

Case Notes and Relevant Law from “The ADA in Prison”
NDRN Webinar - June 4, 2020

Systemic Cases

Holmes v. Godinez, 11-cv-2961

- Class action lawsuit against the Illinois Department of Corrections on behalf of deaf and hard of hearing inmates
- Settlement approved July 26, 2018, available at: <http://www.equipforequality.org/wp-content/uploads/2018/09/Holmes-Settlement-Agreement-all-attachments.pdf>
- *Settlement highlights:*
 - Individuals whose primary language is ASL will receive ASL interpreters for all “high stakes interactions” (disciplinary investigations/hearings, educational programs; medical/mental health care; transfer meetings)
 - Increased number of TTYs (at least two per facility)
 - Video phones at all facilities with class members

Dunn v. Dunn (now *Braggs v. Dunn*), 14-cv-0601 (M.D. Ala.)

- Class action lawsuit against the Alabama Department of Corrections; P&A also serves as associational plaintiff
- Claims include violations of the ADA, among others
- Settlement approved September 6, 2016, available at: <https://www.clearinghouse.net/chDocs/public/PC-AL-0035-0012.pdf>
- *Settlement highlights:*
 - Creating ADA request procedure and outlining the positions of Statewide ADA Coordinator and Facility ADA Coordinator (at each facility)
 - Requiring external ASL interpreters for confidentiality related occurrences
 - Requiring quarterly hearing aid evaluations
 - Requiring annual training for security staff
 - Outlining requirements of emergency evaluation procedures
- Separate settlement related to ADA claims from individuals with mental health related disabilities approved June 28, 2017, available at: <https://www.clearinghouse.net/chDocs/public/PC-AL-0035-0025.pdf>
- *Settlement highlights:*
 - Expanded protections of Phase 1 to all individuals with a disability related to mental health disability, with the exception of testing requirements for death-sentenced individuals
 - Required provision of Adaptive Behavior/Life Skills Training to all individuals identified as having an intellectual disability, as well as others determined to potentially benefit due to TBI or cognitive impairments.

McBride v. Michigan Dep't of Corrections, 2018 WL 1224783 (E.D. Mich. March 9, 2018)

- Class action of deaf/hard of hearing inmates, asserting systemic failure to provide auxiliary aids/services
- Plaintiffs won summary judgment on some (but not all) ADA issues in March 2018. Court ordered MDOC to provide:
 - Video phones to all deaf or hard-of-hearing prisoners
 - Necessary auxiliary aids for all deaf and hard of hearing prisoners to participate equally in programs, including consistent access to ASL interpreters for all “high-stakes” interactions, including religious services
 - Mandatory training on how to identify and appropriately interact with deaf and hard of hearing inmates
 - Adopt effective and comprehensive policies and procedures in each of these areas, including compliance monitoring
 - Then, parties reached Settlement Agreement that was entered in March 2019 and a settlement monitor has been appointed. Settlement available at: <https://www.clearinghouse.net/chDocs/public/PC-MI-0036-0007.pdf>

DOJ Settlement with South Carolina DOC

- DOJ conducted an investigation and negotiated a settlement agreement with the South Carolina DOC about provision of accommodations to deaf and hard-of-hearing prisoners in 2018.
- That Settlement is available at: https://www.ada.gov/south_carolina_doc_sa.html

Individual Cases

Beckhorn v. New York State Department of Corrections, 2019 WL 234774 (W.D.N.Y. Jan. 16, 2019)

- NY DOC’s program for prisoners with histories of substance abuse which includes transfer to a **work-release program**. Plaintiff requested light-duty work, such as secretarial work, due to disability (shoulder injury) for which he was also seeking workers compensation benefits. A counselor told him he should leave work-release program and do community service program instead. He did as he was advised, but then lost out on opportunity to earn good-time credit to reduce his sentence
- At hearing to evaluate eligibility for good-time credit, he was denied credit due to his “request to remain unemployed and statement of not being able to work.” The chairperson of the hearing stated they couldn’t take a risk with him because even if he got a job doing secretarial work, he could fall out of his chair. (This shows discriminatory intent.)
- Plaintiff brought suit under the ADA and Rehab act. He asked for and was granted a preliminary injunction ordering immediate reinstatement of revoked merit time and a parole hearing.

Cook v. Illinois Dept. of Corrections, 2018 WL 294515 (N.D. Ill. Jan. 4, 2018)

- Plaintiff, a wheelchair user, was ordered to participate in **substance abuse program**. Plaintiff was approved 2x for transfers to facilities with substance abuse programs that ultimately did not occur because facilities weren't ADA compliant. Only two facilities in IDOC system that offered the program had accessible cells—one had 4-5 wheelchair-accessible cells and the other had just one.
- With less than 6 months remaining on sentence, he finally was transferred to program at facility with ADA accessible cell (*after* lawsuit was filed). Received only 4 months of what is typically a 9-month program.
- Court denied Defendants' motion for summary judgment, rejected DOC's argument that it *had* accommodated plaintiff because he participated in and graduated from program.
 - Prison services must be provided on "same basis." Here, program was substantially shorter and less comprehensive when compared to non-disabled inmates.

