

Covington vs. McNeese



MSJ and Motion for Injunctive Relief

Today's Three Motions

- Motion for ADA Summary Judgment
 - Declaring that Defendants violate the ADA
- Order (injunction) for McNeese to Comply with the ADA
- Attorney Fees

Documents to Aid the Court

- Memorandum and Reply Brief
- Violations Chart
 - Lists statutes and testimony supporting McNeese's violations of those statutes
- Arguments Chart
 - Lists every argument made by Defendants and Plaintiffs' response
- Cases Chart
 - Quotes relevant cases establishing McNeese's duty under the ADA and Louisiana statutes

The ADA Guarantee

The ADA gives the disabled the right to enjoy services, programs, and activities on the same level as the able-bodied. This right is comparable to the right of equal protection on the basis of race or religion.

Public entities must take affirmative steps to assure full and meaningful access to their facilities so that every service, program, or activity is readily accessible to the disabled. The failure to meet these needs constitutes discrimination and is actionable under Federal and State law.



The Discrimination Statute

- “No qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity or be subjected to discrimination by such entity.”
 - 42 U.S.C. 12132
- Types of discrimination include:
 - Not upgrading buildings to remove architectural barriers to Code
 - Not establishing an ADA grievance process
 - Not installing signage as required
 - Creating policy barriers such as “registration” requirements

How Has McNeese Discriminated Under the ADA?

- Failed to remove architectural barriers as required by the Accessibility Guidelines to the ADA, 42 U.S.C. 12132, 28 CFR 35.151, 28 CFR 35.150(a)(1), *Schonfield* at 1341, *Parker*, and *Chaffin*.
- Failed to post required signage at inaccessible entrances as required by 28 CFR 135.163.
- Failed to consider public opinion or to conduct a self-evaluation before Jan. 26, 1992 or transition plan to assure full compliance before Jan. 26, 1995 as required by 28 CFR 35.105 and 28 CFR 35.150(d).
- Failed to designate a “responsible official” to oversee compliance as required by 28 CFR 35.150(3)(iv).

How Has McNeese Discriminated Under the ADA? (cont.)

- Created a false “registration” process to deter the disabled from receiving accommodations, as prohibited by 28 CFR 35.106 and *Schonfeld*.
- Refused to correct known campus problems or anticipate unknown problems, as required by *Schonfeld*.
- Failed to provide a meaningful grievance process for the “prompt and equitable resolution” of Covington’s complaints as required by 28 CFR 35.107(b).
- Failed to make McNeese “readily accessible” by Jan. 26, 1995 as required by 28 CFR 35.150(d).
- Created a stated policy whereby disabled students’ need to access the full range of services, programs, and activities are considered not to be a “high priority” for McNeese and are not considered “fundamentally important”.

There is no genuine issue of material fact that:

- McNeese has knowingly and willfully violated the ADA.
- Collette Covington is a disabled student who suffered physical, mental, and economic damages due to McNeese's willful failure to comply with the ADA.
- Today, as well as historically, McNeese has denied the disabled access to campus facilities and intentionally suppressed their rights.
- Without court intervention and management, McNeese will not voluntarily comply with the ADA and will continue to violate the rights of the disabled.

History of this case

- Epileptic and wheelchair-bound McNeese Student Collette Covington suffered permanent and debilitating physical injury when she fell in McNeese's non-compliant Student Union restroom.
- But this case is about much more than Covington's physical injuries. It is about McNeese's intentional deprivation of the rights of all disabled students through discriminatory policies and a patent refusal to upgrade its facilities and practices as required by law.

S. O. S.

students offering support

When a student came across someone in a wheelchair, did he know to open the door as a kind gesture or to quietly pass by in fear of unintentionally embarrassing the person? What did a student do if someone in his class suddenly had a seizure? Sometimes it did happen that even those who were educated in dealing with both the physical and emotional aspects of students with handicaps or disorders either did not know what to do when situations occurred, or were not comfortable in dealing with the situation. This is what Collette Covington, president and founder of new organization Students Of-

fering Support, was aiming to address. Covington stressed that "the primary goal of the organization is to help educate students and faculty on the needs of persons with disabilities."

Students Offering Support (S.O.S.) gained its organization status in the spring of 1994. Near the end of the 1994 fall semester, membership had reached approximately twenty. Covington relayed that, "although enrollment was low, students were encouraged to realize that the organization is indeed necessary and that the group was very positive in the attempt to teach its members to become self-dependent." **by Kay Johnson**



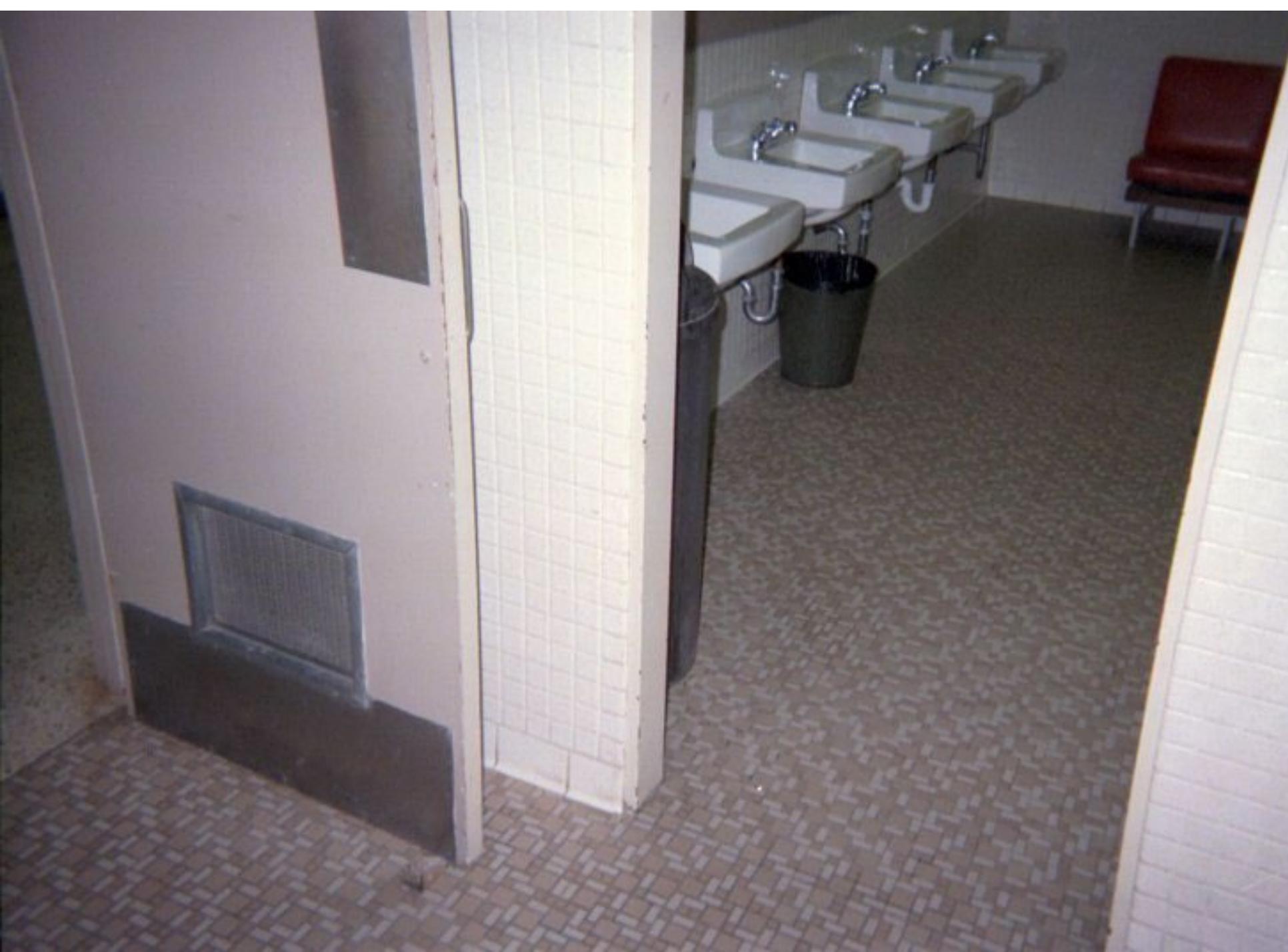
Photo by Rick Veal

Photo by Rick Veal



Founder and President Collette Covington gives Trevor McClinnis a thank-you gift. McClinnis, Public relations officer, designed the S.O.S. logo.

