

# MASSACHUSETTS OFFICE ON DISABILITY



# DISABILITY HANDBOOK FOR THE EXECUTIVE BRANCH



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# **The Massachusetts Office on Disability**

The Massachusetts Office on Disability (MOD) was created in 1981 under Chapter 6, Section 185 of the Massachusetts General Laws. One of the goals of MOD is to increase awareness of the rights of persons with disabilities. It is our hope that this Disability Handbook will be a helpful resource for Executive Branch ADA Coordinators as well as the larger community.

To achieve its goals, MOD focuses its activities in four areas:

## **Training – Advocacy – Monitoring - Resources**

### **Training**

Disability Non-discrimination Training

Covering Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act of 1973, Fair Housing Amendments Act of 1988, MGL Ch. 272, Sec., 92A & Sec. 98, MGL Ch. 151B, MGL Ch. 151C, Sec. 98A

For:

- Executive Agencies
- Municipalities
- Businesses & Private Organizations
- Employers
- Higher Education Institutions
- Housing Providers

- And, Customized
- Community Access Monitor, CAM
- Personal Emergency Preparedness, ER
- Commissions on Disability, CODs
- COD Guidance and Coordination
- Architectural Review/Site Visits

### **Advocacy**

Client Services

- Inform individuals how disability rights apply to their situation
- Re-establish communication with third parties to remove barriers and restore services
- Resolve disability-related discrimination and denial of service issues
- Provide technical assistance to those seeking reasonable accommodation in housing, employment, government, and places of public accommodation

Client Assistance Program, CAP

- Advocate on behalf of applicants for and clients of vocational rehabilitation (VR) agencies and independent living centers (IL)
- Apprise stakeholders of VR and IL services as well as CAP's role relative to those programs

Community Services Program

- Provide technical assistance on the applicability of architectural access codes

## Monitoring

### Reasonable Accommodations, RA

Offer technical assistance regarding obligations to provide reasonable accommodation for:

Housing Providers

Employers

State and Local Government

Places of Public Accommodation

### Architectural Access Board, AAB

AAB Board Member

Technical Assistance on Compliance

Architectural Review/Site Visits

### Government Compliance

ADA - Title I, II, & III

Section 504 of the Rehabilitation Act

Massachusetts General Law Ch. 151b

Executive Orders 351, 352 & 526

Federal Housing Administration (FHA), Fair Housing

Massachusetts General Law Ch. 7, Sec. 61(s)

## Resources

Blog ([mass.gov/mod](http://mass.gov/mod))

Quarterly Newsletter ([mass.gov/mod/newsletter](http://mass.gov/mod/newsletter))

Twitter ([@Massdisability](https://twitter.com/Massdisability))

YouTube

For further information about the Office on Disability, the laws discussed in this book, or to obtain assistance in asserting your rights, visit the MOD web site at [www.mass.gov/mod](http://www.mass.gov/mod) or call (617) 727-7440 or toll free at (800) 322-2020 (both V/TTY). For resources including contact information for Executive Branch ADA Coordinator's and MOD's Disability Laws Booklet, please see the MOD Publications page at: [mass.gov/mod/publications](http://mass.gov/mod/publications) This Handbook is maintained by the General Counsel of the Massachusetts Office on Disability.

**Disclaimer: The materials contained in this book ARE NOT under a © copyright. This book may be quoted or photocopied without consent. However, attribution is requested. This book is not intended to be comprehensive. It offers a succinct overview of the most frequently referenced laws related to disability. Laws and regulations change frequently. The summaries in this book reflect the laws and regulations in effect on March 9, 2018. Please refer to the laws and regulations directly for the actual, current text.**

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## I. Introduction

- **The Handbook**
- **Who is considered a Person with a Disability?**
- **Basic Principles of Access**
- **Getting Started**
- **Policies and Procedures**
- **Contacts**

### • The Handbook

The Disability Handbook (Handbook) is a collection of information about the laws and regulations in place to ensure that the Executive Branch of Massachusetts State Government is accessible to individuals with disabilities. The content of this handbook is designed to assist Executive Branch personnel in their efforts to provide such accessibility.

Executive Order 526 affirms the commitment to fostering inclusion and access that permeates all Executive Branch programs, services and activities. While certain aspects of providing access for people with disabilities are fairly straightforward (American sign language interpreters for Deaf individuals, assistive listening systems for hard of hearing individuals, ramps for mobility access, and Braille documents for blind individuals and large print versions for people with partial vision losses), others are more nuanced and sometimes overlooked. This Handbook attempts to address all facets of accessibility and equal opportunity.

The following sections are based on the protocols for compliance established by the United States Department of Justice (DOJ) and are intended to provide guidance, checklists and forms to assist Executive Branch Entities in complying with the Commonwealth's obligations under the applicable laws intended to ensure accessibility for all people with disabilities.

**DISCLAIMER: This Handbook is intended to guide implementation of the Executive Branch's responsibilities under the Americans with Disabilities Act, Section 504 of the Rehabilitation Act and related state and federal laws. It is for internal staff use and public information only, and is not intended to create any rights, responsibilities, or independent cause of action against the Commonwealth of Massachusetts or any of its government entities.**

### • Who is considered a Person with a Disability?

The Americans with Disabilities Act, MGL Ch. 151B § 1(17) and the Massachusetts Disability-Based Non-Discrimination Standards for Executive Branch Entities, §3.03 define a "disability" as:

- a physical or mental impairment that substantially limits one or more major life activities;
- having a record of such an impairment;
- being regarded as having such an impairment;<sup>1</sup> or
- being associated with a person with one or more disabilities

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<sup>1</sup> Massachusetts Disability-Based Non-Discrimination Standards for Executive Branch Entities, §3.03, contained at the end of this Handbook.

This is intended to be a broad definition in order to ensure the eradication of discrimination. In assessing if a person meets this definition of disability, the Massachusetts Commission Against Discrimination (MCAD) does not consider any medication, prosthetics, devices or any other “mitigating measures” available to the individual.

*However, this definition of disability generally does not include short-term illnesses and injuries.<sup>2</sup> It also – depending on federal v. state law - does not include:*

- Gender dysphoria or gender identity disorders not resulting from physical impairments, transvestism, pedophilia, exhibitionism, voyeurism, or other sexual behavior disorders<sup>3</sup>;
- Compulsive gambling, kleptomania, or pyromania; or
- Psychoactive substance use disorders resulting from current illegal use of drugs.<sup>4</sup>

- **Basic Principles of Access**

A basic principle of this administration is that all interested individuals with disabilities have access to employment opportunities, programs, services and activities. When business is conducted in accordance with this principle, providing accessibility becomes a matter of matching the solution to the need. Barriers are erected when people with disabilities are overlooked as potential or actual consumers precisely because of their disabilities. Often unconscious biases can be the hardest to overcome. This Handbook strives to provide the information and tools necessary for staff of the Executive Branch to incorporate the basic principal of accessibility in all we do.

- **Getting Started**

Executive Branch Entities are required to comply with certain basic administrative duties to ensure effective interaction and participation with people who have disabilities. They must:

- Appoint an ADA<sup>5</sup> Coordinator who is sufficiently highly placed within the organization to ensure compliance with current laws and regulations, i.e. “ADA/504<sup>6</sup> Coordinator.” (Attachment 1)
- Post a Notice of Non-Discrimination and Grievance Policies. (Attachment 2)
- Establish a Grievance Procedure for consumers and employees. (Attachment 3)

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<sup>2</sup> [Summers v. Altarum Institute, Corp., 740 F.3d 325, 329 \(4th Cir. 2014\)](#), and “commands courts to construe the definition of disability in favor of broad coverage, 42 U.S.C. § 12102(4)(A), and to focus on an employer’s actions rather than the extent of an employee’s disability.” [Williams v. Kennedy, 38 F.Supp.3d 186, 193 \(D. Mass. 2014\)](#). “In essence, Congress wanted courts to temper their scrutiny when considering the impact an individual’s impairments have on his or her ability to undertake major life activities.” *Id.*

<sup>3</sup> Note that in particular areas MGL Ch. 151B is more expansive, and in others, the ADA is more expansive- for example 151B exempts pedophilia but not the other categories listed herein. **Please seek legal counsel prior to making decisions based on the exemptions of particular categories due to these inconsistencies with state and federal law.**

<sup>4</sup> While there is no duty to accommodate illegal drug use under the ADA, Massachusetts state law states that an employer may not categorically terminate employment strictly based on non-workplace use of medical marijuana. [Barbuto v. Advantage Sales & Marketing, LLC, 477 Mass. 456 \(2017\)](#)

<sup>5</sup> ADA refers to the Americans with Disabilities Act and subsequent amendments

<sup>6</sup> 504 refers to Section 504 of the Federal Rehabilitation Act of 1973

- Establish a Compliance Policy. (Attachment 4)
- Establish familiarity with the contacts list that appears at the end of this chapter

**a. The ADA/504 Coordinator**

This is the contact person within the Executive Branch Entity charged with responding to disability related questions from staff and citizens with whom the Executive Branch Entity interacts. The person designated as the ADA/504 Coordinator must have knowledge of state and federal disability laws. For resources including contact information for Executive Branch ADA Coordinator's and MOD's Disability Laws Booklet, please see the MOD Publications page at: [mass.gov/mod/publications](http://mass.gov/mod/publications)

The ADA/504 Coordinator is the Executive Branch Entity's primary internal resource to provide disability related technical assistance, and therefore must be conferred with sufficient authority to make decisions or have direct access to the Executive Branch Entity head to discuss matters that directly impact the Executive Branch Entity's employees, policies, procedures, programs and provision of services.

The ADA/504 Coordinator should possess well developed interpersonal skills and the ability to deal with sensitive, emotional or potentially contentious interpersonal matters. This person should possess the ability to exercise discretion in handling confidential information and be skilled at assisting individuals to overcome resistance and change behavior in addition to possessing motivational skills. The ADA/504 Coordinator should be resourceful and knowledgeable with respect to inter-agency and inter-governmental relations and be willing and able to foster partnerships and relationships that will result in better and more complete access for people with disabilities.

The form Executive Branch Entities should use when selecting a Coordinator appears on the next page, as Attachment 1.



## **ATTACHMENT 1 - ADA/504 Coordinator Designation**

### **Executive Branch Entity Designation of ADA/504 Coordinator**

In accordance with Executive Order 526, each Executive Branch Entity shall appoint an ADA/504 Coordinator who shall report directly to the Executive Branch Entity head and work with the Massachusetts Office on Disability concerning issues involving persons with disabilities, and where state employee matters are involved with the Office of Diversity and Equal Opportunity. Notification of such appointment shall be made to the Massachusetts Office on Disability at the address below.

<b>1. Executive Branch Entity Name</b>					
<b>2. ADA/504 Coordinator's Name</b>					
<b>3. E-Mail</b>			<b>4. Phone</b>		
<b>5. Address</b>					
<b>6. Job Title</b>					
<b>7. Date Appointed</b>	___/___/20___	<b>8. Is this appointment?</b>	PERMANENT	ACTING	
<b>9. Does ADA/504 Coordinator report directly to the appointing authority?</b>				YES	NO
<b>10. Are ADA/504 duties</b>	FULL TIME?	PART TIME?	<b>10a. If part time, what % of an FTE?</b>		
<b>11. Direct Supervisor</b>	Name			Title	
<b>Information Or Training Needed for the Coordinator (check all that apply)</b>					
<b>a. Employment Rights</b>			<b>f. Public Program Access</b>		
<b>b. Education Rights</b>			<b>g. Privacy Protections</b>		
<b>c. Housing Rights</b>			<b>h. Other (Please Specify)</b>		
<b>d. Open Meetings Laws</b>					
<b>e. Physical Barrier Removal</b>					
<b>Signatures</b>					
<b>Appointing Authority</b>				<b>Date</b>	___/___/20___
<b>ADA/504 Coordinator</b>				<b>Date</b>	___/___/20___

### **ADDRESS QUESTIONS TO:**

Moss R. Lynch at Moss.R.Lynch@mass.gov or at 617-727-7440 extension 27319

### **SUBMIT COMPLETED DESIGNATION TO:**

Moss R. Lynch, ADA/504 Coordinator & Assistant Director for Training and Communications  
Massachusetts Office on Disability  
One Ashburton Place, #1305, Boston, MA 02108

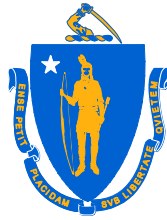
**b. Public Notice**

All public entities including state Executive Branch Entities must inform employees and consumers of the protections of the ADA and MGL Ch. 151B. This notice of non-discrimination must be posted in a public area and/or must be made available in other ways.

It is important to remember the target audience of this notice is *everyone* who interacts with or who would potentially interact with the Executive Branch Entity. It is not a one-time requirement, but must be provided on an ongoing basis. This notice should appear in job postings, on the Executive Branch Entity's website, at all agency worksites or facilities, in program handbooks, in activity schedules, and in meeting announcements.

It is also important to keep in mind the requirements to provide effective communication (see later in this Handbook) may require this notice be posted in ways other than a printed notice on a bulletin board. Please provide said public notice in at least size 16 font with at least 1 inch margins.

A sample public notice appears on the next page as Attachment 2.



# PUBLIC NOTICE

## NON-DISCRIMINATION BASED ON DISABILITY

### COMMONWEALTH OF MASSACHUSETTS (AGENCY NAME)

The (AGENCY NAME) advises its employees and the public that it does not discriminate on the basis of a person's disability in employment or in access to its programs, services, and activities. (APPOINTING AUTHORITY NAME), (TITLE), has designated (ADA/504 COORDINATOR'S NAME), (TITLE), to coordinate efforts to comply with the requirements of Executive Order 526, the Americans with Disabilities Act, the federal Rehabilitation Act and various other federal and state laws protecting the rights of people with disabilities.

Inquiries, requests, and complaints should be directed to:

**(NAME), ADA/504 COORDINATOR  
(AGENCY NAME)  
(STREET ADDRESS)  
(CITY/TOWN, STATE, ZIP CODE)  
(TELEPHONE NUMBER), (TTY NUMBER), (FAX NUMBER)  
(E MAIL ADDRESS)**

**c. Grievance Procedure**

The ADA requires that an informal procedure be established to address any complaints of non-compliance of discrimination and to provide a prompt and equitable resolution. The following “Guidelines related to Disability based Discrimination & Reasonable Accommodation/Modification Action” and “Grievance Procedure” have been established for use by Massachusetts Executive Branch Entities.

## **ATTACHMENT 3 – GUIDELINES & GRIEVANCE PROCEDURES RELATED TO DISABILITY-BASED DISCRIMINATION & REASONABLE MODIFICATION ACTION**

### **GUIDELINES RELATED TO DISABILITY-BASED DISCRIMINATION & REASONABLE MODIFICATION ACTION**

The following are guidelines for informal grievance procedures for complaints of disability based discrimination and/or denial of reasonable modification of an Executive Branch Entity's policies and procedures in the operation of its programs, activities and services.

The entity will do the following:

- Inform all staff and the public that they have the option of reporting complaints of public accommodation disability discrimination or denial of reasonable accommodation in state government programs, activities and services to any Executive Branch Entity charged with enforcing or resolving disability based non-discrimination laws, including but not limited to the Massachusetts Commission Against Discrimination (MCAD), or the Massachusetts Office on Disability.
- Inform all staff and the public that in order to bring a legal claim of discrimination under MGL. Chs. 92, 98, 98A, 151B, and/or 272, one must first file a claim with the MCAD or the EEOC within applicable time limits.
- Inform all staff and the public that they may also report any complaints of discrimination or denial of reasonable modification to its ADA/504 Coordinator.
- Charge the ADA/504 Coordinator with adhering to the process as outlined in the below-listed Grievance Procedure, as adopted by that Executive Branch Entity.
- Prominently display and disseminate its Grievance Procedure.

#### **Notes:**

1. MOD jurisdiction over complaints is limited to public accommodations and state government programs, activities and services provisions – Not to employment complaints and requests.
2. Employment-related complaints from applicants or employees of Executive Branch Entities should be addressed under the policies and procedures established by the Office of Diversity and Equal Opportunity<sup>7</sup> as outlined in their "Guidelines for Implementing Executive Order 526" document.
3. The process established here is intended as a quick informal process. It does not substitute the more formal MCAD, EEOC or Court processes.

### **GRIEVANCE PROCEDURE**

(Entity Name) has adopted an informal grievance procedure providing for prompt and equitable resolution of complaints alleging any violation of state or federal laws and regulations protecting individuals from discrimination based on disability in the provision of programs, activities and services.

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<sup>7</sup> [www.mass.gov/hrd/odeo](http://www.mass.gov/hrd/odeo)

1. The laws and regulations may be examined in the office of (name the ADA/504 Coordinator), at (address), (telephone number), (e-mail). This person has been designated to coordinate the efforts of the organization to comply with the regulations.
2. A complaint must state the name and address of the person filing the complaint and a brief description of the alleged action prohibited by the laws and regulations and the date the action allegedly occurred.
3. A complaint should be filed in the office of (name of the person designated to administer the grievance procedure as the ADA/504 Coordinator), within a reasonable amount of time, but no more than twenty [20] business days, after the action alleged to be legally prohibited.
4. (Name of the person designated to administer the grievance procedure as the ADA/504 Coordinator) shall investigate the complaint to determine its validity. These rules contemplate informal but thorough investigations, affording to all and their representatives, if any, a meaningful opportunity to submit evidence relevant to the complaint.
5. (Name of the person designated to administer the grievance procedure as the ADA/504 Coordinator) shall issue a written decision determining the validity of the complaint no later than twenty [20] business days after its receipt and issue a corrective action plan where the complainant prevails and the circumstances warrant.
6. (Name of the person designated to administer the grievance procedure as the ADA/504 Coordinator) shall maintain the files and records relating to complaints filed hereunder. (Name of the person designated to administer the grievance procedure as the ADA/504 Coordinator) may assist persons with the preparation and filing of complaints, participate in the investigation of complaints and notify the Chief Executive Officer or Head of the [Entity] of the resolution of the complaints.
7. Where the complainant notifies the ADA/504 Coordinator (w/n five [5] business days of receipt) that s/he is dissatisfied with the decision or corrective action plan specified under item 5 above, the ADA/504 Coordinator shall forward the matter to the Secretariat ADA/504 Coordinator for review within ten [10] business days of being noticed of complainant's dissatisfaction communication.
8. The Secretariat ADA/504 Coordinator shall review the entity's finding, decision and corrective action plan, conduct such additional investigation as s/he deems appropriate to the circumstances, and issue a written decision affirming, reversing or modifying the original decision and/or corrective action plan within twenty [20] business days after receipt of the matter.
9. Prior to issuing a decision reversing or modifying a decision reviewed under items 7 and 8 above, the Secretariat ADA/504 Coordinator shall contact the ADA/504 Coordinator for the Massachusetts Office on Disability, Evan C. Bjorklund, General Counsel at 617-727-7440, ext. 27324 or [evan.bjorklund@state.ma.us](mailto:evan.bjorklund@state.ma.us) Massachusetts Office on Disability (MOD) to discuss the merits of the grievance.
10. The Secretariat shall notify the complainant and the Massachusetts Office on Disability of the denial and the reasons for it, or in the case of a delay in resolving the matter, of the reasons for the

delay and when a decision should be expected (within the twenty [20] business days as outlined above in item 8).

11. The Massachusetts Office on Disability has twenty [20] business days to review and possibly modify the decision of the Secretariat ADA/504 Coordinator. If more time is needed, the Massachusetts Office on Disability will notify the complainant of the reasons for the delay and when a decision should be expected.
12. The right of a person to the prompt and equitable resolution of a complaint filed hereunder shall not be impaired by the person's pursuit of other remedies, such as seeking assistance from MOD' Client Services Unit, filing a complaint with the Massachusetts Commission Against Discrimination (MCAD), the appropriate federal Office for Civil Rights and/or any other federal and/or state entity or any state or federal Court.
13. These rules shall be liberally construed to protect the substantial rights of interested persons, to meet appropriate due process standards and assure compliance with the law and regulations.

