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OFFICE OF TEMPORARY AND DISABILITY
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Administrative Directive

Section 1

Transmittal:	06-ADM-05 Revised
To:	Local District Commissioners
Issuing Division/Office:	Division of Employment and Transitional Supports
Date:	Revision Date: April 27, 2006/Original Release: March 31, 2006
Subject:	Providing Access to Temporary Assistance Programs for Persons with Disabilities and/or Limited English Proficiency (LEP)
Suggested Distribution:	Temporary Assistance Directors HEAP Coordinators FS Directors Staff Development Coordinators CAP Coordinators Services Directors Medical Assistance Directors
Contact Person(s):	Cash Assistance (TA) at 1-800-343-8859, extension 4-9344; Food Stamps (FS), extension 3-1469; Home Energy Assistance Program (HEAP), extension 3-0332; and Metro Field Support Bureau (212) 961-8207
Attachments:	Attachment 1-District Self-Evaluation/Review Form
Attachment Available On – Line:	<input type="checkbox"/>

Filing References

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
77 ADM-130					
78 ADM-71					
83 ADM-19 86 ADM-26 02 LCM-7 03 LCM-3 04 LCM-7 85 INF-4 90 INF-53 03 INF-20 03 INF-37 03 INF-38 04 INF-15 05-INF-08		Part 303 Part 348.3 Part 351.1 Part 351.26 Part 355.1 Part 355.2 Part 356.2 Part 356.3 Part 357.1 Part 387.7 Part 393.3	29 USC 794 § 504 42 USC § 608 (d)(2) and (3) 45 CFR Part 84 SSL §136 and §331(3) 42 USC § 12101 <u>et seq.</u>	Welfare-to-Work Employment Policy Manual	GIS 99 MA/021

Section 2

I. Summary

The intent of this summary is to provide local social services district (hereafter “district”) staff with an overview of the policy and implications of the material in the directive. The summary is not intended to take the place of the ADM itself. This directive consolidates existing policy guidance issued by OTDA (Office) for providing access to persons with disabilities and/or Limited English Proficiency (LEP), who are inquiring about, applying for, or receiving Temporary Assistance (TA), Food Stamps (FS) and assistance under the Home Energy Assistance Program (HEAP). This directive also provides districts with a convenient resource that reiterates existing requirements, including the provision of 12 terms that are defined in the federal Americans with Disabilities Act (ADA), examples of complaints that are not ADA-related and reiteration of applicable policies and regulations that pertain to persons with disabilities and/or LEP. A list of informational pamphlets is provided in the Section entitled Additional Resources, below.

General — Districts have the responsibilities to:

- ensure that applicants for and recipients of TA, FS and HEAP have equal access to all benefits, programs and services for which they are eligible, including those offered by other agencies operating on behalf of a district;
 - ensure that emergency/immediate needs are addressed as may be appropriate to the case, and protect the filing or application date when an appointment is rescheduled for a person with a disability and/or LEP because reasonable accommodations cannot be made or no interpreter is available on the date the application is filed;
 - document any limitations, necessary accommodations and/or LEP requirements to ensure access and coordinate services (e.g., note in the case record and on the Welfare-to-Work Case Management System that an individual is unable to climb stairs);
 - provide information to applicants and recipients of public assistance or care, and not discriminate against anyone making the inquiry based on race, color, religion, national origin, age, sex, handicap (physical or mental impairment), genetic pre-disposition or carrier status, creed, arrest/convictions, marital status, sexual orientation, military status and/or retaliation; and
 - assign a person to serve as ADA and LEP contact(s), to investigate any complaints of discrimination or improper case administration, and to inform applicants/recipients with a disability and/or LEP of their complaint procedures.
- **Access by Persons with Disabilities** — Districts have the responsibilities to:
- adopt methods of administration which do not discriminate against and which ensure equal access and opportunity to qualified individuals with disabilities;
 - reasonably modify policies, practices and procedures that deny equal access to persons with disabilities but are not required to take action that would constitute a fundamental alteration in the benefit, program or services;

- assist applicants/recipients to meet eligibility requirements by eliminating non-essential procedures or rules that deny a person with a disability an equal opportunity to participate in the district's programs, services and benefits;
- make reasonable accommodation to the known physical or mental limitations of otherwise qualified applicants/recipients with disabilities unless the district can show that the accommodation would impose an undue financial and administrative burden on the operation of its program;
- make reasonable efforts to recognize potential disabilities, based on the applicant/recipient's disclosure or on an indication of an apparent disability;
- provide access to district offices, or provide alternative means of access;
- provide information in a manner that is accessible to persons with visual or hearing disabilities, and provide necessary auxiliary aids and services to ensure effective communication with persons with disabilities; and
- complete and submit to OTDA the self-evaluation review form (Attachment 1) and correct any deficiencies.

Access by Persons with LEP — Districts have the responsibilities to:

- obtain a qualified interpreter, but may not deny access to an application for benefits, programs or services based on the inability to provide adequate interpretation services;
- provide applicants/recipients the choice to use a relative or friend as an interpreter, but may not require applicants/recipients to bring their own interpreter; and
- make interpreter services desk guides available to workers and language posters available in all client areas.

II. Purpose

This directive consolidates existing policy guidance issued by OTDA (Office) regarding access to benefits, programs and services by persons with disabilities and/or LEP. The purpose of this directive is to provide districts with a convenient resource that reiterates existing requirements for providing access to persons with disabilities and/or LEP, who are inquiring about, applying for, or receiving Temporary Assistance (TA), Food Stamps (FS) and assistance under the Home Energy Assistance Program (HEAP). However, in recognition of the unique challenges presented in providing access to persons with disabilities and/or LEP, this directive also is intended to provide, within existing policy guidelines, flexibility to districts to develop individualized procedures that ensure access to benefits, programs and services, and that meet the requirements described in this directive operationally. This directive is not intended to imply that districts are not in compliance with existing policies regarding access to benefits, programs and services by persons with disabilities and/or LEP.