Members Cathy Didier, Wil Chenier, Deanna Bergeron, Charles Fontenot, Dr. Morris, advisor, Collette Covington, Jade Covington, and Alecia King, get together at the end of the year banquet. One of the goals of the organization was to educate the faculty and student body of the needs of persons with disabilities.









Violation 1: Physical Facilities



McNeese Must Remove Architectural Barriers From Both New and Old Buildings

- **New or Renovated Facilities.** Structures altered after Jan. 26, 1992 must be “readily accessible to and usable by individuals with disabilities *to the maximum extent feasible*” (“Every Square Inch” rule)
 - 28 CFR 35.151 and *Schonfield*
- **Existing Facilities.** Structures not altered after Jan. 26, 1992 must be “readily accessible to and usable by individuals with disabilities” (“At Least One Facility Per Building or Service, Program, or Activity” rule)
 - 28 CFR 35.150(a)(1) and *Parker*

McNeese Does Not Meet Either of These Standards

- McNeese admits that much of its campus is inaccessible to the disabled and that services, programs, and activities are not “readily accessible” to and usable by the disabled.
- McNeese admits that it has no plan or timeline to make its campus or its services, programs, and activities “readily accessible” or “readily accessible to the maximum extent feasible”.
- McNeese admits that it does not consider it “fundamentally important” to make its campus readily accessible or to provide the disabled with access to all services, programs, and activities at McNeese.

McNeese admits that it fails to comply with either standard

REQUEST FOR ADMISSION NO. 6:

Please admit or deny that McNeese State University was aware that it was in noncompliance with the Americans with Disabilities Act prior to January 2001.

RESPONSE TO REQUEST FOR ADMISSION NO. 6:

Admit.

Test for determining whether a facility is “new”

“Changes to the defining characteristic of a facility– to that which makes the facility desirable to the public– mandates that the facility be made accessible to all. Further, accessibility is generously construed to accommodate a wide range of needs, to ensure that patrons ‘are able to get to, enter, and use the facility.’ For example, [all of the] paths of travel to bathrooms, telephones, and drinking fountains must be readily accessible to and usable by individuals with disabilities.”

Kinney vs. Yerusalim, 9 F.3d 1067, 1073 (3rd Cir.1993)

McNeese made the Old Ranch more usable since 1992

- Since 1992, McNeese has:
 - Established a completely new program, service, or activity by installing a \$400,000 computer lab in the Old Ranch
 - Installed an electric door into the building to give the appearance that the building is compliant
 - Conducted extensive environmental remediation
 - Renovated the building's loft and several offices
 - Overhauled the cafeteria with a \$300,000 renovation
 - Had undisclosed additional money spent on renovations by a private company called ARAMARK.
 - Deposition of Richard Rhoden, pg. 53.



All existing “services, programs, and activities” must be readily accessible

“Pursuant to these requirements, the University was obligated to ensure that each service, program, or activity at the Botanical Gardens ‘when viewed in its entirety,’ was accessible to individuals with disabilities. One purpose of the Botanical Gardens is to serve as a venue for group events. The University holds open the Monet Garden as a place for group convocations, like the Girl Scout awards ceremony that Parker attended. The University, therefore, has a duty to make the Monet Garden ‘readily accessible’ to and ‘usable’ by individuals with disabilities.”

McNeese Admits That NO restroom complies with the ADA in the Old Ranch

REQUEST FOR ADMISSION NO. 4:

Please admit or deny that the Old Ranch women's restroom where the accident which forms the basis of this suit occurred does not meet the requirements of the Accessibility Guidelines promulgated by the U.S. Attorney General for restroom doors.

RESPONSE TO REQUEST FOR ADMISSION NO. 4:

Admit.

McNeese Has Documented Students' Restroom Humiliation

Is our campus user-friendly for everyone?

KELLEY GRAYLEE
THE CONTRABAND

Okay, admit it. Almost everyone is guilty of parking in a handicap space on campus. And everyone has their excuses for doing so.

While there have been many improvements on campus towards helping our disabled friends, there are still many problems that should be recognized. The main complaints from disabled students are doorways, elevators, restrooms and parking.

One main problem on campus is the entrances to the buildings. Some buildings such as Kaufman Hall have automatic doors, but other buildings are nearly impossible to enter. The entrance ramp to Kirkman Hall is on the far right side of the building, which is extremely inconvenient.

Donna Spears, a senior psychology major said, "My sister-in-law, Amy, helps me to get around on campus, and some buildings are very difficult to enter."

Amy Spears said, "Sometimes I have to pull her up the stairs backwards into Kirkman to avoid going all the way around to the only entrance ramp."

In addition to this, some entrance

ramps are so steep, that it is difficult to go up. Before transferring to McNeese, Spears attended LSU at Eunice. There the ramps were not quite as steep and more manageable.

Most doorways are not difficult to enter, however, at times students are not considerate of those less fortunate. "On several occasions, students have noticed us approaching a door and ran in front so they would not have to wait," Spears said.

"The majority of students are willing to help me when I need them," senior sociology major Dianna Bergeron said. She has had some difficulties with teachers also, but most were willing to help in any way.

"Services for Students with Disabilities has helped me in many ways. They have provided note takers for all of my classes and this has been the biggest help."

Another main problem that some students face is the elevators. Although there are signs on the elevators in Frasch Hall indicating usage exclusive to those with disabilities, students will fill up the elevators instead of taking the stairs.

The largest problem with the elevators is that the buttons are too high for someone in a wheel chair to reach alone. Director of SSD, Tim Delaney has tried to have this problem solved.

"The cost to have the button panel lowered is outrageous and there is no funding for this sort of project."

When King Dorm is completed, there will be an entrance ramp, electronic doors and sufficient elevators for these students.

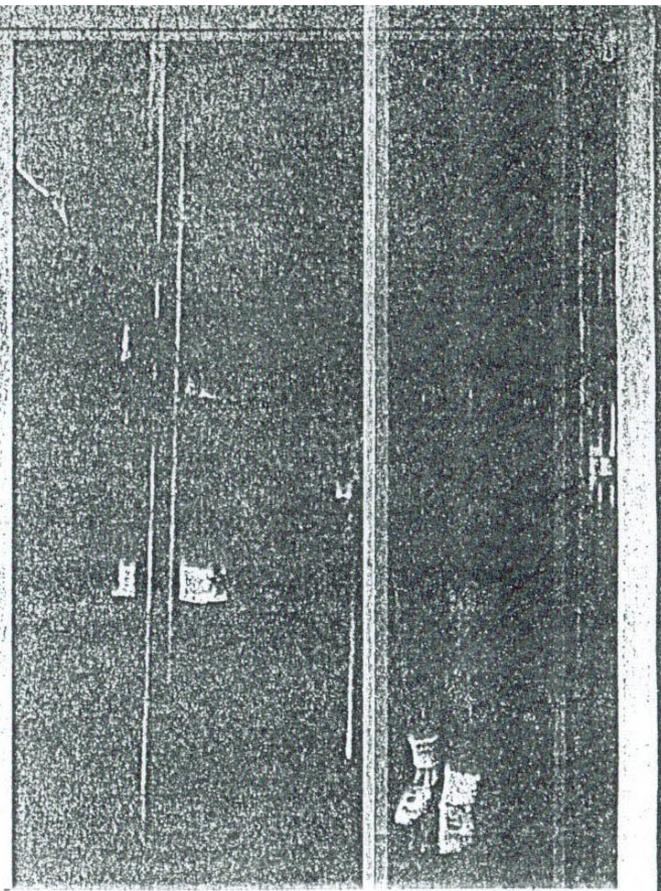
Restrooms are another problem which plagues disabled students on campus. There is only one restroom in all of Kaufman that is accessible to these students, and the library has no accessible restroom in the entire building. This problem has improved drastically throughout the years, though.

