

Adult and Community Learning Services

Disability Guidelines



Adult and Community Learning Services

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Massachusetts Department of Elementary and Secondary Education



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Dear ABE Practitioners:

The Massachusetts Department of Elementary and Secondary Education (the Department) is issuing the attached Adult and Community Learning Services Disability Guidelines to describe the general state and federal requirements for accessibility of adult basic education (ABE) programs for individuals with disabilities. The Disability Guidelines underscore and support the Department's commitment to ensuring that ABE programs are accessible, safe, usable for all participants, and that policies and practices do not discriminate against individuals with disabilities.

The Disability Guidelines present a general overview of federal and state requirements under Section 504 of the Rehabilitation Act, the Americans with Disabilities Act (ADA) of 1990, and the Department's anti-discrimination policies. The document highlights administrative requirements that ABE programs must follow to demonstrate that the programs' policies and practices do not discriminate against or create barriers to participation for individuals with disabilities. Compliance with these administrative requirements and with federal and state civil rights laws will ensure that all ABE programs are accessible and barrier-free for all learners, and are inclusive in their policies.

The Disability Guidelines are available on the Disability Services section of the Adult and Community Learning Services (ACLS) website at <http://www.doe.mass.edu/acls/disability/default.html>. Technical assistance is available from ACLS. Note that these Disability Guidelines provide general information on program requirements are not intended to be legal advice. You should direct specific questions about compliance with state and federal requirements to your program's legal counsel.

In addition to the Disability Guidelines, the Department will continue to keep you informed on disability related topics in Adult and Community Learning Services (ACLS) mailings, Americans with Disabilities Act Regional Network (ADARN) Sharing Groups, and with System for Adult Basic Education Support (SABES) and ACLS sponsored workshops.

I hope that you will find the Disability Guidelines and the other disability related resources the Department provides helpful in your work. Please do not hesitate to contact me with your comments.

With Literacy in Mind,

Anne Serino
ACLS Administrator

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CHAPTER 1: OVERVIEW OF ACCESS LAWS

Adult basic education (ABE) programs are required to comply with the requirements of federal anti-discrimination laws including Section 504 of the Rehabilitation Act of 1973 (Section 504), the Americans with Disabilities Act (ADA), and state laws that prohibit discrimination on the basis of disability, including M.G.L. c. 151B. The following chapter includes a general overview of these laws.

I. SECTION 504 OF THE REHABILITATION ACT AMENDMENTS

Section 504¹ is a federal law prohibiting discrimination against qualified individuals with disabilities. Section 504 applies to all programs and activities that receive federal funds, including local school districts and ABE programs.

No otherwise qualified individual with a disability in the United States . . . shall solely by reason of his or her disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance....

Consistent with Section 504, as a recipient of federal funds an ABE program may not, on the basis of someone's disability, deny a qualified individual with a disability an equal or effective opportunity to participate in or benefit from ABE programs compared to the opportunity that is provided to others. ABE programs must provide individuals with disabilities an equal opportunity to achieve the same result, to gain the same benefit, or to reach the same level of achievement that is available to an individual without a disability. This requires ABE programs to remove barriers to participation, which may mean providing accommodations to individuals with disabilities or making changes to facilities and programs.

II. THE AMERICANS WITH DISABILITIES ACT

The ADA² is a comprehensive federal civil rights law enacted to ensure that individuals with disabilities are not discriminated against in employment, public services, public accommodations and communications. The ADA extends the requirements of Section 504 to state and local governments and to private programs open to the general public, regardless of whether the program receives federal funds. The ADA prohibits discrimination against any "qualified individual with a disability," and requires that public programs and programs open to the public offer individuals with disabilities an equal opportunity to participate in and benefit from the programs.

¹ Section 504 refers to Section 504 of the Rehabilitation Act of 1973 as amended: 29 U.S.C. § 794; 34 CFR Part 104, available at <http://www.ed.gov/policy/rights/reg/ocr/edlite-34cfr104.html>.

² The full text of the Americans with Disabilities Act (ADA), 20 U.S.C. § 12101 *et seq.*, is available at <http://www.ada.gov/pubs/ada.htm>. The implementing regulations of Title II of the Act, 28 CFR Part 35, are available at <http://www.ed.gov/policy/rights/reg/ocr/edlite-28cfr35.html>.

The ADA contains sections, or “Titles,” that address specific areas covered by the law. These include employment³, public services, transportation, and telecommunications. Title II of the ADA applies to all state and local government services. Title III applies to all public accommodations, that is, programs open to the general public. To comply with the ADA, all ABE programs must provide reasonable accommodations and modifications in their policies, practices, procedures, and facilities so that individuals with disabilities have access to these programs. Accommodations and modifications must be provided unless the ABE program can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.⁴

The key provisions of the ADA that ABE programs need to know about are the requirements of nondiscrimination and access. ABE programs must ensure that:

- a. The ABE program’s policies and practices do not discriminate against individuals with disabilities. An individual with a disability may not be excluded from participation because of his/her disability. This means that all policies and practices must be universally applied in the program. ABE programs cannot have different standards for enrollment, participation and access for people with and without disabilities;
- b. If an ABE program is located in a building constructed before January 26, 1992, the ABE program must be readily accessible to individuals with physical disabilities. Programs may remove a physical barrier to participation by individuals with disabilities by using the ADA Standard for Accessible Design⁵ or the Uniform Federal Accessibility Standards (UFAS),⁶ or by providing “program access.”⁷ Program access includes acquiring or modifying equipment or devices, reassigning classes to accessible buildings, assigning aides, or providing program opportunities at alternate accessible sites.
- c. If an ABE program is located in a building constructed or altered after January 26, 1992, the building must comply with either the ADA Standards for Accessible Design or UFAS.