III. Background

OTDA 06-ADM-05
(Rev. 4/2006)

A. Access by Persons with Physical and/or Mental Disabilities.

The federal ADA, enacted July 26, 1990, provides comprehensive civil rights protections to persons with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications. Counties are required to have on file a self-evaluation as mandated by ADA regulations to have been completed on or before January 26, 1993, where appropriate, regarding those policies and practices that previously had not been included in a self-evaluation required by section 504 of the federal Rehabilitation Act of 1973. Where structural modifications were needed to achieve program accessibility, all counties were required to have developed a transition plan by July 26, 1992, that provided for the removal of these barriers. Any structural modifications should have been completed as expeditiously as possible, but no later than January 26, 1995. Counties were required to comply with the requirements of Title II of the ADA on January 26, 1992, whether or not they had completed a self-evaluation.

Subtitle A of Title II of the ADA is intended to protect qualified persons with disabilities from discrimination on the basis of disability in the benefits, programs and services of all state and local governments. Title II also extends the protections against discrimination set forth in section 504 of the Rehabilitation Act, as amended, to all activities of state and local governments. All state and local government services and those services that receive state and/or local assistance must be in compliance with these requirements.

The Personal Responsibility and Work Opportunity Reconciliation Act ("PRWORA"), the federal Welfare Reform Law, specifically provides that section 504 and the ADA apply to any program or activity receiving federal TANF funds. 42 U.S.C.A. sections 608(d) (2) and (3), respectively.

In addition, Office regulations (Part 303 of 18 NYCRR) prohibit districts from discriminating against a person because of race, color, national origin, age, sex, religion or handicap (physical or mental impairment). Part 303.7 of 18 NYCRR extends the definition of the term handicap to include those persons having Acquired Immune Deficiency Syndrome (AIDS), testing positive for human immunodeficiency virus (HIV) infection or being perceived as susceptible to AIDS or HIV infection.

B. Access by Persons with LEP.

New York's TA, FS and HEAP programs' applicant/recipient population encompasses people with many different native languages and varying abilities to communicate in English. Since the 1980's, the State has been working with New York City and other districts to revise LEP policies and procedures and to provide increased services to persons with LEP.

On August 13, 1999, the Office and the Department of Health issued a General Information System message (GIS 99 MA/021) reminding districts of State policy regarding civil rights and access to FS, TA and Medical Assistance (MA) benefits. The GIS Message articulated New York State's policy that applicants for and recipients of

social services programs must have timely access to TA, FS and MA benefits regardless of race, color, religion, gender, age, national origin or disability. Each district is required to ensure that programs are administered in a fair and humane manner, and that all staff, especially those who have direct contact with applicants and recipients on a daily basis, understand this obligation and are trained to carry out these policies. Persons with LEP must be able to apply for benefits, programs and services without undue hardship.

On September 22, 2000, a joint “Local District Commissioner” letter was issued by the Department of Health and the Office. This letter introduced a mandated “Interpreter Services Poster” and a recommended district worker’s “Interpreter Services Desk Guide”. These documents were developed with the purpose of enhancing communication between the workers and clients who had LEP. These communications tools also were intended to expedite the process of engaging interpretation services for the client.

In 2002, the State reached an agreement with advocate groups to resolve litigation concerning the translation of various forms and informational materials as well as the provision of interpreter services to non-English speaking applicants and recipients of the Food Stamp program in New York City. The litigation alleged that New York policies, practices and customs violated federal FS regulations and failed to provide meaningful access to the FS program to persons who are not fluent in English. As part of the agreement, application and certification materials have been translated into Spanish, Russian, Chinese, Haitian-Creole and Arabic. Certain client informational materials also have been translated into those languages as well as French, Korean, Vietnamese and Yiddish. Application materials used at the New York City Food Stamp only centers have also been translated into Spanish, Russian, Chinese, Haitian-Creole, Arabic and Korean.

On March 21, 2005, the Office issued 05-INF-08, entitled “Revisions to PUB-4842: “Interpreter Services Poster” and PUB-4843: Interpreter Services Desk Guide.”

The purpose of this release is two fold:

1. To notify districts that the mandated “Interpreter Services Poster” (PUB-4842) and the recommended district worker’s “Interpreter Services Desk Guide” (PUB-4843) have been updated, reformatted and are available for ordering.
2. To also inform districts that the information contained on these documents has been translated into six additional languages. The complete list of “Other than English” languages is:

Albanian, Arabic, Bengali, Bosnian, Chinese, Farsi, French, Haitian Creole, Hindi, Italian, Korean, Polish, Russian, Spanish, Tagalog, Ukrainian, Urdu, Vietnamese, Yiddish and Symbol for Deaf/Hearing Impaired.

As part of its on-going efforts to improve access to Office services and programs for persons with LEP, the Office has posted a variety of client-focused information on its Internet website at <http://www.otda.state.ny.us/default.htm>. Selected, client-focused information is now available in Spanish, Arabic, Chinese and Russian. Currently available on the website is translated information regarding the following programs:

Temporary Assistance, Food Stamps, Home Energy Assistance Program, and Earned Income Tax credits, Disability Determinations, and Refugee and Immigration Affairs. Also posted on the Internet in translation are key program applications and supportive documents, as well as informational brochures.

IV. Definitions

A. ADA Definitions

The following terms (1-12) are defined in the federal ADA and are provided in this Directive for your convenience.

1. A person with a disability is one who:
 - a. Has a physical or mental impairment that substantially limits one or more of the major life activities of such person;
 - b. Has a record of such impairment; or
 - c. Is regarded as having such impairment.¹
2. Physical impairment under 1.a means any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine. Specific examples of physical impairments include orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, HIV disease (symptomatic or asymptomatic), tuberculosis, drug addiction and alcoholism.
3. Mental Impairment under 1.a means any mental or psychological disorder including, but not limited to, mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.
4. Major life activities under 1.a means functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.
5. Substantially limits under 1.a means the person's major life activities are restricted as to the conditions, manner, or duration under which they can be performed in comparison to most people. For example, a person who is paraplegic is substantially limited in the major life activity of walking; a person who is blind is substantially limited in the major life activity of seeing; and a person who is mentally retarded is substantially limited in the major life activity of learning.

¹ The definition of disability under the ADA is distinctly different from, and more general than, the Social Security Administration definition of disability as used in Social Security disability reviews.

