ADA & Accessible IT Center Staff

Oce Harrison, Ed.D.
Project Director
oharrison@AdaptiveEnvironments.org

Kathy Gips
Director of Training
kgips@AdaptiveEnvironments.org

Will Miller
ADA Information Specialist
wmiller@AdaptiveEnvironments.org

Andy Washburn
ADA Information Specialist
awashburn@AdaptiveEnvironments.org

Gabriela Bonome-Sims
Director of Administration
gsims@AdaptiveEnvironments.org

Mike DiLorenzo
Information Technology Administrator
mdilorenzo@AdaptiveEnvironments.org

Carolina Avila
Project Assistant
cavila@AdaptiveEnvironments.org

Ana Gomez-Moreno
Coordinator of Design and Communications
agomez@AdaptiveEnvironments.org

Valerie Fletcher
Principal Investigator
vfletcher@AdaptiveEnvironments.org

Lisa Spitz
Designer
lisa@lisaspitz-design.com

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Andy Washburn, Editor

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The center is one of ten Regional Disability and Business Technical Assistance Centers funded by the National Institute on Disability and Rehabilitation Research (NIDRR) to provide information, materials and technical assistance to individuals and entities that are covered by the Americans with Disabilities Act (ADA). However, please be aware that NIDRR is not responsible for enforcement of the ADA. The information, materials and/or technical assistance are intended solely as informational guidance and are neither a determination of your legal responsibilities under the Act, nor binding on any agency with enforcement responsibility under the ADA.

Regional Advisory Board

The Regional Advisory Board meets twice a year. The members' input and commitment greatly assists the New England ADA & Accessible IT Center in its mission.

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Michael Kurs, Pullman & Comley, LLC
Suzanne Liquerman, Connecticut Department of Administrative Services
Candace Low, ADA Coalition of Connecticut

Maine

Kathy Powers, Maine Consumer Information and Technology Training Exchange (CITE)
Steve Tremblay, Alpha One

Massachusetts

Myra Berloff, Massachusetts Office on Disability
Chuck Hitchcock, CAST
Cathy Taylor, Cape Organization for Rights of the Disabled (CORD)

New Hampshire

Carol Nadeau, New Hampshire Governor's Commission on Disability
Therese Willkomm, Ph.D., ATECH Services

Rhode Island

Bob Cooper, Rhode Island Governor's Commission on Disabilities

Vermont

James P. Dorsey, Vermont Department of Employment and Training
Deborah Lisi-Baker, Vermont Center for Independent Living
David Sagi, Vermont Division of Vocational Rehabilitation

Cover image – **Top row from left to right:** Will Miller, Kathy Gips, and Carolina Avila.
Front row from left to right: Oce Harrison, Dulce (office mascot), and Andy Washburn

Turning up the Volume On Legislative Talk

15 Year Anniversary - Americans with Disabilities Act

Never in the history of the US have we discussed disability issues with the frequency, volume, and down-to-earth manner that we do today, fifteen years after the passage of landmark civil rights legislation, the Americans with Disabilities Act. You can't meet a person or talk with a family member who doesn't have a disability story to tell. The ADA has increased communication, elevated conversations, and sparked debate. The boom of disability talk is all around us.

Before the 1960's, disability was either whispered about or kept secret entirely. Over the years, dialogue has emerged rather slowly and sometimes painfully. Just prior to the passage of the ADA, conversations expanded to a lively discussion and debate – culminating with the ADA. The ADA resoundingly assured people, legally speaking, a place in life, acceptance by others, a chance at a living, and equal opportunities. Fifteen years later, conversations once shaped by family and medical personnel are now shaped by peers and the law. Discussions now are attending to the authority of recognized civil rights. The law has helped to move conversations beyond the focus on the individual to an environmental and social consciousness. While commemorating the influence this law has had in challenging attitudes and behaviors, we look toward the future capacity of the law to generate new legal and social *talk*.

Oce Harrison, Project Director (right) with Carolina Avila, Project Assistant and Dulce, Office Dog

The legislative dialogue continues in this celebratory issue of *Access New England* with articles about new "legal conversations" of far reaching magnitude. The US Supreme Court will decide if states and counties can be sued for not accommodating disabled prisoners, setting up another legal showdown over the power of Congress to tell states what to do (See Page 6 for more details). Most recently, cruise ships have been in the news; the Supreme Court ruled that foreign cruise lines sailing in US waters must provide better access for passengers using wheelchairs (See Page 6). In another article, the *National Council on Disability* exposes the courts' focus on whether or not a plaintiff has a disability, to the exclusion of whether the plaintiff has been discriminated against. (See Page 2).

In the midst of all this talk, let's not forget to act! There are many 15-year anniversary celebrations to participate in; see *News from Around the Region* for upcoming activities.