The Department requires that an ABE program fulfill five specific administrative requirements that support nondiscrimination and accessibility consistent with federal law. The program must:

1. Designate an ADA Coordinator;

³ ABE programs must also comply with the provisions in Section 504 and Title I of the ADA that require nondiscrimination in employment. These Disability Guidelines do not address employment requirements. Additional information about nondiscrimination in employment is available from the U.S. Equal Employment Opportunity Commission at <http://www.eeoc.gov/types/ada.html>, and the Massachusetts Commission Against Discrimination at <http://www.mass.gov/mcad/dfactsheet.html>.

⁴ 28 CFR § 35.130(b)(7)

⁵ The ADA Standards for Accessible Design can be found at <http://www.usdoj.gov/crt/ada/stdspdf.htm>.

⁶ The Uniform Accessibility Standards can be found at <http://www.access-board.gov/ufas/ufas-html.ufas.htm>.

⁷ 28 C.F.R. § 35.150

2. Provide public notice of the program's commitment to comply with the ADA;
3. Adopt and post a grievance procedure that incorporates due process standards and provides for prompt and equitable resolution of complaints alleging discrimination on the basis of disability;
4. Conduct a self-evaluation; and
5. Develop a transition plan to make the program barrier free for accessibility.

More information about these administrative requirements is available in Section V, pages 5 - 12.

III. MASSACHUSETTS STATUTES PROHIBITING DISCRIMINATION

The Massachusetts' Constitution⁸ and Massachusetts General Laws Chapters 151B, 272 §§92A, 98, and 98A, also prohibit discrimination on the basis of disability. In general, the requirements of our state statutes are the same as the requirements of federal law. For further information on Massachusetts laws prohibiting discrimination on the basis of disability, please contact the Massachusetts Commission Against Discrimination (MCAD).⁹

IV. DEFINITIONS OF TERMS

In order to better understand the requirements of the federal and state disability laws, it is helpful to understand the meaning of the laws' terms. The following definitions are adapted from the U.S. Department of Justice's *Americans with Disabilities Act Title II Technical Assistance Manual*, available at <http://www.usdoj.gov/crt/ada/taman2.html>. Please consult the Manual and other materials available from the Department of Justice for additional information.

Federal and state disability laws protect three categories of *individuals with disabilities*:

1. Individuals who have a *physical or mental impairment that substantially limits one or more major life activities*;
2. Individuals who have a *record of a physical or mental impairment that substantially limits one or more of the individual's major life activities*; and
3. Individuals who are *regarded as having such an impairment*, whether they have an impairment or not.

Physical impairments include physiological disorders or conditions; cosmetic disfigurement; or anatomical loss, i.e., loss of a body part that affects one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin and endocrine. Sometimes physical impairments may not be obvious. *Mental impairments* include mental or psychological disorders, such as mental retardation, organic brain syndrome, emotion or mental illness, and specific learning disabilities.

⁸ Massachusetts Constitution, Article 114.

⁹ Links to these statutes and to state regulations can be located on the MCAD Website at <http://www.mass.gov/mcad/index.html>.

The ADA protects those people who have a physical or mental impairment that substantially limits a major life activity, and also people with *a record of such an impairment*, and people who are *regarded as* having an impairment that substantially limits a major life activity. This includes people who have a history of impairment even though they have recovered from the impairment, people who have been misclassified as having an impairment, and people who are treated as if they have an impairment that limits a major life activity.

In order for an individual's physical or mental impairment to constitute a disability, a person's impairment must substantially limit a *major life activity*. Major life activities include caring for one's self, performing manual tasks, walking, seeing, hearing, breathing, speaking, learning, and working. *Substantially limits* mean that the individual is restricted in the conditions, manner, and duration under which they can perform that activity when compared with most people.

In order to be protected by the laws that prohibit discrimination on the basis of disability, an individual must also be a "qualified individual with a disability." A *qualified individual with a disability* in an ABE program is someone who meets the essential eligibility requirements for participation in the ABE program or activities, or for the receipt of services provided by the ABE program. That means that either with or without reasonable accommodation through the modification to the program's policies and practices, the removal or architectural or communication barriers, or the provision of auxiliary aids or services, the individual can participate in the ABE program.

The ADA requires a public entity to *reasonably modify* its policies, practices, and procedures to avoid discrimination. Among other things, an ABE program cannot use eligibility criteria that will screen out individuals with disabilities from participating in the ABE program, unless the program can show that such requirements are necessary for the provision of the ABE program or activity. A program can establish *eligibility criteria so long as the criteria are evenly applied and essential* for ABE program participation.