**Notes:**

1. MOD's jurisdiction over complaints is limited to the public accommodations and state government programs, activities and services provisions -- not employment. Employment-related complaints from applicants or employees of Executive Branch Entities should be addressed under the policies and procedures established by the Office of Diversity and Equal Opportunity "Guidelines for Implementing Executive Order 526" document.
2. If a member of the public chooses to seek advocacy or assistance in filing a complaint - from MOD -in regard to their complaint, that individual will work exclusively with MOD's Client Services Unit. To avoid a conflict, to the extent possible, MOD's General Counsel will not provide technical assistance or advocacy to members of the public seeking to file a complaint or to the Client Services unit on said matters.
3. If an individual files a complaint with an administrative agency (for example, Massachusetts Commission Against Discrimination), regarding the same facts and circumstances, MOD will not institute its phase in the resolution process and will consider the matter administratively closed. In the event that a complaint is filed *after* MOD begins its phase in the resolution process, MOD will terminate its attempts to facilitate an amicable resolution.
4. The process established here is intended as an informal process. It does not substitute the more formal MCAD, federal OCR or state or federal Court processes.

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(Chief Executive Officer's Signature)

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(Entity Name)

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(Address)

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(Telephone)

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(TTY)

- **Policies and Procedures**

Executive Branch Entities typically conduct business, or implement policies and procedures in a neutral non-discriminatory fashion. With respect to disability accommodation, business procedures or policies may require modification to provide an equal opportunity for the participation by a person with a disability.

Examples of policies that might require modification include (1) mandating a driver's license as the only form of ID to purchase alcohol, or (2) requiring a child who uses a wheel chair to be accompanied by an attendant at a summer day camp, (3) enforcing a "no-dogs" policy that excludes a person who uses a service dog, (4) imposing a surcharge to cover the cost of a needed accommodation, (5) or enforcing a policy for someone who is Deaf or hard of hearing, or requiring one to communicate verbally on the telephone when there are other equally effective means of communication available.

The development and modification of policy is a core function of most government entities. People with disabilities have a stake in policy formation and decisions. Massachusetts and federal laws (and executive orders, bulletins, and guidelines) were enacted to ensure that individuals with disabilities:

- Are protected from illegal discrimination, and ensured equal access to benefits and privileges in employment, housing and places of public accommodation, including all government programs, activities and services,
- Have an equal opportunity to be part of the policy making processes of government entities,
- Have an equal chance to participate in and benefit from programs provided by the government, and
- Have a meaningful opportunity to obtain case-by-case changes to specific rules that would otherwise result in discrimination.

**Criteria or Methods of Administration:**

An Executive Branch Entity is prohibited from using criteria or methods of administration:

- That subject qualified individuals with disabilities to discrimination;
- That defeat or substantially impair accomplishment of program objectives related to individuals with disabilities; or
- That perpetuate disability based discrimination of another Executive Branch Entity.

These prohibitions specifically include direct actions by an Executive Branch Entity, as well as actions taken indirectly through contractual or other arrangements.

This next section addresses some common situations where inclusion of persons with disabilities in the policy-making process will enhance the quality of government services.

**Denial of Participation on Planning or Advisory Boards**



An Executive Branch Entity shall not deny a qualified individual with a disability of the opportunity to participate as a member of planning or advisory boards. To assure full participation, entities must also address the communication access needs of people with disabilities. Upon request, written material should be made available in alternative formats (e.g., large print, Braille or audio tape). Auxiliary aids should also be provided at public meetings when necessary to provide full participation. For example, if a resident who is deaf wishes to participate, the Executive Branch Entity should provide a qualified sign language interpreter (at no cost to the participant). If the person is hard of hearing, an assistive listening system should be provided. If the individual cannot benefit from amplification but can read English, then CART (Communication Access Real-Time Translation) should be provided.

### **Open Meetings<sup>8</sup>**

Meetings that are open to the public should be held in locations that provide, at a minimum, access to accessible parking, an accessible path of travel, an accessible entrance, and, if bathrooms are provided for public use, an accessible bathroom. Requirements such as requiring advance RSVP arrangements to attend meetings or being carried up-stairs are unacceptable methods for obtaining access to meetings. If doors are activated via remote intercom systems, arrangements need to be made to allow access for people with disabilities who would not be able to use the intercom, such as those who are deaf or blind.

### **Policies, Practices, or Procedures**

An Executive Branch Entity must make reasonable modifications in policies, practices, or procedures where the modifications are necessary to avoid discrimination on the basis of disability. This obligation is limited. An Executive Branch Entity can claim an exception if it demonstrates that making the modifications would fundamentally alter the nature of the service, program, or activity, or if it would place an unacceptably high financial or administrative burden on the entity.

### **Permissible Eligibility Criteria**

An Executive Branch Entity may not impose eligibility criteria for participation in its programs, services, or activities that either screen out or tend to screen out people with disabilities, unless it can show that the criteria are necessary for the provision of the service, program, or activity.

### **Safety**

An Executive Branch Entity may impose legitimate safety requirements necessary for the safe operation of its services, programs, or activities. However, the Executive Branch Entity must ensure that its safety requirements are based on real risks, not on speculation, stereotypes, or generalizations about individuals with disabilities.

### **Participation in Planning and Advisory Boards and Commissions**

People with disabilities have an equal right to participate in State government boards and commissions. In order for them to participate effectively, members with disabilities may need reasonable accommodations, such as materials in another accessible format (Braille, large print, etc) or provision of American Sign Language interpreters, Certified Deaf Interpreters (CDI) assistive listening systems or CART.

### **Surcharges**

An Executive Branch Entity may not impose a surcharge on a particular individual with a disability or any group of individuals with disabilities to cover the cost of measures such as the provision of auxiliary aids and

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<sup>8</sup> See this [link](#) on the Attorney General's website for Open Meeting Law educational materials.

services, barrier removal, alternatives to barrier removal, and other reasonable modifications that are required to provide that individual or group with nondiscriminatory treatment required by state or federal law, regulation or policy.

## **EXCEPTIONS**

These policies and procedures do not require an Executive Branch Entity to take any action that it can demonstrate would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial or administrative burdens, or creates a direct threat to health and safety. In those circumstances where personnel of the Executive Branch Entity believe that the proposed action would fundamentally alter the service, program, or activity or would result in undue financial and administrative burdens, an Executive Branch Entity has the burden of proving that compliance with these standards would result in such alteration or burdens.

The decision that compliance would result in such alteration or burdens must be made by the head of the Executive Branch Entity or his or her designee after considering all resources available for use in the funding and operation of the service, program, or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion and by a written statement of concurrence from the Director of the Office on Disability or his designee.

Even if an action required to comply with these Standards would result in such an alteration or such burdens, an Executive Branch Entity shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the benefits or services provided by the Executive Branch Entity.

## **SAMPLE COMPLIANCE POLICIES**

The following pages provide sample general policies and procedures which may be adapted to meet the needs of your entity.

## ATTACHMENT 4

# SAMPLE ADA/§504 COMPLIANCE POLICIES

### 1. GENERAL

It is the policy of (ENTITY NAME) to support and comply with both the requirements and principles of Section 504 of the Rehabilitation Act of 1973, MGL Ch. 151B, and the Americans with Disabilities Act of 1990, as amended, and to, in general, ensure that, to the maximum extent practicable, persons with disabilities are afforded equal access to the facilities, programs, activities and services of (ENTITY NAME) and that all otherwise qualified individuals receive equal employment opportunities.

Specific policies, procedures, and practices that (ENTITY NAME) has put in force toward achievement of these goals are as follows:

### 2. PROGRAM LOCATION(S)

Physical access to the programs and services of (ENTITY NAME) is a major focus of the ADA mandated self-evaluation. All programs, services, and activities will be examined.

Those programs, services, or activities that are found not to be accessible, as well as those that are, will be identified within the survey document along with explanations of the nature of their inaccessibility.

Wherever, in compliance with ADA and applicable State architectural access codes, whichever is stricter, equal access is limited or precluded by structural barriers, priority will be given to removal of these barriers over alternative methods of achieving program access.

When structural changes are undertaken, a written one to three year transition plan citing the steps to be taken and anticipated timelines will be developed and incorporated within the evaluation document.

Should new construction or qualifying renovations be undertaken, (ENTITY NAME) will ensure that all requirements, as applicable, of the ADA Accessibility Guidelines (ADAAG), the ADA, and the Massachusetts Architectural Access Code are met or exceeded.

### 3. COMMUNICATION

#### a. EMERGENCY

Emergency alarm devices in all public areas are both visual and auditory. Emergency evacuation procedures including those for people with disabilities have been developed and are, for each facility, described in attached documents.

The individual(s) responsible for coordinating training for emergency evacuation in each program location (facility) is (are): (EMPLOYEE NAME) (PROGRAM LOCATION).

Information on emergency evacuation procedures will, as appropriate, be provided to consumers verbally, in written form, and in alternative formats as earlier described.

#### **b. TELECOMMUNICATION DEVICES FOR THE DEAF - TTY**

(ENTITY NAME) may have previously operated under the requirement that a TTY (a type of Telecommunication Device for the Deaf, (TDD)) be available and may have operated a dedicated TTY line to fulfill this requirement. Taking into consideration the fact that many Deaf individuals whose primary language is American Sign Language use videophones as primary means of communication, and that a federally funded Video Relay Service (VRS) exists which utilizes professional sign language interpreters to bridge the gap between Deaf callers and (ENTITY NAME), it is no longer necessary for a TTY to be located onsite unless it is known that (ENTITY NAME) has clients whose only form of communication is through TTY. Instead, staff should be trained on how to respond to VRS calls, and how to utilize VRS services to return calls from Deaf consumers. Since videophones are only to be used by Deaf individuals, there is no need to purchase videophones for (ENTITY NAME), although provision of a public videophone for Deaf consumers may be considered.

#### **c. RELAY SERVICES**

At least one employee at each program location will be trained in the use of the telecommunication relay service from the provider of this service or a functionally equivalent expert from the Massachusetts Commission for the Deaf and the Hard of Hearing. Executive Branch agencies should review Massachusetts Commission for the Deaf and Hard of Hearing (MCDHH)'s *"Telephone/Communication Access Compliance for Deaf and Hard of Hearing Consumer across the Commonwealth"* policy.

#### **d. INTERPRETERS/ Communication Access Real-time Translation (CART)**

Upon being provided with reasonable prior notice of need, by a publicly announced deadline that is at least three weeks prior to the event or meeting, (ENTITY NAME) will provide American Sign Language Interpreters, Certified Deaf Interpreters (CDI) or Communication Access Realtime Translation (CART) for services and/or activities through the MCDHH Interpreter Referral Service.

#### **e. WRITTEN MATERIALS**

All written materials provided to consumers will, upon reasonable prior notice of need, be made available in the alternative formats such as large print, Braille, or electronically.

#### **f. ASSISTIVE EQUIPMENT/TECHNOLOGY**

Where necessary to provide effective communication with people with disabilities (ENTITY NAME) will comply with all applicable Federal and State laws and regulations relative to the use and availability of auxiliary aids, equipment and services.

In addition, no arbitrary restrictions or limitations will be placed on the type or number of assisted equipment items, including service animals, that consumers may bring with them to (ENTITY NAME)'s program locations.

If a program uses televised information, the captioning must be turned on at all times. All movies and videos used in conjunction with consumer services or activities will contain captioning and descriptive video service. If such products are not available, alternative means of providing communication access, such as the

previously described American Sign Language Interpreter or CART, must be provided when these items are used.

Where needed, Assistive Listening Devices with the correct adapters to fit the consumer's hearing needs/instrument (headphones, neckloop and earbuds) will be used at meetings and during one-on-one counseling sessions and provided if, as determined through cooperative discussion with affected consumer(s), deemed to be the most practical means of attaining communication accessibility. As needed, visual and/or tactile signaling devices will be provided.

#### 4. INFORMATION TECHNOLOGY

Where information technology is available to consumers or members of the public as part of any program, activity or service of (ENTITY NAME) that technology shall conform to accessibility standards established by the Executive Office of Technology Services and Security.



#### 5. TRANSPORTATION

(ENTITY NAME) does not routinely provide transportation for members of the public or recipients of its programs, activities and services. In those rare circumstances where transportation is provided for invited guests or members of policy making bodies (ENTITY NAME) will ensure that the transportation is accessible to people with disabilities through the use of an adequate number of accessible vehicles for this purpose.

If vehicles are owned and/or operated directly and an adequate number of accessible vehicles is not currently available to ensure equal receipt of service, outside accessible services will be engaged.

#### • [Contacts](#)

If you have questions about:	Contact:
<ul style="list-style-type: none"><li>• Legal Aspects of Disability Rights</li></ul>	Massachusetts Office on Disability Evan C. Bjorklund Esq., General Counsel One Ashburton, Place, #1305, Boston, MA 02108 <a href="mailto:Evan.Bjorklund@massmail.state.ma.us">Evan.Bjorklund@massmail.state.ma.us</a> 617-727-7440 Voice or TTY 617-727-0965 FAX 800-322-2020 Toll Free in Massachusetts <a href="http://www.mass.gov/mod">www.mass.gov/mod</a>
<ul style="list-style-type: none"><li>• Sign Language Interpreters</li><li>• CART (communication access real time translation) and remote CART</li><li>• Captioning</li><li>• Loop or other amplification devices</li></ul> <p><b>Note:</b> MCDHH recommends requests at least three (3)</p>	Requests are received by the Department of Interpreter/CART Services in several ways: <ol style="list-style-type: none"><li>1. Online request: This is the preferred way for making requests. The service may not be used for cancellations. Please visit the MCDHH website at <a href="http://www.mass.gov/mcdhh">www.mass.gov/mcdhh</a> for the online request form.</li><li>2. Phone: non-emergencies are received between 8:45 a.m. and 5:00 p.m. at 617-740-1600 VOICE and 617-740-1700 TTY. Legal</li></ol>

If you have questions about:	Contact:
<p>weeks in advance, because of high demand.</p> <p>If no requests for ASL interpreters are received 48 hours prior to a scheduled event, the ASL interpreter order can be cancelled through MCDHH without charge. In this case, the convening agency will not be charged. (If cancelled less than 48 hours before an event the requester is charged for the interpreters.)</p>	<p>emergencies are received 24 hours 7 days/week at 800-249-9949 TTY/VOICE.</p> <p>3. FAX: 617-740-1880 with an <a href="#">Interpreter/CART Request Form</a> </p> <p></p> <p>Massachusetts Commission for the Deaf and Hard of Hearing  Interpreter/CART Referral Service  600 Washington Street  Boston, MA 02111  8:45 AM- 5:00 PM, Monday - Friday  617-740-1600 Voice  617-740-1700 TTY  617-740-1880 Fax  800-882-1155 Voice  800-530-7570 TTY  617-326-7546 Video Phone  Fax: 617-740 -1699  Email: MCDHH.Office@state.ma.us  <a href="http://www.mass.gov/mcdhh">www.mass.gov/mcdhh</a></p>

If you have questions about:	Contact:
<ul style="list-style-type: none"> <li>• Braille</li> <li>• Audio tape</li> <li>• Large Print</li> <li>• Best Formats For Electronic Files</li> </ul>	<p>Massachusetts Commission for the Blind  Technology for the Blind Program  John Oliveira, Deputy Commissioner  600 Washington Street – 3<sup>rd</sup> Floor  Boston, MA 02111  <a href="http://www.mass.gov/mcb">www.mass.gov/mcb</a>  <a href="mailto:John.Oliveira@state.ma.us">John.Oliveira@state.ma.us</a>  617-626-7509 Voice  617-422-0419 Fax</p>
<ul style="list-style-type: none"> <li>• Workplace accommodations for Executive Branch staff who have temporary or permanent disabilities</li> </ul>	<p>Office of Diversity and Equal Opportunity  Sandra Borders, Director  One Ashburton Place, Room 213  Boston, MA 02108  <a href="http://www.mass.gov/hrd/odeo">www.mass.gov/hrd/odeo</a>  <a href="mailto:sandra.borders@state.ma.us">sandra.borders@state.ma.us</a>  617-727-7441 Voice  617-727-6015 TTY  617-727-0568 Fax</p>

## II. ACCESSIBILITY AND THE EXECUTIVE BRANCH

- **Program Accessibility**
- **Considerations for Physical Access**
- **Considerations for Communication Access**
- **Considerations for Information Access**
- **Considerations for Staff Activities**
- **Considerations for Service Animals**
- **Considerations for Transportation**
- **Considerations for Safety**
- **Considerations for Contracting and Acquisitions**
- **Considerations for Technology Access**
- **Licensing, Certification and Testing**
- **Eligibility Standards, Criteria and Methods of Administration**

For purposes of this Handbook, accessibility refers to the ability of people with disabilities to “participate in, and enjoy the benefits of, programs or activities conducted by the Executive Branch.”<sup>9</sup> For general information on disabilities and access, contact the Massachusetts Office on Disability.<sup>10</sup>

- **Program Accessibility**

An Executive Branch Entity must ensure that its programs are accessible to people with disabilities. Although it remains a goal that all buildings and facilities be fully accessible to all, this is not currently a necessary requirement of each or every part of a facility. “Program Accessibility” is the current standard. Executive Branch Entities must ensure that all of their programs, services, and activities, when viewed in their entirety, are accessible to people with disabilities. This may be achieved by a number of methods

In most situations, the preferred method of providing program accessibility is by altering an existing facility, or using another facility. However, an Executive Branch Entity may pursue alternatives to structural changes in order to achieve program accessibility. For example, where the second-floor office of a public welfare agency may be entered only by climbing a flight of stairs, an individual with a mobility impairment seeking information about welfare benefits can be served in an accessible ground floor location or in another accessible building.

It is the responsibility of the Executive Branch Entity to ensure the alternate location is not only architecturally accessible but that it affords the same level of privacy or amenities as the primary location.

Similarly, an Executive Branch Entity may move a public hearing from an inaccessible building to a building that is readily accessible. When choosing among available methods of providing program accessibility, an

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<sup>9</sup> 47 C.F.R. § 1.1803; MA Executive Order 526

<sup>10</sup> For specific MOD services, duties and functions please see earlier in this Handbook.

Executive Branch Entity must give priority to those methods that offer services, programs, and activities in the most integrated setting appropriate.

Executive Branch Entities sometimes fail to ensure that the entire range of its programs, activities, facilities, buildings, and services meet the Program Accessibility Requirements. When this happens, people with disabilities are unable to participate in the activities of government, such as public meetings, public functions, and other programs and services the entity offers. If a building such as a courthouse is inaccessible because doorways are too narrow, restroom facilities are inaccessible, and steps are the only way to get to all or portions of a facility, people with disabilities who use wheelchairs are unable to participate in jury duty, hearings, court proceedings or to access other services. Likewise, if appropriate communication access is not provided, then a Deaf or hard of hearing or late deafened citizen may not be able to participate in the program or service offered.

Program access is intended to remove physical and communicative barriers to services, programs, and activities, but it generally does not require that a government make each facility, or each part of a facility, accessible. For example, not every restroom in a facility need be accessible. Signage directing people with disabilities to the accessible features and spaces in a facility should be provided.

Executive Branch Entities may choose to make structural changes to existing facilities to achieve access. But, Executive Branch Entities can also pursue alternatives to structural changes to achieve program accessibility. For example, Executive Branch Entities can move public meetings to accessible buildings and can relocate services for individuals with disabilities to physically or communicatively accessible levels or parts of buildings. When choosing between possible methods of program accessibility, however, Executive Branch Entities must give priority to the choices that offer services, programs, and activities in the most integrated setting appropriate. In addition, all newly constructed facilities must be fully accessible to people with disabilities.<sup>11</sup>

- **Considerations for Physical Access**

### **BUILDINGS / ROOMS / HALLWAYS**

When choosing a site, consideration must be given to ensure that people with mobility related disabilities are generally able to move throughout the building with ease. In most cases, state buildings adhere to federal and Massachusetts standards established by the U.S. Access Board<sup>12</sup> and the Massachusetts Architectural Access Board (MAAB).<sup>13</sup> These standards are to be applied during the design, construction, and alteration of buildings and facilities.

Beyond the new construction design elements requiring access, there are practical, commonplace decisions Executive Branch staff can make to assure optimal physical access to Executive Branch programs and activities. Among the options to be considered:

- Determine if adjacent parking lots provide handicapped parking and that there is a clear, unimpeded path of travel from the parking (or the street) to the building.
- Ensure aisles, pathways and doorways remain unimpeded by boxes, furniture or other obstacles. Facilities that are compliant with current building codes may be rendered inaccessible by placing items in spaces that were not intended to be used as storage.

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<sup>11</sup> 28 C.F.R. §§ 35.149, 35.150, 35.151, 35.163.

