

# MBTA ACCESSIBILITY LAWSUIT UPDATE

GREATER BOSTON RESIDENTS WORKING TOGETHER FOR ADA COMPLIANCE BY THE MBTA

DANIELS-FINEGOLD ET AL. v. MBTA

SUMMER 2005

FEDERAL COURT: CIVIL ACTION No. 02 CV 11504 MEL

ISSUE VI

## Case Update

On July 27, 2005 four named Plaintiffs, their attorneys, and Defendant's attorneys met directly with the MBTA's new General Manager, Daniel Grabauskas. The meeting provided the opportunity to tell the head of the MBTA, Mr. Grabauskas, about the barriers people with disabilities encounter in trying to access the MBTA's public transportation system. More importantly, the meeting provided the opportunity for the Plaintiffs to tell Mr. Grabauskas that they are only interested in concrete and lasting solutions to ensure that the MBTA complies with the ADA.

Presently the Plaintiffs and the Defendants have **suspended depositions (fact discovery)** and are **in talks with the MBTA**. Plaintiffs have already disclosed their experts' report on the poor condition of the elevators and a video documentary of Green Line portable lift problems. They also plan to disclose the experts' studies of MBTA's buses. Both the elevator, lift and bus studies may guide the MBTA in understanding the problems and how to fix them.

If the talks with the defendant are successful it could result in the type of Settlement/Court Order that the Plaintiffs have been seeking since filing the Complaint in July 2002. The Plaintiffs will settle for **nothing less** than a strong Court Order to ensure that the MBTA complies with the ADA now and in the future. Plaintiffs and their legal team felt that the meeting with Mr. Grabauskas was very positive.

## Success Story! New Elevator Gives Plaintiff Access to Education

Gene Smith, a plaintiff in the *Joanne Daniels-Finegold, et al. v. MBTA* lawsuit, wanted to go to school – education has always been very important to her. She had obtained her GED as an adult, and attended classes for a certificate in mental health counseling, but had set her mind on obtaining a

college degree. Bunker Hill Community College, located at the Community College station on the Orange Line, provided her with that opportunity. On her first day of school, she excitedly alighted the train at the Community College station. Her heart sank. She could see the college across from the platform; between her and the school were about 40 stairs, and a significant walk. Students rushed past her, dashing up the stairs for class.

Ms. Smith was devastated, but very determined. For three years, she slowly and painfully ascended the stairs using a cane. On some days, she would use the "The Ride" service, but knew she would be late for class on those days. Eventually, the stress of carrying heavy books up the stairs began affecting her health and her doctor advised her to stop attending class. "I felt like the MBTA was telling me I didn't need or deserve an education," Ms. Smith described in her affidavit.

She had an opportunity to ask the former General Manager of the MBTA, Michael Mulhern, why there was no elevator at such an important stop and he said he would "work on it." She had another opportunity in 2004 to discuss this with the MBTA employees, including Mulhern, at a meeting organized by BCIL. At that meeting, an employee indicated that an elevator would be at the station soon. This time, the promise was not empty. In 2005, an elevator opened at the Community College station, for the first time providing access to the college for people with disabilities.

Gene Smith is delighted. She recently returned from a leadership training program in Washington D.C., and intends to enroll again at Bunker Hill to finally complete her degree. However, while this is a positive step forward, Ms. Smith still has concerns. Only time will tell if they can maintain it in a working, sanitary condition.

## Preliminary Injunction Filed Regarding MBTA Elevators

**T**he plaintiffs have been fed up with persistent elevator failures and desired immediate action. On July 25, 2005, their attorneys at Greater Boston Legal Services (GBLS) filed a *preliminary injunction* with the court on this issue.

**Preliminary Injunction:** A motion filed with the court before trial, for immediate action to prevent irreparable harm, decided upon review of the facts.

*Plaintiffs Seek:*

- ♦ Timely information and updates on elevator service conditions and operating order
- ♦ Alternate transportation to passengers in the event of elevator malfunction
- ♦ Sufficient maintenance to ensure maximum rate of availability of existing elevators

## Experts Report on MBTA Operating Issues

**G**reater Boston Legal Services (GBLS) has retained recognized experts to prepare objective reports on specific issues within their specialty. *The reports include:*

- ♦ Tester observations on MBTA *bus services* for persons with disabilities.
- ♦ Inspections of *elevator conditions* at 15 key MBTA stations.
- ♦ *Video reports* on the operating condition of mechanical lifts on the Green Line.

The experts' reports will be used as evidence as necessary. In sum, they indicated a pattern of unequal access.

## Spotlight: 15 Year Anniversary of the ADA Prompts Community Action on MBTA Access Issues

**J**uly 26, 2005 marked the 15 year anniversary of the date when the landmark civil rights law, the Americans with Disabilities Act (ADA), was passed by Congress. To commemorate this occasion, the Boston Center for Independent Living (BCIL) held a rally and press conference at Park Street Station to speak out about unequal MBTA access issues. The event was attended by over seventy-five people. An expert analysis prepared for BCIL and GBLS on the poor condition of MBTA elevators was also distributed. Members

from BCIL, lawyers from GBLS, Councilman Felix Arroyo, and many people with disabilities were present to speak to the public, press, and MBTA regarding the ADA and the work that remains to ensure equal access to MBTA services. The message was clear:

*That unequal access has serious, discriminatory effects in further limiting the opportunities of persons with disabilities, results in inconvenience and perpetuation of negative stereotypes, and is a wrong that needs to be made right.*

In sum, the gathering was a successful display of cooperation and activism.

## We Need Your Help; Community Activism Needs to Continue

**G**etting the MBTA to bring equal access to our public transit system for people with all types of disabilities is a big job! It will involve the courts (through *Daniels-Finegold*), but will also require continued public pressure on the MBTA and community collaboration until all of the problems are resolved. You are our eyes; note any problems that you may experience or notice. You are our voice; speak out to the MBTA, to state and local government, and all of Greater Boston about these problems.

## Contact Information

### **Boston Center for Independent Living (BCIL) Helen Hendrickson, Community Organizer**

BCIL works to promote the civil rights of all people with disabilities and to respond to the needs of persons with many different disabilities.

95 Berkeley Street, Suite 206

Boston, MA 02116

Phone: 617-338-6665, x233

TTY: 617-338-6662

Fax: 617-338-6661

E-mail: [hhendrickson@bostoncil.org](mailto:hhendrickson@bostoncil.org)

### **Greater Boston Legal Services**

GBLS is the primary provider of free, civil legal services to low-income residents of the 32 cities and towns of greater Boston.

197 Friend Street

Boston, MA 02114

Phone: 617-312-1234

TTY: 617-371-1228

Fax: 617-371-1222