V. ANTIDISCRIMINATION POLICIES

In addition to meeting federal and state requirements for accessibility and participation by individuals with disabilities, the Department requires ABE programs to fulfill five additional administrative requirements to demonstrate compliance with its policy of non-discrimination in publicly-funded education programs. ABE programs must:

1. Submit a letter of commitment;
2. Provide disability access training for staff;
3. Involve persons with disabilities in the program;
4. Provide a teletypewriter (TTY) telephone for the Deaf and hard of hearing to ensure effective communication; and
5. Participate in required professional development for the ADA Coordinator.

CHAPTER 2: ADMINISTRATIVE COMPLIANCE

I. THE CHECKLIST FOR ABE PROGRAMS

To demonstrate the program's compliance with federal and state disability laws, the Department requires ABE programs to complete and submit the ten-question ADA Checklist on an annual basis as posted at <http://www.doe.mass.edu/acls/disability/default.html>. The ADA Checklist confirms that the program has reviewed the conditions at the program site, including facilities, policies, and procedures, to ensure that the program is accessible and verifies the program's efforts to comply with federal laws and state requirements.

A program that reports inaccurate information to the Department, fails to submit the checklist, is not accessible, or has policies and practices that discriminate against individuals with disabilities will jeopardize its continued funding from the Department.

II. FEDERAL ADMINISTRATIVE COMPLIANCE

As described in Chapter I, ABE programs must comply with five administrative requirements to demonstrate compliance. An ABE program must:

- A. Appoint an ADA Coordinator;
- B. Post a Notice of Non-discrimination;
- C. Establish a Grievance Procedure for students;
- D. Conduct a self-evaluation; and
- E. Develop a transition plan regarding accessibility if the facility is not barrier-free.

A. ADA COORDINATOR

Each ABE program must appoint an ADA Coordinator. The ADA Coordinator is responsible for ensuring that a program is in compliance with the Section 504 and the Americans with Disabilities Act, and for answering questions from staff and program participants prior to or after enrollment. In order to do this job effectively, the ADA Coordinator needs to have knowledge of state and federal disability requirements. The ADA Coordinator must be able to deal with sensitive and emotional issues, and work constructively with the program and participants to ensure that individuals with disabilities have access to ABE programs and services.

The Department requires that the ADA Coordinator in any program funded by the Department ensures the program is in compliance with state and federal requirements, including the following:

- Answering disability related questions
- Ensuring that persons with disabilities receive reasonable accommodations
- Investigating disability related student complaints and grievances
- Ensuring that program policies and practices are non-discriminatory

- Providing orientation for new staff and disability related training at least annually for all staff
- Developing a system that ensures all confidential information is secured in locked files
- Verifying and documenting that the program is accessible and usable

B. PUBLIC NOTICE OF NON-DISCRIMINATION

The ABE program must post a public notice of non-discrimination affirming the program's commitment to the requirements set forth in Section 504, the ADA and other civil rights laws. The notice must be posted in a prominent place at the program site. An ABE program can use the model public notice form that is available on the Department's website at <http://www.doe.mass.edu/acls/disability/default.html>, or develop its own public notice.

An ABE program that develops its own public notice must be sure to include all information that is contained in the model notice, including program name; a statement of non-discrimination against individuals in the on the basis of race, color, gender, national origin, religion, creed, disability, age, sexual orientation and genetic information. The public notice must also include the name, office address, telephone number, and hours for the ADA Coordinator. Although the law does not require that an email address be included in the contact information, the Department strongly recommends that this alternative format of communication be made available. The public notice may also be included in brochures and as part of intake information.

The notice of non-discrimination must be available in alternative formats (e.g., audio, large print, Braille) to accommodate individuals that may not be able to read it. Available alternate formats must also be listed on the notice. The Department also recommends that the ABE program make the notice of compliance available in the three most widely spoken languages of the student body. Programs can access alternate formats of the model public notice and translations in 14 languages at the Department website at <http://www.doe.mass.edu/acls/disability/default.html>. A Braille format of the notice is available upon request from ACLS.

In addition, the ABE program must post its grievance policy in a prominent place at the program site. It can also be included in brochures and as a part of intake information. Grievance procedures are discussed below.

C. GRIEVANCE PROCEDURE

Federal law prohibits institutions from establishing policies, practices, and services that exclude or discriminate against individuals with disabilities. The Department requires all ABE programs to establish a procedure to help provide a prompt and appropriate response to complaints of discrimination by a student. If an individual believes that he or she has been discriminated against, the grievance procedure is the first step in the process of resolving complaints alleging any action that is prohibited by law.

The primary purpose of the grievance procedure is to resolve a discrimination complaint without having to take legal action. Sometimes a program may not know that it has not met the needs of

individuals with disabilities or has discriminated against a participant. The procedure allows the institution to correct the violation by complying with the law. In most cases, a complaint can be resolved at the grievance procedure stage.

Programs may adopt the model grievance procedure that is available at the Department website at <http://www.doe.mass.edu/acls/disability/default.html>. An ABE program that develops its own grievance procedure must be sure to include all of the elements recommended by U.S. Department of Justice (DOJ) in the grievance procedure.¹⁰ The grievance procedure must also include the name, office address, telephone number, and hours for the ADA Coordinator. Although including an email address is not required by law, the Department recommends that programs include this alternative contact information.

