

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JOHNATHAN LACY, KENNETH FARRIS,)	
MARQUE BOWERS, MAURICE BOSTON,)	
KEVIN DAWSON, individually and for all)	
others similarly situated,)	
)	
Plaintiffs,)	No. 14 C 6259
v.)	
)	Judge Robert W. Gettleman
THOMAS DART, Sheriff of Cook County and)	
COOK COUNTY, ILLINOIS,)	
)	
Defendants.)	

ORDER

Plaintiffs Johnathan Lacy, Kenneth Farris, Marque Bowers, Maurice Boston and Kevin Dawson brought an amended class action complaint against defendants Thomas Dart, Sheriff of Cook County, Illinois (the “Sheriff”) and Cook County, Illinois (the “County”), alleging violations of § 202 of the Americans with Disabilities Act (“ADA”), 42 U.S.C. § 12132, Section 504 of the Rehabilitation Act (“Rehab Act”), 29 U.S.C. § 794(a), and 42 U.S.C. § 1983. Following oral argument and an extensive evidentiary hearing on plaintiffs’ request for preliminary injunction, this court certified a class of “all Cook County jail detainees who have been assigned an currently use a wheelchair.” Lacy v. Dart, 2015 WL 1995576 (N.D. Ill. Apr. 30, 2015). On October 8, 2015, the court granted in part plaintiffs’ request for injunctive relief, requiring the Sheriff to redraft an order mandating that wheelchair-using detainees be given assistance when maneuvering courthouse ramps. Lacy v. Dart, 2015 WL 5921810 (N.D. Ill. Oct. 8, 2015).

On November 19, 2015, the court granted plaintiffs’ motion for partial summary judgment, denied defendants’ motion for summary judgment and entered judgment of liability in

favor of plaintiffs and against defendants with respect to plaintiffs' individual damage claims. Lacy v. Dart, 2015 WL 7351752 (N.D. Ill. Nov. 19, 2015). In reaching that conclusion, the court found that the holding cells in the suburban courthouses, including the courts in Bridgeview and Markham, Illinois, were not ADA compliant, and that defendants had not been providing reasonable accommodations to overcome the structural barriers. Id. at *2. The court noted, however, that defendants had made and were continuing to make extensive ADA-related improvements to the detention areas at the six county courthouses, and that although not legally obligated to do so under the ADA, defendants had undertaken construction at each of the suburban courthouses to bring the lower level detention areas into compliance with the ADA's 2010 Accessibility Standards. Id. at *4, n.8.

Now before the court is plaintiffs' motion for supplemental injunctive relief (Doc. 236) seeking a permanent injunction ordering defendant Cook County to remove a "privacy screen" from each of the two holding cells at the Maywood Courthouse that defendants have altered to comply with the ADA accessibility standards. Also pending is plaintiffs' motion (Doc. 287) for supplemental injunctive relief regarding the detention cells at the Bridgeview Courthouse. After initial briefing, the court held an evidentiary hearing and then received supplemental briefing. For the reasons described below, plaintiffs' motion regarding the Maywood Courthouse (Doc. 236) is granted. Plaintiffs' motion regarding the Bridgeview Courthouse (Doc. 287) is denied.

BACKGROUND

The extensive factual and evidentiary history of this case was discussed in the court's previous opinions, particularly its October 8, 2015 Order, Lacy, 2015 WL 5921810, and will not be repeated. In brief, plaintiffs are or were wheelchair-using detainees held at Cook County Jail. Like all Cook County Jail detainees, plaintiffs' periodically attended court hearings in connection with their underlying criminal cases at either the Leighton Criminal Courthouse in Chicago, or one of the five suburban courthouses: Maywood; Markham; Skokie; Rolling Meadows; and Bridgeview. Plaintiffs' allege that as wheelchair-using detainees they were subject to numerous ADA and Rehab Act violations in connection with their criminal court appearances, including that the holding cells and bathroom facilities at the suburban courthouses were not compliant with the ADA and Rehab Act's Architectural Accessibility Standards, and that defendants had not provided reasonable accommodations to overcome those barriers.

After seven days of evidentiary hearings and extensive briefing, the court found that plaintiffs' rights under the ADA had been violated. With respect to the suburban courthouses, it was undisputed that the bathroom facilities in the holding cells were not compliant with current ADA Accessibility Standards. The court rejected defendants' argument that providing portable commode chairs was a reasonable accommodation to overcome the structural barriers because those chairs did not provide wheelchair-using detainees access on the same basis as non-disabled detainees. The court declined to enter an injunction, however, because defendants had presented extensive evidence that the holding cells at the suburban courthouses were being renovated to bring them into compliance with current ADA Accessibility Standards. Indeed, defendants have

been successful in bringing three of the five suburban courthouses into total compliance. As will be seen, however, despite defendants' commendable efforts, a little work remains to be done.

DISCUSSION

The ADA was enacted to “provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities.” 42 U.S.C. § 12101(b)(1). Title II, under which plaintiffs bring their claims, proscribes discrimination against individuals with disabilities with respect to access to public services, programs, and activities, and provides that “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 in the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.” See Tennessee v. Lane, 541 U.S. 509, 516-17 (2004); 42 U.S.C. § 12132.

Title II's implementing regulations provide that “[a] public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability.” 28 C.F.R. § 35.130(b)(7). As already noted, the holding cells at Bridgeview and Maywood did not meet the 2010 Standards for Accessibility. Because both buildings were constructed prior to 1992, defendants were not required to remove barriers, even if removal was readily achievable. Title II Technical Assistance Manual (“ADATAM”) § II-5200. Because of the age of the courthouses, defendants' obligations are limited to providing wheelchair-using pretrial detainees with reasonable accommodations that overcome the structural barriers. Lacy, 2015 WL 5921810 at *2. Physical changes to a building are required only when there is no other feasible way to make the programs accessible. ADATAM § 2-5200.