Happy Anniversary! Oce

Focusing on Disability, Not Discrimination

If a woman whose arthritis is so bad that she needs a walker to get around isn't a person with a disability, then who is? The National Council on Disability (NCD), an independent federal agency created in 1978, asked the same question 15 years after the passage of the Americans with Disabilities Act (ADA) in a recent report called "Righting the ADA." A copy of the report is available online at: www.ncd.gov/newsroom/publications/2004/righting_ada.htm.

The report maintains that, since the enactment of the ADA, federal courts have chipped away at its protections to the point where they've been denied—not only to the woman with the walker, but also to people with asthma, epilepsy, seizure disorders, HIV and multiple sclerosis, to name just a few conditions. What's worse, the NCD says, is the fact that the bulk of the courts' decisions under the ADA have focused not on the existence or absence of workplace bias, but on the status of the person bringing the case, forcing employees to reveal sensitive personal details and circumventing the law's intended focus on employer behavior.

To right the course of the ADA, counteract the effect of restrictive court decisions and bring the law back to its original legislative intent, the NCD says, it has drafted and is proposing an ADA Restoration Act. The measure is intended to reinstate the original, congressionally intended breadth of the ADA's protections, restore some remedies that court decisions have restricted, and curtail certain inappropriate defenses that have been grafted onto its carefully crafted standards.

Of all the issues raised in "Righting the ADA," disability advocates agree that the most significant are those connected with the court decisions that have incrementally narrowed the ADA's definition of disability.

"The ADA is the only area of discrimination law where the plaintiff has to have a mini-lawsuit about whether he or she is a person with a disability before the case even gets to the heart of the controversy," said Harriet McBryde Johnson, a disability rights lawyer in Charleston, SC.

"Discrimination should be the major target," agreed Jeff Rosen, NCD's general counsel and director of policy. "Look at [the laws against race or religious bias]—you don't try to ascertain whether the person's skin color qualifies them for protection, or whether a person went to religious services frequently enough to enable them to bring a bona fide claim of religious bias. We want to see the same thing with the ADA."

Peter Petesch, a partner with the Washington, DC, office of Ford and Harrison, says he thinks that the NCD report raises a good point when it complains that the focus in ADA cases has shifted to the status of the employee rather than the employer's behavior.

"That's a valid point, but I don't know of another fair way to do it, because unlike conditions such as gender, or age, there's not much of a bright line litmus test for disability," Petesch said. "The line between who wants protection and who's just imperfect is a complex, convoluted analysis. Just because a person has an imperfection, that doesn't render them protected. The law applies to those who are substantially limited."

"Complex" and "convoluted" have been used to describe the route that ADA plaintiffs must track. To establish entitlement to its protections, employees have to prove that they are a "qualified person with a disability," which involves showing, among other things, that they have impairments that keep them from doing activities that are centrally important to their daily lives.

The Supreme Court has used this definitional criterion to turn away the case of a factory worker whose carpal tunnel syndrome prevented her from doing her assembly line job because, even though she was unable to do her

job, she could still do other manual tasks such as household chores and self-care. The case is Toyota Manufacturing Kentucky v. Williams, 122 S.Ct. 681 (2002).

Another definitional hurdle concerns the duration of the employee's impairment. In Williams, the Supreme Court said that an impairment must be permanent or long term to constitute a disability. In lower courts, according to the NCD report, this statement has resulted in the exclusion from protection of a number of conditions, many of them quite serious, including epilepsy, breast cancer, lumpectomy and radiation treatment, kidney obstruction, and arthritis that hampers the ability to walk.

In the arthritis case, Sutton v. New Mexico Department of Children, Youth and Families, 922 F. Supp. 516 (D.N.M. 1996), the employee's arthritis had deteriorated to the point where she needed a walker to get around. She had surgery to address the condition, and while recuperating, she claimed, her employer terminated her employment because of her disability. The court dismissed the case because she couldn't show that her condition was permanent or of long-term impact.

Another definitional roadblock concerns the number of jobs that employees' conditions prevent them from doing. In Williams, the Supreme Court said that employees aren't protected unless their conditions prevent them from doing a broad range of jobs. Lower courts have interpreted this to bar many employees from protection, even though they may have been fired, refused employment or otherwise disadvantaged at work because they couldn't show that their conditions prevented them from doing a broad range of jobs.

> "The ADA is the only area of discrimination law where the plaintiff has to have a mini-lawsuit about whether he or she is a person with a disability before the case even gets to the heart of the controversy," said Harriet McBryde Johnson.

One example is the case of Lori Rhoads, a financial analyst with Standard Federal Savings Bank in Frederick, MD. The bank fired her for absenteeism when she was sidelined by bronchitis, pneumonia, severe lung infections and cluster-migraine syndrome, all of which came from workplace smoke that exacerbated her asthma. When she sued to get her job back, a federal court told her that she didn't qualify for protection under the ADA because she had to show not only that she couldn't work in her own smoke-infested office but also that she was substantially limited from working in a broad range of jobs. The case was Rhoads v. FDIC, 257 F.3d 373 (4th Cir. 2001).

