

Interim Policy on Accessibility

References:

Workforce Innovation and Opportunity Act (WIOA), Section 188; [WIOA Notice of Proposed Rulemaking](#), 20 CFR § 679.370; 28 CFR 35 Subpart E – Communications, 28 CFR § 35.160(b)(2); 29 CFR Part 38; [31 CFR Part 60-3](#); [TEGL 37-14](#); [TEN 1-15](#); Continuous Improvement Policy; Equal Opportunity and Nondiscrimination Policy; Americans with Disabilities Act of 1990; Rehabilitation Act of 1973, as amended, Section 504; and the [Strategic Five-Year State Workforce Investment Plan](#).

Background:

The Workforce Innovation and Opportunity Act (WIOA) stresses physical and programmatic accessibility, including the use of accessible technology to increase individuals with disabilities' access to high quality workforce services. Title I of WIOA assigns responsibilities at the local, State and Federal levels to ensure the creation and maintenance of an American Job Center (AJC) system that enhances the range and quality of workforce development services that are accessible to individuals seeking assistance. It prohibits discrimination on the basis of race, color, national origin, sex, age, disability, religion, political affiliation or belief, participant status, and against certain non-citizens. Although gender identity is not an explicitly protected basis under the applicable federal laws, discrimination based upon gender identity, gender expression, and sex stereotyping has been interpreted to be a form of prohibited sex discrimination, including under laws that apply to federally financially assisted employment, training, and education programs and activities.¹

As set forth in the regulations (29 CFR Part 38) implementing Section 188 of WIOA, there is an obligation to assure fair and equitable access to all services, programs and facilities for members of both sexes, various racial and ethnic groups, individuals in differing age groups, and individuals with disabilities. Any entity that receives financial assistance under Title I of WIOA is a recipient obligated to ensure nondiscrimination and equal opportunity. This includes State and Local Workforce Development Boards, AJC operators, service providers, vendors, and subrecipients, as well as other types of individuals and entities. This policy is directed toward ensuring that the programs, services and facilities of each AJC delivery system are accessible to all, including individuals with disabilities.

¹ TEGL 37-14

Action:

After a 10 day review period, this Policy will be considered final. Questions and comments should be submitted in writing to the WIOA Policy Mailbox, ndol.wioa_policy@nebraska.gov.

Local areas are required to have a policy on accessibility addressing the provisions identified in this policy as well as ensure their local WIOA Plan addresses the requirements set forth in this policy.

Policy:

No individual is to be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in the administration of or in connection with, any program or activity, funded in whole or in part under WIOA, because of race, color, religion, sex (except as otherwise permitted under Title IX of the Education Amendments of 1972), national origin, age, disability, or political affiliation or belief.²

Prohibition of Discrimination on the Basis of Disability

A recipient is obligated to provide physical and programmatic accessibility and reasonable accommodation/modification in regard to the WIOA program, as required by section 504 of the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act of 1990, as amended, and Section 188 of WIOA.

The ADA defines a “disability” with respect to an individual to mean 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.

WIOA Program Accessibility

When providing aid, benefits, or services under a WIOA Title I financially assisted program or activity, a recipient must not directly or through contractual, licensing, or other arrangements, on the ground of disability:

- (1) Deny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefits, services, or training;
- (2) Afford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefits, services, or training that is not equal to that afforded others;
- (3) Provide a qualified individual with a disability with an aid, benefit, service or training that is not as effective in affording equal opportunity to obtain the

² WIOA Section 188(a)(2)

same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

- (4) Provide different, segregated, or separate aid, benefits, services, or training to individuals with disabilities, or to any class of individuals with disabilities, unless such action is necessary to provide qualified individuals with disabilities with aid, benefits, services or training that are as effective as those provided to others;
- (5) Deny a qualified individual with a disability the opportunity to participate as a member of planning or advisory boards; or
- (6) Otherwise limit a qualified individual with a disability in enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving any aid, benefit, service or training.³

Separate or different programs or services for individuals with disabilities are not prohibited under the ADA; however individuals with disabilities cannot be forced to participate in these programs instead of WIOA Title I financially assisted programs or activities.⁴

Auxiliary Aids, Services and Assistive Technology

To afford individuals with disabilities an equal opportunity to participate in and enjoy the benefits of the WIOA Title I program or activity, a recipient must furnish appropriate auxiliary aids or services where necessary. In determining what type of auxiliary aid or service is appropriate and necessary, such recipient must give primary consideration to the requests of the individual with a disability.⁵ Primary consideration means honoring the choice unless the agency can demonstrate that another equally effective means of communication is available, or that using the means chosen would result in a fundamental alteration in the service, program, activity, or undue financial and administrative burdens.⁶