Nevertheless, if the public entity elects to make physical alterations, the alteration must be done “in a manner that the altered portion of the facility is readily accessible to and usable by individuals with disabilities.” 28 C.F.R. 35.151(b). When, as in the instant case, the physical alterations commenced after March 15, 2012, the alterations must comply with the 2010 Accessibility Standards. 28 C.F.R. 35.151(c)(3).

Maywood Courthouse

The evidence shows that the toilet areas in the modified detention cells at the Maywood Courthouse do not comply with the clean-floor space requirements of the ADA. Specifically, the 2010 Standards for Accessible Design § 604.3.1 provides that “clearance around a water closet shall be 60" (1525 mm) minimum measured perpendicular from the side wall and 56" (1420 mm) minimum measured perpendicular from the rear wall.” The evidence shows that the privacy screens located in front of each toilet stand 54 ½" from the rear wall perpendicular, or 1 ½" too close.

Defendants argue that because they did not intend to alter the entire holding cell, they were entitled under the 2010 Standards, § 202.3, to “alter as many elements within a room or space without triggering the requirement to make the entire room or space accessible based on the alteration of individual elements.” According to defendants, they never intended to change the privacy screen element because of the amount of work involved.

The court rejects this argument. Defendants have repeatedly represented to this court that their intent was to make the holding cells accessible by bringing them up to 2010 Standards. Moreover, even if defendants were technically correct that they do not have to remove (or move) the privacy screens (which they are not), the screens nonetheless create a structural barrier for

which defendants must provide a reasonable accommodation. There is no evidence that they have done so. The privacy screens are too close to the rear wall and must be moved to render the cell and its toilet facilities readily accessible to wheelchair-using detainees. It makes little sense to modify the toilet as defendant did, and yet leave too little space to use it.

Nor have defendants demonstrated that removing the privacy screens is “technically infeasible.” A public entity that elects to alter a facility must do so in a manner that makes the facility “readily accessible and usable by individuals with disabilities to the maximum extent feasible.” 28 C.F.R. § 35.151(b)(1). The feasibility requirement has been construed as meaning “technical feasibility” rather than “economic feasibility.” See Disabled in Action of Pa. v. Southeastern Pa. Transp. Auth., 635 F.3d 87, 94-95 (3d Cir. 2011). Defendants have attempted to demonstrate technical infeasibility by presenting evidence that the two privacy screens at Maywood, unlike the screens at the other suburban courthouses, are imbedded into the concrete walls and floors. When pressed on the subject, however, defendants’ expert, Mr. Gumm, could not say that removing the screens would diminish the structural integrity of the wall in a manner that would pose any significant risk. Nor did he say that the walls’ integrity could not be repaired once the bracing for the screens was removed. Consequently, the court concludes that defendants have failed to demonstrate that removing the screens would be technically infeasible.

Bridgeview Courthouse

Defendants admit that the entire two holding cells (6 & 7) at the Bridgeview Courthouse were altered. The evidence demonstrates that a new accessible door opening/wall assembly was installed. A new toilet with a new privacy screen was installed. A new ADA compliant bench

was installed. Because the original sliding door was too narrow, a new front wall with a wider door was installed, ultimately requiring an alteration of the floor plan of the cells.

It is undisputed that the two holding cells are fully compliant with the 2010 ADA Accessibility Standards in all but one respect. The turning space within each cell does not comply with § 304.32 of the 2010 Standards, which requires that “the turning space shall be a T-shaped space within a 60" sq. minimum with arms and base 36" wide minimum.” It is undisputed that one of the four legs in each cell is 34" in width instead of the required 36".

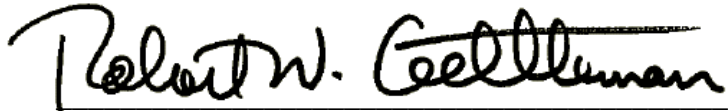
Defendants argue that it is technically infeasible to comply with the full 36" width base based on the size of the cells, and that to do so would require removal of a wall. According to defendants, “where compliance with applicable requirements is technically infeasible, alteration shall comply with the requirements to the maximum extent feasible.” 2010 ADA Standards 202.3, exception 2. Although it is unfortunate that defendants did not discover this problem until after the renovations were complete, it appears that the problem is the result of having to alter the floor plan to accommodate the wider sliding door.

Plaintiffs argue that defendants should have elected to renovate a larger holding cell (18) rather than the two smaller holding cells. This decision was made by the Sheriff, however, based on the number of detainees that attend court. It is a decision that is reasonably related to legitimate penological interests and will not be disturbed by this court. The evidence provided demonstrates that despite the 2" deviation, wheelchair-using detainees are able to complete a T-turn within the cell with no difficulty. Consequently, the court concludes that defendants have demonstrated “technical infeasibility” and that the Bridgeview Courthouse holding cells do not violate the ADA.

CONCLUSION

For the reasons described above, the court grants plaintiffs' motion for supplemental injunctive relief (Doc. 236), and orders defendant Cook County to move the privacy screens in each of the two holding cells at the Maywood Courthouse to provide the required 56" from the rear wall of the cells. The court denies plaintiffs' motion for supplemental injunctive relief (Doc. 287) regarding the detention cells at the Bridgeview Courthouse.¹

ENTER: May 2, 2017

A handwritten signature in black ink that reads "Robert W. Gettleman". The signature is written in a cursive style with a horizontal line underneath the name.

**Robert W. Gettleman
United States District Judge**

¹This order adjudicates the remaining substantive issues in this case, and thus is final and appealable. At the next status hearing the court will address the issues of attorneys fees and costs.