



Town of Clarksburg, Massachusetts

PART B – Evaluation of Non-discriminatory Policies & Practices in Programs, Services & Activities

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Introduction

In an effort to provide and maintain compliance with the American with Disabilities Act (ADA), the Town of Clarksburg contracted with the Institute for Human Centered Design (IHCD) to undertake a comprehensive assessment of its policies, practices and procedures as well as its facilities to determine compliance with the requirements of the Americans with Disabilities Act (ADA). The review and recommendations provided in this assessment also go beyond strict compliance assessment to recommend enhancements to current conditions that would result in a more usable, inclusive and welcoming environment for members of the Clarksburg community.

Information about corrective action will include recommendations based on Title II of the ADA as well as recommended “*best practices*” for each aspect that requires action.

The assessment included non-discrimination in policies, practices and procedures for all of the Town’s programs, services and activities including those related to effective communication and policies, practices and procedures relative to employment.

Corrective action is needed in policies and procedures to create written policies that would ensure the Town of Clarksburg’s compliance with applicable laws. In addition, the Town may wish to consider making a commitment to a more accessible website, and the Town has taken an important step in that direction by requesting a website accessibility report from IHCD. Choosing to make the website completely accessible would make it available to site visitors who use assistive technology such as screen readers as well as to website visitors with a mix of other functional limitations. The website is also a valuable asset in communicating the Town’s commitment to equal opportunity for people with disabilities through a clear statement and contact information for the ADA Coordinator. It can also provide a helpful opportunity to share information about accessible routes to reaching the Town’s programs and activities including meetings as well as requesting effective communication or modification of policies.

This report summarizes IHCD’s findings of ADA Title II compliance. The information pertinent to this assessment was obtained by an on-line ADA questionnaire developed by the Institute for Human Centered Design and submitted by two (2) departments from the Town of Clarksburg, information from the Town’s website and from materials forwarded to IHCD by Town Administrator. A questionnaire was also submitted to the Clarksburg Commission for Americans with Disabilities (which may also be known as the Commission on Disability) and returned by three (3) participants. This mix of sources constitutes the basis for this compliance assessment report. It is clear that the Town understands its obligations under Title II of the ADA but additional steps are necessary to ensure that

people with disabilities enjoy the same opportunities to participate in its programs, services and activities as Clarksburg residents without disabilities.

Analysis

Title II of the ADA prohibits discrimination on the basis of disability. Specifically, Title II requires that:

No qualified individual with a disability shall, on the basis of 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 any public entity (28 CFR Part 35.130 (a)).

This report is divided into sections where these requirements apply. Each section includes the applicable citation from Title II of the ADA; IHCD's summary of findings after reviewing answers from the ADA questionnaire and information from the website and other previously mentioned sources. It also includes IHCD's recommendations for the Town of Clarksburg to implement.

I - Designation of Responsible Employee

Title II of the ADA makes clear that a public entity must designate a responsible employee and adopt grievance processes.

A public entity that employs 50 or more persons shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under this part, including any investigation of any complaint communicated to it alleging its noncompliance with this part or alleging any actions that would be prohibited by this part. The public entity shall make available to all interested individuals the name, office address, and telephone number of the employee or employees designated pursuant to this paragraph. (28 CFR Part 35.107 (a)).

Title II provides little specific guidance for implementing this requirement but the primary role of the designated employee, also called the ADA Coordinator, ensures the Town complies with the ADA.

Finding

The Town of Clarksburg has met its obligation to designate a responsible employee by appointing Rebecca Stone, the Town Administrator, as the ADA Coordinator. However, from ADA Questionnaire survey responses and information on the Town's website, Rebecca Stone's appointment as a responsible employee for the role of ADA Coordinator is not publicized. Notice of the ADA Coordinator appointment is posted on a bulletin board in the Town Administrator's office. The visibility of the

Notice is limited since the public is only allowed entry to the Town Hall during scheduled appointments.

Recommendations

The Town should consider clarifying for its entire community and Town employees the name and scope of responsibilities of the ADA Coordinator. Highlighting this information will improve compliance and make for more efficient operations with respect to the needs of members of the public with disabilities. Rebecca Stone's name and role as ADA Coordinator should be made clear on the Town's website, employee information, and notifications.

