

Town of Hingham

Part B – Evaluation of Nondiscriminatory 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 Hingham 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 Hingham community.

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

The assessment included nondiscrimination 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.

This report summarizes IHCD’s findings of ADA Title II compliance. The information pertinent to this assessment was obtained by an online ADA questionnaire developed by the Institute for Human Centered Design (IHCD) and submitted by departments from the Town of Hingham, and from the Town’s website. IHCD received twelve (12) department questionnaire responses. IHCD also received input from members of Hingham’s Commission on Disabilities.

This mix of sources constitutes the basis for this compliance assessment report. It is clear that the Town understands many of 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 Hingham 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 35.100 (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 Hingham to implement.

1 – Designation of Responsible Employee

Title II of the ADA makes clear that a public entity that employs 50 or more persons 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 Hingham has met its obligation to designate a responsible employee by designating Arthur P. Robert, Assistant Town Administrator of Operations and ADA Coordinator as the Town’s ADA Coordinator. Mr. Robert was listed as the ADA Coordinator within the ADA Notice and Grievance Procedure, on the Accessibility webpage and the Commission on Disability webpage. A majority of the staff are aware that Mr. Robert has been appointed as the ADA Coordinator.

Recommendations

Though the Town of Hingham has made a good start informing the community, the Town should consider providing further clarification for its entire community (including Town employees). Information that should be clarified include the name, phone number, email address and scope of responsibilities of the ADA Coordinator(s) and the process for submitting an ADA grievance or for requesting an accommodation or modification of Town policies. Include for example, the ADA Coordinator’s contact information on the Human Resources webpage and on all public meeting notices. We recommend that the Town consider designating an additional ADA Coordinator for employment issues.

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 and can identify 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

Eleven (11) of the twelve (12) survey respondents were not aware of the Grievance Procedure that the Town adopted in order to meet its ADA obligations. One respondent has a very detailed internal process and another indicated that they were regulated by the state. When asked if their department had a Grievance Procedure, the other respondents indicated “no”, “unknown”, or “not certain.”

The town has a Grievance Procedure, and it can be found on the Commission on Disability webpage and the document center webpage.

Recommendations

The Town should take steps to clarify its Grievance Procedure regarding members of the public and Town employees.

IHCD recommends the following:

- Include the Grievance Procedure and state the commitment to provide copies in accessible formats upon request on the Accessibility webpage.
- 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 that Town employees can provide information to members of the public about the process when appropriate.

- Ensure good record keeping for all complaints submitted and documentation for steps taken towards resolution. Maintain records for a reasonable length of time.

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

The Town has a Notice of Nondiscrimination which can be found on the Commission on Disability webpage, some meeting notices and document center webpage.

From the responses submitted by staff it seems that the Town of Hingham does not have a uniform policy regarding the posting of ADA Nondiscrimination Notices for members of the public. When asked eight (8) of twelve (12) Town departments reported that an ADA Notice was not posted in Town buildings. Two (2) departments were unsure if the ADA was posted in Town buildings. One (1) department responded that the ADA Notice could be found on the Town’s website.

Recommendations

- Publish the Town’s ADA Notice in the materials and communications distributed by the Town (e.g., reports, contracts, agendas, meeting notes, applications, social media).
- Post copies in public locations in the Town’s buildings.
- Post the Town’s ADA Notice in a clear and central location on the web site so that members of the public are aware that this information is for them and their use; post on social media.
- Distribute the Town’s ADA Notice to all department heads.
- Copies should be provided, including in alternative formats (such as braille or large print), to any person upon request.
- Update and include the ADA Coordinator’s name, title, address, telephone number and email address on materials and publications that contain general information disseminated to staff and members of the public, such as notices on the website and in buildings, on notices for large Town meetings and occasional social media communications

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 32.100 (b)(7))

Findings

From the responses submitted by staff, there is no evidence that the Town is unable to provide a reasonable modification upon request.

Recommendations

- Ensure that Town employees can provide information to members of the public about the process of requesting reasonable modification of policies when appropriate.
- IHCD, through its New England ADA Center, can provide a training for the Town of Hingham on all of the Town’s ADA obligations, including the administrative requirements and providing reasonable modifications 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.

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 35.100 (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

Several programs within the Town of Hingham have eligibility criteria. The Council on Aging has an age-related eligibility criterion for certain programs due to funding. To qualify for certain grants, you must be a resident. These requirements might be necessary for the provision of the service, program or activity, and are 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 Hingham does include an Equal Employment Opportunity statement within the ADA Notice and Grievance Procedure and as a stand-alone statement on the Town’s website:

<https://www.hingham-ma.gov/768/Equal-Opportunity-Employment-Clause>. Most of the job postings included a short Equal Employment Opportunity statement as well.