The DOJ recommends the following elements be included in a grievance procedure:

- A description of how and where a discrimination complaint may be filed;
- If a written complaint is required, a statement notifying potential complainants that alternative means of filing will be available to people with disabilities who require such an alternative;
- A description of the time frames and processes to be followed by the complainant;
- Information on how to appeal an adverse decision; and
- A statement of how long complaint files will be retained.

The ADA Coordinator should keep accurate records with documentation of steps taken to resolve the complaint. All grievance procedure documentation must be kept in a confidential file. A complaint should be kept on file for at least three years.

Administrative complaints under Section 504 and Title II of the ADA may be filed with the U.S. Department of Education, or with the U.S. Department of Justice. Complaints may be sent to:

Office for Civil Rights
U.S. Department of Education
330 C Street, S.W., Suite 5000
Washington, D.C. 20202

or

Coordination and Review Section
P.O. Box 66118
Civil Rights Division
U.S. Department of Justice
Washington, D.C. 20035-6118

The Department of Justice will also investigate alleged violations of Title III of the ADA regarding public accommodations. An investigation may be requested by any individual who believes that he or she has been discriminated against or that a specific class of persons has been discriminated against in violation of Title III. Complaints may be sent to the following address:

Office on the Americans with Disabilities Act
Civil Rights Division, U.S. Department of Justice
P.O. Box 66738, Washington, D.C. 20035-9998

¹⁰ The Model Grievance Procedure can be found in the Title II ADA Compliance Toolkit at <http://www.usdoj.gov/crt/ada/pcatoolkit/chap2toolkit.htm>.

D. SELF-EVALUATION

Each ABE program that the Department funds must conduct a self-evaluation to assess its compliance with Section 504 and the ADA. The self-evaluation allows the program to assess four areas of compliance: employment, program policies, communications, and facility accessibility.

The ABE program must send the original self-evaluation form to the Department and keep a copy on file at the program site. Each time an ABE program makes structural changes to its facility or moves to another facility the program must conduct another self-evaluation to consider issues of facility accessibility. Records must be submitted to the Department no later than 30 business days after relocation to the new facility.

A self-evaluation guide can be obtained from the *Accommodating Adults with Disabilities in Adult Education Programs* manual at <http://das.kucri.org/AccommodationsNotebook.shtml>, from the University of Kansas Center for Research on Learning, or from the ADA website at <http://www.ada.gov/racheck.pdf>.

The Department recommends the ADA Coordinator invite a team of people including a person with a disability to participate in the program evaluation. Other team members may include teachers, board members, and students. A diverse team will allow for differing perspectives on policies and practices that may help to shape or change policies to be more inclusive of all students.

When a program applies for funding in a new five-year cycle, the Department strongly recommends that the program conduct another self-evaluation. This is an ideal time to check all areas of accessibility, including:

- All required notices are posted and visible.
- Programs ensure that communications with individuals with disabilities are as effective as communications with others. A TTY and relay telephone training has been provided for all staff.
- All safety devices (i.e. strobe lights, sprinklers, fire extinguishers, etc.) are in working order.
- Ramps and fire extinguishers are structurally sound and unblocked.
- The parking lot has sufficient accessible parking space(s) and signage and lines are visible.
- Bathrooms, drinking fountains, telephone devices, etc. are accessible and usable and, if not, the necessary repairs are made.
- An annual fire drill has been conducted.
- Evacuation and emergency plans accommodate students with disabilities.
- Evacuation and emergency plans are posted in every room.

E. TRANSITION PLAN REGARDING ACCESSIBILITY

Consistent with federal law, all individuals with disabilities must have access to a full range of ABE programs and facilities. An individual with a disability must be able to enter the facility and be able to use it safely. This means that classrooms, corridors, bathrooms and other areas of the facility that are used by program participants and the general public must be accessible and usable for persons with disabilities. Accessibility may be achieved by altering existing facilities, constructing additional facilities, acquiring or redesigning equipment, providing aides to participants, and providing services at alternative accessible sites, among other things.

If a barrier to accessibility is discovered during the program's self-evaluation, or at any time, the ABE program must create a transition plan that details the steps that the program will take to remove the barrier to accessibility. All physical barriers to accessibility must be reported to the ACLS within 48 hours of identification. No later than 30 business days after notification, the program's ADA Coordinator must submit to ACLS a transition plan that includes the following information:

- A detailed description of the physical barrier(s) that prevents accessibility;
- A description of steps that are being taken to remove the barrier, including a schedule for completion of the corrective action; and
- Contact information for the person responsible for implementing the program's transition plan.

All public facilities that are designed, constructed, or altered to be accessible and usable by individuals with disabilities must comply with design standards. Public entities may conform with the design standards in the Uniform Federal Accessibility Standards (UFAS) or the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (ADAAG). Additional information about these standards is available in the DOJ's guidelines, and at <http://www.usdoj.gov/crt/ada/adahom1.htm>.

When an ABE program adopts a transition plan to correct barriers to accessibility, the ADA Coordinator must provide the Department with quarterly updates on the progress of the corrective action. ACLS is available to assist programs in developing appropriate transition plans.

A program that discovers a barrier and does not submit a transition plan is in violation of federal law and state policy, and continued funding from the Department may be affected.

