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ADA Americans With Disabilities Act
COMPLIANCE GUIDE
Monthly Bulletin Vol. 10/ No. 12 • December 1999

President urges agencies to hire people with disabilities

In commemoration of October as National Disability Employment Awareness Month, the Clinton administration undertook several initiatives to lower the unemployment rate of people with severe disabilities, including a presidential memorandum to promote employment, a mentoring day for youth with disabilities, a plea to Congress to fund the Work Incentives Improvement Act, and a cooperative agreement between two agencies that have programs for people with disabilities.

"My administration has helped create more than 19 million new jobs in the last six and a half years, and unemployment is at a 20-year low. Yet almost three out of four Americans with severe disabilities who want to work are not working," Clinton stated.

Presidential memorandum

In a radio address to the nation Oct. 16, President Clinton announced that he had sent a memorandum to the heads of executive departments and agencies, urging them to:

- recruit people with disabilities for positions at all levels;
- provide opportunities for students with disabilities;
- ensure career opportunities for people with disabilities;
- collect and maintain data on employees with disabilities; and
- reasonably accommodate applicants and employees with disabilities.

"I'm also calling on our federal human resources agency, the Office of Personnel Management [OPM], to ensure that every agency gets the help it needs to fulfill these commitments. We are the nation's largest employer. I want it to be a model for private industry," stated Clinton.

In addition to the memorandum, the agency heads were sent a copy of a plan titled "Accessing Opportunity: The Plan for Employment of People With Disabilities in the Federal Government" and a companion employment guide developed by the OPM. The memorandum directs federal officials "to implement this plan immediately within your departments and agencies and to bring qualified people with disabilities into the federal workforce."

Mentoring day

As an initial effort to encourage the employment of more people with disabilities, the administration sponsored a mentoring day Oct. 27 for youth with disabilities. More than three dozen high school and college

*(See **Federal Agencies**, page 2)*

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In This Supplement

This supplement includes a revision of the directory of resources within federal agencies and national organizations.

Confidentiality must be protected

Because of the stigma that still surrounds AIDS, human resource (HR) professionals need to work doubly hard to protect the confidentiality of medical information of people who have the condition, according to Colleen Young, program manager at the National AIDS Fund's Workplace Resource Center. Employers simultaneously should create a cooperative environment that may encourage employees to trust their supervisors and co-workers enough to disclose their condition, recommended B.J. Stiles, the former chief executive officer of the National Leadership Coalition on AIDS, which subsequently became the National AIDS Fund.

Many people continue to be uncomfortable working with people who have AIDS, Young remarked, speaking at a Society for Human Resource Management conference on workplace diversity in Washington, D.C. In a survey of employers conducted by the National AIDS Fund, 63 percent of the respondents said they would be uncomfortable working with someone who has AIDS, Young stated. Although 46 percent of the respondents knew someone who had HIV or AIDS, 21 percent said they would fire an employee at the first sign of illness. While 73 percent wanted training on HIV and AIDS, only

*(See **Confidentiality**, page 3)*

Federal Agencies

(continued from page 1)

youth with disabilities participated at various federal offices.

After a briefing from White House and administration officials in the Old Executive Office Building, participants dispersed to various locations, including the White House, the departments of Defense, Education, Justice, Labor and Transportation, and the OPM, where volunteer mentors discussed and shared their employment experiences.

The goal of the mentoring day was to expose young people with disabilities to a variety of job opportunities, in addition to providing federal agencies with the chance to network with prospective employees. Mentoring days also were sponsored by several corporations nationwide on the same day.

Work Incentives Improvement Act

The Clinton administration is touting the Work Incentives Improvement Act as one measure to help reduce the unemployment rate for people with disabilities by allowing current beneficiaries of Supplemental Security Income and Social Security Disability Insurance to work without losing their Medicaid or Medicare benefits; creating a new $1,000 tax credit to cover work-related costs for people with disabilities; and doubling the federal funding of assistive technologies (see March 1999 *Monthly Bulletin*, page 1). The act unanimously passed the Senate June 16 and passed the House of Representatives Oct. 19 by a vote of 412 to 9.

However, the bill has been sent to a House-Senate conference committee to try and resolve differences between the two versions.

Clinton criticized the House version for its "limitations on the health options and inadequate and problematic financing provisions." The House bill lacks mandatory funding for infrastructure grants that provide an incentive for states to adopt the Medicaid buy-in portion of the legislation; a mandatory demonstration that allows people who are not yet too disabled to work to buy into Medicaid; and a guarantee of Medicare coverage for eligible individuals returning to work.

Interagency cooperation

To promote the employment of people with disabilities, the Small Business Administration and Social Security Administration entered a memorandum of understanding Oct. 20 to mutually promote the Small Business Administration's Welfare-to-Work Initiative and the Social Security Administration's disability insurance and supplemental security income programs. The Welfare-to-Work Initiative provides small businesses looking for employees with access to qualified workers from underutilized pools of labor, including people with disabilities.

The memorandum of understanding was signed at a disability community briefing, which Vice President Gore attended. Gore put the initiatives for persons with disabilities into context by recalling his visit with an individual with a disability "who couldn't talk, walk or move, except a thumb and forefinger. He used the finger to manipulate a mouse to guide his cart down the hall into an office. He would pick out letters on the keyboard and send them. This was Stephen Hawking, described as the smartest man in the whole world. Without his work, we would be unable to solve some of the astrophysics questions we are solving today. ... Tipper asked, 'Can you imagine how individuals with severe disabilities were perceived 100 years ago before assistive technology? Would anyone have looked and said, "There's the smartest man in the whole world"?' Not likely, but it's a lesson to me. There are men, women and children who are misperceived and not valued for the contributions they can make." ■

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Confidentiality

(continued from page 1)

18 percent received it, she added. Training is important to help employers respond appropriately when they learn that an employee has HIV or AIDS, she noted.

Safety and performance concerns

The two main temptations faced by employers that have workers with AIDS is violating the confidentiality of medical information and focusing on disability rather than performance, said Young. Some employers "feel a duty to inform others because of safety concerns or paternalism," Young stated.

Usually, workers with AIDS do not pose a safety risk to co-workers or the public because HIV is transmitted only through body fluids. Even in settings where workers may get cuts such as in the construction business, if Occupational Health and Safety Administration standards are followed and all blood is treated as if it is infectious, any risk to others can be safely managed, she added. "Know what a proper barrier is," in the event of a bleeding employee, she advised. If blood is on the ground, a trash can could be placed over it as a barrier until the blood is cleaned up following the Centers for Disease Control and Prevention's universal precautions (visit **http://www.cdc.gov/search.htm** and search for "universal precautions"), she noted.

Typical accommodations

While people with AIDS may have some functional limitations that result in performance problems, these problems often can be corrected through reasonable accommodations, she noted. Frequent side effects of AIDS include fatigue, nausea, lightheadedness, weight loss, vision impairments, chronic diarrhea and psychiatric side effects such as depression, she stated.

Although medications control some of these side effects, employers can supply some accommodations such as providing a chair or permitting a "power nap" to someone who is fatigued, nauseous or lightheaded. Power naps also are a way to accommodate individuals with other disabilities such as multiple sclerosis, cancer and Epstein-Barr virus, she added. Job sharing and leave may be an accommodation for someone who needs time off because of fatigue or for medical treatment, she noted. Moving someone's workstation closer to a restroom and permitting frequent breaks may be accommodations for someone who has chronic diarrhea.

One of the changing realities of AIDS is that "these days it is largely manageable if you have good health care, resources, and are one of the fortunate ones for whom the medications work," said Stiles. Some of the "wonder drugs" that have made AIDS manageable for many individuals need to be refrigerated. To protect the confidentiality of the individuals with disabilities, a kitchen should be available in some discreet location such as the HR office where the medication can be easily accessed by the employee, Young recommended.

