



# Town of Clarksburg, Massachusetts

## PART C – Self-Evaluation Summary

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## Introduction

This ADA Self-Evaluation report includes a summary of the Town’s policies obtained by an on-line ADA questionnaire developed by the Institute for Human Centered Design (IHCD). This Self-Evaluation report also includes a summary of architectural barriers identified during accessibility surveys performed by IHCD teams between April 20 – 22 of 2021.

Together these findings are designed to help move the Town towards full compliance with its obligations under the Title II of the Americans with Disabilities Act (ADA) and/or the 521 CMR Massachusetts Architectural Access Board regulations.

For clarity, this ADA Self-Evaluation report is organized as follows:

- Legal Overview;
- Summary of the Evaluation of Policies in Programs, Services, and Activities;
- Summary of the Evaluation of Facilities.

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## 1. Legal Overview

The Town of Clarksburg is obligated by both Federal laws and State codes concerning the rights of people with disabilities in the daily provision of programs, services, and activities. At the end of this report, there is a comprehensive list of relevant laws.

### **Federal Obligation: American with Disabilities Act (ADA)**

Based on the 1964 Civil Rights Act and expanding upon the obligations of the 1973 Rehabilitation Act, the 1990 ADA prohibits discrimination against people with disabilities. The ADA provides civil rights protections to individuals with disabilities similar to those afforded to individuals on the basis of race, color, sex, national origin, age, and religion. The cornerstone of Title II of the ADA, which applies to state and local governments, is clear: no qualified person with a disability may be excluded from participating in, or denied the benefits of, the programs, services, and activities provided by state and local governments because of a disability.

The 2008 Amendments to the ADA (ADAAA), signed into law on September 25, 2008, describes in more detail the range of conditions covered by the civil rights protections of the ADA. The amendments expand the definition of “disability” to include impairments that substantially limit a major life activity and states that when determining whether someone qualifies as having a disability, one cannot take into account assistive devices, auxiliary aids, accommodations, medical therapies and supplies. The amendments also address episodic disabilities that may go into remission but still can significantly limit a major life activity when active, such as epilepsy and post-traumatic stress disorder. The ADA defines a disability as<sup>1</sup>:

- A physical or mental impairment that substantially limits one or more major life activities (i.e. working, talking, hearing, seeing, caring for one's self);
- Having a record of a physical or mental impairment that substantially limits one or more major life activities;

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<sup>1</sup> To learn more about qualified individuals with disabilities or to read the full text of the ADA, please visit <http://www.ada.gov>

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- Being regarded by others as having an impairment such as individuals with severe facial scarring.

It is important to stress that the primary obligation to public entities such as the Town of Clarksburg, under Title II of the Americans with Disabilities Act, is to ensure that, when viewed in their entirety, the programs, services, and activities offered are equally available to people with disabilities. The Town is required to follow the 2010 ADA Standards for Accessible Design in new construction and alterations. The 2010 ADA Standards must also be used for corrective actions if existing conditions don't comply with the original ADA Accessibility Guidelines. Municipalities also must relocate programs or otherwise provide access to programs located in inaccessible older facilities (e.g. facilities built before the ADA went into effect January 26, 1992). Ensuring program access may require capital investment when there is no alternative solution and should be a priority for corrective action.

Note that the websites of Title II entities are also considered “*programs*” and should be accessible to the standards of the Web Content Accessibility Guidelines 2.0 AA. A review of the Town of Clarksburg’s website was provided as part of the scope of work of this contract.

The Town must communicate effectively with people who have hearing, vision, or speech disabilities. The Town is also required to make reasonable modifications to policies, practices, and procedures where necessary to ensure the equal participation of people with disabilities. Whatever is written or spoken must be as clear and understandable to people with hearing, vision, or speech disabilities as it is for people who do not have disabilities. In addition, the ADA requires the provision of “auxiliary aid and service” to meet their responsibility for effective communication. Auxiliary aid and service refer to readers, notetakers, sign language interpreters, assistive listening systems, open and closed captioning, text telephones (TTYs), videophones, information provided in large print, braille, audible, or electronic formats, and other tools for people who have communication disabilities.

Following the passage of the ADA, the Department of Justice issued the 1991 ADA Standards for Accessible Design to address physical access to facilities and transportation. In 2010 the Department of Justice issue a revised and updated ADA Standard called the 2010 ADA Standards for Accessible Design (2010 ADA Standards) that would apply to all Title II and Title III entities. These standards revised requirements for policies such as ticketing and service animals, and for physical elements such as assembly seating, established construction tolerances for certain elements and formalized long-standing guidelines for play areas, golf courses, recreational boating facilities, swimming pools, and other recreational facilities.

