

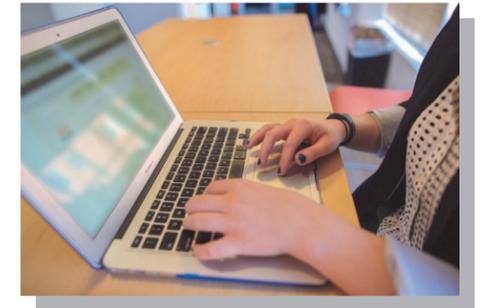
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Web Accessibility: State & Local Governments

By Evan C. Bjorklund, General Counsel

We celebrated the 25th anniversary of the Americans with Disabilities Act (ADA) in 2015. As we look to the future, an important area to address is web accessibility. Since the passing of the ADA, the internet has dramatically changed the way that government entities serve the public; citizens can now use state government websites to correspond with officials and obtain information about government services.



Although the internet as we know it today did not exist when Congress enacted the ADA, it has always been the position of the Department of Justice (DOJ) that all state and local government websites and items posted thereon be accessible given the ADA's equal access language: "The ADA requires that state...governments provide qualified individuals with disabilities equal access to their programs, services, or activities." As state governments increase online services, the obligations to provide equal access on the web carry accordingly.

That being said, DOJ has not provided clear and concise guidelines on web accessibility for state and local entities. In 2010, DOJ published an Advanced Notice of Proposed Rulemaking (ANPRM) and put forth its plan to promulgate new regulations under Title II of the ADA to provide a construct for dealing with accessibility of state and local government websites. However, given the onslaught of regulatory delays, we are still waiting for Title II regulations which are anticipated to be released for comment in early 2016. Some experts have even suggested that DOJ is purposely delaying the issuance of regulations.

A strategy of delaying the issuance of regulations would, in all likelihood, be due to DOJ's understanding that more settlements and litigation surrounding website accessibility will provide further concrete proof that website accessibility is achievable. Also, as more time passes, accessibility will naturally increase as the norm in all facets of technology. Considering the wide scope and intricacies of technology based rules, many experts in the web accessibility realm have suggested that final rules for Title II won't be fully implemented until 5 years from now. Litigation and resulting settlements have shown that the duty to make websites (and anything posted thereto) is real. In fact, numerous recent settlement agreements attained by DOJ with state and local governments require that these entities make their website's conform with the Web Content Accessibility Guidelines (WCAG) 2.0 and the ADA.

In any case, because of the increased litigation under the ADA and related state statutes, we urge state and local governments to head web accessibility as one of their top legal risk management priorities. Although regulatory conformance is seemingly unworkable without regulations, tracking standards like WCAG 2.0 A and AA provide a framework and guidance to accessibility. Also, entities can monitor litigation settlements – especially those in which the DOJ filed Statements of Interest – which will provide some guidance as entities struggle to be compliant. The Commonwealth has adopted its own MassIT standards, mirroring WCAG 2.0. At MOD we strive to provide guidance and support to state agencies regarding web accessibility and we ask that you help raise awareness on this issue and the obligations of the ADA.

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Spring 2016 Calendar

March	WEDNESDAY	WEDNESDAY	THURSDAY	TUESDAY	WEDNESDAY
	2 State Agency ADA Coordinator Meeting	9 Regional COD Meeting Worcester	10 Independent Living Education Day State House	29 Vietnam Veterans Day	30 Deafblind Awareness Day State House
April <small>Public Health Month, Autistic Awareness Month</small>	FRIDAY	SATURDAY	MONDAY	TUESDAY	SATURDAY
	1 Student Government Day	2 Autism Awareness Day	4 Red Sox Opening Day	5 Veterans of WWI Hospital Day	9 Former POW Recognition Day
	SATURDAY	MONDAY	TUESDAY	WEDNESDAY	
	16 World Voice Week	18 Patriots' Day	26 Guardian's Day	27 Regional COD Meeting	
May <small>Lupus Awareness Month</small>	WEDNESDAY	WEDNESDAY	MONDAY	TUESDAY	MONDAY
	11 Emergency Management	18 Visiting Nurse Association Week	23 Special Needs Awareness Day	24 Phenylketonuria Awareness Day	30 Memorial Day