Frank Alvarez, who heads the disability practice of management law firm Jackson, Lewis, says he agrees that lower court decisions have strayed a long way from the ADA's original legislative intent to improve employment opportunities for people with disabilities. "I've read the ADA's legislative history, and I think the court rulings are inconsistent," said Alvarez. "So the question must be asked: Why has the ADA case law developed this way?

Despite their allegiance to business interests, employers' attorneys Petesch and Alvarez say they respect the NCD report and the proposed legislation. Petesch agreed that the report makes good historical points about the prejudices and myths that have surrounded disabilities.

In fact, Rosen and others at the NCD stress the educational potential of their report. "Look at the example of women, Hispanics and African-Americans and their struggle for integration," said Rosen. "This struggle is not that different than where women were 50 years ago and African-Americans were 100 years ago. There's a building awareness of the issues. We're most interested in building a platform for an informed discussion."

Source: "Advocates for the Disabled Seek Major Overhaul of the ADA," Diane Cadrain, HR Magazine, February, 2005.

US Census Bureau Facts About Disability

Celebrating the 15th Anniversary of the Americans with Disabilities Act

On July 26, 1990, President George H.W. Bush signed into law the Americans with Disabilities Act, guaranteeing equal opportunity for people with disabilities in public accommodations, commercial facilities, employment, transportation, state and local government services and telecommunications.

Population Distribution

37.5 million – Number of people age 5 and over in the civilian noninstitutionalized population with at least one disability, representing 14 percent. These individuals fit at least one of the following descriptions: they are 5 years old or older and have a sensory, physical, mental or self-care disability; they are 16 years old or older and have difficulty going outside the home; or they are 16 to 64 years old and have an employment disability.

By age and sex

8 percent of boys and 4 percent of girls ages 5 to 15 have disabilities.

12 percent of men and 11 percent of women ages 16 to 64 have disabilities. This apparent difference is not statistically significant.

42 percent of women and 38 percent of men 65 or older have disabilities.

42% – Percentage of working-age men (21 to 64) with disabilities who are employed. For women, the rate is 34 percent. Altogether, 4.0 million men and 3.5 million women with disabilities are employed.

847,000 – Number of people ages 18 to 34 who have disabilities and are enrolled in school. They comprise 5 percent of all students in this age group. The majority of this group (567,000) attend college or graduate school. For further information on the data appearing in the Population Distribution section, see www.census.gov/hhes/www/disability/2003acs.html.

Specific Disabilities

10.8 million – The number of people age 5 or older with a sensory disability involving sight or hearing. This group accounts for 4.1 percent of the civilian noninstitutionalized population age 5 or older.

23.6 million – The number of people age 5 or older with a condition limiting basic physical activities, such as walking, climbing stairs, reaching, lifting or carrying. This group accounts for 9.0 percent of the civilian noninstitutionalized population age 5 or older.

13.5 million – The number of people age 5 or older with a physical, mental or emotional condition causing difficulty in learning, remembering or concentrating. This group accounts for 5.1 percent of the civilian noninstitutionalized population age 5 or older.

7.0 million – Number of people age 5 or older who have a physical, mental or emotional condition causing difficulty in dressing, bathing or moving around inside the home. This group accounts for 2.7 percent of the civilian noninstitutionalized population age 5 or older.

10.7 million – Number of people age 16 or older who have a condition that makes it difficult to go outside the home to shop or visit a doctor. This group accounts for 4.9 percent of civilian noninstitutionalized people who are of this age.

11.8 million – Number of people ages 16 to 64 who have a condition that affects their ability to work at a job or business. They account for 6.4 percent of civilian noninstitutionalized people in this age group. For further information on the data appearing in the Specific Disabilities section, see www.census.gov/hhes/www/disability/2003acs.html.

Earnings and Education

$33,109 – According to the March 2001 supplement to the Current Population Survey, these are the mean earnings in 2000 of year-round, full-time workers 16 to 64 with work disabilities. By comparison, those without work disabilities earned an average of $43,269.

72 percent – Percentage of people 16 to 64 with work disabilities who had high school diplomas or higher education in 2001.

11 percent – Percentage of people 16 to 64 with work disabilities who had college degrees or more in 2001.

Serving Our Nation

2.5 million – Number of veterans who received compensation for service-related disabilities as of 2003. Of these vets, 414,000 served in World War II; 164,000 in Korea; 848,000 in Vietnam; and 476,000 in the Persian Gulf (the data cover service from Aug. 2, 1990 to Sept. 30, 2003). See Table 515 at www.census.gov/prod/www/statistical-abstract-04.html.

