

SETTLEMENT AGREEMENT BETWEEN

THE UNITED STATES OF AMERICA

AND

THE TOWN OF POESTENKILL, NEW YORK

UNDER THE AMERICANS WITH DISABILITIES ACT

DJ 204-50-247

BACKGROUND

SCOPE OF THE INVESTIGATION

The United States Department of Justice (Department) initiated this compliance review in response to a complaint against the Town of Poestenkill, New York (Town), filed 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 complaint was investigated by the Disability Rights Section of the Department's Civil Rights Division and focused on the Town'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 the Town's obligations under title II and the Department's regulation, 28 C.F.R. § 35.106;
- 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. §§ 35.149 - 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. §§ 35.150 and 35.151, and the ADA Standards for Accessible Design (Standards), 28 C.F.R. pt. 36, App. A (2010), 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, UFAS, or 2010 Standards, as applicable, 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, including 9-1-1 services, for persons who use TTYs and computer modems, 28 C.F.R. § 35.162;
- to provide information for interested persons with disabilities concerning the existence and location of the Town'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 alterations commenced after January 26, 1992 - must comply with the ADA's alterations requirements: Poestenkill Library and Poestenkill Elementary School.

The Department's program access review covered those of the Town's programs, services, and activities that operate in the following facility: Poestenkill Town Hall.

The Department reviewed the Town's policies and procedures regarding emergency management and disaster prevention, and sidewalk maintenance to evaluate whether persons with disabilities have an equal opportunity to utilize these programs.

JURISDICTION

1. The ADA applies to the Town 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 the Town 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 Town of Poestenkill, New York.
4. In order to avoid the burdens and expenses of 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."

ACTIONS TAKEN BY THE TOWN

6. The Town has implemented a process to provide qualified sign language interpreter services upon request at Town meetings and events.
7. The Town repaired the elevator lift in Town Hall in July 2009, and has maintained it in operational order since then.

REMEDIAL ACTION

NOTIFICATION

8. Within two months of the effective date of this Agreement, the Town will adopt the attached Notice ([Attachment A](#)); distribute it to all agency heads; publish the Notice in a local newspaper of general circulation serving the Town; post the Notice on its Internet Home Page; 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.
9. Within three months of the effective date of this Agreement, and on yearly anniversaries of this Agreement until it expires, the Town will implement and report to the Department its written procedures

for providing information for interested persons with disabilities concerning the existence and location of the Town's accessible programs, services, and activities.

GENERAL EFFECTIVE COMMUNICATION PROVISIONS

10. The Town will take steps to ensure that all appropriate employees are trained and practiced in using the New York Relay Service to make and receive calls.

EMPLOYMENT

11. Within three months of the effective date of this Agreement, the Town 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 the Town:
 - 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 the Town'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, the Town 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; and
 - will make an individualized assessment of whether a qualified individual with a disability meets selection criteria for employment decisions. To the extent the Town's selection criteria have the effect of disqualifying an individual because of disability, those criteria will be job-related and consistent with business necessity.

EMERGENCY MANAGEMENT PROCEDURES AND POLICIES

12. The Department will work collaboratively with the Town to ensure that the Town's Emergency Operations Plan (EOP) will be in compliance with ADA requirements. The touchstone for compliance with ADA requirements relating to emergency management is [Chapter 7](#) of the Department's *ADA Best Practices Tool Kit for State and Local Government (ADA Tool Kit)*, which addresses in detail key ADA obligations that apply to all aspects of emergency management, including planning, preparedness, evacuation, shelters, medical and social services, lodging and housing programs, recovery, and rebuilding.
13. The Town is committed to compliance with the ADA requirements as described in [Chapter 7](#) of the *ADA Tool Kit*. Within 180 days of the effective date of this Agreement, the Town will revise its EOP so that it conforms with [Chapter 7](#) of the *ADA Tool Kit*, and the Town will provide a copy of its revised EOP (including supporting documents) to the Department. The Department will review the revised EOP to ensure compliance with title II of the ADA and its implementing regulation.
14. If the Town contracts with another entity, such as the American Red Cross or another local government, to provide its emergency preparedness plans and emergency response services, the Town will ensure that the other entity complies with the following provisions on its behalf.
15. Within 180 days of the effective date of this Agreement, the Town will implement and report to the Department its written procedures that ensure that it regularly solicits and incorporates input from

persons with a variety of disabilities and those who serve them regarding all phases of its emergency management plan (preparation, notification, response, and clean up).