MOD Collaborates with MA Interscholastic Athletic Association

By James Aprea

The Massachusetts Interscholastic Athletic Association (MIAA) is a private, non-profit association organized by its member schools to govern, coordinate and promote education based programs for high school students. The MIAA is implementing an inclusive sports initiative offering athletic opportunities to student athletes with disabilities. MOD is developing a relationship with the MIAA which we are confident will lead to enhanced athletic opportunities for students with disabilities.



James Aprea, Advocate,
Client Assistance Program

During the week of January 25-29, 2016 the MIAA held its annual Leadership Institute where coaches, educators, and administrators come together to learn how to foster leadership among student athletes within their schools. I was lucky enough to be invited by the MIAA director, Bill Gaine, to attend this year's Institute and I was pleased to accept.

The Leadership Institute presented an opportunity to learn from practitioners in the field of interscholastic sports and to better understand the way they work with their student bodies and athletes. Attendees learned various techniques in promoting leadership, community involvement, health, and education in students. During the weeklong intensive training I was able to forge relationships with school staff throughout Massachusetts which will allow MOD to have a broader reach in informing our constituents of the work we conduct as a public service agency.

From the Director's Desk

By David D'Arcangelo

Reflecting back after becoming Director of MOD in February of 2015 I am pleased to report that our agency objectives are being received very well by our staff, governmental partners and, most importantly, the clients and public we proudly serve.

Our staff deserves accolades for their hard work and commitment to our mission of "bringing about full and equal participation in all aspects of life by persons with disabilities... in a manner that fosters dignity and self-determination."

Certainly, our staff has embraced several new initiatives that are designed to realize our mission as we endeavor to improve our agency. I recognize how challenging it can be to adjust to new leadership and truly appreciate such a positive reception.

Some initiatives over the past year include the creation of this newsletter, an enhanced website and contact management procedures, and a newly created social media presence all designed to better connect with our constituencies and the public. MOD was pleased to take part in a series of events that celebrated the 25th anniversary of the Americans with Disabilities Act, including MOD's first Disability Summit, The ADA at 25 Past-Present-Future. We have also made efforts to bring about greater engagement of our state agency ADA coordinators with the goal of preventing discrimination, increasing access to state programs and services, and ensuring state employees with disabilities receive the accommodations they need to perform their jobs.

MOD's 2016 focus is employment for people with disabilities. We have identified that approximately 228,000 working age Massachusetts residents with disabilities are not participating in the labor force. In response, we are endeavoring to make recommendations to improve the labor force participation among this group. MOD aims to help the Commonwealth lead by example as an employer through new efforts to employ more persons with disabilities in our state government. Another focus of MOD this year is to work with municipalities to start or revitalize local Commissions on Disability to increase community access.

Thank you for taking time to read Massachusetts Disability Quarterly and for your interest in issues involving persons with disabilities.



MOD staff members from left to right: James Aprea, Rob Dias, David D'Arcangelo, Rita DiNunzio, Adrienne Manson, Naomi Goldberg

Jeffrey's Access Corner

By Jeffrey Dougan

I hope not to jinx us as this is our Spring newsletter, but it has been known to snow in New England in April. Let's talk about obligations for snow removal on sidewalks under the Massachusetts Architectural Access Board's rules and regulations (AAB) and the Americans with Disabilities Act (ADA).

