

County of Wayne, Nebraska

Section 504 – Rehabilitation Action of 1973 Americans with Disabilities Act of 1990

July 2014

POLICY STATEMENT

The County of Wayne ensures that no qualified disabled individual shall, solely on the basis of his or her disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any of its programs, services, or activities as provided by Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 (ADA). Wayne County further ensures that every effort will be made to provide nondiscrimination in all of its programs or activities regardless of the funding source.

For our purposes, a disabled person is defined as any person who

- Has a physical or mental impairment that substantially limits one or more major life activities,
- Has a record of such an impairment, or
- Is regarded as having such an impairment

ORGANIZATION

The Wayne County ADA Coordinator is:

Melissa Rabbass
510 Pearl Street
Wayne, NE 68787
(402) 375-1979

melissa@wayne.nacone.org

Office Hours: Monday – Friday, 8:30 a.m. – 5:00 p.m. (excluding holidays)

SECTION 504 / ADA COORDINATOR RESPONSIBILITIES

- Monitor the LPA's current policies and practices for implementing ADA/504
- Identify shortcomings in compliance and developing remedies
- Evaluate remedial steps taken to eliminate the effects of discrimination
- Monitor complaint procedures that incorporate appropriate due process standards and provide for prompt and equitable resolutions of complaints alleging an action prohibited by ADA/504
- Process the disposition of complaints filed under ADA/504
- Ensure agency compliance with ADA/504
- Collaborate and coordinate with the heads of major divisions and departments to enable ADA/504 compliance efforts
- Establish and maintain collaborative relationships with critical external stakeholders, such as disability advocacy groups and organizations
- Monitor the agency's ADA/504 Transition Plan to ensure that all department facilities remain in compliance with applicable accessibility standards
- Monitor established procedures to ensure that requested auxiliary aids are provided
- Conduct annual reviews of ADA/504 program areas
- Conduct ADA/504 training programs for managers and employees
- Prepare a report of ADA/504 accomplishments and problem areas for the NDOR Annual Report to FHWA
- Monitor the preparation of ADA/504 information for dissemination to the general public, including the "Notice to the Public" offer to provide reasonable accommodation, upon request
- Identify, investigate, and eliminate ADA/504 discrimination when found to exist

SECTION 504 / ADA NOTICE TO THE PUBLIC

A copy of the Notice to the Public is included as Appendix A of this policy. This Notice includes information regarding the County's commitment to non-discrimination and identification of the ADA Coordinator. This Notice will be available on Wayne County's website and in public areas of the Wayne County Courthouse and the Judicial Building. A statement of non-discrimination is included in Wayne County's employee handbook, employment advertising, employment application forms, and bid requests.

AUTHORITIES

Section 504 of the Rehabilitation Act of 1973, as amended, provides that "No otherwise qualified disabled individual in the United States, as defined in section 7(6), shall solely by reason of this disability, be excluded for the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."

29 USC 794 (October 29, 1992 to the Rehabilitation Act of 1973) substitutes "a disability" for "handicaps" and "disability" for "handicap."

49 CFR Part 27.13 (Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Financial Assistance) states, "This part applies to each recipient of Federal financial assistance from the Department of Transportation and to each program or activity that receives or benefits from such assistance."

49 CFR Part 28.102 (Enforcement of Nondiscrimination on the Basis of Disability in Programs or Activities Conducted by the Department of Transportation) states, "This part applies to all programs or activities conducted by the Department of Transportation except for programs and activities conducted outside the United States that do not involve individuals with disabilities in the United States."

28 CFR Part 35 (Judicial Administration) states, "The purpose of this part is to effectuate Subtitle A of Title II of the ADA which prohibits discrimination on the basis of disabilities by public entities."

49 CFR Part 27 (Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Financial Assistance) states, "The purpose of this part is to carry out the intent of Section 504 of the Rehabilitation Act of 1973 (29 USC 794) as amended, to the end that no otherwise qualified disabled individual in the United States shall, solely by reason of his or her disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."

49 CFR Part 28-140 (Employment) states, "(a) No qualified individual with disabilities shall, on the basis of disability, be subjected to discrimination in employment under any program or activity conducted by the Department," and "(b) The definitions, requirements, and procedures of Section 504 of the Rehabilitation Act of 1973 (29 USC 791), as established by the Equal Employment Opportunity Commission in 29 CFR part 1613, shall apply to employment in federally conducted programs or activities."

29 CFR Part 1613 (Equal Employment Opportunity in the Federal Government) states, "It is the policy of the Government of the United States . . . to provide equal opportunity in employment for all persons to prohibit discrimination in employment because of race, color, religion, sex, or national origin and to promote the full realization of equal employment opportunity through a continuing affirmative program in each agency."