From the responses received from the ADA staff questionnaire, there is no evidence that the Town has failed to provide reasonable accommodations to its employees. Eleven (11) of the twelve (12) survey respondents indicated that their department has a nondiscrimination policy, eight (8) respondents indicated their department has reasonable accommodation policies in place, and ten (10) departments believed that there are policies on non-discrimination in selection criteria and the administration of test in place.

Recommendations

- Clearly provide information on the ADA and who to contact regarding reasonable accommodation requests for job applicants and municipal employees on the Human Resources webpage.

- Include an Equal Employment Opportunity Statement on the Human Resources webpage.
- Within the Employee Benefit handbook and employee portal, clearly state the contact information for the ADA Coordinator and provide a direct link to the Grievance Procedure.
- Make sure that the Equal Opportunity Statement is included on all job posting and consider adding, “If you need a reasonable accommodation, please contact...” and provide contact information.
- Review documents for the term “handicapped” and replace with “disability.”
- IHCD recommends that Town of Hingham employees familiarize themselves with the excellent free national resource from the Job Accommodation Network (JAN) (<https://askjan.org>).

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 35.100 (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 which auxiliary aid is appropriate should evolve from a consultation between the ADA Title II entity (Town of Hingham) 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 Hingham 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

Within the ADA Notice and Grievance Procedure, the Town of Hingham does state a commitment to provide effective communication through the provision of alternative formats, but the survey responses were mixed. “We offer large font when we can. We have an iPad with large font set of accessibility purposes. We offer the iPad to enlarge paper documents for those with low vision” and “We record meetings and use live transcript function in Zoom” On the other side, “no” and “The department does not do a great job of this, some online documents are scanned pdfs and therefore can't use text-to-speech technology. All new documents are uploaded as saved (not scanned pdfs) for this reason. If town employees had access to Adobe Pro then all documents could be provided in a manner that is equally effective to individuals who are visually impaired or blind.”

Recommendations

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

- 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 homepage, meeting notice and social media. Copies should also be posted in prominent locations in the Town's public buildings. (A sample Effective Communications notice is provided just after this bulleted list).
- 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. A “qualified” interpreter is 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. There currently is no state law or licensing requirement for general American Sign Language interpreters that requires national certification or Massachusetts Commission for the Deaf and Hard of Hearing (MCDHH) approval, except for legal interpreters. In the Commonwealth of Massachusetts, MGL.221.92a, the Massachusetts Commission for the Deaf and Hard of Hearing is responsible for the approval of qualified court and legal American Sign Language interpreters. However, it is always a good idea to ensure that interpreters are either Massachusetts Commission for the Deaf and Hard of Hearing approved, or possesses a national certification through the Registry of Interpreters for the Deaf (RID) or Board for Evaluation of Interpreters (BEI), as these are quality assurance exams with required demonstration of interpreting proficiency. Without passage of those exams there is no measure of competency for hiring agencies to ensure quality services.
- 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 should 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. (A sample Effective Communications notice is provided just after this bulleted list).
- 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 Hingham 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 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 Hingham 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 to build capacity within the Town to comply with this important element of the ADA.

Sample of Effective Communication request:

“The Town of Hingham 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/Video calls 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. In their Guidance on Web Accessibility and the ADA (<https://beta.ada.gov/resources/web-guidance/>), the Department of Justice recommends using the Web Content Accessibility Guidelines (WCAG) or the Section 508 Standards, to ensure accessibility.

Note: IHCD will be submitting a web accessibility report with recommendation for the Town to implement.

- To address these Information and Communication Technology (ICT) issues, Hingham 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.
- IHCD recommends providing web forms or accessible fillable PDFs for all the forms available on the Town’s website.
- Include captioning for all the videos available on the Town’s website and social media.
- Include alternative text descriptions for all photographs and images available on the Town’s website and social media.
- Provide podcast transcripts upon requests.
- 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.

Also, it is the Department of Justice position that police stations provide sign language interpreters in a timely manner when requested.

- 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 a Video Remote Interpreting service.

8 – Emergency Preparedness, Evacuation Plans, and Emergency Shelters

While a review of the Town of Hingham’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 related to emergency preparedness see the following:

- 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.

Based on this review, IHCD recommends the following:

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

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):

- 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 (JAN):

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

New England ADA Center:

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