

State of Connecticut Judicial Committee Public Hearing

SUBJECT MATTER: DENIAL the Nomination

Reappointment of Chief Justice Chase T. Rogers

RE: THIS, A FORMAL WRITTEN COMPLAINT, EFFECTIVELY COMMUNICATED against past, current and future continuing Gender and Disability Discrimination by Chief Justice Chase T. Rogers, The State of Connecticut Judicial Branch; AND this Legislative Judicial Committee: all of whom choose with reason of intent and or effect to exclude from participation, deny the benefits of the services, programs, and activities of the Judicial Branch and the Legislative Judicial Committee, and or subject individuals to discrimination by the Judicial Branch and or Legislative Judicial Committee, by reasons of gender and or disability!

These are all violations of multiple Federal Laws and Regulations, the Americans with Disabilities Act (ADA), Americans with Disabilities Amendments Act of 2008 (ADAA), Civil Rights Act of 1964 (CRA), Section 504 of the Rehabilitation Act of 1973 (504), Restoration Act of 1987 (RA), Family Medical Leave Act (FMLA), and all others, collectively referred to within (discrimination, violation, non compliance with).

This Complaint is also a PROTEST and OBJECTION To the reappointment of Mrs. Chase T. Rogers as Judge/Chief Justice.

This Committee has had 23 years plus about a month to provide, ensure, maintain and monitor, and report on Judicial Branch Compliance with the Americans with Disabilities Act Title II including maintaining a log, file and to follow up communication with each individual of remedy by or for, of each complaint of discrimination, request for modification, accommodation, suggestion, and/or comments.

Some on this Committee have served for 21 years? Many on this Committee have been told of the complaints often over many years. Many have been told of the complaints from many citizens over many years. And many have, even as recent as last year, promised to provide the name and contact info of the OFFICIAL State of Connecticut Judicial Branch Designate Responsible Employee for ensuring compliance of Title II by the Judicial Branch 28 CFR PART 35.107a. This Committee has failed to provide this information or to investigate as to why the Judicial Branch has no such person. Nor report such information back to the requester.

Mrs. Chase T. Rogers rode a white horse purpose with promise of drastic and determined change from what is best described as the Judicial Branch 'good-ol-boys club' of business as usual with all of it's privileges', preferential treatments, no responsibilities', no accountabilities, discriminations. She put on that elegant respected black robe symbol of due process and equal protections eight years ago. Mrs. Chase T. Rogers has had eight (8) years as Chief Justice of Our State of Connecticut Courts, with full Supervisory Authority as she has routinely proclaimed in her official decisions, writings and speeches, and has had almost daily continued complaints of discrimination and non compliance violations of Federal Law and the ADA, Title II, ADAA of 2008. Mrs. Chase T. Rogers with intent and or effect has failed to lead a proper investigation and failed to make one simple statement, and to practice or protect citizens and their rights, especially those with ADA rights. Mrs. Rogers has a zero policy to disability discrimination as appose to a zero tolerance policy and by intent, effect and or mentoring enforces ongoing Judicial Branch disability discrimination

Shown on the next page is a SAMPLE zero tolerance policy, written by me, that Mrs. Rogers has failed to create equal, same or comparable or practice as describe below.

The Americans with Disabilities Act, Title II provides;

Sec. 12132. Discrimination; Subject to the provisions of this subchapter, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

In contrast to Title I's regulation of employment, Title II, which governs the provision of public services, programs and activities, addresses state conduct that impinges upon fundamental constitutional rights embodied in the First, Fourth, Fifth, Sixth, Eighth and Ninth, Tenth, and Fourteenth Amendments.

This duty to accommodate is perfectly consistent with the well-established due process principle that, "within the limits of practicability, a State must afford to all individuals a meaningful opportunity to be heard" in its courts. Boddie, 401 U. S., at 379 (internal quotation marks and citation omitted).²⁰ Our cases have recognized a number of affirmative obligations that flow from this principle: the duty to waive filing fees in certain family-law and criminal cases,²¹ the duty to provide transcripts to criminal defendants seeking review of their convictions,²² and the duty to provide counsel to certain criminal defendants.²³ Each of these cases makes clear that ordinary considerations of cost and convenience alone cannot justify a State's failure to provide individuals with a meaningful right of access to the courts. Judged against this backdrop, Title II's affirmative obligation to accommodate persons with disabilities in the administration of justice cannot be said to be "so out of proportion to a supposed remedial or preventive object that it cannot be understood as responsive to, or designed to prevent, unconstitutional behavior." Boerne, 521 U. S., at 532; Kimel, 528 U. S., at 86.²⁴ It is, rather, a reasonable prophylactic measure, reasonably targeted to a legitimate end.

For these reasons, we conclude that Title II, as it applies to the class of cases implicating the fundamental right of access to the courts, constitutes a valid exercise of Congress' §5 authority to enforce the guarantees of the Fourteenth Amendment. The judgment of the Court of Appeals is therefore affirmed. See Tenn. v. Lane U.S. Supreme Court (2004).

The State of Connecticut Judicial Branch enforces a zero tolerance policy of disability discrimination, and will provide for immediate and full remedy for each instance of past disability discrimination, elimination of current disability discrimination and prohibit future disability discrimination including the use of independent due process hearings when requested

Chief Justice Rogers clearly does not understand nor care about the needs of the disabled. The following are story after story of ADA violations that Chief Justice Rogers allowed to occur. Whether she resigns, is forcefully removed or not re-appointed, she must be removed to make a positive change for all.

Mrs. Rogers needs to go, be fired preferably, resign at least, defiantly not reappointed! Mrs. Rogers is a bigoted biased prejudice 'hate crimes' advocate 'ugly laws' enforcer discriminating mentoring person of power with zero regards to We The People, specifically including Disabled Persons; that the State of Connecticut Judicial Branch should not employ, actually it is illegal to employ. Mrs. Rogers needs to go!

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Judicial Committee, Legislators, other interested persons'; given the need and or choice do you chose to use a curb ramp or the curb step, the wheelchair ramp or stairs, an elevator or stairs, push button doors or push/pull/twist handle doors, old Dick and Jane reading books or specialized readers of today, old readen, riten, ritmatic or computer ease programs, 30 plus student class size or small as possible individualize education. Do you cry in pity of our service men and women returning with out limbs and PSTD and take moments of wonder notice of the prosthetics' developments, and true MENTORING efforts of their comrades supporting? Have you ever thanked a disabled individual for how wonderful life becomes as accepting and accommodating disabilities enhances universal design for everyone, disable and able? Can you look out at your electorate and identify the disable from the able? Are my needs really the same as yours?

Acknowledged hear ye and now, Mrs. Chase T. Rogers did not create or assist in creating the problems and Non Compliance to the Americans with Disabilities Act I address below; however Mrs. Chase T. Rogers has been made fully aware of the problems and non compliance with Federal Laws and protections of disabled individuals and has chosen to install barriers, smoke screens, cover ups, frauds, mirrors, miss- representations, and isolation to remedy past Disability Discriminations, eliminate current Disability Discriminations, and prohibit future Disability Discriminations as provided for by the Americans with Disabilities Act! Hate crime, ugly laws encouragements and “mentoring” of her Judicial gangs.

Mrs. Chase T. Rogers, as THEE Chief Justice and HEAD of the Connecticut Judicial Branch; as in her Administrative responsibilities’ and supervisory powers to ensure and to make the Judicial Branch compliant fully with the Americans with Disabilities Act (ADA or used thru out Title II of the ADA); and or Americans with Disabilities Amendments Act of 2008 (ADAA or Title II); and Section 504 of the Rehabilitation Act of 1973, and the Civil Rights Restoration Act of 1987; The Civil Rights Act of 1964; The Developmental Disability Assistance and Bill of Rights of 2000; has failed and with intent and or effect, just as disparate animus and discriminately neglects the disability population.

And to make immediate remedy of ADA violations, was made aware of Judicial Branch ADA violations within a month of her appointment to be the Chief Justice. Mrs. Rogers was repeatedly made aware of ADA violations and non compliance. Mrs. Rogers and her “GANG”, found thru her Public Service Trust Commission and Appellate Court Justice, now Chief Appellate Court Justice Alexandra DiPentima and its focus groups that the Judicial Branch is non compliance and has no non discrimination policy, while implementing a annual Equal

Employment Opportunity Plan (EEO) employment (and contractors to/for the Judicial Branch such as all attorneys) non discrimination policy that she signs off as to be “not a paper commitment”. Its actually in booklet form of 15 pages of comprehensive affirmative actions. Here in is **A Barrier** to We The People. The Judicial Branch considered it was fully compliant with the ADA because it had this policy.

Mrs. Rogers, as Chief Justice of The State of Connecticut Judicial Branch, is THEE Legal Expert in Connecticut and as such stands alone on the pillar of what we the people and you the Legislators give unquestionable difference to as the last voice on matters. Chief Justice is the Rule as to how or if the Connecticut Courts comply with the ADA. It is the Administrative Responsibilities’ and Obligations to and the Leadership that is ‘expected to be present. Mrs. Rogers was offered the job and accepted this, and Mrs. Rogers fails, with intent and effect.

What did Mrs. Rogers and her Gang know and when did Mrs. Rogers and her Gang find out that the Connecticut Judicial Branch is not compliant with The Americans with Disabilities Act?

Mrs. Rogers as a legal expert with fiduciary responsibilities’ of a legal expert, along with ignorance not being an excuse, should have known and worked to ensure the Connecticut Judicial Branch was compliant on January 26, 1992. But let’s temporary for this discussion assume without deciding or agreeing that Mrs. Rogers did not know. Mrs. Rogers and her Gang **DID** out the CT. Judicial Branch was non compliant to the ADA shortly after becoming Chief Justice by at least my letter, and for sure on her acceptance of her Strategic Plan, wrote by her Gang, on June 30, 2008.

As shown in my SAMPLE policy above, the ADA provides remedial of past disability discrimination, elimination of current disability discrimination, and prohibits future disability discrimination, see Tennessee v. Lane U.S. Supreme Court (2004), See Goodman and The United States v. Georgia,(2006).

What has Mrs. Rogers done to remedy past disability discrimination; eliminate current disability discrimination; and prohibit future disability discrimination? As evidenced I provide within this document, of cases Mrs. Rogers leading and “mentoring” her gang with their combined “supervisory authority” opinions’ that become unquestionable concurring standards; cover up, smoke screens, exclude disabled from participation, deny benefits’ of the JB services, programs and activities, and discriminate against disabled persons every day. She has steadfast ignored and refuses to remedy past, eliminate current, and prohibit future disability discrimination of users of the Judicial Branch while providing preferential treatment to her privileged gang of State Actor coworkers State Actor employees and State Actor Contractors using the Judicial Branch to earn money and fame. See the Judicial Branch Equal Employment Opportunity Plan, signed each year by Mrs. Rogers. Preferential treatment to coworkers and contractors? Judicial Branch employees are privileged? Ordinary citizens are pawns? Disabled individuals are lesser human beings, “imbeciles” that nauseate Mrs. Rogers like her Judicial relatives’ of yesteryears whose “mentoring” actions ‘outlawed disabled individuals from public streets less they nauseate the good people; castrated and sterilized disabled less they recreate more of the same’ (see Buck v. Bell). Mrs. Rogers provides additional “no paper commitment” “mentoring” and cover ups to the State Contractors of the Judicial Branch, like the Attorneys and GAL’s within the Judicial Branch the EEOP, but no such policy, no such plan for We The People!