When Donna Spears came to MSU in 1992, there was only one restroom on campus to appropriately fit her needs.

"Overall, I love MSU because it has a lot to offer and conditions have certainly improved. When MSU was first built, handicap students were not even allowed to attend MSU," said Spears.

By far, the largest problem for these students is parking. There are not nearly enough handicap spaces. At times Amy and Donna Spears have had to drive around for 15 to 20 minutes waiting for an available space.

So the next time you think about parking in a handicap parking place, instead of thinking of a clever excuse like I have in the past, remember that there are students on campus who are in real need of that front row space.



Chad Labbie practices courtesy by holding the door open for Dianna Bergeron

of ycaza/The Contraband

2/3/11

Handicapped accessibility at McNeese in need of change

12/1/96

Dear Editor,

As a handicapped person I am confronted with difficulties that the ordinary student does not have to face. Rest room facilities, for instance, have always been a problem for me.

On beginning at McNeese I had my concerns and what I soon discovered was not only humiliating but embarrassing. I traveled throughout Kaufman Hall looking for a handicapped accessible rest room only to find that no such animal exists in the building.

Since the situation was becoming urgent I decided to try the nearest facility. As I entered the facility, it seemed large enough, until I tried to enter the stall. My wheelchair, which is the smallest in width and length made for an adult, would not fit through the door of the stall.

At this point, I could do one of two things. I could leave my chair outside and crawl to the toilet or use the

urinal. Noticing the condition of the floor, I opted for the second choice. Leaning on my chair and praying I would not fall, I pulled myself up to the urinal. After taking care of business, I allowed myself to fall back into the chair. I looked for the flush handle and was in complete shock to find it located on the floor.

I thought of not flushing it, but I was taught better manners than that. I lowered myself down to where my hand could reach the pedal on the floor. With a quick push, the urinal began to flush.

Handicapped accessibility at McNeese is marginal, that is to say, barely within the legal boundaries of the Americans with Disabilities Act.

Most of what is proclaimed as accessible by the little sign, would only be considered so by someone who is not disabled. The rest room in the Hitching

Post, for example, is in no way, shape or form handicapped accessible.

All that McNeese has done to this rest room is to mount bars on the walls and remove the door on the stall.

You cannot fit a wheelchair in this restroom! In order for this rest room to be considered handicapped accessible, the stall needs to be wider and longer.

Furthermore, while getting into the main rest room is not so bad, getting out is nearly impossible.

You have to back all the way out of the stall and through the rest of the room because there is not enough room to turn around. Here is where the fun starts, the door to the rest room opens to the inside.

Try accomplishing this in a wheelchair with 10 students trying to get into the room at the same time. If you are lucky, one of them is nice enough to open for you.

Rest room facilities are of the highest concern to the few people I have spoken with who are disabled. It becomes an aggravation to have to leave one building, in order to use the rest room in another.

Fraser Hall is the only building that I am aware of in which the rest rooms are truly accessible. The rooms are wide enough, and there is plenty of room to turn around.

The stalls are long enough to accommodate a wheelchair and the person in it. The flushing unit is not on the floor.

I was talking to a student by the name of Chuck Bryan. He told me about an idea that Dr. Robert L. Ramsey had which was to make the stage used for graduation handicapped accessible. This would

allow everyone who graduates to walk across the stage and receive their diploma. I can not speak for everyone, but for me this is the whole point of graduation to be able to walk, even roll, across the stage and receive your degree so that everyone can see and pictures can be taken.

I would like to make a suggestion to the Board of Regents. If you want to find out how accessible McNeese State University really is, I would challenge you to acquire a wheelchair (I have one available to anyone who accepts the challenge) and accompany me one day to my classes, etc.

I believe this would change the minds of those who believe that enough has been done about this matter. I would also like to see a day of observance for handicapped individuals, in which certain members of the staff and of the student body become handicapped for a day.

Each member of the select few, would endure a specific handicap for an entire day. They would go about their regular duties and activities, except with a handicap.

I could have said a lot more about the facilities at McNeese, but I believe if we can educate people on what it would be like to function with a handicap, we would not experience these problems. You can not resolve a problem, until you know what the problem is. They would be resolved by able and disabled people working together.

That is why I signed to write this article. It was not meant to bash McNeese or its Board of Regents for the conditions the disabled face, but to inform and to educate them on the work that still must be done.

Allen R. Hurlbut

Inaccessible Campus

by Brandie Durio

How would you feel if you had to use the bathroom but could not shut the door for privacy? What if you could not even fit in the bathroom and the closest one you could use was three buildings away?

The bathroom was only one of the many problems that the disabled students at McNeese faced daily. Others ranged from entrance ramps to using the elevators without any danger. Many people were not aware that there was a problem; but as the year grew on, so did these complaints.

Brenda Hunt, a "physically challenged" student, led a protest in 1990,

but accomplished little. "I believe that the people of McNeese care, but the state does not," said Hunt. She had reached senior standing when the deadline for compliance to the ADA (Americans with Disabilities Act) arrived. When asked how she felt about the university meeting requirements, Hunt said that she had seen no real improvements. "My goal is to make things better, so that in the future these problems will be easier for other physically challenged students," she said.

Hunt was only one of the many students with these complaints. Kevin Bruno, another physically challenged student, also felt the university was taking its time. "The ADA is the law, and should be first priorities," stated Bruno.

Sarah Granger, a more patient student, felt that McNeese was doing as good as could be expected. "The major problems in the buildings were handled moderately well, but I can't

say great because there are still problems," said Granger.

Although some students felt that no one was listening to their complaints or ideas, others felt differently. There was a temporary committee that handled the accommodations. Dr. Whitney Harris, a compliance officer of the committee, described his duty as advisor of administrative affairs han-

Although there were many people handling the ADA compliance, there was one man who had the real power, Dr. Larry DeRouen. Dr. DeRouen said the university was trying its best to comply with the ADA with the limited funds that were available. "We are trying to renovate with minimum funds. We have already spent thirty-five thousand dollars," stated Dr. Derouen. Dr.



HANDICAPPED students sometimes had trouble getting to and from buildings. Kevin Bruno has difficulty reaching the entrance to the auditorium because parked cars blocked the sidewalk. (Photo by Woodley Polynice)

Larry Derouen, director of facilities and planning, proposed a capital outlay budget request for the years 1993-1997. This budget was a project which would expand the available spending used to meet the ADA law. The proposed budget asked for \$1,291,667 the first year, \$1,041,667 the second year, \$541,666 the third year, and no expenditures for the last two years of the budget plan. This five year request plan comes to a total of \$2,875,000 which was sent to the Board of Trustees. Richard Futch of the Board of Trustees said that the board had already

viewed the capital request from McNeese. He stated that the Board of Trustees prepared an overall system-wide ADA compliance totaling \$10,000,000 over a five year program which means, if approved, McNeese would have the money needed to meet the laws. McNeese was making changes and trying in every way to comply with the ADA. ♦

THE CONTRABAND

The Contraband is the student run school newspaper. The paper is published each Wednesday during the fall and spring semesters except during holidays and exam periods. The deadline for all submissions is 5 p.m. Monday one week before the issue is to run. The opinions expressed in this paper are not necessarily the opinions of the McNeese Administration.