Of all the accommodation requests, leave is the most problematic for employers that want employees who can show up to work, noted one conference attendee, saying, "The most common complaint from immediate supervisors is about attendance. Sure, employees have FMLA [Family and Medical Leave Act] leave, but that is quickly exhausted. Supervisors want employees who are there."

Dialogue with employees

Stiles cautioned employers against over-empathizing with employees who have AIDS, saying, "Employers can't keep jobs open indefinitely. They want to reward other people."

He advised instead that employers assess each individual situation realistically. "As an employer, I managed two workers from diagnosis to death. In looking back, I as a manager failed. I was too idealistic, too hopeful at the mid-stage." He regretted not talking about organizations that could provide factual information about Social Security benefits and the pluses and minuses of short-term versus long-term disability. He noted that it is particularly difficult to know when such a talk might be appropriate now that medications work so well for so many.

Creating an environment that fosters trust between employees and employers can help create an honest dialogue between supervisors and individuals about accommodations and business needs. The ADA is "designed to be protective. This is not the best standard for behavior in dealing with employees and promoting teamsmanship," he stated. Protecting confidentiality can help encourage employees to open up and assist employers in keeping interactions "as human as possible," he added.

Sometimes HR offices will be the first place that individuals disclose that they have AIDS, he noted. "It is not too unusual in HR when an employee comes and closes the door and reveals they have HIV or AIDS. Many employees distrust their supervisors and dislike their workteam. They fear the worst case with their health. An employee may start with, 'I want a transfer. My employer adds to my stress and I don't trust him/her.'"

Erosion of confidentiality

As soon as HR finds out about the condition and an accommodation has been requested, not only must it start the interactive process of identifying a reasonable accommodation, but it must do its utmost to protect the confidentiality of the person's condition. Stiles warned that employees in the benefits office need to be trained about the ADA's confidentiality provisions. "The erosion of confidentiality often occurs on the grapevine from information that comes into the benefits office. ... People who manage information in payroll or with insurance pick up on aberrations."

*(See **Confidentiality**, page 4)*

Central accommodation committee reviews costlier requests

Ford Motor Co. has standardized its response to reasonable accommodation requests by establishing uniform procedures and a central committee to review costly and problematic accommodation requests, according to Joyce Wasilewski, a Ford human resources associate. Ford also is considering creating a centralized budget to pay for accommodations, rather than requiring accommodations to be paid from individual teams' budgets, she noted.

Addressing the National Business & Disability Council's annual conference at Microsoft's headquarters in Redmond, Wash., Wasilewski said the central accommodation committee was established partly to share information about what accommodations different plants were providing. Moreover, the committee helps ensure that ADA requirements are met.

Interactive process

Ford provides an accommodation manual for its human resources managers and an abridged version of the manual for all supervisors. When an employee with a disability requests an accommodation, Ford advises its managers to talk with the employee about the needed accommodation. Managers should not assume they know what accommodation should be provided without engaging in an interactive process, and should not assume an accommodation is needed when one has not been requested, Wasilewski cautioned.

"So often managers look at extremely expensive accommodations" when they fail to engage in the interactive process, remarked Wasilewski. "We had a situation recently where there was an employee of short stature. The manager was considering buying new office equipment that cost $5,000 or $6,000, even though the employee did not ask for an accommodation. The employee said, 'Why not just have me step up and put a pillow for me to sit on? That's what I do at home.' It's amazing how often a manager decides they know what is best for people."

Nevertheless, Wasilewski noted that sometimes managers will provide an expensive accommodation even absent any accommodation request if they think that new equipment will improve a valued employee's work environment and productivity. For example, at one plant, a manager noticed that a vehicle designer with a severe vision impairment had to be an inch or two from the computer screen to do his work, in spite of the employee having the largest screen at the plant and a magnification device. The manager purchased a 50-inch monitor for the employee that cost $15,000. "The employee did not ask for this, but the manager realized that this was a good employee and wanted the worker to continue to be productive," she said.

Ford has paid for several accommodations that cost thousands of dollars each in the past year, including a scooter for a supervisor with a mobility impairment to use to travel through a warehouse, she stated, estimating that the average accommodation during the past year cost $4,000 or $5,000. However, this year's accommodations have been more expensive. She estimated that in previous years accommodations had cost on average about $2,000.

Committee review

If an employee rejects an accommodation offered by the manager, human resources gets involved, Wasilewski noted. Most accommodations questions are resolved at the plant level and do not reach the central accommodation committee, which reviews only about one accommodation a month. The committee reviews any accommodation that would cost more than $1,000 and any instance when a plant has not been able to find an accommodation, she stated.

The committee has 16 members who represent various segments of the company, including the primary staff, life and disability employees, human resources, corporate medical staff, equal employment representatives, labor, wage administrators, lawyers and risk managers. Rather than hold an on-site meeting, which could delay the committee's decision by weeks, the committee often holds meetings online. The members are e-mailed to find out if they support or oppose a recommended accommodation.

Ford has set up a standardized accommodation request form that must be submitted for any request that will be reviewed by the accommodation, she remarked. "We were getting verbal requests and 20-page

*(See **Accommodation**, page 5)*

Confidentiality

(continued from page 3)

But sometimes talk around water coolers nevertheless spreads rumors about individuals' conditions and employers guess the truth long before employees disclose, Stiles acknowledged. He recalled one lawyer at a firm who did not tell his employer he had HIV for years, finally disclosing so that his employer would know when it decided if it would make him a partner. "The employer laughed and said, 'I figured it out two years ago.' Often others have figured it out and are waiting for the worker to give the workteam permission to be a support group. But it is important to not be premature about this," Stiles commented.

Finally, he cautioned employers not to blame employees for the way they acquired HIV. "The extra challenge is to remain literate and try to stay rational. Be sympathetic and work with the changing realities of the epidemic," he advised. ■

Failure to provide ADA training results in punitive damages

An employer that has made a good-faith effort to comply with the ADA cannot be held vicariously liable for punitive damages for supervisors' discriminatory actions, but simply having a policy prohibiting disability discrimination without any ADA training is not enough to show good-faith compliance, ruled the federal appeals court (*EEOC v. Wal-Mart Stores Inc.*, 187 F.3d 1241 (10th Cir. 1999)).

No interpreter provided

Wal-Mart Stores maintained that it had made a good-faith effort to comply with the ADA and should not be held vicariously liable for the actions of two of its supervisors, who a jury determined violated the ADA. One of the supervisors failed to provide Eduardo Amaro, an employee with a hearing impairment, with a certified American Sign Language interpreter for a mandatory training session that included a videotape presentation that was not captioned, offering instead only a co-worker who could fingerspell. Amaro left the training session and was transferred the following day from scanning and marking labels to janitorial duties.

Amaro's immediate supervisor and the store manager met with Amaro without an interpreter to explain the transfer, which they maintained was because of a reduction in staff in the receiving department and because the maintenance position would "involve less communications and be more simple" for Amaro, the court stated. Amaro requested an interpreter to explain the transfer, but was not provided with one.

Amaro threatened to filed a complaint with the EEOC and was suspended. About a week later, an interpreter was provided for a meeting between Amaro and the store manager, who insisted on transferring him. Amaro refused and was discharged, although he was rehired nearly five months later.

The EEOC and Amaro joined in a lawsuit, maintaining that Wal-Mart unlawfully retaliated against Amaro for asserting his ADA rights by suspending and terminating him. A jury awarded Amaro $3,527.79 in compensatory damages and $75,000 in punitive damages. The district court entered the judgment and awarded $41,063.72 in attorneys' fees.