<sup>12</sup> The Access Board, Accessibility Guidelines and Standards are available at <https://www.access-board.gov/guidelines-and-standards/buildings-and-sites/about-the-ada-standards/ada-standards>.

<sup>13</sup> The Massachusetts Architectural Access Code is available at: [521 C.M.R. §1.0, et seq.](#)



- Determine that the building/facility provides signage that is clear and unambiguous, and contains high contrast, raised letters and Braille.
- Arrange meeting rooms or seating areas, in a manner that creates aisles between tables and/or chairs that are sufficiently wide to permit easy passage for wheelchairs, scooters, and other mobility aids.
- Ensure pre-arranged seating arrangements, include gaps in the seating plan to allow space for people who use wheelchairs or scooters.
- If accommodations that require user activation are installed in the building -- for example, chair lifts that require keys<sup>14</sup> to operate them-- make sure that the key or other means of activation is easily available for users with disabilities. It does little good to have a lift installed if the key that is required to operate it is in an office on the other side of the lift! Keep in mind that lifts and other similar aids must be easily accessible in both directions, i.e., “coming” and “going.” Note, that in 2011 the MA Elevator Board changed their regulations regarding keys, and now require no-key mechanisms.<sup>15</sup>
- Do not assume that all people with similar disabilities will want identical accommodations. If you are unsure of what to do, ask the person with a disability for guidance. Also, do not assume that a person only has one disability. Persons with visible physical disabilities may also have non-obvious sensory or developmental disabilities.

## • Parking and Drop-Off Space

An entity is not required to provide parking unless it offers it to everyone. However, parking is a highly desirable access feature of any site. A passenger drop off area is also a highly desirable site feature, particularly when no accessible parking is available. Access to parking should not be provided through systems such as intercoms which are not accessible to Deaf or hard of hearing individuals unless alternate policies are posted at point of entry.

When parking can be provided, accessible parking spaces, including van accessible spaces, must be located on the shortest accessible route from adjacent parking to the accessible entrance of the building or facility. Accessible parking spaces and the required accessible route should be located where individuals with disabilities do not have to cross a vehicular lane.

When parking cannot be located immediately adjacent to a building and the accessible route must cross a vehicular route, then it is recommended that a marked crossing must be used where the accessible route crosses the vehicular route. In facilities that have multiple accessible entrances with adjacent parking spaces, the accessible parking spaces must be dispersed.

## • Entrances and Paths of Travel

Once one reaches a building or facility, there needs to be a level path of travel to get into and through the building or facility. Entrances need to be wide enough for a wheelchair to pass through and heavy doors need to be adjusted or equipped with automatic openers to allow people with disabilities to pass.

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<sup>14</sup> A proper variance would need to be granted by the MA Elevator Board to operate a wheelchair lift with a key switch.

<sup>15</sup> 524 CMR 35.00 Part XX 2000.10a

## • Interior Layout

There are extensive regulations available from the [Massachusetts Architectural Access Board \(AAB\)](#) and the U.S. Access Board detailing the particulars of what makes a space accessible. These regulations contain a wealth of information about everything from counter and stair heights, to bathroom dimensions.

Even when space is designed with accessibility in mind, Executive Branch Entities must regularly check their space for obstacles, such as boxes and extraneous furniture that tend to creep into hallways, meeting rooms and other common spaces over time.

## NEW CONSTRUCTION AND ALTERATIONS

The Americans with Disabilities Act requires that all facilities designed, constructed, or altered by, on behalf of, or for the use of an Executive Branch Entity must be readily accessible and usable by individuals with disabilities, if the construction or alteration began after January 26, 1992.<sup>16</sup> However, Massachusetts has had a state building code that has required accessibility be provided in publicly funded buildings since 1968, and in all buildings open to the public since 1975.

What is "readily accessible and usable?" This means that the facility must be designed, constructed, or altered in strict compliance with particular design standards. Executive Branch Entities must use the Americans with Disabilities Act Accessibility Standards for Buildings and Facilities (ADAAG) 28 C.F.R. §36, Appendix A or (where applicable) the 2010 ADA Standards for Accessible Design and the Massachusetts Architectural Access Board regulations (521 C.M.R.) when designing projects. In areas where the two regulations differ, the standard that provides the most access for people with disabilities should be used.

## HISTORIC PRESERVATION PROGRAMS

Special program accessibility requirements and limitations apply to historic preservation programs.<sup>17</sup> Historic preservation programs are programs conducted by an Executive Branch Entity that have preservation of historic properties as a primary purpose. An historic property is a property that is listed or eligible for listing in the National Register of Historic Places or a property designated as historic under the Massachusetts Historical Commission.

In achieving program accessibility in historic preservation programs, an Executive Branch Entity must give priority to methods that provide physical access to individuals with disabilities. Physical access is particularly important in an historic preservation program, because a primary benefit of the program is uniquely the experience of the historic property itself.

An Executive Branch Entity is not required to take any action that would threaten or destroy the historic significance of an historic property. In cases where physical access cannot be provided because of either this special limitation, or because an undue financial burden or fundamental alteration would result, alternative measures to achieve program accessibility must be undertaken. Those measures might include for example videos of upper story rooms, closed circuit television of activities taking place in inaccessible areas, etc.

***Note: This special limitation does not apply to programs that are not historic preservation programs, but just happen to be located in historic properties.***

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<sup>16</sup> 2010 Standards: [https://www.ada.gov/2010ADASTandards\\_index.htm](https://www.ada.gov/2010ADASTandards_index.htm); 1991 Standards: [https://www.ada.gov/1991ADASTandards\\_index.htm](https://www.ada.gov/1991ADASTandards_index.htm)

<sup>17</sup> US DOJ Technical Assistance Manual, § II-6.3300.

## **CURB CUTS**

Curb cuts are sloped areas that create a smooth transition from sidewalks to streets or roads. Curb cuts allow people with mobility impairments to gain access to the sidewalks and to pass through center islands in streets. Without the required curb cuts, sidewalk travel in developed areas is difficult, and in some cases impossible for people who use wheelchairs, scooters, and other mobility aids. Improperly designed curb cuts or the lack of curb cuts can be dangerous, since individuals may be forced to travel in streets and roadways.

- **New Construction**

When streets and roads are newly built or altered, they must have curb cuts wherever there are curbs or other barriers to entry onto a pedestrian walkway or cross walk. Likewise, when new sidewalks or walkways are built or altered, they must contain curb cuts or sloped areas wherever they intersect with streets or roads.<sup>18</sup>

While resurfacing a street or sidewalk is considered an alteration for these purposes, filling in potholes alone will not trigger the alterations requirements.<sup>19</sup>

- **Existing Structures**

At existing roads and sidewalks that have not been altered, governments may choose to construct curb cuts at every point where a pedestrian walkway intersects a curb, but they are not necessarily required to do so.

- **Curb Cut Specifications**

The Massachusetts Architectural Access Board specifications for curb cuts are found in [521 C.M.R. §21](#).

- **Considerations for Communication Access**

In our complex society, effective communication requires at least vision, hearing, speech, thought processing and gross and fine manual skills. Executive Branch Entities need to take proactive steps to ensure they are prepared to address a variety of communication issues generally, and are aware of the need to provide specific accommodation through the use of a variety of auxiliary aids and services designed to enable Deaf or hard of hearing individuals to participate equally in events, programs and services offered.

As Executive Branch Entities, we must spend the time to identify and address the communication needs of people with disabilities. A little advance planning goes a long way in making it possible to comply with this standard in a prompt and effective way.

## **HOW DOES ONE COMMUNICATE EFFECTIVELY?**

Effective Communication is based on mutual understanding and comprehension of the message being conveyed and how it is being conveyed. While there are many different ways of achieving this goal there are some general guidelines that should be followed:

- First, ask the individual what generally works best for them. Sometimes, it is as simple as speaking more clearly or raising your voice slightly.

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<sup>18</sup> See new federal guidance entitled: "[Accessible Shared Streets: Notable Practices and Considerations for Accommodating Pedestrians with Vision Disabilities](#)"

<sup>19</sup> [https://www.fhwa.dot.gov/civilrights/programs/ada\\_resurfacing\\_qa.cfm](https://www.fhwa.dot.gov/civilrights/programs/ada_resurfacing_qa.cfm)

- Second, use tools and resources at hand to begin the conversation. For example, if the individual is deaf and you need to convey a short message in the absence of a sign language interpreter, try writing notes. This can be done with a pad and pen, or on a computer where available, or using a speech to text application on a smartphone. Keep in mind that not all deaf people are as fluent in written English as you may be, because American Sign Language is their primary language.

## **SPECIAL CONSIDERATIONS BY TYPE OF COMMUNICATION**

- **Information and Signage**

Make sure that interested persons, including persons with impaired vision or hearing, can obtain information about the existence and location of accessible services, activities, and facilities.

Provide signs at all inaccessible entrances to each facility, directing users to an accessible entrance or to a location where they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each accessible entrance of a facility.

- **Telephone**

Where an Executive Branch Entity communicates by telephone with applicants and beneficiaries, effective telecommunication systems such as a phone call made to a Deaf consumer's direct videophone number (which automatically triggers the insertion of a qualified American Sign Language interpreter provided by the Video Relay System) shall be used to communicate with individuals with impaired hearing or speech. If permissible by the Entity and requested by the consumer, email communications may also be employed.

For more information about communication options for people who are deaf or hard of hearing, contact the Massachusetts Commission for the Deaf and Hard of Hearing. The following incorporates MCDHH's policy on this matter:

### **Telephone/Communication Access Compliance for Deaf and Hard of Hearing Consumers across the Commonwealth**

*The ADA defines relay services as telephone services that enable people who are Deaf or hard of hearing, or who have a speech disability to communicate with a person who can hear in a manner that is "functionally equivalent" to the ability of an individual without a disability to communicate by telephone.*

*The ADA required the Federal Communications Commission (FCC) to develop and enforce relay service regulations that encourage "the use of existing technology and do not discourage or impair the development of improved technology." The FCC has used this directive as a means to improve relay services and foster the development of new technology so relay users are not left behind as these technological advancements occur.*

*In the Commonwealth, all individuals can enjoy communication access through our statewide MassRelay program. MassRelay is a free service for the residents of Massachusetts. It enables people who are Deaf,*

*hard of hearing, late-deafened, or speech disabled to communicate over the phone. MassRelay is a free service available 24 hours a day and is accessed by dialing 711 from a telephone or Teletypewriter (TTY).*

*Today, in addition to MassRelay, Deaf and hard of hearing individuals can choose from many different relay service providers and a wide range of relay services:*

- Voice Carry Over (VCO) for people who are Deaf or hard of hearing who communicate by speaking*
- Hearing Carry Over (HCO) for people with a speech disability who use a TTY*
- Speech-to-Speech (STS) relay service for people with a speech disability who use a telephone*
- Non-English languages relay services, such as Spanish-to-Spanish*
- Captioned Telephone Service (CTS) for people with a special “captioned telephone” that enables them to read what the other person is saying through captions displayed on the “captioned telephone”, while communicating through spoken language.*
- Video Relay Service (VRS) is federally funded telecommunications service where a remotely situated American Sign Language interpreter interprets between a Deaf person who is using a video phone at one location and a hearing person who is using any voice phone, at another location. At the Deaf user's end, a videophone and a high speed internet connection are necessary; nothing is needed at the hearing caller's end.*
- Video Remote Interpreter (VRI) is conceptually similar to VRS in that it uses a remotely situated ASL interpreter to interpret between a Deaf ASL user and a hearing person. The difference is that this service is not federally funded, and is designed to facilitate communication between a Deaf person and a hearing person at the same location, using a remotely situated ASL interpreter. For this service, a video connection and high speed internet is required for the location where the Deaf and hearing person are located.*
- Internet Protocol Relay (IP Relay) service, an Internet-based system for people with a computer or other web-enabled device who communicate using text*
- Internet Protocol Captioned Telephone Service (IP CTS), an Internet-based system that enables people to communicate by speaking and listening to what they can hear over a telephone, and read what the other person is saying through captions displayed on a computer or other web-enabled device*

*For more information about these forms of relay services, see the FCC factsheet at <http://www.fcc.gov/cgb/consumerfacts/trs.html> .*

*Relay services are provided at no cost (free) to all relay service users. State relay service programs provide and pay for some relay services, such as relay services used on in-state calls made through TTY, CTS and STS. The FCC oversees the Interstate Telecommunications Relay Fund which pays for other relay services,*

*such as relay services used on interstate calls made through TTY, CTS and STS, as well as on all calls made through IP Relay, VRS, and IP CTS.*

*As technology has advanced, consumers have embraced these new methods of communication. It is the recommendation of MCDHH that providers adjust their expectations for communication access and meet the changing needs of the community by implementing updated policies and strategies. Today, many Deaf consumers use VRS and videophones, which do not require the entity on the other end (hospital, police, libraries, schools, and state services,) to have any specialized equipment. These newer methods provide real communication access by providing actual interpretation between two different languages. Video phones and VRS allow Deaf ASL users to communicate effectively in their own language, and have English interpreted into that language. This is an important advancement because TTY (Teletype) Relay does not enable interpretation between the two distinctly different languages of ASL and English. Many EOHHS agencies have stressed the importance of Deaf and hard of hearing constituents having access to their services and programs. In this effort, many state agencies have implemented policies and protocols related to TTY usage. These agencies typically have a dedicated TTY line which they publish and include on their business cards. This particular form of communication is almost obsolete. There are rare instances when a person may try to reach out via a TTY, but for the majority of Deaf and hard of hearing consumers; their preferred method of access is now through STS relay and VRS.*

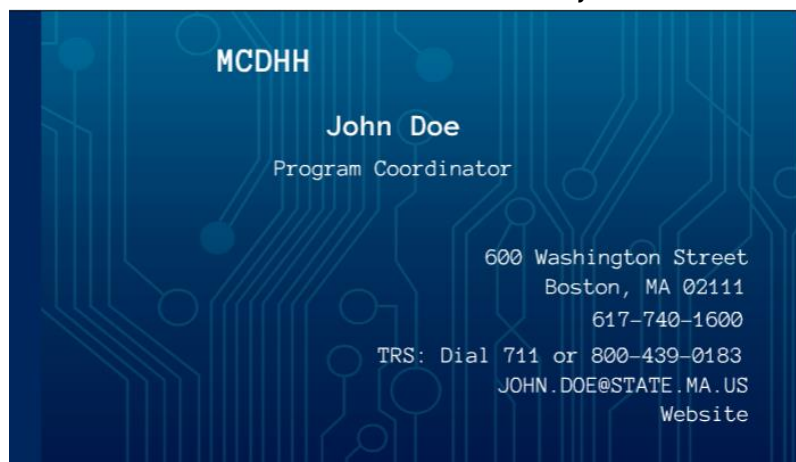
*With these technological advances in mind, MCDHH recommends that state agencies review and update their policies as it relates to communication access for those that are Deaf and hard of hearing. This can occur by incorporating the above types of technology access in their ADA compliance and their Language Access Plans.*

*MCDHH recommends the following language be included in all publicly available materials where contact information is provided:*

*We value our clients, customers, and patients, who are Deaf and hard of hearing. In order to serve you most effectively , please use either your preferred Video Relay Service provider, the Massachusetts Telecommunications relay system at 711, or your captioned telephone to contact us at (xxx-xxx-xxxx) (insert your phone number & hour of operation)*

*If calling outside of our regular business hours, please leave a detailed message letting us know how we can help you, what your preferred contact method is, and any specific instructions that might be necessary. Alternately, you can email us at (provide your email here) and we will respond to you as quickly as possible, or you may submit a query through our form. (Link to a specific form here)*

*We recommend that business cards and publications be updated to include the 711 Relay number to ensure that this information is readily available to the general public.*



*MCDHH is available for consultation. Please contact Jonathan O'Dell at [jonathan.odell@MassMail.State.MA.US](mailto:jonathan.odell@MassMail.State.MA.US) for further information on how to provide effective telecommunication access.*

*1. 711 dialing is available nationwide to access non-Internet-based relay services such as TTY relay services, STS relay services, and VCO TTY, and HCO TTY relay services. For more information about 711, see [www.fcc.gov/cgb/consumerfacts/711.html](http://www.fcc.gov/cgb/consumerfacts/711.html).*

*2. In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Petition for Declaratory Ruling, filed by AT&T, CAC, CSDVRS, LLC, GoAmerica, Inc., Lifelinks, LLC, Snap Telecommunications, Inc., Sorenson Communications, Inc., Sprint Nextel Corporation, and Viable Inc., CG Docket No. 03-123 (filed January 28, 2009 "National Association of the Deaf," NAD: National Association of the Deaf, 2017, accessed January 24<sup>th</sup>, 2017, <https://www.nad.org/>.*

- **Internet and Other Computer Based Services**

Most computer based services can be delivered in ways that are accessible to everyone. Consult [www.mass.gov/accessibility](http://www.mass.gov/accessibility) for information about how to ensure web sites and other applications are accessible to people with disabilities. This applies to computers made available to the public. However, it does not require dedicated computers be made available to particular individuals at locations other than those available to everyone else. If a webinar is provided by an Entity, such a webinar must include captions to be accessible to Deaf and hard of hearing participants.

- **What Aids or Services Are Necessary?**

Executive Branch Entities are obligated to provide appropriate auxiliary aids and services, where necessary to afford an individual with a disability an equal opportunity to participate in, and enjoy the benefits of a service, program, or activity conducted by an Executive Branch Entity.

In determining what type of auxiliary aid or service is necessary, an Executive Branch Entity shall first discuss with the individual his/her communications needs. If more than one effective method is available, primary consideration must be given to the preference of the individual with the disability.

If subject matter expertise is needed, staff at the Massachusetts Commission for the Deaf and Hard of Hearing (MCDHH) can provide advice on which auxiliary aids and services would be most effective and cost efficient in a given situation. Contact Jonathan O'Dell at [Jonathan.odell@massmail.state.ma.us](mailto:Jonathan.odell@massmail.state.ma.us).

- **Considerations for Information Access**

- FORMS / PUBLIC INFORMATION / COMPLAINTS / MEDIA, ETC.**

- **Choose a font style and size that is easy to read.** When developing forms, publications, press releases, solicitations for consumer input, or other information gathering or disseminating tools and processes, be sure to consider the accessibility of both the content and the medium you elect to use.

There are no hard and fast rules guiding the selection of font styles and sizes. In fact, publication manuals and guidelines vary dramatically in their rules and preferences. There is, however, some general agreement on the following principles:

- For both print documents and electronic displays, sans serif fonts are easier to read. Sans serif fonts lack the little “feet” attached to each letter; Arial Narrow, the font used in this manual, is an example of a sans serif font.

This illustrates a serif font.

- For large print, the size of type required will vary with the needs of the reader. For generically produced large print, a font size of 16 to 18 is preferred.

This illustrates large print.

- Use high contrast between colors when possible. It may be difficult for people with low vision to see information that is presented in colors that do not contrast strongly. By contrast we mean the degree of difference between the background and the text on a page. Although there is great variety in acceptable color choices, most basically, one should be dark, and the other light.
    - Remember that approximately 7% of all males have some form of red-green colorblindness; this condition only affects 0.4% of women. For many people with this disorder, red and green look essentially alike. Keep this in mind when designing color documents.
    - Remember to include an accessibility statement in any documents you disseminate. For further guidance, see the “Disseminating News Releases, Public Notices, Texts, and Other Documents” section of this Handbook.



- Existing documents that are not in accessible format for either the public (e.g., those mentioned above) or staff (e.g., personnel records, standardized forms), must be made accessible for people with disabilities upon request.

If a person with a disability contacts you asking for assistance with Executive Branch information or resources, help them to the best of your ability. If you find that you are unable to satisfy their need, ask them to contact: The entity's ADA/504 Coordinator or contact the Executive Branch's ADA/504 Coordinating Agency, the Massachusetts Office on Disability, at 617-727-7440, or by Contact Us Form at: <http://www.mass.gov/anf/employment-equal-access-disability/oversight-agencies/mod/contact-us-form.html>

## ○ Braille

Braille is a series of raised dots that can be read with the fingers by people who are blind or whose eyesight is not sufficient for reading printed material. Teachers, parents, and others who are not visually impaired ordinarily read Braille with their eyes. Braille is not a language. Rather, it is a code by which languages such as English or Spanish may be written and read.