Building Your Rolodex

Department of Justice ADA Home Page

www.ada.gov

The Department of Justice offers technical assistance on the ADA Standards for Accessible Design and other ADA provisions applying to businesses, non-profit service agencies, and state and local government programs; also provides information on how to file ADA complaints.

Equal Employment Opportunity Commission (EEOC)

www.eeoc.gov

The EEOC offers technical assistance on the ADA provisions applying to employment; also provides information on how to file ADA complaints.

US Department of Transportation Federal Transit Administration

www.fta.dot.gov/ada

Through the Federal Transit Administration, the Department of Transportation offers technical assistance concerning the transportation provisions of Title II and Title III of the ADA.

Federal Communications Commission (FCC)

www.fcc.gov/cgb/dro/

The FCC offers technical assistance on the ADA's telephone relay service (TRS) requirements.

The Access Board

www.access-board.gov

The Access Board is a Federal agency devoted to accessibility for people with disabilities. Key responsibilities include: developing and maintaining accessibility requirements for the built environment, transit vehicles, telecommunications equipment, and for electronic and information technology; providing technical assistance and training on these guidelines and standards; and enforcing accessibility standards for federally funded facilities.

Job Accommodation Network (JAN)

www.jan.wvu.edu

JAN is funded by the Department of Labor to provide advice on accommodating employees with disabilities.

Project ACTION

www.projectaction.easterseals.com

Project ACTION is funded by the US Department of Transportation to provide information about making transportation accessible.

ADA Document Portal

www.adaportal.org

The ADA Document Portal allows visitors to search through over 7000 technical assistance documents related to the Americans with Disabilities Act.

Supreme Court Decides One Case, Agrees to Hear Another

The ADA protects the rights of passengers with disabilities who sail on cruise ships that call at American ports, even ships that fly under foreign flags, the Supreme Court has ruled. However, under the decision, foreign ships will not be required to make the major structural alterations that would ordinarily be required under the ADA to guarantee the "full and equal enjoyment" of access to "places of public accommodation." The case is Spector v. Norwegian Cruise Line Ltd., No. 03-1388.

"It's a significant win that gives us everything except those accommodations that would have been most troubling to the industry," said Thomas Goldstein.

Lawyers for passengers who brought the lawsuit against Norwegian Cruise Line said the decision accomplished much of what they had sought. "It's a significant win that gives us everything except those accommodations that would have been most troubling to the industry," said Thomas Goldstein, who argued the passengers' case before the Supreme Court. He said the decision would require such readily achievable and "straightforward changes" as grab bars and lower water fountains, as well as the elimination of surcharges and other special rules that disabled passengers found expensive or burdensome. A copy of this decision can be obtained at: http://straylight.law.cornell.edu/supct/html/03-1388.ZS.html.

The Supreme Court has also agreed to hear a case that will decide if states and counties can be sued for damages by not accommodating disabled prisoners. Justices will consider the case of Tony Goodman, who claims he has been held for more than 23 hours a day in a cell so narrow he cannot turn his wheelchair. Goodman, injured in a car accident, is serving time for aggravated assault and a cocaine conviction. He claims that because the prison in Reidsville, GA, is not equipped for people in wheelchairs, he cannot go to the bathroom or bathe without help, and does not have access to counseling, classes and religious services.

The Bush administration has filed an appeal on behalf of Mr. Goodman; the case has major implications for states because of the costs of retrofitting old prisons to provide access. Paul Clement, the president's lead Supreme Court lawyer, told justices in a filing that ADA's protections address "the inhumane, degrading, and health-endangering conditions of daily living for inmates."

Lawyers for the state of Georgia had urged the court to refuse to hear the case, so that lower district courts would have more time to sort out the Supreme Court's May 2004 ruling in the case of Tennessee v. Lane, No. 02-1667. In that case, the Supreme Court ruled 5-4 that states can be sued over inaccessible courthouses.

States have repeatedly clashed with the federal government over their liability under the ADA, seeking immunity from lawsuits because the Constitution says a state government cannot be sued in federal court without its consent. The case is Goodman v. Georgia, 04-1236.

Sources: "Supreme Court Rules That Disabilities Act, in Part, Applies to Foreign Cruise Ships," Linda Greenhouse, New York Times, June 7, 2005 and "Court to Review Rights of Disabled Inmates," Gina Holland, Associated Press, May 16, 2005.

The ADA Center

ADA Distance Learning Opportunities

ADA Distance Learning provides continuing education on regulations and trends under the ADA. All you need is a telephone. Participate by yourself or invite colleagues to sit around a speaker phone. The toll free phone number will be sent to registrants prior to each session. Each session is real-time captioned on the host website so that people who are deaf and people who prefer to read the presentation and questions and answers can participate.

Fee

$40 businesses; $25 non-profit organizations.

Regional advisory board members enjoy a moment of sunshine during their June 7 meeting at Fort Adams in Newport, RI.