Policy alone not enough

Wal-Mart appealed the award of punitive damages, arguing that it should not be vicariously liable for the act of the supervisors when it prepared and disseminated an ADA compliance manual and the supervisors failed to act in accordance with it. The

*(See **ADA Training**, page 6)*

Accommodation

(continued from page 4)

letters and said, 'Time out. We need a form.' I suggest you do, too, and give it a lot of thought," she advised. Wasilewski recommended that the form include detailed information about the employee and the individual's restrictions as well as other accommodations provided at the plant.

While some companies have a centralized budget to pay for accommodations, Ford does not, although it is considering setting up a centralized budget, she stated. After reviewing the accommodation request, if the committee decides an accommodation must be granted, the individual team must pay for and provide the accommodation. If the committee cannot decide, the committee co-chairpersons are responsible for making the accommodation decision, she added.

Centralized budget

At Aetna Inc. there is a centralized budget to pay for accommodations "to make sure that cost is never an issue," according to Mary Flynn, an Aetna ergonomics coordinator. Nevertheless, individual teams still must pay for accommodations that would be normal business expenses such as removing architectural barriers during renovations.

Like Ford, Aetna will take into consideration an employee's preference, Flynn noted. Sometimes, an employee's preference may not be the most convenient option for an employer, but Flynn said the employee's preference still might be the best option. For example, an employee with a disability who already is familiar with one speech-to-text software program may prefer that program over other speech software already in an office's system, she noted. The company should consider permitting the worker to use the software she or he knows, according to Flynn.

Most accommodations are not costly, and many just involve common sense, she emphasized. Frequently, accommodations may involve a modified work schedule, or allowing telecommuting or periodic rest breaks. Other frequent accommodation requests include specialized equipment, special workstations and furniture, eliminating a nonessential job function or leave. Although leave is allowed as an accommodation if it is for a definite period of time, indefinite leave is not, she stated. "We like to have a common sense approach and do what we need to help the person be successful," she commented.

Other articles from the National Business & Disability Council's annual conference, including a story on communicating corporate values and an article on electronic access, will appear in the January 2000 Monthly Bulletin. ■

ADA Training

(continued from page 5)

appeals court acknowledged that in *Kolstad v. American Dental Ass'n* (see August 1999 *Monthly Bulletin*, page 7), the Supreme Court stated that "in the punitive damages context, an employer may not be vicariously liable for the discriminatory decisions of managerial agents where these decisions are contrary to the employer's 'good-faith efforts to comply with [federal anti-discrimination laws].'" Although *Kolstad* involved Title VII of the Civil Rights Act of 1964, which prohibits employers from discriminating based on race, color, gender, national origin or religion, the appeals court stated, "The punitive damages analysis is the same for Title VII and ADA claims."

The purpose of the good-faith defense was to recognize an employer's well-intentioned efforts to comply with anti-discrimination statutes such as the ADA and Title VII and avoid "the perverse effect of 'dissuading employers from implementing policies to prevent discrimination in the workplace,'" noted the court, quoting from *Kolstad*. But simply having an anti-discriminatioin policy is not enough, it ruled. Instead, the Supreme Court's good-faith defense sought to encourage employers to:

- adopt anti-discrimination policies; and
- educate their personnel on federal prohibitions against workplace discrimination.

Consequently, "the extent to which an employer has adopted anti-discrimination policies and educated its employees about the requirements of the ADA is important in deciding whether it is insulated from vicarious punitive liability," the appeals court stated.

No ADA training

While Wal-Mart had an anti-discrimination policy, Amaro's immediate supervisor testified that she did not become aware of any reasonable accommodation requirement under the ADA until three years after Amaro's suspension and termination. The personnel manager responsible for training at the store where Amaro worked said that during her seven years as a Wal-Mart manager, she had received no ADA training, never discussed the ADA with any employees under her supervision and did not have a copy of the Wal-Mart ADA handbook.

The appeals court concluded that Wal-Mart could not be shielded from punitive damages just because it had a policy when there had been no ADA training.

"Wal-Mart's assertion of a generalized policy of equality and respect for the individual does not demonstrate an implemented good-faith policy of educating employees on the act's accommodation and non-discrimination requirements. The evidence demonstrates a broad failure on the part of Wal-Mart to educate its employees, especially its supervisors, on the requirements of the ADA, and to prevent discrimination in the workplace. We therefore conclude that given the facts of this case, Wal-Mart enjoys no protection from vicarious punitive liability for the conduct of its managerial agents against Amaro," the appeals court stated.

Intentional discrimination

The court also rejected Wal-Mart's argument that punitive damages should not have been awarded because the two managers did not intentionally discriminate against Amaro. Wal-Mart knew Amaro had a hearing impairment and that he would need interpreters for meetings and training when it hired him, the court noted.

In spite of this, Wal-Mart failed to provide an interpreter and subsequently suspended Amaro when he objected to a perceived demotion and provided an interpreter only in the meeting to terminate him, the court stated. In addition, the store manager testified that he was familiar with the ADA's accommodation requirements. The court determined that the jury reasonably concluded that Wal-Mart intentionally discriminated against Amaro, and affirmed the award of punitive damages. ■

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Medical student challenges denial of extra reading time

A medical school that does not consult with the university's disability resources center before denying a student's accommodation request subjects the denial to closer scrutiny by courts if the student sues than a university that thoroughly investigates available accommodations, determined the U.S. Circuit Court of Appeals for the Ninth Circuit (*Wong v. Regents of the University of California*, 1999 U.S. App. LEXIS 22353 (9th Cir.)).

After finishing his first two years of medical school, Andrew Wong learned about the disability resource center from the university's promotions board, which was reviewing his academic record after he failed a surgery and medicine clerkship. The center's staff members referred him to a psychologist who diagnosed Wong as having a learning disability. The psychologist, a medical school faculty member, recommended that Wong be given extra time to read before he repeated his surgery and medicine clerkships.

The dean granted Wong eight weeks off before both clerkships. Although Wong continued to have some difficulty in making presentations, including some uncertainty and taking extra time to answer questions, he received a "B" in each clerkship.

Accommodation request denied

Nevertheless, the dean, without consulting with the disability resource center, denied Wong's request for eight weeks off to read for his next clerkship, pediatrics. The dean and Wong did not speak to each other about the accommodation request, but communicated only through the registrar. The dean claimed that he denied the accommodation request because Wong also asked to intersperse fourth-year electives with his remaining third-year clerkships to graduate on time, but Wong claimed he requested only the accommodation of extra time.

Later, the dean said that he denied the extra time because Wong already received time off for the previous two clerkships and had passed the pediatrics clerkship without an accommodation three years earlier. (After failing two clerkships, Wong had to repeat all of his third-year clerkships.) Wong countered that pediatrics had become much more rigorous and demanding in the intervening years. The dean then responded that allowing additional time "would have been unreasonable, unfair to other students and contrary to the purposes of the curriculum."

Student dismissed from program

Wong failed the ward performance portion of his pediatrics clerkship, and was criticized for poor clinical judgment and difficulty synthesizing information. In addition, he was faulted for a reporting inaccuracy that would have resulted in inappropriate dosages in at least one instance, but Wong blamed a supervisor for this error.

In Wong's subsequent obstetrics/gynecology clerkship, a preliminary report concluded that his performance was substandard and noted that Wong communicated poorly and lacked confidence when examining patients. Wong was ordered to appear before the promotions board, but the dean told Wong not to mention the denial of extra time, which Wong did not. Instead, Wong attributed his poor performance to his having a flu-like virus and being preoccupied with his mother's recent cancer diagnosis. The committee dismissed Wong from medical school.

