



Town of Sudbury, 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 Sudbury 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 Sudbury 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 Sudbury's compliance with applicable laws. In addition, the Town may wish to consider making a commitment to a more accessible website. 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 (IHCD) and submitted by 14 departments from the Town of Sudbury, from the Town's website, the Town of Sudbury Employee Handbook (2019), and the Sudbury Public Schools 2019-2020 Parent Handbook.

Note: Additionally, IHCD also located a series of documents posted on Sudbury's website at the following link (<https://sudbury.ma.us/osrpc/wp-content/uploads/sites/322/2014/08/PlanAppendicesCDE.pdf?version=ddc2d633044d6d16d193618b0f482b66>). The materials are under the overall heading of "2008 Open Space and Recreation Plan

Appendices CDE”. The documents include an ADA Notice, a Grievance Procedure, an Effective Communication Policy and a Reasonable Modification Policy. This set of documents also lists members of the Commission on Disability and named Sudbury’s ADA Coordinator. However, it appears that some or all of these materials are from August 15, 2008 or earlier, and some information such as the name of the ADA Coordinator and the members of the Commission are clearly out of date. Sudbury should take steps to ensure that current version of all these materials are available in accessible formats and are posted on the Town’s website. The document should address all Town programs (not only open space and recreational programs). The materials should also be easily locatable and made known to all municipal departments and members of the public.

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 Sudbury 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 Sudbury to implement.

1 - 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, is making sure that the Town is in compliance with the ADA.

Finding

The Town of Sudbury has designated Assistant Town Manager Maryanne Bilodeau of the Human Resources department as the ADA Coordinator for employment. Facilities Director William Barletta handles ADA coordination with regards to Town facilities. The Town Manager Henry Hayes, Jr. handles special requests for Town-wide concerns.

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.

Furthermore, clarification regarding 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.

2 – 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

A Grievance Policy is provided for Town employees in the Town of Sudbury Employee Handbook (2019). However, Sudbury does not appear to have a grievance procedure for members of the public who believe they have been discriminated against on the basis of disability as relates to the Town’s programs, policies and procedures, (except in the 2008 Open Space and Recreation Plan Appendices CDE). Moreover, it is not clear if staff in all departments is aware of their ADA obligation and the process for meeting the requirements for grievance procedures. Regarding Grievance Procedures, department responses included: “No Grievances that I am aware of”, “Has not been necessary”, “None implemented”, “We have never had any procedure that I am aware of”, and “We had the local disability commission reach out with minor concerns relating to a new space in the library. They asked for more accessible seating, and for the doors to be adjusted. We accommodated those requests.”

Recommendations

The Town should take steps to adopt and 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.
- The Grievance Procedure should provide a two-step review process that allows for appeal; and include 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.

3 – 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

From the responses submitted by staff it seems that, the Town of Sudbury does not have a uniform policy regarding the posting of ADA Non-Discrimination Notices for members of the public. Responses from Town departments include: “I do not believe so”, “no”, “not known”, “Just braille placards at doors”, “Lunch room”, and “Signs (including braille) are located on the walls throughout the DPW office building.”

In addition, there does seem to be a Notice online in the 2008 Open Space and Recreation Plan Appendices CDE, on the Sudbury Public Schools website

(<https://www.sudbury.k12.ma.us/site/handlers/filedownload.ashx?moduleinstanceid=268&dataid=86&FileName=A%20Section%2003.10.20.pdf>) and in the Town of Sudbury Employee Handbook (2019).

Recommendations

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

- 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.
- 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.

4 - 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

A public entity must make reasonable modifications in policies, practices, or procedures unless the modification would fundamentally alter the nature of the service, program, or activity.

From all of the responses submitted by staff, there is no evidence that the Town was unable to provide a reasonable modification. From all of the responses submitted by staff, there is no evidence that the Town was unable to provide a reasonable modification. A reasonable modification policy is provided on the Sudbury website with regards to open space and recreation in the 2008 Open Space and Recreation Plan Appendices CDE.

