

**SETTLEMENT AGREEMENT BETWEEN**  
**THE UNITED STATES OF AMERICA**  
**AND**  
**KANAWHA COUNTY PUBLIC LIBRARY BOARD, WEST VIRGINIA**  
**UNDER THE AMERICANS WITH DISABILITIES ACT**  
**DJ 204-84-52**

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[Settlement](#) • [Department of Justice Press Release](#)

**BACKGROUND**

***SCOPE OF THE INVESTIGATION***

The United States Department of Justice (Department) initiated this matter as a compliance review of Kanawha County Public Library Board (KCPL), West Virginia, under Title II of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. §§ 12131-12134, and the Department's implementing regulation, 28 C.F.R. Part 35.

The review was conducted by the Disability Rights Section of the Department's Civil Rights Division and focused on KCPL's compliance with the following Title II requirements:

- 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;
- to notify applicants, participants, beneficiaries, and other interested persons of their rights and KCPL's obligations under Title II and the Department's regulation, 28 C.F.R. § 35.106;
- to designate a responsible employee to coordinate its efforts to comply with and carry out KCPL's ADA responsibilities, 28 C.F.R. § 35.107(a);
- to establish a grievance procedure for resolving complaints of violations of Title II, 28 C.F.R. § 35.107(b);
- 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:
  - 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,

- physical changes to buildings (required to have been made by January 26, 1995), in accordance with the Department's Title II regulation, 28 C.F.R. § 35.151, and the ADA Standards for Accessible Design (Standards), 28 C.F.R. Part 36, App. A, or the Uniform Federal Accessibility Standards (UFAS), 41 C.F.R. § 101-19.6, App. A.
- to ensure that facilities for which construction or alteration was begun after January 26, 1992, are readily accessible to and usable by people with disabilities, in accordance with 1) the Department's Title II regulation and 2) the Standards or UFAS, 28 C.F.R. § 35.151;
- 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;
- to provide direct access via TTY (text telephone) or computer-to-telephone emergency services, for persons who use TTY's and computer modems, 28 C.F.R. § 35.162;
- to provide information for interested persons with disabilities concerning the existence and location of KCPL's accessible services, activities, and facilities, 28 C.F.R. § 35.163(a); and
- 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).

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 new construction or alterations requirements: Cross Lanes Public Library, Sissonville Public Library, and Clendenin Public Library.

The Department's program access review covered those of KCPL's programs, services, and activities that operate in the following facilities: Elk Valley Public Library, Main Public Library, Dunbar Public Library, St. Albans Public Library, Marmet Public Library, Glasgow Public Library, and Riverside Public Library.

### ***JURISDICTION***

1. The ADA applies to Kanawha County Public Library because it is a "public entity" as defined by Title II. 42 U.S.C. § 12131(1).
2. The Department is authorized under 28 C.F.R. Part 35, Subpart F, to determine the compliance of Kanawha County Public Library 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.

3. The parties to this Agreement are the United States of America and the Kanawha County Public Library Board.
4. In order to avoid the burdens and expenses of an investigation and possible litigation, the parties enter into this Agreement.
5. In consideration of, and consistent with, the terms of this Agreement, the Attorney General agrees to refrain from filing a civil suit in this matter regarding all matters contained within this Agreement, except as provided in the section entitled "Implementation and Enforcement."

## **REMEDIAL ACTION**

### ***NOTIFICATION***

6. Within two months of the effective date of this Agreement, KCPL will adopt the attached Notice ([Attachment A](#)); distribute it to all agency heads; publish the Notice in a local newspaper of general circulation serving Kanawha County; post the Notice on its website; and post copies in conspicuous locations in its public buildings. It will refresh the posted copies, and update the contact information contained on the Notice, as necessary, for the life of this Agreement. Copies will also be provided to any person upon request.
7. Within three months of the effective date of this Agreement, and on yearly anniversaries of this Agreement until it expires, KCPL will implement and report to the Department its written procedures for providing information for interested persons with disabilities concerning the existence and location of KCPL's accessible programs, services, and activities.

### ***ADA COORDINATOR***

8. Within three months of the effective date of this Agreement, KCPL will appoint or hire one or more ADA Coordinator(s). The ADA Coordinator(s) will coordinate the KCPL's effort to comply with and carry out its responsibilities under the ADA, including any investigation of a complaint communicated to it alleging its noncompliance with Title II or alleging any actions that would be prohibited under Title II. KCPL will make available to all interested individuals the name(s), office address(es), and telephone number(s) of the ADA Coordinator(s).