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Facilities that meet or exceed the 1991 ADA Standards are not required to make changes to the new 2010 Standards except in the case of renovation. For elements that are non-compliant, the corrective measures must align with the 2010 ADA Standards. It is not expected that the buildings will meet or be brought up to all of the 2010 ADA Standards absent significant or total renovation. State and local governments must ensure that individuals with disabilities are not excluded from services, programs, and activities because buildings are inaccessible. This means Title II entities do not need to remove physical barriers, such as stairs, in all existing buildings, as long as they make their programs accessible to individuals who are unable to use an inaccessible existing facility.

#### Alterations to historic properties under the ADA

Alterations to historic properties must comply with the specific provisions governing historic properties in the 2010 ADA Standards, to the maximum extent feasible. Under those provisions, alterations should be done in full compliance with the alterations standards for other types of buildings. However, if following the usual standards would threaten or destroy the historic significance of a feature of the building, alternative solutions may be used. The decision to use alternative solutions for that feature must be made in consultation with the appropriate historic advisory board as designated in the 2010 ADA Standards (for Massachusetts, the Massachusetts Historical Commission), and interested persons should be invited to participate in the decision-making process.

Note that any corrective actions needed to ensure program accessibility would also have to comply with the requirements of the 2010 ADA Standards for historic facilities.

#### **State Obligation:**

##### Massachusetts Constitutional Amendment – Article 114

The Massachusetts Constitution states:

“No otherwise qualified handicapped individual shall, solely by reason of his handicap, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity within the Commonwealth.”

Article 114 is written broadly. It prohibits discrimination based on disability on any level within the state, not just for recipients of state or federal funds. For example, Town meetings must be

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held in an accessible location with sign language interpreters provided if needed, and the Town cannot refuse to do business with an individual based on the person’s disability.

#### Massachusetts Architectural Access Board

The Architectural Access Board (AAB) is a regulatory agency whose mandate is to develop and enforce regulations designed to make public buildings accessible to, functional for and safe for use by persons with disabilities. See the Rules and Regulations of the Architectural Access Board 521 CMR. In addition to writing regulations, the Board decides on variance requests, provides training on its regulations, issues advisory opinions and makes decisions on complaints. Local building inspectors are responsible for enforcing the regulations which are a specialized section of the Massachusetts Building Code. See 780 CMR.

The construction, reconstruction, remodeling, alteration, or change of use of a building or facility that is open to the public triggers the authority of the Architectural Access Board. New construction must fully comply.

For renovation, remodeling, or alteration:

- The work being done must comply with the regulations.
- If the work done in any 36-month period is greater than \$100,000, the “work being performed” is required to comply. In addition, an accessible entrance and an accessible toilet room, telephone and drinking fountain (if toilets, telephones and drinking fountains are provided) shall also be provided.
- If the work done in a 36-month period is more than 30% of the “full and fair cash value” of the building<sup>2</sup>, the entire building must come into compliance.

Enforcement: Anyone can file a complaint with the Architectural Access Board. The Board has the authority to issue variances and/or impose fines of up to \$1000 per violation per day of noncompliance with its order.

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<sup>2</sup> This is usually the assessed value established by the city or town. See [521 C.M.R. § 5.38](#) for details about establishing value where no assessment exists.

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## 2. Summary of the Evaluation of Policies in Programs, Services and Activities

Title II of the Americans with Disabilities Act (ADA) prohibits discrimination against qualified individuals with disabilities by public entities. Activities covered include all services, programs and activities offered by the public entity, all aspects of employment, services carried out by contractors, all activities of the local legislative and judicial branches and public transportation.

A thorough understanding of the requirements of Title II of the ADA is an essential responsibility of public entities.

Please note that a complete summary of the Town’s policies, practices and procedures is included in Part B – Evaluation of Non – Discriminatory Policies and Practices in Programs, Services and Activities.

The ADA administrative requirements help to ensure that the needs of people with disabilities are addressed in all services, programs and activities that the Town operates. A Title II entity is required to:

1. Designate a Responsible Employee (ADA Title II - 28 CFR Part 35.107 (a)) to coordinate compliance with the ADA. The purpose of having a responsible employee – ADA Coordinator - is to ensure that when the public deals with a state or local government agency, the public is able to identify a person who is knowledgeable with the requirements of the ADA.

The Town of Clarksburg has met its obligation to designate a responsible employee by appointing Rebecca Stone, the Town Administrator, as the Town’s ADA Coordinator.