16. Within 180 days of the effective date of this Agreement, the Town will implement and report to the Department its written procedures that ensure that its community evacuation plans enable those who have mobility impairments, vision impairments, hearing impairments, cognitive disabilities, mental illness, or other disabilities to safely self-evacuate or be evacuated by others. Some communities are instituting voluntary, confidential registries of persons with disabilities who may need individualized evacuation assistance or notification. If the Town adopts or maintains such a registry, its report to the Department will discuss its procedures for ensuring voluntariness, appropriate confidentiality controls, and how the registry will be kept updated, as well as its outreach plan to inform persons with disabilities of its availability. Whether or not a registry is used, the Town plan should address accessible transportation needs for persons with disabilities.
17. Within 180 days of the effective date of this Agreement, the Town will implement and report to the Department its written procedures that ensure that if its emergency warning systems use sirens or other audible alerts, it will also provide ways to inform persons with hearing impairments of an impending disaster. The use of auto-dialed TTY messages to pre-registered individuals who are deaf or hard of hearing, text messaging, e-mails, open-captioning on local TV stations and other innovative uses of technology may be incorporated into such procedures, as well as lower-tech options such as dispatching qualified sign language interpreters to assist with emergency TV broadcasts.
18. Within 180 days of the effective date of this Agreement, the Town will implement and report to the Department its written procedures that ensure that emergency shelters have a back-up generator and a way to keep medications refrigerated (such as a refrigerator or a cooler with ice). Access to back-up power and refrigeration at such shelters will be made available to persons whose disabilities require access to electricity and refrigeration, for example, for using life-sustaining medical devices, providing power to motorized wheelchairs, and preserving certain medications, such as insulin, that require refrigeration. The written procedures will include a plan for notifying persons of the location of such shelters.
19. Within 180 days of the effective date of this Agreement, the Town will implement and report to the Department its written procedures that ensure that persons who use service animals are not separated from their service animals when sheltering during an emergency, even if pets are normally prohibited in shelters. The procedures will not segregate persons who use service animals from others but may take into account the potential presence of persons who, for safety or health reasons, should not be in contact with certain types of animals.
20. Within 180 days of the effective date of this Agreement, the Town will develop, implement, and report to the Department its plans for providing equivalent opportunities for accessible post-emergency temporary housing to persons with disabilities. Within one year of the effective date of this Agreement, the Town will ensure that information it makes available regarding temporary housing includes information on accessible housing (such as accessible hotel rooms within the community or in nearby communities) that could be used if people with disabilities cannot immediately return home after a disaster if, for instance, necessary accessible features such as ramps or electrical systems have been compromised.

PHYSICAL CHANGES TO EMERGENCY SHELTERS

21. Some of the Town's emergency shelters may be owned or operated by other public entities subject to title II or by public accommodations subject to title III and, as such, are subject to the obligation to provide program access or remove barriers to accessibility under the ADA. This Agreement does not

limit such future enforcement action against the owners or operators of these facilities by any person or entity, including the Department.

22. Within 180 days of the effective date of this Agreement, using the survey instrument entitled *ADA Checklist for Emergency Shelters* ([Attachment N](#)), the Town will survey all of its emergency shelters (including those owned or operated by other entities) to identify barriers to access by people with disabilities in the parking; exterior route to the entrance; entrance; interior route to the emergency shelter area, including the route to the drinking fountains, eating areas, sleeping areas, toilet rooms, and shower/bathing rooms designated for those seeking shelter; and the emergency shelter area itself, including the drinking fountains, eating areas, sleeping areas, toilet rooms, and shower/bathing rooms designated for those seeking shelter.
23. Within twelve months of the effective date of this Agreement, for each emergency shelter, the Town will then either (1) ensure that all barriers to access by people with disabilities have been removed or (2) identify and designate an alternate emergency shelter with no barriers to access by people with disabilities, using the survey instrument entitled *ADA Checklist for Emergency Shelters* ([Attachment N](#)).
24. Within three months of the effective date of this Agreement and until all emergency shelters have accessible parking, exterior routes, entrances, interior routes to the shelter area, and toilet rooms serving the shelter area, the Town will identify and widely publicize to the public and to persons with disabilities and the organizations that serve them the most accessible emergency shelters.

SIDEWALKS

25. Within three months of the effective date of this Agreement, the Town will implement and report to the Department its written process for soliciting and receiving input from persons with disabilities regarding the accessibility of its sidewalks, including, for example, requests to add curb cuts at particular locations.
26. Within three months of the effective date of this Agreement, the Town will identify and report to the Department all streets, roads, and highways that have been constructed or altered since January 26, 1992. Paving, repaving, or resurfacing a street, road, or highway is considered an alteration for the purposes of this Agreement. Filling a pothole is not considered an alteration for the purposes of this Agreement. Within three years of the effective date of this Agreement, the Town will provide curb ramps or other sloped areas complying with the Standards, UFAS, or the 2010 Standards, as applicable, at all intersections of the streets, roads, and highways identified under this paragraph having curbs or other barriers to entry from a street level pedestrian walkway. See paragraph 36 for more details regarding applicable standards.
27. Beginning no later than three months after the effective date of this Agreement, the Town will provide curb ramps or other sloped areas complying with the Standards, UFAS, or the 2010 Standards, as applicable, at any intersection having curbs or other barriers to entry from a street level pedestrian walkway, whenever a new street, road, or highway is constructed or altered.
28. Within three months of the effective date of this Agreement, the Town will identify all street level pedestrian walkways that have been constructed or altered since January 26, 1992. Paving, repaving, or resurfacing a walkway is considered an alteration for the purposes of this Agreement. Within three years of the effective date of this Agreement, the Town will provide curb ramps or other sloped areas complying with the Standards, UFAS, or the 2010 Standards, as applicable, at all places where a street level pedestrian walkway identified under this paragraph intersects with a street, road, or highway. See paragraph 36 for more details regarding applicable standards.