No reports to the Governor equals no ADA for the people, equals people are excluded from participation, denied the benefits of life liberty property pursuit of happiness due process and equal protection of law, and discriminated against at will by State Actors and State

Contractors. See:

IN RE JOSEPH W., JR., ET AL.*(SC 18951) (SC 18952) **Rogers, C. J.**, and Norcott, Palmer, Zarella, Eveleigh, Harper and Vertefeuille, Js.*Argued May 14—officially released June 28, 2012*** ‘ADA is not a defense and termination proceedings are not a program, service, activity of the Judicial Branch’

is in direct opposition to at least 6 different Congress’s, Civil Rights of 1964; Rehabilitation Act of 1973; ADA OF 1990; DDABOR of 2000; ADA of 2008; and specifically the Restitution Act of 1987 which specifically spells out Congress’s full intentions as to what is a program service activity of Public Entities, EVERYTHING THEY DO. But not in the Rogers and Rogers’ Gangs Courts. See;

([AC26392](#) - Logan v. Logan, *Opinion* McLachlan, Harper and Lavine, Js., while not from the Rogers reign, came the year before, and Mrs. Rogers and gang recite it in oppose to every application of Appeals requesting the protections and Rights of the ADA; Joesph W. (**AC 35555**) (**AC 35574**); ; BARBARA MCKECHNIE v. DENNIS MCKECHNIE (**AC 31498**); IN RE JOSEPH W., JR., ET AL.* (**SC 18951**) (**SC 18952**) Rogers, C. J., and Norcott, Palmer, Zarella, Eveleigh, Harper and Vertefeuille, Js.; [AC31363](#) - Martocchio v. Savior. Cases that I am aware of, I’m sure there are more. And I provide in part below.

Mrs. Rogers (and to be completely fare each of her predecessor’s, Sullivan and Peters for two, I’m not sure if any in-between) are to issue annual reports to the Governor and Legislators and to Commission on Human Rights and Opportunities, CHRO on the Judicial

Branch Compliance efforts to the ADA. This is a State Law, Mrs. Rogers and her gang chooses to break. And SEE Mrs. Rogers own hand selected inquiry Public Service Trust Committee independently exposed and informed her and her gang:

Judges don't understand ADA and how it applies to them. (PSTC Strategic Plan Focus Group TRENDS November 27, 2007 identification, noted below on this page)

Question raised: **WHY?**

Prohibiting disability discrimination is not an option; It's the LAW as of July 26, 1990 and all public entities were to be in compliance on January 26, 1992.

Over 800 "TRENDS" = OVER 800 DISCRIMINATORY PRACTICES

Mrs. Rogers, Chief Justice of The State of Connecticut Supreme Court exercising supervisory authority over the Judicial Branch, formed a 42 member commission called the Public Service and Trust Commission (PSTC here after) to look at where the Branch is today and develop a Strategic Plan for where the Branch is going tomorrow. Mrs. Rogers accepted this Strategic Plan and the more than 800 "trends" found by the PSTC as well as some lesser amounts of recognized impact of the discriminating "trends", and strategies to correct the "trends" on June 30, 2008 at an Annual Connecticut Judges Meeting. Among these "trends" are;

See (PSTC) focus group Office of Protection and Advocacy for Persons with Disabilities November 27, 2007 pages 1-5 @ 10.1 for TRENDS at http://www.jud.ct.gov/Committees/pst/pst_focus.pdf, confirming; No point person on ADA compliance in the Judicial System; Need for more responsive ADA coordinator / need for ADA coordinator; Need for ADA coordinator in each courthouse; Consistency in accommodations with different judges; Judges don't understand ADA and how it applies to them; Do judges have an understanding of how intellectual / learning / neurological disabilities may effect a confession or statement?; Better recognition of visual vs. hidden disabilities. Among Strategies are:

STRATEGIES; Provide with incentives for participating in training.

Judge DiPentima (Chair of the PSTC) in presenting this Strategic Plan, Mrs. Rogers (Chief Justice Connecticut Supreme Court) with accepting the Strategic Plan, and Ms Quinn (former Chief Court Administrator), Judge Patrick Carroll III, current Chief Court Administrator) in accepting responsibility for implementing the Strategic Plan all piled on the back slapping and made passing comments to 'needing the help of the Judges to carry out the Strategic Plan.

http://www.jud.ct.gov/Committees/pst/pst_focus.pdf pages 10.1

Judge DiPentima has influence but little or no Supervisory Authority BUT is prohibited from discriminating against the Disable and is considered a Mandated Reporter and has professional and civic duty to inform. Mrs. Rogers and Judge Quinn, and today Judge Patrick

Carroll, III by reason of their titles have full Supervisory Authority. As such we hold that they are required by law to enforce at all times, thru out the State of Connecticut and within the State of Connecticut Judicial Branch the purpose of the ADA including;

12101 (b) Purpose

It is the purpose of this chapter

(1) to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities;

(2) to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities;

As well as Title II of the ADA;

What is this non compliance? I explain more and provide additional info further into my written testimony but in short to start with the Administrative responsibilities', **of self evaluations 28 CFR PART 35.105**, of everything the Public Entity does for any discriminating applications and elimination of these, say like the Practice Book where Practice Rule ONE should be **a zero tolerance policy to discrimination** and there is no mention of non discrimination at all within any of the pages. I do here by insist that this "holly grail" judicial book not only make this rule number one but that it is incorporated effectively communicated onto the front and back covers of every Practice Book going forward! Why? So what does a practicing Attorney have to go off? What does a non informed pro se litigant have to go off? What does the HONEST Judge have to go off? NOTHING SO THE ATTORNEY DOES NOTHING! The Litigant remains ignorant and gets denied, refused and discriminated against when requesting, and Judges deny, refuse and discriminate by intent or effect. And the litigants get theatrical participation, denial of benefits and discriminated against including in many instances ridicule and sick daily humor for Mrs. Rogers' Marshalls and staff at disabled expense. This day is not long enough for the examples.

Notice, 28 CFR PART 35.106, effectively communicated, 28 CFR PART 35.160. See Miranda Rights to fully understand this if you need, but no notice of rights = no reason to expect or look for or request any. We'll all just assume that we got our wheelchair ramp and as such we got our rights and protections, **Here's another Barrier.** And as the cases immediately below show with no notice and no education of attorneys there is no early request or identification of disability modification needs. So no request at first means no rights going forward, but that's a Title I EMPLOYMENT application which is different from Title II and is not what Title II mandates. **AH! Another example of a EEOP Barrier!**

Designated Responsible Employee to ensure that the Judicial Branch is compliant with Title II and resolve discrimination issues promptly with little or no costs, 28 CFR PART 35.107(a). I ask you Senator Colman to provide me with this persons name and contact last April/May and you committed but as of yet failed to provide, same as Mrs. Rogers fails to comply and provide one. Oh she provides ADA "contact" persons basically to run interference to disabled requests, comments and complaints. No Designated Responsible Employee. This person, with proper written job description and authority would have the power and authority to overturn discriminating ORDERS, OPINIONS, DECISIONS. But not in the Rogers Gang Courts. **Another Barrier! And Federal Law Violation!**

Written Grievance Policy 28 CFR PART 35.107(b). There have been attempts but in reality they are not transparent and are burdensome, require unlawful criteria, delays and completely starchy and everyone results in denial. Again, there has not even been a consistent policy to since the Rogers agendas in 2007/2008.

How about Connecticut General Statutes? NON COMPLIANCE, Another Barrier

Sec. 46a-78. (Formerly Sec. 4-61k). Annual agency reports to Governor. Review by commission. (a) All departments, agencies, commissions and other bodies of the state government shall include in their annual report to the Governor, activities undertaken in the past year to effectuate sections 46a-70 to 46a-78, inclusive.

(b) Such reports shall cover both internal activities and external relations with the public or with other state agencies and shall contain other information as specifically requested by the Governor.

(c) The information in the annual reports required under the provisions of this section shall be reviewed by the Commission on Human Rights and Opportunities for the purpose of monitoring compliance with the provisions of sections 46a-70 to 46a-78, inclusive.

There are no reports at least prior to 2013, I think Mrs. Rogers Gang is prepping up back slapping reports today and last year, boasting of their pretty pictures of the Courts and parking lots posted on the WEB as “continuing compliance” efforts. Pretty Pictures of our WE THE PEOPLE COURTS are not reasonable modifications to policies, practices, programs and activities of OUR COURTS as required by the ADA. Rather, Mrs. Rogers and her gang repeatedly proclaim and hold solid that various Court sessions are not policies, practices, programs, services or activities covered by the ADA and that the ADA is/are no defense in Court, SEE:

In RE JOSEPH W., JR., ET AL.* (AC 35555) (AC 35574) Lavine, Alvord and Peters, Js. *Argued September 10—officially released October 9, 2013*** In AC 35574, the mother claims that the court improperly (1) denied her request for relief under the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. § 12101 et seq.,

Shortly before the second trial on the neglect petitions for both children, the respondents sent a letter to the trial court in which they stated that they believed their rights under the ADA had been violated by the department. In that letter, they requested that the department provide an ADA coordinator to oversee the case. On the first day of trial, the court, *Bentivegna, J.*, denied the request and proceeded with the trial.

When the trial concluded, the court found by a fair preponderance of the evidence that both children were neglected under the doctrine of predictive neglect and committed the children to the care and custody of the commissioner. The respondents filed separate appeals from the adjudications of neglect. Our Supreme Court, although concluding that the trial court properly rejected the respondents’ ADA claims, reversed the judgments. *In re Joseph W.*, 305 Conn. 633, 46 A.3d 59 (2012). *** On December 3, 2012, which was the first day of trial, the father

and the mother each filed a written statement requesting that ADA coordinators for the department and the judicial branch be present throughout the court proceedings. After hearing the parties' arguments regarding these requests, the court, *Keller, J.*, denied both requests because (1) the ADA claims previously had been raised and our Supreme Court concluded that alleged ADA violations are not a defense in child protection proceedings, and (2) the requests were not timely filed with the court.³

AC 35574, A The mother's first claim is that the court improperly denied her request for relief under the ADA. Although she had insisted that ADA coordinators for the department and the judicial branch be present throughout the court proceedings,⁵ the court responded that the ADA did not provide a defense to neglect and termination proceedings. Referring to our Supreme Court's decision in *In re Joseph W.*, supra, 305 Conn. 633, the court denied the mother's request.