III. STATE ADMINISTRATIVE REQUIREMENTS

In addition to the five administrative requirements for compliance with federal law, the Department has adopted state policies to further services for students with disabilities. In Massachusetts, the Department requires ABE programs to provide the following information:

- A. Submit a letter of commitment;

- B. Provide disability access training for staff;
- C. Involve persons with disabilities in the program;
- D. Provide a teletypewriter (TTY) telephone for the Deaf and hard of hearing to ensure effective communication; and
- E. Participate in required professional development for the ADA Coordinator

A. LETTER OF COMMITMENT

ABE programs must submit a letter of commitment to the Department annually stating the program's commitment to compliance with Section 504 and the ADA. The letter must provide assurances that the program will be physically accessible, non-discriminatory in its policies and practices, and will adhere to the requirements of federal law and other anti-discrimination laws. The letter must be signed by the program's chief executive officer (CEO) or program director. A sample letter of commitment that can be modified or used as a guide for a program's own letter can be found on the ACLS website at <http://www.doe.mass.edu/acls/disability/default.html>.

B. DISABILITY ACCESS TRAINING

The ADA Coordinator must provide program staff with annual training opportunities and information about Section 504, the ADA, non-discrimination laws, and disability related topics. It is important that staff is aware of the federal and state requirements to ensure that students with disabilities are afforded equal opportunities to participate in and benefit from ABE programs. Training may include inviting speakers to address staff, allowing staff to attend workshops, and sharing information about the ADA and disability issues during staff meetings. The ADA Coordinator may use resources in their local communities, including hospitals and human service agencies. Additional resources are available through the System for Adult Basic Education Support (SABES). More information is available on the SABES website at <http://www.sabes.org> or by visiting a SABES regional center.

C. INVOLVEMENT OF PERSONS WITH DISABILITIES

ABE programs must actively recruit persons with disabilities to be involved in program activities. One way of doing this is by inviting all of the student body, particularly students with disabilities, to be part of committees. The ADA Coordinator and staff should actively recruit students with disabilities to participate in the student advisory council, committees, boards, community planning partnerships, and other activities.

D. TELETYPEWRITER FOR EFFECTIVE COMMUNICATION

ABE programs must provide equally effective communication with individuals with disabilities, including those who are deaf, hard of hearing, or speech impaired. ABE programs may use the state's telephone relay service, a system where a relay operator uses a standard telephone and a telecommunications device for the deaf (TDD) to type and to read messages to allow individuals with and without communication disorders to communicate by telephone with each other. There is no cost for the relay service, which may be accessed by dialing 711 or 800-439-0183.

Department policy requires ABE programs to have teletypewriter (TTY) telephone service in addition to using the telephone relay service. The TTY is an accommodation for individuals with communication disorders who choose not to use the telephone relay service. The TTY number should be listed on the program's letterhead and brochures.

ABE programs must have at least one individual trained to use the TTY and telephone relay service during both day and evening program operational hours. It is recommended that more than one staff member should be trained to use these telephone services. For information about TTY and telephone relay service training, contact the Communication Access and Training Technology Service at the Massachusetts Commission for the Deaf and Hard of Hearing at 617-740-1668.

E. ADA COORDINATOR PROFESSIONAL DEVELOPMENT

The ADA Coordinator appointed by the ABE program needs a working knowledge of the ADA and Section 504, as well as the state's administrative requirements for ensuring compliance with disability access requirements. ADA Coordinators must attend at least one ADA training each year. The Department recommends that ADA Coordinators complete six hours of disability-related professional development each year by attending SABES workshops, Americans with Disabilities Act Regional Network (ADARN) Sharing Group, professional development offered by other agencies, or national conferences. The SABES website at <http://www.sabes.org/> is a resource for information about professional development.

A new ADA Coordinator, that is an individual with less than one year of experience in the position, should complete a five-hour ADA overview orientation. SABES offers the ADA overview orientation twice a year. The Department strongly recommends that new ADA Coordinators continue to expand their working knowledge of the ADA and disability issues by utilizing available resources and training opportunities.

F. ADDITIONAL CONSIDERATIONS: FIRE SAFETY

Programs should be located in facilities that comply with applicable federal and state laws regarding fire safety. Although there are no specific additional fire safety requirements for ABE programs, the Department strongly recommends that all programs have evacuation plans to ensure that students and staff can safely evacuate the building, and that programs conduct a fire drill at least once a year. Evacuation and safety planning should also specifically address the needs of individuals with disabilities.

The Department recommends that ABE programs include the following fire safety recommendations as part of a building safety plan:

1. Develop an evacuation plan and post it in each room with the evacuation route.
2. Make sure students and staff know where they are assigned to meet during evacuation.