Furthermore, clarification on the ADA Coordinator will:

- Make it easier for the Town to be proactive in meeting the needs of members of the public with disabilities;
- Help the Town to develop and articulate a clear vision and mission with regard to members of the public with disabilities;
- Reduce confusion and improve the Town's day-to-day operations with respect to members of the public with disabilities;
- Permit employees to respond more quickly to needs as they arise because they have a primary contact for addressing their needs;
- Build in-house expertise and capacity;
- Prevent confusion and help ensure that candidates for employment, employees and the public have a clear understanding of their responsibilities and rights under the ADA.

II – Grievance Procedures

Title II of the ADA requires a public entity to adopt an adequate grievance process.

A public entity that employs 50 or more persons shall adopt and publish grievance procedures providing for prompt and equitable resolution of complaints alleging any action that would be prohibited by this part. (28 CFR Part 35.107 (b))

Findings

The Town has a Grievance Procedure posted on a bulletin board in the Town Administrator's office. Currently, Town Hall is closed to the public for COVID-19 precautions. The visibility of the Grievance Procedure is limited since the public is only allowed entry during scheduled appointments. Based on the limited survey responses, it could not be determined if staff in all departments are aware of their ADA obligation and the process for meeting the requirements for grievance procedures. Regarding

Grievance Procedures, one survey response to the ADA Questionnaire indicates that issues are handled, “As directed by town officials.”

Recommendations

The Town should take steps to clarify its grievance process regarding members of the public.

IHCD recommends:

- Provide an “ADA Compliance” link on the Town’s website home page directly to the Grievance Procedure form and state the commitment to provide copies in accessible formats upon request.
- While the Grievance Procedure for members of the public provides a two-step review process that allows for appeal, it should also include reference to reasonable time frames for review and resolution of the grievance.
- Ensure good record keeping for all complaints submitted and documentation for steps taken towards resolution.
- Distribute the Grievance Procedure to all department heads, and post copies of it in noticeable locations in each of the Town’s public buildings.
- Ensure Town employees and the public are aware of the Grievance Procedure process and can provide information to members of the public about the process when appropriate.
- Ensure the complete contact information for the ADA Coordinator, including name, address, email and phone number is included in the Grievance Procedure.

III – Notice

Title II of the ADA requires that public entities notify participants of its non-discrimination policies:

A public entity shall make available to applicants, participants, beneficiaries, and other interested persons information regarding the provisions of this part and its applicability to the services, programs, or activities of the public entity, and make such information available to them in such manner as the head of the entity finds necessary to apprise such persons of the protections against discrimination assured them by the Act and this part. (28 CFR Part 35.106)

Findings

The Town of Clarksburg has a public Notice of Non-Discrimination policies posted on a bulletin board in the Town Administrator’s office. The visibility of the Notice is limited since the public is only allowed entry during scheduled appointments. The Town does not have a uniform policy regarding the posting of ADA non-discrimination Notices for members of the public. One survey participant observed that

notices are posted, “On the window.” Where another respondent did not know if there were any notices on the Town’s non-discrimination policies.

Recommendations

The Town should take steps to clarify with employees the process of posting of the ADA Notice of Non-Discrimination policy to comply with the ADA Title II requirement that states that public entities shall take initial steps to notify employees, program/service participants and beneficiaries of its obligations.

IHCD recommends the following:

- Publish the Notice in all the materials distributed by the Town; post the Notice on the Town’s website home page and post copies in public locations in the Town’s buildings.
- Distribute the Notice to all department heads. Copies should also be provided to any person upon request and state the commitment to provide copies in accessible formats upon request.
- Include the ADA Coordinator’s name, address, telephone number and email address on materials and publications that contain general information disseminated to staff and members of the public.

IV - Reasonable Modification of Policies, Practices and Procedures

Title II of the ADA requires state and local governments to modify its policies when necessary to avoid discrimination:

A public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity. (28 CFR Part 32.130 (b)(7))

Findings

The Town has developed written policies to ensure modification to policies and procedures upon request. From the responses submitted by staff, there is no evidence that the Town was unable to provide a reasonable modification when requested.

Recommendations

- Clarksburg should ensure that Town employees can provide information to members of the public about the process of requesting reasonable modification of policies when appropriate.