We agree with the trial court that this claim of the mother was raised and decided in *In re Joseph W.*, supra, 305 Conn. 650–53. The mother claimed in *In re Joseph W.*, as she claims in this appeal, that she is not asserting the alleged ADA violations as a defense, but rather as an affirmative claim that the department did not make reasonable efforts at reunification because it failed to make arrangements for her to have an ADA coordinator to assist her with the children. Our Supreme Court held: "Because she has failed to provide the court with any provision, either in the federal statute itself or under relevant state law, demonstrating that a violation of a parent's rights under the ADA can be the basis for an appeal from an adjudication of neglect, we reject her claims on appeal." *Id.*, 652. **We are bound by our Supreme Court's holding; the mother's ADA claim is without merit.**

⁵ In her appellate brief, the mother additionally claims that an ADA coordinator should have participated at the reunification stage to assist her in "obtaining specific programs [that] would have been suitable for a person with a psychiatric disability as is the case with [the mother]." The record discloses that the request for the ADA coordinator or representative was made by written request on the first day of trial and was directed only to the trial proceeding.

and or if a party has not asked previously, they lose all ADA Rights today, See

(**AC26392** - Logan v. Logan, *Opinion* McLachlan, Harper and Lavine, Js. The defendant, Kevin B. Logan, appeals from the judgment of the trial court denying his motion for contempt and granting the motion for modification filed by the plaintiff, Heather V. Logan. He claims that the court improperly (1) failed to provide him with accommodations in accordance with the Americans with Disabilities Act (ADA), 42 U.S.C. § 12101 et seq.,^{***}

I
The defendant's first claim on appeal is that the court improperly failed to provide him with accommodations according to the ADA. This claim was not raised in the trial court, and no specific accommodation was requested by the defendant in the trial court. The defendant asserts that he has been diagnosed with chronic pain in his neck, back and left and right rotator cuff, and that he suffers from bilateral carpal tunnel syndrome and myofascial syndrome,

which affect his skeletal muscles. He also claims that he has been diagnosed with attention deficit disorder, bipolar disorder, depression and anxiety disorder. His disabilities affect his motor skills and ability to communicate.

“Practice Book § 4185 [now § 60-5] provides in pertinent part: The court on appeal shall not be bound to consider a claim unless it was distinctly raised at the trial or arose subsequent to the trial. The court may in the interests of justice notice plain error not brought to the attention of the trial court. Practice Book § 4185 [now § 60-5] provides that this court is not bound to consider a claim that was not distinctly raised at trial. This rule applies to constitutional claims. . . . [O]nly in most exceptional circumstances can and will this court consider a claim, constitutional or otherwise, that has not been raised and decided in the trial court.” (Citations omitted; internal quotation marks omitted.) *Brubeck v. Burns-Brubeck*, 42 Conn. App. 583, 588, 680 A.2d 327 (1996). **Because the defendant did not raise his ADA claim in the trial court, nor did he provide any information to suggest that the issue raised by him was an exceptional circumstance that would permit this court to review this unpreserved issue, we decline to review the defendant’s first claim.**

BARBARA MCKECHNIE v. DENNIS MCKECHNIE (AC 31498) DiPentima, C. J., and Espinosa and West, Js. *Argued April 25—officially released July 26, 2011.* Additionally, we note that in *Logan v. Logan*, 96 Conn. App. 842, 845–46, 902 A.2d 666 (2006), we declined to review a party’s claim raised for the first time on appeal that the trial court improperly failed to provide him with accommodations according to the Americans with Disabilities Act (ADA), 42 U.S.C. § 12101 et seq., during court proceedings. Accordingly, ***

We note that the court expressly made no finding of disability and then stated that even if it did, a finding of disability played no part in the court’s decision to award sole custody to the defendant as a result of that disability. Despite suggestions in her briefs of an implicit finding of a disability, the plaintiff has not directly challenged the express factual finding by the court. Thus, we are bound by the court’s findings. We also are mindful that in termination of parental rights cases, this court had rejected claims that the ADA provides a defense or creates special obligations. See *In re Brendan C.*, 89 Conn. App. 511, 526, 874 A.2d 826, cert. denied, 274 Conn. 917, 879 A.2d 893, cert. denied 275 Conn. 910, 882 A.2d 669 (2005); *In re Antony B.*, 54 Conn. App. 463, 472–73, 735 A.2d 893 (1999). Specifically, we reasoned that a termination proceeding is “not a service, program or activity under the ADA.” (Internal quotation marks omitted.) *In re Antony B.*, supra, 472.7 we decline to review this claim. ***

***||

The plaintiff next claims that § 46b-56 (c) (12) is unconstitutionally vague. Specifically, she argues that unless the term “disability” is read in accordance with the definition set forth by federal law in the ADA;⁴ see 42 U.S.C. § 12102 (1),⁵ then § 46b-56 (c) (12) is vague and impossible to apply. The defendant argues, inter alia, that § 46b-56 (c) (12) provides the required notice because it contains a core meaning. We agree. ***

***We also are mindful that in termination of parental rights cases, this court had rejected claims that the ADA provides a defense or creates special obligations. See *In re Brendan C.*, 89 Conn. App. 511, 526, 874 A.2d 826, cert. denied, 274 Conn. 917, 879 A.2d 893, cert.

denied, 275 Conn. 910, 882 A.2d 669 (2005); *In re Antony B.*, 54 Conn. App. 463, 472–73, 735 A.2d 893 (1999). Specifically, we reasoned that a termination proceeding is “not a service, program or activity under the ADA.” (Internal quotation marks omitted.) *In re Antony B.*, supra, 472.7***

***7 The defendant directs our attention to sibling authority rejecting claims that the ADA applies in the context of custody determinations. In *Curry v. McDaniel*, 37 So. 3d 1225, 1233 (Miss. App. 2010), the Mississippi Court of Appeals noted that it had found “no persuasive authority which supports the proposition that the ADA applies or was intended to apply to childcustody determinations.” The court reasoned that a custody determination was not a service, program or activity contemplated by the ADA, and that it was the best interests of the child that controlled the custody determination. *Id.* Similarly, in *Arneson v. Arneson*, 670 N.W.2d 904, 911 (S.D. 2003), the Supreme Court of South Dakota rejected an extension of the ADA into a judicial custody determination.

IN RE JOSEPH W., JR., ET AL.* (SC 18951) (SC 18952) **Rogers, C. J.**, and Norcott, Palmer, Zarella, Eveleigh, Harper and Vertefeuille, Js. *Argued May 14—officially released June 28, 2012***

Opinion

ROGERS, C. J. The primary issue in this appeal is whether the trial court applied the proper standard of proof when, pursuant to General Statutes § 46b-129, it rendered adjudications of neglect under the doctrine of predictive neglect. ***

On remand, the trial court, *Bentivegna, J.*, conducted a second trial on the neglect petitions for both children. Shortly before trial, the respondents sent a letter to the trial court in which they stated that they believed that the department had violated their rights under the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. § 12101 et seq., and requested that the department provide an ADA coordinator to oversee the case. They also stated that they questioned “the [j]udicial [b]ranch’s enforcement of the ADA law, as well.” On the first day of trial, the trial court responded to this request by stating that “the ADA does not provide a defense or create a special obligation in a child protection proceeding,” and “child protection proceedings are not services, programs or activities within the meaning of . . . the ADA.” Accordingly, the court denied the respondents’ request and proceeded with trial.

On appeal, the father claims that: *** (3) the trial court improperly denied the respondents’ request for relief under the ADA. The mother claims that:*** (3) the trial court improperly denied the respondents’ request for relief under the ADA.

Because, however, the issue is likely to arise on remand, we address the respondents’ ADA claim and conclude that the trial court properly denied the respondents’ request for relief under that statute.***

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The respondents' final claim on appeal is that they were denied their rights under the ADA. Specifically, the mother contends that the department "did not make reasonable efforts [at] reunification, because [it] failed [to] make arrangements for [her] to have a coordinator to assist her in her effort of reunification with her children." The father, on the other hand, argues that the trial court denied the respondents' due process rights by refusing to provide them with an ADA coordinator during the neglect proceedings. We disagree, and, accordingly, affirm the judgment of the trial court regarding the respondents' ADA claims. At the neglect proceedings, the trial court rejected the mother's claims under the ADA based in part upon *In re Antony B.*, 54 Conn. App. 463, 735 A.2d 893 (1999), in which the Appellate Court concluded that "the ADA neither provides a defense to nor creates special obligations in a termination proceeding"; *id.*, 472; because "termination proceedings are not services, programs or activities within the meaning of . . . the ADA . . ." (Internal quotation marks omitted.) *Id.*, 471–72. The mother now claims on appeal that the trial court's reliance upon *In re Antony B.* was misplaced because the Appellate Court's holding in that case pertained solely to termination proceedings, rather than neglect proceedings, and she was not attempting to assert the alleged ADA violations as a defense in the neglect proceedings. Turning to the mother's first argument, we note that, although the Appellate Court did state in a footnote in *In re Antony B.* that its holding "concern[ed] only the applicability of the ADA to termination proceedings"; *id.*, 473 n.9; it did so only in contrast to a hypothetical case where a parent brings a *separate cause of action* against the department, rather than attempting to assert an ADA violation as a defense in on-going child protection proceedings. Although that case involved termination proceedings, the Appellate Court's reasoning is equally applicable in neglect proceedings, which are also initiated by the department in the interest of child protection but which are "neither final nor irrevocable because [they are] subject to change via numerous statutorily prescribed stages of review."⁹ *Fish v. Fish*, 285 Conn. 24, 117, 939 A.2d 1040 (2008) (*Katz, J.*, concurring); see also *In re Juvenile Appeal (84–AB)*, *supra*, 192 Conn. 263–64; *In re Juvenile Appeal (83–CD)*, *supra*, 189 Conn. 287–88. Accordingly, the trial court properly applied *In re Antony B.* in the present case.

The mother also attempts to distinguish *In re Antony B.* by arguing that she is not asserting the alleged ADA violations as a defense, but rather as an affirmative claim that "the [department] did not make reasonable efforts [at] reunification, because [it] failed [to] make arrangements for [the mother] to have a coordinator to assist her . . . with her children." In the context of this appeal, however, because the mother is appealing from the adjudication of neglect, it is unclear what remedy she seeks if she is not attempting to assert the alleged ADA violations as a defense to the adjudication of neglect. Additionally, even if she is not attempting to assert them as a defense, she has not adequately briefed the claim she intended to bring against the department. Because she has failed to provide the court with any provision, either in the federal statute itself or under relevant state law, demonstrating that a violation of a parent's rights under the ADA can be the basis for an appeal from an adjudication of neglect, we reject her claims on appeal. Turning to the father's ADA claim, he argues that the judicial branch was "required to provide a designated person or coordinator to ensure [that] the mother [was] not denied access to the courts."¹⁰ Specifically, he claims that, under 28 C.F.R. § 35.107 (a), as a public entity with more than fifty employees, the judicial branch was required to "designate at least one employee to coordinate its efforts to comply with its responsibilities under this part, including any investigation of any complaint communicated to it alleging its noncompliance

with this part” (Internal quotation marks omitted.) We disagree. Even if we were to assume that the respondents were disabled under the definition set forth in the ADA, an issue on which the father made no offer of proof, he has cited no authority for the proposition that 28 C.F.R. § 35.107 requires trial courts to provide disabled parents with ADA coordinators during child protection proceedings. 11 Moreover, even if we were to assume that an ADA coordinator may be appointed under appropriate circumstances, the father does not challenge his competency to participate in the neglect proceedings, and a review of the record indicates that he actively participated in them by speaking directly to the court in support of his ADA claim. Furthermore, at oral argument before this court, it was noted that, throughout the neglect proceedings, neither respondent’s counsel requested that a guardian ad litem be appointed to represent the respondents. Accordingly, we reject the ADA claim of the father and agree with the trial court’s conclusion in this regard.