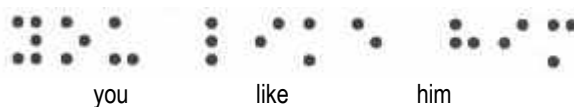
### What Does Braille Look Like?

Braille symbols are formed within units of space known as Braille cells. A full Braille cell consists of six raised dots arranged in two parallel columns each having three dots. The dot positions are identified by numbers from one through six. Sixty-four combinations are possible using one or more of these six dots. A single cell can be used to represent an alphabet letter, number, punctuation mark, or even a whole word.

### How Is Braille Written?

When every letter of every word is expressed in Braille, it is referred to as Grade 1 Braille. Very few books or other reading material are transcribed in Grade 1 Braille. However, many newly blinded adults find this useful for labeling personal or kitchen items.

The system used for reproducing most textbooks and publications is known as Grade 2 Braille. In this system cells are used individually or in combination with others to form a variety of contractions or whole words. For example, in Grade 1 Braille the phrase *you like him* requires twelve cell spaces. It would look like this:



If written in Grade 2 Braille, this same phrase would take only six cell spaces to write. This is because the letters *y* and *l* are also used for the whole words *you* and *like*, respectively. Likewise, the word *him* is formed by combining the letters *h* and *m*. It would look like this:



There are 189 different letter contractions and 76 short-form words used in Grade 2 Braille. These “short cuts” are used to reduce the volume of paper needed for reproducing books in Braille and to make the reading process easier.

- **Video Description**

Video Description uses spoken explanations and descriptions of visual elements that are inserted into a television or video program without interfering with the sounds and dialogue that are a regular part of the program. This service is available on a limited basis on certain cable television channels, on Public Broadcasting Service (PBS) television shows, commercial broadcast stations, and on DVDs for purchase or rental.

- **Assistive Listening Devices**

Assistive Listening Devices increase the volume of a desired sound, such as the soundtrack of a movie or the voice of a tour guide, without increasing the loudness of background noises. Some Assistive Listening Devices are also used to convey audio descriptions to visitors with vision impairments

It is estimated that one out of every 5 over the age of 12 in the U.S. has a significant hearing loss, ranging from 25 dB (mild) to 90 dB (severe). About half of them are older adults. Among people with hearing loss, some wear hearing aids or use other devices to enhance residual hearing, and may also read lips. Assistive Listening Devices come in many configurations. Essentially, the function of an Assistive Listening Device is to supplement residual hearing by targeted amplification. The **transmitter** picks up the desired sound and converts it to a signal which it then sends out. The **receiver, worn by an individual with a hearing loss**, picks up the signal and transmits it to the user. Several receivers can pick up the signal from a single transmitter.

**There are several types of Assistive Listening Device systems:**

- **FM systems** transmit sounds via radio waves. With this system, the speaker wears a compact microphone and transmitter while the listener has a portable receiver with headphones, ear buds or a necklace. FM systems are commonly used when the speaker is required to move around. This system is not affected by light, but may experience radio interference from nearby radio stations or strong electromagnetic fields.
- **Audio Induction Loops** are generally meant for installation in fixed locations such as public hearing spaces and meeting rooms, and are ideally installed when a new space is constructed since they are often placed under the floor or in the ceiling. A loop system will convert the sound input (usually from an existing public address or microphone system already in the room) to an electromagnetic field that is carried by the loop of wire encircling the desired area. This creates a weak magnetic field throughout the looped area which is designed to be picked up by hearing aid or cochlear implant users that have integrated Telecoil functionality in their devices (most devices do). This is then converted back into an audible sound source by the hearing aid, cochlear implant or induction loop receiver if the hard of hearing person has neither but still wishes to use the loop.
- **Infrared systems** transmit sounds via light waves to users wearing receivers. The receiver must be in the transmitter's line of sight to function properly. This limits where listeners with receivers can be

located, but it also prevents spillover of sound into other areas and ensures privacy. Sunlight and bright incandescent light interfere with the transmitter signal, so an IR system may not be a good choice for outdoors. IR systems are often used in movies, conferences, and live performances.

It is important to select a system based on its intended use. Where a single channel system is more economical, and may be practical for a one-on-one conversation, the purchase of a multi-channel system allows for greater flexibility, such as the use of different transmitters and receivers in adjacent rooms without any danger of “spillage.” The same system can serve multiple uses (e.g. translations, audio descriptions, etc.) because it can transmit and receive multiple frequencies.

### ○ **Sign Language Interpreters**

When using an interpreter...

- Speak clearly in a normal tone and at a natural pace; do not exaggerate lip movements.
- Make sure there is adequate lighting. Avoid lighting that places a shadow on the interpreter or that makes it difficult to see the interpreter’s hands and face – for example, in front of a window or with bright or glaring light placed behind the interpreter, or a podium that has a spotlight on the speaker in a room that is otherwise too dark to see an interpreter.
- When arranging presentations, keep in mind sightlines and space available at the front of the room, so that interpreters don’t crowd the speakers and can be clearly seen from anywhere in the room.
- If possible, position the interpreter so that the person who is deaf or hard of hearing can see both the interpreter and the speaker.
- If speakers during the event are likely to use acronyms, jargon, or vocabulary peculiar to a specific field, it is helpful to provide the interpreter with a list of such terms and their definitions in advance of the event.
- Speak directly to the person who is deaf or hard of hearing and avoid phrases like, “tell him” or “ask her.”
- Maintain eye contact with the person who is deaf or hard of hearing, not with the interpreter. It may help to remember that the conversation is with the person who is deaf or hard of hearing, not with the interpreter. This may seem difficult at first because it is the interpreter’s voice that is heard and the person who is deaf or hard of hearing will be shifting his gaze between the speaker and the interpreter. Keep in mind that the person who is deaf or hard of hearing must look at the interpreter in order to understand what is being said.
- Realize that interpreters are speaking for the person who is deaf or hard of hearing. When interpreters say, “I” or “me,” they are speaking as the person who is deaf or hard of hearing, not as themselves.

- Do not attempt to have private conversations with a working interpreter. It is the job of the interpreter to convey everything that is said or heard, including efforts at engaging the interpreter's attention. If you need to speak with the interpreter about an altogether different matter, please use the interpreters to inform the Deaf person of this so they know why you are continuing to speak to the interpreter when the event has ended.
- Situations requiring one or more hours of interpreting may call for more than one interpreter. A team of two interpreters helps reduce the possibility of errors and lessens the likelihood of injury due to the stressful repetitive motions required by interpreting. When interpreters work as a team, they will generally switch roles every twenty to thirty minutes.
- If there is any question as to the best arrangements for a particular situation, ask the interpreters and the people who are deaf or hard of hearing. They are the experts on what will work best for them.
  - **CART (Communication Access Real time Translation)**

Communication Access Real time Translation (CART) is a verbatim speech-to-text translation service for people who need communication access. Unlike computerized note taking or abbreviation systems, that summarize information for consumers, CART provides a complete translation of all spoken words and environmental sounds, empowering consumers to decide for themselves what information is important to them. CART consumers include people with hearing loss; individuals with cognitive or motor challenges; anyone desiring to improve reading/language skills; and those with other communication barriers. The Americans with Disabilities Act (ADA) specifically recognizes CART as an assistive technology that affords effective communication access.

#### **How it's done**

A CART writer uses a steno machine, notebook computer, and real time software to render instant speech-to-text translation on a computer monitor or other display for the benefit of an individual consumer or group in a number of settings: classrooms; business, government, and educational functions; courtrooms; religious, civic, cultural, recreation, or entertainment events. A CART writer is sensitive to the varying needs of individual consumers and has had training in conveying a speaker's message, complete with environmental cues. This expertise distinguishes a CART writer from a court reporter in a traditional litigation setting.

Besides steno writers, there is another form of CART which is sometimes referred to as "voice writing." A trained voice writer will listen to everything being said in a given environment and repeat it into a special pickup microphone connected to voice recognition speech-to-text software. Since this system is calibrated to recognize the voice writer's speech pattern, this system achieves a higher accuracy rate than random individuals speaking into the same software.

CART in either of the methods described above can be delivered remotely by offsite CART providers who listen in on the conversation through an open telephone line and transcribe what is said to a web page, which is accessible to the consumer in real time. This is tremendously helpful when local CART writers are not available but comes with significant caveats. For one, every speaker in the room must be clearly heard by the remote provider, since they cannot write what they cannot hear. Placing a single microphone or open telephone in the middle of a large meeting room or in the center

of a long rectangular table with people sitting at both ends is highly unlikely to have a good outcome. Additionally, since the CART provider is not in the room and cannot see who is speaking or take advantage of a speaking chart, each speaker must identify themselves by name before speaking in particularly challenging situations.

Similar to interpreters, CART providers would be given a list of any unusual words or acronyms that will be used, as well as a list of the attendees who are likely to speak.

### ○ **Captioning and Subtitling**

Captioning is the transcription and subsequent text display of dialog and other auditory information, such as on-and off-screen sound effects, music, and laughter. Captioning is used in many places including videos and films, live performances and demonstrations, lectures, web sites, and television.

Captioning benefits are not limited to people who are deaf or hard of hearing. In loud, crowded venues as well as hushed, quiet settings, captioned video allows sighted visitors to read what they cannot hear. Captions also benefit new readers and people who are learning English as a second language.

Subtitling is different from captions in that it does not display anything other than the dialog, and it rarely includes other auditory information.

There are two categories of captions:

**CLOSED captions** are captions that are hidden in the video signal and are not visible until the captioning feature has been turned on, either at the source level (cable box) or at the television level.

**OPEN captions** are captions that have been decoded, so they have become an integral part of the television picture, like subtitles in a movie. Open captions cannot be turned off.

One resource Executive Branch Entities can utilize is the “CADET” tool which stands for the Caption And Description Editing Tool<sup>20</sup>

- Developed by National Center for Accessible Media at WGBH (NCAM)
- Partially funded by a grant from the MA Attorney General's Office
- Free, downloadable caption-authoring software
- Enables anyone to produce high-quality caption files compatible with any media player that supports the display of captions
- Can also be used to generate audio-description scripts

Also, there are many companies that provide paid captioning services (utilize the ITS61<sup>21</sup> state contract for this, mentioned later in this Handbook). Auto-generated captions vary wildly based on a person's speech patterns and ambient background noise and are not, generally, suitable for critical captioning needs. Entities placing content on YouTube can also utilize timecode or auto-syncing caption feature to generate captions

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<sup>20</sup> <http://ncamftp.wgbh.org/cadet/>

<sup>21</sup> <https://www.mass.gov/service-details/statewide-it-accessibility-services-contract-its61>

based on a text transcript of the spoken dialogue that is uploaded for YouTube to synchronize with the spoken dialogue.

- **Considerations for Staff Activities**

**Office parties / Holiday celebrations / etc.**

Remember that people with disabilities are also members of the Executive Branch staff. All programs or activities should be planned with an eye to ensuring access for anyone who would like to attend.

- When disseminating Executive Branch generated notices, distributing flyers, or making posters, be sure to include an accessibility statement. Remember that the “host” of the event usually assumes responsibility for arranging for accommodations for people with disabilities. For further guidance, see the “Meetings, Documents, Training” section of this Handbook.
- When broadcast messages are sent via voice mail system, make sure the information is shared with staff members who are Deaf or hard of hearing.

- **Considerations for Service Animal Users**

Both the Americans with Disabilities Act and MGL c. 272 §§ 98 and 98A afford protections to people who use service animals. Service animals are animals that have been trained to perform a specific task for a person with a disability. Most people are familiar with people who are blind who use guide dogs, but more and more people who have other disabilities are using service animals – such as helping to pull wheelchairs, retrieving dropped items, alerting someone who is Deaf or hard of hearing to an environmental alert or protecting someone who is about to have a seizure.

A few key points to keep in mind are:

- Service animals are not pets.
- People with disabilities who use service dogs can go everywhere that people who are not accompanied by dogs are entitled to go.
- It is against the law to deny people with disabilities, who use service animals, entry or service.
- Allergies or another person's fear of animals are not valid reasons for denying access to a person using a service animal.
- Service animals are not required to be licensed or certified as such.
- People with disabilities who use service animals cannot be charged extra fees.
- Users of service animals are obliged to keep the animal under control at all times and are responsible for taking care of the animal's needs.

- **Considerations for Transportation**

**General**

Although getting to government offices is often a challenge for people with disabilities, an Executive Branch Entity is only obliged to provide transportation to a particular program, activity or service for people with disabilities in two types of situations:

1. When it provides transportation to everyone, regardless of disability; and
2. When it is obliged to provide transportation for a particular person as an accommodation to his or her disability.

This applies both when the transportation is provided directly by the Executive Branch Entity and when the entity pays for transportation for consumers, board members or others participating in a program, activity or service. When arrangements for the transportation are made by the Executive Branch Entity, the individual being transported should be asked if a lift equipped vehicle is needed, and if not, does the vehicle need any other special equipment to allow him or her to get into and out of the vehicle.

- **Transportation Services Operated By An Executive Branch Entity**

The remainder of this guidance deals with those limited situations when an Executive Branch Entity operates a transportation service specific to its own programs, activities and services, such as a college campus shuttle service that carries students, faculty and staff between various places on or near a college campus. The purpose of the shuttle is to get people who participate in the process of education to classes and related activities only, not to transport the general public anywhere they might want to go.

**Note:** The following only applies where the transportation is incidental to some other primary program, such as a campus shuttle service. It does not apply to public transportation systems, where the transportation is itself the primary service.

- **Vehicles Purchased or Leased by an Executive Branch Entity**

There are special rules for new vehicles purchased or leased:

- **Fixed Route Systems**

A fixed route system is a transit system that operates on a particular path, usually at specific times and during specific hours. An example is the college campus shuttle mentioned above. The path the shuttle takes is the same all the time and in many cases there are specific times of operation and scheduled times when the shuttle is supposed to be at a particular place along the route.

If and when an Executive Branch Entity that operates a fixed route system purchases or leases new vehicles, the vehicles must be readily accessible to, and usable by individuals with disabilities.<sup>22</sup> However, it is not required to offer paratransit services.

- **Demand Responsive Systems**

A demand response system is one where an individual requests a ride at a specific time from one point to another. An example is the Council on Aging van service for things such as doctors' appointments.

An Executive Branch Entity that operates such a system and purchases or leases new vehicles must either:

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<sup>22</sup> 42 U.S.C. §12142(a)

1. Ensure that the vehicle is readily accessible to and usable by people with disabilities, including individuals who use wheelchairs?
2. Ensure that the system, when viewed as a whole, provides a level of service to people with disabilities that is equal to the level it provides to other people.<sup>23</sup>

An Executive Branch Entity is not specifically required to install a lift in a particular existing vehicle, nor is it specifically required to provide a full scale "paratransit" service, like those required of public transportation authorities such as the Ride by the Massachusetts Bay Transportation Authority (MBTA) or Dial-a-BAT by the Brockton Area Transit Authority.

**Note:** Although not required for any particular existing vehicle already owned by the entity, this does not prevent an entity from buying or operating a "paratransit-like" system, if that Executive Branch Entity determined that one or both of those approaches is the most reasonable way to ensure equal opportunity for those served by the entity.

- **Considerations for Safety**

Executive Branch Entities can use legitimate safety criteria, which are necessary for safe operations. Safety requirements must be based on actual risks, not on mere speculation, stereotypes, or generalizations about people with disabilities.

**Building Evacuation**

- Remember that people who are deaf or hard of hearing generally do not benefit from public address systems or verbal instructions from security officers. Rumors or instructions passed by word of mouth are also likely to be missed by a person who is deaf or hard of hearing. If someone in your area is deaf or hard of hearing, make sure that you pass along information about emergency situations as they occur. Even in the absence of a sign language interpreter, essential safety information can often be conveyed quickly and concisely by using paper and pen or mime and gestures.
- Remember that people who are blind cannot see you. Before attempting to help people who are blind, introduce yourself and ask them if they would like assistance. If they accept your offer of help, allow them to take your arm; do not push or drag them along with you. If you are uncertain about what to do, ask the person how they would like to proceed.
- People who have low vision have varying levels of sight -- some may be able to discern shapes, others may only be able to identify areas that are light or dark, still others may have tunnel vision, or may be able to see only in areas with bright lighting. Before helping someone who appears to have vision problems, ask if they would like help. If so, ask how they would like to proceed.
- There are established procedures for evacuating people with disabilities. For details, you should consult your appropriate evacuation plan. You should also contact the Evacuation Coordinator for your Executive Branch Entity about the specifics of your Executive Branch Entity's evacuation plan.<sup>24</sup>

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<sup>23</sup> 42 U.S.C. §12144

<sup>24</sup> <https://www.mass.gov/service-details/state-transportation-building-emergencies>



## Security Issues

When giving directions in emergency or high stress situations, do not assume that people who are non-responsive are being uncooperative.

- People who are deaf or hard of hearing may be unable to hear spoken instructions. Even people who have substantial residual hearing may have difficulty hearing instructions coming from behind them or orders given in areas with background noise such as fire alarms or the chatter from crowds of people.
- People who are blind or have low vision may not see gestures or other visual cues indicating where they should go or what they should do.

When going through standard security screening procedures, it is helpful to inform people who are blind of the process they are about to experience. Give verbal cues as to where to place items for inspection and how to pass through the metal detectors.

Remember that some people with disabilities have assistive devices that are not easily removed. Some devices, such as cochlear implants to improve hearing or metal rods to strengthen bones, are surgically implanted and cannot be taken off or detached. Be aware that such devices may set off metal detectors. Some devices, such as internally implanted heart defibrillators, have delicate computer setting that may be disturbed by screening devices. Be prepared to use courtesy and good judgment in dealing with such situations.

- **Considerations for Contracting And Acquisitions**

**All of the Executive Branch's programs and activities must be accessible to people with disabilities.**

This includes programs and activities offered by the Executive Branch through contracts or other arrangements.<sup>25</sup> The Commonwealth Standard Form Contract and Instructions require compliance with all federal and state laws, and they specifically mention several disability rights laws, such as the ADA and Section 504 of the Rehabilitation Act, Massachusetts Amendment Article CXIV and MGL c.151.

Because the goods and services for which Executive Branch Entities contracts vary widely, it is impossible to cover all possible contingencies in a single standard form contract.<sup>26</sup> Entities must ensure that "statements of work" for the provision of programs or activities are carefully written to ensure that access for people with disabilities is explicitly required.

In addition, Executive Branch Entities must ensure that their contracting practices do not discriminate against possible vendors with disabilities, and that all materials related to the request are available in formats that are accessible. Please also see ITS61 statewide contract<sup>27</sup> for expert resources for government entities to get assistance to insure that information technology services do not discriminate against people with disabilities.<sup>28</sup>

- **Considerations for Technology Access**

Many people with disabilities use assistive technologies that enable them to use computers. Some assistive technology involves separate computer programs or devices, such as screen readers, text enlargement

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<sup>25</sup> 47 C.F.R. § 1.1830(b)(3)-(6).

<sup>26</sup> See for example, supplemental contract language is available from EOTSS, at <http://www.mass.gov/anf/research-and-tech/policies-legal-and-technical-guidance/tech-guidance/accessibility-guidance/>.

<sup>27</sup> <https://www.mass.gov/service-details/statewide-it-accessibility-services-contract-its61>

<sup>28</sup> <http://www.mass.gov/anf/research-and-tech/policies-legal-and-technical-guidance/tech-guidance/accessibility-guidance/it-accessibility-services-statewide-contract.html>

software, and computer programs that enable people to control the computer with their voice. Other assistive technology is built into computer operating systems. For example, basic accessibility features in computer operating systems enable some people with low vision to see computer displays by simply adjusting color schemes, contrast settings, and font sizes. Operating systems enable people with limited manual dexterity to move the mouse pointer using key strokes instead of a standard mouse. Many other types of assistive technology are available, and more are still being developed.

Executive Branch Entities are obliged to communicate effectively with people regardless of their disabilities.<sup>29</sup>  
<sup>30</sup> The Massachusetts Information Technology Secretariat has undertaken major activities to ensure that the Executive Branch lives up to its legal obligations.

- **Licensing, Certification and Testing**

An Executive Branch Entity may not discriminate on the basis of disability in its licensing, certification, and regulatory activities. A person is a "qualified individual with a disability" with respect to licensing or certification, if he or she can meet the essential eligibility requirements for receiving the license or certification.<sup>31</sup> While many programs and activities of public entities do not have significant qualification requirements, licensing programs often do require applicants to demonstrate specific skills, knowledge, and abilities. Public entities may not discriminate against qualified individuals with disabilities who apply for licenses, but may consider factors related to the disability in determining whether the individual is "qualified."