6. Record of impairment under 1.b means that the person has a history of, or has been misclassified as having, a physical or mental impairment that substantially limits one or more major life activities.
 - Examples of those who have a history of impairment are those with histories of mental or emotional illness, heart disease or cancer.
 - Examples of those who were misclassified as having a record of such impairment, i.e., any record or perception of an alleged impairment that subsequently was found not to be factually correct, may include those who have been erroneously diagnosed as having mental retardation or mental illness. Discrimination on the basis of such a past record of impairment is prohibited.
7. Regarded as having such impairment under 1.c means:
 - a. The person has a physical or mental impairment that does not substantially limit major life activities, but the person is treated as having such a limitation; e.g., an individual with mild diabetes controlled by medication, is wrongfully barred by the staff of a county-sponsored summer camp from participation in certain sports because of her diabetes; or
 - b. The person has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; e.g., a child born with a prominent facial disfigurement, is wrongfully refused admittance to a county-run day care program because her presence in the program might upset the other children; or
 - c. The person has no impairment but is treated as having impairment; e.g., a person is excluded from a county-sponsored activity because the official believes unfounded rumors that the person is infected with the HIV virus. Myths, fears and stereotypes associated with disabilities or perceived physical or mental conditions may limit the person's major life activities and qualify the person for protection under the ADA.
8. Qualified person with a disability means a person with a disability, as defined under paragraph 1., 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 a district. A person with a disability is qualified if that person meets the essential eligibility requirements for receipt of services or participation in the program or activity.
9. Auxiliary aids and services include:
 - a. Qualified interpreters, note-takers, transcription services, written materials, telephone handset amplifiers, assistive learning devices,

assistive listening systems, telephones compatible with hearing aids, closed caption decoders, open and closed captioning telecommunication devices for deaf persons (TDDs), videotext displays, or other effective methods of making orally-delivered material available to persons with hearing impairments;

- b. Qualified readers, taped texts, audio recordings, Braille materials, large print material, or other effective methods of making visually delivered material available to persons with visual impairments;
 - c. Acquisition or modification of equipment or devices;
 - d. Interpreter Services, Desk Guide/Posters;
 - e. Other similar services and actions.
10. A qualified interpreter under paragraph 9.a is an interpreter who is able to interpret effectively, accurately, and impartially both receptively and expressively, using any necessary specialized vocabulary.
11. Reasonable accommodations may include:
- a. Making existing facilities used by disabled applicants for and recipients of benefits, programs and services readily accessible to and usable by such persons;
 - b. Job restructuring, part-time or modified work schedules, reassignment to a vacant position;
 - c. Acquisition or modification of equipment or devices;
 - d. Appropriate adjustment or modifications of examinations, training materials or policies;
 - e. Provision of qualified readers or interpreters; and
 - f. Other similar accommodations for persons with disabilities.
12. A complaint is complete for purposes of the federal ADA if it contains a written statement that contains the complainant's name and address and describes the district's alleged discriminatory actions in sufficient detail to inform the Office of the nature and date of the alleged violation of Title II of the ADA. It must be signed by the complainant or by someone authorized to do so on his or her behalf. (A complaint for non-ADA purposes is defined in subsection B. below.)

B. Examples of Complaints that are not ADA Related

- 1. Complaint, as defined by Office regulations at 18 NYCRR Part 356.1(b), is any written or oral communication made to a social services district or this Office by

or on behalf of an applicant for or a recipient of public assistance or care, other than a complaint for which there is a right to a fair hearing, or a communication from any other source directed or referred to the social services district or this Office alleging, directly or indirectly, dissatisfaction with:

- a. The action or failure to act in a particular case;
- b. The manner in which a social services district generally handles its cases;
- c. The social services districts' facilities and services, or the manner in which it generally conducts its business;
- d. Other facilities or services (public or private) employed by a social services district for providing care and services for its clients; or
- e. Any other aspect of social services administration not mentioned in this section.

V. Program Implications

A. General Requirements for All Applicants for and Recipients of TA, FS or HEAP.

1. Districts should review their procedures to ensure that the requirements described in this section are met operationally. Districts are encouraged to be flexible and creative in discharging their responsibilities under the ADA and concerning access by persons with LEP.
 - It is the responsibility of each district to ensure that applicants for and recipients of TA, FS and HEAP have access to all benefits, programs and services, including those offered by other agencies operating on behalf of a district. If an applicant/recipient is determined eligible for one or more benefits, programs or services, the district should attempt to coordinate activities so the process is as seamless as possible, and that the identified need(s) of the applicant/recipient is (are) met. Districts should document in the case record a person's disability and/or any LEP information to indicate the types of actions taken to ensure access and coordinate the service process. Districts should maintain a record of requests for accommodations and how such requests were addressed by the district.
 - Districts must adhere to confidentiality provisions as required by Social Services Law section 136 for applicants for and recipients of TA, FS and HEAP. Districts must also protect the confidentiality and privacy of information regarding the existence of a person's disability. Districts must share only the accommodations required, not the nature of a disability, with individuals providing client services who do not need to know the nature of the disability. Districts also must ensure that persons acting as interpreters for persons with LEP understand their obligation to maintain client confidentiality.

- Applicant/recipient interviews should be conducted to the extent practicable, in areas in which reasonable privacy is afforded; applicant/recipient interviews should be scheduled in a way that will minimize waiting and that will result in a minimum number of return visits. For example, sufficient space should be available to accommodate wheelchair access for compliance with Automated Finger Imaging System (AFIS) requirements, or the district must provide an alternate means of obtaining a photograph of the applicant/recipient.
- Documentation and referral information must be clearly explained to applicants/recipients.
- Waiting areas should be accessible to persons with disabilities and reasonably comfortable, to the extent practicable. There should be reasonable access to rest rooms, water fountains, and other necessities.
- Districts should make interpreter services desk guides available to workers and language posters available in all client areas. The Office has revised its interpreter services desk guide and language preference poster. These revised materials are available to districts as described in Section VII.