3. Designate someone to be the monitor to ensure that everyone knows where to go when the fire alarm sounds.
4. Designate someone to take the attendance list so the program can verify all staff and students have evacuated the building.
5. Include fire safety information in a lesson or have a fire safety awareness day or week.
6. During the intake interview ask if the student will need any assistance to evacuate the building.
7. Develop a buddy system for persons with disabilities.
8. In consultation with the local fire department, designate a safe haven for persons with disabilities. Make sure the safe haven is equipped with a means of communication with firefighters such as a cell phone or walkie-talkie. A staff person is not required to stay in the safe haven during a fire.
9. If the program is located above the ground floor, consider purchasing an evacuation chair.
10. On an annual basis:
 1. Conduct an annual fire drill and keep a log or record of each drill.
 2. Check the following safety equipment to ensure it is in working order:
 - fire extinguishers
 - fire alarm
 - strobe lights
 - means of egress (check for clutter)
 - sprinkler system
 - smoke detector (check with clock time change)
 - carbon monoxide detector
 - fire escape

CHAPTER 3: MODIFICATIONS AND ACCOMMODATIONS FOR ACCESS TO THE EDUCATION PROGRAM

I. INTAKE

A person with a disability cannot be refused an opportunity to enroll in an ABE program because of his/her disability. ABE programs must have an inclusive admission policy.

- No discrimination through eligibility criteria.
- Participation in the most integrated setting.
- The program must provide intake accommodations. If a person with a disability were unable to read small print, for example, a reasonable accommodation could be for the intake coordinator to allow the person to verbally answer the questions. He/She could use an intake form with larger print or voice activated technology.

II. PHYSICAL ACCESS

Adult learners with disabilities must have access to the full range of ABE programs that are available to other adult learners. ABE programs must offer adequate physical access including:

- An entrance ramp must be available to use as an alternative to stairs.
- An automatic door opener or bell intercom system must be used when a door is heavier than five pounds.
- At least one bathroom must be wheelchair accessible.
- If the program has a parking lot, at least one space per 25 spaces must be designated for accessible parking.
- Modifications in policies and rules to allowed the use of service animals.
- Persons with disabilities will have records and disability related information kept confidential.

III. ACADEMIC ACCOMMODATIONS

ABE programs are required to make reasonable accommodations for individuals seeking enrollment or enrolled in programs. Accommodations are adjustments that allow individuals with disabilities to participate in the classroom, to perform tasks in the class, and to enjoy the same privileges as his/her peers in the program.

A student with a disability who self-discloses has a right to accommodations. He/She will be required to have documentation of his/her disability to receive appropriate academic accommodations. Accommodations must be reasonable and in some cases because of the type of accommodation may take time to secure.

In order to obtain an accommodation the student must:

A. Self-Disclose

- Inform the ABE program that he/she will need an accommodation.
 - Ideally, the student should provide accommodation needs at intake.
 - If the student does not provide accommodation information during intake, it should be provided during the first week of classes.
 - Be a self-advocate. An adult learner must explain his/her disability and recommend accommodations.

B. Provide Documentation

- The student must provide documentation from a licensed professional that explains what the disability is; how the disability affects learning; what the instructional needs are; and what accommodations are needed for testing and evaluation.
- A program can use assessment information including an Individualized Education Plan (IEP) developed by the public school system to document a person's disability for an accommodation in the ABE program.

C. Participate in an Interactive Discussion

- The program and the student should discuss the student's need.
- Accommodations are individualized, one size does not fit all.
- Some accommodations cost money or may need to be purchased. This can take time. Early disclosure will give the ABE program time to respond to the accommodation request.

There are many types of accommodations, and those that are used must be tailored to the individual student's needs. For example, a reasonable classroom accommodation for a student with an attention-related disability such as ADHD may be to modify the classroom environment by moving the student's desk to the front of the class, allowing the student to take frequent breaks, or allowing the student to wear headphones. These are all reasonable accommodations. Accommodations must be determined on a case-by-case basis.

Additional information and resources about accommodations for adult learners is available from the U.S. Department of Education's Office of Vocational and Adult Education at <http://www.ed.gov/about/offices/list/ovae/pi/AdultEd/disability.html> or at the Searchable Online Accommodation Resource (SOAR) website at <http://www.jan.wvu.edu/soar/>.

Please Note: An IEP must have been developed within the last five years for a GED test accommodation. Otherwise, a qualified licensed professional must administer formal assessments for GED test accommodations. Assessment reports to be used for GED test accommodations cannot be more than five years old. For additional information on GED test accommodations, please see <http://www.doe.mass.edu/ged/afd.html>.

IV. USE OF AUXILIARY AIDS AND SERVICES

Individuals with disabilities may need to use auxiliary aids and services in order to access the ABE program. In some cases, auxiliary aids are accommodations for individuals with disabilities, but many auxiliary aids and services enhance program quality for all students and are not costly. Here are some auxiliary aids and services that most programs use that many students, either with or without a disability, have benefited from using:

- Colored markers/highlighters
- Audio tapes
- Verbal descriptions
- Large print
- Pictorial signage
- Computer diskette
- Colored overlays

A program does not have to provide personal auxiliary aids such as walkers, hearing aids, canes, or wheelchairs.

CHAPTER 4: STUDENT RECORDS AND CONFIDENTIALITY

Education records, including all records regarding an individual's disability or medical condition, are confidential and must be protected. These records cannot be shared with someone other than the individual to whom the records apply unless the individual has given permission for the information to be shared, or unless someone has a legitimate educational interest in having that information.¹¹ The following guidelines must be followed when making referrals or engaging in conversation with other professionals about a student, unless you have consent from the individual.