TELEPHONE:	ADDRESS:
Newroom 475-5645	The Contraband
Editor's Desk 475-5647	P O Box 91275
Business Office 475-5646	Lake Charles, LA 70609

News Manager Publicity Officer Editor Business Manager Advertising Manager Circulation Manager Correspondent	Executive Editor Business Manager News Editor Arts & Entertainment Editor Sports Editor Columnist
--	--

1996-1997

McNeese has been sued before because of inaccessible restrooms

8.

On or about January 25, 1993, HUNT was attempting to use the restroom in Frache Hall on the campus of MCNEESE, when she fell and sustained personal injuries and property damage to her wheelchair.

9.

HUNT's injury and damage were the direct result of the failure of MCNEESE to have restroom stalls accessible to the handicapped, i.e., the stall was too narrow for a wheelchair to negotiate and contained no hand rails.

10.

The omissions of MCNEESE are discriminatory under the provisions of 42 U.S.C. Sec. 12181 et seq., in that HUNT has been excluded, denied services, and otherwise treated differently than other individuals because of the structural barrier of insufficient facilities for persons with her disability.

Inaccessible restrooms top the list of McNeese problems.

List of Needs in Order of Priority:

1. The bathroom facilities in all buildings. \$7,000 min - \$9,000 max
2. The entrances to the Burton Business Center. \$8,000 min. - \$12,000 max
3. The curb ramps as indicated on attached map of campus. \$400
4. More parking spaces in all parking lots. \$100/space
5. More than one access ramp to buildings. \$10,800
6. Baseball Field \$1,000
7. FOOTBALL FIELD \$3,000
8. Tables in classrooms \$39,000
9. Auto. water fountains \$5000

McNeese admits that it prevents the disabled from attending school

“Tim Delaney, director of services for students with disabilities, agreed that accommodations at MSU need to be upgraded. According to Delaney, his office services around 100 students, whereas most other schools in the state serve anywhere from two to four times that amount. Delaney attributes the low numbers of students with disabilities at MSU to inadequate accommodations.”

McNeese student newspaper, Jan. 21, 1998

In his deposition, Delaney acknowledged this quote. His only response was to say that things were now better because his office serves 150 students instead of 100.

McNeese Knowingly Denies the Disabled Access to Its Cafeteria, Student Government, Newspaper, Yearbook, and Meeting Rooms

- Dr. Robert Hebert admits that the Old Ranch is one of the most important student buildings on campus and that it houses McNeese's cafeteria, meeting rooms, student government, newspaper, yearbook, debate team, and other offices.
- Yet Hebert defends McNeese's refusal to bring the Old Ranch into compliance, calling the rights of the disabled to enjoy these programs, services, and activities not "fundamentally important".



McNeese Will Not Bring Non-Academic Buildings Into Compliance

- McNeese owns all of the buildings on its campus.
- Yet Hebert claims that McNeese will not bring buildings such as the Old Ranch into compliance.
- Instead, he suggests that the “students” come up with the money to do this. This is a bizarre and unlawful attempt for McNeese to avoid responsibility under the ADA.



McNeese's Response: We Might Comply; But Don't Ask Us How

- McNeese makes only two arguments in its response brief:
 - It exploits the language of 28 CFR 35.150 and 35.151 to suggest that one compliant restroom anywhere on its sprawling campus is sufficient under the ADA.
 - It also suggests that unspecified “other methods” assure ADA compliance. Yet there is no evidence of any other methods in place that would ensure a readily accessible and usable campus.
- These arguments reflect an inaccurate understanding of the law.

Violation 2: McNeese will not install signage as required by law



Violation 2: McNeese will not install signage as required by law

- 28 CFR 135.163 requires that McNeese:
 - “Shall provide signage at all inaccessible entrances to each of its facilities directing users to an accessible entrance or to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each accessible entrance of a facility.”

Q. I guess another question that I want to ask, you know, we talked about the important role that the old Ranch has, and we talked about the fact that there's nowhere for somebody in a wheelchair to go to use the rest room for a facility that complies. What steps did you take -- and you've also admitted that you know that parts of campus don't comply. Do you put up any warning signs with a wheelchair with a slash through it or anything to let people know not to go into these rest rooms?

A. No, because we weren't told that that was a requirement to do something like that.



Violation 3: McNeese Will Not Draft a Self-Evaluation or Consider Public Comment



Violation 3: McNeese Will Not Draft a Self-Evaluation or Consider Public Comment

- 28 CFR 35.105 requires that public entities:
 - (1) “Conduct a written self-evaluation to evaluate which ‘services, policies, and practices, and the effects thereof’ do not comply with the ADA;
 - (2) Provide an opportunity to interested persons, including individuals with disabilities or organizations representing individuals with disabilities, to participate in the self-evaluation; and
 - (3) To maintain the self-evaluation on file and available for public inspection for three years.”



Violation 4: McNeese Will Not Draft a Transition Plan or Consider Public Input

- 28 CFR 35.150(d) requires that public entities:
 - “(1) Identify physical obstacles that limit accessibility of programs or activities to persons with disabilities;
 - (2) Describe in detail the methods that will be used to make the facilities accessible;
 - (3) Specify the schedule for taking the steps necessary to achieve compliance with this section, and if the time period of the transition plan is longer than one year,
 - (4) Identify the steps that will be taken during each year of the transition plan; and
 - (5) Identify the official responsible for implantation of the plan.”
- The plan must also:
 - “(1) Set forth the steps necessary to complete such changes;
 - (2) Provide an opportunity to interested persons, including persons with disabilities, to participate in the development of the transition plan by submitting comments, and
 - (3) Remain on file for public inspection.”



A Few Examples of Things That Happen Without a Plan

- Old Ranch has an electric door to get into the building but no accessible restroom inside.
- New Ranch ostensibly has an accessible restroom but no accessible door to get in the building.
- Farrar has a handicapped electric door at the top of a set of steps. On the other side of the building is a handicapped ramp leading to a non-accessible door that's often locked.
- The Disabilities Office isn't accessible to the disabled!

Some simple problems that could be solved with a transition plan

A. No, actually the electric door is on one side of the building, and the ramp is on the other side of the building.

.....

Q. Have you ever had a student complain that when they went to go into Farrar, the door was locked at the top of the ramp?

A. Yeah.

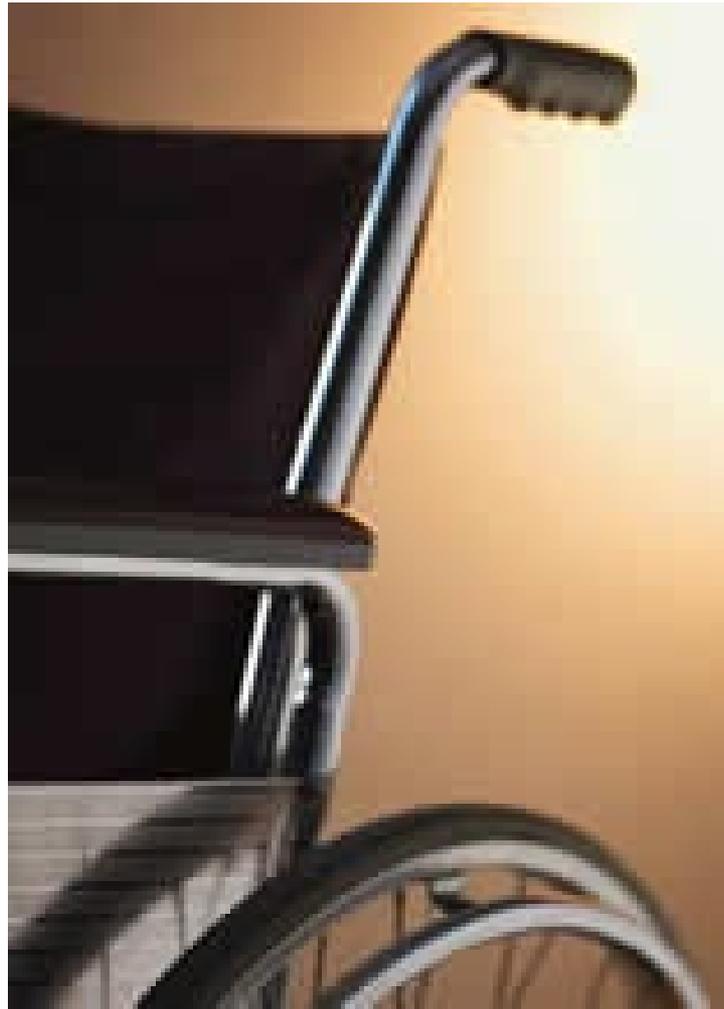
Q. Did that happen often?