B. Requirements Pertaining To Applicants/Recipients under the ADA.

Districts must afford qualified persons with a disability an opportunity to participate in or benefit from a district's benefits, programs and services. Districts are responsible for ensuring that the opportunities afforded to qualified persons with a disability are equal to the opportunities afforded to persons without disabilities. Districts may carry out their activities using contractual arrangements or community resources.

Districts should maintain information that documents limitations and any necessary accommodations to ensure access for individuals with disabilities. This information should be available to all appropriate staff responsible for providing benefits and services. For example, information describing an individual's limitations and need for accommodations should be included in the employability assessment and considered when developing the employability plan. This information should be considered when determining appropriate activity assignments, including treatment for individuals. Districts are also required to notify worksite supervisor(s) in writing of an individual's limitations and need for reasonable accommodation.

An applicant/recipient's right to reasonable accommodations extends beyond work activities, therefore, information describing limitations and necessary accommodations should be available to any appropriate staff responsible for managing the client's case. For example, if an individual cannot have early morning appointments because of medication issues, or cannot climb stairs, the district should maintain documentation of the limitation(s) and necessary accommodation(s) to insure that the individual's needs are accommodated over time and through referrals to various sources.

Districts must adopt methods of administration which do not discriminate against and which ensure equal access and opportunity to qualified individuals with disabilities.

Districts must reasonably modify policies, practices and procedures that deny equal access to persons with disabilities but are not required to take action that would constitute a fundamental alteration in the benefit, program or services. If a proposed action would result in a fundamental alteration or undue burden, the district must take another action that would not cause this result. Districts must operate their programs so that, when viewed in their entirety, they are readily accessible to and usable by persons with disabilities. Districts have discretion in how they discharge this responsibility.

These requirements are subject to the limitations described below.

- The determination of whether a temporary impairment is a disability must be resolved on an individual basis, taking into consideration both the duration (and expected duration) of the impairment and the extent to which it actually limits a major life activity of the affected person.
- The ADA does not cover disadvantages attributable to environmental, cultural or economic factors such as poverty or having a criminal record.
- The ADA also does not cover mere physical characteristics such as hair, skin, or eye color.
- Age by itself is not considered to be a disability under the ADA unless the person has a physical or mental impairment that limits one or more of their major life activities.
- The ADA does not cover personality traits such as poor judgment or a quick temper where these are not symptoms of a mental or psychological disorder, unless the person has a recognizable physical or mental impairment in addition to these characteristics. Although drug addiction is a recognized impairment under the ADA, a district may withhold services or benefits based on an addict's current and illegal use of drugs or abuse of alcohol. Although a district ordinarily must consider good cause when an applicant with a physical or mental disability fails to comply with an eligibility requirement, the district should not consider the applicant's use or abuse of drugs or alcohol as good cause for his/her failure to comply.

Districts must attempt through reasonable means (e.g., posters, client booklets, etc.) to provide sufficient information to applicants/recipients, including persons who fail to self-disclose existing physical or mental impairments, to inform them of their rights under the ADA to reasonable accommodations to access benefits, programs or services provided by the district. Districts should make reasonable efforts to recognize potential disabilities, based on the applicant/recipient's disclosure or on an indication of an apparent disability. Staff should conduct an initial inquiry to identify an applicant or recipient's disability needs if the applicant or recipient agrees to take part in such inquiry. If there is an initial indication that the person has a disability that may impact his/her ability to successfully complete or benefit from the district's benefits, programs or services, based on the applicant's/recipient's disclosure or other information or indication that an apparent disability may exist, the district should offer the person an opportunity for a more comprehensive evaluation or assessment to determine whether an accommodation is necessary. However, districts may not inquire into the nature of the

disability beyond what is necessary to provide reasonable accommodation to access benefits, programs or services. Districts should take appropriate steps to ensure the confidentiality of information concerning a person's disability.

In addition, districts should use behavioral observations, historical data known to the agency or other means to help identify those persons who may not be able to self-disclose existing physical or mental conditions to district staff, and may then offer reasonable modifications in policies, practices, and procedures to make benefits, programs or services accessible for those persons. For example, district staff may observe an applicant/recipient acting in a disruptive or hostile manner toward other applicants/recipients in the waiting area. As a result of such observation, the district should consider making reasonable modifications to policies, practices, and procedures for such person, and may use staff with experience assisting hard-to-serve persons, or mental health professionals, as may be determined appropriate by the district, to speak with the applicant/recipient to assess whether he/she has disability-related needs and what reasonable accommodations are needed. Such staff should possess good communication, listening and assessment skills and the ability to work positively in a team setting. Then, if necessary, the district may re-direct the applicant/recipient to a modified process where the applicant/recipient may be able to effectively articulate his/her needs and adequately complete the application, recertification or other process, or the district may provide someone to assist a person with a physical or mental disability to complete the application or other required form.²

Applicants for and recipients of TA may establish good cause for not complying with eligibility requirements. Good cause may include instances when the applicant or recipient has a physical or mental impairment that prevents compliance, pursuant to 18 NYCRR 351.26(a) (1). For example, a recipient is required as a condition of eligibility for TA to attend a group recertification. However, where the session is held on the second floor of a building without elevator access, and where the recipient has a physical impairment that limits his/her mobility, the recipient has good cause for not completing his/her recertification in the manner assigned by the district. In these instances, districts must offer to make alternative arrangements to conduct the recipient's recertification.

The use of a modification or accommodation offered by the district to provide meaningful program access under the ADA is the choice of a person with a disability and not an essential eligibility requirement for the program(s) administered by the district. In some circumstances, an applicant/recipient may fail to complete an essential program eligibility requirement by intentionally declining to make use of a reasonable accommodation. In cases where the refusal to accept reasonable accommodations may result from the person's inability to recognize or acknowledge the existence of his/her disability, the district may need to seek involvement from a mental health professional or other qualified staff if the applicant/recipient does not appear to understand the consequences (such as denial of benefits or sanction) of his/her action when he/she refuses to make use of the reasonable accommodation to facilitate compliance with essential program eligibility requirements. In such cases, the refusal of the

² A determination that reasonable accommodation is required is not a determination of disability for any other purposes, e.g., employment exemption.

accommodation and/or any intervention attempt(s) must be documented before the district takes the appropriate negative case action. Districts should consider referral to adult protective services or other resources or services that may be of assistance to such persons.