- Only individuals who have a “legitimate educational interest” in having access to the student’s records, i.e., providing services, etc., may have access to confidential student record information.
- Always get permission in writing from the student to send information or speak with individuals from other agencies.
- Carefully review referral form information. Do not send anything that is not requested.
- Never share a person’s HIV status with anyone.
- When discussing a possible referral for a student to another institution, do not give his/her name, not even a first name.
- When discussing a student’s record information, always do it privately.
- Close doors and never talk about students in public places.
- Review recordkeeping and confidentiality policies with new staff and at least annually with current staff.
- Keep all disability record information in a separate record file. Always return confidential records including disability record information to locked files when you leave your office.
- Limit the number of keys and the number of staff that have access to files with disability record information.
- Require staff to sign out records. Post a log on the file cabinet for staff to sign out records. This will help you keep track of records.
- Every few years as staff change, consider changing your file locks.
- Close your computer screen when you leave your office or when others are in your office space.
- Carefully discard written confidential information that is not going into a student’s record.
- Always maintain confidentiality when sending emails, faxes or leaving a voicemail.
- Always check the copier for all papers before leaving the machine.
- When mailing confidential information, stamp the envelope confidential, to be opened by recipient. Confirm that the recipient has received the confidential information.

¹¹ For additional requirements regarding student record confidentiality, see the federal Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g and 34 CFR Part 99 at <http://www.ed.gov/policy/gen/reg/ferpa/index.html>, and the Massachusetts Student Records Regulations, 28 CMR 23.00 at <http://www.doe.mass.edu/lawsregs/603cmr23.html?section=01>.

CHAPTER 5: RESOURCES

Americans with Disabilities Act (ADA), 20 U.S.C. § 12101 *et seq.*,
<http://www.ada.gov/pubs/ada.htm>; 28 CFR Part 35,
<http://www.ed.gov/policy/rights/reg/ocr/edlite-28cfr35.html>.

Section 504 of the Rehabilitation Act (Section 504), 29 U.S.C. § 794,
http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=browse_usc&docid=Cite:+29USC794; 34 C.F.R. Part 104,
<http://www.ed.gov/policy/rights/reg/ocr/edlite-34cfr104.html>.

ADA Home Page, U.S. Department of Justice, <http://www.usdoj.gov/crt/ada/adahom1.htm>.

ADA Best Practices Tool Kit for State and Local Governments, U.S. Department of Justice,
<http://www.usdoj.gov/crt/ada/pcatoolkit/chap1toolkit.htm>.

The Americans with Disabilities Act Title II Technical Assistance Manual, U.S. Department of Justice; <http://www.usdoj.gov/crt/ada/taman2.html>.

The Americans with Disabilities Act Title III Technical Assistance Manual, U.S. Department of Justice, <http://www.usdoj.gov/crt/ada/taman3.html>.

Adult Education and People with Disabilities, U.S. Department of Education's Office of Vocational and Adult Education,
<http://www.ed.gov/about/offices/list/ovae/pi/AdultEd/disability.html>.

Adaptive Environment Center, Inc. 1996. ADA Title II Action Guide for State and Local Governments and Supplement on Employment.

Bulgren, J., M. Gilbert, J. Hall, B. Horton, D. Mellard, K. Parker 1998. Accommodating Adults with Disabilities in Adult Education Programs. Lawrence, KS: University of Kansas Institute for Adult Studies 1998

Huntsville, AS Arkansas Adult Education/Literacy 2004. Arkansas Adult Education and Literacy: Policy & Procedure Manual for Serving Students with Learning Disabilities and /or Attention Deficit Hyperactivity Disorder.

The Academy for Educational Development and University of Kansas Institute for Research in Learning Disabilities 1999. Bridges to Practice: A Research-based Guide for Literacy Practitioners Serving Adults with Learning Disabilities.

Young Adults with Learning Disabilities Project 2003. Learning Disabilities Awareness.