2. Adopt and distribute a public Notice (ADA Title II - 28 CFR Part 35.106) of the provisions of the ADA to members of the public who may participate in the Town’s programs, services and activities. The effective notice should state the Town’s obligations under the ADA and include the complete contact information of the ADA Coordinator.

The Town of Clarksburg has a public Notice of Non-Discrimination policy posted on a bulletin board in the Town Administrator’s office.

3. Develop and distribute Grievance Procedures (ADA Title II - 28 CFR Part 35.107 (b)) for prompt resolution of any complaint regarding disability discrimination.

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The Town has a Grievance Procedure posted on a bulletin board in the Town Administrator’s office. 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.

IHCD recommends the Town take steps to clarify its Grievance Procedure to all department heads, and post copies of it in noticeable locations in each of the Town’s public buildings. Provide an “ADA Compliance” link on the Town’s website homepage directly to the Grievance Procedure form. and state the commitment to provide copies in accessible formats upon request.

4. Modify its Policies, Practices and Procedures (ADA Title II – 28 CFR Part 35.130(b)(7)) when necessary to avoid discrimination.

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.

IHCD recommends the Town take steps to 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 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.

5. Provide Reasonable Accommodation (ADA Title II – 28 CFR Part 35.140(a)) to qualified employees with disabilities. This requirement may include modifying work schedules, job restructuring, and making facilities used by employees readily accessible to an employee with a disability, or moving the employee, if possible without compromising job responsibilities, to an accessible location.

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

Regarding questions about reasonable accommodations and other related topics, IHCD recommends that the Town of Clarksburg becomes familiar with the excellent free national resources from the *Job Accommodation Network* (<https://askjan.org>).



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6. Provide Auxiliary aids and services (ADA Title II – 28 CFR Part 35.160) to ensure effective communication with people with disabilities. This provision requires ADA Title II entities to take steps to ensure that communication with members of the public and employees with disabilities is as effective as communication with others. This requirement may include but is not limited to providing sign language interpreters, providing Computer-Assisted-Real-time-Translation (CART), written materials for persons who are deaf or have difficulty hearing, braille or large print information or information in digital format for people who are blind or have difficulty seeing.

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.”*

IHCD recommends the Town consider publicizing clear processes for members of the public and employees to request auxiliary aids and services.

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### 3. Summary of the Evaluation of Facilities

The analysis of existing conditions that encompasses the body of this evaluation is based on observations and documentation completed by IHCD team during site visits. This accessibility survey included the following facilities:

#### Municipal Buildings

Town Hall  
Police Department  
Library  
Community Center  
Fire Station  
DPW Garage and Salt Shed\*  
Sewage Pumping Station\*

#### School Buildings

Clarksburg Elementary School

#### Outdoor Facilities

Cemetery and Tool Shed  
Veterans Memorial Recreation Field

\*These facilities were included in the original RFP but were not surveyed since no programming is provided to members of the public at those two (2) facilities.

### **Building Facilities Overview**

Under Title II of the ADA, the Town of Clarksburg must make sure that “No qualified individual with a disability shall, because a public entity's facilities are inaccessible to or unusable by individuals with disabilities, 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 35.149].

A public entity may not deny the benefits of its programs, services and activities to individuals with disabilities because its facilities are inaccessible. This means that each program, service and activity of the Town, when viewed in its entirety, must be readily accessible to and usable

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by individuals with disabilities.” This requirement is known as Program Accessibility [28 CFR Part 35.150].

The program accessibility requirement does not necessarily require the Town to make each existing facility accessible or to take any action that would threaten or destroy the historic significance of a historic property. Or require a public entity to take any action that it can demonstrate would result in a fundamental alteration in the nature of the program or in an undue financial and administrative burden.

The Town may comply with the requirements through such means as redesign or acquisition of equipment, reassignment of services to accessible buildings, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, or any other methods that result in making the Town’s services, programs or activities readily accessible to and usable by individuals with disabilities. A public entity is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section.

In choosing among available methods for meeting the requirements of this section, a public entity shall give priority to those methods that offer services, programs, and activities to qualified individuals with disabilities in the most integrated setting appropriate.

IHCD recommends the following improvements at the Town Municipal Buildings:

#### Town Hall

- Provide a 2-stop Limited Use / Limited Application (LULA) elevator.
- Provide an accessible route to the swing set (stone dust) and an impact attenuating surface under and around the swings (poured-in-place rubber).
- Provide an automatic door opener at the rear entrance/exit door (west side).
- Provide compliant signage (directional, designation and egress signs).
- Provide a compliant single-user toilet room.
- Provide a Hi-Lo Drinking fountain.
- Provide a compliant service counter (Treasurer/Collector office).