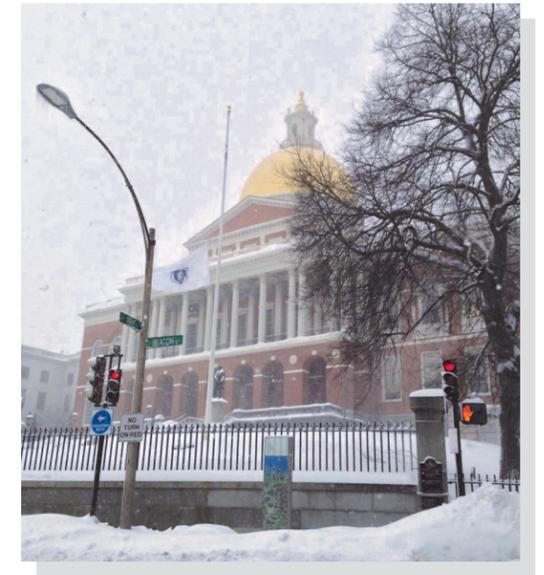
It is important to note that your municipality may have an ordinance or bylaw requiring you to clear the sidewalks that abut your home or business. The Massachusetts Office of Geographic Information (MassGIS) maintains a "Sidewalk Snow Removal Map" which indicates whose responsibility it is to clear the sidewalks within each MA community. You can access the Map from the MassGIS homepage: <http://massgis.maps.arcgis.com/home/>.

Regardless of whether a municipality, resident or business is obligated to remove the snow from an abutting sidewalk along their property, it is important to know that there are obligations to remove the snow from the sidewalks within a reasonable period of time after the snow stops.

The building code that addresses snow removal on sidewalks is the MAAB, which requires access features to be maintained and fully operational at all times under Section 2.6 Maintenance of Access Features. For this purpose, the sidewalk is the access feature and keeping it clear of snow is the maintenance obligation. However, did you know that section 2.6 did not always appear in the MAAB regulations? This requirement first appeared in the 1996 revision of the MAAB regulations and therefore only applies to access features installed, renovated or constructed after 1996. So, if a sidewalk was installed, renovated or constructed prior to 1996, the MAAB would not have jurisdiction over the issue. However, if the sidewalk was installed, renovated or constructed after 1996, then the MAAB would have jurisdiction and a building code complaint could be filed on the issue.

In analyzing the Civil Rights aspect of this issue, we look to the ADA federal regulations, which also requires Maintenance of Access Features under Section 35.133 (Title II) and 36.211 (Title III). Unlike the MAAB, the year of the installation, renovation or construction of the sidewalk is irrelevant to the obligation to keep the sidewalk clear of snow. The sidewalk clearing must provide, at a minimum, a 36 inch path of travel that is clear of ice and snow.

The timeframe for clearing the snow is determined by the length of time and the amount of snowfall. Although no official guidance is given, other than a "reasonable period of time", the Federal Highway Administration, in their "Guide for Maintaining Pedestrian Facilities for Enhanced Safety Research Report – 2.3.2 Snow and Ice Removal" offers guidance explaining that these "timeframes could range from 2-72 hours after a snowfall." The report goes on to suggest that "All timeframes must balance the needs of pedestrians and provide a reasonable amount of time for property owners to remove snow."



MOD Hosts Commonwealth Diversity Fellow

By Michael Dumont

MOD is delighted to welcome Jacey Taft, a fellow from the Commonwealth Diversity Fellows Program. The semester long fellowship provides college students with the opportunity to gain valuable, first-hand experience with the inner-workings of state government and aims to create a pipeline for new job candidates in the future. Jacey is currently a student at UMASS Boston pursuing a Master of Public Administration in International Relations.

Jacey has been tasked with working with Massachusetts communities to form a strategy for creating Commissions on Disability in the 191 communities that are without one. This project will require Jacey to interact with legislative and municipal officials as well as members of the public on the procedures of adopting MGL Chapter 40 Section 8J within specific communities.

Welcome Jacey!

Save the Date!



2016 Summit

September 16, 2016

Boston Convention and Exhibition Center

This year's theme is:

Employment.

Details to follow in our next issue.