An Executive Branch Entity does not have to lower or eliminate licensing standards that are essential to the licensed activity to accommodate an individual with a disability. Where an Executive Branch Entity administers licensing examinations, it must provide auxiliary aids for applicants with disabilities and administer the examinations in accessible locations.

In addition, an Executive Branch Entity may not establish requirements for the programs or activities of licensees that would result in discrimination against qualified individuals with disabilities. For example, an Executive Branch Entity's safety standards may not require the licensee to discriminate against qualified individuals with disabilities in its employment practices.

Although licensing standards are covered by Title II of the ADA, the licensee's activities themselves are only covered when the licensee is being paid by the state to provide the service. An activity does not become a "program or activity" of an Executive Branch Entity merely because it is licensed by the Executive Branch Entity.

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<sup>29</sup> Mass Disability-Related Non Discrimination Standards, §7.01.

<sup>30</sup> The Department of Justice issued a technical assistance document addressing website accessibility entitled, "[Accessibility of State and Local Government Websites to People with Disabilities](#)." This technical assistance document can be accessed on the ADA Home Page at [www.ada.gov](http://www.ada.gov)

<sup>31</sup> US Department of Justice Technical Assistance manual for Title II of the Americans with Disabilities Act, II-3.7200

- Eligibility Standards, Criteria and Methods of Administration

- **Eligibility Standards**

An Executive Branch Entity cannot use eligibility criteria<sup>32</sup> that screen out or tend to screen out people or any class of people with disabilities from fully and equally enjoying any goods, services, facilities, privileges, advantages, or accommodations, unless those criteria are necessary for providing the goods, services, facilities, privileges, advantages, or accommodations being offered.

- **Other Criteria or Methods of Administration**

An Executive Branch Entity cannot use criteria or methods of administration<sup>33</sup> that cause qualified individuals with disabilities to be discriminated against on the basis of disability. They may not do so directly or through contractual or other arrangements. Those criteria and methods may not:

- Subject qualified individuals to discrimination on the basis of disability;
- Defeat or substantially impair accomplishment of the objectives of the Executive Branch Entity's program with respect to people with disabilities; or
- Perpetuate the discrimination of another Executive Branch Entity or another Massachusetts agency.

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<sup>32</sup> Massachusetts Disability-Related Standards for Non-Discrimination for Executive Branch Agencies, §7.01.

<sup>21</sup> Massachusetts Disability-Related Standards for Non-Discrimination for Executive Branch Agencies, §5.02(G)

### III. MEETINGS, DOCUMENTS and TRAININGS

- **Employees with Disabilities and Meeting Attendance**
- **Meeting with Non-Executive Branch Attendees**
- **Disseminating News Releases, Public Notices, Texts and Other Documents**
- **Hosting Accessible Meetings and Events**
- **Non-Executive Branch Events**
- **Audio-Visual Media**
- **Trainings**

- **Employees with Disabilities and Meeting Attendance**

- a. **Who pays for accommodations?**

Because the agency employing an individual with a disability and an agency holding a meeting both have legal obligations to communicate effectively with that individual, there has been some confusion about which Executive Branch Entity should pay for auxiliary aids and services related to meetings and events. In the absence of any specific guidance for a particular event, Massachusetts Executive Branch Entities should follow these general rules:

1. When the meeting is internal to government, the employer agency should pay for the aids and services.
2. When the employer has assigned personnel to provide auxiliary aids and services as a reasonable accommodation, the employer agency should pay for the aids and services.
3. When the meeting or event is open to the public, the Executive Branch Entity convening the meeting should pay for the aids and services.
4. Where the employer agency is providing the aids or services the convening agency must provide all materials that are to be communicated to the employer agency in accessible digital format no later than 7 business days prior to the meeting or event.

- b. **Internal Executive Branch Meetings**

***IF THE MEETING IS OPEN TO EXECUTIVE BRANCH STAFF ONLY ...***

- Include a reasonable accommodation statement in all announcements and publicity, including all invitations, flyers, posters, e-mails, advertisements, etc.

***IF THE MEETING IS FOR A LIMITED EXECUTIVE BRANCH AUDIENCE ... (division meeting, internal task force, committee, etc.)***

***AND YOU KNOW THE ATTENDEES***

- Be sure to request accommodations (e.g., accessible formats, sign language interpreters, etc.) you know will be needed as far in advance as possible.

***AND YOU DON'T KNOW THE ATTENDEES***

- Include a reasonable accommodation statement in your invitation or announcement.

***IF THE MEETING REQUIRES PRE-REGISTRATION ...***

- Be sure your registration form includes a reasonable accommodations section. See sample statement later this chapter.
- As soon as a request for accommodation is received forward the request to the appropriate person.

- **Meetings with Non-Executive Branch Attendees**

***IF YOUR MEETING IS A PUBLIC MEETING WITH NO PRE-REGISTRATION REQUIRED ...***

- Include a reasonable accommodation statement in all announcements and publicity, including all invitations, flyers, posters, e-mails, advertisements, etc.

***IF YOUR MEETING IS OPEN TO A LIMITED PUBLIC AUDIENCE...AND YOU KNOW THE ATTENDEES***

- Be sure to request accommodations (e.g., accessible formats, sign language interpreters, etc.) you know will be needed as far in advance as possible.

***AND YOU DON'T KNOW THE ATTENDEES***

- Include a reasonable accommodation statement in your invitation or announcement.

**Notify the Security Personnel in the Building where the meeting is to be held in advance if you expect a large number of attendees with disabilities.** Advance notice allows security officers to prepare themselves for alternative communication modes and reminds them to expect visitors with assistive devices that may require special handling when going through metal detectors.

Providing Reasonable Accommodation is an obligation you must meet. It will make it much easier on all concerned if enough time is allocated to organize the necessary tasks. It is recommended that your first public announcement is released at least one month (30 days) in advance.

***IF YOUR MEETING IS AN EXECUTIVE BRANCH OPEN MEETING, SUCH AS A BUDGET HEARING, REGULATORY REVIEW, STATE PLANS REVIEW ...***

***AND/OR FOCUSES ON ISSUES YOU EXPECT TO BE OF INTEREST TO PEOPLE WITH DISABILITIES, AND A LARGE ATTENDANCE IS EXPECTED,***

***AND THERE IS NO PRE-REGISTRATION ...***

- **Include a reasonable accommodation statement** in all announcements and publicity, including all invitations, flyers, posters, e-mails, advertisements, etc.
- As soon as a request for accommodation is received, alert those who will be involved in fulfilling the request.

**Notify the Security Personnel in the Building where the meeting is to be held in advance if you expect a large number of attendees with disabilities.** Advance notice allows security officers to prepare themselves for alternative communication modes and reminds them to expect visitors with assistive devices that may require special handling when going through metal detectors.

Providing Reasonable Accommodation is an obligation you must meet. It will make it much easier on all concerned if enough time is allocated to organize the necessary tasks. It is recommended that your first public announcement is released at least one month (30 days) in advance. If services have already been arranged for a meeting that must be rescheduled or cancelled, please notify the person who made the arrangements as soon as possible since you are obligated to pay in full for services canceled without appropriate advanced notice.

#### **IF SIGN LANGUAGE INTERPRETERS ARE PRESENT FOR A MEETING ...**

- Make an announcement from the podium noting that interpreters are available and inquiring if there are any attendees who wish to use their services.

#### ***SAMPLE WORDING FOR ANNOUNCEMENT OF INTERPRETER AVAILABILITY:***

Sign language interpreters are available for this meeting. Although we have had no requests for interpreting services, we would like to make sure that we are meeting the needs of all attendees. If there is anyone currently in attendance who needs the services of an interpreter, please so indicate to the interpreter. [pause for response]

Thank you. [continue with meeting content]

#### **IF AGENDAS AND OTHER DOCUMENTS FOR A MEETING ARE AVAILABLE IN ALTERNATIVE FORMATS, SUCH AS BRAILLE OR LARGE PRINT, ...**

- Make an announcement from the podium noting their location and inquiring if there are any attendees who wish to avail themselves of them.

#### **IF YOUR MEETING REQUIRES PRE-REGISTRATION ...**

- Be sure your registration form includes a reasonable accommodations section.
- As soon as a request for an accommodation is received, forward the request to the appropriate person.
- [Disseminating News Releases, Public Notices, Texts, And Other Documents](#)
- **Include an accessible format statement in your releases.**
- **Model Statement:**

##### **Accessible Formats**

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to (Name of your Executive Branch Entity contact) or call the (Name of your Executive Branch Entity contact):

- **Make sure to indicate the web address consumers can use to get an electronic copy.**

- [Hosting Accessible Meetings and Events](#)

Hosting successful meetings or events requires cooperation between event planners, chairpersons, moderators, coordinators, and attendees. The following hosting responsibilities and guidelines can help produce accessible events that comply with non-discrimination requirements.

## OPENING ANNOUNCEMENTS

- **Announce the availability of any accommodations that are in place.**
  - Example: “For the [event name] today, we have the following accessibility services available [mention those actually in place for the event, e.g., sign language interpreters, Assistive Listening Devices, CART and/or captioning.] Also, agendas and handouts are available in large print, electronic format, and Braille. If anyone needs assistance in locating where these services are being provided please let [identify any Executive Branch staff who can assist in getting attendees the appropriate service(s) or products—ask the Executive Branch staff identified to stand] know.”
  - Also point out the person(s) responsible for each accommodation, so participants will know who to turn to for help if an accommodation is not working as advertised.
- **Provide verbal directions to accessible restroom facilities.**
  - For example, if the meeting is being held in the 21<sup>st</sup> Floor Conference Room 2 in the McCormack State Office Building in Boston, the directions would look something like:

Turn left when exiting the conference room for the restrooms. Once past the elevator lobby, the ladies room is the third door on the right side. The men’s room is two doors further down, also on the right side of the hall.
- **Provide verbal directions to any site facilities** the attendees may need to know about; e.g., cafeteria, payphones, TTYs, ATMs.

## MEETING MODERATORS

- **Introduce all speakers and panelists verbally by name.** An alternative method is to ask the speakers to take turns introducing themselves. This practice is preferable, as those in the audience who can not see become familiar with the voices of the presenters.
- **Make it a practice to recognize individuals who would like to take the floor.**
  - This will avoid situations where several people attempt to speak at the same time. This is both good meeting practice and an aid to interpreters and CART writers, who are only able to render the comments of one speaker at a time.
  - This will identify the speaker for attendees who are blind or have low vision as well as for CART providers, and sign language interpreters.
  - A variation that is often used, particularly for events with attendees who are blind or have low vision, is to ask speakers to identify themselves each time they make a comment. This is a major benefit to CART providers, sign language interpreters, and members of the audience using these

accommodations. Announcing one's name each time one speaks is imperative when using remote CART, as the writer often cannot see the speaker.

- Since there is always a time lag between the time interpreters and CART providers hear a message and are able to interpret or transcribe it, people who depend upon these services receive such information at a point slightly later than hearing participants. This frequently puts people who are deaf or hard of hearing at a disadvantage when trying to make a point or to respond to a question. By the time the question or issue is conveyed to them, others have already begun answering. By controlling access to the floor, the moderator can provide more equitable opportunities for comment and response.
- **Verbally acknowledge any speakers/panelists joining the meeting while in progress, or leaving the meeting before it ends.**
  - For example: "We've just been joined by Alex Bell from Executive Branch Corp....glad to have you with us!" (Give Alex a chance to respond briefly. This will orient people who are blind or have low vision to his location and to his voice.) Then return to the discussion at hand.
- **If the public address system is not working properly, interrupt the speaker, reminding them to wait until the microphone is working correctly and repeat their comments using the working public address system.** Participants relying on Assistive Listening Devices, sign language interpreters, and CART text will miss the information if it does not come through the PA system.
- **Remember to be patient. It will take extra time for individuals with speech disabilities or individuals using sign language interpreters or CART to fully participate in discussions.**
  - Participants with speech disabilities may require additional time to complete their comments.
  - And, individuals using sign language interpreters, captions, and CART, experience delays in receiving information as well as expressing comments. On average, there is a 1-15 second delay between the time a comment is uttered and the time the complete sign language interpretation is presented.
  - Similarly, there is a 1-15 second delay for the complete captioned or CART text to appear. There is a similar delay when a response is expressed in sign language and interpreted into speech.
  - Thus, asking a question or soliciting comments and then quickly selecting the first person to raise a hand or shout out a response, does not allow those experiencing time delays an opportunity to participate.
- **If the text of any handout or audio visual presentation is not available in accessible formats (i.e., Braille, electronic text file, large print), announce to the audience how to obtain a copy in an accessible format.**
  - Example: "We regret that the [document, PowerPoint presentation, agenda, etc.] is not available in Braille, large print, or electronic text. However, anyone in the audience can contact (Name of your Executive Branch Entity contact) to obtain a copy in the format you prefer. You can call (telephone and TTY numbers) or you can send an e-mail to (Name of your Executive Branch Entity contact)."
- **Be aware of any changes to the physical environment.**
  - If at any time before, during, or after the meeting, pathways or aisles become blocked for wheelchair access, move the barrier or designate someone to do so as soon as possible.



- Also, if the layout of the meeting room is changed during the meeting (for example, tables/chairs moved in a different configuration, additional equipment brought in, etc.), announce the changes or additions to the audience and warn them of hazards associated with the change(s)/addition(s), (e.g., power cords, cables, etc.)
- This will be especially helpful for attendees who are blind or have low vision. Example: “Just so that everyone is aware, we’ll need to change the location of some of the tables during the break in order to accommodate the equipment coming in for the next session. Also, please be aware that in order for the equipment to operate, there will be a power cord/cable that will be taped to the carpet that will run across the aisle. So please exercise caution when walking in the aisle area or close to the equipment when it is set up.”
- **Always describe any changes to preprinted agendas, handouts, or other materials.**
- **When an acronym that is not commonly known to the general public is first used, be sure to pause the discussion momentarily, giving the spelling and/or meaning of the acronym.** Not only will this be helpful to the audience, but will also be of invaluable assistance in providing accurate information to sign language interpreters, captioners, and CART writers. Example: “Excuse me. Just to help clarify what ‘Nancy’ is — it’s the acronym for the North American Numbering Council, N-A-N-C, which is often pronounced, ‘Nancy.’ It is ... [provide explanation].”
- **PRESENTERS WITH PRINTED HANDOUTS OR AUDIO/VISUAL MEDIA...**

#### **AND IT IS UNKNOWN IF PEOPLE WITH DISABILITIES WILL ATTEND...**

- Inform the presenters of the Executive Branch’s obligation to provide access to people with disabilities when requested. Ask the presenters whether printed handouts or audio-visual elements will be included in their presentations. If such materials will be in use, then....
- Request that presenters have copies of the media they plan to use readily available in the event that people with disabilities should request accommodations. Inform the presenter that if a request for accommodation is received, they will be asked to forward a copy of their presentation materials to the Executive Branch immediately so that we may convert them into accessible format.
- **Non-Executive Branch Events**

#### **IF INVITED TO SPEAK AT A NON-EXECUTIVE BRANCH EVENT AND HAVE HANDOUTS OR AUDIO/VISUAL PRESENTATIONS...**

Check with the event planner to find out whether the sponsoring organization has made arrangements for accessibility for individuals with disabilities.

#### **IF THE HOSTS HAVE MADE ARRANGEMENTS FOR ACCOMMODATIONS...**

- Have copies of handouts and audio-visual media ready for your hosts so that they can have them produced in accessible format.
- If interpreters are being provided and you would like some guidelines on how to work with them, see the section on sign language interpreters later in this Handbook.

## **IF THE HOSTS HAVE NOT MADE ARRANGEMENTS FOR ACCOMMODATIONS**

### **OR DO NOT KNOW IF PEOPLE WITH DISABILITIES PLAN TO ATTEND...**

- Be prepared to read or describe any document or Audio Visual presentation you will be sharing.
  - If any document you are presenting differs from the one passed out in accessible formats, be sure to re-read any sections or contextual material necessary to convey to the group the full impact of the change(s) made.
  - If you are exhibiting a diagram or model, be sure to describe the individual parts as well as any interactions or changes that are being shown. If animation or special effects are being used, be sure to describe those as well.
- If you are distributing print, electronic text, or audio formats at your presentation, send the document(s) (preferably in electronic format) to the person identified by the convening Executive Branch Entity at least two weeks prior to your presentation date.
- When submitting slides or other graphic displays that do not include textual content (for example pictures, drawings, unlabeled charts, etc.) for conversion to accessible format, please provide a description of the key visual elements; include an explanation of any special significance implied by the manner of presentation.
- If you do not have accessible copies of your materials with you, state at the beginning of your presentation that your materials can be provided in accessible format upon request. Ask audience members who need such formats to supply you with the following information:
  - Name, address, telephone number, e-mail address
  - Specific materials they would like converted to accessible format
  - Type of accessible format they are requesting

Forward the consumer's information along with copies of the document(s) they are requesting (preferably in electronic format) to the person identified by the convening Executive Branch Entity.

#### **• Audio Visual Media**

Organizers and planners of Executive Branch meetings must make sure that all attendees, including individuals with disabilities, are not "excluded from participation in," or "denied the benefits of" meetings and events. In order to ensure that everyone can participate in and benefit from the meeting or event, it is vital that the organizer knows, to the extent possible, what audio/visual presentations will be used.

#### **• Presenters with Printed Handouts or Audio/Visual Media...**

##### **And People with Disabilities Are Expected**

Inform the presenters of the Executive Branch's obligation to provide access to people with disabilities. Ask the presenters whether printed handouts or audio-visual elements will be included in their respective presentations. If such materials will be in use, then ...

- **In advance of the meeting, request a copy** of the media that presenters plan to use -- printed handouts, audio-visual elements, etc. If available, an electronic version is preferred.
  - For conversion of print and other textual media to Braille, large print, electronic text, or audio format, send an e-mail to (Name of your Executive Branch Entity contact) or call the (Name of your Executive Branch Entity contact).
  - When using slides or other graphic displays that do not include textual content (for example pictures, drawings, unlabeled charts, etc.), please provide a description of the key visual elements; include an explanation of any special significance implied by the manner of presentation. For example, if a parody of a company logo is displayed, note that it is a satirical depiction of Company X's logo. Then proceed to describe what the image looks like.
  - If possible, submit materials at least 5 business days prior to the date they are needed so that the conversion to accessible format can be completed by the day of the event.
  - For consultation regarding video or other non-text media that is not captioned, contact your ADA/504 Coordinator to determine the arrangements needed to assure access. Please allow as much lead time as possible.
- Remind presenters and event moderators that information contained in working documents, flipcharts, posters, and visual aids must be read or described in order for the information to be accessible to the entire audience.
  - If, as a group, you are editing or revising a document, be sure to re-read any sections or contextual material necessary to convey to the group the full impact of the change(s) to be made.
  - If you are exhibiting a diagram or model, be sure to describe the individual parts as well as any interactions or changes that are being shown. If animation or special effects are being used, be sure to describe those as well.
- **Media Produced Or Owned By The Executive Branch Video Formats (Videotape, CD, DVD, etc.)**

#### **Captioning<sup>34</sup>**

- Video media owned or produced by the Executive Branch that is intended for use by either staff or the public must be captioned. The captioning may be either open or closed. Content with specific relevance to emergency services should be open captioned so it can be displayed on any monitor, including those not required to have built in converters.
- When video is offered for sale with captions, the Executive Branch Entity must purchase the captioned version.
- For items that are not available for purchase with captions, or for items given to the Executive Branch without captions, the Executive Branch Entity must assure that captioning will be added at the earliest opportunity.
- Comments for the record on video that are accompanied by a transcript need not be captioned.

#### **Video Description**

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<sup>34</sup> To Find Out How To Arrange For Captioning Please refer to the [ITS61](http://ncamftp.wgbh.org/cadet/) state contract OR utilize the CADET: Caption And Description Editing Tool <http://ncamftp.wgbh.org/cadet/>

Video description is expected for visual media held or produced by the Executive Branch and must be available to be provided upon request. Retention and maintenance of video described versions of recordings should parallel that of non-video described versions.