Wong sued the university, contending that its failure to provide extra time to prepare for the clerkships as a reasonable accommodation violated Title II. The district court dismissed his claims, determining that his accommodation request was not reasonable and Wong was not a qualified student with or without accommodation because he could not perform the tasks required of an effective medical doctor.

Experts not consulted

The appeals court reversed and ordered that a jury determine if the request was reasonable and Wong was qualified. Although courts generally defer to universities' academic decisions, the Ninth Circuit noted that universities have a duty to "gather sufficient information from the disabled individual and qualified experts as needed to determine what accommodations are necessary to enable the individual to meet the standards in question."

The medical school did not refer to the disability resource center experts who were qualified to determine what accommodations were necessary before denying Wong extra time for the pediatrics clerkship, the court emphasized. Criticizing the dean, the court asserted, "the fact that he simply passed messages to Wong through the registrar, stating his decision to deny Wong's request — without consulting Wong or any person at the university whose job it was to formulate appropriate accommodations — strikes us as a conspicuous failure to carry out the obligation 'conscientiously' to explore possible accommodations."

The court doubted that the dean considered whether the accommodation would fundamentally alter the program's requirements or standards at the time of Wong's request. While the fact that the university twice granted this accommodation for Wong did not obligate the university to continue to grant the accommodation, it was evidence that the accommodation was reasonable, the court stated.

Accommodation's success ignored

Moreover, the promotions board did not consider the fact that Wong performed well when he was given the eight-week reading period, but did not when the accommodation was denied. "This failure to take Wong's disability and need for accommodation into account shows that the school's system for evaluating a learning disabled student's abilities and its own duty to make its program accessible to such individuals fell short of the standards we require to grant deference to an academic institution's decision-making process," the court stated. ■

• **Bill Gates, Microsoft's founder and chief executive officer, announced the formation of Able To Work, an independent business consortium to increase employment opportunities for people with disabilities,** at the National Business & Disability Council's annual conference at Microsoft's headquarters in Redmond, Wash. The consortium will provide tools and mentorship to help corporations recruit individuals with disabilities, and already has launched an interactive Web site listing job postings of member companies (**http://www.abletowork.org/**). The consortium also will work with the Society for Human Resource Management to improve the quality and quantity of recruiting and accommodation information for members.

• **A corporate steering group has been formed to head the Business Leadership Network, a business-led venture to enhance the employment opportunities for people with disabilities,** announced John Lancaster, the executive director of the President's Committee on Employment of People With Disabilities. "The success of the Business Leadership Network is driven by the firm belief of participating employers that a workforce inclusive of qualified people with disabilities contributes to their bottom line. These businesses are committed to developing 'disability friendly' policies to attract talented applicants who happen to have disabilities," Lancaster said.

• **A settlement has been entered between a class of persons with mobility, vision and hearing impairments and the Oakland, Calif., Coliseum, including a $425,000 fund to compensate people with disabilities who have had access problems at the coliseum.** Improvements will include elevated platforms for accessible field seating at concerts; installation of a new elevator in the older part of the stadium; assistive listening systems and audible fire alarms; the removal of protruding objects; and the availability of print materials in alternative formats.

• **A Macy's department store at Union Square in San Francisco has been ordered to provide more space between merchandise racks and make other improvements for shoppers with disabilities.** The court determined that Macy's violated the ADA by failing to consider various methods to provide full and equal access.

The department store was faulted for not experimenting with different methods of providing access, not trying to adjust its planning and display practices, and failing to reposition display units. ■

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Section 504 Compliance Handbook

Supplement No. 253 December 1999

Access Board issues proposed revamping of ADAAG

The Access Board's Nov. 16 proposed rule to update the Americans With Disabilities Act Accessibility Guidelines (ADAAG) recommends reorganizing ADAAG to make it consistent with the accessibility standards of the Architectural Barriers Act (ABA) and model building codes in a consolidated standard for new and altered facilities called the ADA/ABA Accessibility Guidelines. The proposed rule (64 *Fed. Reg.* 62247-62538) includes a new section on residential facilities and newly recommended standards for work areas, alarms, teletypewriters (TTYs), signage, elevators, automatic teller machines and public transit facilities.

The accessibility standards for the ABA, which requires federal facilities to be accessible, and the ADA are being made uniform partly to ensure that federal agencies no longer rely on the ABA's Uniform Federal Accessibility Guidelines, which David Capozzi, the director of the Access Board's Office of Technical and Information Services, characterized during a presentation at a recent meeting of the editorial advisory board for the *Section 504 Compliance Handbook* as less stringent than the ADA Accessibility Guidelines. (For a comparison of the two accessibility standards, see ¶402.) Most agencies have adopted the Uniform Federal Accessibility Guidelines as Section 504's accessibility standard.

Reorganization

ADAAG currently has 12 sections: purpose; general; miscellaneous instructions and definitions; accessible elements and spaces and scope and technical requirements; restaurants and cafeterias; medical care facilities; business, mercantile and civic facilities; libraries; accessible transient lodging; transportation facilities; judicial, legislative and regulatory facilities; and detention and correctional facilities. Only the first 10 have been adopted by the U.S. Department of Justice as part of its ADA Standards for Accessible Design.

The proposed rule has 11 sections: ABA scoping; ADA scoping; building blocks; accessible routes; general site and building elements; plumbing elements and facilities;

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D.C. must retrofit school restrooms

The District of Columbia has been ordered to remove barriers from public restrooms at River Terrace Elementary School that prevented Freddy Ramirez, a 9-year-old child with cerebral palsy who uses a wheelchair, from using the restroom independently (*Ramirez v. District of Columbia*, 1999 U.S. Dist. LEXIS 15964 (D.D.C.)).

Aides assisted student

A few months after Ramirez was transferred to River Terrace, his mother learned that the school had no restrooms that were accessible for children with mobility impairments, the court stated. The doorways to a boys' restroom near his classroom were too narrow to allow for the passage of a wheelchair and no restroom stall had ADA-required modifications, according to the court.

In addition, the restroom doors and hallway doors near the restroom were too heavy for Ramirez to open, the door to the stall had a broken lock and the stall lacked grab bars before the district was sued, according to Charles Goldman, one of Ramirez's attorneys and a contributing editor to the *Handbook*. When Ramirez wanted to go to the restroom, he was assisted by aides, including one female aide. The aide would place him on the

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Proposed Rule

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communication elements and features; special rooms and features; built-in furnishings and equipment; transportation facilities; and residential facilities. The proposed ADA/ABA Accessibility Guidelines, which incorporate many of the recommendations by an ADAAG Review Advisory Committee use, to the extent possible, chapter and section numbers identical to those of the American National Standards Institute (ANSI) for comparable subject matter.

Residential facilities

The ADA/ABA Accessibility Guidelines propose adding standards for residential facilities covered by the ADA, including public housing. In 1998, the Access Board withdrew proposed Section 13, which had proposed standards for residential facilities (see March 1998 *Monthly Bulletin*, page 1). The newly proposed standards for residential facilities are based primarily on the ANSI standard for accessible dwelling units, according to the Board.

An accessible dwelling unit would be required to have an accessible route; accessible primary entrance door; accessible elevators when elevators are provided; accessible laundry equipment, bathrooms and kitchens; and accessible communication features, including audible and visual alarms and, for buildings with intercoms, a telephone jack capable of supporting voice telephones and TTYs.

Work areas

The proposed rule does not have accessibility standards for individual work stations because changes to work stations are required when necessary as reasonable accommodations under Title I of the ADA. Instead, the proposed rule would continue to require access to common employee work areas such as the manufacturing space of a plant, as well as access to employee spaces used for purposes other than job-related tasks such as break rooms, vending areas, cafeterias, auditoriums, lounges and locker rooms.