Footnotes

10 The department argues that the father’s ADA claim was unpreserved because it is “not what [he] claimed in his request . . . or in his argument at trial.” (Citation omitted.) The record reveals, however, that the respondents’ letter stated: “We also question the [j]udicial [b]ranch’s enforcement of the ADA law, as well.” In addition, at the hearing, the father stated to the trial court: “[B]efore proceeding forward, under our ADA rights, we would like to have [the department’s] designated responsible employee present *during [these] proceedings*, as well as the judicial branch’s ADA coordinator. . . . I’m not waiving my right for this. I’d like for these people to be present.” (Emphasis added.) The trial court, in denying the father’s request, responded:

“I understand your position and you made a record of your position” We conclude therefore that the father preserved this claim for appellate review.

11 The father has also failed to identify with any specificity the duties that he believes an ADA coordinator should have been assigned in this case. By way of example in his brief, he asserts: “In the instant case the accommodations *may have* only required more frequent breaks so that the parents could have additional time to have the proceedings and evidence explained to them to ensure that they understood and could assist in the defense of their case.” (Emphasis added.) The father also does not cite any authority for his supposition that such actions were necessary and the record reveals that the respondents’ counsel never indicated to the trial court that their clients were unable to understand the proceedings that were taking place.

AC31363 - Martocchio v. Savior; buried in the footnote 2 The plaintiff also claims that the court violated the Americans with Disabilities Act (ADA), 42 U.S.C. § 12101 et seq. The plaintiff did not raise this claim relating to the ADA in the trial court, nor did he inform the court that he had any disability or request accommodations under the ADA during the contempt proceedings. Under these circumstances, we decline to review his claim. See *Logan v. Logan*, 96 Conn. App. 842, 845–46, 902 A.2d 666 (2006) (declining to review claim that court failed to provide ADA accommodations during contempt hearing when ADA claim was not raised in trial court).

Mrs. Rogers repeatedly refuse to take ADA arguments from lower Courts and base many such denials outright on previous ignorant opinions that Tennessee v. Lane U.S. Supreme Court (2004) and the ADAA 2008 have overturned and outlawed.

It is also State law that all within the Judicial Branch receive training on ADA and non disability discrimination, and that ALL training be conducted or be approved by CHRO. Mrs. Rogers and her mentoring gang have not done this. Mrs. Rogers approves and promotes that all training be done secretly and by outside vendors with zero oversight and zero review of who, what, where, when, how, why of training and or grading of Mrs. Rogers and her gang is in place with as little transparency as possible. Ignorance, mythology, and stereotyped are all forms of discrimination, we need to know and have this right to know which Judges and Justices are bigoted, bias, prejudice, opinions' to disabled individuals. We have the absolute RIGHT to none and to the immediate remedy of each discriminating Court Orders, Opinions, and Decisions. Disability Discrimination has no place in any and needs to be remedied immediately with zero tolerance of Judges yelling proceedings to hearing impaired, attorneys humming Twilight Zone, Clerks and Support Enforcement Officers causing commotion to draw attention and lose of thoughts, and Marshalls, backs to the Judge surrounding litigants with high distractibility, making faces of scowl goading the disabled into confrontation and excluding participation of their hearing.

In addition, while Mrs. Rogers hides behind the smoke screens and cover ups, all the while as her gang gets their jollies and daily doses of humor at the expense of disabled individuals as the gang members continues to isolate and segregate and separate children from parents, Mrs. Rogers flaunts and teases her life of the privileged' boasting of her pride and joy relationships with her children, they with opportunity to join in Mrs. Rogers rises to the

top, and Mrs. Rogers with all opportunities to witness each of their moments of life. See Mrs. Rogers slap the faces of disabled parents in her conformation speech in 2007, proudly talking of her children.

The Judicial Branch ADA Access Committee who in the past three years acts as the Designated Responsible Employee in matters they can boast of; but deny services to persons having direct involvement with a case;

*The Judicial Branch's [Advisory Board on the Americans with Disabilities Act](#) was established to support the Judicial Branch's continued compliance with the Act. The Advisory Board welcomes specific suggestions on how the Branch can continue its compliance with Title II of the Act. Written suggestions may be emailed to ada.program@jud.ct.gov. Please limit suggestions to general observations about programs or processes. **Suggestions relating to specific cases will not be considered.** Submissions are subject to the Judicial Branch's [Privacy Policy](#).*

And while we read this, please tell me on what verifiable date the Judicial Branch became compliant with Title II of the ADA??????? Because I never received any compliance hence here I am in front of you all, again.

Judicial Branch Gender Discrimination as high lighted by Judicial Branch Disability Discrimination has stolen this from my children and I, for that which is not illegal, I have not done, has not happened, and has since been confessed to not happening, all based on fears in a persons head, based on nothing, that someone reacted to and I was not provided due process or equal protection of laws for.

Mrs. Rogers as Chief Justice has full Supervisory Authority and often proclaims such, yet cowards behind her Black Robe, because she may someday be holding Supreme Court over an "active case" so to avoid her legal obligations and responsibilities' to address Disability Discrimination complaints, comments, requests, demands, expectations, AND remedy of

Disability Discrimination. Such convictions, opinions, decisions, orders are not active cases, and they are illegal. They are discrimination and to be corrected immediately. No person is to be discriminated against in OUR COURTS. ZERO TOLERANCE IS THE LAW OF THE UNITED STATES, but not in Mrs. Rogers and her gangs holding courts. Gender and Disability Discrimination is the rule, see Charise Hutton boasting testimony to Fatherlessness Task Force more than 90% fathers are non custodial less than 10% mothers are non custodial. May I get an Equal Protection explanation please?

If the Judicial Branch is non compliant with the ADA than the Judicial Branch has no Jurisdiction over a case.

Disability Discrimination is not suppose to be a part of or take place in any case; as such, Disability Discrimination complaints are not normally suppose to be an active litigation. Disability Discrimination from and in the Courts are suppose to be handled administratively for efficiency in time, expense, and limited exposures with a ZERO TOLERANCE POLICY so to enforce remedy of past disability discrimination, elimination of current disability discrimination and prohibition of future disability discrimination, which should weed out and ween out all disability discrimination and NOT EFFECT Mrs. Rogers Rightful Obligations to “active case review” as Chief Justice of the State of Connecticut Supreme Court and The State of Connecticut Judicial Branch.

I want my babies back today, I want my property back in full today, I want my great name back today, I want my past, present, and future rights to life liberty property and pursuit of happiness back today, I want my Right to Vote for the people and issues I wish to vote for back today, and I want my respect for that black robe back today.

I, equal and the same as President Obama have pen and phone in hand. You each as well as the bigoted, biased, prejudice discriminating Chief Justice Chase T. Rogers have the

legal obligation and responsibility to remedy all instances of disability discrimination imposed on me immediately that is the law. What say you?

Mrs. Rogers needs to go! And I get my babies back today.

Yours For Barrier Free Courts With Sober And Honest Judges, And Justices Including Chief Justice, With Non Discriminating Attorneys, Vendors And Other State Contractors'!

Bill Mulready (I sign again and again and again)

The cornerstone of Title II of the ADA is this: no qualified person with a disability may be excluded from participating in, or denied the benefits of, the programs, services, and activities provided by state and local governments because of a disability, or be subjected to discrimination by any such entity. One simple sentence, but it has many words, phrases and ideas to understand.

Sec. 12132. Discrimination

Subject to the provisions of this subchapter, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

See Tenn. v. Lane No. 02-1667 U. S. Supreme Court, Brief of the States of Minnesota, Connecticut, Illinois, Missouri, New Mexico, New York, Washington and Wisconsin AMICI CURIAE in support of Respondents; (Here after States Brief)

In Adopting Title II, Congress Identified State Discrimination That Violated The Fundamental Constitutional Rights Of People With Disabilities.

More than showing equal protection violations subject to rational basis review, the record supporting Title II shows that discrimination by the states in public services impinged upon fundamental constitutional rights of people with disabilities, including such rights as parental rights, voting rights, access to the courts and prisoners' rights to humane conditions of confinement. Since a higher standard of scrutiny applies to these rights, Congress was justified in concluding that the record documented constitutional violations by the states.

In *Garrett*, the Court held that the record of state conduct was insufficient to justify abrogation of sovereign immunity, in part, because of the standard of review applicable to state treatment of people with disabilities, namely the rational basis test under the Equal Protection Clause.^{[1][3]} The Court determined that the respondents failed to demonstrate that the identified state conduct could never have a rational basis. In contrast to Title I's regulation of employment, Title II, which governs the provision of public services, programs and activities, addresses state conduct that impinges upon fundamental constitutional rights embodied in **the First, Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments**. In such a case, a higher standard of scrutiny applies. See, e.g., *Dunn v. Blumstein*, 405 U.S. 330 (1972) (holding that right to vote can be restricted only when purpose of restriction and overriding interests served thereby meet close constitutional scrutiny); *Boddie v. Connecticut*, 401 U.S. 371 (1971) (holding that due process requires state to provide meaningful access to courts absent showing of countervailing state interest of overriding significance); *Harper v. Va. State Bd. of Elections*, 383 U.S. 663, 670 (1966) ("We have long been mindful that where fundamental rights and liberties are asserted under the Equal Protection Clause, classifications which might invade or restrain them must be closely scrutinized and carefully confined.").

See Tenn. V. Lane

This duty to accommodate is perfectly consistent with the well-established due process principle that, "within the limits of practicability, a State must afford to all individuals a meaningful opportunity to be heard" in its courts. *Boddie*, 401 U. S., at 379 (internal quotation marks and citation omitted).²⁰ Our cases have recognized a number of affirmative obligations that flow from this principle: the duty to waive filing fees in certain family-law and criminal cases,²¹ the duty to provide transcripts to criminal defendants seeking review of their convictions,²² and the duty to provide counsel to certain criminal defendants.²³ Each of these cases makes clear that ordinary considerations of cost and convenience alone cannot justify a State's failure to provide individuals with a meaningful right of access to the courts. Judged against this backdrop, Title II's affirmative obligation to accommodate persons with disabilities in the administration of justice cannot be said to be "so out of proportion to a supposed remedial or preventive object that it cannot be understood as responsive to, or designed to prevent, unconstitutional behavior." *Boerne*, 521 U. S., at 532; *Kimel*, 528 U. S., at 86.²⁴ It is, rather, a reasonable prophylactic measure, reasonably targeted to a legitimate end.

For these reasons, we conclude that Title II, as it applies to the class of cases implicating the fundamental right of access to the courts, constitutes a valid exercise of Congress' §5 authority to enforce the guarantees of the Fourteenth Amendment. The judgment of the Court of Appeals is therefore affirmed. See *Tenn. v. Lane* U.S. Supreme Court (2004)

AMERICANS WITH DISABILITIES ACT OF 1990, AS AMENDED

SUBCHAPTER II - PUBLIC SERVICES

Part A - Prohibition Against Discrimination and Other Generally Applicable Provisions

Sec. 12132. Discrimination

Subject to the provisions of this subchapter, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of

services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

The Fourteenth Amendment to the U. S. Constitution reads:

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article."

The Americans with Disabilities Act Title II Technical Assistance Manual Covering State and Local Government Programs and Services

Introduction

This technical assistance manual addresses the requirements of title II of the Americans with Disabilities Act, which applies to the operations of State and local governments. It is one of a series of publications issued by Federal agencies under section 506 of the ADA to assist individuals and entities in understanding their rights and duties under the Act.