42 USC Part 12101-12213 (The Americans with Disabilities Act of 1990) states, "No covered entity shall discriminate against a qualified individual with a disability because of the disability of such individual in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment."

SECTION 504 / ADA SELF-EVALUATION

The ADA does not necessarily require a public entity to make each of its existing facilities accessible to and usable by individuals with disabilities. With this in mind, Wayne County focused on its primary facilities at 510 Pearl Street, 521 Lincoln Street, 219 West 6th Street, and 421 Centennial Road in Wayne.

A team comprised of ADA Coordinator Melissa Rabbass and Commissioner Dean Burbach conducted a walk-through of the Wayne County Courthouse, Judicial Building and Department of Health and Human Services (DHHS) Building. The self-evaluation also reviewed the availability of programs and services.

Wayne County will update the ADA/Section 504 Policy, Self-Evaluation, Transition Plan, and Grievance Procedure as necessary, but at least biennially. The next review is scheduled for 2015.

The County of Wayne does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services. Application and consideration of all job openings will meet the requirement of the equal opportunity statement in the Notice under the Americans with Disabilities Act. The County is in the process of writing detailed job descriptions for all positions. These job descriptions will include a list of essential job functions required to perform the duties of the job.

All County meetings and hearings, which are open to the public, are held in a location that is accessible to people with disabilities when possible. Wayne County has selected election polling places which will meet ADA requirements.

The east entrance to the Courthouse is accessible, and an elevator that serves each level of the Courthouse (except the attic) is available for anyone who is unable to use the stairs.

Most offices would need to be rearranged for an employee with a disability. Most of the vaults are not accessible; however, the cost to enlarge the doorways to the vaults would create an undue financial burden. Alternate plans are to assist persons using wheelchairs with records or files at a desk or table outside of the vault.

Most of the counters in the Courthouse offices are not the required height; however, all offices have clipboards available. There is also an accessible table available in the main floor lobby, in the basement lobby, and in the courtroom and commissioners' meeting room on the second floor of the Courthouse.

Most offices are equipped with a magnifying glass for persons who need assistance with reading small print. Assistance by County or Courthouse personnel could also be provided in reading and filling out small print documents.

The Courtroom is not entirely accessible as there are a couple steps into the jury box, the witness stand, the bailiff's desk and the judge's bench. Procedures are in place with the County and District Courts and their Judges to accommodate persons who are unable to manage the steps.

Wayne County intends to install, repair or replace accessible features on the pedestrian right of way as needed starting in fiscal year 2014. Curb ramps should be constructed, or reconstructed, to the extent technically feasible as provided by the ADAAG. Detectable warnings will also be added to the curb ramps as per ADAAG guidelines.

SECTION 504 / ADA TRANSITION PLAN

Wayne County's Transition Plan is included in this policy as Appendix B for the Courthouse, and Appendix C for the Judicial Building. The final Transition Plan became available in September 2013.

The DHHS Building located at 421 Centennial Road was destroyed in the October 4, 2013 tornado, so the transition plan for this building is no longer applicable.

The items in the Transition Plan are prioritized as Level 1, 2, or 3. Level 1 items are scheduled for completion during fiscal year 2013 - 2014, Level 2 during fiscal years 2014 - 2016, and Level 3 during fiscal years 2016 – 2019. While we strive to achieve compliance by 2019, we are allowing up to 10 years to complete all items on our Transition Plan.

Wayne County will design and construct all future alterations to its facilities at 510 Pearl Street, 521 Lincoln Street, and 219 West 6th Street in Wayne in accordance with the most recent ADAAG standards and guidelines, unless technically infeasible.

Technically Infeasible: According to the ADAAG, technically infeasible means, with respect to an alteration of a building or a facility, that it has little likelihood of being accomplished because existing structural conditions would require removing or altering a load-bearing member which is an essential part of the structural frame; or because other existing physical or site constraints prohibit modification or addition of elements, spaces, or features which are in full and strict compliance with the minimum requirements for new construction and which are necessary to provide accessibility.

The following is a nonexclusive list of situations when an exception may be considered:

- When ADAAG slope requirements cannot be met because of the difference in elevation between the project and the topography or geography of the area adjoining the project.
- When building the project in strict compliance with the ADAAG would cause:
 - (1) the project to not conform with minimum design standards
 - (2) the project to negatively affect historic property
 - (3) an adverse effect on public safety

When all reasonable alternatives have been exhausted, it may be determined that strict adherence to all accessibility requirements may not be technically feasible. Where compliance is not technically feasible, the alteration or construction shall comply with the requirements to the maximum extent feasible.