## **Audio Recordings**

Audio recordings that are owned by the Executive Branch and that are intended for use by either staff or the public must have written transcripts available upon request. Transcripts may be produced when requested and need not be prepared in advance. Once produced, however, the retention and maintenance of transcripts should parallel that of the audio recording.

- **Trainings**

- **EXECUTIVE BRANCH TRAINING**

All Executive Branch sponsored trainings must be accessible to people with disabilities. It is expected that trainers will:

- Comply with reasonable accommodation requests from participants, including, but not limited to:
  - Providing print materials in Braille, large print, or electronic format.
  - Reading or describing visual objects, displays, or projections used in class.
  - Adjusting the classroom to allow appropriate lines of sight and/or physical access.
  - Providing transcripts of any audio media used in connection with the class.
  - Distributing any oral quizzes or tests in print format.
  - Providing print quizzes or tests in audio format.
  - Using good communication practices, such as using a microphone, having speakers identify themselves every time they talk and making sure interpreters and CART providers receive optimal audio information, and that assistive listening systems are provided and in proper working order.
- Be sure your registration form includes a reasonable accommodations section.

As soon as a request for accommodation is received, forward it to the appropriate person.
- Include a reasonable accommodation statement in all announcements and publicity, including all invitations, flyers, posters, e-mails, advertisements, etc.

- **Executive Branch Contracted Training**

Entities contracting with the Executive Branch to provide training are obliged to provide accessible training. It is expected that trainers will:

- Comply with reasonable accommodation requests from participants, including, but not limited to:
  - Providing print materials in Braille, large print, or electronic format.
  - Reading or describing visual objects, displays, or projections used in class.
  - Adjusting the classroom to allow appropriate lines of sight and/or physical access.
  - Providing transcripts of any audio media used in connection with the class.
  - Distributing any oral quizzes or tests in print format.

- Providing print quizzes or tests in audio format.
  - Using good communication practices, such as using a microphone, having speakers identify themselves every time they talk and making sure interpreters and CART providers receive optimal audio information and that assistive listening systems are provided and in proper working order.
  - Be sure the registration form includes a reasonable accommodations section. As soon as a request for accommodation is received, forward it to the appropriate person.
  - Include a reasonable accommodation statement in all announcements and publicity, including all invitations, flyers, posters, e-mails, advertisements, etc.
- **Executive Branch Employees Attending External Training ...**

Executive Branch employees participating in external training are expected to complete an Executive Branch Training Form. Generally speaking, it is the responsibility of the entity offering the training to provide the accommodations. It is the employee's responsibility to make their reasonable accommodation needs known.

**MODEL REASONABLE ACCOMMODATION STATEMENT TO BE USED IN ALL ANNOUNCEMENTS AND PUBLICITY, INCLUDING ALL INVITATIONS, FLYERS, POSTERS, E-MAILS, ADVERTISEMENTS, ETC.:**

**Reasonable Accommodations**

Reasonable accommodations for people with disabilities are available upon request. Include a description of the accommodation you will need, including as much detail as you can. Also include a way we can contact you if we need more information. Please allow at least three weeks (21 days) advance notice. Last minute requests will be accepted, but may be impossible to fill. Send an e-mail to (Name of your Executive Branch Entity contact) or call the (Name of your Executive Branch Entity contact).

**MODEL REASONABLE ACCOMMODATION REQUEST FORM FOR INCLUSION IN REGISTRATION FORM:**

***Please remember that each Executive Branch Entity is responsible for covering the accommodation costs, such as Sign Language Interpreters and CART, of its employees attending an internal executive branch meeting.***

**Reasonable Accommodations**

**I need the following reasonable accommodation:**

- ☐ Braille
- ☐ Large Print
- ☐ Digital Audio Recording
  - Please circle one: USB, CD, E-mail attachment
  - Please circle one: MP3, RealAudio
- ☐ Digital Text
  - Please circle one: USB, CD, E-mail attachment
  - Please circle one: ASCII, MSWord
- ☐ Sign Language Interpreter
- ☐ CART (Computer Access Realtime Translation)

- ☐ Assistive Listening Devices (add checkbox for headphones, neckloop, earbud)
- ☐ Audio cassette (analog)
- ☐ Other (please specify)

## IV. REASONABLE ACCOMMODATIONS AND MODIFICATIONS

- **What are Accommodations and Modifications?**
- **How to Handle Requests and Complaints**

- **What are Accommodations and Modifications?**

Most of this Handbook discusses ways in which entities set themselves up generally. This Chapter is about the individual variations needed to accommodate the particular needs of people with disabilities. These accommodations and modifications are needed because the impact of a disability is different for each individual.

Requests to do things differently than an Executive Branch Entity would ordinarily operate are often made by people with disabilities. These accommodations and modifications enable them to participate in or benefit from Executive Branch Entity programs, activities and services. Entities must grant these requests when they are “reasonable.”

These requests are as varied as the needs of people with disabilities. Examples of reasonable requests include: helping a person without hands to fill out a form that the consumers are ordinarily obliged to complete themselves, providing a letter in Braille for a blind consumer, allowing a blind person to prove identity with other than a driver’s license, providing a diabetic meal at a luncheon sponsored by an entity and allowing a person to have a flexible time to appear for a meeting.

- **How to Handle Requests and Complaints**

Requests can be made to virtually any Executive Branch employee. They can be oral or in writing.

**NOTE: Entities may not demand a particular form as a condition to granting an accommodation or modification.**

The Entity must inform all staff that they must report any requests for accommodation or modification to the ADA/504 Coordinator.

Executive Branch agencies should adopt the sample Grievance Procedures and Guidelines, found in earlier in this Handbook as “Attachment 3.”

## V. DISABILITY PRIMER

- **Disability Terminology**
- **Disability Etiquette**
- **Disability Access Symbols**

- **Disability Terminology**

The disability community generally emphasizes the individuality of people with disabilities, not their disability. The term “handicapped” has fallen into disuse and should be avoided. However, it is still used in some Massachusetts statutes. The terms “able-bodied,” “physically challenged” and “differently abled” are also discouraged. The following are some recommendations:<sup>35</sup>

Never use the article “THE” with an adjective to describe people with disabilities.

The preferred usage, “people with disabilities,” stresses the essential humanity of individuals and avoids objectification. Alternatively, the term “disabled people” is acceptable, but still defines individuals as disabled, first, and people second.” The term “hearing impaired” should not be used as it is perceived by many to be a term that implies that the individual is in some way “broken” and needs to be “fixed.” Instead, the term, “deaf or hard of hearing,” can be used.

Use:	People who are deaf People who are hard of hearing People who are deaf or hard of hearing
Not:	the deaf deaf-mutes deaf and dumb
Use:	People who are blind People with low vision People who have impaired vision
Not:	the visually impaired
Use:	People with disabilities
Not:	the disabled The handicapped

To refer to a person’s disability, choose the correct terminology for the specific disability. The following terms are examples of appropriate terms to describe people with disabilities.

People who are: blind, Deaf or hard of hearing, developmentally disabled.

People with, or who have: intellectual disabilities, vision impairments, Cerebral Palsy, Down Syndrome, paraplegia, quadriplegia, partial hearing loss, seizure disorder, specific learning disability, speech impairment, or speech disability.

Be careful not to imply that people with disabilities are to be pitied, feared or ignored, or that they are somehow more heroic, courageous, patient, or “special” than others. Never use the term “normal” in contrast.

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<sup>35</sup> Extracted, with compiler additions, from the University of North Carolina at Wilmington, Disability Services, “Disability Terminology,” <http://www.uncwil.edu/stuaff/SDS/disterm.html>



Use:	Trina qualified for her “Swimmer” certificate.
Not:	Trina held her own while swimming with normal children.

A person in a wheelchair is a “wheelchair user” or “uses a wheelchair.” Avoid terms that define the disability as a limitation such as “confined to a wheelchair” or “wheelchair-bound.” A wheelchair liberates; it doesn’t confine.

Never use the terms “victim” or “sufferer” to refer to a person who has had a disease or disability. This term dehumanizes the person and emphasizes powerlessness.

Use:	person with HIV/AIDS
Not:	victim of AIDS or AIDS sufferer.

Use:	had polio
Not:	polio victim

- **Disability Etiquette**

- a. **General Etiquette<sup>36</sup>**

- When talking with a person with a disability, speak directly to that person rather than to a companion or sign language interpreter who may be present.
- When introduced to a person with a disability, it is appropriate to offer to shake hands. People with limited hand use or who wear an artificial limb can usually shake hands. Shaking hands with the left hand is an acceptable greeting.
- When meeting a person with a visual impairment, always identify yourself and others who may be with you. When conversing in a group, remember to identify the person to whom you are speaking.
- If you offer assistance, wait until the offer is accepted. Then listen to or ask for instructions.
- Treat adults as adults. Address people who have disabilities by their first names only when extending that same familiarity to all others present. Never patronize people who use wheelchairs by patting them on the head or shoulder.
- Leaning or hanging on a person’s wheelchair is similar to leaning or hanging on a person and is generally considered annoying. The chair is part of the personal body space of the person who uses it.
- Listen attentively when you’re talking with a person who has difficulty speaking. Be patient and wait for the person to finish, rather than correcting or speaking for that person. If necessary, ask short questions that require short answers, a nod, or a shake of the head. Never pretend to understand if you are having difficulty doing so. Instead, repeat what you have understood and allow the person to respond. The response will clue you in and guide your understanding.
- When speaking with a person in a wheelchair or a person who uses crutches, place yourself at eye level in front of the person to facilitate the conversation.

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<sup>36</sup> Excerpted, with compiler revisions, from a list compiled from many sources by Karen Meyer of the National Center for Access Unlimited, a joint venture of the United Cerebral Palsy Association, Inc. and Adaptive Environments Center, Inc. <http://www2.ucsc.edu/ada/ADAhints.html>

- To get the attention of a person who is deaf or hard of hearing, tap the person on the shoulder or wave your hand. Look directly at the person and speak clearly. Not all people who are deaf or hard of hearing can speechread. For those who do speechread, be sensitive to their needs by placing yourself facing the light source and keeping your mouth and face visible and unobstructed when speaking. Rephrasing is better than repetition, and it is best to seek out a quiet area rather than a busy location for communicative purposes. Keep in mind that hearing aids and cochlear implants do not “fix” a person’s communicative challenges; you still need to be sensitive to potential communication breakdowns.
- Relax. It’s okay if you happen to use accepted, common expressions, such as “See you later” or “Did you hear about this,” that seem to relate to the person’s disability.

#### **a. Sensitivity to Blindness and Visual Impairments<sup>37</sup>**

The following points of etiquette are helpful to keep in mind when interacting with a person who is blind or visually impaired.

- Introduce yourself to people who are blind or visually impaired using your name and/or position, especially if you are wearing a name badge containing this information.
- Speak directly to people who are blind or visually impaired, not through a companion, guide, or other individual.
- Speak to people who are blind or visually impaired using a natural conversational tone and speed.
- Address people who are totally blind or severely visually impaired by name when possible. This is especially important in crowded areas.
- Immediately greet people who are blind or visually impaired when they enter a room or a service area. This allows you to let them know you are present and ready to assist. It also eliminates uncomfortable silences.
- Indicate the end of a conversation with a person who is totally blind or severely visually impaired to avoid the embarrassment of having them continue speaking when no one is actually there.
- Feel free to use words that refer to vision during the course of conversations with people who are blind or visually impaired. Vision-oriented words such as *look*, *see*, and *watching TV* are a part of everyday verbal communication. The words *blind* and *visually impaired* are also acceptable in conversation.
- Be precise and thorough when you describe individuals, places, or things to people who are totally blind. Don’t leave things out or change a description because you think it is unimportant or unpleasant. It is also important to refer to specific people or items by name or title instead of general terms like “you”, or “they” or “this.”
- Feel free to use visually descriptive language. Making reference to colors, patterns, designs, and shapes is perfectly acceptable.
- Speak about a person with a disability by first referring to the person and then to the disability. Refer to “people who are blind” rather than to “blind people.”

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<sup>37</sup> Excerpted with compiler edits from American Foundation for the Blind, Information Center, “Sensitivity to Blindness and Visual Impairments,” [http://www.afb.org/info\\_document\\_view.asp?documentid=911](http://www.afb.org/info_document_view.asp?documentid=911)

- Offer to guide people who are blind or visually impaired by asking if they would like assistance. Offer them your arm. It is not always necessary to provide guided assistance; in some instances it can be disorienting and disruptive. Respect the desires of the person you are with.
- Guide people who request assistance by allowing them to take your arm just above the elbow when your arm is bent. Walk ahead of the person you are guiding. **Never grab a person who is blind or visually impaired by the arm and push him/her forward.**
- Guide dogs are working mobility tools. Do not pet them, feed them, or distract them while they are working.
- Do not leave a person who is blind or visually impaired standing in “free space” when you serve as a guide. Always be sure that the person you guide has a firm grasp on your arm, or is leaning against a chair or a wall if you have to be separated momentarily.
- Be calm and clear about what to do if you see a person who is blind or visually impaired about to encounter a dangerous situation. For example, if a person who is blind is about to bump into a stanchion in a hotel lobby, calmly and firmly call out, “Wait there for a moment; there is a pole in front of you.”

### c. Interacting with people who have speech disabilities<sup>38</sup>

There are a variety of disabilities, such as stroke, cerebral palsy, and deafness that may involve speech impairments. People with speech disabilities communicate in many different ways.

- People who have speech disabilities may use a variety of ways to communicate. The individual may choose to use American Sign Language, write, speak, use a communication device, or a combination of methods. Find out the person’s preferred method and use it.
- Be appropriate when speaking with a person with a speech disability. Never assume that the person has a cognitive disability just because he or she has difficulty speaking.
- Move away from a noisy source and try to find a quiet environment for communicating with the person.
- If the person with a speech disability has a companion or attendant, talk directly to the person. Do not ask the companion about the person.
- Listen attentively when you are talking with a person who has difficulty speaking. Be patient and wait for the person to finish, rather than correcting or speaking for the person. If necessary, ask short questions that require short answers, a nod, or shake of the head.
- If you do not understand what the person has said, do not pretend that you did. Ask the person to repeat it. Smiling and nodding when you have no idea what the person said is embarrassing to both parties. Instead, repeat what you have understood and allow the person to respond.
- When you have difficulty conversing on the telephone with the person, suggest the use of a speech-to-speech relay service so that a trained professional can help you communicate with the person. Either you or the person can initiate the call free of charge via the relay service.
- If the person uses a communication device, make sure it is within his or her reach. If there are instructions visible for communicating with the person, take a moment to read them.

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<sup>38</sup> Excerpted with compiler edits from University of Kentucky, Engaging Differences Project, “Etiquette: Someone who has a Speech Impairment,” [http://www.uky.edu/TLC/grants/uk\\_ed/interactiontips6.html](http://www.uky.edu/TLC/grants/uk_ed/interactiontips6.html)

- Do not make assumptions about what a person can or cannot do based on his disability. All people with disabilities are different and have a wide variety of skills and personalities.

- **Disability Access Symbol**



#### **Access to Low Vision<sup>39</sup>**

This symbol may be used to indicate access for people who are blind or have low vision, including: guided tours, paths to a nature trail, scent gardens in a park, tactile tours or museum exhibitions that may be touched.



#### **Accessibility Symbol<sup>40</sup>**

The wheelchair symbol should only be used to indicate access for individuals with limited mobility, including wheelchair users. For example, the symbol is used to indicate accessible entrances, bathrooms, or telephones that have been lowered for wheelchair users. Remember that a ramped entrance is not completely accessible if there are no curb cuts, and an elevator is not accessible if it can only be reached via steps.



#### **Accessible Print<sup>41</sup>**

The symbol for large print is 'Large Print' printed in 16 Point or larger text. In addition to indicating that large print versions of books, pamphlets, museum guides and theater programs are available, the symbol may be used on conference or membership forms to indicate that print materials may be provided in large print. Sans serif or modified serif print with good contrast is highly recommended, and special attention should be paid to letter and word spacing.



#### **Assistive Listening Systems<sup>42</sup>**

These systems transmit sound via radio waves, infrared lights, or direct coupling with a person's hearing aid or microphone. They include infrared, loop, hard wired and FM systems. Portable systems may be available from the same audiovisual equipment suppliers that service conferences and meetings.



#### **Audio Description, also called Video Description.<sup>43</sup>**

There are 2 symbols that are used for this service that makes television, video, film, and live performances more accessible for persons who are blind or have low vision. For televisions and monitors, descriptions of visual elements are provided by a trained Audio

<sup>39</sup> Excerpted with compiler additions from Graphic Artists Guild, "Disability Access Symbols," (symbols available in downloadable files from this site), <http://www.gag.org/resources/das.php>

<sup>40</sup> Id. THIS SYMBOL IS NOT THE UNIVERSAL SYMBOL OF ACCESS

<sup>41</sup> Id.

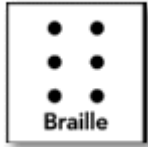
<sup>42</sup> Id.

<sup>43</sup> Excerpted with compiler additions from Graphic Artists Guild, "Disability Access Symbols," (symbols available in downloadable files from this site), <http://www.gag.org/resources/das.php>

Second graphic ("D" with radiating arcs) from WGBH, Services for Hire, "Access Symbols," <http://main.wgbh.org/wgbh/hire/symbols.html>

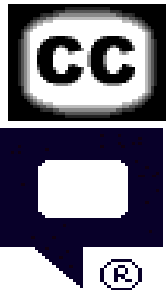


Describer using the Secondary Audio Program (SAP).



#### **Braille Symbol<sup>44</sup>**

This symbol indicates that printed matter is available in Braille, including exhibition labeling, publications, and signage.



#### **Closed Captioning<sup>45</sup>**

These symbols indicate that a television program or videotape is closed captioned. The “CC” (with or without the rounded rectangle surrounding it) is generic and can be used by any company. The second icon that looks like a comic strip speech “balloon” (a rounded rectangle with a small “tail” protruding below) is a registered service mark of the National Captioning Institute (NCI), and is only used for productions that are captioned by NCI.



#### **Sign Language Interpretation<sup>46</sup>**

The symbol indicates that sign language interpretation is provided for lectures, tours, performances, conferences, or other programs.



#### **TTY (Teletypewriter)<sup>47</sup>**

TTYs are also known as text telephones (TTs), or telecommunications devices for the deaf (TTYs). The TTY symbol indicates that TTYs are available.



#### **Volume Control Telephone<sup>48</sup>**

This symbol indicates that telephone handsets with amplified sound and/or adjustable volume controls are available.

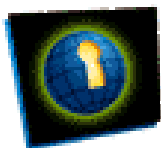
<sup>44</sup> From Graphic Artists Guild, “Disability Access Symbols,” (symbols available in downloadable files from this site), <http://www.gag.org/resources/das.php>

<sup>45</sup> Excerpted with compiler additions from Closed Captioning FAQ, “Closed Captioning Overview: Why are there different icons to denote captioned programs?” <http://www.robson.org/capfaq/overview.html#icons>

<sup>46</sup> From Graphic Artists Guild, “Disability Access Symbols,” (symbols available in downloadable files from this site), <http://www.gag.org/resources/das.php>

<sup>47</sup> Excerpted with compiler additions from Graphic Artists Guild, “Disability Access Symbols,” (symbols available in downloadable files from this site), <http://www.gag.org/resources/das.php>

<sup>48</sup> Id.



### **Web Access<sup>49</sup>**

This symbol appears on web sites that have been designed with accessibility features. The symbol should always be used with the following alt-text tag: Web Access Symbol (for people with disabilities).

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<sup>49</sup> Excerpted from WGBH, Service for Hire, "Access Symbols," <http://main.wgbh.org/wgbh/hire/symbols.html>

## VI. APPENDICES

- **Text of Executive Order 526**
- **Massachusetts Accessibility Links**
- **Massachusetts Disability Based Standards for the Executive Branch Entities**

- [Text of Executive Order 526](#)

By His Excellency

DEVAL L. PATRICK  
GOVERNOR

**EXECUTIVE ORDER NO. 526**  
**ORDER REGARDING NON-DISCRIMINATION, DIVERSITY,**  
**EQUAL OPPORTUNITY, AND AFFIRMATIVE ACTION**  
**(Superseding Executive Order 478)**

WHEREAS, the Constitution of the Commonwealth of Massachusetts is based on a belief in freedom and equality for all individuals and in the duty of Government to safeguard and foster these rights;

WHEREAS, the Executive Branch of the Commonwealth of Massachusetts recognizes the importance of non-discrimination, diversity, and equal opportunity in all aspects of state employment, programs, and activities;

WHEREAS, creating a culture of inclusion that values and promotes diversity and equal opportunity for all individuals is the central objective of this Executive Order and the goal of my administration;

WHEREAS, while acknowledging the many efforts and accomplishments of the past, the Commonwealth can and must do more to ensure that non-discrimination, diversity and equal opportunity are safeguarded, promoted, and reflected in state workplaces, decisions, programs, activities, services, and contracts;

NOW, THEREFORE, I, Deval L. Patrick, Governor of the Commonwealth of Massachusetts, by virtue of the authority vested in me by the Constitution, Part 2, c. 2, § 1, Art. I, do hereby order as follows:

Section 1. This Executive Order shall apply to all state agencies in the Executive Branch. As used in this Order, “state agencies” shall include all executive offices, boards, commissions, agencies, departments, divisions, councils, bureaus, and offices, now existing and hereafter established.