From left to right: Mike Kurs, Will Miller, Christine Botts, Lisa Caron, Tom Mercier, Dale Sandy, Oce Harrison, Cathy Taylor, Christine Rancourt, and Harvey Salvas. Front row: Cheryl Killam and Annette Bourbonniere.

Registration

Phone: (800) 949-4232 (voice/tty)
Fax: (617) 482-8099
Email: adainfo@NewEnglandADA.org
Online: www.adaptiveenvironments.org/neada/

Send name, affiliation, address, email address, phone number, date of session(s) and non–profit or business fee. Registration and payment is required prior to audio conference sessions.

All sessions are on Tuesdays from 2:00-3:30 pm Eastern.

We will email you the toll free call-in number a few days before each session.

Session Descriptions

Gaining Access to the Doctor's Office: What is the state of the art of accessible medical equipment?
August 16, Representative from the RERC on Accessible Medical Instrumentation

Readily Achievable Barrier Removal: What does it mean 15 years later?
September 20, Speaker: TBA

Parade Magazine Celebrates ADA's 15th Anniversary

A 15 year ADA Anniversary article written by John Hockenberry will be the cover story of Parade Magazine on Sunday, July 24th. The regional ADA & IT Centers are mentioned in the article along with stories about access in New England.

33,905 and Counting...

That's the number of technical assistance calls and e-mails the New England ADA & Accessible IT Center has handled since we opened our doors on October 1, 1996. The Center is one of ten regional disability and business technical assistance centers funded by the National Institute on Disability and Rehabilitation Research (NIDRR) to provide information and informal guidance about the Americans with Disabilities Act of 1990 and the accessibility of education-based information technology. The Center is a project of Adaptive Environments, Inc., a Boston-based nonprofit organization.

We routinely field questions from people with disabilities, as well as family and friends of these individuals, architects, employers, private businesses, and state and local government entities. Call the Center toll-free at 1 (800) 949-4232 (voice/tty) or e-mail us with a question at: ADAinfo@NewEnglandADA.org. Also, check out the recent redesign of our web site at: www.NewEnglandADA.org.

As we celebrate the 15th anniversary of the ADA, we here at the Center would like to thank you for the opportunity of helping to foster voluntary and effective compliance with the provisions of the ADA.

Around the Region

Hanson to Build Accessible Community Playground

Over a year ago, The Hanson Playground Committee began meeting to plan the replacement of a sixteen year old playground located at the Maquan Elementary School in Hanson, MA. Shortly after they began, the committee began working closely with the North River Collaborative, an educational organization that provides educational and other programming to disabled students in the region. The collaborative, housed at the Maquan School, has twenty students who use mobility aids. The group immediately began researching the possibilities and strategizing about how to make the playground as accessible as possible. The volunteer committee has applied for sixty grants and has raised $90,000. Most of the funding has been donated privately from community members and local businesses.

The playground, which is scheduled for construction in late August, will include ramps that lead to the main part of the structure and elevated areas, play panels under which wheelchair users can roll, and a hammock swing. The committee is hoping to raise additional money to fund a rubberized surface, which would allow children with mobility disabilities greater access to the site.

Maquan Elementary School students get together to support the building of an accessible community playground in Hanson. This will be the first one of its kind in Plymouth County.

The playground will be the only one of its kind in the area and can be utilized by the more than 200 disabled children in Plymouth County. The Hanson Playground Committee is committed to creating an inclusive space that allows all children to play together. They have gone above and beyond what the regulations require. Fifteen years after its passage, the spirit of ADA is alive and well in Massachusetts.

Alpha One ADA Projects Underway in Maine

Alpha One has many projects underway including adaptive renovations of five Rural Development projects, an upcoming training workshop for Code Enforcement Officers across the state, and two large survey assessments involving title II and title III facilities. Architect/ Accessibility Specialist Denis Pratt is working on a large bank facility in Saco that involves a multi-story home office and bank facility. The contract work involves physical survey, documentation of existing conditions, recommendations with budget estimates, and graphic sketches of recommended solutions.

Both Denis Pratt and Bill Bisson are performing a town-wide Title II survey and assessment of all municipally controlled properties in the Town of Oxford. The assessment includes Title II compliance issues and also Life Safety issues such as emergency egress and fire protection. A total of 10 facilities have been surveyed and are now in the report/documentation stage of the project.

NH Celebrates 15 years of the ADA

The Governor's Commission on Disability (GCD) is planning a July event at Bear Brook State Park in Allenstown, NH to kick off a year long celebration highlighting accessible sites and programs in New Hampshire. Examples include:

Accessible Courthouses

Chief Justice Broderick, NH Supreme Court, after visiting every courthouse in the state, is committed to accessibility improvements including jury boxes, witness stands and judge's benches. Cheryl Killam, Accessibility Specialist, has evaluated 40 courthouses to date, and was recently appointed to the Citizens Commission on the Courts.