Undue Financial Burden: The ADA does not require a public entity to take any action that would fundamentally alter the nature of their services, programs or activities, or would result in an undue financial or administrative burden. An unduly burdensome financial classification is found in situations where the cost for accessibility improvements compared to the County's overall budget is disproportionately high and, therefore, not readily achievable.

The decision that compliance would result in such alteration or burdens will be made by the Board of Commissioners after considering all resources available for use in the funding and operation of the service, program, or activity. When making the determination of undue burden, the Board may elect to accept estimates in lieu of bids or specific costs for facility alterations and funding and operating a service, program or activity. They may also examine the guidelines related to disproportionality in alterations.

The final decision will be accompanied by a written statement of the reasons for reaching that conclusion. Upon making a determination of undue financial or administrative burden, the County shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the benefits or services provided by the County of Wayne.

Historic Preservation: The Wayne County Courthouse is listed on the National Register of Historic Places. The ADA Title II Regulations state “In order to avoid possible conflict between the congressional mandates to preserve historic properties, on the one hand, and to eliminate discrimination against individuals with disabilities on the other, paragraph (a)(2) provides that a public entity is not required to take any action that would threaten or destroy the historic significance of an historic property.”

The regulations go on to state “Only when providing physical access would threaten or destroy the historic significance of an historic property, or would result in a fundamental alteration in the nature of the program or in undue financial and administrative burdens, may the public entity adopt alternative methods for providing program accessibility that do not ensure physical access.”

Wayne County strives to achieve a balance between preserving the historic value of our Courthouse, while at the same time ensuring accessibility for individuals with disabilities.

REASONABLE ACCOMMODATION PROCEDURES

Written requests for reasonable accommodations should be made to the ADA Coordinator. If a request is made orally, it shall be followed by a written request, although the ADA Coordinator may begin processing the request upon receipt of an oral request. The request may be made by a family member, health professional or other representative acting on the individual's behalf with the individual's consent.

A Wayne County employee with a disability also has the right to request reasonable accommodations that will allow the individual to perform the essential functions of the job. It is the employee's responsibility to contact his or her supervisor or the ADA Coordinator to request the accommodation. County officials who receive requests for accommodation should respond to them promptly.

The ADA Coordinator or the employee's supervisor may request medical documentation only when the employee's need for accommodation is not apparent and there is no other medical information already on file which demonstrates that need. It is not appropriate to request medical information that is unrelated to the individual's request for accommodation. For example, an individual may request an ergonomic keyboard because of carpal tunnel syndrome. Although a supervisor may obtain medical information about the carpal tunnel syndrome, and the need for the keyboard, the supervisor may not request other, unrelated, medical information. The County also has the right to have medical information reviewed by a medical expert of the County's choosing at the County's request and at the County's expense.

The failure to provide appropriate documentation or to cooperate with the County's efforts to obtain such documentation may result in denial of the accommodation request.

If an employee has concerns about disclosing his or her disability to a supervisor, the employee may send the request directly to the ADA Coordinator rather than the direct supervisor. Employees should understand, however, that it may become necessary to disclose that information to the supervisor in order to facilitate the provision of the reasonable accommodation. A supervisor may not retaliate against an employee who has requested an accommodation.

Individuals with disabilities applying for positions with the County of Wayne, or who are selected for interviews, may request accommodations by contacting the supervisor of the department for which he or she is applying. The supervisor will meet with the ADA Coordinator as soon as possible to ensure proper accommodations can be made. Reasonable accommodations will be made on a case-by-case basis for qualified persons covered under the ADA/Section 504.

Upon receiving the written request for accommodation, the ADA Coordinator may:

- Meet with the employee's supervisor, or the chairman of the Board of Commissioners if the request is made by a member of the public, to conduct an analysis of the individual's request or employee's job to determine its purpose and essential functions.
- Consult with the employee or individual to determine the exact limitations imposed by the individual's disability, and how those limitations could be overcome with a reasonable accommodation.
- Work with the individual or employee to identify potential accommodations and assess the effectiveness of those accommodations in enabling the individual or employee to perform his or her essential functions.
- Discuss these potential accommodations with the employee's supervisor or the chairman of the Board of Commissioners to determine if and how the request for accommodation will be granted. Consideration will be given to the preference and needs of the individual or employee, the overall needs of the office if requested by an employee, the ability to provide the accommodation in a timely manner, and which accommodation would be most appropriate for the individual/employee and Wayne County.
- A final disposition ordinarily should be made within seven business days of the request or receipt of medical documentation, in cases where medical documentation is required.