APPENDICES

- A. MASSACHUSETTS ADA STANDARDS**
- B. ADA CHECKLIST**

APPENDIX A: MASSACHUSETTS ADA STANDARDS

1. ADA Coordinator: ABE programs must have an ADA Coordinator. The ADA Coordinator is responsible for ensuring that a program is in compliance with both the federal Americans with Disabilities Act and Massachusetts' ADA requirements. He/She is also responsible for duties including, but not limited to: answering ADA related questions; ensuring that persons with disabilities receive reasonable accommodations; investigating ADA related complaints and grievances; ensuring that program policies and practices are non-discriminatory; providing orientation for new staff and ADA related training at least annually for all staff; developing a system that ensures all confidential information is secured in locked files; and verifying and documenting that the program is accessible and usable.
2. Public Notice: ABE programs must establish and post a public notice that a) informs students and the general public that all programs and activities are provided without regard to disability, and b) provides the names(s), address(es) and telephone number(s) of the ADA Coordinator(s) responsible for Title II and Title III of the ADA. The public notice is available in 14 languages on the ACLS website at <http://www.doe.mass.edu/acls/disability/default.html>.
The public notice is available in Braille by request from ACLS. *It is recommended that the public notice be posted in at least three of the languages most widely spoken by the student body.*
3. Grievance Procedure: ABE programs must establish and publish a written grievance procedure. The grievance procedure should provide a mechanism for staff and students to address issues of non-compliance with state and federal laws relating to discrimination and equal access. The grievance procedure must include the ADA Coordinator's name, office address, telephone number, and hours available. An email address is not required by law, but is strongly recommended. A model grievance procedure is available in 14 languages on the ACLS website at <http://www.doe.mass.edu/acls/disability/default.html>.
The grievance procedure is available in Braille by request from ACLS. *It is recommended that the grievance procedure be posted in at least three of the languages most widely spoken by the student body.*
4. Self-Evaluation: ABE programs must conduct a one-time self-evaluation to ensure the program's policies are non-discriminatory and the facility is accessible. Use of the self-evaluation helps to ensure that a program is in compliance with federal laws regarding disability access. The original must be submitted to the ACLS and a copy must be kept on file at the program site. If a program moves to another facility, a new self-evaluation must be completed and submitted no later than 30 business days after relocation to the new facility. The guidelines for self-evaluation can be accessed for free from the University of Kansas Institute for Adult Studies. The self-evaluation is part of the *Accommodating Adults with Disabilities in Adult Education Programs* manual. It can be found at <http://das.kucrl.org/AccommodationsNotebook.shtml> or <http://www.ada.gov/racheck.pdf>.
It is recommended that programs conduct a self-evaluation prior to each new five-year funding cycle.

5. Transition Plan: ABE programs must be barrier free. All physical barriers must be reported to the ADLS Program Specialist within 48 hours of identification of the barrier and a transition plan for barrier removal must be developed and submitted within 30 business days. The transition plan must include a detailed description of any barrier(s) that exist, a description of what is being done to remove the barrier(s), and a target date for completion of the corrective action(s). For multi-step barrier removal activities, a list of the steps to be taken and a comprehensive timeline must be included. ACLS requires quarterly updates on transition plans that include barrier removal work.
6. Letter of Commitment: ABE programs must submit a letter each year indicating support of and commitment to compliance with the Section 504 and the ADA. The organization's chief executive officer (CEO) or program director must sign the letter. A sample letter of commitment can be found on the ACLS website at <http://www.doe.mass.edu/acls/disability/default.html>.
7. Training for Staff: The ABE program's ADA Coordinator must conduct a needs assessment of the program's staff training needs related to Section 504, the ADA, and disabilities. Based on this assessment, the ADA Coordinator must provide opportunities for program staff to receive education and training on the requirements of federal law and disability related topics.
8. Involvement of Persons with Disabilities: ABE programs must facilitate involvement of persons with disabilities in their programs. Some examples of this involvement include engaging persons with disabilities in student committees and as volunteers, trainers, guest speakers, and board members. One way of doing this is by inviting all of the student body, particularly students with disabilities, to be part of committees. The ADA Coordinator and staff should actively recruit students with disabilities to participate in the student advisory council, committees, boards, community planning partnerships, and other activities.
9. Teletypewriter (TTY) Telephone for Deaf and Hard of Hearing: ABE programs must be prepared to accommodate Deaf, hard of hearing, and speech impaired persons through the provision of text telephone (TTY) and telephone relay service that is accessible to students, staff, and visitors. Every ABE program must have a TTY telephone and post a sign indicating its location for students, staff, and the public to view. All ABE programs must include the TTY number on their stationery and brochures. ABE programs must have at least one individual trained to use the TTY and the telephone relay service during both day and evening operational hours. It is recommended that more than one staff member should be trained to use the TTY and the telephone relay service. ABE staff can be trained by the Massachusetts Commission for the Deaf and Hard of Hearing. For TTY and relay telephone service training, call 617-740-1668. There is no cost for this training. The ADA Coordinator must annually submit the names of staff with the date(s) they were trained to use the TTY and telephone relay service, and by whom. The telephone relay service is free.
10. ADA Coordinator Professional Development: ADA Coordinators must attend at least one Section 504/ADA training each year. It is strongly recommended that the ADA Coordinator complete six hours of disability related professional development each year. A new ADA Coordinator, defined as an individual with less than one year of experience in the position, should complete a five-hour Section 504/ADA overview orientation. It is strongly recommended that a new ADA Coordinator continue to expand his/her working knowledge of the law by attending SABES workshops, ADARN sharing groups, and other disability related workshops and conferences.

FY2009 ADA CHECKLIST

Program Director: Please complete all relevant **yellow** shaded areas according to instructions in the Comments.

Agency Name				# of sites			
Program Director				Director E-mail			
ADA Coordinator				Coordinator E-mail			
Transition Plan Attached	Public Notice Posted	Grievance Procedure Posted	Letter of Commitment	TTY is Available to Students	TTY is listed on Stationery	TTY is listed on Brochure	Date of Self-Evaluation
ADA Coordinator Training Topics (What)			Date	ADA Training with Staff (What)			Date
Relay and TTY Training (Who)			Date	Involvement of Persons with Disabilities (How)			Date
Multiple Sites		ADA Coordinator		Accessible	Send to Adult and Community Learning Services: <u>ada@doe.mass.edu</u> by Tuesday, September 30, 2008 Assurance: The sender of this document certifies it contains true and accurate information.		
Other Comments from Program ADA Coordinator if needed.							
Comment 1:							
Comment 2:							