#### Police Station

- Provide compliant signage (egress).

**Note:** See the report for the Town Hall for accessibility issues regarding the entrance, parking and toilet room.

### Library

- Provide a compliant access aisle and identification signs at the accessible parking spaces.
- Provide a drinking fountain for a standing user.
- Provide a compliant lavatory (with knee and toe clearance).

### Community Center

- Provide compliant signage (designation, egress and illuminated International Symbol of Accessibility (ISA) signs).
- Renovate toilet rooms.
- Correct the cross slopes at the routes leading to the main entrance and the exit located near the kitchen.
- Correct the excessive change in level at the route leading to the main entrance and the emergency exits.
- Provide a compliant threshold at the main entrance door.

### Fire Station

- Provide an accessible route to the single-user toilet room (wooden ramp).
- Provide a van accessible parking space.
- Renovate toilet room.
- Provide a temporary ramp (as needed) at the back entrance/exit.
- Provide compliant door hardware.

IHCD recommends the following improvements at the Town School Building:

### Clarksburg Elementary School

- Provide a 2-stop Limited Use / Limited Application (LULA) elevator.
- Provide compliant exterior accessible routes.
- Provide an impact attenuating surface under and around the play elements in the playground (poured-in-place rubber).
- Provide compliant sinks (classrooms).
- Provide compliant doors.
- Renovate toilet rooms.
- Provide compliant drinking fountains.
- Provide compliant signs (designation, egress and directional).
- Provide compliant work surfaces (with knee and toe clearance).
- Provide an accessible picnic table.

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## Outdoor Facilities Overview

The program accessibility obligation does not typically require that every outdoor area be made accessible. As noted before, “when viewed in its entirety” applies to programs for which there are multiple locations for comparable programs. Usually, a public entity determines which method it will use for meeting its program accessibility obligations. When structural changes are made to existing facilities, the changes must comply with the 2010 ADA Standards for Accessible Design. When choosing to purchase equipment or to make structural changes, the public entity should factor financial resources required to maintain program accessibility.

Over time, the Town will need to reassess its compliance with program accessibility, and it may become necessary to acquire new accessible equipment or make structural modifications.

It is important to note that those elements in existing facilities that are subject to supplemental requirements of the 2010 ADA Standards (*e.g.* elements for which there are neither technical nor scoping specifications in the 1991 Standards) such as (C) *Recreational boating facilities*; (D) *Exercise machines and equipment*; (E) *Fishing piers and platforms*; (H) *Play areas*; (J) *Swimming pools, wading pools, and spas*; and (L) *Miscellaneous - (1) Team or player seating and Accessible route in court sports facilities*, need to be brought into compliance.<sup>3</sup>

IHCD recommends the following improvements at the Town Outdoor Areas:

### Clarksburg Cemetery

- Provide compliant ground surfaces around the cemetery.

### Peter A. Cook Veterans Memorial Field

- Renovate existing exterior access routes.
- Provide accessible routes connecting existing walkway to the boundary of sport activity, the pavilion and all other amenities.
- Provide clear floor space at bleachers.
- Provide accessible van parking spaces.

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<sup>3</sup> As described in 28 CFR 35.150(b)(2)(i) Title II ADA Regulations

## Reference List:

### Federal Laws:

- Americans with Disabilities Act (ADA)
- 2010 ADA Standards for Accessible Design

### State Law:

- 521 CMR Massachusetts Architectural Access Board – Rules and Regulations

### Guidance:

- ADA Action Guide for State and Local Governments: <https://www.adaactionguide.org>
- ADA Checklist for Existing Facilities: <https://www.adachecklist.org>
- Outdoor Developed Areas: A Summary of Accessibility Standards for Federal Outdoor Developed Areas: <https://www.access-board.gov/attachments/article/1637/outdoor-guide.pdf>
- US Access Board: <https://www.access-board.gov/guidelines-and-standards/buildings-and-sites/about-the-ada-standards/guide-to-the-ada-standards/animations>
- ADA Checklist for Polling Places: <https://www.ada.gov/votingchecklist.htm>
- Solution for Five Common ADA Access Problems at Polling Places: [https://www.ada.gov/ada\\_voting/voting\\_solutions\\_ta/polling\\_place\\_solutions.htm](https://www.ada.gov/ada_voting/voting_solutions_ta/polling_place_solutions.htm)