The accommodation does not need to be the most expensive option, nor does it need to be exactly what the individual requests, but it must be effective.

The Americans with Disabilities Act does not require the County of Wayne to take any action that would fundamentally alter the nature of its programs or services, or impose an undue financial or administrative burden.

If a request for accommodation is denied, it must be in writing and outline the reasons for denial. The ADA Coordinator must also inform the employee or individual of the right to any available informal dispute resolution avenues, such as reconsideration of denial or review by another neutral party.

All requests for accommodation, including any medical or other documentation provided, will be kept on file separate from the employee's personnel file. The ADA Coordinator will maintain the files. Access to these files is limited to those with an identifiable need to review the information.

GRIEVANCE PROCEDURES

This Grievance Procedure is established to meet the requirements of the Americans with Disabilities Act of 1990 ("ADA"). It may be used by anyone who wishes to file a complaint alleging discrimination on the basis of disability in the provision of services, activities, programs, or benefits by the County of Wayne, Nebraska.

The complaint should be in writing and contain information about the alleged discrimination such as name, address, phone number of complainant and location, date, and description of the problem. A Complaint Form is available for the convenience of the individual and to help ensure all the necessary information is provided. Alternative means of filing complaints, such as personal interviews or a tape recording of the complaint, will be made available for persons with disabilities upon request.

The complaint should be submitted by the grievant and/or his/her designee as soon as possible but no later than 60 calendar days after the alleged violation to:

Wayne County Courthouse
Melissa Rabbass, ADA Coordinator
510 Pearl Street
Wayne, NE 68787
(402) 375-1979
melissa@wayne.nacone.org

Within 15 calendar days after receipt of the complaint, the ADA Coordinator or her designee will meet with the complainant to discuss the complaint and the possible resolutions. An investigation, as may be appropriate, shall be conducted, and will afford all interested parties an opportunity to submit evidence relevant to the complaint.

Within 30 calendar days of the meeting, the ADA Coordinator or her designee will respond in writing, and where appropriate, in a format accessible to the complainant, such as large print or audio tape. The response will explain the position of the County of Wayne and offer options for substantive resolution of the complaint.

If the response by the ADA Coordinator or her designee does not satisfactorily resolve the issue, the complainant and/or his/her designee may appeal the decision within 15 calendar days after receipt of the response to the County Commissioners or their designee.

Within 30 calendar days after receipt of the appeal, the County Commissioners or their designee will meet with the complainant to discuss the complaint and possible resolutions. Within 30 calendar days after the meeting, the County Commissioner or their designee will respond in writing, and, where appropriate, in a format accessible to the complainant, with a final resolution of the complaint.

All written complaints received by the ADA Coordinator or her designee, appeals to the County Commissioners or their designee, and responses from these two offices will be retained by the County of Wayne for at least three years.

The right of a person to a prompt and equitable resolution of the complaint filed hereunder shall not be impaired by the person's pursuit of other remedies, such as the filing of an ADA complaint with responsible Federal Department or Agency. Use of this grievance procedure is not a prerequisite to the pursuit of other remedies.

OPPORTUNITY FOR PUBLIC COMMENT

The Wayne County ADA Policy, Notice to the Public and Transition Plans were made available for public inspection and comment via the Wayne County website for a period of two weeks.

- They were also available outside the County Roads office in the Courthouse during regular business hours since July 1, 2013.
- A notice was mailed to the advocacy agencies in Wayne.
- Several newspaper and online articles were published with regards to the County’s endeavor to create a thorough Transition Plan, at least two of which mentioned the plan was available for public comment.
- No comments were received.

ASSURANCES

Pursuant to the requirements of Section 504 of the Rehabilitation Act of 1973 (29 USC 794), the County of Wayne, desiring to avail itself of federal financial assistance from the US Department of Transportation, hereby gives assurance that no qualified disabled person shall, solely by reason of his/her disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination, including discrimination in employment, under any program or activity that receives or benefits from this federal financial assistance.

The County of Wayne further assures that its programs will be conducted, and its facilities operated, in compliance with all requirements imposed by or pursuant to 49 CFR Part 27, 28 CFR Part 35 and 42 USC 12101-12213.

Revised and adopted this 5th day of August, 2014 at Wayne, Nebraska.

The Board of Commissioners of Wayne County, Nebraska.

Dean Burbach, District 2, Board Chairman

Randy Larson, District 1

James Rabe, District 3

ATTEST:

Debra Finn, Wayne County Clerk