DOJ Settlement: Union Parish Detention Center

- DOJ investigation revealed that UPDC held a detainee with HIV in isolated, segregated housing for six months because he has HIV
- "Segregation of detainees with HIV is medically unnecessary"
- Settlement Agreement highlights:
 - No longer segregate detainees based on HIV status
 - Adopt non-discrimination policies
 - Designate ADA coordinator & establish ADA complaint procedure
 - Advise staff about agreement & train staff annually about HIV and nondiscrimination
 - Damages of \$27,500 to complainant
- Settlement Available at: www.ada.gov/union_parish_sa.html (March 22, 2018)

Roberts v. Dart, 2018 WL 1184735 (N.D. Ill. March 7, 2018)

- Plaintiff with leg amputation required **grab bars** to safely use toilet. Was housed in Cook County Jail's Residential Treatment Unit for nearly two years. For 364 days, was housed in an ADA-compliant room but for 243 days was in a non-compliant room
- In non-compliant room, was forced to depend on correctional officer to take him to a common restroom with grab bars. Sometimes not permitted to go; fell twice in his cell
- Court granted summary judgment for plaintiff
 - Letting Roberts use dayroom bathroom is not sufficient—not always permitted to go and left him **dependent on others**.
 - Violation constituted deliberate indifference. Acted despite knowledge of risk of harm

Clemons v. Dart, 2016 WL 890697 (N.D. Ill. Mar. 9, 2016).

- An inmate who used a wheelchair and who was a double amputee was assigned to an inaccessible cell at Cook County jail with the promise that nurses were always on call to help him access the sink, shower, and toilet in his room. The Sheriff argued that he had not discriminated because the nursing staff were available to provide him to access all the same facilities available to individuals without disabilities. The court rejected that argument, reasoning that on-demand nursing support was not equivalent to providing an accessible cell because it reduced the inmate's ability to engage in **independent living** to the fullest extent possible—a right protected by the ADA.
- The court also stated that that Title II “requires **affirmative, proactive accommodations** necessary to ensure meaningful access to public services and programs, not accommodation upon request.” *Id.* at 6. The court held that the Sheriff “gets things backward” by arguing that the plaintiff was not discriminated against because he could obtain assistance when he asked for it. The court reasoned that “[Sheriff] was required to provide non-discriminatory access; [Plaintiff] was not required to request it.”

Wright v. New York State Department of Corrections, 831 F.3d 64 (2nd Cir. 2016)

- A man with cerebral palsy and scoliosis sought to bring in his own motorized wheelchair as a reasonable accommodation but was denied due to the facility's blanket ban on motorized wheelchairs. Instead, the facility provided a manual wheelchair (which the individual could not operate independently), a wheelchair-accessible cell, a quad cane, and access to mobility aides.
- The court found that the policy prevented the inmate from enjoying a wide range of prison services (at times was unable to visit law library, sick calls, doctor appointments, meals, unable to make it to the bathroom, unable to participate in jobs he wanted or attend yard). And the court held that the prison's insistence that plaintiff rely on “inmate mobility aides” for movement around the facility was fundamentally “in tension” with the ADA's “emphasis on **independent living and self-sufficiency**” which ensures that “a public benefit is not contingent upon the cooperation of third persons.”
- The court further concluded that Title III's “**individualized inquiry**” requirement applied to failure to accommodate actions under Title II. The court found that the blanket ban on motorized wheelchairs, based on generalized security concerns, violated this requirement, and the facility was required to engage in an individualized inquiry into the particular inmates' propensity to commit violent acts, disciplinary history, past crimes, or physical needs.

Reaves v. Department of Corrections, 2016 WL 4124301 (D. Mass July 15, 2016).

- The court granted a preliminary injunction to a man who had not been able to shower, go outdoors, or socialize with peers for over sixteen years because his quadriplegia made him unable to sit upright in a wheelchair. The court found that he was likely to succeed on the merits of his ADA and Rehab Act claims for **failure to accommodate**.

- The court found the Department had an obligation to modify its policies and provide the inmate with accommodations that would allow him to be able to **enjoy the “experience[s] that [are] fundamental to what it means to be human” alongside other prisoners.**
- For example, the court rejected the Department’s rationale that it could not provide any outdoor recreation to Reaves because it was too dangerous to either leave him on the yard alone (as he was “physically helpless”) and too dangerous to assign an officer to protect because “the officer would have been greatly outnumbered by inmates.” *Id.* at *28. While the court acknowledged those security concerns, it concluded that the Department had other options available that it failed to consider, such as taking the plaintiff outside at a different time, by himself, with fewer inmates, or to a different location. Failing to consider alternative solutions and reasonable modifications to practices was inconsistent with the language and purpose of the ADA.

Pierce v. DC, 128 F. Supp. 3d 250 (D.D.C. 2015).