29. Beginning no later than three months after the effective date of this Agreement, the Town will provide curb ramps or other sloped areas complying with the Standards, UFAS, or the 2010 Standards, as applicable, at all newly constructed or altered pedestrian walkways where they intersect a street, road, or highway.

WEB-BASED SERVICES AND PROGRAMS

30. Within one month of the effective date of this Agreement, and on subsequent anniversaries of the effective date of this Agreement, the Town 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 Town 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).
31. Within three months of the effective date of this Agreement, and throughout the life of the Agreement, the Town 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.

NEW CONSTRUCTION, ALTERATIONS, AND PHYSICAL CHANGES TO FACILITIES

32. The Town will ensure that all buildings and facilities constructed by or on behalf of the Town are constructed in full compliance with the requirements of 28 C.F.R. § 35.151, including applicable architectural standards.
33. The Town will ensure that alterations to Town facilities are made in full compliance with the requirements of 28 C.F.R. § 35.151, including applicable architectural standards.
34. The elements or features of the Town's facilities that do not comply with the Standards, including those listed in Attachments [J](#) and [K](#), prevent persons with disabilities from fully and equally enjoying the Town'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.
35. When taking the actions required by this Agreement from the effective date of this Agreement until March 14, 2012, the Town may use either the 1991 Standards or the 2010 Standards. During this time, the Town must designate which of these two accessibility standards it elects to use, use the same accessibility standard throughout a facility in making alterations and architectural changes, and report to the Department which standards will be used for each facility. As of March 15, 2012, the Town must use the 2010 Standards when making the architectural changes required by this Agreement.
36. Within three months of the effective date of this Agreement, the Town 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.
37. Altered Facilities: In order to ensure that the following spaces and elements in Town facilities for which alterations commenced after January 26, 1992, are readily accessible to and usable by persons with disabilities, the Town will take the actions listed in Attachments [J](#) and [M](#).

38. Program Access in Existing Facilities: In order to ensure that each of the Town'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, the Town will take the actions listed in Attachments [K](#) and [M](#).
39. Facilities and Programs Not Surveyed by the Department: The Town will review compliance with the requirements of title II of the ADA for those Town facilities and programs that were not reviewed by the Department. Within twelve months of the effective date of this Agreement, the Town will submit for review by the Department a detailed report listing the access issues identified during its review together with the corrective actions and completion dates proposed to resolve such issues. The review conducted by the Town, the access issues identified, and the corrective actions and completion dates proposed will be consistent with the requirements of title II of the ADA; the review of Town facilities and programs conducted by the Department for purposes of this Agreement; and the access issues, corrective actions, and completion dates reflected in Attachments [J](#), [K](#), and [M](#).

MISCELLANEOUS PROVISIONS

40. Except as otherwise specified in this Agreement, at yearly anniversaries of the effective date of this Agreement until it expires, the Town will submit written reports to the Department summarizing the actions the Town 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.
41. Throughout the life of this Agreement, consistent with 28 C.F.R. § 35.133(a), the Town 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).
42. Within six months of the effective date of this Agreement, the Town will develop or procure a two-hour training program on the requirements of the ADA and appropriate ways of serving persons with disabilities. The Town 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.
43. Within one year of the effective date of this Agreement, the Town will deliver its training program to all Town employees who have direct contact with members of the public. At the end of that period, the Town 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

44. If at any time the Town 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.
45. The Department may review compliance with this Agreement at any time. If the Department believes that the Town 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 the Town 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 the Town, 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.

46. For purposes of the immediately preceding paragraph, it is a violation of this Agreement for the Town 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.
47. 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.
48. 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 the Town or the Department on request.
49. 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 the Town's continuing responsibility to comply with all aspects of the ADA and section 504 of the Rehabilitation Act.
50. This Agreement will remain in effect for three years or until the parties agree that all actions required by the Agreement have been completed, whichever is later.
51. The person signing for the Town represents that he or she is authorized to bind the Town to this Agreement.
52. The effective date of this Agreement is the date of the last signature below.

For the Town of Poestenkill :

By: /s/ Dominic Jacangelo
DOMINIC JACANGELO
Town Supervisor
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Poestenkill, NY 12140

For the United States:
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