C. Requirements Pertaining to Access by Persons with LEP.

Districts must continue to post the “Interpreter Services Poster” (PUB-4842) in all TA, MA and FS Benefits client areas. To assure that the most current version of the “Interpreter Services Poster” is posted, districts must order the 6/04 poster as soon as possible. Districts should also order, and make available to their workers in all program areas, the 6/04 version of the “Interpreter Services Desk Guide” (PUB-4843).

D. Inquiries for Information and Complaints

1. Inquiries – 18 NYCRR includes provisions that districts must comply with as follows:

- Part 356.1(a) defines an inquiry as any request for information that does not constitute an application for public assistance or care other than a complaint as defined in Section III.B.13 above.
- Part 356.2(a) requires districts to answer all inquiries promptly. If districts do not have the information requested, they should acknowledge the request and refer the person to the appropriate source for reply.
- Part 355.1(a)(6) specifies that districts are responsible for providing information to applicants and recipients of public assistance or care and are prohibited from discriminating against anyone making the inquiry based on race, color, religion, national origin, age, sex, handicap (physical or mental impairment) or marital status.
- Part 355.1(b) and 45 CFR Part 84, which was issued to effectuate section 504 of the Rehabilitation Act of 1973, requires districts to provide information in a manner that is accessible to visually impaired or blind and hearing impaired or deaf applicants and recipients.
- Part 355.2(a) requires districts to promptly give a copy of the appropriate information pamphlet to each person who inquires or applies. An example of an informational pamphlet that must be provided is: LDSS 4148A “What You Should Know About Your Rights and Responsibilities”. A list of additional informational pamphlets is provided in Section VII, Additional Resources, below.

2. Complaints – Districts must investigate complaints of discrimination or improper case administration. Districts should make reasonable efforts to inform applicants/recipients with a disability and/or LEP of such complaint procedures. Districts also are responsible for ensuring that staff understands such agency procedures. In addition, districts must post procedures for filing discrimination

complaints in a conspicuous manner and must list those agencies or persons that will handle complaints, e.g., local commissioner, New York State Division of Human Rights.

When a complaint has been referred by the Office to a district, a report shall be submitted within 20 days of the date of such request and shall cover fully all matters pertaining to the complaint, as required by 18 NYCRR Part 356.3(e). If the time limit cannot be met, an interim report should be sent. The Office may provide feedback to the district concerning any matters covered in the report pertaining to the complaint, and may undertake further review of the complaint, in consultation with the district, if determined necessary.

Regarding complaints of denial of access by persons with disabilities, districts must publish their procedures that provide for prompt and equitable resolution at the local level of complaints alleging any violation of Title II of the ADA. For disability-related complaints concerning the Office's programs, districts must submit a copy of such complaints, and the district's determination thereon, to the Office's Bureau of Equal Opportunity Development (BEOD). In addition, persons may file administrative complaints under Title II of the ADA with an appropriate federal agency or bring a lawsuit in federal district court. Complainants are not required to exhaust the district's internal complaint procedures before filing a complaint with a federal agency.

Districts should document and record investigations of discrimination complaints and their findings. Where such complaints are founded, districts should take appropriate remedial action both to resolve the complaint and to retrain staff regarding their responsibilities. Districts should take appropriate corrective actions when staff discriminates against applicants/recipients of TA, FS and HEAP.

LDSS-4148A includes a section entitled "NONDISCRIMINATION RIGHTS" (see http://sdssnet5/otda/ldss_eforms/eforms/4148A.pdf). This section provides the following information to applicants/recipients regarding discrimination complaint procedures:

- *Discrimination by the New York State Office of Temporary and Disability Assistance (OTDA), by the New York State Department of Health, by the New York State Office of Children and Family Services, by the New York State Department of Labor³ or by your local Department of Social Services based on race, religion, ethnic background, marital status, disability, sex, national origin, political belief or age is illegal.*
- *If you think you have been discriminated against in a Temporary Assistance Program, which includes Family Assistance and Safety Net Assistance, or*

³ Part C of Chapter 57 of the Laws of 2005 transferred the functions, powers, duties and obligations of DOL concerning the employment placement and training programs for applicants for and recipients of public assistance, FS and individuals eligible for non-assistance services to the Office.

that your case has been handled improperly due to some type of discrimination, you can complain by calling or writing to the Bureau of Equal Opportunity Development (BEOD).⁴

- *If you think you have been discriminated against in the Food Stamp Benefits Program, you can complain by writing to the USDA.*

Your discrimination complaint will be investigated, and you will be told in writing of the findings.

- *If you think you have been discriminated against on the basis of disability, you can complain by writing to Disability Rights Section.*

Your discrimination complaint will be investigated, and you will be told in writing of the findings.

- *If you think you have been discriminated against in the Medical Assistance Program, you can complain by calling or writing to Human Resources Group, New York State Department of Health.⁵*

- *If you feel you have been discriminated against in TA, FS, and their related employment programs, Medical Assistance, Services or Child Care you can contact the Division of Human Rights.⁶ You can also call or write to one of the regional offices of the New York State Division of Human Rights, which can be found in the Government pages of the telephone book. Some cities and counties in New York State also have human rights commissions that investigate discrimination complaints. Check your telephone book for a listing.*

Districts must comply with the requirements of 18 NYCRR Part 356 outlining a district's responsibility to respond to complaints by or on behalf of an applicant for or recipient of TA, FS or HEAP. This requirement does not include complaints arising from issues for which there is a scheduled fair hearing.

Procedures for handling complaints under the Food Stamp program are the most comprehensive and strictly prescribed by Federal authorities. Food Stamp complaint procedures are outlined in 03 LCM-3, Food Stamp Program Civil Rights Complaint Procedures and displayed on LDSS-8036, Food Stamp Complaint Procedure poster.

For all other programs, districts may use Food Stamp complaint procedures, but have the discretion to implement other appropriate complaint procedures, (except where the complaint includes an allegation of discrimination in relation to food

⁴ BEOD will refer the complaint to the local district for investigation, and send a copy of the transmittal letter to the complainant.

