STATE INSTRUCTION NUMBER 16-12

To: Local Workforce Development Board Chairs
Local Workforce Area Signatory Officials
Local Workforce Area Administrators

Subject: Facility and Program Accessibility Under WIOA

Issuance Date: May 26, 2017

Effective Date: Immediately

Purpose: To transmit updated guidance on the requirement to ensure program and facility accessibility to individuals with disabilities and to transmit evaluation instruments.

Background: 29 CFR 38.13 stipulates that no qualified individual with a disability may be excluded from participation in, or be denied the benefits of a service, program, or activity or be subjected to discrimination because facilities are inaccessible or unusable by individuals with disabilities. In addition, all WIOA Title-I financially assisted programs and activities must be programmatically accessible.

Regarding physical accessibility, there is no "grandfather clause" in the ADA that exempts older facilities. If a facility was in compliance with the 1991 Standards or Uniform Federal Accessibility Standards (UFAS) as of March 15, 2012, a public entity is not required to make changes to meet the 2010 Standards, until the public entity decides to alter a facility for reasons other than the ADA. Elements and spaces being altered must comply with the 2010 Standards. For definitions of alteration, refer to (https://www.ada.gov/regs2010/titleII_2010/title_ii_primer.html).

29 CFR 38.28(b) requires that LWDBs designate a Local Equal Opportunity Coordinator/Officer responsible for coordinating the EO responsibilities within the local workforce area with the State Equal Opportunity Officer.

Policy: Facilities must be accessible or usable by individuals with disabilities. In each local workforce area, government buildings in which staff is located, services provided, and/or programs conducted are subject to Title II of the ADA. Therefore, new facilities or alterations of facilities that began construction after January 26, 1992, must comply with the applicable federal accessible design standards, such as the ADA Standards for Accessible Design (1991 or 2010) or the UFAS. In addition, recipients/subrecipients that receive federal financial assistance must meet their accessibility obligations under Section 504 of the Rehabilitation Act and the implementing regulations at

29 CFR part 32. Recipients/subrecipients utilizing commercial facilities to locate staff, provide services, and/or conduct programs may be subject to additional accessibility requirements under other statutory authority, including Title III of the ADA that is not enforced by U.S. Department of Labor Civil Rights Center (CRC). As indicated in 29 CFR 38.3(d)(10), compliance with this part does not affect a recipient's/subrecipient's obligation to comply with the applicable ADA Standards for Accessible Design.

All WIOA Title I-financially assisted programs and activities must be programmatically accessible, which includes: providing reasonable accommodations for individuals with disabilities; making reasonable modifications to policies, practices, and procedures; administering programs in the most integrated setting appropriate; communicating with persons with disabilities as effectively as with others; and providing appropriate auxiliary aids or services, including assistive technology devices and services, where necessary to afford individuals with disabilities an equal opportunity to participate in, and enjoy the benefits of, the program or activity.

Action: The Local EO Coordinator/Officer must ensure completion of the two evaluation instruments for each of the following: local fiscal/administrative entity, comprehensive SC Works centers, satellite SC Works centers, and access points open to WIOA applicants, participants and the public at-large, and submit the evaluations to the DEW Office of Equal Opportunity annually by March 31st. Copies of the completed evaluations must be kept on file by the Local EO Coordinators/Officers for availability at time of monitoring. The two required evaluation instruments are as follows:

1. The Disability Access Checklist, attached. Links can be found on the SC Works Document Directory page at https://www.scworks.org/docs.asp.

2. The ADA Checklist for Existing Facilities, which can be found at the ADA website at http://www.adachecklist.org/. This assessment can be completed by in-house staff or can be competitively outsourced.

LWDBs are responsible for ensuring compliance with the equal opportunity provisions in Section 188 of WIOA; 29 CFR part 38; section 504 of the Rehabilitation Act of 1973, as amended; and Title II of the ADA, as amended.

Inquiries: Questions may be directed to Stephani Frese at 803-737-2381 or sfrese@dew.sc.gov.

Patricia Sherlock, Director
Policies and Procedures

Attachment

Disability Access Checklist: Determining Accessibility in Facilities and Provision of Services

The information and surveys contained in this document will enable Local Equal Opportunity Coordinators to perform required system evaluations and develop plans, which meet the accessibility needs of customers with disabilities who come to SC Works Centers for services, based on real data. This checklist addresses requirements of Section 504 of the Rehabilitation Act of 1973, as amended, as well as those under the Americans with Disabilities Act, as amended.

Accessibility is ever changing. Technology, standards, and needs are constantly evolving and should be viewed as an on-going process. System evaluation will capture both strengths and weaknesses and allow the development of a concrete plan to increase the level of accessibility in local programs. The plan should identify priorities for barrier removal and assist in planning for continual improvement.