- Clarksburg should also ensure that the form for requesting reasonable modifications of policies is on the Town’s website, and state the commitment to provide copies in accessible formats upon request.
- Include the ADA Coordinators name, address, telephone number and email address on materials and publications that contain general information disseminated to staff and members of the public.

V – Eligibility Criteria

A Title II entity may not impose eligibility criteria that may prevent a person with a disability from participating in its programs, services or activities:

A public entity shall not impose or apply eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any service, program, or activity, unless such criteria can be shown to be necessary for the provision of the service, program, or activity being offered. (28 CFR Part 35.130 (8)).

This requires that ADA Title II entities may not impose eligibility criteria that either screen out or tend to screen out persons with disabilities, unless it can show that such requirements are necessary for the provision of the service, program or activity.

Findings

Departmental responses to the ADA Online Questionnaire indicate that there is no eligibility criteria in place. In the matters of eligibility criteria, one response indicates, “Everyone is invited.”

VI– Employment and Reasonable Accommodation

Title II of the ADA prohibits discrimination on employment on the basis of disability:

No qualified individual with a disability shall, on the basis of disability, be subjected to discrimination in employment under any service, program, or activity conducted by a public entity. (28 CFR Part 35.140 (a)).

This requires that ADA Title II entities make reasonable accommodation to qualified employees with disabilities. Reasonable accommodation may include modifying work schedules, job restructuring, and making facilities used by employees readily accessible to employees with a disability.

Note that the requirements of Title I of the ADA, as established by the regulations of the Equal Employment Opportunity Commission in 29 CFR Part 1630, apply to employment in any service,

program, or activity conducted by a public entity if that public entity is also subject to the jurisdiction of ADA Title I. (28 CFR Part 35.140 (b)(1)).

Findings

One response confirms reasonable accommodation policies are available for employees with disabilities. Furthermore, the Public Notice mentions that the Town's does not discriminate on the basis of disability in its hiring or employment practices.

Recommendations

- Ensure that materials and publications that contain general information disseminated to the Town's employees include information on the requirements of reasonable accommodation under the ADA.
- On the Administration website page, clearly provide information on who to contact regarding reasonable accommodation requests.
- IHCD recommends that the Town of Clarksburg employees familiarize themselves with the excellent free national resource from the Job Accommodation Network (<https://askjan.org>).

[See attachment #1 on Reasonable Accommodation Policy]

VII – Effective Communication through Auxiliary Aids and Services

Title II entities are required to provide appropriate auxiliary aids and services to ensure “effective communication” with people with disabilities. This obligation applies to all members of the public with disabilities including job applicants, program participants and people who are seeking information about the Town's programs, services or activities. Specifically, Title II requires that:

A public entity shall take appropriate steps to ensure that communications with applicants, participants, members of the public, and companions with disabilities are as effective as communications with others. (28 CFR Part 35.160 (a)).

Auxiliary aids and services are devices or services that enable effective communication for people who have vision, hearing, or speech disabilities (communication disabilities), use different ways to communicate. The type of auxiliary aid or service necessary to ensure effective communication will vary in accordance with the length and complexity of the communication involved (e.g., a query at a service counter in the Town Offices, a meeting, a job description).

The obligation to communicate effectively with people who have disabilities applies to the presentation and exchange of information in all forms including sound, print, graphics and voice.

Furthermore, this requirement may include but is not limited to providing sign language interpreters, telephone handset amplifiers, Telecommunication Devices for Deaf persons (TDD's), note takers, written materials for persons who are deaf or hard of hearing or transcripts, braille, digital or audio information for persons who are blind or have difficulty seeing.

The decision about what auxiliary aid is appropriate should evolve from a consultation between the ADA Title II entity (Town of Clarksburg) and individuals with disabilities wherever possible to ensure effective communication. In many cases, more than one type of auxiliary aid or service may make effective communication possible. While consultation is always strongly encouraged to achieve effective communication, the Town of Clarksburg is required to give primary consideration to the requests of individuals with disabilities. The effective communication obligation does not require the Town to take any action that would result in a fundamental alteration in the nature of its services, programs or activities or that would impose an undue financial and administrative burden.