### ***GRIEVANCE PROCEDURE***

9. Within three months of the effective date of this Agreement, KCPL will adopt the attached ADA Grievance Procedure ([Attachment B](#)), distribute it to all agency heads, and post copies of it in conspicuous locations in each of its public buildings. It will refresh the posted copies, and update the contact information contained on it, as necessary, for the life of the Agreement. Copies will also be provided to any person upon request.

### ***GENERAL EFFECTIVE COMMUNICATION PROVISIONS***

10. Within three months of the effective date of this Agreement, KCPL will identify sources of qualified sign language and oral interpreters, real-time transcription services, and vendors that can put documents in Braille, and will implement and report to the Department its written procedures, with time frames, for fulfilling requests from the public for sign language or oral interpreters, real-time transcription services, and documents in alternate formats (Braille, large print, cassette tapes, etc.).
11. KCPL will take steps to ensure that all appropriate employees are trained and practiced in using the West Virginia Relay Service to make and receive calls.

### ***EMPLOYMENT***

12. Within three months of the effective date of this Agreement, KCPL will amend its employment policies, as necessary, to comply with the regulations of the U.S. Equal Employment Opportunity Commission implementing Title I of the Americans with Disabilities Act of 1990, codified at 29 C.F.R. Part 1630. At minimum, those policies will provide that KCPL:
  - will not discriminate on the basis of disability in its hiring or employment practices.
  - will not ask a job applicant about the existence, nature, or severity of a disability. Applicants may be asked about their ability to perform specific job functions. Medical examinations or inquiries may be made, but only after a conditional offer of employment is made and only if required of all applicants for the position.
  - will make reasonable accommodations for the known physical or mental limitations of a qualified applicant or employee with a disability upon request unless the accommodation would cause an undue hardship on the operation of KCPL's business. If an applicant or an employee requests a reasonable accommodation and the individual's disability and need for the accommodation are not readily apparent or otherwise known, KCPL may ask the individual for information necessary to determine if the individual has a disability-related need for the accommodation.
  - will maintain any employee's medical records separate from personnel files and keep them confidential.

- will make an individualized assessment of whether a qualified individual with a disability meets selection criteria for employment decisions. To the extent KCPL's selection criteria have the effect of disqualifying an individual because of disability, those criteria will be job-related and consistent with business necessity.

### ***WEB-BASED SERVICES AND PROGRAMS***

13. Within 1 month of the effective date of this Agreement, and on subsequent anniversaries of the effective date of this Agreement, KCPL will distribute to all persons – employees and contractors – who design, develop, maintain, or otherwise have responsibility for content and format of its website(s) or third party websites used by KCPL (Internet Personnel) the technical assistance document, “Accessibility of State and Local Government Websites to People with Disabilities,” which is [Attachment H](#) to this Agreement (it is also available at [www.ada.gov/websites2.htm](http://www.ada.gov/websites2.htm)).
14. Within three months of the effective date of this Agreement, and throughout the life of the Agreement, KCPL will do the following:
  - A. Establish, implement, and post online a policy that its web pages will be accessible and create a process for implementation;
  - B. Ensure that all new and modified web pages and content are accessible;
  - C. Develop and implement a plan for making existing web content more accessible;
  - D. Provide a way for online visitors to request accessible information or services by posting a telephone number or e-mail address on its home page; and
  - E. Periodically (at least annually) enlist people with disabilities to test its pages for ease of use.

### ***PHYSICAL CHANGES TO FACILITIES***

15. The elements or features of KCPL's facilities that do not comply with the Standards, including those listed in Attachments [I](#), [J](#), [K](#) and [L](#), prevent persons with disabilities from fully and equally enjoying KCPL's services, programs, or activities and constitute discrimination on the basis of disability within the meaning of 42 U.S.C. § 12132 and 28 C.F.R. §§ 35.149 and 35.150.
16. KCPL will comply with the cited provisions of the Standards when taking the actions required by this Agreement.
17. Within three months of the effective date of this Agreement, KCPL will install signage as necessary to comply with 28 C.F.R. § 35.163(b), after having surveyed all facilities that

are the subject of this Agreement for the purpose of identifying those that have multiple entrances not all of which are accessible.

18. Newly Constructed Facilities: In order to ensure that the following spaces and elements in KCPL facilities, for which construction was commenced after January 26, 1992, are readily accessible to and usable by persons with disabilities, KCPL will take the actions listed in [Attachment I](#).
19. Altered Facilities: In order to ensure that the following spaces and elements in KCPL facilities, for which alterations commenced after January 26, 1992, are readily accessible to and usable by persons with disabilities, KCPL will take the actions listed in [Attachment J](#).
20. Program Access in KCPL's Existing Facilities: In order to ensure that each of KCPL's programs, services, and activities operating at a facility that is the subject of this Agreement, when viewed in its entirety, is readily accessible to and usable by persons with mobility impairments, KCPL will take the actions listed in [Attachment K](#).