Section 2. Non-discrimination, diversity, and equal opportunity shall be the policy of the Executive Branch of the Commonwealth of Massachusetts in all aspects of state employment, programs, services, activities, and decisions. Each executive officer and agency head serving under the Governor, and all state employees, shall take immediate, affirmative steps to ensure compliance with this policy and with applicable federal and state laws in connection with both the internal operations of state government as well as their external relations with the public, including those persons and organizations doing business with the Commonwealth. Each agency, in discharging its duties, shall consider the likely effects that its decisions, programs, services, and activities will have on achieving non-discrimination, diversity, and equal opportunity.

Section 3. All state agencies shall develop and implement affirmative action and diversity plans to identify and eliminate discriminatory barriers in the workplace; remedy the effects of past discriminatory practices; identify, recruit, hire, develop, promote, and retain employees who are members of under-represented groups; and ensure diversity and equal opportunity in all facets, terms, and conditions of state employment. Such plans shall set forth specific goals and timetables for achievement, shall comply with all applicable state and federal laws, and shall be updated, at a minimum, every two years.

Section 4. All programs, activities, and services provided, performed, licensed, chartered, funded, regulated, or contracted for by the state shall be conducted without unlawful discrimination based on race, color, age, gender, ethnicity, sexual orientation, gender identity or expression, religion, creed, ancestry, national origin, disability, veteran's status (including Vietnam-era veterans), or background. Equal opportunity and diversity shall be protected and affirmatively promoted in all state, state-assisted, and state-regulated programs, activities, and services. Non-compliance shall subject violators to such disciplinary or remedial actions as permitted by law. This provision applies, but is not limited to, the use and operation of facilities owned, leased, funded or subject to control by the Commonwealth; the sale, lease, rental, financing, construction, or development of housing; state-licensed or chartered health care facilities, educational institutions, and businesses; education, counseling, and training programs; and public schools.

Section 5. All Executive Branch contracts entered into after the effective date of this Order shall contain provisions prohibiting contractors and subcontractors from engaging in discriminatory employment practices; certifying that they are in compliance with all applicable federal and state laws, rules, and regulations governing fair labor and employment practices; and committing to purchase supplies and services from certified minority or women-owned businesses, small businesses, or businesses owned by socially or economically disadvantaged persons or persons with disabilities. Such provisions shall be drafted in consultation with the Office of the Comptroller and the Operational Services Division, which shall develop and implement uniform language to be incorporated into all Executive Branch contracts. The provisions shall be enforced through the contracting Executive Branch Entity, the Operational Services Division and/or the Massachusetts Commission Against Discrimination. Any breach shall be regarded as a material breach of the contract that may subject the contractor to appropriate sanctions.

Section 6. All state agencies shall exclude from any forms requesting information any item or inquiry expressing or soliciting specifications as to race, color, creed, religion, national origin, ethnicity, gender, age, sexual orientation, gender identity or expression, or disability, unless the item or inquiry is expressly required by statute or is deemed by the Massachusetts Commission Against Discrimination, the Massachusetts Office on Disability, the Human Resources Division, or the Office of Diversity and Equal Opportunity to be a bona fide qualification or otherwise required in good faith for a proper purpose.

Section 7. The Office of Diversity and Equal Opportunity ("ODEO"), as presently established within the Human Resources Division of the Administration and Finance Secretariat, shall be responsible for ensuring compliance with this Executive Order and with all applicable state and federal laws. ODEO shall have a Director (the "Director"), who shall be selected by and serve at the pleasure of the Governor. The Director shall report to the Commonwealth's Chief Human Resources Officer and submit periodic written reports to the Governor. The Director shall have the authority to:

- Establish guidelines for Executive Branch Entity affirmative action and diversity plans ("plans");
- Review all such plans and either approve, return for amendment, or reject them;



- Establish periodic reporting requirements for agencies concerning the implementation of their plans and all actions taken to ensure compliance with this Executive Order and applicable state and federal laws;
- Provide assistance to agencies in achieving compliance with their plans and with applicable federal and state laws;
- Monitor and assess the status of agency compliance and investigate instances of non-compliance; and
- Where appropriate, determine and impose remedial courses of action, including the potential imposition of a freeze on all personnel requisitions and appointment forms submitted by any non-compliant agency to the Chief Human Resources Officer.

Section 8. Each Secretariat shall appoint a Diversity Director. Each agency shall appoint a Diversity Officer. Diversity Directors and Officers shall have a direct reporting relationship to their Secretary or Agency head; shall also report to the Director of ODEO; and shall coordinate their component's compliance with the requirements of this Order and applicable federal and state laws. Through the Diversity Directors and Officers, and in compliance with the reporting guidelines and requirements established by ODEO, all state agencies shall submit periodic reports to the Director of ODEO concerning the status and implementation of their affirmative action and diversity plans.

Section 9. The Massachusetts Office on Disability ("MOD"), through its Director, shall be responsible for advising, overseeing and coordinating compliance with federal and state laws protecting the rights of persons with disabilities, including but not limited to the Americans with Disabilities Act ("ADA"), 42 U.S.C §§12131-12134; Section 504 ("504") of the Rehabilitation Act of 1973, 29 U.S.C. § 794; Article CXIV of the Massachusetts Constitution; and Chapter 6, §§ 185-87; Chapter 93, § 103; Chapter 151B; and Chapter 272, §§ 92, 98, and 98A of the Massachusetts General Laws. MOD shall serve as the Executive Branch's designated ADA and Rehabilitation Act Coordinator, and shall provide information, training, and technical assistance and promulgate guidelines reflecting best practices, policies and procedures concerning persons with disabilities. Each agency shall appoint an ADA/504 Coordinator who shall report directly to the agency head and work with MOD concerning issues involving persons with disabilities. Notification of such appointment shall be made to MOD's Director.

Section 10. Pursuant to guidelines established by ODEO and MOD, all agency heads, managers, supervisors, and employees shall attend mandatory diversity training within one year of the effective date of this Order. For future hires, such training shall be part of the standardized orientation provided to new employees.

Section 11. ODEO and MOD shall promulgate guidelines establishing a complaint resolution process for individuals who allege non-compliance by state agencies with applicable federal and state laws prohibiting discrimination. In instances where this process does not resolve the complaint, the Director of ODEO may refer to the Massachusetts Commission Against Discrimination ("MCAD") or to MOD any information concerning conduct that the Director believes may constitute a violation of the law. The MCAD shall initiate investigations and, where necessary, file complaints against those agencies and persons whom it has reason to believe are in violation of the laws of the Commonwealth or the United States.

Section 12. In performing their responsibilities under this Order, ODEO, MOD, and the MCAD shall have the full cooperation of all state agencies, including compliance with all requests for information.

Section 13. The Governor's Non-discrimination, Diversity and Equal Opportunity Advisory Council ("Advisory Council") is hereby established to advise the Governor concerning policies, practices, and specific actions that the Commonwealth should implement to ensure that the objectives of this Executive Order are accomplished.

13.1 The Advisory Council shall consist of fifteen persons, including a Chair, each of whom shall be appointed by the Governor. All members shall serve without compensation at the pleasure of the Governor in a solely advisory capacity.

13.2 The Advisory Council's work shall include, but need not be limited to, making written recommendations to the Governor concerning actions, policies, and practices that the Commonwealth should implement to ensure that the objectives of this Executive Order are accomplished.

13.3 The Advisory Council shall meet at such times and places as determined by the Chair and shall submit an initial report containing its written recommendations to the Governor no later than 60 days following the appointment of the Council's 15 members. Thereafter, the Advisory Council shall meet at least semi-annually and submit supplemental reports to the Governor no less than once per year.

Section 14. Nothing in this Executive Order shall be construed to preclude or otherwise limit the continuation or implementation of any lawful affirmative action programs or other programs that support the objectives of this Executive Order.

Section 15. This Executive Order shall take effect immediately and shall continue in effect until amended, superseded or revoked by subsequent Executive Order.

Given at the Executive Chamber in Boston this 17th day of February in the year of our Lord two thousand and eleven, and of the Independence of the United States of America two hundred and thirty-five.

- [State Accessibility Links](#)

**Massachusetts Commission Against Discrimination (MCAD)**

<https://www.mass.gov/orgs/massachusetts-commission-against-discrimination> works to ensure equality of opportunity by enforcing the Commonwealth's anti-discrimination laws in employment, housing, public accommodations, credit, mortgage lending, and education. Established by Massachusetts General Law Chapter 6, Section 56, the MCAD enforces the following General Laws: Chapter 149, Sections 105D and 191, Chapter 151B, Chapter 151C, Chapter 272, Section 92A, Section 98 and 98A, and Chapter 111, Section 199A. MCAD works to eliminate discrimination and advance the civil rights of the people of the Commonwealth of Massachusetts through law enforcement (filing of complaints, investigations, mediations and conciliations, hearings, and litigation) and outreach (training sessions, public education, and testing programs).

**Massachusetts Commission for the Blind (MCB)**

<http://www.mass.gov/mcb> provides a broad array of social and rehabilitative services to all legally blind residents of the Commonwealth of Massachusetts. MCB provides the highest quality rehabilitation and social services to blind individuals, leading to independence and full community participation.

**Massachusetts Commission for the Deaf and Hard of Hearing (MCDHH)** <http://www.mass.gov/mcdh> on behalf of people of all ages who are deaf and hard of hearing, established by Massachusetts General Laws, Chapter 6 §191-197, MCDHH works to explore innovative solutions for accessible communication, to identify links to resources and supports, and to become better prepared for current and future challenges impacting people who are deaf, hard of hearing, and late-deafened.

**Massachusetts Department of Mental Health (DMH)**

<http://www.mass.gov/dmh> works to assure and provide access to services and supports to meet the mental health needs of individuals of all ages, enabling them to live, work and participate in their communities. The Department establishes standards to ensure effective and culturally competent care to promote recovery. The Department sets policy, promotes self-determination, protects human rights and supports mental health training and research. This critical mission is accomplished by working in partnership with other state agencies, individuals, families, providers and communities.

**Massachusetts Department of Developmental Services (DDS)**

<http://www.mass.gov/eohhs/gov/departments/dds/> provides assistance in job placement, transportation, housing, or intense levels of treatment, monitoring and care. DDS provides these services through state-operated programs and with 265 provider agencies across the state. DDS is dedicated to creating, in partnership with others, innovative and genuine opportunities for individuals with developmental disabilities to participate fully and meaningfully in, and contribute to, their communities as valued members.

**Massachusetts Division of State Parks & Recreation, Universal Access Program**

<http://www.mass.gov/eea/agencies/dcr/massparks/accessibility/> is dedicated to providing outdoor recreation opportunities in Massachusetts State Parks for visitors of all abilities. Accessibility to our State Parks is achieved through site improvements, specialized adaptive recreation equipment, and accessible recreation programs. Use this as a guide to discover the most accessible parks and forests that offer the recreation opportunities you seek.

**Massachusetts Executive Office of Technology Services and Security (EOTSS)**  
<http://www.mass.gov/accessibility> provides technology related guidance for Executive Branch Entities on accessibility, audits agencies for compliance with Executive Branch standards including Web sites and Applications standards. These standards roughly parallel those found in §508 of the Federal Rehabilitation Act.

**Massachusetts Office on Disability (MOD)**

<http://www.mass.gov/mod> was created in 1981, by M.G.L. c. 6, sec. 185, et seq., as the state advocacy Executive Branch Entity that serves people with disabilities of all ages. MOD's primary mission is to ensure access. The purpose of the Office is to bring about full and equal participation of people with disabilities in all aspects of life. It works to assure the advancement of legal rights and for the promotion of maximum opportunities, supportive services, accommodations and accessibility in a manner which fosters dignity and self-determination. MOD is the Commonwealth's Americans with Disabilities Act Coordinating Agency.

**Massachusetts Office of Diversity and Equal Opportunity (ODEO)**

[http://www.mass.gov/?pageID=hrdmodulechunk&L=1&L0=Home&sid=Ehrd&b=terminalcontent&f=contact\\_odeo&csid=Ehrd](http://www.mass.gov/?pageID=hrdmodulechunk&L=1&L0=Home&sid=Ehrd&b=terminalcontent&f=contact_odeo&csid=Ehrd) works to carry out the Governor's mandate to ensure practices of non - discrimination and equal opportunity and to deliver customer-focused solutions in attracting, hiring, retaining and promoting a diverse workforce within the Commonwealth of Massachusetts.

**Massachusetts Rehabilitation Commission (MRC)**

<http://www.mass.gov/mrc> promotes dignity for individuals with disabilities through employment and independent living in the community. MRC is responsible for Vocational Rehabilitation Services, Community Services, and eligibility determination for the Social Security Disability Insurance (SSDI) and the Supplemental Security Income (SSI) federal benefits programs.

# MASSACHUSETTS OFFICE ON DISABILITY DISABILITY-BASED NON-DISCRIMINATION STANDARDS FOR EXECUTIVE BRANCH ENTITIES PER EO526

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## Article 1. PURPOSE

**Section 1.01** The purpose of these standards is to operationalize within the Executive Branch of Massachusetts government the provisions of various federal and state laws which prohibit discrimination based on disability in the programs, activities and services operated by the Executive Branch, including but not limited to the Federal Rehabilitation Act of 1973, 29 U.S.C. 701, et seq., the Americans with Disabilities Act, 42 U.S.C. 12101, et seq., the federal and Massachusetts Fair Housing Acts, 42 U.S.C. 3601, et seq. and G.L. c. 151B, §4, the Massachusetts Public Accommodations Statute, G.L. c. 272 §§ 92A, 98 and 98A, the Massachusetts Constitutional Amendment prohibiting discrimination based on disability, amendment Article CXIV, and its implementing statute G.L. c. 93, §103.

## Article 2. APPLICABILITY & RELATIONSHIP TO OTHER LAWS

**Section 2.01** Per the authority and direction of Massachusetts Executive Order 526<sup>50</sup>, these standards prohibit discrimination as described herein by any entity within the Executive Branch of Massachusetts Government, as well as discrimination by any person or entity acting on behalf of or with the express or implied authority of any such entity.

**Section 2.02** These Standards do not invalidate or limit the remedies, rights, and procedures of any Federal law, or other State and local laws (including State common law) that provide greater or equal protection for the rights of individuals with disabilities or individuals associated with them. These standards do not alter an individual's right to seek redress where another state administrative enforcement procedure is available, including but not limited to those available from the Massachusetts Commission on Discrimination, 804 C.M.R. 1.00, et seq. the Architectural Access Board, G.L. c. 22, §13A, 521 C.M.R. §1, et seq., or the Special Education Regulations, 603 C.M.R. § 28.00, et seq.

## Article 3. DEFINITIONS

As used in these Standards, the terms below shall have the following meanings:

**Section 3.01** Auxiliary aids and services includes but is not limited to:

(A) Qualified interpreters, note takers, transcription services, written materials, telephone handset amplifiers, Assistive Listening Devices, assistive listening systems, telephones compatible with hearing aids, closed caption decoders, open and closed captioning, telecommunications devices for deaf persons (TTY's),

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<sup>50</sup> <http://www.mass.gov/courts/docs/lawlib/eo500-599/eo526.pdf>

videotext displays, or other effective methods of making aurally delivered materials available to individuals with hearing impairments;

(B) Qualified readers, taped texts, audio recordings, Brailled materials, large print materials, or other effective methods of making visually delivered materials available to individuals with visual impairments;

(C) Acquisition, development, customization or modification of telecommunication, or electronic and information technology or other software, applications, equipment or devices; and

(D) Other similar services and actions.

**Section 3.02** Current illegal use of drugs means illegal use of drugs that occurred recently enough to justify a reasonable belief that a person's drug use is current or that continuing use is a real and ongoing problem.

**Section 3.03** Disability means, with respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment, or being associated with one having such impairment.

(A) Physical or mental impairment means: (i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more body systems, such as: Neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, immune, circulatory, hemic, lymphatic, skin, and endocrine; or (ii) Any mental or psychological disorder such as intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disability.

(B) Major Life Activities but are not limited to: (i) Caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, writing, communicating, interacting with others, and working; and (ii) The operation of a major bodily function, such as the functions of the immune system, special sense organs and skin, normal cell growth, and digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive systems. The operation of a major bodily function includes the operation of an individual organ within a body system.

(C) The term "substantially limits" shall be construed broadly in favor of expansive coverage, to the maximum extent permitted by the terms of the ADA. "Substantially limits" is not meant to be a demanding standard. An impairment does not need to prevent, or significantly or severely restrict, the individual from performing a major life activity in order to be considered substantially limiting. The determination of whether an impairment substantially limits a major life activity depends on a multitude of factors, including but not limited to the nature and severity of the impairment, the duration or expected duration of the impairment, and the permanent or long term impact of the impairment.

(D) Has a record of such an impairment means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(E) Is regarded as having an impairment means:

(1) Has a physical or mental impairment that does not substantially limit a major life activity but that is treated by an individual or entity as constituting such a limitation; or

(2) Has a physical or mental limitation that substantially limits a major life activity only as a result of the attitudes of others towards such an impairment; or

(3) Has none of the impairments defined in paragraphs (e) (1) or (2) but is treated by an individual or entity as having such impairment.

(F) Disability generally, does not include –

- (1) Transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders<sup>51</sup>;
- (2) Compulsive gambling, kleptomania, or pyromania; or
- (3) Psychoactive substance use disorders resulting from current illegal use of drugs.

**Section 3.04** Drug means a controlled substance, as set forth in the Massachusetts Controlled Substance Act (G.L. c. 94C, §§ 3 and 31).<sup>52</sup>

**Section 3.05** Executive Branch Entity means:

- (A) The Executive Branch of Massachusetts government; and
- (B) Any department, agency, board, commission, special purpose district, or other instrumentality of the Commonwealth that is under the authority or control of the Governor.

**Section 3.06** Facility means all or any portion of buildings, structures, sites, complexes, equipment, rolling stock or other conveyances, roads, walks, passageways, parking lots, or other real or personal property, including the site where the building, property, structure, or equipment is located.

**Section 3.07** Historic Preservation Programs means programs conducted by an Executive Branch Entity that have preservation of historic properties as a primary purpose.

**Section 3.08** Historic Properties means those properties that are listed or eligible for listing in the National Register of Historic Places or properties designated as historic by the Massachusetts Historical Commission.

**Section 3.09** Illegal Use of Drugs means the use of one or more drugs, the possession or distribution of which is unlawful under the Massachusetts Controlled Substance Act (G.L. c. 94C, §1 et seq.) The term illegal use of drugs does not include the use of a drug taken under supervision by a licensed health care professional, or other uses authorized by G.L. c. 94 C or other provisions of Federal and State law.

**Section 3.10** Individual with a Disability means a person who has a disability. The term individual with a disability does not include an individual who is currently engaging in the illegal use of drugs, when the Executive Branch Entity acts on the basis of such use.

**Section 3.11** Qualified Individual with a Disability means an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by an Executive Branch Entity.

**Section 3.12** Qualified Interpreter means an interpreter who is able to interpret effectively, accurately, and impartially both receptively and expressively, using any necessary specialized vocabulary.