Findings

The Town has a policy regarding the request of auxiliary aids or services, however, that policy is on a bulletin board in the Town Administrator's office. One survey participant stated that effective communication is provided, "*As directed by town officials.*"

Recommendations

The Town should consider publicizing clear processes for members of the public and employees to request auxiliary aids and services:

- The Town should clarify its policy on Effective Communication so staff across all departments have an understanding of their responsibility and clarity about what to do.
- Distribute the Effective Communication Notice to all department heads; publish it in a local newspaper of general circulation serving the Town; in all materials regarding the Town's programs, services or activities, and on the Town's website home page. Copies should also be posted in prominent locations in the Town's public buildings.
- Staff should clearly understand the responsibility to provide auxiliary aids and services where necessary to afford qualified individuals with disabilities, including applicants, participants, companions, and members of the public, an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity of a public entity (28 CFR Part 35.153 (b)). Staff should also clearly understand the process for requesting auxiliary aids and services when needed.

- Staff needs to understand the scheduling time necessary in requesting a sign language interpreter or Computer Aided Real-time Transcription (CART) through the Commission for the Deaf and Hard of Hearing or other provider. Interpreters must be qualified.

Note: A “qualified” interpreter means someone who is able to interpret effectively, accurately, and impartially, both receptively (i.e., understanding what the person with the disability is saying) and expressively (i.e., having the skill needed to convey information back to that person) using any necessary specialized vocabulary.

- Members of the public also need to have a clear understanding of the process for requesting auxiliary aids and services and the time period in which a request must be made if it involves ASL interpreters, CART, or special equipment such as assistive listening devices that may need to be rented. This information should be included in the general information for the public as well as on the Town’s website.

Sample of Effective Communication request:

“The Town of Clarksburg is committed to the full participation of people with disabilities. Any person with a disability who requires an auxiliary aid or service for effective communication, or a modification of policies or procedures to participate in the Town’s programs, services, activities and committee meetings, should contact the office of the ADA Coordinator (Name, Address, Phone number and Email) as soon as possible but no later than 48 hours before the scheduled event.” (*if the Town needs 2 or 3 weeks or longer to ensure an interpreter, then it must be clearly stated).*

- Ideally, the Town should develop a system for training staff to meet these responsibilities especially knowing the processes for securing braille, making large print, other types of accessible formats, understanding how to request interpreters or CART and the length of time needed prior to an event. It is also important that staff know how to use and maintain the assistive listening systems and other special devices to assist people with disabilities to enjoy effective communication.

IHCD, through its New England ADA Center, can provide a training for the Town of Clarksburg on Effective Communication that would be appropriate for department heads and public-facing Town staff in order to build confidence about rights and responsibilities and building capacity within the Town to comply with this important element of the ADA.

- Ensure that information and resources at each department interacting with members of the public are available in accessible format. That could be done by having a large print sign at each department and on each department’s portion of the website stating:

“All of our materials are available, upon request, in accessible format such as audio, large print or braille.”

- Ensure that staff interacting with the public is fully trained on how to respond to TTY and relay calls for telephone communications with people who are deaf, have difficulty hearing or have speech disabilities.

Even though there is a fundamentally changed pattern among people who are deaf or hard-of-hearing in relation to communication technology, TTY remains a compliance requirement. Because of these advances in communication technology, some people who are deaf and people with speech disabilities no longer have TTYs in their homes and rely instead on instant messaging, text messaging, email, or the video communication features of computers.

- Ensure that the Town’s website and other web-based services are accessible to people with disabilities. It is the Department of Justice position that when services are provided on a website, those services too must be made accessible. (see www.ada.gov/mclennan_pca/mclennan_sa.html *Section K on Web Based Services and Programs*)
 - To address these Information and Communication Technology (ICT) issues, Clarksburg should commit to fixes and maintenance of the website accessibility. All staff should undergo training on accessibility best practices for posting web content and creating accessible documents. All third-party software should be properly vetted for compliance with WCAG 2.0 AA and section 508 of the Rehabilitation Act.
 - Ensure that all the fillable forms on the Town’s website are accessible to people with disabilities. IHCD recommends providing web forms or accessible fillable PDF’s for all the forms available on the Town’s website.
 - Include Alt Text on all images on the Town’s website for people who are blind or has low vision to identify the content of the image with screen reading technology.
 - Additionally, under Title II of the ADA, emergency programs, services and activities must be accessible to people with disabilities. Ensure that the Town takes the necessary steps to effectively communicate with people with disabilities and make the emergency plan available on the Town’s website and update the emergency procedure as often as is necessary.
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Also, it is the Department of Justice position that Police Departments provide sign language interpreters in a timely manner as follows:

- Non-scheduled Interpreter Requests: A “non-scheduled interpreter request” means a request for an interpreter made by an inmate, visitor, companion, or other member of the public, who is deaf or hard of hearing with less than two (2) hours advanced notice. For non-scheduled interpreter requests, the interpreter shall be provided no more than two (2) hours from the time of the request for an interpreter if the service is provided through a contract interpreting service or a staff interpreter who is located off-site or 30 minutes from the request for an interpreter if the service is provided through a Video Remote Interpreting service.
- Scheduled Interpreter Requests: A “scheduled interpreter request” is a request for an interpreter made two (2) or more hours before the services of the interpreter are required. For scheduled interpreter requests, the Police Department will make a qualified interpreter available at the time of the scheduled appointment. If an interpreter fails to arrive for the scheduled appointment, upon notice that the interpreter failed to arrive, the Police Department will immediately use reasonable efforts to call an interpreter service for another qualified interpreter or provide Video Remote Interpreting service.

VIII – Emergency Preparedness, Evacuation Plans, and Emergency Shelters

While a review of the Town of Clarksburg’s emergency preparedness, evacuation plans and emergency shelters was not part of this RFP, as evidenced by recent U.S. Department of Justice’s (DOJ) Project Civic Access settlement agreements, DOJ’s views on emergency preparedness, shelters and evacuation plans are critical components of a Town’s responsibilities related to accessibility.

Recommendations

- Visibly post up-to-date floor plans for all buildings;
- Post information about evacuating people unable to use stairs;
- Develop evacuation plans for each facility;
- As plans are developed or revised, adopt policies to ensure that community evacuation plans enable people with disabilities, including those who have mobility, vision, hearing, or cognitive disabilities, mental illness, or other functional limitations, to safely self-evacuate or to be evacuated by others. Until all emergency shelters are accessible with parking, exterior routes, entrances, interior routes to the shelter area, and accessible toilet rooms serving the shelter area, the Town should identify and widely publicize to the public, including persons with disabilities and the organizations that serve them, the locations of the most accessible emergency shelters.

For more information see:

Making Community Emergency Preparedness and Response Programs Accessible to People with Disabilities - <http://www.ada.gov/emergencyprepguide.htm>

ADA Tool kit: Emergency Management - <http://www.ada.gov/pcatoolkit/chap7emergencymgmt.pdf>

FEMA Guidance on Planning for Integration of Functional Needs Support Services in General Population Shelters - http://www.fema.gov/pdf/about/odc/fnss_guidance.pdf

Additionally, we recommend considering engaging the National Fire Protection Association (NFPA) for evacuation training and guidance, providing and load verifying backup power source for elevator to address Functional Needs Support Services (FNSS) emergency shelter needs, installing one or more accessible showers to meet emergency shelter needs and providing backup power for charging batteries for wheelchairs or breathing equipment and refrigeration for medication to meet emergency shelter needs.

Attachment #1: Sample ADA Employment Policy

The [NAME of TOWN] is committed to equal opportunity in all aspects of employment for qualified individuals with disabilities. In accordance with the Americans with Disabilities Act (ADA) and other federal and state law, it is the policy of the [NAME of TOWN] to provide necessary reasonable accommodation in employment to any qualified individual with a disability unless the accommodation would impose an undue hardship on the operation of the [NAME of TOWN] or would change the essential functions of the position.

Reference List

ADA Action Guide for State and Local Governments:

- www.adaactionguide.org

Department of Justice:

- Americans with Disabilities Act Title II Regulations:
http://www.ada.gov/regs2010/titleII_2010/titleII_2010_regulations.htm
- Making Community Emergency Preparedness and Response Programs Accessible to People with Disabilities - <http://www.ada.gov/emergencyprepguide.htm>

Federal Emergency Management Agency:

- FEMA Guidance on Planning for Integration of Functional Needs Support Services in General Population Shelters - http://www.fema.gov/pdf/about/odc/fnss_guidance.pdf

Job Accommodation Network:

- <http://www.askjan.org>

New England ADA Center:

- <https://www.newenglandada.org>