The advisory committee also recommended requiring accessible routes to individual work stations, but the Access Board did not include this recommendation in the proposed rule out of concern that it would be unworkable in some employment settings. The Board also noted that accessible routes to individual work stations are required by contemporary building and fire codes for emergency evacuation purposes and therefore may be provided even absent a similar requirement in the ADA/ABA Accessibility Guidelines. But the agency is still considering adding this requirement and is seeking public comment.

Alarms

One proposed change work areas would be to require that alarms in most work spaces are visual as well as audible; currently both are required only in common employee and public spaces. The Board

*(See **Proposed Rule**, page 3)*

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Proposed Rule

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proposed the change "because it is an issue of life safety and because installation of visual alarms after construction can be difficult and expensive." The Board estimated that this new rule would increase the cost of new office buildings by approximately $65,375 per building and $16.3 million per year nationwide, given that approximately 250 new office buildings are built each year.

The maximum flash rate for visual alarms was reduced from 3 Hertz to 2 Hertz to minimize the risk to persons who are photosensitive of having a seizure or other reaction from the flashing. The slowest rate of flashing that does not significantly increase the reaction time of people who are deaf or hard of hearing is 1 Hertz, according to the Board. The Board said that a 1 Hertz flash rate would be sufficient, but a 2 Hertz flash rate was specified to tolerate manufacturing and field conditions.

In areas of rescue assistance, which the proposed rule would rename areas of refuge, the Board proposed adding a requirement that directions accompany and explain how to use required two-way communication systems. The Board is seeking information on products available to make two-way communication accessible to people who have a hearing impairment or cannot use voice communication.

Signage

The Board also proposed that accessible signage not only provide tactile access, as currently required by ADAAG, but visual access as well. This could be accomplished either by having signs that are visually and tactually accessible or by having two signs, one visual and one tactile.

Several new requirements for tactile characters were recommended, including:

- a minimum of one inch of separation between raised characters and borders or other decorative elements;
- only sans serif fonts and no italic, oblique, script and other highly decorative styles, whereas ADAAG simply allows "simple" serif fonts without defining what these are; and
- a reduced maximum character stroke thickness of from 20 percent to 15 percent of the character height because thinner strokes are easier to read tactually.

The recommended requirements for visual signs differ in several respects:

- lower case characters would be permitted because words in all upper case are considered difficult to read visually;
- fonts with serifs would be allowed because serifs do not necessarily reduce visual readability, although italic, oblique, script and highly decorative forms would be prohibited;
- the maximum character stroke thickness (30 percent of character height) would be greater than that specified for tactile signs;
- character spacing of between 10 percent and 35 percent of the character height would differ from the spacing for tactile signs; and
- a minimum mounting height of 40 inches would be required, which differs from the height of tactile signs, whose characters were recommended to be installed between 48 and 60 inches high measured from the characters' baseline.

Teletypewriters

The ADA/ABA Accessibility Guidelines proposed using the term teletypewriters (TTYs) rather than telecommunications devices for the deaf (TDDs). The Board agreed with the advisory committee's conclusion that ADAAG's current requirement of at least one TTY on a site where four or more public pay telephones are provided is inadequate "because it does not take into account large sites such as college campuses and shopping malls where people who need TTYs are limited to one TTY-equipped phone."

The proposed rule recommends that in private buildings where four or more pay phones are provided at a bank of phones, within a floor, building, or on a site, a TTY be provided at each location. For public buildings, one pay telephone on a floor or within a public use area would trigger the requirement for a TTY. One exception to these requirements would be that a TTY would not be required for a bank of phones if the bank was within 200 feet of and on the same floor as a bank with a TTY.

In addition, the proposed rule recommended that a TTY be required at rest stops, emergency roadside stops and service plazas when at least one public pay phone is provided. "Telecommunications can be critical at such locations and searching for off-highway TTYs would be impractical," the Board stated. Because of the more stringent proposed TTY requirements, ADAAG's current TTY

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requirement applying to stadiums, arenas and convention centers should be removed, according to the proposed rule.

Elevators

The proposed standards would permit the use of a greater variety of elevator cars than the two standard car configurations recognized in ADAAG. In addition, the proposed rule recommended the following new requirements for standard elevators:

- changing the height of call buttons from 42 inches centered to a range of between 35 and 48 inches measured to each button centerline;
- adding requirements for the frequency (1,500 Hertz maximum) and decibel ranges (20 to 80 decibels) for hall call buttons;
- adding requirements for car controls so that numbers are provided in ascending order and, in the case of multiple columns, read left to right;
- providing a maximum decibel level (80 decibels) for audible car position indicators;
- requiring car position indicators to provide automatic verbal announcements because of the ready availability of such indicators and allowing audible signals only in slow-moving elevators with a maximum-rated speed of 200 feet per minute; and
- requiring that essential information be presented in both tactile and visual form when instructions for the use of emergency communication equipment is provided.

ATMs and fare machines

Significant changes were recommended by the proposed rule for accessible automatic teller machines (ATMs) and fare machines, including new specific requirements mandating:

- the same degree of privacy of input and output for all users;
- tactually discernible key surfaces raised at least 1/25 of an inch from the surrounding surface with outer edges having a radius no more than 1/50 of an inch;
- a minimum of an inch separation between keys with function keys separated from numeric keys by at least triple the distance provided between numeric keys;
- the arrangement of numeric keys according to the standard 12-key telephone keypad with the number five key designated by a single raised dot;
- a standard arrangement with tactile marking and color coding of function keys so the keys are provided in the following order (left to right or top to bottom) with the tactile markings and color indicated: enter or proceed key (raised circle/green), clear or correct key (raised vertical line or bar/black), cancel (raised ex/red), add value key (raised plus sign/ blue), and decrease value key (raised minus sign/yellow);
- video display screens to be visible from a point 40 inches above the center of the clear floor space in front of the machine;
- paper currency to be dispensed in ascending order with the lowest denomination on top; and
- providing options for receipts in print, audible format or both.

Rail stations

The proposed rule also recommended a number of changed requirements for rail stations, including removing requirements for:

- minimum illumination levels at signage and uniform levels along routes for consistency because illumination levels in other facility types are not addressed;
- the placement of clocks in uniform locations throughout the facility because this provision is vague;
- criteria for escalator treads, including marking strips, because they are more applicable to general safety than to accessibility;
- transparent panels in elevator cars because this concerns public security for everyone, not specifically people with disabilities;
- specifications for counters because general scoping for sales and service counters already covers them; and
- references to alterations to areas containing a primary function because this is addressed in another provision on alterations.

Public comments

Comments on the proposed rule, which can be viewed at **http://www.access-board.gov**, should be sent to the Office of Technical and Information

*(See **Proposed Rule**, page 5)*

Restrooms

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toilet with his pants unzipped and wait outside the stall until he was finished, Goldman added.

District sued

A year after enrolling at River Terrace, Ramirez decided he wanted to use the restroom on his own. Because the restroom door was too narrow, Ramirez had to crawl across the floor to use the toilet, the court noted. After crawling to the sink to wash his hands, Ramirez would have to "get down on the floor again and dirty my hands," he stated. Ramirez, along with his parents, sued the district, arguing that it violated the ADA by having an inaccessible restroom and doors.

Grace Perry-Gaiter, an attorney for the district, maintained at an Oct. 14 hearing that the boys' restroom, as well as several other restrooms, were accessible. "[T]he doors have been totally corrected. We have now ADA-complian[t] bathrooms," she testified, although she added later that the restrooms would not be completely retrofitted until Nov. 30. She emphasized that a unisex restroom in a health suite already was completely ADA compliant.