⁵ The ADA Title II Coordinator for the New York State Department of Health is Anna Colello, who is the contact for making an ADA related complaint involving Medicaid.

⁶ Although LDSS 4148A directs applicants/recipients to the Division of Human Rights, the Human Rights Law does not cover all types of applicant/recipient complaints.

stamps). At a minimum, complaint procedures for all other programs must ensure that reasonable procedures have been developed and are in effect to investigate complaints of denial of access by persons with disabilities and/or LEP, as is required by 18 NYCRR 356.3.

VI. Required Action

A. **Scheduling Considerations for Persons with Disabilities and/or LEP.** When an appointment is rescheduled for a person with a disability and/or LEP because reasonable accommodations cannot be made or no interpreter is available on the date the application is filed, the delay does not affect the application filing date or any other dates relevant to the processing of applications. Districts must also assure that emergency/immediate needs are addressed as may be appropriate to the case.

B. **Access by Persons with Disabilities.**

Districts should assign a staff person to serve as an ADA contact, who will be responsible for monitoring investigation and resolution of complaints and for overseeing procedures that ensure access to benefits, programs and services, and that meet the requirements described in this directive operationally.

Districts must provide qualified persons with disabilities an equally effective opportunity for access to, and participation in, programs, services and benefits when the person has a disability as defined under the ADA and in Section III. A above. Districts also must assist applicants/recipients to meet eligibility requirements by eliminating non-essential procedures or rules that deny a person with a disability an equal opportunity to participate in the district's programs, services and benefits. For example, if a district's procedure requires a person to travel from one office to a second office in order to comply with child support standards or rules, the district may need to accommodate the person by bringing a child support worker to the first location, rather than requiring the person to travel to a second, inaccessible location. Although the district may modify non-essential procedures, the district may not eliminate the actual child support requirements solely because the person has a disability.

Districts must make reasonable accommodation to the known physical or mental limitations of otherwise qualified applicants/recipients with disabilities unless the district can show that the accommodation would impose an undue financial and administrative burden on the operation of its program. Districts may request that an applicant/recipient provide appropriate documentation where the disability is not readily apparent. Districts may deny reasonable accommodation, when the applicant/recipient, after being given reasonable opportunity, fails or refuses to comply with the request to provide appropriate documentation where the disability is not readily apparent. Programs and services should be provided to all applicants/recipients in the same manner or location, unless separate or different measures are necessary to ensure equal opportunities for individuals with disabilities. Programs that provide special benefits to people with disabilities are permitted but people with disabilities cannot be compelled to participate in those programs.

A district need only make reasonable modifications in its policies, practices, or procedures, to assure that otherwise eligible persons are not denied needed benefits, programs and services. If the district can demonstrate that a modification would fundamentally alter the nature of its benefits, programs and services, it is not required to make the modification. For example, if a district issues food stamp benefits using the Electronic Benefit Transfer system and has no authority to issue the benefits as cash, the district is not required to alter its FS program to provide food stamp benefits in cash to accommodate a request made by a recipient with a mental impairment who is afraid to access benefits electronically. A reasonable modification to accommodate the recipient's disability may be made by using an alternative payee arrangement.

Persons with disabilities must have access to district offices. If there are barriers in the district's buildings that would hinder access, alternative means of access must be available, whether these are alternate entrances and offices or alternate places for conducting interviews. A district may, however, pursue alternatives to structural changes in order to achieve program accessibility. For example, where the second-floor office of a district is entered only by climbing a flight of stairs, a person with a mobility impairment or phobia who is seeking information about, or seeking to apply for benefits, programs and services can be served in an accessible ground floor location or in another accessible building.

Districts must ensure that their communications with persons with disabilities are as effective as communications with others. Districts must provide the necessary auxiliary aids and services, as defined in Section III. A. 9 above, to ensure effective communication, when persons with disabilities seek to access benefits, programs and services provided by the district. The type of auxiliary aid or service necessary to ensure effective communication will vary in accordance with the length and complexity of the communication involved and may be determined on a case-by-case basis.

For persons with vision impairments, the use of magnifying lenses, qualified readers, taped texts, audio recordings, Braille materials, or large print materials may be useful for transactions that involve complex or extensive communications. Where a district provides information in written form, it must, when requested, make that information available to persons with vision impairments in a form that is usable by such persons. The requirement for effective communication does not mean that a district must put all of its documents in Braille. The requirement for effective communication means that a district must provide information in Braille, where feasible, or in another comparable format that is usable by persons with vision impairments, as determined appropriate by the district in the particular circumstances.

Districts are not required to have a sign language interpreter present every time they deal with a person who is deaf or hearing impaired. For applicants/recipients who are hearing impaired or deaf, the type of auxiliary aid or service necessary to ensure effective communication may vary in accordance with the length and complexity of the communication involved. More complex or extensive communications may require the use of qualified interpreters, assistive listening systems, videotext displays, or other aids or services.

District staff may communicate with persons who have hearing impairments through written materials and the exchange of written notes. For persons with vision impairments, district staff may provide oral directions or read written instructions. In many transactions, such as filing applications, communications provided through such simple methods are as effective as the communications provided to other persons in similar transactions.

Districts that communicate by telephone must provide equally effective communications with persons with disabilities, including persons with hearing and speech impairments. Districts are not required to have Telecommunications Devices for the Deaf (TDD's) to communicate with people who have hearing or speech impairments. Telephone relay services generally may be used to provide equally effective communications. Such services are available Statewide. Relay services involve a relay operator who uses both a standard telephone and a TDD to type the voice messages to the TDD user and read the TDD messages to the standard telephone user. Where a district uses such services, staff must be instructed to accept and handle relayed calls in the normal course of business.

Districts must document in the case file that the applicant/recipient needs reasonable accommodation, so that an interpreter or other appropriate auxiliary aids and services can be scheduled for any future appointments.

C. Access by Persons with LEP.

Districts should assign a staff person to serve as an LEP contact, who will be responsible for monitoring investigation and resolution of complaints and for overseeing procedures that ensure access to benefits, programs and services, and that meet the requirements described in this directive operationally. (Districts may assign the same staff person to serve as the ADA and LEP contact.)

