

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 96-M-3012

KEVIN W. WILLIAMS,

Plaintiff,

v.

THE UNIVERSITY OF DENVER,  
a Colorado corporation,

Defendant.

**SECOND AMENDED COMPLAINT**

Plaintiff Kevin W. Williams, by and through his attorneys, Fox & Robertson, P.C., hereby brings this Second Amended Complaint against Defendant the University of Denver.

**INTRODUCTION**

1. Plaintiff brings this action for damages to redress injuries suffered as a result of Defendant's violations of the Rehabilitation Act, 29 U.S.C. 701 et seq., and for injunctive relief to cure Defendant's violations of the Rehabilitation Act and Title III of the Americans with Disabilities Act, 42 U.S.C. § 12181 et seq.

## **JURISDICTION AND VENUE**

2. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1343.

3. Venue is proper within this District pursuant to 28 U.S.C. § 1391.

## **PARTIES**

4. Plaintiff Kevin Williams is and was at all times material hereto a resident of Colorado residing at 3425 S. Sherman Street, Apt. 610, Englewood, CO 80110. As a result of a diving accident in 1986, Mr. Williams is a tetraplegic -- that is he is paralyzed from the chest down with limited use of his arms and hands. Mr. Williams uses an electric wheelchair for mobility and is substantially impaired in several major life activities. He received his Bachelor of Arts degree in political science and received his Juris Doctor degree from the University of Denver College of Law on December 20, 1996. He became a member of the Colorado Bar on or about May 15, 1997 and is currently the general counsel of the Colorado Cross-Disability Coalition.

5. Defendant University of Denver is a corporation incorporated in the state of Colorado. It is a private undergraduate and postgraduate educational institution located in Denver, Colorado. The University's College of Law is a private law school located at the University's Park Hill campus.

Defendant the University of Denver is legally responsible for the actions of the College of Law and its agents alleged herein.

### **GENERAL ALLEGATIONS**

6. The University of Denver College of Law is a private law school located at the University's Park Hill campus that offers courses of study leading to, among others, the Juris Doctor degree. The College of Law offers, as benefits and services of its program of legal study, among other things, classes, seminars, guest lectures, student organizations and activities, internships and externships, contacts with faculty, administration and fellow graduates, career services, and an extensive array of alumni activities. The College of Law -- through its students, faculty, alumni and facilities -- is an active participant in the Denver legal community and offers a variety of benefits and services to members of this community and to the general public. On information and belief, the College of Law and/or the University of Denver lease the premises of the College of Law to others for use in conducting classes, lectures, continuing legal education and other programs open to the Denver legal community and the general public.

7. Plaintiff Kevin W. Williams received his Bachelor of Arts degree from the University of Colorado at Denver, applied and was admitted to the University of Denver College of Law, successfully completed the course of study for the Juris Doctor degree and received that degree on December 20, 1996. Mr. Williams is currently a member of the Colorado Bar and an attorney practicing in Denver.

As such, he was a qualified handicapped person as defined in the Rehabilitation Act and its regulations for all of the programs, benefits and services that the College of Law provides to its students and is currently a qualified handicapped person for all programs, benefits and services that the College of Law provides to its alumni, members of the Denver legal community and the general public.

8. The College of Law uses a number of different buildings on the Park Hill campus, each of which contains architectural barriers that have discriminated and continue to discriminate against Mr. Williams because he uses a wheelchair. These barriers, in and of themselves, violate the Rehabilitation Act, the Americans with Disabilities Act and their respective implementing regulations. The knowing failure by the College of Law to remedy these violations since at least March 22, 1988 -- the date of passage of the Civil Rights Restoration Act making the Rehabilitation Act applicable to the entire school -- constituted and continues to constitute intentional conduct and/or deliberate, callous or reckless indifference to Plaintiff's rights under the Rehabilitation Act.

9. By -- among other things -- segregating Mr. Williams to the back of class and to the margins of many events and completely denying him access to other events, student organizations and other programs, Defendant's architectural barriers have denied and continue to deny Mr. Williams the opportunity to participate in and/or benefit from benefits and services of programs of the College of Law and have provided and continue to provide Mr. Williams with benefits and/or services that are not equal to, that are not as effective as, and that are largely separate from those provided to nondisabled persons. As such, Defendant has discriminated and continues to discriminate against Plaintiff on the basis of disability.

10. These barriers will continue to discriminate against Mr. Williams as an alumnus of the College of Law and as a member of the Denver legal community by preventing him from participating in alumni, CLE and other programs held at the College of Law on a basis that is equal to and as effective as that of nondisabled alumni and will cause him to be, at these events, separated from nondisabled alumni. For example, since graduation -- in his capacity as an alumnus and member of the legal community -- Mr. Williams has made use of and will make use of -- among others -- the classrooms in the Lowell Thomas Law Building, the Davis Auditorium, the Atrium, and the student organization offices. As such, he will likely continue to experience discrimination in these locations.

11. In addition, College of Law policies -- for example, those concerning shut-down of elevators and automatic doors -- discriminate against Mr. Williams on the basis of disability in his attempt to participate in the benefits and services of the College of Law. For example, following Mr. Williams's graduation, he has attended several classes at the Lowell Thomas Law Building, including a bar review course and a CLE training course. During both programs, Mr. Williams had the experience of being prevented from entering the building because the automatic doors had been turned off at a time when the doors in question were open. As such, Mr. Williams was prevented from entering while non-disabled participants could come and go.

12. The University provides a regular transportation service between the Park Hill campus and the main campus. The vehicles used for such transportation are not accessible to or usable by persons in wheelchairs nor is the transportation program, when viewed in its entirety, accessible to or usable by persons in wheelchairs.