Accessible Playgrounds

Scheduled to open July 2 in Griffen Park, Windham; new playground being built as of June in Peterborough; Tardif Accessible Playground in Laconia recently funded; playgrounds in Barrington and Hampton in the fundraising/planning stages; and accessible playground opened in Epsom last year.

Access to State Parks

Now listed on the NH State Parks website is "Accessibility at a Glance" (www.nhparks.state.nh.us/ParksPages/AccessGlncHom.html) which gives an idea of the level of access within each state park.

New Baseball Stadium

The Fisher Cats Stadium in Manchester opened on April 7. Cheryl Killam toured the stadium prior to its opening and reviewed the accessible seating areas located directly behind home plate, all along the concourse, and at all party decks and luxury suites.

Baseball fans enjoy another sellout at Fisher Cats Stadium in Manchester. The team is an affiliate of the Toronto Blue Jays organization.

Access to the Arts

The NH State Council on the Arts has received a grant through the National Endowment for the Arts to offer a forum on careers in the arts for people with disabilities. The GCD is part of the planning committee for Creative Work Opportunities for All: Careers in the Arts Forum which will be offered on November 1, 2005.

ⓘ For information about any GCD events and programs contact their offices at (800) 852-3405 (voice/tty).

Hartford Hotel Project Required to Meet State and Federal Access Codes

A Connecticut state agency has ordered the developer of a new hotel in Hartford to redo bathrooms in 17 rooms that are supposed to be handicapped accessible. The bathrooms in those 17 rooms at the new Marriott hotel at Adriaen's Landing don't meet the state code to make sure that people in wheelchairs are able to use the toilets. A consultant for the hotel of argued that the hotel's bathrooms meet federal ADA requirements. However, the chairman of the codes and standards committee of the Department of Public Safety says the bottom line is that the bathrooms have to meet state standards as well as federal standards and currently they don't. The project manager for Waterford Development says it's now back to the design board. The hotel is supposed to open this summer.

Source: "State Orders Hotel Corrected for Disabled," Associated Press, May 25, 2005.

Access Board Update

US Postal Service and GSA Adopt New Accessibility Standards

New accessibility standards adopted by the US Postal Service and the General Services Administration (GSA) will soon govern the design of new or altered Federal buildings. The standards, which are based on guidelines the Board issued last July, contain updated provisions that improve accessibility while facilitating compliance. The adopted standards will apply to a wide range of Federal facilities under the purview of GSA, the Federal government's "landlord," and to postal facilities. The design and construction of new facilities, altered areas of existing facilities, and leased facilities will be subject to these standards in accordance with the Architectural Barriers Act, which ensures access to buildings that are federally funded.

The new standards will replace the Uniform Federal Accessibility Standards for these two agencies and will take effect in six months according to notices the agencies will be issuing. Similar action by two other agencies, the departments of Defense (DOD) and of Housing and Urban Development (HUD), will update those standards covering the rest of the Federal sector, specifically military facilities and HUD-funded housing.

"This prompt action by GSA and the US Postal Service will help ensure that the Federal government serves as a model of accessibility," noted Board Chair Jan Tuck. "Through its technical assistance and training programs, and its history of partnerships with other agencies, the Board stands ready to assist these agencies in implementing the standards." The Board has already helped train hundreds of facility personnel on the new standards at the US Postal Service's eight facility service offices across the country and at its headquarters.

In addition to the Federal sector, the Board's guidelines will also serve to update standards for facilities in the private sector and state and local government sectors covered by the Americans with Disabilities Act (ADA). The Department of Justice and, in the case of transit facilities, the Department of Transportation, is responsible for updating the ADA standards.

Source: Access Currents, Volume 11, No. 2, March/April 2005.

DOJ/Employment Update

Making EEO Mediation Accessible to People with Disabilities

The Justice Department, the US Equal Employment Opportunity Commission (EEOC), and the National Council on Disability (NCD) have jointly released two new publications addressing how to ensure that mediation of equal employment opportunity disputes is accessible to people with disabilities. The publications are available on all three agencies' websites, at www.eeoc.gov, www.ncd.gov, and www.ada.gov.

The documents, entitled Questions and Answers for Mediation Providers: Mediation and the Americans with Disabilities Act and Questions and Answers for Parties to Mediation: Mediation and the Americans with Disabilities Act, address the obligations of all private and public sector mediation providers, including employers that offer their employees mediation as a benefit of employment. The documents are written in a question-and-answer format and consider topics such as:

- Types of reasonable accommodations that may be necessary to make mediation accessible to people with disabilities;

- Best practices for ensuring that mediation is accessible;
- The confidentiality of medical information disclosed during mediation; and
- Recommended types of ADA training for mediators.