II-8.0000 ADMINISTRATIVE REQUIREMENTS

Regulatory references: 28 CFR 35.105-35.107; 35.150(c) and (d).

II-8.1000 General. Title II requires that public entities take several steps designed to achieve compliance. These include the preparation of a self-evaluation. In addition, public entities with 50 or more employees are required to --

- 1) Develop a grievance procedure;
- 2) Designate an individual to oversee title II compliance;
- 3) Develop a transition plan if structural changes are necessary for achieving program accessibility; and
- 4) Retain the self-evaluation for three years.

If a public entity identifies policies and practices that deny or limit the participation of individuals with disabilities in its programs, activities, and services, when should it make changes? Once a public entity has identified policies and practices that deny or limit the participation of individuals with disabilities in its programs, activities, and services, **it should take immediate remedial action to eliminate the impediments to full and equivalent participation.** Structural modifications that are required for program accessibility should be made as expeditiously as possible but no later than January 26, 1995.

II-8.4000 Notice to the public. A public entity must provide information on title II's requirements to applicants, participants, beneficiaries, and other interested persons. The notice shall explain title II's applicability to the public entity's services, programs, or activities. A

public entity shall provide such information as the head of the public entity determines to be necessary to apprise individuals of title II's prohibitions against discrimination.

What methods can be used to provide this information? Methods include the publication of information in handbooks, manuals, and pamphlets that are distributed to the public to describe a public entity's programs and activities; the display of informative posters in service centers and other public places; or the broadcast of information by television or radio. In providing the notice, a public entity must comply with the title II requirements for effective communication, including alternate formats, as appropriate.

§ 35.105 Self-evaluation.

- (a) A public entity shall, within one year of the effective date of this part, evaluate its current services, policies, and practices, and the effects thereof, that do not or may not meet the requirements of this part and, to the extent modification of any such services, policies, and practices is required, the public entity shall proceed to make the necessary modifications.
- (b) A public entity shall provide an opportunity to interested persons, including individuals with disabilities or organizations representing individuals with disabilities, to participate in the self-evaluation process by submitting comments.
- (c) A public entity that employs 50 or more persons shall, for at least three years following completion of the self-evaluation, maintain on file and make available for public inspection:
 - (1) A list of the interested persons consulted;
 - (2) A description of areas examined and any problems identified; and
 - (3) A description of any modifications made.
- (d) If a public entity has already complied with the self-evaluation requirement of a regulation implementing section 504 of the Rehabilitation Act of 1973, then the requirements of this section shall apply only to those policies and practices that were not included in the previous self-evaluation.

§ 35.106 Notice

A public entity shall make available to applicants, participants, beneficiaries, and other interested persons information regarding the provisions of this part and its applicability to the services, programs, or activities of the public entity, and make such information available to them in such manner as the head of the entity finds necessary to apprise such persons of the protections against discrimination assured them by the Act and this part.

§ 35.107 Designation of responsible employee and adoption of grievance procedures

- (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.

II-8.5000 Designation of responsible employee and development of grievance

procedures. A public entity that employs 50 or more persons shall designate at least one employee to coordinate its efforts to comply with and fulfill its responsibilities under title II, including the investigation of complaints. A public entity shall make available the name, office address, and telephone number of any designated employee.

In addition, the public entity must adopt and publish grievance procedures providing for prompt and equitable resolution of complaints alleging any action that would be prohibited by title II.

Title II Regulations

1991 Preamble and Section-by-Section Analysis

Appendix B to the title II rule incorporates the guidance, i.e., the 1991 Section-by-Section Analysis, to the title II rule published July 26, 1991. The 1991 analysis remains relevant to the extent it is not contradicted by the amendments to the rules or it provides guidance on provisions of the rules unchanged by the revised 2010 ADA regulations.

Subpart A -- General

§35.101 Purpose.

Section 35.101 states the purpose of the rule, which is to effectuate subtitle A of title II of the Americans with Disabilities Act of 1990 (the Act), which prohibits discrimination on the basis of disability by public entities. This part does not, however, apply to matters within the scope of the authority of the Secretary of Transportation under subtitle B of title II of the Act.

§35.102 Application.

This provision specifies that, except as provided in paragraph (b), the regulation applies to all services, programs, and activities provided or made available by public entities, as that term is defined in §35.104. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), which prohibits discrimination on the basis of handicap in federally assisted programs and activities, already covers those programs and activities of public entities that receive Federal financial assistance. Title II of the ADA extends this prohibition of discrimination to include all services, programs, and activities provided or made available by State and local governments or any of their instrumentalities or agencies, regardless of the receipt of Federal financial assistance. Except as provided in §35.134, this part does not apply to private entities.

§35.105 Self-evaluation.

Section 35.105 establishes a requirement, based on the section 504 regulations for federally assisted and federally conducted programs, that a public entity evaluate its current policies and practices to identify and correct any that are not consistent with the requirements of this part. As noted in the discussion of §35.102, activities covered by the Department of Transportation's regulation implementing subtitle B of title II are not required to be included in the self-evaluation required by this section.

Experience has demonstrated the self-evaluation process to be a valuable means of establishing a working relationship with individuals with disabilities, which has promoted both effective and efficient implementation of section 504. The Department expects that it will likewise be useful to public entities newly covered by the ADA.

All public entities are required to do a self-evaluation. However, only those that employ 50 or more persons are required to maintain the self-evaluation on file and make it available for public inspection for three years. The number 50 was derived from the Department of Justice's section 504 regulations for federally assisted programs, 28 CFR 42.505(c). The Department received comments critical of this limitation, some suggesting the requirement apply to all public entities and others suggesting that the number be changed from 50 to 15. The final rule has not been changed. Although many regulations implementing section 504 for federally assisted programs do use 15 employees as the cut-off for this record-keeping requirement, the Department believes that it would be inappropriate to extend it to those smaller public entities covered by this regulation that do not receive Federal financial assistance. This approach has the benefit of minimizing paperwork burdens on small entities.

Paragraph (d) provides that the self-evaluation required by this section shall apply only to programs not subject to section 504 or those policies and practices, such as those involving communications access, that have not already been included in a self-evaluation required under an existing regulation implementing section 504. Because most self-evaluations were done from five to twelve years ago, however, the Department expects that a great many public entities will be reexamining all of their policies and programs. Programs and functions may have changed, and actions that were supposed to have been taken to comply with section 504 may not have been fully implemented or may no longer be effective. In addition, there have been statutory amendments to section 504 which have changed the coverage of section 504, particularly the Civil Rights Restoration Act of 1987, Pub. L. No. 100-259, 102 Stat. 28 (1988), which broadened the definition of a covered "program or activity."

Several commenters suggested that the Department clarify public entities' liability during the one-year period for compliance with the self-evaluation requirement. The self-evaluation requirement does not stay the effective date of the statute nor of this part. Public entities are, therefore, not shielded from discrimination claims during that time.

Other commenters suggested that the rule require that every self-evaluation include an examination of training efforts to assure that individuals with disabilities are not subjected to discrimination because of insensitivity, particularly in the law enforcement area. Although the Department has not added such a specific requirement to the rule, it would be appropriate for public entities to evaluate training efforts because, in many cases, lack of training leads to discriminatory practices, even when the policies in place are nondiscriminatory.

§35.106 Notice.

Section 35.106 requires a public entity to disseminate sufficient information to applicants, participants, beneficiaries, and other interested persons to inform them of the rights and protections afforded by the ADA and this regulation. Methods of providing this information include, for example, the publication of information in handbooks, manuals, and pamphlets that are distributed to the public to describe a public entity's programs and activities; the display of

informative posters in service centers and other public places; or the broadcast of information by television or radio. In providing the notice, a public entity must comply with the requirements for effective communication in §35.160. The preamble to that section gives guidance on how to effectively communicate with individuals with disabilities.

§35.107 Designation of responsible employee and adoption of grievance procedures.

Consistent with §35.105, Self-evaluation, the final rule requires that public entities with 50 or more employees designate a responsible employee and adopt grievance procedures. Most of the commenters who suggested that the requirement that self-evaluation be maintained on file for three years not be limited to those employing 50 or more persons made a similar suggestion concerning §35.107. Commenters recommended either that all public entities be subject to section 35.107, or that "50 or more persons" be changed to "15 or more persons." As explained in the discussion of §35.105, the Department has not adopted this suggestion.

The requirement for designation of an employee responsible for coordination of efforts to carry out responsibilities under this part is derived from the HEW regulation implementing section 504 in federally assisted programs. The requirement for designation of a particular employee and dissemination of information about how to locate that employee helps to ensure that individuals dealing with large agencies are able to easily find a responsible person who is familiar with the requirements of the Act and this part and can communicate those requirements to other individuals in the agency who may be unaware of their responsibilities. This paragraph in no way limits a public entity's obligation to ensure that all of its employees comply with the requirements of this part, but it ensures that any failure by individual employees can be promptly corrected by the designated employee.

Section 35.107(b) requires public entities with 50 or more employees to establish grievance procedures for resolving complaints of violations of this part. Similar requirements are found in the section 504 regulations for federally assisted programs (*see, e.g.*, 45 CFR 84.7(b)). The rule, like the regulations for federally assisted programs, provides for investigation and resolution of complaints by a Federal enforcement agency. It is the view of the Department that public entities subject to this part should be required to establish a mechanism for resolution of complaints at the local level without requiring the complainant to resort to the Federal complaint procedures established under subpart F. Complainants would not, however, be required to exhaust the public entity's grievance procedures before filing a complaint under subpart F. Delay in filing the complaint at the Federal level caused by pursuit of the remedies available under the grievance procedure would generally be considered good cause for extending the time allowed for filing under §35.170(b).

Subpart B -- General Requirements

§35.130 General prohibitions against discrimination.

The general prohibitions against discrimination in the rule are generally based on the prohibitions in existing regulations implementing section 504 and, therefore, are already familiar to State and local entities covered by section 504. In addition, §35.130 includes a number of provisions derived from title III of the Act that are implicit to a certain degree in the requirements of regulations implementing section 504.

Several commenters suggested that this part should include the section of the proposed title III regulation that implemented section 309 of the Act, which requires that courses and examinations related to applications, licensing, certification, or credentialing be provided in an accessible place and manner or that alternative accessible arrangements be made. The Department has not adopted this suggestion. The requirements of this part, including the general prohibitions of discrimination in this section, the program access requirements of subpart D, and the communications requirements of subpart E, apply to courses and examinations provided by public entities. The Department considers these requirements to be sufficient to ensure that courses and examinations administered by public entities meet the requirements of section 309. For example, a public entity offering an examination must ensure that modifications of policies, practices, or procedures or the provision of auxiliary aids and services furnish the individual with a disability an equal opportunity to demonstrate his or her knowledge or ability. Also, any examination specially designed for individuals with disabilities must be offered as often and in as timely a manner as are other examinations. Further, under this part, courses and examinations must be offered in the most integrated setting appropriate. The analysis of §35.130(d) is relevant to this determination.