These tools are designed to simplify complex issues while maintaining the integrity of the goal of accessibility and the requirements of the law. Questions regarding specific situations that arise within programs should be expected. Call the DEW Office of Equal Opportunity for additional information.

Take the following steps:

- Complete the applicable sections of the checklist for the Workforce Development Board's administrative entity and for each SC Works Center/facility open to WIOA applicants, participants, and the public at-large.

- Develop internal action steps to rectify issues identified as a result.

- Develop written policies covering employment and program practices.

- Maintain copies of each checklist and any supporting/resulting documents on file.

- Submit each checklist to the DEW Office of Equal Opportunity by March 31st every year.

Throughout this form there are response questions. Please note that several of the text boxes have a 180 character limit, but do not indicate as such. Please attach any supplementary information if additional space is needed.

SECTION I

Accommodation / Customer Service Practices

The first portion of the checklist reviews recommended customer service and accommodation practices for SC Works Center programs, outlines what you are required to do, and asks you to evaluate your efforts to date.

	Yes	No
1. Has your SC Works program affirmatively sought to serve qualified individuals with disabilities?	☐	☐
a. What outreach programs have you implemented?		
b. Have you been successful?	Yes ☐	No ☐
c. How do you know?		
2. Do you have a written policy concerning discrimination on the basis of physical, psychological, emotional, or cognitive disability?	Yes ☐	No ☐
3. Do you regularly review your service practices (advertising, notices, signage, facility, and program access) to be certain that you, your operators, staff, and recipients are nondiscriminatory in the treatment of individuals with disabilities?	Yes ☐	No ☐

Program and Employment Practices

	Yes	No
1. Medical records for customers and employees must be kept in a separate, secure location. Access to medical records must be limited. Are all records that contain medical information kept in a separate place from non-medical records? (Medical information includes insurance application forms, as well as disclosure and documentation of disability, health certificates, results of physical exams, etc.)	☐	☐
a. Do you have a written policy regarding who has access to medical information?	Yes ☐	No ☐
b. What is the policy? (A copy should be attached.)		
2. Do your program and employment recruitment materials, including photos and ad copy, contain positive images of persons with disabilities and indicate your commitment to inclusion of persons with disabilities?	Yes ☐	No ☐
3. Are inquiries related to the presence of a disability limited to performance of essential functions of the job or requirements for reasonable accommodations (following a request for same)?	Yes ☐	No ☐

	Yes	No
a. Are staff aware of what constitutes legal and illegal inquiries?	☐	☐

b. If 'yes', how did they obtain this information? Describe. For example, did they participate in a training session? Read relevant literature? etc.

	Yes	No
c. Have job descriptions been analyzed to determine which functions of a job are 'essential' and which are 'marginal'?	☐	☐

If "yes", describe the process for doing this.

	Yes	No
d. Are job descriptions in writing?	☐	☐

If "no", why not?

	Yes	No
e. Are any of the following questions asked during the employment application process?		
o Health or physical condition?	☐	☐
o Physical or mental problems or disabilities?	☐	☐
o Medical history?	☐	☐
o Previous workers' compensation claims?	☐	☐
o Prior health insurance claims?	☐	☐
o Past drug use or substance abuse?	☐	☐
(NOTE: These types of employment questions are no longer used. Consider ADA training in interviewing.)		
4. Do you require that applicants for employment take any of the following tests as part of the application process?	Yes	No
a. Drug or alcohol test?	☐	☐
b. HIV tests?	☐	☐
c. Skill or performance tests?	☐	☐
d. Psychological tests?	☐	☐
e. Intelligence tests?	☐	☐

	Yes	No
5. As an employer, do you have a substance abuse policy?	☐	☐
6. As an employer, do you have a drug testing policy?	☐	☐

It is required that reasonable accommodation be provided to employees and customers with disabilities. Reasonable accommodation includes a broad range of adaptations to the manner or circumstances in which a service activity is performed, an interview is conducted, etc.

