ADA Enforcement Overview

Types of Lawsuits/Legal Actions

- DOJ settlement agreement
- FTA compliance review
- Citizen Suit against municipality

Typical Process for DOJ settlement agreement

- DOJ inquiry initiated by citizen complaint
- DOJ inquiry not limited to original complaint. In other words, a complaint that the City does not provide suitable services for the deaf can result in a full-scale review of all City programs, facilities, etc.
- City must survey all facilities and install signage directing to accessible entrances/paths within one year of settlement
- Within three months of the effective date of the Agreement, the City will identify and report to DOJ all streets, roads, and highways that have been constructed or altered since January 26, 1992. Paving, repaving, or resurfacing a street, road, or highway is considered an alteration for the purposes of this Agreement, while filling a pothole is not.
- City must provide DOJ with an exhaustive list of:
    - Improvements needed at facilities constructed since January 26, 1992
    - Improvements needed at other existing facilities
- Within two years of the effective date of the Agreement, the City will provide curb ramps or other sloped areas complying with the Standards or UFAS at all intersections of the streets, roads, and highways having curbs or other barriers to entry from a street level pedestrian walkway.
- At 120 days, 180 days, and one year following settlement, and thereafter at one-year intervals, LPA submits written reports to the Department summarizing the actions taken pursuant to the agreement. Reports include photographs, architectural plans, copies of adopted policies, and proof of efforts to secure funding/assistance for structural renovations.
- DOJ may review compliance with the Agreement at any time. If the Department believes that the City has failed to comply in a timely manner with any requirement of the Agreement without obtaining sufficient advance written agreement with the Department for a modification of the relevant terms, the Department will so notify the City in writing and it will attempt to resolve the issue or issues in good faith. If the Department is unable to reach a satisfactory resolution of the issue or issues raised within 30 days of the date it provides notice to the City, it may institute a civil action in federal district court to enforce the terms of this Agreement, or it may initiate appropriate steps to enforce title II and section 504 of the Rehabilitation Act.

DOJ Settlements

Settlement agreement between the United States of America and New Albany, Indiana DJ# 204-26s-85 (2001) http://www.ada.gov/newalbin.htm

Settlement agreement between the United States of America and Jeffersonville, Indiana under the Americans with Disabilities Act, DJ# 204-26s-152 (2004)
http://www.ada.gov/jeffersonvillesa.htm

Settlement agreement between the United States of Americaand the City of Gary, Indiana under the Americans with Disabilities Act DJ# 204-26-62 (2005) http://www.ada.gov/garysa.htm

Settlement agreement between the United States of America and Allen County, Indiana under the Americans with Disabilities Act DJ# 204-26-61 (2005) http://www.ada.gov/allensa.htm

FTA Compliance Reviews - http://www.fta.dot.gov/civilrights/title6/civil_rights_5463.html

Citizen Suit

Jon Culvahouse, et al. v. City of Laporte (2009)
http://indianalawblog.com/archives/2010/01/01/index.html

Synopsis: the plaintiffs say the City's sidewalks qualify as a "service, program, or activity" within the meaning of the ADA, so the City must make the sidewalks readily accessible to people with disabilities. The City responds, first, the sidewalks don't constitute a service, program, or activity under the ADA; second, maintenance of existing sidewalks is the home owner's responsibility under LaPorte City Ordinance No. 733, so requiring the City to repair or improve sidewalks would require implementation of a new service, program, or activity contrary to the ADA's requirements; and, third, granting the requested relief would result in an undue financial burden to the City. The City also says that because historically it has chosen to not provide sidewalks and sidewalk maintenance to its citizens, any requirement to undertake such work now would amount to a new service not required by the ADA. The court denies the City's motion and grants the plaintiffs' motion in part.

Key snippets:

- Indiana municipalities have "exclusive jurisdiction over bridges, streets, alleys, sidewalks, watercourses, sewers, drains, and public grounds inside [their] corporate boundaries, unless a statute provides otherwise." IND. CODE § 36-1-3-9(a). Indiana courts over the years have continued to recognize municipalities' authority and duty to keep their sidewalks in a reasonably safe condition for use by the public.
- One claiming that a public program or service violates the ADA must establish "(1) that he [or she] has a qualifying disability; (2) that he [or she] is being denied the benefits of services, programs, or activities for which the public entity is responsible, or is otherwise

discriminated against by the public entity; and (3) that such discrimination is by reason of his [or her] disability.

- Title II imposes an affirmative obligation on public entities to make their programs accessible to qualified individuals with disabilities, except where compliance would result in a fundamental alteration of services or impose an undue burden
- Requiring the City to maintain its sidewalks so that they are accessible to individuals with disabilities is consistent with the tenor of [28 C.F.R.] § 35.150, which requires the provision of curb ramps, 'giving priority to walkways servicing' government offices, 'transportation, places of public accommodation, and employers,' but then 'followed by walkways serving other areas.' 28 C.F.R. §35.150(d)(2). Section 35.150's requirement of curb ramps in all pedestrian walkways reveals a general concern for the accessibility of public sidewalks, as well as a recognition that sidewalks fall within the ADA's coverage, and would be meaningless if the sidewalks between the curb ramps were inaccessible.
- The ADA is broad enough to include public sidewalks within the scope of a city's services, programs, or activities
- Cities and towns in this state have control of streets and sidewalks within their respective limits, and are bound to exercise reasonable care to keep them in a safe condition for travel. This duty is primary, and cannot be delegated to another so as to transfer the responsibility.
- The plaintiffs must show that "but for" their disabilities, they would have been able to access the services or benefits desired, that is, use of the sidewalks in LaPorte. Once the plaintiffs have made this prima facie showing, the defendant must come forward to demonstrate unreasonableness or undue hardship in the particular circumstances.
- An undue financial burden defense must be based on consideration of all resources available for use in the funding and operation of the service, program, or activity
- References to other cases:
    - Johnson v. City of Saline, 151 F.3d 564, 569 (6th Cir. 1998) ("[W]e find that the phrase 'services, programs, or activities' encompasses virtually everything that a public entity does.")
    - New Jersey Protection and Advocacy, Inc. v. Township of Riverside, No. 04-5914, 2006 WL 2226332, at *3 (D.N.J. Aug. 2, 2006) ("this court deigns to find that sidewalks are, in and of themselves, programs, services, or activities for the purpose of the ADA's implementing regulations")
    - Town of Highland v. Zerkel, 659 N.E.2d 1113, 1120 (Ind. Ct. App. 1995) ("the trial court correctly instructed the jury that the duty to maintain the reasonably safe condition of town sidewalks lies solely with Highland and that the homeowners abutting the sidewalk have no duty to repair the sidewalks")