IHCD recommends:

- Sudbury should ensure that Town’s employees can provide information to members of the public about the process of requesting reasonable modification of policies when appropriate.
- Sudbury 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 current 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 – 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

Some departments responded to the online questionnaire indicating that they have eligibility criteria such as age, residency, and minimum qualifications. These requirements are necessary for the provision of the service, program or activity, and permitted under the ADA.

6 – 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)).

Under the ADA, an employer has to provide reasonable accommodations to qualified individuals with disabilities who are employees or applicants for employment, unless to do so would cause undue hardship (significant difficulty or expense). A reasonable accommodation may include modifying work schedules, job restructuring, and making facilities used by employees readily accessible to employees with a disability.

Findings

The Town of Sudbury Employee Handbook (2019) includes a reasonable accommodation policy and it is available on the Town’s website. From the responses to the ADA questionnaire, two departments stated that they were not aware that a reasonable accommodation policy is in place. An effort should be made to inform all departments of the existence of the policy in the Employee Handbook (2019).

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 Town Manager’s page, update the information on who to contact regarding reasonable accommodation requests.
- IHCD recommends that Town of Sudbury employees familiarize themselves with the excellent free national resource from the Job Accommodation Network (<https://askjan.org>).

[See attachment #1 at the end of the document]

7 – 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 Sudbury) 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 Sudbury and all public entities are 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

From the questionnaires received from various departments, many departments had procedures for effective communications, including TTY services, accommodating visitors, and providing assistive listening systems.

Because a few departments seemed unclear on effective communication, it seems that clarifying procedures of providing effective communication could be beneficial. Some of the questionnaire responses include:

- “We have not encountered a situation where aids were required although not prepared if needed.”
- “We do not have anything that I am aware of. I don’t know how we ensure this.”
- “We do not currently have aides to help with visually or hearing impaired. We do not currently have a process for this.”

Recommendations

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

- The Town of Sudbury would benefit from a written policy on Effective Communication so staff across all departments has 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 a Computer-Assisted Real Time Interpreter (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.

- Ensure the Police Department provides 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.
- 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.
- In determining what type of auxiliary aid or service is necessary to comply with Title II of the ADA, the Town should give primary consideration to the expressed preference for a particular auxiliary aid or service by deaf and hard of hearing individuals. Primary consideration means that the Town of Sudbury will inquire as to the choice of auxiliary aid or service of the person with a disability and will honor the expressed choice unless the Town can demonstrate that another equally effective means of communicating is available.
- 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 Sudbury 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.

Sample of Effective Communication request:

“The Town of Sudbury 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).

- Ensure that information and resources at each department interacting with 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 Sudbury 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 captioning for all the videos available on the Town’s website.
- 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.

8 – Emergency Preparedness, Evacuation Plans, and Emergency Shelters

While a review of the Town of Sudbury’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 Protect Association (NFPA) for evacuation training and guidance, providing and load verifying backup power source for elevator to address Functional Needs Support Services (F.N.S.S.) 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.

Sudbury Public School Policies

IHCD reviewed the 2019-2020 Parent Handbook for Sudbury Public Schools.

Based on this review, IHCD recommends the following:

- Ensure that the input and needs of students, staff and visitors with disabilities are included in all phases of emergency management planning. When developed, involve the participation of members of the municipal Disability Commission.
- Ensure that communication with students with disabilities is as effective as communication with any student.
- Make the evacuation procedure available on the public school website in an accessible format and update the evacuation procedure as often as necessary.

In addition, make the following changes to the Student Handbook:

- On page 57 regarding absences, ensure there is a policy for parents and students with disabilities who call the phone line. Where a public entity communicates by telephone with applicants and beneficiaries, text or equally effective telecommunications systems should be used to communicate with individuals who are deaf or hard of hearing or have speech impairments.

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>

Attachment #1: Sample ADA Employment Policy

The NAME of TOWN/CITY 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/CITY 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/CITY or would change the essential functions of the position.