

At Sidebar

JAMES I. BRIGGS JR.

Improving Accessibility for Individuals with Disabilities in the National Air Transportation System

DURING THE SECOND week of May, I attended the 2011 National Americans with Disabilities Act Symposium,¹ an annual training effort of the ADA National Network, which is funded by grants from the Department of Education and the National Institute on Disability and Rehabilitation Research. Signed into law more than 20 years

ago, the Americans with Disabilities Act² broadly protects the rights of individuals with disabilities when it comes to employment, access to state and local government services, places of public accommodation, transportation, and other important areas of American life. This symposium made me reflect on recent efforts by Congress and federal agencies to ensure that individuals with disabilities have access to as much as possible. These efforts include the following:

- the Americans with Disabilities Act Amendments Act of 2008,³
- the Department of Justice's 2010 revisions of the Title II⁴ and Title III⁵ ADA regulations and adoption of the 2010 ADA Standards for Accessible Design,⁶
- the Equal Employment Opportunity Commission's 2011 revisions and guidance to the Title I regulations,⁷ and
- the Department of Transportation's 2009 revised Air Carrier Access Act regulations.⁸

Even as I write, federal agencies are studying and drafting further accessibility requirements and guidance under the ADA. Such activity is not a bad thing. It is only right to provide for the inclusion of everyone in the activities, programs, and services offered by both public and private entities.

My involvement with the ADA has been related to the accommodation of passengers with disabilities in air transportation, specifically with the operators of passenger-service airports in North America. Of course, improving accessibility for passengers with disabilities has the added benefit of making the air transportation system even more accessible for

everyone. An airport is a very complex piece of real estate, in which a web of evolving, and sometimes conflicting, laws and regulations distributes accessibility responsibilities among airport operators, airline operators, airport concessionaires, ground transportation providers, federal entities, and others. Because all these activities occur on the piece of real estate "owned" by an airport operator, the airport operator is left with the responsibility of trying to coordinate the activities of all these various parties—a daunting task.

But where does the life begin for this web of regulations? Many begin within two small and little-known independent federal agencies: the National Council on Disability⁹ and the U.S. Access Board.¹⁰ The National Council on Disability (created in 1978) promotes equal opportunity policies, programs, practices, and procedures for individuals with disabilities. The U.S. Access Board (originally created in 1973 as the Architectural and Transportation Barriers Compliance Board) is devoted to accessibility and accessible design for people with disabilities.

Following the May 2009 effective date of the Department of Transportation's revised Air Carrier Access Act regulations (the federal rules regulating accessibility of air carriers to passengers with disabilities), both the Access Board and the National Council on Disability appear to be focusing more on accessibility in the national air transportation system. Issues that are in the initial development stage at these two agencies include best practices for accessibility of airline and airport ticketing kiosks to individuals with vision impairments; accessibility of announcements and visual displays in airports to those with vision or hearing impairments; and ability for the hearing-impaired and vision-impaired to find their way around airports and to get to parking lots, passenger drop-off areas, baggage claim carousels, boarding bridges, and screening checkpoints. The Department of Justice also is evaluating potential new regulations to address the accessibility of electronic and information technology equipment (such as ticketing kiosks, interactive transaction machines, point-of-sale devices, and automated teller machines) as well as relevant websites.

For matters involving passengers with disabilities,

SIDEBAR *continued on page 7*

air carriers fall primarily under the jurisdiction of The DOT pursuant to the Air Carrier Access Act. Airport operators, on the other hand, fall primarily under the jurisdiction of the DOJ pursuant to the Americans with Disabilities Act. The DOT currently is considering potential regulations for accessibility of airport and airline websites, accessibility of announcements and visual displays in airport terminals, and provision of relief areas in airports for service animals. In addition, the DOT has been stepping up enforcement against airlines for failing to provide adequate assistance to passengers with disabilities in enplaning and deplaning and in transferring between connecting flights. Within the DOT, the Federal Aviation Administration has initiated audits of airport operators for ADA accessibility. This last April, the FAA even conducted a full-day training session on ADA compliance for airport operators. In order to further improve accessibility, the FAA is drafting two guidance documents involving aircraft accessibility (Advisory Circular 150-5220-21) and airport accessibility (Advisory Circular AC 150-5360-14).

Even though regulations may be changing and uncertainty exists regarding future regulations addressing individuals with disabilities and their ability to access all features of our national air transportation system, the bottom line is best stated by the cornerstone in the FAA's airport disability compliance program: No qualified person with a disability may be excluded from participating in, or denied benefits of, the programs, services, and activities provided by an entity because of a disability. Great strides have been made over the last 20 years since the enactment of the Americans with Disabilities Act, but a great deal still remains to be done to ensure inclusion. I look forward to participating in these efforts. **TFL**

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Endnotes

¹See www.adasymposium.org.

²Current text of the Americans with Disabilities Act of 1990 incorporating the changes made by the ADA Amendments Act of 2008 is available at www.ada.gov/pubs/adastatute08.htm. Text showing the changes to the Americans with Disabilities Act of 1990 made by the ADA Amendments Act of 2008

with deleted language shown as strike throughs and insertions shown in boldface is available at www.ada.gov/pubs/adastatute08mark.htm.

³P.L. 110-325 (2008).

⁴75 Fed. Reg. 56164 (09/15/2010), "Nondiscrimination on the Basis of Disability in State and Local Government Services," available at www.gpo.gov/fdsys/pkg/FR-2010-09-15/pdf/2010-21821.pdf.

⁵75 Fed. Reg. 56236 (09/15/2010), "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," available at www.gpo.gov/fdsys/pkg/FR-2010-09-15/pdf/2010-21824.pdf.

⁶See www.ada.gov/regs2010/ADAREgs2010.htm.

⁷76 Fed. Reg. 16978 (03/25/2011), "Regulations to Implement the Equal Employment Provisions of the Americans With Disabilities Act," available at www.gpo.gov/fdsys/pkg/FR-2011-03-25/pdf/2011-6056.pdf.

⁸73 Fed. Reg. 27614 (05/13/2008), "Nondiscrimination on the Basis of Disability in Air Travel," available at www.gpo.gov/fdsys/pkg/FR-2008-05-13/pdf/08-1228.pdf.

⁹See www.ncd.gov/.

¹⁰See www.access-board.gov/.

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