Reasonable accommodations may include:
- Allowing an individual with a psychiatric disability to periodically leave early or arrive late and later make up that time
- Making structural modifications to accommodate a participant who uses a wheelchair
- Providing auxiliary aids and services including sign language interpreters, readers, or alternative format

	Yes	No
7. Regarding reasonable accommodation:		
a. Have employees, applicants, participants, and other individuals been informed that they are entitled to reasonable accommodations?	☐	☐
b. If 'yes', how have they been so informed?		
	Yes	No
c. Are reasonable accommodations provided to SC Works Center program employees, applicants, participants, and other individuals with disabilities?	☐	☐
d. How do you know?		
	Yes	No
f. Do supervisory staff know how to proceed if an accommodation is requested?	☐	☐
g. Has a specific staff member been designated to coordinate reasonable accommodation requests, including determining when an accommodation is or is not reasonable and when a funding request will be made? (Note: This is not required, but is recommended.)	☐	☐
h. Do they know how to secure a sign language interpreter if necessary?	☐	☐

i. Do they know how to get material transcribed into Braille or recorded in audio format?	☐	☐
8. As a matter of policy, are interviews, staff meetings, and other gatherings held in accessible locations? (Accessible locations include accessible entrances, meeting areas, and rest rooms.)	Yes ☐	No ☐
9. Are off-site staff trainings, holiday parties, picnics, or other gatherings held in accessible locations?	Yes ☐	No ☐
10. Are reasonable accommodations, including sign language interpreters, written materials in alternative format, etc. provided to individuals with disabilities at off-site meetings, trainings, and social events?	Yes ☐	No ☐

SECTION II

COMMUNICATIONS ACCESSIBILITY CHECKLIST FOR SC WORKS CENTERS

Communications access refers to the way information is received and transmitted. When evaluating your program in terms of access to communication, you will assess the four different ways in which communication occurs: aural, oral, cognition, and visual. It is important to keep in mind that there are four distinct, broad populations that are affected by your level of accessibility in this area: persons with impaired hearing, speech, cognition, and vision.

	Yes	No
1. Does the SC Works Center have information that is communicated visually? (Note: information communicated visually includes brochures, enrollment forms, handbooks, flip charts, slides, posters, graphic directional signs, etc.)	☐	☐
Type of Information: ☐ Large Print ☐ Braille ☐ Videos ☐ Readers ☐ Verbal Description ☐ Pictorial ☐ Signage ☐ Other, Please Specify:		
2. Does the program involve information that is communicated verbally?	☐	☐
Type of Information: ☐ Interpreter ☐ TDD ☐ Relay ☐ Paper/Pen ☐ Written Copies ☐ Oral Interpreter ☐ Other, Please specify:		
3. Does the SC Works Center inform persons with disabilities that auxiliary aids and services are provided upon request? (Note: It is not sufficient to inform only persons who have identified themselves as having an accommodation need. You must inform the public at-large.)	☐	☐
4. How do you do so?		
5. Does the SC Works Center have a procedure for deciding which auxiliary aids and services to provide?	Yes ☐	No ☐
6. Does the procedure provide for consideration of an individual's preferred aid or service?	Yes ☐	No ☐
7. Does the procedure include a mechanism for determining that an aid or service that was provided was equally effective?	Yes ☐	No ☐
8. Does the program communicate with the public over the phone?	Yes ☐	No ☐
9. Are telephone conversations lengthy, complex, technical or personal?	Yes ☐	No ☐

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	Yes	No
10. Does the program have a TDD?	☐	☐
11. If so, have staff been trained on the appropriate use of a TDD?	☐	☐
12. Is there a mechanism for re-training?	☐	☐
13. Are staff trained in the use of the relay system?	☐	☐
14. Are staff aware of the relay number?	☐	☐
15. Does the program have a web page?	☐	☐
16. Is the web page captioned?	☐	☐
17. Is there a mechanism for ensuring that people who are deaf or hearing impaired are aware of an activated fire or smoke alarm?	☐	☐
18. Is there an established emergency evacuation procedure that addresses the needs of persons with disabilities? (This should include the evacuation of persons with mobility impairments.)	☐	☐
19. Have staff been trained in this procedure?	☐	☐

Please describe the training, technology, and auxiliary aids and services available for people with disabilities in your LWDA's SC Works Centers. If your SC Works Centers needs assistance to make sure that services, technology, etc., can be used by people with disabilities, experts at the Job Accommodation Network (JAN) can give advice on hardware, software, and technology to enable people who are blind, deaf, or have physical disabilities to use the SC Works Center services. The JAN phone number is 800-JAN-7234 or 800-ADA-WORK.

Reviewer(s)

Date Reviewed

LWDA

FACILITIES CHECKLIST

Please conduct facility accessibility reviews for your administrative entity and for each facility open to WIOA applicants, participants, and the public at-large using the ADA Checklist for Existing Facilities. This checklist, which is based on the 2010 ADA Standards for Accessible Design, can be found at www.ADAchecklist.org. Submit these facility accessibility reviews to the DEW Office of Equal Opportunity by March 31st, annually.

NOTE: Elements in facilities that were built or altered before March 15, 2012, and that comply with the 1991 ADA Standards for Accessible Design are not required to be modified to meet the specifications in the 2010 Standards.