But Goldman countered that, "With regard to the health suite, it is locked. He has to go get somebody. That is not the same as you and I being able to go to the bathroom independently. That is a violation of the ADA."

Moreover, the district botched the job when it put grab bars into a stall in the boys' restroom when it installed them at uneven heights and placed one grab bar too close to the toilet paper dispenser, according to Goldman. He criticized the district for not being forthcoming about what changes actually had been made to the restrooms, saying, "What has been done? We don't honestly know because they never told us."

Accessible restrooms ordered

After announcing that the district would be ordered to make its restrooms accessible, the judge criticized the district for placing Ramirez in a school that did not have accessible restrooms. "Freddy for many months existed in a very squalid, completely unacceptable situation that no human should have to endure, and yet the school let that continue with lots of promises, with lots of notices to the principal and nothing being done," the judge asserted. While the hallway doors sometimes were propped open, the judge stated at the hearing, "That is no ultimate solution."

The judge noted that the ADA was enacted nearly 10 years ago, remarking, "[T]here have been substantial hearings in this court on other matters concerning this type of situation and the district, apparently the school board and authorities don't get the message." Students with disabilities should not have "to go through humiliation and embarrassment and frustration to be able to go to the bathroom in the public schools that are provided within the District of Columbia," the judge added.

School's accessibility defended

The district insists that it has "made all the necessary changes and adjustments to comply with the court order and the ADA as well," according to Eugene Adams, special deputy with the D.C. corporation counsel. He said that automatic push-button doors had been installed.

Devonya Smith, a spokesperson with the D.C. Public Schools, noted that push-button doors are not specifically required by the ADA. The changes were implemented before the school year started, she said.

'Affirmative obligation'

However, the court determined, "The defendants themselves appear to have conceded that the facilities at River Terrace are not yet ADA-compliant. At the Oct. 6, 1999, hearing, [the] DCPS [D.C. Public Schools] provided a scope of work for the court's review that states that River Terrace Elementary School 'does not meet requirements of the American[s] With Disabilities Act Accessibility Guideline[s] for Buildings

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Services, Access Board, 1331 F St. NW, Suite 1000, Washington, DC 20004. E-mail comments should be sent to **docket@access-board.gov**. Comments sent by e-mail will be considered only if they include the full name and address of the sender.

For further information, contact: Marsha Mazz (on the ADA Accessibility Guidelines) and Jim Pecht (on the ABA Accessibility Guidelines), Office of Technical and Information Services, Access Board, 1331 F St. NW, Suite 1000, Washington, DC 20004, (202) 272-5434 ext. 121 (for Mazz) or ext. 128 (for Pecht), **TA@access-board.gov**. ❑

University agrees to appoint full-time ADA coordinator

Before settling a class action brought by students with mobility and vision impairments under Section 504 and the Americans With Disabilities Act (ADA), San Francisco State University was not in compliance with the laws' architectural and program accessibility requirements and did not centralize its ADA compliance efforts through a full-time ADA coordinator, according to Rhoda Benedetti, an attorney with Disability Rights Advocates in Oakland, Calif.

On Nov. 4, San Francisco State University entered a settlement to resolve the dispute, agreeing to ensure that the campus is accessible and hire a full-time ADA coordinator in addition to setting aside $5 million that the university may begin spending to improve campus accessibility as of July 2000 over the following seven years if necessary, stated Jack McCowan Jr., an attorney for the university and a partner at Gordon & Rees in San Francisco. If there are any remaining barriers, the university may spend $300,000 per year for five more years, and already spent $2.7 million on improving campus accessibility prior to the settlement, according to McCowan. He vigorously denied that the university was ever out of compliance with Section 504 or the ADA and said that the university may end up spending no more money on improving campus accessibility "if the ADA coordinator concludes that the campus is totally accessible, which has always been our position."

Facilities access

Benedetti disagreed, claiming that students with mobility and vision disabilities were barred access to university buildings and programs. In some large classroom buildings there were no accessible restrooms, she stated, and no signage directed students to the nearest accessible restroom.

"Students would search up and down halls, and go look in neighboring buildings for accessible restrooms. Some students urinated on themselves because they were unable to find restrooms" they could use, she said. Students with disabilities cannot use facilities on an equal basis with nondisabled students if there are no accessible restrooms, she remarked. Similarly, buildings lacked accessible water fountains and telephones, including emergency telephones, she added.

In addition, science labs were inaccessible, Benedetti asserted. No work stations in the labs were accessible, so wheelchair users, including one of the plaintiffs in the case, Elizabeth Campos, could not do experiments, Benedetti maintained. "Professors discouraged students with disabilities from continuing in the program and were not forthcoming with accommodations. They did not want to deal with students with disabilities in the sciences," she stated.

Parking

Benedetti also said that finding accessible parking increasingly had become a problem for students with disabilities as the university removed parking from the central part of its campus and built new lots in outlying areas. While a shuttle would come to pick up a student who called from a phone in a satellite lot, Benedetti said the phone and the shuttles were inaccessible.

Many students and faculty with disabilities believed that accessibility was worsening across the campus. "Disabled students and faculty were quite vocal about the worsening access, but the university ignored them and continued on its course," she stated. "The input from students and faculty were swept under the carpet. They had no option but to turn to the courts." The lawsuit was filed in June 1997 by

*(See **ADA Coordinator**, page 7)*

Restrooms

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and Facilities (ADAAG) as well as Building Elements Designed for Children's Use added to ADAAG Jan. 13, 1998."

The children's facilities standards are not enforceable because they have not yet been adopted by the U.S. Department of Justice (see March 1998 *Monthly Bulletin*, page 1). While the court acknowledged that existing facilities also do not have to meet ADAAG if program accessibility is provided, it determined that the school district had "an affirmative obligation to provide an accessible, ADA-compliant environment" for Ramirez at River Terrace to ensure program accessibility. This obligation arose partly from the fact that the D.C. Public Schools designated River Terrace as a satellite program of a school for children with physical impairments that Ramirez once attended and reassigned Ramirez from the accessible school to River Terrace's inclusion program, the court ruled.

"The irony is this is a special needs school," Goldman remarked. ❑

ADA Coordinator

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Campos, and two San Francisco State University organizations, Students Tenaciously Advocating for Our Rights and the California Faculty Association.

Only in the late summer and early fall of this year did the university respond to the complaints, according to Benedetti. "Literally on the eve of trial, there was a flurry of activity. Suddenly, there was signage. Restrooms were altered. Paths of travel were altered."

Disability Resource Center

Rather than have an ADA coordinator oversee campus compliance efforts, "the university's approach to access has been up to the individual on a case-by-case basis bringing complaints to the Disability Resource Center (DRC) and the DRC would do what it could."

The DRC did not have the authority to remove barriers on campus and students felt that it was ineffective, Benedetti stated. "The DRC would give them the runaround, and tell them, 'go talk to parking.' For paths of travel, they'd say, 'talk with grounds maintenance,' and power doors, 'see plant operation,'" she said. "Students were sent from person to person and given no satisfactory action. There was no centralized response."

'Leaving it up to the disabled person to solve problems is not the proper approach under the ADA. There is a duty to have a self-evaluation and transition plan and remove barriers.'

—Rhoda Benedetti, attorney

Benedetti criticized the university for leaving it up to the student with a disability to approach different operations of the university. "Leaving it up to the disabled person to solve problems is not the proper approach under the ADA. There is a duty to have a self-evaluation and transition plan and remove barriers. It is not enough to say, 'people with disabilities identify problems and then we will do what we can.'"

ADA coordinator

Having an ADA coordinator is key to effective ADA compliance, according to Benedetti, who said, "OCR [Office for Civil Rights] guidelines tell campuses that an ADA coordinator should be appointed. The coordinator has to have support from the highest levels of the university and resources and authority."