A. It happened a few times. I'm not sure if that falls under maintenance or police department, whoever unlocks the doors. I don't really know. Not maintenance, custodial or police department.

Wasted Money, No Compliance, No Plan, No Accommodations

- The self-evaluation and transition plan is designed to help public entities prepare their facilities so that discrimination never occurs.
- McNeese has no central plan and builds projects haphazardly, often wasting money with no increase in accessibility or usability.
- McNeese chooses to wait for discrimination to occur and then decide whether it feels like remedying the problem after-the-fact rather than follow a master plan.
- Disabled students will never have a usable campus at this rate!

Violation 5: McNeese Illegally Requires that the Disabled “Register”



Mandatory “Registration” Violates the ADA

- 28 CFR 135.106 and *Schonfeld* require that McNeese be “readily accessible”.
- It is just as unlawful to require the disabled to “register” as “disabled” as it is to students to register on the basis of their race or religion.
- The disabled cannot be singled out or be required to go out of their way to escape discrimination.
- Registration has the effect of singling out and creating additional barriers to the disabled and is an additional form of discrimination.

Statutes and cases prohibiting “registration” as a condition for access

- La. R.S. 46:2254 forbids McNeese to elicit or attempt to elicit information from students about disabilities.
- “Cases involving access generally proscribe to the theory that a plaintiff bringing a claim alleging inadequate access to a facility does not have to formally request accommodation”
Panzardi-Santiago vs. University of Puerto Rico, 200 F.Supp.2d 1, 18 (D.P.R.2002)
- “The ADA does not require plaintiffs bringing a claim alleging inadequate access to a facility to have ‘formally’ requested to use the facility.”
Schonfeld vs. City of Carlsbad, 978 F.Supp.1329 (S.D.Cal.1997), *affirmed*.

McNeese admits that “registration” carries a stigma on campus

register with me. And a lot of people, you said pride a while ago, I think are ashamed. I think a lot of people -- there's a rumor, it's not true, but they assume that when they graduate somewhere on their diploma or their transcript it's going to say they were registered with my office, and then they think that's a mark against them like, oh, I got extra privileges or things like that, so. Which is not true, but, you know.

Yet McNeese Requires The Disabled to “Register” To Receive Accommodations

Q. Okay. When a student registers with you, what is that? Do they have to register in order to receive services?

A. To receive accommodations, yeah. We get their

Deposition of Tim Delaney

Q. So, McNeese wouldn't accept her -- wouldn't accept a complaint --

A. No, I wouldn't say that either. I'm saying that I think that it would look better on her part if she was registered with my office, in other words, if she would follow the rules like everyone else.

Q. Okay -- what --

Deposition of Tim Delaney

- A. Well, no, it's just -- in order for her to go through me to get services or accommodations, you must register, by law, through my office.
- Q. Okay.
- A. In other words, I have to have documentation. I mean, she could tell me this and that, but unless I have proof from a doctor saying she has a disability, then that's just someone talking, you know.
- Q. So, if somebody shows up in a wheelchair, that's not proof enough?
- A. No. Anybody can ride a wheelchair. You can go buy one at the pawn shop, you know.

Deposition of Tim Delaney

McNeese profits off of disabled students: \$50,000 a piece

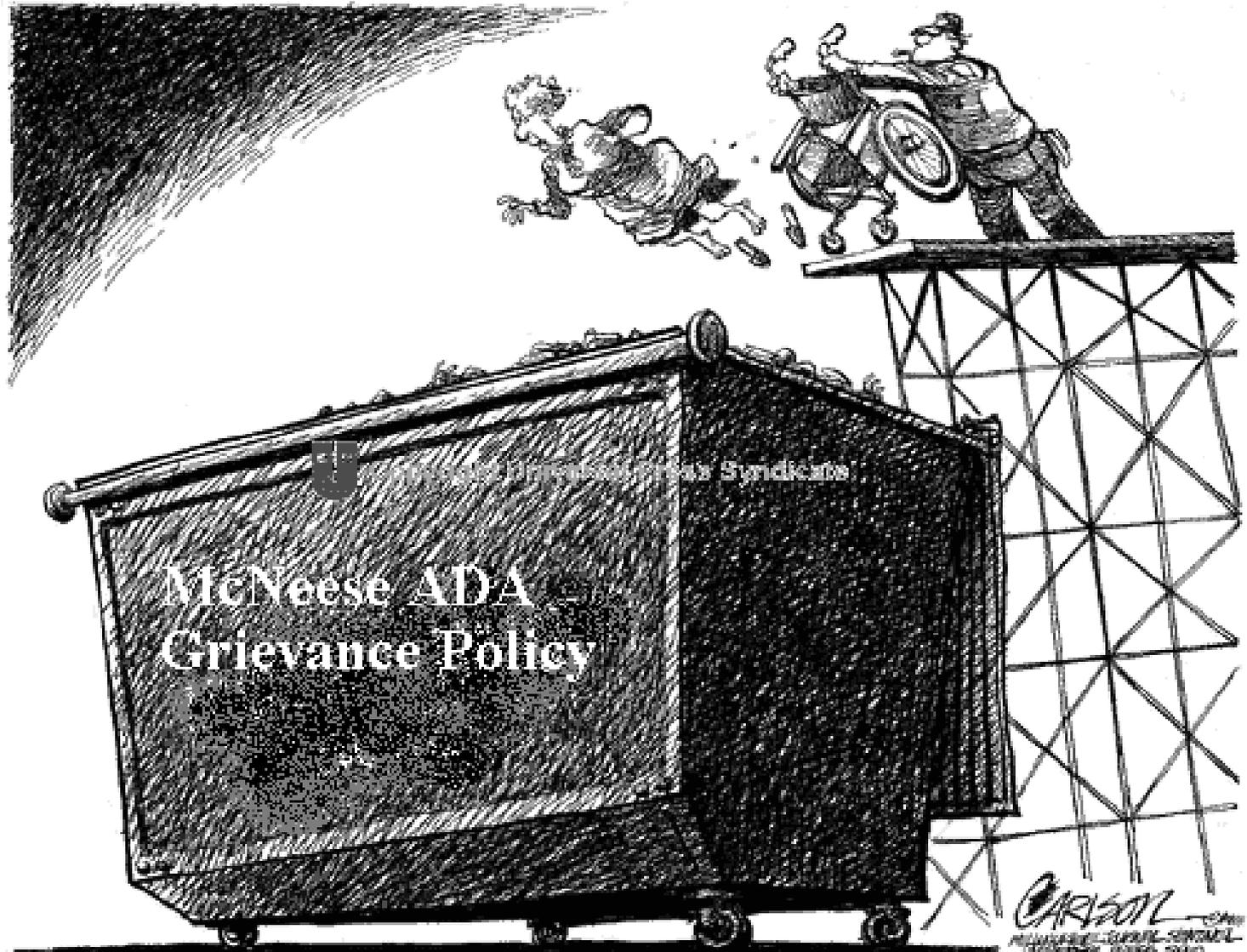
A. No. Actually, this is just my version, but I think they look at each student as probably \$50,000. So, no, they would love to see my students increase. When I first started we had, I think, less than 60, and I'm like at 150 now. So it's -- that's 50,000 times each one, so that's good.