Paragraphs (d) and (e), previously referred to in the discussion of paragraph (b)(1)(iv), provide that the public entity must administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities, *i.e.*, in a setting that enables individuals with disabilities to interact with nondisabled persons to the fullest extent possible, and that persons with disabilities must be provided the option of declining to accept a particular accommodation.

Section 28 CFR PART 36.309 Examinations and Courses (this is from Title III as provided for by 28 CFR PART 35.130(d))

Paragraph (b)(1)(i) requires that a private entity offering an examination covered by the section must assure that the examination is selected and administered so as to best ensure that the examination accurately reflects an individual's aptitude or achievement level or other factor the examination purports to measure, rather than reflecting the individual's impaired sensory, manual, or speaking skills (*except where those skills are the factors that the examination purports to measure*).

Subpart D -- Program Accessibility

§35.149 Discrimination prohibited.

Section 35.149 states the general nondiscrimination principle underlying the program accessibility requirements of **§§ 35.150 and 35.151**.

Paragraph (a)(3), which is taken from the section 504 regulations for federally conducted programs, generally codifies case law that defines the scope of the public entity's obligation to ensure program accessibility. This paragraph provides that, in meeting the program accessibility requirement, a public entity is not required to take any action that would result in a fundamental alteration in the nature of its service, program, or activity or in undue financial and administrative burdens. A similar limitation is provided in §35.164.

This paragraph does not establish an absolute defense; it does not relieve a public entity of all obligations to individuals with disabilities. Although a public entity is not required to take

actions that would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens, it nevertheless must take any other steps necessary to ensure that individuals with disabilities receive the benefits or services provided by the public entity.

It is the Department's view that compliance with §35.150(a), like compliance with the corresponding provisions of the section 504 regulations for federally conducted programs, would in most cases not result in undue financial and administrative burdens on a public entity. In determining whether financial and administrative burdens are undue, all public entity resources available for use in the funding and operation of the service, program, or activity should be considered. The burden of proving that compliance with paragraph (a) of §35.150 would fundamentally alter the nature of a service, program, or activity or would result in undue financial and administrative burdens rests with the public entity.

The decision that compliance would result in such alteration or burdens must be made by the head of the public entity or his or her designee and must be accompanied by a written statement of the reasons for reaching that conclusion. The Department recognizes the difficulty of identifying the official responsible for this determination, given the variety of organizational forms that may be taken by public entities and their components. The intention of this paragraph is that the determination must be made by a high level official, no lower than a Department head, having budgetary authority and responsibility for making spending decisions.

Any person who believes that he or she or any specific class of persons has been injured by the public entity head's decision or failure to make a decision may file a complaint under the compliance procedures established in subpart F.

Subpart D—Program Accessibility **§ 35.149 Discrimination prohibited.**

Except as otherwise provided in § 35.150, no qualified individual with a disability shall, because a public entity's facilities are 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.

§ 35.150 Existing facilities

- (a) *General.* A public entity shall operate each service, program, or activity so that the service, program, or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities. This paragraph does not—
 - (1) Necessarily require a public entity to make each of its existing facilities accessible to and usable by individuals with disabilities;
 - (2) Require a public entity to take any action that would threaten or destroy the historic significance of an historic property; or
 - (3) Require a public entity to take any action that it can demonstrate would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens. In those circumstances where personnel of the public entity believe that the proposed action would fundamentally alter the service, program, or activity or would result in undue

financial and administrative burdens, a public entity has the burden of proving that compliance with §35.150(a) of this part would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the head of a public entity or his or her designee after considering all resources available for use in the funding and operation of the service, program, or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, a public entity shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with disabilities receive the benefits or services provided by the public entity.

The Americans with Disabilities Act Title II Technical Assistance Manual; Covering State and Local Government Programs and Services

<http://www.ada.gov/taman2.html#II-1.0000>

II-5.0000 PROGRAM ACCESSIBILITY

Regulatory references: 28 CFR 35.149-35.150.

II-5.1000 General. A public entity may not deny the benefits of its programs, activities, and services to individuals with disabilities because its facilities are inaccessible. A public entity's services, programs, or activities, when viewed in their entirety, must be readily accessible to and usable by individuals with disabilities. This standard, known as "program accessibility," applies to all existing facilities of a public entity. Public entities, however, are not necessarily required to make each of their existing facilities accessible.

Is a public entity relieved of its obligation to make its programs accessible if no individual with a disability is known to live in a particular area? No. The absence of individuals with disabilities living in an area cannot be used as the test of whether programs and activities must be accessible.

ILLUSTRATION: A rural school district has only one elementary school and it is located in a one-room schoolhouse accessible only by steps. The school board asserts that there are no students in the district who use wheelchairs. Students, however, who currently do not have a disability may become individuals with disabilities through, for example, accidents or disease. In addition, persons other than students, such as parents and other school visitors, may be qualified individuals with disabilities who are entitled to participate in school programs. Consequently, the apparent lack of students with disabilities in a school district's service area does not excuse the school district from taking whatever appropriate steps are necessary to ensure that its programs, services, and activities are accessible to qualified individuals with disabilities.

Connecticut General Statutes

Sec. 46a-7. State policy concerning disabled persons. It is hereby found that the state of Connecticut has a special responsibility for the care, treatment, education, rehabilitation of and advocacy for its disabled citizens. Frequently the disabled are not aware of services or are unable to gain access to the appropriate facilities or services. It is hereby the declared policy of the state to provide for coordination of services for the disabled among the various agencies of the state charged with the responsibility for the care, treatment, education and rehabilitation of the disabled.

Sec. 46a-69. Discriminatory practices by state. It shall be a discriminatory practice to violate any of the provisions of sections 46a-70 to 46a-78, inclusive.

Sec. 46a-70a. Compliance with equal employment requirements by Judicial Department. The Judicial Department shall comply with the provisions of section 46a-70 and shall, not later than January 15, 1985, submit a report of such compliance to the General Assembly.

Sec. 46a-71. (Formerly Sec. 4-61d). Discriminatory practices by state agencies prohibited. (a) All services of every state agency shall be performed without discrimination based upon race, color, religious creed, sex, marital status, age, national origin, ancestry, mental retardation, mental disability, learning disability or physical disability, including, but not limited to, blindness.

(b) No state facility may be used in the furtherance of any discrimination, nor may any state agency become a party to any agreement, arrangement or plan which has the effect of sanctioning discrimination.

(c) Each state agency shall analyze all of its operations to ascertain possible instances of noncompliance with the policy of sections 46a-70 to 46a-78, inclusive, and shall initiate comprehensive programs to remedy any defect found to exist.

(d) Every state contract or subcontract for construction on public buildings or for other public work or for goods and services shall conform to the intent of section 4a-60.

Sec. 46a-74. (Formerly Sec. 4-61g). State agencies not to permit discriminatory practices in professional or occupational associations, public accommodations or housing. No state department, board or agency may permit any discriminatory practice in violation of section 46a-59, 46a-64 or 46a-64c.

Sec. 46a-77. (Formerly Sec. 4-61j). Cooperation with commission required of state agencies. Compliance with Americans with Disabilities Act. (a) All state agencies shall cooperate with the Commission on Human Rights and Opportunities in their enforcement and educational programs.

(b) All state agencies shall comply with the commission's request for information concerning practices inconsistent with the state policy against discrimination and shall consider its recommendations for effectuating and implementing that policy.

(c) Each state agency shall comply in all of its services, programs and activities with the provisions of the Americans with Disabilities Act (42 USC 12101) to the same extent that it provides rights and protections for persons with physical or mental disabilities beyond those provided for by the laws of this state.

(d) The commission shall continue to augment its enforcement and education programs which seek to eliminate all discrimination.

Sec. 46a-78. (Formerly Sec. 4-61k). Annual agency reports to Governor. Review by commission. (a) All departments, agencies, commissions and other bodies of the state government shall include in their annual report to the Governor, activities undertaken in the past year to effectuate sections 46a-70 to 46a-78, inclusive.

(b) Such reports shall cover both internal activities and external relations with the public or with other state agencies and shall contain other information as specifically requested by the Governor.

(c) The information in the annual reports required under the provisions of this section shall be reviewed by the Commission on Human Rights and Opportunities for the purpose of monitoring compliance with the provisions of sections 46a-70 to 46a-78, inclusive.

Sec. 46a-96. Hearings take precedence. Hearings in the court under this chapter shall take precedence over all other matters, except matters of the same character.

And I'm going to ask that you all Committee show Mrs. Rogers what that means and take a leadership role here and now and table all other issues except matters of the same character and make this precedence. Remedy Disability Discrimination in our Connecticut Courts today, Eliminate Disability Discrimination in our Connecticut Courts today, Prohibit Disability Discrimination in our Connecticut Courts today and for forever.

Merit of my case, two litigants, family identified with hidden learning disabilities including memory and processing disabilities and attention deficient hyper activity

ADHD is a developmental disorder that comprises significant impairment in impulse control or response inhibition, sustained attention, concentration, or effort, and excessive motor

restlessness or activity level relative to the person's developmental or mental age. The disorder arises early in childhood, typically before age 7 years, is relatively persistent over time (lasts for years with no episodes of complete remission) and results in significant impairment in current adaptive functioning (family life, work performance, school performance, general social functioning, self-care, or emotional adjustment). The disorder has a strong hereditary or familial predisposition and likely (though not definitively) has a neurological or neurodevelopmental basis to it. Chronic and significant underachievement or underproductivity related to known ability levels (intelligence and achievement skills) in school and later, in employment are common as are impairments in social relationships due to the impulsivity, inattentiveness, and restlessness. An apparently related disorder, known as ADD without hyperactivity, also known as ADHD – Predominantly Inattentive Type, is also known to exist. However, little is known about this disorder other than that it represents an impairment in attention not associated with significant behavioral disinhibition or hyperactivity. The specific nature of the impairment in attention is not well understood. The stability of this disorder over time is unknown as are its causes. See State of Connecticut Judicial Branch, Connecticut Bar Examining Committee, Instructions for filing petition for Non-Standard Testing Conditions on the Connecticut Bar Examination. Form NST5- The Clinical Diagnosis of ADHD in Adults. What is ADHD?

It must be remembered that for the person with severe mental illness who has no treatment the most dreaded of confinements can be the imprisonment inflicted by his own mind, which shuts reality out and subjects him to the torment of voices and images beyond our own powers to describe.

- a. Conflict and discord are common in marriages and partnerships involving an individual with undiagnosed AD/HD.
- b. Due to the deficits in executive functioning, inhibitory control, and attentional processes associated with AD/HD, individuals with AD/HD are often forgetful, disorganized, distracted, irresponsible, and communicate poorly and over-react emotionally.

And when the AD/HD is undiagnosed, neither partner has a context in which to understand these characteristics and such behaviors can invoke negative reactions and blameful attributions from the partner without AD/HD

What else has Mrs. Rogers failed to provide? Here's a sample list of 41 non compliance out of 45 items. No wonder there's no report to the Governor !

This complaint and testimony is focused on the Branch's and each of its entities non compliance with the following **Title II** and **504** requirements, (NC = Non Compliance):

1. NC On and since April 19, 1995 and presently, the State of Connecticut Judicial Branch and each of its entities and trial courts have not established adequate written procedures that would make the programs, services, and activities of

each of the Branch and each of the Branch's entities and trial courts accessible to and usable by individuals with disabilities.