The ADA requires state and local entities to name an ADA coordinator (see ¶1030), while Section 504 requires all federal fund recipients to name a Section 504 coordinator (see ¶226). Instead of having an ADA coordinator, the university had several people it identified as overseeing components of what an ADA coordinator would do, she stated. Getting the "buy in" from the university's top administration is essential, she stated, "so you don't have a person with the title but with their hands tied behind their back."

In addition to stating in public that the ADA coordinator has the university's support, the university should ensure that the ADA coordinator has adequate funding and that the coordinator works closely with other departments at the university, including parking, plan operations, maintenance and the DRC, Benedetti added.

Allegations denied

McCowan defended the university's accessibility, saying, "This really is a very accessible campus given the topographical conditions that are dealt with on that property. It is a campus that slopes toward the ocean. It is not flat." McCowan also noted that the campus was a hundred years old and some buildings were built long before Section 504 and the ADA were enacted. Nevertheless, "the university has done a good job and will continue to" comply with both laws, he stated.

He defended the university's self-evaluation and transition plan and said that facilities, paths of travel and parking all had been accessible before the lawsuit. Because the campus is growing, some paths of travel have temporarily been blocked during construction, he acknowledged, but he stated, "Anytime there is construction there are inconveniences."

The campus, which serves 27,000 students including 800 students with disabilities, is growing, and parking has been moved from the central part of the campus to reduce traffic, which McCowan characterized as "a safety hazard for all." Nevertheless, many accessible parking spaces remain close to buildings, he remarked.

"We never had fewer spaces than what the ADA requires. Sometimes individuals feel entitled to a particular parking space," even though they do not have a right to use that particular space, he added.

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ADA Coordinator

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McCowan said both the phone at the new parking lot and the shuttles around the campus were accessible. Although lifts on shuttles sometimes did not work, they were fixed as soon as possible and there was no significant delay to getting them fixed and therefore no ADA violation, he asserted. In addition, even though it is not required to, the university provides an accessible shuttle from rapid transit stations to the campus.

'Nonsense'

He described as "nonsense" Benedetti's characterization of the university's ADA compliance efforts as inadequate before the eve of trial and her assertion that the university did not respond to complaints from students and faculty. While 400 individuals connected with the campus joined in the class action, McCowan emphasized that there had not been many complaints brought to the attention of the DRC.

The university had centralized its oversight of ADA compliance with the DRC prior to the settlement, and McCowan said the DRC "did a good job responding to concerns. It helped move classes to accessible buildings and bring a portable lab station to Campos," he noted.

The university always had the top administration's backing of ADA compliance, he added, noting that the DRC's budget has increased from $400,000 in 1994 to more than $800,000 in 1999, and saying, "Over the last four years, the DRC overspent its budget and the university always paid" the additional expenses.

Settlement terms

According to the plaintiffs' attorneys, which included the Legal Aid Society of San Francisco and Leonard, Carder, Nathan, Zuckerman, Ross, Chin & Remar of San Francisco in addition to Disability Rights Advocates, San Francisco State University agreed to:

- hire a full-time ADA coordinator who will examine each of the facilities on campus to determine what barriers need to be removed and ensure program access;
- ensure that there is at least one accessible entrance at every building on campus;
- distribute to students and faculty with mobility and/or vision disabilities an updated and comprehensive access guide at the beginning of each academic year indicating the location of accessible parking, transit stops, exterior paths of travel, building entrances, restrooms and water fountains;
- provide more than 25 new sets of accessible restrooms;
- install a comprehensive accessible campus phone system;
- provide comprehensive exterior and interior signage identifying accessible entrances and restrooms;
- install a self-operable pool lift at the gymnasium pool and accessible showers;
- build a new elevator or modify the existing service elevator at the faculty club if it continues to host university activities;
- designate areas of rescue assistance on every floor of multi-story facilities;
- designate accessible shuttle stops on accessible shuttle routes;
- provide additional disabled parking spots close to the university;
- purchase new lift-equipped shuttles and ensure they meet current access standards;
- modify paths of travel to provide accessible paths from disabled parking spaces so that wheelchair users do not need to travel behind other vehicles or through vehicular routes;
- install exterior pedestal maps of the campus that are accessible to wheelchair users; and
- mark drop-offs at the edges of paths and steps as well as posts in pathways with adequate detectable striping.

The new ADA coordinator will report directly to the university's president. McCowan criticized the plaintiffs' description of the settlement terms as misleading, stating that, "Most of the those things already have been done."

But Benedetti said that the settlement is "doable for the university and long overdue." She said that it will usher in "a new day at the university for students with disabilities. They will be able to complete their education, get to class, use those buildings and go to the library and have a snack and have transportation after. Everything that we take for granted is a struggle for them. This will level the playing field, and help them get in, get an education and move on." ❑

Access Board to tackle classroom acoustical standards

To improve the learning environment for all students, including those children with hearing or speech impairments or learning disabilities, the U.S. Access Board is drafting classroom acoustical standards that will lower the levels of background noise in classrooms, much of it from heating and cooling systems, stated the Access Board, in a Nov. 8 response to a petition for rulemaking on classroom acoustics (64 *Fed. Reg.* 60753-60758). Within the response, the Access Board offered technical assistance on background noise, reverberation, the use of amplification, classroom design and interference with assistive technologies from such sources as electrical outlets.

Comments sparked action

In a June 1, 1998, notice (63 *Fed. Reg.* 29679), the Access Board requested comments on classroom acoustics, after receiving the petition from the parent of a child with a hearing impairment. More than 100 comments were received, including those from parents of children with hearing impairments and professionals in acoustics and audiology, that stated education problems could be related to poor classroom acoustics, according to the Access Board.

Background noise

The comments included studies of elementary and secondary school classrooms that revealed that excessive background noise, often from heating and cooling units, is common even in classrooms. "The research literature is replete with teacher reports of the need to turn off the heating or cooling unit during important lessons. Children with hearing loss must always be seated away from such noises and close to the teacher," according to the Board.

The Access Board noted that central air, good insulation for window frames, sound-resistant walls, doors and ceilings, and carpeting, all could reduce background noise. Moreover, the Board recommended keeping windows shut. "Windows and other openings are the weak link in building enclosure. Where exterior noise is significant, it will not be possible to maintain speech intelligibility in classrooms with the windows open," the Board stated.

Reverberation

Reverberation, sounds that reflect from hard surfaces and arrive back at the listener's ears, adds to the background noise levels and smears clarity of the direct sound, according to the Access Board. "Fortunately, reverberation is relatively easy and economical to control, even in existing classrooms, by adding absorbent materials to certain room surfaces," stated the Access Board. In an investigation of classroom reverberation, researchers found that when absorptive material was placed on the upper portions of the classroom side and rear walls, as opposed to the traditional front of the room, the clarity of speech was found to be better, the Access Board reported.

Amplification

Like the absorptive materials for reverberation, schools are installing soundfield systems to evenly distribute amplification throughout the classroom. Children who use hearing aids or other assistive listening devices need maximum amplification, stated the Access Board.

"Instructional methods are changing to small-group, computer-supported learning that makes it difficult to utilize these amplification technologies," warned the Board. However, an improved room design ensures that all children have access to teaching signals and amplification both directly and through assistive technologies.

Facility and room acoustical design should consider elements that include: site, space and classroom location that minimizes exposure to environmental, equipment and occupancy noise; slab, ceiling, roof and wall construction, including doors and windows, that are barriers to noise; and room size and proportion for appropriate sound reflection and absorption, advised the Access Board.