A list of auxiliary aids and services can be found in 29 CFR § 38.4, and includes:

- Qualified interpreters, notetakers, transcription services, written materials, telephone handset amplifiers, assistive listening systems, telephones compatible with hearing aids, closed caption decoders, open and closed captioning, telecommunications devices for deaf persons (TDDs/TTYs), videotext displays, or other effective means of making aurally delivered materials available to individuals with hearing impairments;

³ 29 CFR § 38.7(a)

⁴ 29 CFR § 38.7(c)

⁵ 29 CFR § 38.9(b)

⁶ 28 CFR 35 Subpart E – Communications, 28 CFR Part 35.160(b)(2)

- Qualified readers, taped texts, audio recordings, brailled materials, large print materials, or other effective means of making visually delivered materials available to individuals with visual impairments;
- Acquisition or modification of equipment or devices; and
- Other similar services and actions.

A recipient must not place a surcharge on a particular individual with a disability, or any group of individuals with disabilities, to cover the costs of measures associated with providing auxiliary aids, services, or assistive technology, that are required to provide that individual or group with the nondiscriminatory treatment required by WIOA Title I.⁷

This obligation does not require a recipient to provide personal devices, such as wheelchairs; prescribed devices, such as prescription eyeglasses or hearing aids; or readers for personal use or study.⁸

If an individual with disabilities elects not to participate in an available separate or different program or service, and instead chooses to participate in available WIOA Title I financially assisted programs and activities, the obligations regarding auxiliary aids, services, and assistive technology still apply.

Facility Accessibility

In order to be ready and welcoming when persons with disabilities seek services, advance preparatory actions must be taken. Specific information on ADA accessibility guidelines for buildings and facilities is provided on the Internet at <http://www.access-board.gov/guidelines-and-standards/buildings-and-sites/about-the-ada-standards/ada-standards>. Some areas to particularly note include:

- Signage
- Accessible Counters
- Automatic and Power-Assisted Doors
- Accessible Restrooms
- Accessible Workstations
- Obstacle Free Entrance
- Space in Waiting Room for People Using Wheelchairs
- 32-inch Clear Opening on Door
- 36-inch Clear Path of Travel

The above is only a sampling of considerations. Accessibility is an on-going process. However, all of the ADA technical requirements must be applied during the design, construction, and alteration of buildings and facilities.

⁷ 29 CFR § 38.7(k)

⁸ 29 CFR § 38.7(m)

The definition of “facility” under the ADA includes “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.”⁹

Reasonable Accommodations

With regard to aid, benefits, services, training, and employment, a recipient must provide reasonable accommodation to qualified individuals with disabilities who are applicants, registrants, eligible applicants/registrants, participants, employees, or applicants for employment, unless providing the accommodation would cause undue hardship. Definitions of the terms “reasonable accommodation” and “undue hardship” are specified in 29 CFR § 38.4.

Employment Related Placements

Recipients must not, directly or through any contractor, use testing procedures that have an adverse impact on disabled employment applicants or subject qualified individuals with disabilities to discrimination on the ground of such disability.¹⁰

Recipients, or any contractor including on the job training contractors, shall not discriminate against an individual with a disability if the person is otherwise qualified for the job. Compliance with the Uniform Guidelines of Employee Selection Procedures, 31 CFR§ 60-3, is required.¹¹

Recommended Steps

1. **Designate an Access Coordinator** (someone well versed in ADA requirements).
2. **Consult with disability community and with people who are trained in access and ADA compliance.**
Include a cross section of customers and board members with disabilities in visits to your Career Centers. Ask them to make suggestions for improvements.
3. **Use Self-Evaluation Checklists and Available Resources.**
In 2003, the Civil Rights Center (CRC), the Employment and Training Administration (ETA), and the Office of Disability Employment Policy (ODEP) released the *WIA Section 188 Disability Checklist* (“Checklist”). The Checklist was designed to help ensure meaningful participation by individuals with disabilities in the one-stop system.