2. NC On and since April 19, 1995 and presently, the State of Connecticut Judicial Branch and each of its entities and trial courts have not established published procedures that would make the programs, services, and activities of the Branch, each of the Branch's entities and trial courts accessible to and usable by individuals with disabilities.
3. The State of Connecticut Judicial Branch (here after Branch), under title II of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. §§ 12131-12134, and the US DOJ implementing regulation, 28 C.F.R. Part 35. Because the State and the Branch receives financial assistance from the Department of Justice and or the United States Government under the authority of section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and the Department's implementing regulation, 28 C.F.R. Part 42, Subpart G.
4. NC to conduct a self-evaluation of its services, policies, and practices by July 26, 1992, and make modifications necessary to comply with the Department's title II regulation, 28 C.F.R. § 35.105; Policies and Practices
5. NC to notify applicants, participants, beneficiaries, and other interested persons of their rights and the Branch and each of its entities obligations under title II and the Department's regulation, 28 C.F.R. § 35.106;
6. NC to train and designate a responsible employee to coordinate its efforts to comply with and carry out the Branch's ADA responsibilities, 28 C.F.R. § 35.107(a);
7. NC to establish written grievance procedures for resolving complaints of violations of title II, 28 C.F.R. § 35.107(b);
8. NC to establish general prohibitions against discrimination by the Branch and each of its entities under title II and the Department's regulation, 28 C.F.R. §35.130
9. NC No qualified individual with a disability shall, on the basis of disability, 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. 28 C.F.R. §35.130 (a)
10. NC A public entity shall administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities. 28 C.F.R. §35.130 (d)
11. NC Nothing in this part shall be construed to require an individual with a disability to accept an accommodation, aid, service, opportunity, or benefit provided under

the ADA or this part, which such individual chooses not to accept. 28 C.F.R. §35.130 (e)(1)

12. NC A public entity shall not exclude or otherwise deny equal services, programs, or activities to an individual or entity because of the known disability of an individual with whom the individual or entity is known to have a relationship or association. 28 C.F.R. §35.130 (g)
13. NC to operate each program, service, or activity so that, when viewed in its entirety, it is readily accessible to and usable by individuals with disabilities, 28 C.F.R. § 35.150, by:
14. NC delivery of services, programs, or activities in alternate ways, including, for example, redesign of equipment, reassignment of services, assignment of aides, home visits, or other methods of compliance or, if these methods are not effective in making the programs accessible,
15. NC to ensure that communications with applicants, participants, and members of the public with disabilities are as effective as communications with others, including furnishing auxiliary aids and services when necessary, 28 C.F.R. § 35.160;
16. NC to provide information for interested persons with disabilities concerning the existence and location of the Branch's accessible services, activities, and facilities, 28 C.F.R. § 35.163(a); and
17. NC to provide signage at all inaccessible entrances to each of its facilities, directing users to an accessible entrance or to information about accessible facilities, 28 C.F.R. § 35.163(b).
18. NC As part of its compliance review, the Department reviewed the following facilities, which – because construction or alterations commenced after January 26, 1992 – must comply with the ADA's ????????
19. NC The Department's program access review covered those of the Branch,s programs, services, and activities that operate in the following facilities: Albany Branch Library at 1250 Albany Avenue;
20. NC The Department's program access review covered those of the Branch's programs, services, and activities that are operated by the City at facilities owned or controlled by other entities, including: 250 Constitution Plaza
21. NC The Department reviewed the Branch's policies and procedures regarding notification of ADA policies, effective communication, emergency management and disaster prevention, sidewalk maintenance, and accessibility of web-based programs to evaluate whether persons with disabilities have an equal opportunity to utilize these programs.

22. NC Finally, the Department reviewed the Branch's Marshalls Department's policies and procedures regarding providing effective communication to persons who are deaf or hard-of-hearing.

JURISDICTION

23. The ADA applies to the Branch, each of the Branch's entities and trial courts because it and they are a "public entity" as defined by title II. 42 U.S.C. § 12131(1).
24. The Department is authorized under 28 C.F.R. Part 35, Subpart F, to determine the compliance of the Branch with title II of the ADA and the Department's title II implementing regulation, to issue findings, and, where appropriate, to negotiate and secure voluntary compliance agreements. Furthermore, the Attorney General is authorized; under 42 U.S.C. § 12133, to bring a civil action enforcing title II of the ADA should the Department fail to secure voluntary compliance pursuant to Subpart F.
25. The Department is authorized under 28 C.F.R. Part 42, Subpart G, to determine the Branch's compliance with section 504 of the Rehabilitation Act of 1973, to issue findings, and, where appropriate, to negotiate and secure voluntary compliance agreements. Furthermore, the Attorney General is authorized, under 29 U.S.C. § 794 and 28 C.F.R. §§ 42.530 and 42.108-110, to suspend or terminate financial assistance to the Branch provided by the Department of Justice should the Department fail to secure voluntary compliance pursuant to Subpart G or to bring a civil suit to enforce the rights of the United States under applicable federal, state, or local law.

Legal Standards

26. NC No qualified individual with a disability shall, on the basis of disability, be excluded from participation in, and denied the benefits of the services, programs or activities of a public entity or be subjected to discrimination by any public entity. 42 U.S.C. ' 12132, and the implementing regulations at 28 C.F.R. Part 35.130(a).
27. NC A public entity may not deny an individual with a disability, on the basis of disability, the opportunity to participate in or benefit from its services. 28 C.F.R. Part 35.130(b)(1)(i).
29. NC A public entity may not afford a qualified individual with a disability, on the basis of disability, an opportunity to participate in or benefit from a service that is not equal to that afforded others. 28 C.F.R. Part 35.130(b)(1)(ii).
30. NC A public entity may not provide a qualified individual with a disability, on the basis of disability, an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the

same level of achievement as that provided to others. 28 C.F.R. Part 35.130(b)(1)(iii).

31. NC A public entity shall make reasonable modifications in policies, practices and procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program or activity. 28 C.F.R. Part 35.130(b)(7).
32. NC (d) A public entity shall administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities. 28 C.F.R. Part 35.130(d).
33. NC Nothing in this part shall be construed to require an individual with a disability to accept an accommodation, aid, service, opportunity, or benefit provided under the ADA or this part which such individual chooses not to accept. 28 C.F.R. Part 35.130(e).
34. NC A public entity shall not exclude or otherwise deny equal services, programs, or activities to an individual or entity because of the known disability of an individual with whom the individual or entity is known to have a relationship or association. 28 C.F.R. Part 35.130(g).
35. NC No qualified individual with a disability shall, because the facilities are inaccessible to and unusable by individuals with disabilities, be excluded from participation in, or be denied the benefits of, the services, programs, and activities of the public entity or be subjected to discrimination by any public entity. 28 C.F.R. Part 35.149.
36. NC A public entity shall operate each service, program or activity so that the service, program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities in the most integrated setting appropriate to meet the needs of individuals with disabilities. 28 C.F.R. Part 35.150(a), (b)(1).
37. NC A public entity is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section, where changes would threaten or destroy the historic significance of an historic property, or where modifications would fundamentally alter the nature of a service, program, or activity, or would result in undue financial and administrative burdens. 28 C.F.R. Part 35.150(a), (b)(1).
38. NC No qualified handicapped person shall, solely on the basis of handicap, be excluded from participation in, or denied the benefits of, or otherwise be subjected to discrimination under any program receiving or benefiting from federal financial assistance. 28 C.F.R. Part 42.503(a).

39. NC A recipient of federal financial assistance may not discriminate against individuals with disabilities on the basis of disability by denying them the the opportunity accorded others to participate in the program receiving federal financial assistance. 28 C.F.R. Part 42.503(b)(1)(i).
40. NC A recipient of federal financial assistance may not discriminate against individuals with disabilities on the basis of disability by denying them an equal opportunity to achieve the same benefits that others achieve in the program receiving federal financial assistance. 28 C.F.R. Part 42.503(b)(1)(ii).
41. NC A recipient of federal financial assistance shall administer programs in the most integrated setting appropriate to the needs of qualified individuals with disabilities. 28 C.F.R. Part 42.503(d).
42. NC A recipient of federal financial assistance shall insure that no qualified qualified handicapped person is denied the benefits of, excluded from participation in, or otherwise subjected to discrimination under a program receiving federal financial assistance because the recipient's facilities are inaccessible to and unusable by handicapped individuals. 28 C.F.R. Part 42.520.
43. NC A recipient of federal financial assistance shall operate each program so that the program, when viewed in its entirety, is readily accessible to and usable by handicapped persons. 28 C.F.R. Part 42.521(a).
44. NC A recipient of federal financial assistance is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with 28 CFR 42.521(a). In choosing among methods, a recipient shall give priority to those methods that offer programs to handicapped persons in the most integrated setting appropriate to obtain the full benefits of the program. 28 C.F.R 42.521(a), (b).

Sovereign Immunity

45. The Americans with Disabilities Act and Section 504 of the Rehabilitation Act properly abrogate the States Eleventh Amendment immunity. *See Tennessee v. Lane (2004).*

The State of Connecticut Judicial Branch has failed to comply with the Americans with Disabilities Act (ADA) 42 U.S.C. 12101- 42 U.S.C. 12213 and 47 U.S.C. 225-611, in particular Title II 42 U.S.C. 12131-12134 and the ADA Title II implementing regulations codified at 28 C.F.R. Section 35. <http://www.usdoj.gov/crt/ada/req2.html>
<http://www.usdoj.gov/crt/ada/taman2.html>. For review of the text of the ADA please visit at www.usdoj.gov/crt/ada/pubs/ada.htm.

The ADA Is A Remedial And Preventive Scheme Proportional To The Injury

Not surprisingly, given their profound segregation from the rest of society, see 42 U.S.C. 12101(a)(2), the needs of persons with disabilities were not considered when rules were promulgated, standards were set, and the built environment was designed.

Viewed in light of the underlying Equal Protection principles, the ADA is appropriate preventive and remedial legislation. First, it is preventive in that it establishes a statutory scheme that attempts to detect government activities likely tainted by discrimination. For example, the ADA regulations require States to conduct self-evaluations of policies, programs, and activities in order to determine that any distinctions they make based on disability, or refusals to provide meaningful or integrated access to facilities, programs, and services are based on legitimate governmental objectives. The ADA thus attempts to ensure that inaccurate stereotypes or irrational fear are not the true cause of State decisions. See *Bangerter v. Orem City Corp.*, 46 F.3d 1503 & n.20 (10th Cir. 1995); cf. *School Bd. of Nassau County v. Arline*, 480 U.S. 273, 284-285 (1987). This approach is similar to the standards articulated by the Court in *Cleburne*.

Second, the ADA is remedial in that it attempts to ensure that the interests of people with disabilities are taken into account. Not surprisingly, given their profound segregation from the rest of society, see 42 U.S.C. 12101(a)(2), the needs of persons with disabilities were not considered when rules were promulgated, standards were set, and the built environment was designed. As a result, Congress determined that for an entity to treat persons with disabilities as it did those without disabilities was not sufficient to eliminate the effects of years of segregation and to give persons with disabilities equally meaningful access to every aspect of society. See 42 U.S.C. 12101(a)(5); see also U.S. Commission on Civil Rights, *supra*, at 99. When persons with disabilities have been segregated, isolated, and denied effective participation in society, Congress may conclude that affirmative measures are necessary to bring them into the mainstream. Cf. *Fullilove*, 448 U.S. at 477-478.