### ***PROGRAM MODIFICATIONS***

21. Access to KCPL Programs Housed in Others' Facilities: In order to ensure that KCPL's programs, services, and activities that are the subject of this Agreement and that are operated by KCPL at facilities owned or controlled by other entities, when viewed in their entirety, are readily accessible to and usable by persons with mobility impairments, KCPL will take the actions listed in [Attachment L](#).

### ***MISCELLANEOUS PROVISIONS***

22. Except as otherwise specified in this Agreement, at yearly anniversaries of the effective date of this Agreement until it expires, KCPL will submit written reports to the Department summarizing the actions KCPL has taken pursuant to this Agreement. Reports will include detailed photographs showing measurements, architectural plans, work orders, notices published in the newspaper, copies of adopted policies, and proof of efforts to secure funding/assistance for structural renovations or equipment.
23. Throughout the life of this Agreement, consistent with 28 C.F.R. § 35.133(a), KCPL will maintain the accessibility of its programs, activities, services, facilities, and equipment, and will take whatever actions are necessary (such as routine testing of accessibility equipment and routine accessibility audits of its programs and facilities) to do so. This provision does not prohibit isolated or temporary interruptions in service or access due to maintenance or repairs. 28 C.F.R. § 35.133(b).
24. Within six months of the effective date of this Agreement, KCPL will develop or procure a two-hour training program on the requirements of the ADA and appropriate ways of serving persons with disabilities. KCPL will use the ADA technical assistance materials developed by the Department and will consult with interested persons, including

individuals with disabilities, in developing or procuring the ADA training program.

25. Within one year of the effective date of this Agreement, KCPL will deliver its training program to all KCPL employees who have direct contact with members of the public. At the end of that period, KCPL will submit a copy of its training curriculum and materials to the Department, along with a list of employees trained and the name, title, and address of the trainer.

## **IMPLEMENTATION AND ENFORCEMENT**

26. If at any time KCPL desires to modify any portion of this Agreement because of changed conditions making performance impossible or impractical or for any other reason, it will promptly notify the Department in writing, setting forth the facts and circumstances thought to justify modification and the substance of the proposed modification. Until there is written Agreement by the Department to the proposed modification, the proposed modification will not take effect. These actions must receive the prior written approval of the Department, which approval will not be unreasonably withheld or delayed.
27. The Department may review compliance with this Agreement at any time. If the Department believes that KCPL has failed to comply in a timely manner with any requirement of this Agreement without obtaining sufficient advance written agreement with the Department for a modification of the relevant terms, the Department will so notify KCPL in writing and it will attempt to resolve the issue or issues in good faith. If the Department is unable to reach a satisfactory resolution of the issue or issues raised within 30 days of the date it provides notice to KCPL, it may institute a civil action in federal district court to enforce the terms of this Agreement, or it may initiate appropriate steps to enforce Title II.
28. For purposes of the immediately preceding paragraph, it is a violation of this Agreement for KCPL to fail to comply in a timely manner with any of its requirements without obtaining sufficient advance written agreement with the Department for an extension of the relevant time frame imposed by the Agreement.
29. Failure by the Department to enforce this entire Agreement or any provision thereof with regard to any deadline or any other provision herein will not be construed as a waiver of the Department's right to enforce other deadlines and provisions of this Agreement.
30. This Agreement is a public document. A copy of this document or any information contained in it will be made available to any person by KCPL or the Department on request.
31. This Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or agents of either party, that is not contained in this written Agreement (including its Attachments, which are hereby incorporated by reference), will be enforceable. This Agreement does not purport to remedy any other potential violations of

the ADA or any other federal law. This Agreement does not affect KCPL's continuing responsibility to comply with all aspects of the ADA.

32. This Agreement will remain in effect for three years.
33. The person signing for KCPL represents that he or she is authorized to bind KCPL to this Agreement.
34. The effective date of this Agreement is the date of the last signature below.

For Kanawha County Public Library Board:      For the United States:

GRACE CHUNG BECKER,  
Acting Assistant Attorney General

By: \_\_\_\_\_  
MICHAEL A. ALBERT,  
President  
Kanawha County Public Library Board  
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Date: June 10, 2008

Date: 7/10/08

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