- Although it was obvious to the prison that an inmate was deaf, the prison did not evaluate how it could enable him to communicate effectively while in prison, nor did it provide him with any accommodations. The prison argued that it was not required accommodate to the inmate because he had not specifically requested any accommodations.
- Citing 28 CFR 35.150 (Title II) and 28 CFR 42.503(f) (Rehab Act), the court held that “prison officials have an **affirmative duty** to assess the potential accommodation needs of inmates with known disabilities who are taken into custody and to provide the accommodations that are necessary . . . without regard to whether or not the disabled individual has made a specific request for accommodation.” *Id.* at 272.
- The purpose of requesting an accommodation is merely to put the entity on notice—if the prison is already on notice, the prisoner does not have to request an accommodation for the prison to be held liable.

In re Estate of Crandall v. Godinez, No. 14-cv-1401, 2015 WL 1539017 (C.D. Ill. Mar. 31, 2015)

- This case illustrates the **difference between medical care claim and ADA claim.** The Court held that plaintiff had not pleaded an ADA claim because he only challenged the *adequacy* of the medical services the decedent received, not that the decedent was subject to discrimination or failed to receive services that other inmates received.
- Court drew a distinction between a claim that a prisoner was not properly treated for his mental illness—which did not state a claim under the ADA—and a claim that the prisoner was denied access to medical services—which would state a claim.
- Court found that plaintiff had not alleged that the decedent was placed in segregation *because of* his disability or for reasons related to his disability—instead, was placed in segregation regarding investigation of theft of another prisoner’s funds

Corbin v. Indiana, No. 3:16CV602-PPS/MGG, 2018 WL 1920711, at *4 (N.D. Ind. Apr. 23, 2018)

- This case distinguished from *Estate v. Crandall*, and court found plaintiff did state an ADA claim where he alleged he was placed in segregated housing *because of* his disability and that he was denied a service covered by the ADA and Rehabilitation Act due to that segregation placement.

Andrews v. Rauner, 2018 WL 3748401 (C.D. Ill. Aug. 6, 2018)

- Incarcerated woman had a number of mental health conditions and regularly engaged in acts of self-harm. Medical professionals noted importance of “out of cell time” to engage in activities like socializing and writing. Instead, placed in solitary after she tried to hurt herself
 - Ex: 2015 suicide attempt – stripped naked in crisis cell instead of transfer to an inpatient hospital for mental health care
 - When in segregation, asked questions about mental health through cell door; psychiatrist visit for 30 minutes/week
- Case brought under the ADA and Section 504 (plus Constitution) based on discrimination and failure to accommodate
- In motion to dismiss, IDOC argued that you can’t bring an ADA/504 claim of inadequate mental health treatment—that’s an 8th Amendment claim.
 - Court rejected this argument, agreed with plaintiff that denying PWD access to hospitalization and instead placing her in solitary confinement removed her from access to services, programs, and activities
- IDOC also argued that “access to human interaction” is not a program, service or activity under Title II.
 - Court also rejected this argument, since plaintiff’s argument was that PWD was denied access to long list of activities, incl. education, recreation, exercise, mental health treatment and services

Relevant Regulations

28 CFR § 35.152

- (a) **General.** Applies to public entities that are responsible for the operation or management of adult and juvenile justice jails, detention and correctional facilities, and community correctional facilities, either directly or through contractual, licensing, or other arrangements with public or private entities, in whole or in part, **including private correctional facilities.**
- (b) **Discrimination prohibited.**
 - (1) Public entities shall ensure that qualified inmates or detainees with disabilities shall not, because a [facility](#) is inaccessible to or unusable by individuals with disabilities, be excluded from participation in, or be denied the benefits of, the services, programs, or activities of a [public entity](#), or be subjected to discrimination by any [public entity](#).

(2) Public entities shall ensure that inmates or detainees with disabilities are housed in the most integrated setting appropriate to the needs of the individuals. Unless it is appropriate to make an exception, a public entity -

(i) Shall not place inmates or detainees with disabilities in inappropriate security classifications because no accessible cells or beds are available;

(ii) Shall not place inmates or detainees with disabilities in designated medical areas unless they are actually receiving medical care or treatment;

(iii) Shall not place inmates or detainees with disabilities in facilities that do not offer the same programs as the facilities where they would otherwise be housed; and

(iv) Shall not deprive inmates or detainees with disabilities of visitation with family members by placing them in distant facilities where they would not otherwise be housed.

(3) Public entities shall implement reasonable policies, including physical modifications to additional cells in accordance with the 2010 Standards, so as to ensure that each inmate with a disability is housed in a cell with the accessible elements necessary to afford the inmate access to safe, appropriate housing.

28 CFR 35.107

(a) **Designation of responsible employee.** A public entity that employs 50 or more persons shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under this part, including any investigation of any complaint communicated to it alleging its noncompliance with this part or alleging any actions that would be prohibited by this part. The public entity shall make available to all interested individuals the name, office address, and telephone number of the employee or employees designated pursuant to this paragraph.

(b) **Complaint procedure.** A public entity that employs 50 or more persons shall adopt and publish grievance procedures providing for prompt and equitable resolution of complaints alleging any action that would be prohibited by this part.