Deposition of Tim Delaney

McNeese knew of Covington's disability before her accident

never did. But she'd talk to me, and she just would ask me questions about just things pertaining to her disability and things like that, and I always kept trying to get her to register with me, and this is like in, I think, 2000. It was a semester before she got in the accident. I remember she had to have some kind of -- I remember her disability, something with her foot. She had to have some kind of surgery, and we just talked about that, you know, just about, I guess, surgery and things like that.

Violation 6: McNeese Fails to Provide a Meaningful Grievance Process



28 CFR 35.107(b) Requires McNeese to Provide a Meaningful Grievance Process

- “(b) Complaint procedure. A public entity that employs 50 or more people shall adopt and publicize grievance procedures providing for prompt and equitable resolution of complaints alleging any action that would be prohibited by this part.”

McNeese Has No Grievance Policy and Refuses to Resolve Covington's Grievance

- As noted, Covington has made numerous complaints to McNeese, including:
 - Inaccessible classrooms in Farrar Hall
 - Frequently broken elevators throughout campus
 - Inaccessible restrooms throughout campus
 - No self-evaluation or transition plan or public comment allowed
 - Defective light ballasts cause seizures
 - Some buildings have no access ramps, inadequate access ramps, or ramps with inaccessible or locked doors
 - No method of evacuating the disabled from upper floors in the event of an emergency or elevator malfunction
 - No wheelchair access in auditoriums such as Farrar
 - Teachers advise students to withdraw from classes rather than agree to move them to accessible locations
 - Plaintiffs' Response to Defendants' 1st Set of Interrogatories.

McNeese Defenses



McNeese Suggests a Hardship

- The ADA is an unfunded mandate.
- To prove a hardship, McNeese has the burden of showing that:
 - On or before Jan. 26, 1995, the head of the institution (Hebert) drafted a written statement establishing the reasons why McNeese could not comply.
 - Such statement must prove that compliance would result in such a burden to a service, program, or activity that it would be fundamentally altered.
 - McNeese must **consider all resources available** to it in reaching this conclusion.

McNeese is expected to shoulder a substantial short-term burden

“There is no general undue burden defense in the ADA. Rather, following the Section 504 regulations for program access in existing facilities, as Congress intended, the ADA regulations provide for the defense only in limited circumstances. . . .

While the integration of people with disabilities will sometimes involve substantial short-term burdens, both financial and administrative, the long-range effects of integration will benefit society as a whole.”

Kinney vs. Yerusalim, 9 F.3d 1067, 1074 (3rd Cir.1993)

Hebert Defeats McNeese's Defense

- Dr. Hebert testified that:
 - McNeese understands its obligations under the ADA.
 - McNeese does not claim any exemption under the ADA.
 - McNeese knows that the ADA is an unfunded mandate that “they expect to be enforced.”



Actually, McNeese is awash in money

- Since the ADA was passed, McNeese has spent \$528,380,592– over **half a billion dollars**.
- In that time, McNeese’s budget doubled. Yet even with an additional \$25 million, McNeese has made no contingency for its most basic ADA needs.
- In 2005 alone, McNeese spent \$50 million.
 - \$240,558 on travel
 - \$6,268,482 on non-specified “other services”
 - In five years, its budget will grow by \$6,217,429
 - Last year, it received \$1,776,135 more in self-generated funds than expected, an 8.65% earnings surprise!

\$89,568 sits in a campus “beautification” account

- Two years ago, McNeese spent \$300,000 to “beautify” the New Ranch. This includes new lighting, painting, new flooring, new ceilings, and new furniture.
- It is undisputed that there isn’t a single accessible entrance to the New Ranch.
- McNeese chose to “beautify” a building that the disabled aren’t able to even use instead of taking a step toward ending its discrimination!

\$6 Million in Casino Money Buys a Lot of Big Screen TVs

- Beginning in 1995, McNeese became one of the few schools in Louisiana to have supplemental and completely discretionary casino money.
- McNeese averages \$630,408.42 per year in gambling money, cumulatively, **three times** what McNeese needed to bring its entire campus into compliance.
- Of this \$6 million, some of the following items were purchased:
 - 41 inch big screen televisions
 - \$11,123.89 robotic lights
 - \$1,456 portable sound system
 - \$1,724 laser disc players
 - \$2,577.62 “developmental workshop”
 - \$2,115 in landscaping for Enrollment Office
 - \$4,145.50 in furniture for Enrollment office
 - \$38,073.38 for computer scanners

McNeese Hasn't Figured Out How to Spend \$231,518 of this Money!

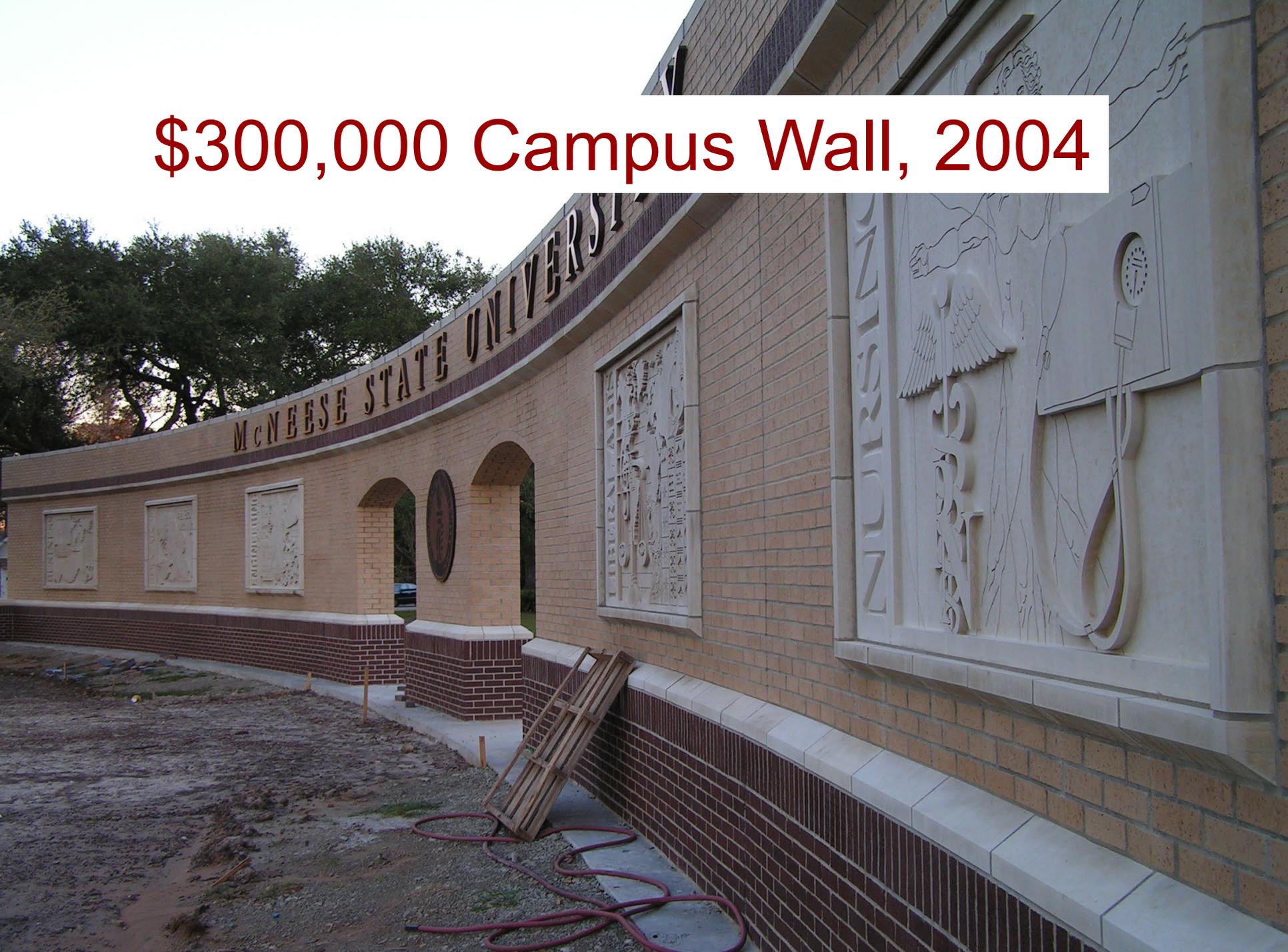
- To date, \$231,518.02 in casino funds sits in a McNeese bank account. McNeese hasn't yet determined how to spend it. Apparently, it won't be on the ADA.