13. On information and belief, removal of the architectural barriers described above is -- and has been since the ADA became applicable to Defendant -- readily achievable. As such, Defendant has had, since that time, an obligation to remove such barriers.

14. In addition, Defendant has been -- since at least March 22, 1988 --

1. prohibited from denying a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit or service; affording a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others; providing a qualified handicapped person with an aid, benefit, or service that is not as effective as that provided to others; providing different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others; ... [or] otherwise limiting a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit or service, and
2. required to operate any program or activity conducted in an existing facility so that the program or activity, when viewed in its entirety, is readily accessible to handicapped persons, giving priority to those methods that provide such programs or activities in the most integrated setting appropriate.

With respect to the programs and activities of the College of Law conducted during the time Mr. Williams was a student, Defendant has not met these standards.

15. In addition to the discrimination Plaintiff has suffered because of Defendant's architectural barriers, Plaintiff has also been subjected to a pattern and practice of intentional discriminatory conduct on the basis of disability by the College of Law. This pattern and practice has included but is not limited to: scheduling an event at which Mr. Williams was to be honored in an inaccessible location; refusing funding and recognition to a student organization of students with disabilities co-founded by Mr. Williams where such funding and recognition were routinely afforded organizations of non-disabled students; asking Mr. Williams and other targeted disabled students to sign forms attesting to the College's antidiscrimination policy while other covered students were not required to sign such a form; holding Mr. Williams up to public ridicule and otherwise retaliating against him for requesting that the Defendant comply with the Rehabilitation Act and the ADA.

16. Mr. Williams has repeatedly informed the University and College of Law of its various architectural violations and other discriminatory conduct during his three and a half years at the school and attempted to persuade them to remedy these violations. He has spent many hours over this time meeting with representatives of the University to discuss these violations. It was his hope that his letters and meetings would cause the College of Law to comply with the law.

17. While Defendant has repeatedly promised over the past several years to take certain actions to correct some of the architectural barriers described in this Amended Complaint, the barriers

remain unchanged and, prior to the filing of the present lawsuit, Defendant was unwilling to make a binding commitment to bring the school into compliance with governing laws and regulations.

18. On information and belief, over the past several years, the University of Denver and the College of Law have commissioned and reviewed several studies of compliance by the school with relevant access laws. As such, the University and the College have long been on notice that they do not comply with these laws.

19. The architectural and other barriers, policies and conduct described above have caused, are continuing to cause and in the future will cause damage to Mr. Williams including but not limited to the humiliation, embarrassment, anger and emotional distress of segregation and discrimination on the basis of disability, the losses associated with receiving a legal education that was not equal to, as effective as or integrated with that of other students, and the inability to participate on an equal basis in benefits and services that the College of Law provides its alumni, the Denver legal community, and the general public.

**FIRST CLAIM FOR RELIEF**  
(Violation of the Rehabilitation Act)

20. Plaintiff realleges and incorporates by reference the allegations set forth in paragraphs 1 - 19 above as if fully set forth herein.

21. Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, prohibits discrimination on the basis of disability by recipients of federal funds.

22. The University of Denver and its College of Law receive and, at all times relevant to the claims made herein, have received federal funds.

23. The architectural and other barriers, policies and conduct described above violate the Rehabilitation Act of 1973 and its implementing regulations.

24. Plaintiff Kevin Williams has been, continues to be and will in the future be, damaged by the architectural and other barriers, policies and conduct described above.

**SECOND CLAIM FOR RELIEF**  
(Violation of the Americans with Disabilities Act)

25. Plaintiff realleges and incorporates by reference the allegations set forth in paragraphs 1 - 24 above as if fully set forth herein.

26. Title III of the Americans with Disabilities Act prohibits discrimination on the basis of disability by any person who owns, leases (or leases to) or operates a place of public accommodation. 42 U.S.C. § 12182.

27. Public accommodations covered by Title III include auditoriums, lecture halls or other places of public gathering, undergraduate and postgraduate schools or other places of education. 42 U.S.C. § 12181(7)(D) & (J).

28. The University of Denver College of Law owns, leases (or leases to) and/or operates a place of public accommodation as defined in the Americans with Disabilities Act.

29. The architectural and other barriers, policies and conduct described above violate Title III of the Americans with Disabilities Act and its implementing regulations.

30. Plaintiff Kevin Williams has been, continues to be and will in the future be, damaged by the architectural and other barriers, policies and conduct described above.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully prays:

31. That this Court assume jurisdiction;

32. That this Court declare the actions of Defendant complained of herein to be in violation of the Rehabilitation Act, 29 U.S.C. § 794 et seq., and the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq.;

33. That this Court issue an injunction ordering Defendant to take appropriate steps to bring those features of its program and facilities likely to be used by Mr. Williams in the future into compliance with the Rehabilitation Act and the Americans with Disabilities Act.

34. That this Court award Plaintiff compensatory damages under the Rehabilitation Act in an amount to be proved at trial;

35. That this Court award reasonable fees and costs to Plaintiff's attorneys;

36. That this Court award such additional or alternative relief as may be just, proper and equitable.

**JURY DEMAND:** Plaintiff demands a jury on all issues which can be heard by a jury.

Respectfully submitted,

FOX & ROBERTSON, P.C.

Amy F. Robertson  
Timothy P. Fox  
1675 Larimer Street  
Suite 610  
Denver, CO 80202  
(303) 595-9700

Dated:

Attorneys for Plaintiff

Address of Plaintiff:

3425 S. Sherman St.  
Apt. 610  
Englewood, CO 80110