Interference

Another challenge for schools to accommodate students with assistive technologies is decreasing the interference from lighting, radio frequency sources, heating and air conditioning, and electrical outlets, according to the Board. These interferences can neutralize the effectiveness of assistive technology because "young children with hearing loss may be unable to identify and call attention to malfunctioning devices," emphasized the Board. In the extreme case of a school located in the path of a transmission tower or equipment, the Access Board states it may be necessary to install shielding in exterior walls and roofs.

*(See **Acoustical Standards**, page 10)*

President urges agencies to hire people with disabilities

In commemoration of October as National Disability Employment Awareness Month, the Clinton administration undertook several initiatives to lower the unemployment rate of people with severe disabilities, including a presidential memorandum to promote employment, a mentoring day for youth with disabilities, a plea to Congress to fund the Work Incentives Improvement Act, and a cooperative agreement between two agencies that have programs for people with disabilities.

"My administration has helped create more than 19 million new jobs in the last six and a half years, and unemployment is at a 20-year low. Yet almost three out of four Americans with severe disabilities who want to work are not working," President Clinton stated.

Presidential memorandum

In a radio address to the nation Oct. 16, Clinton announced that he had sent a memorandum to the heads of executive departments and agencies, urging them to:

- recruit people with disabilities for positions at all levels;
- provide opportunities for students with disabilities;
- ensure career opportunities for people with disabilities;
- collect and maintain data on employees with disabilities; and
- reasonably accommodate applicants and employees with disabilities.

"I'm also calling on our federal human resources agency, the Office of Personnel Management [OPM], to ensure that every agency gets the help it needs to fulfill these commitments. We are the nation's largest employer. I want it to be a model for private industry," stated Clinton.

In addition to the memorandum, the agency heads were sent a copy of a plan titled "Accessing Opportunity: The Plan for Employment of People With Disabilities in the Federal Government" and a companion employment guide developed by the OPM. The memorandum directs federal officials "to implement this plan immediately within your departments and agencies and to bring qualified people with disabilities into the federal workforce."

Mentoring day

As an initial effort to encourage the employment of more people with disabilities, the administration sponsored a mentoring day Oct. 27 for youth with disabilities. More than three dozen high school and college youth with disabilities participated at various federal offices.

After a briefing from White House and administration officials in the Old Executive Office Building, participants dispersed to various

*(See **Federal Agencies**, page 11)*

Acoustical Standards

(continued from page 9)

Until standards for classroom acoustics are implemented and enforced, the Access Board's technical assistance on these key issues should provide guidance for design professionals, schools and parents, the Board stated. The noise level in a classroom for a student with a hearing impairment or learning disability is an important educational issue that will be detailed in the upcoming standards, concluded the Access Board.

Schedule for developing rules

A comment from the Acoustical Society of America (ASA) noted that the Society had formed a working group on classroom acoustics in 1997 under the American National Standards Institute (ANSI) committee on noise and recommended that the Board join the group in the development of standards. The Access Board voted to collaborate with the current ASA/ANSI working group and announced that an expanded version of the group would have two years to develop standards.

Organizations added to the drafting group include: the Alexander Graham Bell Association for the Deaf, Self Help for Hard of Hearing People, the American Speech-Language-Hearing Association, the American Federation of Teachers, the American Institute of Architects and the American Society of Heating, Refrigeration and Air Conditioning Engineers. The first meeting of the full group took place May 18 with follow-up meetings Nov. 5 and 6.

The response to the petition for rulemaking is available on the Access Board's Web site at **http://www.access-board.gov/rules/acoustic2.htm.** ❑

Federal Agencies

(continued from page 10)

locations, including the White House, the departments of Defense, Education, Justice, Labor and Transportation, and the OPM, where volunteer mentors discussed and shared their employment experiences.

The goal of the mentoring day was to expose young people with disabilities to a variety of job opportunities, in addition to providing federal agencies with the chance to network with prospective employees. Mentoring days also were sponsored by several corporations nationwide on the same day.

> *'There are men, women and children who are misperceived and not valued for the contributions they can make.'*
>
> *—Vice President Gore*

Work Incentives Improvement Act

The Clinton administration is touting the Work Incentives Improvement Act (H.R. 1180) as one measure to help reduce the unemployment rate for people with disabilities by allowing current beneficiaries of Supplemental Security Income and Social Security Disability Insurance to work without losing their Medicaid or Medicare benefits; creating a new $1,000 tax credit to cover work-related costs for people with disabilities; and doubling the federal funding of assistive technologies (see March 1999 *Monthly Bulletin*, page 6). The act unanimously passed the Senate June 16 and passed the House of Representatives Oct. 19 by a vote of 412 to 9. A conference report resolving differences between the Senate and House versions was issued Nov. 17 and the House approved the conference report Nov. 18.

Interagency cooperation

To promote the employment of people with disabilities, the Small Business Administration and Social Security Administration entered a memorandum of understanding Oct. 20 to mutually promote the Small Business Administration's Welfare-to-Work Initiative and the Social Security Administration's disability insurance and supplemental security income programs. The Welfare-to-Work Initiative provides small businesses looking for employees with access to qualified workers from underutilized pools of labor, including people with disabilities.

Gore's reaction

Vice President Gore attended the signing of the memorandum of understanding, and put the initiatives into context by recalling his visit with an individual with a disability "who couldn't talk, walk or move, except a thumb and forefinger. He used the finger to manipulate a mouse to guide his cart down the hall into an office. He would pick out letters on the keyboard and send them. This was Stephen Hawking, described as the smartest man in the whole world. Without his work, we would be unable to solve some of the astrophysics questions we are solving today. ... Tipper asked, 'Can you imagine how individuals with severe disabilities were perceived 100 years ago before assistive technology? Would anyone have looked and said, "There's the smartest man in the whole world?"' Not likely, but it's a lesson to me. There are men, women and children who are misperceived and not valued for the contributions they can make." ❑

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Briefly

• **The U.S. Supreme Court has sought the Solicitor General's view of an appeals court decision upholding the segregation of HIV-positive prisoners in separate programs** (*Onishea v. Hopper*, Appendix IV:499). The Supreme Court seeks the Solicitor General's opinion when the Court is interested in reviewing a case.

In *Onishea*, the appeals court ruled that the plaintiffs with HIV were not otherwise qualified to participate in integrated programs because they posed a significant risk to the health and safety of others that could not be reduced through reasonable accommodation. However, a dissenting judge wrote, "The majority's holding is in direct conflict with governing Supreme Court precedent and eviscerates Section 504's protections," and characterized the risk of transmitting HIV in the integrated programs as "based on a wholly unlikely and speculative chain of events."

• **The University of Connecticut's Postsecondary Education Disability Unit will hold its Postsecondary Learning Disabilities Professional Training Institute — South** in Orlando, Fla., Jan. 12-15. For information about the conference's agenda, contact: Stuart Schwartz, director of special education, University of Florida, P.O. Box 117050, Gainesville, FL 32611, (352) 392-0701, ext. 258, **ses@coe.ufl.edu**. For registration information, contact: Ole Nelson, Department of Conferences, University of Florida, P.O. Box 113172, Gainesville, FL 32611, **onelson@doce.ufl.edu**.

• **Bill Gates, Microsoft's founder and chief executive officer, announced the formation of Able To Work, an independent business consortium to increase employment opportunities for people with disabilities,** at the National Business & Disability Council's annual conference at Microsoft's headquarters in Redmond, Wash. The consortium will provide tools and mentorship to help corporations recruit individuals with disabilities and has launched an interactive Web site listing job postings of member companies (**http://www.abletowork.org/**). The consortium also will work with the Society for Human Resource Management to improve the quality and quantity of recruiting and accommodation information for members. ❑

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