**Section 3.13** Service Animal Any dog or miniature horse trained to do work or perform tasks for the benefit of an individual with a disability. The work or tasks performed by the service animal must be directly related

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<sup>51</sup> Note that in particular areas MGL Ch. 151B is more expansive, and in others, the ADA is more expansive- for example 151B exempts pedophilia but not the other categories listed herein. ***Please seek legal counsel prior to making decisions based on the exemptions of particular categories due to these inconsistencies with state and federal law.***

<sup>52</sup> While there is no duty to accommodate illegal drug use under the ADA, Massachusetts state law states that an employer may not categorically terminate employment strictly based on non-workplace use of medical marijuana. [Barbuto v. Advantage Sales & Marketing, LLC, 477 Mass. 456 \(2017\)](#)

to the disability, including but not limited to, guiding individuals with impaired vision, alerting individuals with impaired hearing to intruders or sounds, providing minimal protection or rescue work, pulling a wheelchair, or fetching dropped items. Dogs and/or miniature horses may be considered service animals if they have been individually trained to provide assistance to an individual with a disability; beyond that, there are no requirements for certification by a state or local government.

**Section 3.14** State means the Commonwealth of Massachusetts.

**Section 3.15** Section 504 means Section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112, 87 Stat. 394 (29 U.S.C. 794)), as amended.

**Section 3.16** Undue Burden means significant difficulty or expense. In determining whether an action would result in an undue burden, factors to be considered include the following:

- (A) The nature and cost of the action needed to comply with these standards;
- (B) The overall financial resources of the entity or entities involved in the action; the number of persons employed at the entity; the effect on expenses and resources; legitimate safety requirements that are necessary to safe operation, including crime prevention measures; or the impact otherwise of the action upon the operation of the entity's program;
- (C) The geographic separateness, and the administrative or fiscal relationship of the entity in question to any parent entity;
- (D) If applicable, the overall financial resources of any parent entity;
- (E) the overall size of the parent entity with respect to the number of its employees; the number, type, and location of its facilities; and
- (F) If applicable, the type of operation or operations of any parent entity, including the composition, structure, and functions of the workforce of the parent entity.

## **Article 4. ADMINISTRATIVE REQUIREMENTS**

### **Section 4.01 Notice**

An Executive Branch Entity shall make available to applicants, participants, beneficiaries, and other interested persons information regarding the provisions of these standards and their applicability to the services, programs, or activities of that entity. It shall make such information available in such manner as the head of the entity finds necessary to apprise the aforementioned people of the protections against discrimination assured them by federal and Massachusetts Law.

### **Section 4.02 Designation of Responsible Employee**

An Executive Branch Entity shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under these standards, including any investigation of any complaint communicated to it alleging its noncompliance with these standards or alleging any actions that would be prohibited by these standards. The Executive Branch 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.

### **Section 4.03 Grievance Procedures**

#### **(A) Complaint Procedure**

An Executive Branch entity must adopt and publish an informal grievance procedure providing for prompt and equitable resolution of complaints alleging any action that would be prohibited by these Standards (See Attachment 3 earlier in this Handbook). Individuals dissatisfied with the result of the informal grievance



procedure may file formal complaints with various federal or Massachusetts enforcement agencies, including but not limited to:

- (1) The Massachusetts Commission Against Discrimination,
- (2) The U.S. Department of Justice,
- (3) The Equal Employment Opportunity Commission, or
- (4) To the extent that the entity is a recipient of federal funds, with the appropriate federal Office of Civil Rights.

These standards do not alter an individual's right to seek redress where another state administrative enforcement procedure is available, including but not limited to those available from the Massachusetts Commission Against Discrimination, 804 C.M.R. 1.00, et seq. the Architectural Access Board, G.L. c. 22, §13A, 521 C.M.R. §1, et seq., or the Special Education Regulations, 603 C.M.R. § 28.00, et seq.

## **Article 5. GENERAL REQUIREMENTS**

### **Section 5.01 Prohibition of discrimination**

#### **(A) General Prohibitions**

No qualified individual with a disability shall, on the basis of disability:

- (1) Be excluded from participation in, or
- (2) Be denied the benefits of the services, programs, or activities of an Executive Branch Entity, or
- (3) Be subjected to discrimination by any Executive Branch Entity, subject to the defenses set forth in these Standards.

### **Section 5.02 Prohibited Activities**

#### **(A) Denial of Participation**

An Executive Branch Entity shall not subject an individual or class of individuals, on the basis of disability or disabilities of the individual or class, directly or through contractual, licensing, or other arrangements, to a denial of the opportunity of the individual or class to participate in, or benefit from, the goods, programs, activities, services, facilities, privileges, advantages, or accommodations of the Executive Branch Entity.

#### **(B) Unequal Benefit**

An Executive Branch Entity shall afford all individuals or classes of individuals with the opportunity to participate in, or benefit from, a good program, activity, service, facility, privilege, good, or advantage on an equal basis, without regard to whether the individual or class of individuals has a disability.

#### **(C) Separate Benefit**

An Executive Branch Entity shall not provide an individual or class of individuals, on the basis of a disability or disabilities of the individual or class, directly or through contractual, licensing, or other arrangements with a good, program, activity, service, facility, privilege, advantage, or accommodation in an Executive Branch Entity that is different or separate from that provided to other individuals, unless the action is necessary to provide the individual or class of individuals with a good, program, activity, service, facility, privilege, advantage, or accommodation, or other opportunity that is as effective as that provided to others.

#### **(D) Aid or Perpetuate Discrimination by Others**

An Executive Branch Entity shall not aid or perpetuate discrimination against a qualified individual with a disability by providing significant assistance to an agency, organization, or person that discriminates on the basis of disability in providing any aid, benefit, or service to beneficiaries of the Executive Branch Entity's program;

#### **(E) Deny Participation on Planning or Advisory Boards**

An Executive Branch Entity shall not deny a qualified individual with a disability the opportunity to participate as a member of planning or advisory boards on the basis of the individual's disability;

**(F) Otherwise Limit a Qualified Individual**

An Executive Branch Entity shall not otherwise limit a qualified individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service on the basis of the individual's disability.

**(G) Criteria or Methods of Administration**

An Executive Branch Entity shall not, directly or through contractual or other arrangements, utilize criteria or methods of administration:

- (1) That have the effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability;
- (2) That have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the Executive Branch Entity's program with respect to individuals with disabilities; or
- (3) That perpetuates the discrimination of another Executive Branch Entity if both public entities are subject to common administrative control or are agencies of the State.

**(H) Integrated Settings**

**(1) General**

An Executive Branch Entity shall afford goods, services, facilities, privileges, advantages, and accommodations to an individual with a disability in the most integrated setting appropriate to the needs of the individual.

**(2) Opportunity to Participate**

Notwithstanding the existence of separate or different programs, services or activities, an Executive Branch Entity shall not deny an individual with a disability an opportunity to participate in programs, activities or services of an Executive Branch Entity that are not separate or different.

**(3) Accommodations and Services**

Nothing in these standards shall be construed to require an individual with a disability to accept an available accommodation, service, opportunity, or benefit that the individual chooses not to accept.

**(I) Administrative Methods**

An Executive Branch Entity shall not, directly or through contractual or other arrangements, utilize standards or criteria or methods of administration that have the effect of discriminating on the basis of disability, or that perpetuate the discrimination of others who are subject to common administrative control.

**(J) Association**

An Executive Branch Entity shall not exclude or otherwise deny equal goods, services, facilities, privileges, advantages, accommodations, or other opportunities to an individual or entity because of the known disability of an individual with whom the individual or entity is known to have a relationship or association.

**(K) Facility Site or Location**

An Executive Branch Entity shall not, in determining the site or location of a facility, make selections:

- (1) That have the effect of excluding individuals with disabilities from, denying them the benefits of, or otherwise subjecting them to discrimination; or
- (2) That have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the service, program, or activity with respect to individuals with disabilities.

**(L) Selection of Procurement Contractors**

An Executive Branch Entity, in the selection of procurement contractors, shall not use criteria that subject qualified individuals with disabilities to discrimination on the basis of disability.

**(M) Licensing or Certification Programs**

An Executive Branch Entity shall not administer a licensing or certification program in a manner that subjects qualified individuals with disabilities to discrimination on the basis of disability, nor may an Executive Branch

Entity establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with disabilities to discrimination on the basis of disability.

**(N) Policies, Practices, or Procedures**

An Executive Branch 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 Executive Branch Entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.

**(O) Eligibility Criteria**

An Executive Branch 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.

**(P) Retaliation or Coercion**

**(1) Places Where Programs, Activities or Services Are Conducted**

No person or entity may discriminate against any individual in a place where an Executive Branch entity's programs, activities or services are conducted, because that individual has opposed any act or practice made unlawful by these standards, or because that individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under these Standards or any other standard, law or regulation related to non-discrimination based on disability.

**(2) Coercion, Intimidation, Threats, or Interference**

No person or entity may coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other individual in the exercise or enjoyment of, any disability based right granted or protected by state or federal law, regulation or policy.

**Section 5.03 Limitation on Prohibited Activities**

**(A)** Nothing in these standards prohibits an Executive Branch Entity from providing benefits, services, or advantages to individuals with disabilities, or to a particular class of individuals with disabilities beyond those required by these standards.

**(B)** Nothing in these standards shall be construed to:

**(1)** Require an individual with a disability to accept an accommodation, aid, service, opportunity, or benefit provided under the ADA or these standards which such individual chooses not to accept.

**(2)** Authorize the representative or guardian of an individual with a disability to decline food, water, medical treatment, or medical services for that individual.

**Section 5.04 Surcharges**

An Executive Branch Entity shall not place a surcharge on a particular individual with a disability or any group of individuals with disabilities to cover the costs of measures, such as the provision of auxiliary aids or program accessibility, that are required to provide that individual or group with the nondiscriminatory treatment required by Executive Order 526, the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, or these standards.

**Section 5.05 Illegal Use of Drugs**

**(A)** These standards do not prohibit discrimination against an individual based on that individual's current illegal use of drugs.

**(B)** An Executive Branch Entity shall not discriminate on the basis of illegal use of drugs against an individual who is not engaging in current illegal use of drugs and who--

- (1) Has successfully completed a supervised drug rehabilitation program or has otherwise been rehabilitated successfully;
- (2) Is participating in a supervised rehabilitation program; or
- (3) Is erroneously regarded as currently engaging in the illegal use of drugs.

## **Section 5.06 Maintenance of Accessible Features**

### **(A) General Maintenance**

An Executive Branch Entity shall maintain in fully working condition those features of facilities and equipment that are required to be readily accessible to and usable by persons with disabilities.

### **(B) Isolated or Temporary Interruptions**

Isolated or temporary interruptions in services due to maintenance or repairs do not violate subpart A, above. However, arrangements for continuity of service must be provided to ensure the health, safety and well being of an entity's consumers.

## **Section 5.07 Personal Devices and Services**

These standards do not require An Executive Branch Entity to provide to individuals with disabilities personal devices, such as wheelchairs; individually prescribed devices, such as prescription eyeglasses or hearing aids; readers for personal use or study; or services of a personal nature including assistance in eating, toileting, or dressing.

# **Article 6. SPECIFIC REQUIREMENTS**

## **Section 6.01 Eligibility Criteria**

### **(A) General**

An Executive Branch Entity shall not impose or apply eligibility criteria that screen out or tend to screen out an individual with disabilities or any class of individuals with disabilities from fully and equally enjoying any goods, services, facilities, privileges, advantages, or accommodations, unless such criteria can be shown to be necessary for the provision of the goods, services, facilities, privileges, advantages, or accommodations being offered.

### **(B) Safety**

An Executive Branch Entity may impose legitimate safety criteria that are necessary for safe operations. Safety requirements must be based on actual risks and not on mere speculation, stereotypes, or generalizations about individuals with disabilities.

## **Section 6.02 Reasonable Accommodation**

### **(A) General**

An Executive Branch Entity shall provide reasonable accommodation to individuals with disabilities when such accommodation is necessary to provide individuals with disabilities with full and equal goods, services, facilities, privileges, advantages, or accommodations, subject to the defenses set forth in Section 7.03, below.

### **(B) Reasonable Modification of Policies, Practices, or Procedures**

An Executive Branch Entity shall make reasonable modification of policies, practices, or procedures where such modification is necessary to provide individuals with disabilities with full and equal goods, services, facilities, privileges, advantages, or accommodations.

#### **(1) Service Animals**

Executive Branch Entities shall modify policies, practices, or procedures to permit the use of a service animal by an individual with a disability.

#### **(2) Provision of Auxiliary Aids and Services**

An Executive Branch Entity shall furnish appropriate auxiliary aids and services where necessary to ensure effective communication with individuals with disabilities. Auxiliary aids and services include: equipment, devices, materials, and services necessary to provide effective communication with individuals with disabilities.

**(3) Removal of Barriers**

An Executive Branch Entity shall remove architectural barriers, including communication barriers that are structural in nature, where necessary to provide access to its goods, activities, programs or services.

**Section 6.03 Defenses**

**(A) Direct Threat**

An Executive Branch Entity need not permit an individual to participate in or benefit from the goods, services, facilities, privileges, advantages and accommodations of that entity when that individual poses a direct threat to the health or safety of others.

(1) Direct threat means a significant risk of substantial harm to the health or safety of others that cannot be eliminated by a reasonable accommodation.

(2) In determining whether an individual poses a direct threat to the health or safety of others, an Executive Branch Entity must make an individualized assessment, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence, to ascertain: the nature, duration, and severity of the risk; the probability that the potential injury will actually occur; and whether reasonable accommodation will mitigate the risk.

**(B) Fundamental Alteration**

(1) An Executive Branch Entity need not make any accommodation if it can show that making that accommodation would fundamentally alter the nature of the programs, activities or services offered by the Executive Branch Entity.

(2) When making the accommodation would result in a fundamental alteration, the Executive Branch Entity shall provide an alternative accommodation that is effective in providing individuals with disabilities full and equal accommodations, advantages, facilities, and privileges to the maximum extent possible.

**(C) Undue Burden**

(1) An Executive Branch Entity need not make any accommodation if it can show that making the accommodation would result in an undue burden, i.e. significant difficulty or expense.

(2) When making the accommodation would result in an undue burden, the Executive Branch Entity shall provide an alternative accommodation that is as effective in providing individuals with disabilities full and equal goods, services, facilities, privileges, advantages, or accommodations to the extent that such alternative accommodation does not result in an undue burden.

**(D) Personal Devices or Services**

An Executive Branch Entity need not provide its customers, clients, or participants with personal devices such as wheelchairs; individually prescribed devices such as prescription eyeglasses or hearing aids; or substantial assistance of a personal nature.

**Section 6.04 Program Accessibility**

**(A) General**

No qualified individual with a disability shall, because an Executive Branch Entity's facilities are inaccessible to or unusable by individuals with disabilities, be excluded from participation in, or be denied the benefits of the services, programs, or activities of an Executive Branch Entity, or be subjected to discrimination by any Executive Branch Entity.

**(B) Landlord and Tenant Responsibilities**

Both the landlord who owns a building which houses a Massachusetts Executive Branch Entity and that entity are subject to these standards.

**(C) Donated Space**

Whoever utilizes donated space as a place for conducting any business, program, activity or service of an Executive Branch Entity is subject to the requirements of these Standards.

**(D) Existing Facilities**

**(1) General**

An Executive Branch Entity shall operate each service, program, or activity so that the service, program, or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities. This paragraph does not:

- a) Necessarily require an Executive Branch Entity to make each of its existing facilities accessible to and usable by individuals with disabilities;
- b) Require an Executive Branch Entity to take any action that would threaten or destroy the historic significance of a historic property; or
- c) Require an Executive Branch Entity to take any action that it can demonstrate would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens.

These Standards do not require an Executive Branch Entity to take any action that it can demonstrate would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and/or administrative burden. In those circumstances where personnel of the Executive Branch Entity believe that the proposed action would fundamentally alter the service, program, or activity or would result in undue financial and administrative burdens, an Executive Branch Entity has the burden of proving that compliance with these standards would result in such alteration or burdens.

The decision that compliance would result in such alteration or burdens must be made by the head of the Executive Branch Entity or his or her designee after considering all resources available for use in the funding and operation of the service, program, or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion and by a written statement of concurrence from the Director of the Office on Disability or his/her designee.

Even if an action required to comply with these Standards has resulted or would result in such an alteration or such burdens, an Executive Branch Entity shall take any other action that would not result in such an alteration or such burden but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the benefits or services provided by the Executive Branch Entity.

**(2) Methods**

**a) General**

An Executive Branch Entity may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock or other conveyances, or any other methods that result in making its services, programs, or activities readily accessible to and usable by individuals with disabilities. An Executive Branch Entity is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. In choosing among available methods for meeting the requirements of this section, an Executive Branch Entity

shall give priority to those methods that offer services, programs, and activities to qualified individuals with disabilities in the most integrated setting appropriate.

**b) Time Period for Compliance**

Where structural changes in facilities are undertaken to comply with the obligations established under this section, such changes shall be made as expeditiously as possible.

**(E) New construction and alterations**

**(1) Design and construction**

Each facility or part of a facility constructed by, on behalf of, or for the use of an Executive Branch Entity shall be designed and constructed in such manner that the facility or part of the facility is readily accessible to and usable by individuals with disabilities. If the construction was commenced after January 26, 1992 (but not after March 15, 2012), said facilities or parts of the facilities shall conform with both the Americans with Disabilities Act Accessibility Standards for Buildings and Facilities (ADAAG) 28 C.F.R. §36, Appendix A, and the Massachusetts Architectural Access Board regulations (521 C.M.R.). On March 15, 2012, compliance with the 2010 ADA Standards for Accessible Design was required for new construction and alterations under Title II and III of the ADA, and the Massachusetts Architectural Access Board regulations (521 C.M.R.). If the construction was commenced after December 10, 1968, but before January 26, 1992, said facilities or parts of the facilities shall conform to the Massachusetts Architectural Access Board regulations (521 C.M.R.).

**(2) Alteration**

Each facility or part of a facility altered by, on behalf of, or for the use of an Executive Branch Entity in a manner that affects or could affect the usability of the facility or part of the facility shall, to the maximum extent feasible, be altered in such manner that the altered portion of the facility is readily accessible to and usable by individuals with disabilities, if the alteration was commenced after December 10, 1968.

**(3) Accessibility Standards**

Design, construction, or alteration of facilities shall be in conformance with the Americans with Disabilities Act Accessibility Standards for Buildings and Facilities (ADAAG) 28 C.F.R. §36, Appendix A or the 2010 ADA Standards for Accessible Design, and the Massachusetts Architectural Access Board regulations (521 C.M.R.).

## **Article 7. COMMUNICATIONS**

### **Section 7.01 General**

**(A) Effectiveness**

An Executive Branch Entity shall take appropriate steps to ensure that communications with applicants, participants, and members of the public with disabilities are as effective as communications with others.

**(B) Auxiliary Aids and Services**

**(1)** An Executive Branch Entity shall furnish appropriate auxiliary aids and services, as defined in §3.01 of these Standards, where necessary to afford an individual with a disability an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity conducted by an Executive Branch Entity.

**(2)** In determining what type of auxiliary aid and service is necessary, an Executive Branch Entity shall give primary consideration to the preferences of the individual with disability.

**(C) Telecommunication Devices for the Deaf (TTY's)**

Where an Executive Branch Entity communicates by telephone with applicants and beneficiaries, TTY's or equally effective telecommunication systems (including TTY Relay Services) shall be used to communicate with individuals with impaired hearing or speech.

**(D) Telephone Emergency Services**

Telephone emergency services, including 911 services, shall provide direct access to individuals who use TTY's and computer modems.

**(E) Information and Signage**

(1) An Executive Branch Entity shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(2) An Executive Branch Entity shall provide signage at all inaccessible entrances to each of its facilities, directing users to an accessible entrance or to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each accessible entrance of a facility.

**(F) Duties**

These Standards do not require an Executive Branch Entity to take any action that it can demonstrate would result in a fundamental alteration in the nature of a service, program, or activity or in an undue financial and/or administrative burden. In those circumstances where personnel of the Executive Branch Entity believe that the proposed action would fundamentally alter the service, program, or activity or would result in undue financial and administrative burdens an Executive Branch Entity has the burden of proving that compliance with these standards would result in such alteration or burdens.

The decision that compliance would result in such alteration or burdens must be made by the head of the Executive Branch Entity or his or her designee after considering all resources available for use in the funding and operation of the service, program, or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion and by a written statement of concurrence from the Director of the Office on Disability or his/her designee.

**Even if an action required to comply with these Standards would result in such an alteration or such burdens, an Executive Branch Entity shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the benefits or services provided by the Executive Branch Entity.**