No person shall be denied access to an application for benefits, programs or services based on a district's inability to provide adequate interpretation services. Persons with LEP must be able to apply without undue hardship.

If an applicant/recipient is a person with LEP, the district is responsible for obtaining a qualified interpreter. District staff should be reminded that an applicant/recipient has the choice to use a relative or friend as an interpreter. If the applicant/recipient does not choose this option or no bilingual staff interpreter is available, the district must set up an appointment for the applicant/recipient to return and must arrange for an interpreter or other interpretive services, e.g., Language Line Services, to be available at the appointment. However, applicants/recipients are not required to bring their own interpreter, and no person may be denied access to benefits, programs or services because of a district's inability to provide adequate interpreters. Districts must protect the filing or application date, as noted in VI. A., and continue to adhere to application interview time frames as required by each program area. Districts should document in the case record: (1) if an interpreter was requested by the applicant/recipient and if so, the date the interpreter was requested; (2) if the district offered to provide an interpreter without the applicant/recipient having made a request for such services; (3) whether the applicant/recipient agreed to use the interpreter provided by the district and if the

applicant/recipient agreed to use such an interpreter, how the services were or will be provided; (4) if the applicant/recipient declines/refuses to use the district's interpreter or interpreter services and brings his or her own interpreter.

When an applicant/recipient with LEP calls or visits the district office in person the district must:

- Ask the person what language he/she speaks (many persons know English well enough to answer the question);
- If the person is unable to answer the question, attempt to identify the applicant's/recipient's language by having him/her point to the language on a poster or Interpreter Services Desk Guide;
- Once the language is identified, solicit (if available) the aid of an on-site bilingual staff person to assist as an interpreter. The district should not seek the aid of a bilingual applicant or recipient. Relatives or friends of the applicant/recipient may be used if the applicant/recipient requests and the district determines that the relative or friend is capable of interpreting;
- Refer to the district's specific procedure for providing access to LEP persons if no qualified interpreter is available on-site;
- Be sure that the applicant/recipient understands the date, time and location of the new appointment if a return appointment is required;
- Address any emergency/immediate needs prior to scheduling a return appointment;
- Document in the case record the language of the LEP person, whether the LEP person chose to use his/her own interpreter, and/or whether a request for an interpreter was made, so that an interpreter can be scheduled, if necessary, for any future appointments;
- Document each attempt to contact an interpreter and if the interpreter appeared in person or by telephone.

VII. Systems Implications

There are no systems implications.

VIII. Additional Resources

Resources Available from the Office:

- Questions concerning the ADA may be directed to the Office's ADA Coordinator, Mr. Larry Ritter, Director, BEOD, 40 North Pearl Street-16 D, Albany, New York 12243; [telephone (518) 473-8555; e-mail larry.ritter@otda.state.ny.us].

- Legal questions concerning the ADA may be directed to Ms. Linda Hunt, Counsel's Office, 40 North Pearl Street-16C, Albany, New York 12243; [telephone (518) 474-9777; e-mail linda.hunt@otda.state.ny.us].
- Technical questions concerning LEP may be directed to Mr. Lynn Stone, Executive Deputy Commissioner's Office, 40 North Pearl Street-9C, Albany, New York 12243; [telephone (518) 402-3417; e-mail lynn.stone@otda.state.ny.us].
- Policy questions concerning LEP may be directed to Ms. Malinka Gutierrez, Counsel's Office, 40 North Pearl Street-16C, Albany, New York 12243; [telephone (518) 474-9496; e-mail malinka.gutierrez@otda.state.ny.us].
- Questions concerning ordering forms and documents should be directed to Document Services, which maintains the Local District Forms and Publications Catalog, Pub-4767. If you have any questions about how to order a specific document, please call Document Services [telephone 1-800-343-8859, ext. 4-9522; or (518) 486-6302; or (518) 402-0159].
- Requests for printed copies of the following documents should be submitted on OTDA-876 "Request For Forms or Publications" form, and should be sent to:

Office of Temporary and Disability Assistance
BMS Document Services and Operational Support
P.O. Box 1990
Albany, New York 12201

- Documents also may be ordered through Outlook. To order the forms you must obtain an OTDA-876 electronically by going to the OTDA Intranet Website at <http://otda.state.nyenet/> then to Division of Program Support & Quality Improvement page, then to PSQI E-Forms page (this page contains the electronic OTDA-876).
- For those who do not have Outlook but who have Internet access for sending and receiving email, the Internet email address is: gg7359@dfa.state.ny.us. For a complete list of available forms, please refer to OTDA Intranet site: http://otda.state.nyenet/ldss_eforms/default.htm

Relevant Publications and Forms:

- LDSS-4148A: What You Should Know About Your Rights and Responsibilities *
- LDSS-4148B: What you Should Know About Social Services Programs*
- LDSS-4148C: What You Should Know If You Have An Emergency*
- LDSS-8036: Food Stamp Complaint Poster
- PUB-4842 Language Poster (6/04)
- PUB-4843 Interpreter Services Desk Guide (6/04)
- PUB-4702E: NYS Wants You To Know About Food Stamps Tear Off Poster (English) (9/00)
- PUB-4702E/S: NYS Wants You To Know About Food Stamps Tear Off Poster (English/Spanish) (9/00)
- FORM AD-475B: USDA Form "And Justice For All" (12/99) (Published by USDA).

*This informational booklet is available in nine languages in addition to English. The languages are listed alphabetically below, followed by a two-letter language code: Arabic (AR), Chinese (CH), Haitian-Creole (HA), French (FR), Korean (KO), Russian (RU), Spanish (SP), Vietnamese (VI), and Yiddish (YI). The two-letter code follows the form or publication number of translated documents and identifies the language of the publication. For example, the LDSS-4148A in Spanish, Arabic and Chinese are listed as LDSS-4184A-SP, LDSS-4148A-AR, and LDSS-4148A-CH, respectively.

Self-Evaluation

In assuring that TA, FS and HEAP are delivered in a manner compliant with the requirements of Office regulations and in compliance with federal requirements of the ADA, a self-evaluation review form was developed (Attachment 1). The completion of the form and correction of any deficiencies is mandated.