*** The tendency of those who execute the *** laws of the country to obtain conviction by means of unlawful seizures and enforced confessions, the latter often obtained after subjecting accused persons to unwarranted practices destructive of rights secured by the Federal Constitution, should find no sanction in the judgments of the courts, which are charged at all times with the support of the Constitution, and to which people of all conditions have a right to appeal for the maintenance of such fundamental rights. See *WEEKS v. U.S.*, 232 U.S. 383 (1914)

See *Johnson v. California*, 125 S. Ct. 1141, 1149 (2005). “[P]ublic respect for our system of justice is undermined when the system discriminates,” whether in court proceedings or prison administration. *Ibid.*; see *id.* at 1150 (“[T]he integrity of the criminal justice system depends on full compliance with the Eighth Amendment.”).

http://www.justice.gov/crt/about/app/briefs/georgia_pet_br.pdf

As Mr. Justice Brandeis once observed:

"Decency, security and liberty alike demand that government officials shall be subjected to the same [384 U.S. 436, 480] rules of conduct that are commands to the citizen. In a

government of laws, existence of the government will be imperiled if it fails to observe the law scrupulously. Our Government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. If the Government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy. To declare that in the administration of the criminal law the end justifies the means . . . would bring terrible retribution. Against that pernicious doctrine this Court should resolutely set its face." *Olmstead v. United States*, 277 U.S. 438, 485 (1928) (dissenting opinion). See *MIRANDA v. ARIZONA*, 384 U.S. 436 (1966)

NO JUDICIAL BRANCH ADA = NO ATTORNEY REPRESENTATIONS FOR AND NO MEANINGFUL PARTICIPATION NO BENEFITS FROM SERVICES PRACTICES ACTIVITIES AND DISCRIMINATION BY BOTH THE JUDICIAL BRANCH AND ATTORNEYS, BY INTENT OR BY EFFECT!

See *Tenn. v. Lane* No. 02-1667 U. S. Supreme Court, Brief of the States of Minnesota, **Connecticut**, Illinois, Missouri, New Mexico, New York, Washington and Wisconsin *AMICI CURIAE* in support of Respondents; **This Court has recognized that people with disabilities suffer discrimination resulting from irrational fears, prejudices and ignorance.** See, e.g., *Alexander v. Choate*, 469 U.S. 287 (1985); *City of Cleburne v. Cleburne Living Ctr., Inc.*, 473 U.S. 432 (1985); *School Bd. Of Nassau County v. Arline*, 480 U.S. 273 (1987). (Hereafter referred to as States Brief)

Title II, which governs the provision of public services, programs and activities, addresses state conduct that impinges upon fundamental constitutional rights embodied in the First, Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments. In such a case, a higher standard of scrutiny applies. See No. 02-1667 THE SUPREME COURT OF THE UNITED STATES, STATE OF TENNESSEE, v. GEORGE LANE, BEVERLY JONES, AND UNITED STATES OF AMERICA, BRIEF OF THE STATES OF MINNESOTA, CONNECTICUT, ILLINOIS, MISSOURI, NEW MEXICO, NEW YORK, WASHINGTON AND WISCONSIN *AMICI CURIAE* IN SUPPORT OF RESPONDENTS

(I Bill Mulready separately find application in the Ninth and Tenth Amendments in that the State has not provided so I can and do.)

Congress's finding of a pattern of state discrimination is entitled to great deference by this Court. "Where the constitutional validity of a statute depends upon the existence of facts, courts must be cautious about reaching a conclusion respecting them contrary to that reached by the Legislature; and if the question of what the facts establish be a fairly debatable one, it is not permissible for the judge to set up his opinion in respect of it against the opinion of the

lawmaker.” *Radice v. New York*, 264 U.S. 292, 294 (1924). Moreover, “[g]iven the deference due ‘the duly enacted and carefully considered decision of a coequal and representative branch of our Government,’” a court does “not lightly second-guess such legislative judgments.” *Board of Educ. v. Mergens*, 496 U.S. 226, 251 (1990). See See No. 02-1667 THE SUPREME COURT OF THE UNITED STATES, STATE OF TENNESSEE, v. GEORGE LANE, BEVERLY JONES, AND UNITED STATES OF AMERICA, BRIEF OF THE STATES OF MINNESOTA, CONNECTICUT, ILLINOIS, MISSOURI, NEW MEXICO, NEW YORK, WASHINGTON AND WISCONSIN *AMICI CURIAE* IN SUPPORT OF RESPONDENTS.

See No. 02-1667 Supreme Court of the United States Tenn. V. Lane BRIEF FOR THE AMERICAN BAR ASSOCIATION AS *AMICUS CURIAE* SUPPORTING RESPONDENTS. **D. Title II Of The ADA’s Requirement Of Affirmative Conduct On The Part Of States Is Essential To Ensuring That Individuals With Disabilities Obtain Real, Not Merely Theoretical, Access To The Judicial System.**

U.S. Supreme Court

SCHOOL BD. OF NASSAU COUNTY V. ARLINE, 480 U.S. 273 (1987)

480 U.S. 273

**SCHOOL BOARD OF NASSAU COUNTY, FLORIDA, ET AL. v. ARLINE
CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH
CIRCUIT**

No. 85-1277. Argued December 3, 1986 Decided March 3, 1987

Held:

1. A person afflicted with the contagious disease of tuberculosis may be a "handicapped individual" within the meaning of 504. Pp. 280-286.

(a) Respondent is a "handicapped individual" as defined in 706 (7)(B) and the HHS regulations. Her hospitalization in 1957 for a disease that affected her respiratory system and that substantially limited "one or more of [her] major life activities" establishes that she has a "record of . . . impairment." Pp. 280-281. [480 U.S. 273, 274]

(b) The fact that a person with a record of impairment is also contagious does not remove that person from 504's coverage. To allow an employer to justify discrimination by distinguishing between a disease's contagious effects on others and its physical effects on a patient would be unfair, would be contrary to 706(7)(B)(iii) and the legislative history, which demonstrate Congress' concern about an impairment's effect on others, and would be inconsistent with 504's basic purpose to ensure that handicapped individuals are not denied jobs because of the prejudice or ignorance of others. The Act replaces such fearful, reflexive reactions with actions based on reasoned and medically sound judgments as to whether contagious handicapped persons are "otherwise qualified" to do the job. Pp. 281-286.

2. In most cases, in order to determine whether a person handicapped by contagious disease is "otherwise qualified" under 504, the district court must conduct an individualized inquiry and make appropriate findings of fact, based on reasonable medical judgments given the state of medical knowledge, about (a) the nature of the risk (e. g., how the disease is transmitted), (b) the duration of the risk (how long is the carrier infectious), (c) the severity of the risk (what is the potential harm to third parties), and (d) the probabilities the disease will be transmitted and will cause varying degrees of harm. In making these findings, courts normally should defer to the reasonable medical judgments of public health officials. Courts must then determine, in light of these findings, whether any "reasonable accommodation" can be made by the employer under the established standards for that inquiry. Pp. 287-288.

3. Because the District Court did not make appropriate findings, it is impossible for this Court to determine whether respondent is "otherwise qualified" for the job of elementary school teacher, and the case is remanded for additional findings of fact. Pp. 288-289.
772 F.2d 759, affirmed.

BRENNAN, J., delivered the opinion of the Court, in which WHITE, MARSHALL, BLACKMUN, POWELL, STEVENS, and O'CONNOR, JJ., joined. REHNQUIST, C. J., filed a dissenting opinion, in which SCALIA, J., joined, post, p. 289.

Allowing discrimination based on the contagious effects of a physical impairment would be inconsistent with the basic purpose of 504, which is to ensure that handicapped individuals are not denied jobs or other benefits because of the prejudiced attitudes or the ignorance of others. By amending the definition of "handicapped individual" to include not only those who are actually physically impaired, but also those who are regarded as impaired and who, as a result, are substantially limited in a major life activity, Congress acknowledged that society's accumulated myths and fears about disability and disease are as handicapping as are the physical limitations that flow from actual impairment. 11 Few aspects of a handicap give rise to the same level of public fear and misapprehension as contagiousness. 12 Even those who suffer or have recovered from such noninfectious diseases as epilepsy or cancer have faced discrimination based on the irrational fear that they might be contagious. 13 The Act is [480 U.S. 273, 285] carefully structured to replace such reflexive reactions to actual or perceived handicaps with actions based on reasoned and medically sound judgments: the definition of "handicapped individual" is broad, but only those individuals who are both handicapped and otherwise qualified are eligible for relief. The fact that some persons who have contagious diseases may pose a serious health threat to others under certain circumstances does not justify excluding from the coverage of the Act all persons with actual or perceived contagious diseases. Such exclusion would mean that those accused of being contagious would never have the opportunity to have their condition evaluated in light of medical evidence and a determination made as to whether they were "otherwise qualified." Rather, they would be vulnerable to discrimination on the basis of mythology - precisely the type of injury Congress sought to prevent. 14 We conclude that [480 U.S. 273, 286] the fact that a person with a record of a physical impairment is also contagious does not suffice to remove that person from coverage under 504. 15 [480 U.S. 273, 287]

IV

The remaining question is whether Arline is otherwise qualified for the job of elementary schoolteacher. To answer this question in most cases, the district court will need to conduct an individualized inquiry and make appropriate findings of fact. Such an inquiry is essential if 504 is to achieve its goal of protecting handicapped individuals from deprivations based on prejudice, stereotypes, or unfounded fear, while giving appropriate weight to such legitimate concerns of grantees as avoiding exposing others to significant health and safety risks. 16 The basic factors to be considered in conducting this inquiry are well established. 17 In the context [480 U.S. 273, 288] of the employment of a person handicapped with a contagious disease, we agree with amicus American Medical Association that this inquiry should include

"[findings of] facts, based on reasonable medical judgments given the state of medical knowledge, about (a) the nature of the risk (how the disease is transmitted), (b) the duration of the risk (how long is the carrier infectious), (c) the severity of the risk (what is the potential harm to third parties) and (d) the probabilities the disease will be transmitted and will cause varying degrees of harm." Brief for American Medical Association as Amicus Curiae 19. In making these findings, courts normally should defer to the reasonable medical judgments of public health officials. 18 The next step in the "otherwise-qualified" inquiry is for the court to evaluate, in light of these medical findings, whether the employer could reasonably accommodate the employee under the established standards for that inquiry. See n. 17, supra.

Bill Mulready here writing again; findings of facts, based on medical judgments, not negative or ignorant or stereotype or mythology or arrogance or cover ups or exclusive policy or denials or refusals or any discrimination. What is the rule of law if Judges need not practice?

Prayers for remedy of past disability discriminations, Elimination of current disability discrimination prohibit of future disability discrimination and NO REAPPOINTMENT OF MRS. CHASE T. ROGERS to any position within the State of Connecticut Judicial Branch, and affirmative fully transparent oversight from this day forward of zero tolerance discrimination policy by the Judicial Branch, for The People and To the People

Yours For Barrier Free Courts With Sober And Honest Judges And Non Discriminating Attorneys And Court Staff.

Bill Mulready

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