\$1,000,000 Sits Unused in the Building Use Account

- McNeese has run surpluses ranging from \$511,000 to \$1,214,920 in its “building use” account.
- Last year, McNeese had nearly \$1 million in that account.
- Instead, McNeese has used this money for other projects.
- Dr. Hebert defends his decision not to spend this money on the ADA.



\$300,000 Campus Wall, 2004



Some Recent McNeese Projects

- New Dorms
- New Phone System, \$1,497,600
- Fine Arts Renovation, \$8,127,915
- Library Renovations, \$10,637,204
- Contraband Bayou Improvements, \$2,108,400
- Athletic Complex, \$1,908,000
- Swimming Pool Renovations, \$300,000
- Land Acquisition, \$972,000
- Old Ranch and New Ranch Renovations, over \$1 million
- **Without a Self-Evaluation or Transition Plan, we have no idea whether any of these renovations are even ADA-compliant.**

ADA Money Is Wasted

- Because McNeese has no transition plan, it completes its projects hap-hazardly, such as when it placed an electric door at the top of a set of stairs.
- McNeese has spent \$400,000 on ADA projects such as a copy machine for Tim Delaney and two special computers in the Old Ranch that Delaney admits “really nobody uses”. Delaney even admits that, “A lot of people probably look at it like it’s a waste. . . .”

McNeese Had Access to Additional Methods of Raising Funds

- The McNeese Foundation raises money on behalf of the University.
- McNeese could assess fees through:
 - Board-generated fees
 - University-generated fees, and
 - Student-generated fees

Compliance isn't expensive

- McNeese admits that its student union restrooms would only cost \$12,000 to bring into full compliance. Yet six years after this serious accident and this lawsuit, McNeese will not find \$12,000 out of a budget of \$50 million and after over \$1 million in renovations to the Old and New Ranches.
- Without a self-evaluation or transition plan, it's hard for McNeese to claim a hardship.

Conclusion: No Hardship Defense

- McNeese never followed the procedure for declaring a hardship.
- The head of McNeese specifically repudiated any defense under the ADA.
- McNeese does not meet its hardship burden.
- McNeese doesn't even know what it would cost to comply, so it can't quantify a hardship.
- McNeese has surplus money that it won't spend on the ADA.

Louisiana State Statutes Prohibit Discrimination



McNeese Discriminates Under La. R.S. 46:2254

- La. R.S. 46:2254 parallels the ADA and reads:
 - No otherwise qualified person shall, on the basis of a handicap, be subjected to discrimination by any educational facility, in any real estate transaction, or be excluded from participating in, or denied the benefits of, any program or activity which receives financial assistance from the state or any of its political subdivisions.

McNeese Discriminates Under La. R.S. 46:2254(F)

- La. R.S. 46:2254(F) is stronger than the ADA and reads:
 - An educational institution shall not:
 - (1) Discriminate in any manner in the full utilization of the institution or the services provided and rendered thereby to an otherwise qualified individual because of a handicap that is unrelated to the individual's ability to utilize and benefit from the institution to its services, or because of the use of adaptive devices or aids.

McNeese Discriminated Under La. R.S. 46:2254(J)(1)

- La. R.S. 46:2254 provides that:
 - Any program or activity which receives financial assistance from the state or any of its political subdivisions shall not directly or through contractual, licensing, or other arrangements:
 - (a) Deny an otherwise qualified person on the basis of handicap the opportunity to participate in or benefit from the aid, benefit, or service;
 - (b) Provide an otherwise qualified person with an aid, benefit, or service that is not as effective as, or equal to, that provided to others because of their handicap;
 - (c) Provide different or separate aid benefits or services to otherwise qualified persons because of handicap, unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others.

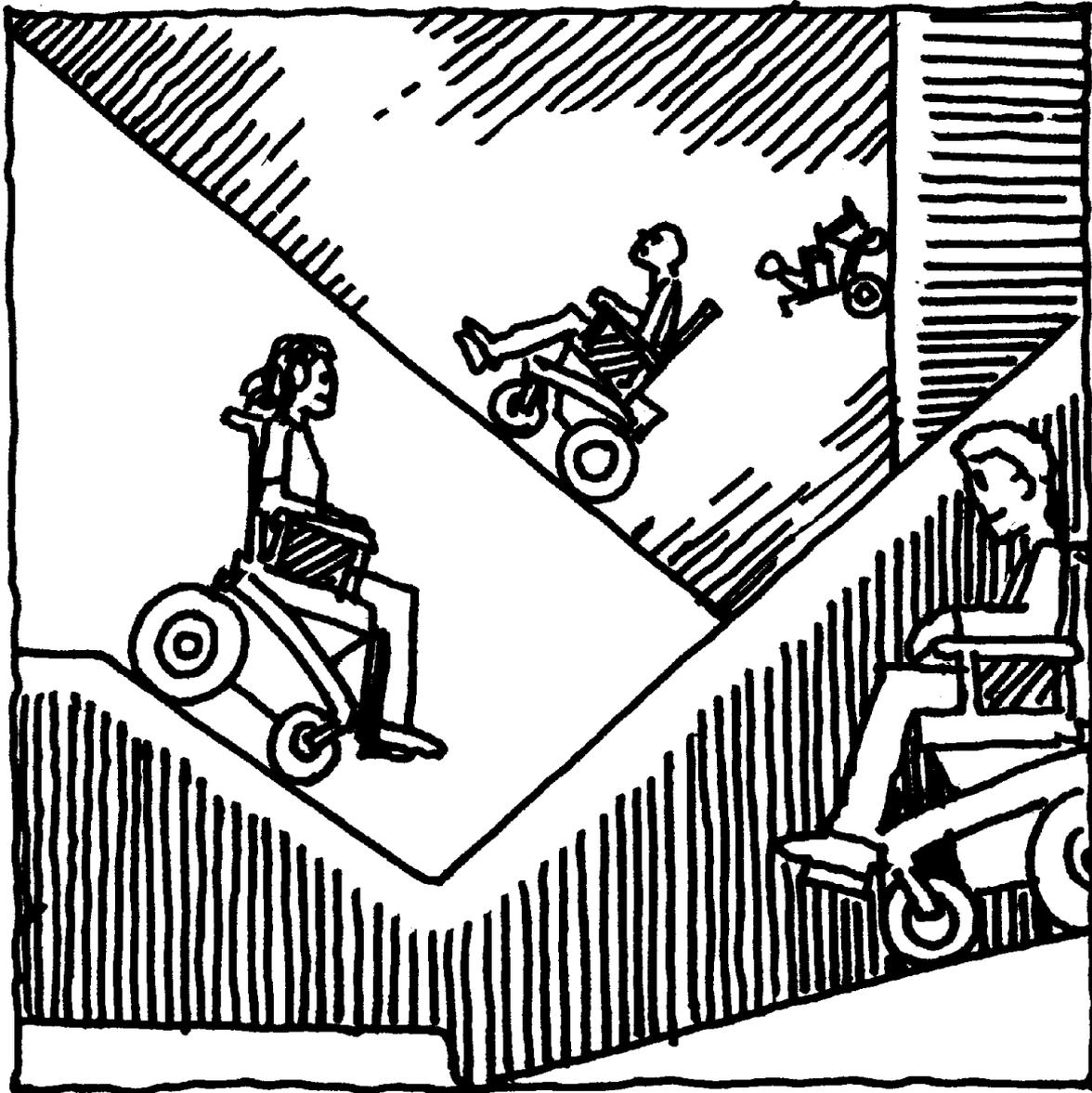
La. Statutes Also Allow Equitable Relief

- Like the ADA, Louisiana's statutes allow equitable relief by individuals discriminated against by a public institution and goes as far as to prohibit such an institution from receiving state funding.
- Under the technical reading of these statutes, McNeese should not have received funding from the State for the last 30 years.