⁹ ADA Sec. 25-104(5)(iii)

¹⁰ 29 CFR § 38.7(e)

¹¹ 29 CFR § 38.10(b)

CRC, ETA and ODEP now are issuing *Promising Practices in Achieving Universal Access and Equal Opportunity: A Section 188 Disability Reference Guide* (Reference Guide) to provide updated information and technical assistance to the one-stop system in meeting their nondiscrimination and universal access obligations for individuals with disabilities. The Reference Guide can be found at the CRC website at:

<http://www.dol.gov/oasam/programs/crc/188Guide.htm>

The Reference Guide provides promising practices that correlate with the nondiscrimination and universal access requirements of Sec. 188¹² of WIOA and its implementing regulations for individuals with disabilities. While this document is focused on the One Stop system, anyone working to ensure universal access and equal opportunity for individuals with disabilities in the workforce development system may use it as a resource document, including governors, state administrators, state workforce agencies, equal opportunity officers, and state and local workforce development agencies.

The Reference Guide does not create new legal requirements or change current legal requirements. Rather, it contains examples of policies, procedures and other steps that AJCs may implement to increase equal opportunity and universal access to programs and services under WIA/WIOA for individuals with disabilities. These promising practices are not necessarily mandatory in every case under Section 188 or the regulations. Moreover, descriptions of approaches in this document should not be construed to preclude states and WIA/WIOA Title I grant recipients from devising alternative approaches to meeting and even exceeding their legal obligations. Finally, adoption of the promising practices in the Reference Guide will not guarantee compliance.

CRC, ETA, and ODEP will continue to issue technical guidance to help one-stop centers comply with their obligations under Section 188.¹³

Additional checklists for physical, program, employment and communication access include:

- Customer Service/Accommodation Practices, accessible at: <http://www.doleta.gov/disability/htmldocs/csap.html>; and
- Software Accessibility, accessible at http://www.doleta.gov/disability/htmldocs/soft_accessibility_checklist.htm

These checklists enable each local workforce development area to conduct self-evaluations of the accessibility of its AJC system and to plan to meet the accessibility needs of individuals with disabilities seeking to use programs, services, and facilities. The checklists are essentially a management tool to

¹² While the Reference Guide provides citations to the current regulations issued pursuant to Section 188 of WIA, USDOL anticipates that the promising practices contained in the Reference Guide will remain relevant and useful for the One-Stop system under the forthcoming WIOA regulations.

¹³ TEN 1-15

assess what has already been done to provide access for individuals with disabilities and to plan what needs to be done in the future. The self-evaluation captures both the strengths and weaknesses, and allows local workforce development areas to develop concrete plans, based on real data, to increase the level of accessibility in their programs, services and facilities.

Additional Resources include the Job Accommodation Network (JAN) — an ODEP funded service that provides free, expert and confidential guidance on workplace accommodations, including those for individuals who have communication challenges. JAN offers many accommodation ideas for many individuals, including:

- Individuals who are deaf or hard of hearing (<http://askjan.org/media/deaf.htm>).
- Individuals with vision impairments (<http://askjan.org/media/visi.htm>).
- Individuals with speech-language impairments (<http://askjan.org/media/spee.htm>).

JAN also offers information about available products and services for people with communication challenges

4. Develop an Access Plan.

The plan shall be based on your findings and include:

- The barriers and solutions
- Establish a priority for each item
- Project the costs associated with each item
- Identify funding sources
- Target completion
- Identify who will do what

5. Provide training to American Job Center staff and contractors.

Effective training ensures that employees and contractors are knowledgeable and aware of policies and procedures relating to persons with disabilities and are trained to comfortably work with all people. It is critical that there is not a gap between written policies/procedures and the actual practice of front-line employees interacting with persons with disabilities.

There are several training and reference tools available on the Internet that were developed under WIA but are still helpful resources, including:

- “Access for All: A Resource Manual for Meeting the Needs of One-Stop Customers with Disabilities” - Institute for Community Inclusion (Children’s Hospital Boston and the University of Massachusetts Boston) – the web site location is <http://www.communityinclusion.org/onestop/onestopmanualcomplete.pdf>.

- “At Your Service – Welcoming Customers with Disabilities” – Southeast ADA Center in coordination with ADA National Network on the Americans with Disabilities Act – the web site location is <http://www.WIAwebcourse.org/>.

6. Conduct regular oversight and monitoring.

To ensure that individuals are not subjected to discrimination on the basis of disability, conduct regular oversight of programs and services. Local boards must assess, on an annual basis, the physical and programmatic accessibility of all AJCs in the local area, in accordance with Sec. 188 of WIOA, if applicable, and applicable provisions of the Americans with Disabilities Act of 1990.¹⁴

Disclaimer:

This policy is based on NDOL’s reading of the statute along with the Notice of Proposed Rulemaking released by USDOL. This policy may be subject to change as additional federal regulations and TEGLs are released. This policy is not intended to be permanent and should be viewed as a placeholder until final federal regulations are released in early 2016.

¹⁴ 20 CFR § 679.370