"These documents will enhance the use of mediation by people with disabilities to resolve employment disputes and will highlight the importance of reasonable accommodation in the alternative dispute resolution process," said NCD Chair Lex Frieden. "NCD is pleased to combine with EEOC and the Justice Department to use our experience and expertise in providing technical assistance on disability issues in the mediation of employment discrimination disputes."

Both EEOC and the Justice Department have successfully used mediation to further their respective missions and to enhance customer service. More than 35,000 charges of discrimination have been resolved through EEOC's private sector mediation program since it was launched in 1999. In Fiscal Year 2004, EEOC achieved a record 8,086 successful resolutions through the agency's voluntary national mediation program, resulting in $112 million in monetary benefits in addition to non-monetary benefits such as changes in employer policies and reasonable accommodations for employees. Additionally, EEOC and more than 670 employers have agreed to refer charges filed to mediation as an alternative to traditional investigation with an option to continue with investigation if mediation does not resolve the charge.

The Justice Department, through a contract with the Key Bridge Foundation, refers mediation complaints it receives under Title II and Title III of the ADA. An increasing number of people with disabilities and disability rights organizations are specifically requesting that the Department refer their complaints to mediation. Under the contract with Key Bridge, more than 400 professional mediators, fully trained in the legal requirements of the ADA, are available nationwide to mediate these cases. Over 75 percent of the cases in which mediation has been completed have been successfully resolved.

EEOC enforces Title I of the Americans with Disabilities Act, which prohibits discrimination against individuals with disabilities by private and state and local government employers, and Section 501 of the Rehabilitation Act, which prohibits discrimination against individuals with disabilities who are federal employees and applicants for federal employment. EEOC also enforces Title VII of the Civil Rights Act of 1964, which prohibits employment discrimination on the basis of race, sex, national origin, color, and religion; the Age Discrimination in Employment Act, which prohibits discrimination against individuals age 40 and older; and the Equal Pay Act.

NCD is an independent federal agency making recommendations to the President and Congress to enhance the quality of life for all Americans with disabilities and their families. NCD is composed of 15 members appointed by the President and confirmed by the US Senate. Its purpose is to promote policies, programs, practices, and procedures that guarantee equal opportunity for all individuals with disabilities, regardless of the nature or severity of the disability; and to empower individuals with disabilities to achieve economic self-sufficiency, independent living, and inclusion and integration into all aspects of society.

The Civil Rights Division of the Justice Department is responsible for litigating cases under Title I of the ADA and Title VII of the Civil Rights Act of 1964, against state and local government employers, and for enforcing Titles II and III of the ADA. Title II prohibits discrimination on the basis of disability with respect to all programs and activities carried on by state and local governments; Title III prohibits discrimination by places of public accommodation. The Civil Rights Division also coordinates the federal government's enforcement of Section 504 of the Rehabilitation Act, which prohibits discrimination on the basis of disability with respect to federally-funded and federally-conducted programs and activities

Tutorial on Accessible Telecommunication Products Available

A new web-based training course is available on ensuring access to telecommunication products under section 508 of the Rehabilitation Act, which requires access to electronic and information technologies procured by the Federal government. The course, the last in a series developed by the Board covering different aspects of its section 508 standards, is designed for those involved in the purchase or procurement of telecommunication products for Federal agencies. It covers all of the requirements that telecommunication products must meet, including those providing access for persons with hearing impairments.

Since issuing its standards for electronic and information technology, the Board has maintained a program of continuing on-line guidance and training on the requirements of the standards. Other section 508 tutorials in the series cover software applications and operating systems; desktop and portable computers; and self contained, closed products, such as information kiosks, calculators, and fax machines. The courses are part of the on-line "508 Universe" program provided on the www.section508.gov website. This site also provides other section 508 tutorials and resources.

Source: Access Currents, Volume 11, No. 2, March/April 2005.

Information Technology Publications

Section 508 Standards (601)

Access Board standards for accessibility in computers, software, networks, websites, peripherals and other electronic office technology. 30 pp. $3

Section 508 Statute (608)

The law requiring federal agencies to make their electronic and information technology accessible to people with disabilities. 3 pp. $1

Quick Tips Web Access (609)

Business card-sized cards includes 10 tips on Web accessibility.

Section 255 Guidelines (611)

Access Board's guidelines for accessibility, usability, and compatibility of telecommunications equipment. 39 pp. $4

Section 255: Access to Telecommunications (612)

Access Board's plain language explanation of Section 255 requirements for access to telecommunication service and equipment. 4 pp. $1

ⓘ All publications are available from our Center by calling (800) 949-4232 (voice/tty) or by ordering online using our shopping cart at www.adaptiveenvironments.org/neada/adapublications.php. Many publications can be downloaded.