McNeese Violated Covington's Rights Under the Louisiana Commission on Human Rights

- La. R.S. 51:2231 provides that the State must:
 - Safeguard all individuals within the state from discrimination because of race, creed, color, religion, sex, age, disability, or national origin in connection with employment and in connection with public accommodations; to protect their interest in personal dignity and freedom from humiliation; to make available to the state their full productive capacities in employment.

Equitable Relief



Injunction is Mandatory

“Appellants have succeeded on the merits of their claim, and they will suffer substantial irreparable harm if the programs, services, and activities held in the Montgomery County Courthouse are not made accessible as required under the statutes. Furthermore, public interest strongly favors mandating accessibility.

When these factors are balanced against the harm to the county of making its programs, services, and activities accessible, the balance tips heavily in favor of granting appellants the relief they request. Therefore, it was an abuse of discretion for the court to deny appellants mandatory injunctive relief.”

Layton vs. Elder, 143 F.3d 436, 472 (8th Cir.1998)

Plaintiff Meets Her Burden Today

- Covington is entitled to injunctive relief under the ADA. Covington must show simply that she faces real and present discrimination which will be remedied only with court intervention. The elements to balance are:
 - The threat of irreparable harm to the movant;
 - The harm to be suffered by the nonmoving party if the injunction is granted;
 - The public interest

Covington Suffers Irreparable Harm Without This Injunction

- There is a substantial threat of irreparable harm to Covington if this injunction is not granted. She is being denied an education every day that McNeese violates her civil rights by refusing to comply with the ADA. Until she receives her education, she is unable to fulfill her career goal of being a school teacher.

McNeese Suffers No Harm From Complying With the ADA

- McNeese would suffer no harm if this injunction were granted. Indeed, by investing the necessary funds into its infrastructure, McNeese would become a more usable institution able to attract a greater diversity of students.
- The State of Louisiana would benefit by this injunction by gaining a tax-paying, working citizen. Without this injunction, Covington may be unemployable and may draw welfare from the State for the rest of her life.
- As a matter of law, the Louisiana Legislature has stated that the cost of upgrading facilities to accommodate disabled students is less than the cost of not upgrading facilities.

The Public Interest Benefits from This Injunction

- Certainly, McNeese and the State of Louisiana become better places by accommodating the disabled. Generations of Louisianians who have been excluded from society will be able to enjoy the benefits of an education without regard to their physical impairments.
- There is simply no argument against this relief.



Attorney Fees

- A party who successfully shows discrimination is entitled to attorney fees.
- Attorney fee awards promote the public policy of encouraging the disabled to enforce their rights under these statutes.
- Attorney fees are mandatory if they are reasonable and a public entity is found to have discriminated.

Prevailing plaintiff in ADA cases are entitled to recover attorney fees

“A prevailing plaintiff in an ADA action is generally entitled to recover fees paid to an attorney unless special circumstances render such an award unjust.”

Rhoads vs. FDIC, 286 F.Supp.2d 532, 541 (D.Md.2003).

ADA depends on attorney fees

“The Americans with Disabilities Act has been appropriately described as ‘one of the landmark civil rights laws in this country.’ To promote the interests of this legislation, Congress turned to the private bar, as it had to promote the interests of our nation’s other civil rights laws. For that reason, Congress expressly authorized awards of reasonable attorneys’ fees, including litigation expenses and costs, to prevailing parties in ADA claims.

Indeed, were it not for the efforts of those attorneys willing to undertake the representation of ADA plaintiffs, there would be little, if any, enforcement of this landmark statute.”

Hansen vs. Deercreek Plaza, LLC, 420 F.Supp.2d 1346 (S.D.Fla.2004).

Total ADA attorney fees are often in the millions; Plaintiffs request is reasonable for a 6 year old case

- \$1,825,000 in attorney fees, *Gaskin vs. Commonwealth of Pennsylvania, Pennsylvania Department of Education*, (E.D.Pa.2005)
- \$952,614 in attorney fees, *Montez vs. Romer*, (D.Co.2003)
- Average hourly rates vary from \$165 per hour to \$295 per hour. See *Pittari vs. American Eagle Airlines*, 2006 U.S. Dist. LEXIS 28722 (W.D.Ark. 2006) to \$295 per hour in *Hansen vs. Deercreek Plaza, LLC*, 420 F.Supp.2d 1346 (S.D.Fla.2004).

Plaintiffs Had No Choice

- Plaintiffs have expended 1,400 hours of work over the course of six years.
- Plaintiff counsel has outlasted four sets of opposing counsel and offered to settle with each.
- Plaintiff counsel meticulously and repeatedly explained these violations to Defense counsel and urged them to offer some sign of compliance. McNeese steadfastly refused and claims that it should not have to accommodate Covington.

A hearing is not required on attorney fees

“A hearing on a fee petition is required only ‘where an evidentiary hearing is requested, where there are disputes of fact, and where the written record is not sufficiently clear to allow the trial court to resolve the disputes of fact.

An evidentiary hearing is unnecessary for issues about which the district court possesses sufficient expertise: Such matters might include the reasonableness of the fee, the reasonableness of the hours and the sufficiency of the outcome.”

Hansen vs. Deercreek Plaza, 420 F.Supp.2d 1346 (S.D.Fla.2004).

What Do Plaintiffs Want Today?

This is not a normal MSJ. Ruling for the Plaintiffs does not deprive the Defendants a day in court. We are not asking the Court to determine liability. We only ask the Court to declare what the Defendants have already admitted— that they violate the ADA.

By rendering this admission into a judgment and an order, this Court ensures that McNeese understands its obligations under the law and allows disabled students such as Covington to enjoy the benefits provided by law.

S. O. S.

students offering support

When a student came across someone in a wheelchair, did he know to open the door as a kind gesture or to quietly pass by in fear of unintentionally embarrassing the person? What did a student do if someone in his class suddenly had a seizure? Sometimes it did happen that even those who were educated in dealing with both the physical and emotional aspects of students with handicaps or disorders either did not know what to do when situations occurred, or were not comfortable in dealing with the situation. This is what Collette Covington, president and founder of new organization Students Of-

fering Support, was aiming to address. Covington stressed that "the primary goal of the organization is to help educate students and faculty on the needs of persons with disabilities."

Students Offering Support (S.O.S.) gained its organization status in the spring of 1994. Near the end of the 1994 fall semester, membership had reached approximately twenty. Covington relayed that, "although enrollment was low, students were encouraged to realize that the organization is indeed necessary and that the group was very positive in the attempt to teach its members to become self-dependent." **by Kay Johnson**



Photo by Rick Veal



Photo by Rick Veal

Founder and President Collette Covington gives Trevor Medina a thank-you gift. Melnis, Public relations officer, designed the S.O.S. logo. Members Cathy Didier, Wil Chentier, Deanna Bergeron, Charles Fontenot, Dr. Morris, advisor, Collette Covington, Jade Covington, and Alecia King get together at the end of the year banquet. One of the goals of the organization was to educate the faculty and student body of the needs of persons with disabilities.