Prior to the issuance of this directive, the self-evaluation form was sent to each district. Districts were asked to return the completed form by November 23, 2004. The Division of Employment and Transitional Supports (DETS) will notify the Commissioner of any district which has not returned the completed self-evaluation form, or has not presented a corrective action plan for any deficiency found. Only districts that are contacted by DETS will have to take action on the mandate to complete the self-evaluation.

Additionally, DETS periodically conducts random compliance reviews using this instrument to assure that districts are meeting ADA requirements.

DTA may require that districts redo and submit the self-evaluations on a schedule to be determined but no more frequently than once in a two year period.

More information on the requirements of Title II of the ADA may be found on the Internet at the U.S. Department of Justice ADA Home Page at www.ada.gov.

IX. Effective Date

The provisions of this directive are effective immediately.

Issued By _____

Name: Russell Sykes
Title: Deputy Commissioner
Division/Office: Division of Employment and Transitional Supports

AMERICANS WITH DISABILITIES ACT (ADA)/LIMITED ENGLISH PROFICIENCY (LEP)
Self-Evaluation Form

District _____ Form completed by: _____ Phone #: _____

Access – ADA

1. Do you have an ADA contact person within DSS who is responsible for social services program access and for the taking and resolution of complaints from applicants/recipients (A/Rs)?

____ Yes ____ No (*)

2. If yes to #1, who is your ADA contact? _____.

Please provide the ADA contact's telephone # _____.

3. a. Has your district done a self-evaluation of program access by A/Rs with disabilities?

Yes ____ (Please attach a copy of the report) No ____ (*)

- b. Were deficiencies found in the self-evaluation?

Yes ____ (go to c.) No ____ (Go to #4)

- c. Were corrective actions taken?

Yes ____ (Please attach copy of the corrective action plan) No ____ (*)

4. Do you have a written procedure for handling complaints from applicants/recipients who claim to have been denied access to social services programs due to a disability?

Yes ____ (Please attach copy) No ____ (*)

5. Do you provide applicants/recipients (A/Rs) for social services programs with information about the ADA's prohibitions against discrimination?

Yes ____ (Please attach copy) No ____

6. Reasonable accommodation means an adaptation or alteration that gives an A/R with disabilities meaningful access to social services programs. Do you have written reasonable accommodation procedures?

Yes ____ (Please attach copy) No ____ (*)

7. Do you have a procedure to insure that the A/R who is offered reasonable accommodation, but refuses, understands the consequences of that refusal?

Yes ____ (Please attach copy) No ____ (*)

Access – General Disabilities

1. a. Are your facilities accessible to, and usable by, individuals with disabilities?

Yes ____ No ____

- b. Are your parking areas and sidewalks accessible to, and usable by, individuals with disabilities?

Yes ____ No ____

- c. Is the entrance wheelchair accessible?

Yes ____ No ____

- d. Are bathrooms and drinking fountains wheelchair accessible?

Yes ____ No ____

- e. Are areas such as the photo ID/finger imaging areas wheelchair accessible?

Yes ____ No ____

- f. If No to e., are alternate accessible sites available?

Yes ____ No ____

- g. If the client area is above or below the 1st floor, are there elevators?

Yes ____ No ____ 1st floor only ____

h. If No to g., are services available at alternate accessible sites?

Yes ____ No ____ (*)

2. In social services districts with more than one district office, are all district offices accessible according to #1. a – e above.

____ Yes ____ No (go to #3)

3. When one or more district office is not handicap accessible, is reasonable accommodation offered?

____ Yes (attach copy of reasonable accommodation plan, or specify) _____
 ____ No (*)

4. Do you have procedures for determining when home visits will be provided for A/Rs who are physically or mentally unable to travel to the office/center?

____ Yes (go to #6) ____ No (*) (go to #5)

5. If No to #4, what alternate accommodations are provided? _____
 _____.

6. Are the home visit or alternate accommodations procedures in writing?

____ Yes (please attach a copy – go to #7) ____ No (*) (go to #7)

7. How is the district's policy regarding home visits or alternate accommodations conveyed to A/Rs?

 (Go to #8)

8. How is the district's policy regarding home visits or alternate accommodations conveyed to the appropriate LDSS staff?

_____.

Access – Visually/sight Impaired

1. a. Are there signs in Braille for the visually/sight impaired?

Yes ____	No ____	Men's and Women's rooms
Yes ____	No ____	Room Numbers
Yes ____	No ____	Exits
Yes ____	No ____	Permanent Rooms and Spaces
Yes ____	No ____	Elevators

- b. If NO to any of the above, how does the visually impaired person find a necessary location?

_____ .

2. Do you have procedures in place for A/Rs who, due to visual impairment, are unable to read the application, information booklets, notices, etc.?

Yes ____ (Please provide copy) No ____ (*)

Access – Mental Impairment

1. Do you have procedures in place to assist a mentally impaired A/R?

Yes ____ (Please provide copy) No ____ (*)

Access – Hearing Impaired

1. Do you have procedures in place to assist hearing impaired A/Rs?

Yes ____ (Please provide copy) No ____ (*)

2. Is a sign-language interpreter provided?

Yes ____ No ____ (*)

3. Does the office/agency have TTY/TTD equipment or New York Relay Services available?

Yes ____ (Type of Service: _____) No ____

Access – Limited English Proficiency

1. Do you have procedures to assist limited or non-English speaking A/Rs?

Yes ____ (Please provide copy) No ____ (*)

2. Are the following available in other than English language?

Signs Yes ____ No ____

Posters Yes ____ No ____

Pamphlets Yes ____ No ____

Other client handouts: Yes ____ (Describe: _____) No ____

3. a. Is the “Interpreter Services Poster” (PUB-4842) displayed in the waiting area?

Yes ____ No ____ (*)

b. Is the recommended 6/04 version of the “Interpreter Services Desk Guide” (PUB-4843) and/or the optional language palm cards used? Yes ____ No ____

(*) Answers with (*) will require a corrective action plan to be submitted within sixty days of the date that this form is due to the returned to the Division of Employment and Transitional Supports (DETS).