New Public Schools Accessible IT Kit Available

Access to information technology in schools is increasingly important for student success. However, many students with disabilities do not have access to the information technology that other students are using. The New England ADA and Accessible IT Center (funded by the US Department of Education) has available, an information kit – *Breaking Down Barriers: K-12 and Beyond* that demonstrates how to make IT accessible to students with disabilities.

This free kit includes:

- a CD-Rom demonstrating the benefits of accessible IT for students with disabilities
- a checklist to help school personnel survey their school's technology for accessibility
- a printed information booklet for parents
- a poster depicting examples of accessible information technology

ⓘ Schools, parents, and others interested in information on making technology in schools accessible can order a kit by calling (8000 949-4232 (voice/tty).

The Center's most popular ADA publications

ADA General

ADA Question & Answer Brochure (53)

Equal Employment Opportunity Commission (EEOC) and Department of Justice (DOJ) booklet outlines ADA basics. 32 pp.

Service Animals Q & A Sheet (60)

Explains the requirements regarding animals that provide services for people with disabilities. 3 pp.

A Guide to Disability Rights Laws (65)

Overview of federal disability laws including ADA, Fair Housing Act, Air Carriers Access Act, Sections 504, 508, and IDEA. 23 pp.

ADA CD ROM (71)

DOJ's Title II and III regulations and technical assistance publications, including the ADA design standards. In HTML, WordPerfect, and ASCII text; many in Acrobat PDF.

Title I: Employment

Title I Technical Assistance Manual (101)

EEOC manual explains the Title I regulations, including questions, answers and practical examples. 260 pp.

EEOC Poster (104)

Summarizes federal laws prohibiting employment discrimination. 1 pp.

EEOC Guidance on Disability-Related Inquiries and Medical Examinations of Employees (126)

Explains when it is permissible for employers to make disability-related inquiries or require medical examinations of employees. 26 pp.

EEOC Guidance Reasonable Accommodations (120)

Addresses what constitutes a request for reasonable accommodation, types of reasonable accommodations, employers' right to documentation of disability and undue hardship. 77 pp.

Title II: Public Services

Title II Technical Assistance Manual (201)

DOJ in-depth explanation, questions, answers and practical examples. Includes '93 & '94 supplements. 77 pp.

DOJ Title II State & Local Government Regulations (204)

22 pp.

Title II Action Guide for State and Local Governments and Employment Supplement (206)

Explains state and local government obligations; has forms for conducting a self-evaluation. 201 pp., $24

Title III: Public Accommodations

Title III Technical Assistance Manual (302)

DOJ offers in-depth explanation of public accommodations and commercial facilities' responsibility. 117 pp.

Title III Regulations for Public Accommodations and Commercial Facilities and ADA Standards for Accessible Design (306)

176 pp.

ADA and Small Businesses Booklet (309)

DOJ on making goods & services accessible; tax credits and deductions to offset access costs. 15 pp.

Commonly Asked Questions about Child Care Centers and the ADA (316)

DOJ guidance on insurance, individual attention, safety, medication, diapering, HIV, mental retardation, allergies, diabetes and facility access. 13 pp.

Facilities Access

Existing Facilities Survey Checklist 2.1 (307)

Survey to identify accessibility problems and solutions for meeting Title III barrier removal obligations. 15 pp., $1

ADAAG Manual: A Guide to the Americans with Disabilities Act Accessibility Guidelines (414)

Access Board clarifies the complexities of the ADAAG; includes helpful drawings. 143 pp.

ADAAG '04: ADA and ABA Accessibility Guidelines 2004

New Access Board guidelines for accessibility of facilities and buildings under the Americans with Disabilities Act and the Architectural Barriers Act. 310 pp.

ⓘ All publications are available from our Center by calling (800) 949-4232 (voice/tty) or by ordering online using our shopping cart at www.adaptiveenvironments.org/neada/adapublications.php. Many publications can be downloaded.

Access
New England

Adaptive Environments
374 Congress Street, Suite 301
Boston, MA 02210

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EVENTS AND ANNOUNCEMENTS

Celebrate the 15th Anniversary of the ADA

Tuesday, July 26, 2005 (Rain or Shine)
Dunn Pond State Park
11:00 AM - 3:30 PM
Gardner, MA

With all of the demands of our daily lives, we rarely take the time to gather as a community, to celebrate the gains we've made and to remember those who made the journey with us. We'll remember those who dreamed the dream and made the movement strong. But mostly, it's a time to kick back, have some fun in the sun, connect with old friends and make some new ones.

Relax and Enjoy the Day

This 119-acre park features a 20-acre pond, walking trails, swimming, picnicking, and play equipment. Private canoes and non-motorized boats are allowed on the pond, and paddle boats can be rented during the summer. Members of the Department of Conservation Universal Access program will be on hand bringing several kayaks and hand cycles for people to try throughout the day.

Food and entertainment will be provided.

Please RSVP

Steve Higgins at steveh@masilc.org or 1 (866) 662-7452 (toll free voice/tty)