



State University of New York

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Memorandum to Presidents

Date: January 24, 1992

Vol. 92 No. 1

From: Office of University Counsel and
Vice Chancellor for Legal Affairs

Subject: Americans with Disabilities Act Regulations

To: Presidents, State-operated Campuses
Presidents, Community Colleges

The Americans with Disabilities Act of 1990 ("ADA") extends comprehensive federal civil rights protection to persons with disabilities. Protection is provided in the areas of employment, public accommodations, government services, and telecommunications. Recipients of federal funds, such as the State University, have been prohibited from discriminating on the basis of disability for nearly two decades under Section 504 of the Rehabilitation Act of 1973 ("§504"). While the ADA represents sweeping change for those not subject to §504, the new Act generally does not mandate many changes for those entities already subject to and in compliance with existing §504 provisions.

The Department of Justice has recently issued final regulations under Title II of the ADA which relate to state and local government services (28 CFR Part 35). An analysis of the regulations, effective January 26, 1992, is included with this Memorandum as Attachment A. The regulations for the most part restate requirements established under §504. Nonetheless, each campus will be required to take certain additional actions:

Actions Required

ON AND AFTER JANUARY 26, 1992

1. **Notice:** Each campus must make information available regarding the protection the ADA offers qualified persons with disabilities.

2. **Designation of ADA Coordinator:** The responsibilities of the §504 coordinator must be revised to include the investigation of allegations of non-compliance with the ADA.

3. Grievance Procedure: The internal discrimination grievance procedure already in place at the campus must be revised to include the ADA.

WITHIN 6 MONTHS (by July 26, 1992)

4. Transition Plan: If structural changes to facilities are required, the campus must develop a transition plan setting forth the steps required to complete any structural changes deemed necessary. Further information will be available from the Office of Capital Facilities.

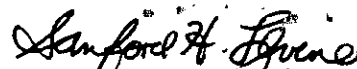
WITHIN 1 YEAR (by January 26, 1993)

5. Self-evaluation: Each campus must update its §504 self-evaluation of its current policies, services and practices to include those policies and practices not included in the previous self-evaluation.

WITHIN 3 YEARS (by January 26, 1995)

6. Completion of Structural Changes: Any structural changes planned must be completed by January 26, 1995.

Questions regarding the implementation of the Act may be directed to the Office of University Counsel (518 443-5400), the Office of Capital Facilities (518 443-5570), or the Office of Affirmative Action (518 443-5101).


Sanford H. Levine

Attachment

Copies for information sent to:
Deans, Statutory Colleges
President Coll
Provost Nesheim

ATTACHMENT A

ANALYSIS OF THE AMERICANS WITH DISABILITIES ACT (ADA) REGULATIONS STATE AND LOCAL GOVERNMENT SERVICES

(Code of Federal Regulations, Title 28, Part 35)

Qualified Persons with a Disability

Qualified persons with a disability are protected from discrimination under the ADA. Echoing regulations under §504 of the Rehabilitation Act of 1973, the ADA defines "qualified individual with a disability" as an individual with a physical or mental impairment which substantially limits one or more major life activities who can, with or without reasonable accommodation, perform the essential functions of a job, or meet the essential eligibility requirements of a program. Persons with a record of past disability or who are regarded as disabled are also protected. On and after January 26, 1992, each campus must revise grievance procedures adopted under §504 (the internal discrimination grievance procedure) to include the resolution of complaints of violations of the ADA. The responsibilities of the §504 coordinator likewise need to be expanded to include coordination of compliance with the ADA. The campuses must also take reasonable steps to notify persons of their rights under the new law.

Employment

The ADA requires employers to make reasonable accommodations if necessary to enable qualified disabled persons to perform the essential functions of a position. A campus may avoid making an accommodation only if it can demonstrate that making the accommodation would create an undue hardship for the campus.

Program Accessibility

Campus programs must be accessible to persons with disabilities. To achieve this end, modifications to campus programs must be made to accommodate the disabled unless the campus can demonstrate that a proposed modification would fundamentally alter the nature of the program or create an undue burden. Each campus must conduct a self-evaluation by January 26, 1993 to evaluate its current policies and practices and to identify and correct any that are not consistent with the ADA. To comply with this requirement campuses will need to update the self-evaluation conducted under §504.

Construction

Where there are no other methods available to make programs accessible, structural changes to facilities may be required. The regulations do not require a campus to make each of its existing facilities, or every part of any facility, accessible to persons with disabilities provided that each program, when viewed as a whole, is accessible. If structural changes are determined to be necessary, the campus must develop a transition plan within 6 months of January 26, 1992 and have the changes completed within 3 years of that date. If the campus has done a §504 transition plan, that document will need to be updated. All new construction and all alteration to existing construction must be designed and constructed so as to be readily accessible to persons with disabilities. The regulations set forth acceptable architectural standards.

Communications

Campuses must ensure that communications with persons with disabilities are as effective as communications with others. Where necessary, the campus must furnish auxiliary aids to facilitate such communication. When communicating by telephone, the campus must use telecommunications devices for the deaf (TDDs) or an equally effective communications system to communicate with the deaf. Telephone emergency systems (such as a 911 system) must also provide direct access to persons using TDDs.

Transportation

If a campus operates a shuttle bus service, the service, when viewed as a whole, must provide equivalent service to persons with disabilities as to other persons. New or reconstructed vehicles must meet the minimum standards for accessibility issued by the Department of Transportation. Insofar as the vehicles used for the service are accessible to the disabled, the campuses are not required to provide additional service for persons not able to use the system.